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

Case Reference : **LON/00BG/LBC/2017/0105**

Property : **Flat 3804, Arena Tower ,25
Crossharbour Plaza London E14
9YF**

Applicant : **Baltimore Wharf SLP**

Representative : **Ms A Omar Counsel**

Respondent : **Dr Mervat Al-Attar
Youssef Fallaha, Tenants**

Representative : **Dr Al-Attar**

Type of Application : **Breach of covenant**

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mrs A Flynn MA MRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR
15 January 2018**

Date of Decision : **15 January 2018**

DECISION

Decision of the tribunal

The Tribunal determines that the Respondent Tenants are in breach of covenant in relation to Clause 15 of the Fifth Schedule of their lease.

The Tribunal makes no order for costs.

Reasons

1 By an application dated 2 November 2017 the Applicant landlord sought a declaration from the Tribunal that the Respondent tenants were and remain in breach of covenant of their lease. Directions were issued by the Tribunal on 07 November 2017.

2 The matter was heard by a Tribunal on 15 January 2018 at which the Applicant was represented by Ms A Omar of Counsel and the Respondents by Dr Al-Attar.

3 The Applicant landlord is the freeholder of the building at Arena Tower, 25 Crossharbour Plaza London E14 9YF.

4 The Respondents are the tenants of Flat 3804 Arena Tower.

5 The lease under which the Respondents hold the property is dated 13 April 2017 for a term of 999 years from the same date and was made between the Applicant of the one part and the Respondents of the other part.

6 The Fifth Schedule of the lease contains a number of covenants given by the tenant including:

'(15) Not to keep any bird dog reptile or other pet or animal whatsoever (whether domesticated or not) in or on the Apartment without the previous consent in writing of the Landlord such consent to be revocable at will by the Landlord by notice in writing in the event of a complaint being received by the Landlord or the animal causing a nuisance or fouling on any of the common parts and provided further that nothing herein contained or implied shall in any way restrict any other covenants and obligations herein contained'.

7 On behalf of the Respondents De Al-Attar admitted that they were keeping a dog in the flat and had not obtained the prior consent of the landlord in accordance with the provisions contained in the lease although they had tried to do so .

8 The Tribunal explained to Dr Al-Attar that in those circumstances the Tribunal had no option but to grant the Applicant the declaration it sought. It had no jurisdiction to grant an extension of time or other remedy and recommended that the Respondents sought legal advice about their position.

9 In the light of the above facts the Tribunal finds that the Respondents' breach of covenant is a continuing breach of their lease.

10 This does not however preclude the Respondents from seeking relief against forfeiture in the event of such action being taken against them by the Applicant.

The Law

11 Commonhold and Leasehold Reform Act 2002 s. 168

No forfeiture notice before determination of breach

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(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.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

Name: Judge Frances Silverman
as Chairman **Date:** 15 January 2018

Note:
Appeals

1. 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.
2. 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.
3. 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.
4. 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.