



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CAM/38UF/LBC/2016/0007

Property : Flat 6, Sanders House, Churchfields,
Stonesfield, Witney, Oxfordshire,
OX29 8ST

Applicant : Deanna Holmes-Asplundh (1)
Sanders House Management Limited
(2)

Representative : Paul Westgate on behalf of PW
Property Services Ltd as agent for
Sanders House Management Limited

Respondent : Mr Lawder Smith

Type of Application : Determination under Section 168
Commonhold and Leasehold Reform
Act 2002

Tribunal Members : Judge S Bright
Mr Neil Martindale FRICS
Mr Mohammed Z Bhatti MBE

Date and Venue of Hearing : 21 July 2016, Jury's Inn, Oxford

Date of Decision : 22 July 2016

DECISION

1. The First Applicant be struck from the Application
 2. The Tribunal finds that there has been a breach of clauses 6, Fourth Schedule and clause 21.2, Fifth Schedule of the lease of the property dated 26 August 2005.
 3. The Tribunal finds that there has been no breach of clause 14, Fifth Schedule of the lease of the property dated 26 August 2005
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charge monies, arranging repair and maintenance for the communal areas, dealing with breaches of the lease and advising on obligations under the lease. Breaches of leases are usually dealt with informally, often by email. He is authorized to incur up to £250 on items. In relation to non-routine he issues he takes instructions from the Company Director. Mr Westgate was instructed by the Director to bring these proceedings; these instructions were given during a lengthy phone call, and there is no email or writing to confirm these instructions.

17. The Respondent explained that the usual approach to management was for Company meetings to be held. Discussions at such meetings would typically include minor items, such as replacing a roof slate. The application to the Tribunal was an important matter but had not been discussed at any meetings. The Director is appointed to instruct the managing agents on day to day matters and urgent issues. In relation to larger items all members of the company are emailed so that a decision can be taken by the majority. This, for example, was what happened in relation to car parking as the allocation of parking spaces under the lease was not clear. Taking legal action against a member is a major action that should have been put to all members. He explained that he thought that this application was a personal matter between the first applicant and himself because she does not like his tenants.
18. The Tribunal adjourned to consider this issue and during the adjournment Mr Westgate secured copies of his Terms of Appointment with the Company, which were then supplied to the Tribunal and to the Respondent.
19. The Tribunal concludes that as the first applicant is not the landlord of the property she is not entitled to be a party to these proceedings and is struck from them accordingly.
20. As Mr Westgate states he has authority to bring these proceedings on clear instruction from the Company director and there is no evidence to the contrary the Tribunal considers that it is able to determine the application brought by the Company.

Covenants and Alleged Breaches

21. The three covenants following are referred to in the Application. By clause 5 the Lessee covenants to observe and perform the covenants contained in the Fourth, Fifth and Eighth Schedules.
 - *4th Schedule (Mutually Enforceable Covenants by the Lessee)* clause 6 provides a covenant by the lessee 'Not to place any flower box flower pot or other like object outside the Apartment'. The Apartment is defined in the First Schedule (as being shown edged red on the plan). From the Plan it is clear that the staircase leading

to Flat 6 is not part of the Apartment.

- *5th Schedule (Covenants by lessee with lessor and management company)*, Clause 21.2 provides a covenant: 'Not to obstruct any part of the Building nor to allow anything to be placed or remain in or upon any part of the Building excluding the Demise and any bin store.' Clause 1.18 defines the Building as meaning 'the building erected on the Development comprising the Properties the Facilities the Car Park the Gardens and such of the Services all being within the blue and brown edging on the Plan'. No plan with blue and brown edging or indicating the extent of the Building was supplied to the Tribunal and neither party is aware of such plan. There was, however, agreement between the Parties about the extent of the common parts. The Demise is defined as meaning the Apartment.
- *5th Schedule, clause 14* contains the covenant: 'To comply with the Regulations'. Clause 1.24 states that 'The regulations' 'means any reasonable regulations made by the Management Company for the proper management and use of the Building'. The Tribunal has not been supplied with a copy of any Regulations. The parties considered whether some of the understandings reached in relation, for example, to the use of the communal areas might count as regulations but were not aware of any formally agreed regulations.

