



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

Case Reference : LON/00AY/LBC/2014/0033

Property : 69a Railton Road
London SE24 0LR

Applicant : Brixton Housing Co-operative

Representative : HPLP solicitors

Respondent : Dermot Madden

Type of Application : Breach of covenant

Tribunal Members : Judge Nicol
Ms S Coughlin MCIEH
Mr JE Francis

Date and venue of hearing : 23rd July 2014 at 10 Alfred Place,
London WC1E 7LR

Date of Decision : 23rd July 2014

DECISION

Decision of the Tribunal

The Tribunal has determined that the Respondent is in breach of clauses 2.1, 5.14 and 5.15 of his tenancy.

The Tribunal's reasons

1. The Applicant is a housing co-operative. Its tenants, who are also its members, do not have statutory security of tenure. Instead, they benefit from tenancy agreements which purport to limit the Applicant's right of

possession unless grounds are established. This kind of tenancy was considered by the courts in *Berrisford (FC) v Mexfield Housing Co-operative Ltd* [2011] UKSC 52. The Supreme Court decided that, rather than being void for lack of a term, the tenancy came within section 149(6) of the Law of Property Act 1925 which deemed the grant of a 90-year lease.

2. The Respondent is a tenant of the Applicant's at the subject property. The Applicant has applied for a determination under section 168 of the Commonhold and Leasehold Reform Act 2002 that the Respondent is in breach of certain terms of his tenancy. By sections 169(5) and 76(2)(c) of the same Act, a lease deemed under the aforementioned section 149(6) of the Law of Property Act 1925 comes within section 168 and so the Tribunal may consider whether to make such a determination.
3. The Tribunal heard the application on 23rd July 2014. The Applicant was represented by Mr Piers Harrison of counsel and the Tribunal heard from two witnesses, Ms Alison Halstead, who is the Respondent's upstairs neighbour, and Mr Michael Cadette, who is the current chair of the Applicant's management committee. A witness statement was also proffered from Ms Antonia Coker, a friend of Ms Halstead who said she was present on a few relevant occasions.
4. Unfortunately, the Respondent appears to have chosen not to take part in these proceedings. As far as the Tribunal can tell, he has been properly notified by the Tribunal of both the proceedings and the hearing. The Tribunal knows of no reason why he should not have attended the hearing. In the event, the Tribunal had no choice but to proceed with the hearing in the Respondent's absence.
5. The Respondent's tenancy includes the following clauses:
 - 2.1 The Tenant shall be a member of the Co-operative throughout the Tenancy and will comply with the Co-operative's Membership Policy/Agreement ...
 - 5.14 The Tenant, members of the household or invited guests shall not at any time cause a nuisance or disturbance to other members of the Co-operative or their guests or to the Tenant's neighbours.
 - 5.15 The Tenant will not commit or allow members of the Tenant's household or invited guests to commit any form of harassment on the grounds of race, colour, religion, sex, sexual orientation or disability which may interfere with the peace and comfort of or cause offence to any other resident in the Property or visitor to a member of the Co-operative or any agent, contractor or staff of the Co-operative or to the Tenant's neighbours.

6. The evidence of the Applicant's witnesses is set out in their respective witness statements which, in the absence of any cross-examination or any reason to doubt any part of them, the Tribunal accepts in full. Essentially, the Respondent can hear Ms Halstead's ordinary household activities through her floor and his ceiling which appears to cause him disturbance. The Applicant installed new floor coverings to try to limit the effect of this noise and Ms Halstead has offered to do what she can, including in mediation. The Respondent has responded with an entirely inappropriate stream of abuse, including racist abuse, and banging and other noise of his own over a period from November 2012 to January 2014. There can be no doubt that the Respondent's behaviour detailed by Ms Halstead in her witness statement constitutes breaches of clauses 5.14 and 5.15 of his tenancy.
7. Mr Cadette has described how, as a result of his behaviour, the Applicant decided to terminate his membership in accordance with rule 12 of their Rules. A general meeting was duly called for 5th March 2014, of which the Respondent was given notice by letter dated 30th January 2014, and a motion expelling him was passed by a majority of 29-2. On that basis, he is in breach of clause 2.1 by not being a member during his tenancy.
8. Therefore, the Tribunal has determined that breaches have occurred of clauses 2.1, 5.14 and 5.15 of the Respondent's tenancy. It is for the courts to determine separately what consequences follow from that.

Name: NK Nicol

Date: 23rd July 2014