

RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

**IN THE MATTER OF SECTION 168 (4) OF THE LEASEHOLD AND
COMMONHOLD REFORM ACT 2002**

REFERENCE: LVT/0005/05/18

PROPERTY: Apartment 201, Caxton Place, Wrexham, LL11 1PA

LANDLORD: The Caxton Place Management Company (Wrexham) Limited

TENANT: Mr. Stephen Wyn Williams

TRIBUNAL: Mr. Andrew Grant
Mr. Roger Baynham
Mr. Eifion Jones

DECISION

1. This is an application made by the Caxton Place Management Company (Wrexham) Limited (“The Applicant”) against Mr Stephen Wyn Williams (“The Respondent”) which seeks a determination pursuant to section 168 (4) of the Commonhold and Leasehold Reform Act 2002 that there has been a breach of a covenant or condition in a lease.

The Application

2. The Applicant is the Freehold owner of Caxton Place, being land and buildings on the north of Regent Street in Wrexham. The Freehold title is registered at HMLR under title number WA859853 (“The Site”).
3. The site consists of 70 individual flats contained within 3 separate blocks together with communal grounds.

4. The Respondent is the long Leasehold owner of flat number 201 Caxton Place, Regent Street, Wrexham, LL11 1PA ("The Flat"). The Leasehold title is registered at HMLR under title number CYM256761. The flat is held pursuant to a long lease for 999 years and commenced on the 1st July 2004. ("The Lease")
5. On the 24th April 2018 the Applicant made an Application to the Residential Property Tribunal for a determination that the Respondent had breached a covenant or condition within his lease.
6. The Tribunal issued directions on the 30th May 2018. The Applicant was directed to file and serve its evidence by 12 noon on the 13th June 2018. The Respondent was directed to file his evidence by 12 noon on the 29th June 2018.
7. The Applicant relies upon the undated statement of Kevin O' Reilly. Mr O' Reilly is the Managing Director of a company called "Mathews of Chester" which is a firm which has been appointed to act as the Managing Agent and which manages the site on behalf of the Applicant.
8. The Respondent relies upon his own undated witness statement.
9. The matter was listed for hearing on the 2nd August 2018.

The Inspection

10. An inspection of The Flat took place at 09-30 on the 2nd August 2018.
11. The Applicant was represented at the inspection by Mr Palfrey (barrister), Ms Richards (solicitor) and Mr O'Reilly from the Managing Agent. Mr Williams was present in person.

The Flat

12. The Flat comprises a ground floor apartment located within a gated development consisting of 70 similar type apartments located in 3 separate blocks of 4 and 5 storeys in height. It is within easy reach of the shops, university and the town centre.
13. The development was constructed approximately 14 years ago and is conventionally built having brick exterior walls and a composite slate roof. The window frames and doors to the communal areas are double glazed UPVC Units. The development is well maintained.
14. The access to the flat is via a communal entrance door. The accommodation has its own entrance door and consists of an entrance hall, a through living / dining room, kitchen, 2 double bedrooms with one having en - suite facilities consisting of a shower, wash basin and w/c. There is also a separate bathroom with a bath, wash basin and a w/c. The flat has been maintained to a high standard.

The hearing

15. The hearing was held at Glyndwr University, Wrexham, LL1 2AW.
16. The Applicant was represented by Mr Palfrey. Mr Williams appeared in person.

The Applicant's submissions

17. Mr Palfrey stated that the Applicant sought to rely upon clause 26 of Part 2 of the Lease and Clause 1 of Part 3 of the Lease.

18. The starting point is Clause 3 of the lease which states that -

“The Lessee for the mutual protection of the Lessor and of the Management Company and of the Lessees of the properties hereby covenants: -

3.1 With the Lessor to observe and perform the obligations on the part of the Lessee set out in parts one two and three of the Eighth schedule

3.2 With the Management Company to observe and perform the obligations on the part of the Lessee set out in parts two and three of the eighth schedule.

19. Clause 26 of Part 2 of the Lease states that the Lessee is: -

“ Not to let the property for a term of less than 21 years other than on an Assured Shorthold Tenancy and not without the written consent of the Management Company to each and every letting (such consent not to be unreasonably withheld).”

20. Clause 1 of Part 3 of the Lease states that the Lessee is –

“Not to use the demised premises for any purpose other than as a private residence and not to carry on any trade business or profession”.

21. Mr Palfrey referred the Tribunal to the various advertisements within the hearing bundle which advertised the flat for short term lets. He submitted that the Respondent was advertising the flat for short term lets on sites such as Airbnb and other similar sites. He submitted that there had been no consent to any such letting and every single let was in breach of clause 26 of Part 2 of the Lease and Clause 1 of Part 3 of the Lease.

22. Further, it was submitted that the lets were all for business purposes which were contrary to the lease. In that regard he said that he sought to rely upon the case of Nemcova v Fairfield Rents (2016).