22. Mr Westgate explained that these covenants were breached by there being a plant pot, barbeque and rubbish bags on the staircase outside of Flat 6 immediately outside the door to Flat 6, as shown in the photographs included in the Bundle. The barbeque and rubbish bags were cleared away after the matter was mentioned to the tenants but the plant pot remained. This tribunal action was brought because there was a concern that without a determination from the Tribunal this could occur again. The plant pot has now been moved by the tenants. The area that the pot was in is an area that the Company maintains and its presence there is a health and safety issue. Mr Westgate claims that the plant pot being on the staircase breaches all 3 covenants mentioned above. The other items were a breach of clauses 14 and 21.2, Fifth Schedule.

23. In response to the Tribunal asking whether both bins and cars placed on communal lands involved a breach of clause 21.2, as seemed to be the case in view of the lease wording, Mr Westgate explained that how to deal with these has been discussed and agreed by leaseholders. It is planned to get a bin store. In relation to the small bike at the front of the house, seen during the Inspection, Mr Westgate accepted that this is also a breach but he had not received complaints about it. In relation to the flower plots outside Flats 7 and 8 (including the flat of the first applicant) Mr Westgate said the he had been told on his appointment that there had been a previous agreement that these could be placed in this communal area. When asked by the Tribunal about the breaches observed by the Tribunal on inspection Mr Westgate said that he acts if instructed.

24. Mr Westgate said that the possibility of forfeiture had not been

discussed at all. The determination from the tribunal was sought so that they could get the items removed. When asked by the Tribunal about the possibility of forfeiture Mr Westgate replied: 'I don't think it was anticipated it would go that far'.

25. The Respondent replied by stating that the barbeque was removed as soon as he became aware of it. He did not accept that the plant pot was a health and safety hazard. The other items belonging to leaseholders in communal areas belonged to the first applicant. The issue involved: i) the first applicant's consideration of taste – the plant pot involved was plastic; and ii) she had an issue with the tenants. He said that the first applicant goes around and takes photos of things that she does not like. The pot has now been removed. The Respondent accepts that there was a breach of clause 6 but he had received an email from Mr Westgate stating that the Council would take it away, and the Respondent was happy with this solution. The next thing he heard was that there would be legal action. When he passed this information on to the tenants the plant pot was removed. The Respondent also accepts that there was a breach of clause 21.2 but denies that the pot was an obstruction. In relation to clause 14, he is not aware of any Regulations made by the Company.

Decision on Alleged Breach of Covenants

26. The Tribunal decides that there had been a breach by the Respondent of clause 4, Fourth Schedule, and clause 21.2, Fifth Schedule. As no evidence was supplied about any Regulations, the Tribunal decides that there was no breach of clause 14, Fifth Schedule.

Costs

27. Mr Westgate had written to the Tribunal to state that he would request an order for costs and expenses incurred in the preparation for and appearance at the hearing.
28. The Tribunal explained the approach taken to costs applications as set out in the recent Upper tribunal decision in *Willow Court Management Company (1985) Limited v Alexander* [2016] UKUT 0290 (LC). This case explains the Tribunal's jurisdiction to make an order in respect of costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 'if a person has acted unreasonably in bringing, defending or conducting proceedings'. It states that the Tribunal must first decide if there is unreasonable conduct as this is a pre-condition of the power to order costs. 'Unreasonable' conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. Applications for costs should not be regarded as routine and should be determined summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions. The applicant for an order should be required to identify clearly and specifically the conduct relied on as unreasonable.

29. If, in the light of this, Mr Westgate wishes to make an application for costs, he will need to do so formally and providing evidence as to the unreasonable conduct alleged.

Judge Bright
22 July 2016

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.