



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

Case Reference : CHI/24UF/LBC/2014/0031

Property : 36 Vincent Road, Gosport, Hampshire PO12 4QN

Applicant : Gosport Borough Council

Representative : -

1st Respondent : Mr Paul and Mrs Claire Badawi

Representative : -

2nd Respondent : Mr Scott Carter-Hearn

Type of Application : Section 168(4) Commonhold and Leasehold Reform Act 2002 for a determination as to breach of covenant under the lease.

Tribunal Members : Judge T A Clark

Date of Paper determination and Decision : 30 April 2015

DECISION

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Decision

1. On 11th March 2015 the Applicants applied for a determination as to alleged breaches of the terms of the lease by the 1st and 2nd Respondents .

2. The Tribunal has determined that various specified breaches have occurred and some are found to be ongoing.

The Law

3. The Commonhold and Leasehold Reform Act 2002 provides that; Section 168(4) "A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred."
4. The burden of proof rests with the Applicant and the standard of proof to be applied by the Tribunal is the civil standard, that is the balance of probability.

The Lease

5. The lease is dated 9th February 1987.
6. Clause 2 provides that ;
"The tenant hereby covenants with the lessor as follows;

2(c) At all times during the term well and substantially to repair maintain and decorate cleanse and keep in repair and properly decorated the demised premises

2 (h) Not to do or permit to be done on the demised premises any act or thing to the damage or annoyance of the lessor or the tenants of the lessor or the occupiers of any part of the building or any adjoining or neighbouring premises

2(n) At all times during the term to observe and perform the regulations specified in the Fifth Schedule hereto.
7. The Second Schedule defines the premises as including the glass and frames within the windows of the flat and the doors and door frames
8. The Fifth Schedule sets out the rules and regulations

5. Any person using the common parts of the building between the hours of 11pm and 7am shall do so as quietly as possible and take special care to close the entrance doors and to cause no disturbance or annoyance to other tenants.

7. (d) Shall not keep in the building or any part thereof any dog and shall not without the written consent of the lessor keep in the building or any other part thereof any other animal bird or pet."

7(f) Shall not permit any singing or the playing of any musical instrument or the use of any gramophone wireless television or recording instrument so as to cause or in the opinion of the lessor to cause a nuisance or annoyance to any other of the building

8. All tenants shall ensure that these rules and regulations are observed and performed by their families servants agents and visitors and shall observe and

ensure the observation of such other rules as may from time to time be made by the lessor.

Inspection

9. No inspection was requested by any party although consent was given by the 2nd Respondent in his witness statement for such inspection. The Tribunal concluded that an inspection was not required and so no inspection took place. The Tribunal understands that the property is a one bedroom flat on the first floor within a block of 8 flats.

The Background

10. The lease was the subject of purchase in 1987 under the Right to Buy provisions contained in the Housing Act 1985 Part v. The current tenants (the 1st Respondents) purchased the leasehold interest in the property on 2nd October 2007. In around May 2013 the sub-tenant (the 2nd Respondents) entered into occupation of the property under an Assured Shorthold tenancy.

Proceedings

11. Directions were given on 15th December 2014. Further directions were given on 27th January 2015. The 2nd Respondent was joined in the proceedings. The matter was re-timetabled to give the 2nd Respondent an opportunity to respond with a statement of case and witness statement and any legal submissions.
12. The Applicants served extended reasons (undated.)
13. The breaches complained of are;
 - I. Failure to keep in good repair/repair the damage to the door to the storage shed which forms part of the demised premises.
 - II. Failure to keep in good repair/repair the damage to the glass in the door on the property which forms part of the demised premises.
 - III. Loud music Loud talking/shouting between the 2nd Respondent and neighbours during the day and night
 - IV. Playing of loud amplified music by the 2nd Respondent during the day and night.
 - V. Drug related activity at the property
 - VI. Keeping a dog/dogs at the property
14. The 1st Respondents notified the Applicant that one of the 1st Respondents, Mr Badawi, had moved property although they had not notified the Applicant of this. As a result they had not received initial correspondence.
15. The Tribunal concluded that the delay of receipt of information by the 1st Respondent in this case were not relevant to our determination. Extensions of time were granted due to the inclusion of the 2nd Respondent to the application. Further the Tribunal concluded that service is effective in law when sent to a person's last known address.