23. Mr Palfrey then referred the Tribunal to the witness statement of Mr O' Riley which was in the bundle. In particular he referred to the warning letter sent to the Respondent on the 6th April 2018 (page 33 in the bundle) and the response (at page 36 of the bundle). He submitted that the response showed that a lease had been entered into in breach of the covenants relied upon.
24. He submitted that no Landlord approval had been sought to the letting and further the Respondent had no licence as required by Rent Smart Wales.
25. Mr Palfrey then went on to comment upon the Respondent's evidence.
26. He submitted that the Landlord had never given permission to the letting mentioned at paragraph 4 of The Respondent's statement.
27. Mr Palfrey submitted that all of the properties put forward by Mr Williams at paragraph 6 and Appendix 1 of his statement and which were said to be evidence of other properties being let on short term lets were , in actual fact, nothing of the sort. He submitted that they were evidence of monthly lets.
28. Mr Palfrey submitted that the Respondent had not produced any medical evidence to support the medical condition of Mr Richmond as advanced at paragraph 8 of his statement.

The Respondent's submissions

29. Mr Williams submitted that until the 25th November 2017 he had a long standing tenant called Mr. Przemyslaw Chojnancki. He said that he had been in the Flat for about 5 or 6 years. He said that the letting had been approved although he had not included any documentary evidence of Landlord approval in the bundle.
30. He went on to say that after the tenant left in November 2017 he redecorated the flat and put in new furnishings. However, he was unable to find a tenant.
31. It was at this point that his business colleague, Mr Stephen Richmond suggested letting the flat out as serviced accommodation.
32. He said that he appointed a channel manager called Evio. They then advertised the property on various web sites.
33. The Respondent admitted that the property had been used for short term lets.
34. However, the Respondent said that after he received the letters from the Landlord he cancelled the Contract with Evio at the end of May 2018. He was informed that it would take between 8 – 10 weeks before all adverts came off of the internet.

35. In the interim Mr Williams said that he manually tried to block each site which meant that it became immediately apparent that the flat was unavailable for short term lets.
36. The Respondent said that the flat had been let for about 5-10 days in March 2018, 10 – 12 days in April 2018, 15 days in May 2018, 15 days in June 2018 and 15 days in July 2018.
37. He said that the Flat was no longer being used for short term lets.
38. The Tribunal asked when had the last guests stayed at the flat and he said at the beginning of July. The Tribunal indicated that during the inspection the beds had clearly been slept in and there were towels on the floor of the bathroom.
39. Mr Williams said that his friend had stayed the weekend before the hearing.
40. Mr Williams said that he was looking to sell the property as it was not financially viable.

Cross examination

41. Mr Palfrey asked if the Respondent entered into the Agreement with Global Sovereign limited. The Respondent said that he did not as he did not receive the Landlord's permission.
42. Mr Palfrey took the Respondent through pages 42 – 48 of the bundle and showed evidence of lettings being advertised on the internet. He asked if the Respondent had any e mails which evidenced that he had cancelled the bookings. The Respondent said he did not have them with him but could get them.
43. Mr Palfrey asked when the last paying guest stayed at the property. The Respondent said "probably in June but I cannot recall".
44. Mr Palfrey asked if they (all bookings) were all cancelled after June. The Respondent replied "after June – yes".
45. Mr Palfrey asked, why, if the last let was in June 2018, there was a review on the internet which said that the reviewer had stayed in July 2018? The Respondent replied that he would need to check as he was unsure. Mr Palfrey asked the respondent to accept that the property had been let from the last day in June until the 2nd July 2018. The Respondent said that he would need to check.
46. Mr Palfrey asked the name of the friend that had recently stayed. The Respondent said the friends name was "Adrian".
47. Mr Palfrey asked what the Respondent did for a living. The Respondent replied that he worked for a company that sold lodges to Golf Clubs that had spare land to use.

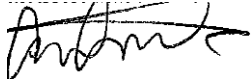
48. Mr Palfrey asked why, would Global Sovereign, a non-trading dormant company need to rent a flat in Wrexham. The Respondent replied that it would be used when visiting sites in North Wales.
49. The Tribunal asked the Landlord whether it would grant the permission that had been sought by the Respondent as regards the letting to Mr Richmond. Mr Palfrey said no as the Respondent was not licensed.
50. The Respondent said that he was licenced and handed to the Tribunal a document which he said evidenced his licence. After examination it was determined that whilst the Respondent had registered with Rent Smart Wales, he did not actually have a licence.

Deliberations

51. During the course of the evidence the Respondent admitted that he had let the property on short term lets without first seeking and obtaining the Landlord's approval.
52. The Respondent said that he had now remedied the breach.
53. However, the Tribunal remain unconvinced that the breach has been remedied.
54. It was clear that the property had been occupied in the days prior to the site visit by the Tribunal.
55. The Respondent indicated that it was a friend that had used the property yet page 53 of the hearing bundle shows a calendar which shows the property as being occupied from the 27th to the 31st July 2018.
56. There is a clear inconsistency between the documents and the Respondent's evidence to the Tribunal.
57. On page 36 of the bundle is a letter sent by the Respondent to the Applicant which indicated that he had entered into a written agreement with Global Sovereign Limited. However, in his evidence the Respondent said that he had not actually entered into that agreement as he did not get the Landlord's permission. Again the evidence is inconsistent.
58. In evidence the Respondent stated that the last letting was in June. However, there is documentary evidence that the property was occupied in early July.
59. Taking all of this into account the Tribunal is not satisfied that the breach has been remedied and we decline so to find.

60. Accordingly, the Tribunal determine that there has been a breach of clause 26 of part 2 of the Lease and that there has been a breach of Clause 1 of part 3 of the lease.

Dated this 31st day of August 2018.

A handwritten signature in black ink, appearing to read 'A Grant', written over a horizontal dashed line.

A Grant
Chairman