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

Case Reference : **MAN/00CX/LBC/2014/0006**

Property : **Flat 1, 116 Skipton Road, Ilkley, West Yorkshire,
LS29 9HE**

Applicants : **Stourton Lea (Management)
Ltd.**

Respondent : **Ms Hazel Cooke**

Type of Application : **Breach of Covenant: Commonhold and Leasehold
Reform Act 2002, s.168**

Tribunal Members : **Judge Caroline Hunter
Ms Jenny Jacobs**

Date of decision : **30 July 2014**

DECISION

Summary Decision

1. The applicant Stourton Lea (Management) Ltd sought a determination that the respondent Ms Hazel Cooke was in breach of the covenants under her lease by installing a patio area in the garden and keeping two labrador/collie cross dogs. In relation to the alleged breaches we conclude:
 - i. That although the respondent, Ms Cooke, had no right to carry out the installation of the patio in the garden, it did not amount to a breach of the lease;
 - ii. That the keeping of the two dogs is in breach of para. 5 of the Seventh Schedule to the lease.

Background

2. On June 6, 2013, the respondent, Ms Hazel Cooke, purchased Flat 1, 116 Skipton Road. 116 Skipton Road, is a four-floor Victorian house which has been divided into three self-contained flats, which are held on identical leases. Flat 1 is on the ground and basement floors. The freeholder is Stourton Lea (Management) Ltd ("the company"), which is owned by the three leaseholders, each of whom holds one share in the company. The other two leaseholders are Ms Dodds who owns Flat 2 on the first floor and Mr Neilson who owns Flat 3 on the second floor.
3. On April 11, 2014 the company applied for a determination that Ms Cooke was in breach of the lease by carrying out work to lay a large stone patio in the communal garden and by keeping two large labrador/collie cross dogs. Directions were issued on April 28, 2014 and decided that the matter could be determined by way of a paper determination, unless either party requested a hearing and without an inspection of the property. Neither party requested an oral hearing.
4. The Tribunal met to determine the matter on July 30, 2014.

The lease

5. The lease distinguishes between:
 - "the property": "all that land and building situate and known as 116 Skipton Road, Ilkley, West Yorkshire" (see First Schedule);
 - "the flats": i.e. the three flats "which form part of the property"
 - "the reserved property", that part of the property not included in the flats, which is further described in the Second Schedule as including "those entranceways passageways halls stairs and landings used in common by occupants of the property for the purposes of giving access to and egress from the various floors thereof and the garden areas driveway and entrance way...."
 - "the premises" which is flat 1 (see Third Schedule).
6. The lease is in a fairly common form and sets out the rights included in the demise in the Fourth Schedule and includes at paragraph 6:

"The right in common with the Lessor and the occupiers of all other flats and all others having the like right to use the gardens forming part of the Property for normal leisure and recreational purposes associated with the use of a garden."

7. The lessee covenants to observe and comply with the “the restrictions set forth in the Sixth and Seventh Schedules”. The Seventh Schedule contains at paragraphs 5 and 13 the following covenants:
“5. Not without the consent of the Lessor to keep any animals on the premises other than one small pet dog or cat and/or cage bird nor to permit any such pet dog to foul any part of the property not to allow the same to become a nuisance to any lessee the owner or occupier of any other flat.”
“13. Not to place any personal effects furniture or other objects including pictures photographs or wall hangings in the entrance hall staircases landings and other areas forming part of the reserved property except with the consent of the owners of all the other flats using the same.”
8. On June 14 2003 a meeting of the directors and members of the Company resolved to:
“grant licence to the present tenants of the three flats together with Hilary Barrett the Purchaser of Flat 1, such licence to be personal to the present tenants and Hilary Barrett in the following terms:
..
The right for the owner of Flat 1 to keep two dogs at the Premises
The right for the owner of Flat 1 to have exclusive use of the area of land as shown on the Plan attached hereto.”

The facts

9. There are some facts that are agreed in the paper submissions provided by the parties.
10. In relation to the patio there is no dispute that Ms Cooke carried out the works. The garden appears quite large (approximately 36 meters in length) and the patio is at the end of the garden nearest the house. We have been provided with photographs of it. As originally built it also included a surrounding fence, but following negotiations this was taken down voluntarily by Ms Cooke. There is some dispute between the parties as to the state of the garden (including a pre-existing patio) prior to the new patio being installed and indeed the continuing condition of the garden. We make no findings in relation to this as it is not relevant to the issues we have to decide.
11. In relation to the dogs there is no dispute by Ms Cooke that she has the dogs. There is some dispute as to assurances given by Ms Dodds and Mr Neilson about keeping the dogs, but again for reasons set out below, we do not find it necessary to reach any conclusions on this.

The Decision

12. In relation to the patio we determine that the garden is part of the reserved premises. This is clear from the wording of the lease. Although Ms Cooke had been led to believe that she had exclusive rights over the patio, presumably on the basis of the 2003 licence agreement, we agree with the applicant’s assertion that she had no such rights. The licence was purely personal and has no application to Ms Cooke.
13. Accordingly Ms Cooke had the right to use the garden for “normal leisure and recreational purposes” in accordance with the lease. In our view this does not

include carrying out major works such as the construction of the patio. This, however, does not mean that there has been a breach of the lease. There is no covenant explicitly preventing this conduct and the company does not in its application point to one. We do not think that we can imply such a term into the lease. Nor do we consider that paragraph 13 of the Seventh Schedule covers this situation: this is not a case of placing personal effects or the like on the reserved property. We accordingly agree with Ms Cooke's submission that there is, in relation to this, no breach of the covenant. This is not to say that the carrying out of the works was lawful, it is likely to amount to a trespass to the land as it goes beyond the use permitted by the lease. Remedies of injunction and damages may be available. That, however, is not a matter which is within our jurisdiction to decide.

14. Turning to the dogs, as noted there is no dispute about whether they are being kept by Ms Cooke on the premises. Ms Cooke asserts that there is no definition of "small" in the lease. We have not been provided with any details of the size of the dogs, beyond their breed, whether by photograph or other measurement. We think it is likely, given the breed, that they cannot be considered small, but make no definitive determination on this matter. The lease, however only permits the keeping of *one* small dog without consent. Two are being kept which is clearly a breach.
15. Ms Cooke in her statement seems to be implying that there was some form of consent through discussions in May and June 2013. Ms Dodds and Mr Neilson deny that they made any assurances that the "dogs were fine". The e-mail sent by Ms Dodds on June 13 2013 would seem to be at odds with the making of such assurances. Whatever was said in these discussions, we do not consider that even as alleged by Ms Cooke that these amounted to "consent from the lessor". Accordingly there is a breach of the lease in the keeping of these dogs.