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**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AC/LBC/2009/0029

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
COMMONHOLD & LEASEHOLD REFORM ACT 2002 – SECTION 168(4)

ADDRESS OF PREMISES:	104 BEAUFORT PARK FALLODEN WAY LONDON NW11 6BY
APPLICANT (LANDLORD):	BEAUFORT PARK RESIDENTS MANAGEMENT LIMITED
APPLICANT'S REPRESENTATIVE	CONWAY & CO. SOLICITORS
RESPONDENT (TENANT):	MR SIMON KASS MRS AMANDA KASS
APPEARANCES	MS L SCOTT – CONWAY & CO. MR J. O'BRIEN – BEAUFORT PARK RESIDENTS MANAGEMENT LTD.
TRIBUNAL :	MS F DICKIE (BARRISTER) - CHAIR MR MEL CAIRNS (FRICS)
HEARING	22 ND JUNE 2009
DATE OF DECISION	7 TH AUGUST 2009

THE TENANT IS STRONGLY ADVISED TO TAKE LEGAL ADVICE ABOUT THE EFFECT OF THIS DECISION.

SUMMARY OF DETERMINATION

1. The tribunal finds that the tenant has breached Clause 5 (xvii) and Paragraph 8 of the Sixth Schedule to the Lease.

PRELIMINARY

2. The premises in question are known as 104 Beaufort Park, Falloden Way, Finchley, London NW11 6BY ("the premises"), a purpose built block of flats on a private estate. The Applicant is the landlord of the Estate, known as Beaufort Park. The Respondents have been the owners of the leasehold interest in the premises since on or around 16th June 1998. The Applicant seeks a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that breaches of covenant in the lease have occurred by virtue of the current occupant of the premises (being apparently a sub-tenant) keeping a dog there.
3. The application was listed for a hearing on Monday 22nd June 2009 at 1:30pm. The hearing was attended on behalf of the Applicant by Ms L Scott, Conway & Co. Solicitors and by Mr J O'Brien Director and Company Secretary of Beaufort Park Ltd. The hearing was adjourned with Further Directions dated 6th July 2009. Neither party has requested a further oral hearing and therefore the tribunal has determined the application on consideration of the evidence presented at the hearing on 6th July 2009 and the additional material now before it, including:
 - (a) Letter 22nd July 2009 Applicant to Ms Scott of Conways, enclosing photographs taken of the occupants of the premises with a dog.
 - (b) Copy of file notes taken by Ms Scott of her telephone attendances on Mr Kass on 21st and 24th July 2009. The first records that Mr Kass denied knowledge of the LVT proceedings but confirmed that his current address for service is 20-22 Finchley Lane, London NW4 1DL. The second records that Mr Kass said he understood the dog would be removed that day and he would be going to the premises to check.

- (c) Letters dated 23rd and 24th July 2009 serving documents on Mr Kass at 20-22 Finchley Road, London NW4 1DL, including the original bundle (previously sent to him at the same address under cover of a letter dated 29th May 2009), the additional documents and Further Directions.

The Lease

4. The premises are demised under a lease dated 25th March 1978. The tribunal was advised that there is a deed of variation of the lease to 999 years from 1991 which did not change any of the terms of the lease and was not produced in evidence. Under Clause 5 (xvii) of the lease, the Lessee covenants to “perform and observe the rules and regulations set out in the Sixth Schedule ... in connection with either the Flat or Beaufort Park.”
5. The Sixth Schedule of the lease provides:
8. No bird dog or other animal shall be kept in the Flat without the previous consent in writing of the Management Company (by their Agent) such consent to be revocable at any time by the Management Company at its sole discretion.
10. Not to cause any obstruction in or on the approaches or passageways adjacent or leading to Beaufort Park.
15. The Lessee shall not have the right to use any part of Beaufort Park other than the Flat and the hall staircase landings passages estate roads and footpaths leading thereto for the purpose of ingress and egress.

Evidence

6. Mr O’Brien gave evidence at the hearing of 22nd June 2009 in accordance with his witness statement produced in advance. He said that he had received complaints from residents about the presence of a large dog at the premises, who had reported to him that it had been fouling the gardens. He said he first noticed this large white dog with a black patch on its eye about a week after the sub-tenants moved in, which was before Christmas 2008. He reported a conversation he had had with the male occupant of the premises, who said it belonged to his

cousin and was going that day. Mr O'Brien did not know the name of this occupant, but said he had seen him, as well as a woman and a child, going in and out of the door to the premises (which had its own entrance, not a communal one) as he passes that part of the estate about 15 times a day.

7. Mr O'Brien then recalled seeing the dog again after Christmas, on its own in the garden outside the premises. During a fortnight in January, after the first letter from the managing agents to the Respondent about the dog dated 12th January 2009, he saw it on at least 3 or 4 occasions on the patch of grass outside the entrance to the premises. This prompted him to go back to the managing agents, who sent a second letter to the Respondents dated 10th February 2009.
8. Mr O'Brien said that he continued to receive reports of sightings of the dog thereafter, and on occasions he saw it himself. He confirmed that Beaufort Park Ltd. had never given any permission for a dog at those premises and there had been no request for such consent.

Determination

9. The tribunal finds that the tenant has covenanted in accordance with the terms of Paragraph 8 of the Sixth Schedule to the Lease. The oral evidence given by Mr O'Brien at the hearing has now been corroborated by photographs and the attendance notes of Ms Scott. On the totality of this consistent and persuasive evidence the tribunal finds that the current occupier of the premises has kept a dog there for some months – at least since Christmas of 2008. Mr Kass has told the landlord of his intention to resolve the situation and ensure that the dog is removed. There is insufficient evidence from either party to determine whether in fact the dog continues to be kept at the premises, but the tribunal is satisfied that it has been so kept in breach of Paragraph 8 of the Sixth Schedule of the lease. Accordingly, the tribunal finds that the tenant has been in breach of Clause 5(xvii).
10. According to Ms Scott's attendances on Mr Kass, the tenant had not received correspondence from the managing agent about the dog, sent to him at his previous address, and until recently he had no knowledge of the presence of the dog. However, the tribunal has no persuasive evidence before it from the

Respondents as to their knowledge of the breach, and in any event Clause 5(xvii) and Paragraph 8 of the Sixth Schedule impose strict liability. Furthermore, that Paragraph imposes a requirement for written consent from the landlord. The tribunal is satisfied that no such consent has been sought or granted.

11. The tribunal was not persuaded that the presence of a dog, or the residents' fear of it, constitutes an obstruction under Paragraph 10 of the Schedule. Paragraph 15 refers to the rights of the Lessee to use Beaufort Park. The occupier's user outside of these rights constitutes more properly a private law cause of action rather than a breach of the lease. The Applicant's case is fully and adequately framed as a breach of Paragraph 8.

Chairman
Ms F Dickie

Date 7th August 2009