16. The Tribunal noted the 1st Respondents have initiated action for possession of the property from the 2nd Respondent by way of service of a notice under Housing Act 1988 section 21 .
17. The Tribunal noted the 1st Respondents requested a stay to allow the eviction process to proceed through the courts. The Applicants declined to agree a stay of the application. The Tribunal is now seized of this matter and declines to grant a stay of proceedings.

Evidence

18. The Tribunal read the bundle provided and in particular the following documents;
 - The lease
 - Office copy entries – This referred to the lease and store being included in the title.
 - The grounds of application containing grounds of application.
 - The directions made on 15th December 2014 and 27th January 2015
 - Extended reasons
 - The statements of case of the Applicant
 - The statement of case of the 1st and 2nd Respondent
 - All the witness statements
19. The Applicants rely on two witness statements with exhibits. These include information from the police containing suggestions of anti social behaviour including noise and drug dealing.
20. The 1st Respondents acknowledged damage to the storage shed and the crack to the glass pane but stated that the 2nd Respondent had not notified them of either of these issues.
21. The 2nd Respondent accepted breaches of covenant in the keeping of two dogs at the property. In addition he accepted the fact of the broken storage shed door, although he denied responsibility for this. He also accepted that he had cracked a pane of glass in a door.
22. The 2nd Respondent denied the allegations of noise nuisance and loud music and asserts himself and by his witnesses that other occupants may be responsible for the noise complained of.
23. The 2nd Respondent denies allegations of drug dealing.
24. The Tribunal finds that letters were sent to the 1st Respondents on 2nd July 2014 and 15th July 2014 and were properly sent to the 1st Respondents last known address. The first letter reported the damage to the storage shed. The second letter reported other alleged breaches of the lease. An invalid Section 146 notice was sent on 14th August 2014.
25. The Tribunal did not take into account the allegations of prior anti social behaviour on the part of the 2nd Respondent. These were not proved

evidentially to the satisfaction of the Tribunal and were not found to be corroborative of the current allegations of breach.

26. The Tribunal did not consider any issues of hardship as these were not relevant to its determination.

Determination

27. The Tribunal applied the civil standard of proof namely that they have to be satisfied on a balance of probability that the matters complained of have occurred.

28. The burden of proof lies with the Applicant to prove the alleged breaches to the requisite civil standard.

29. The Tribunal was satisfied on the available evidence that the following breaches have occurred using the numbering adopted at paragraph 13 above.

I. Failure to keep in good repair/repair the damage to the storage shed. The Tribunal is satisfied that it is not required to reach a determination as to who damaged the storage shed door. The Tribunal finds that the storage shed door was damaged and the 1st Respondents failed to repair/replace within a reasonable time. Nor did they have a system in place to ensure compliance with their obligations.

II. Failure to keep in good repair/repair the damage to the glass panel in front door. The Tribunal finds that the glass panel in the door was cracked by the 2nd Respondent and the 1st Respondents failed to repair/replace within a reasonable time. Nor did they appear to have a system in place to ensure compliance with their obligations.

VI. The Tribunal find the keeping of dogs to be a breach of covenant by the 2nd Respondent which is ongoing. The 1st Respondents are also in breach in permitting the breach to occur and failing to have in place a proper system for ensuring compliance with the lease by the 2nd Respondent.

30. The Tribunal is not satisfied on a balance of probability that the following breaches have occurred, there has been no request for an oral hearing and having determined the application on the papers alone.

III. Loud talking/shouting between the 2nd Respondent and neighbours and/or playing of loud amplified music by the 2nd Respondent

IV. Suspicious behaviour amounting to evidence of drug taking/drug dealing by the 2nd Respondent.

31. The Tribunal makes no findings either way in relation to these allegations of breach of covenant being unable to assess the weight of the evidence in a paper determination which by its very nature limits the ability to test the evidence where there are factual disputes. The evidence in relation to drug

dealing described behaviour as being “suggestive of” and “suspicious”. Thus the Tribunal decline to make findings on the basis of this evidence at this time.

32. The Tribunal were asked to consider that the Applicants have waived any right to rely on breaches by failing to have acted earlier in relation to the keeping of dogs (page 49 of the bundle - Legal Argument on behalf of the 2nd Respondent). The Tribunal do not have jurisdiction to consider this issue.
33. Whether or not other tenants keep dogs or other pets is not material to the decision before the Tribunal today.

Appeal

34. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
35. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision
36. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
37. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

T A Clark
Judge