



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

Case Reference : **CHI/21UD/LBC/2014/0009**

Property : **Flat 2, 13 Stockleigh Road, St Leonards on Sea, TN38 0JP**

Applicants : **Elizabeth Sheila Hyde, Rowena Rowling & Ratko Lakicevic**

Representative :

Respondent : **Pollyann Van Herpen**

Representative : **Heringtons LLP, Solicitors**

Type of Application : **Breach of Covenant section 168(4)
Commonhold and Leasehold Reform Act 2002**

Tribunal Member : **Mr Dallas Banfield FRICS**

Date and venue of Hearing : **Determination on the papers**

Date of Decision : **7 October 2014**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that there has been a breach of s.7 of the First Schedule to the lease in that it has been admitted that a dog has been kept in the premises.
- (2) Not to make an order under s20.C Landlord and Tenant Act 1985.

The Application

1. By an application dated 27 May 2014 the Applicants sought a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent is in breach of various covenants contained in the lease.
2. The Applicants summarised the alleged breaches as;
 - (i) That the Respondent was letting Flat 2 to multiple tenants on separate contracts in breach of Restriction 1 of the First Schedule of the lease. (The Tribunal takes the reference to "tenants" to mean "sub-tenants" and will refer to them as such in these proceedings)
 - (ii) That two of the sub-tenants were using the flat for a car sales business in breach of Restriction 1 of the First Schedule.
 - (iii) That by letting the flat to multiple sub-tenants, the Respondent caused the buildings insurance premium to be higher than it would otherwise be, in breach of Restriction 2 of the First Schedule.
 - (iv) That one of the sub-tenants kept a dog in breach of Restriction 7 of the First Schedule.
3. On 5 June 2014 Directions were issued setting out a timetable for the proper conduct of the proceedings and indicating that the matter would be determined by way of a paper hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing. No such objection has been received.
4. In letters from the Applicants dated 12 August and 29 September 2014 the alleged breaches in respect of grounds 1, 2 & 3 were withdrawn on the grounds that the previous sub-tenants had now vacated the flat. The Tribunal was however asked to make a determination in respect of ground 4 (whether one of the sub-tenants kept a dog).

5. The Respondent holds the property under a lease for a term of 99 years from 25 December 2003 made by way of a Deed of Variation dated 20 April 2004 between Edwina Betty Crosse, Timothy John Priestly and Susan Claire Priestly of the one part and Roger Michael Mather, Morag Ann Craig Mather, Julia Claire Worthington and Simon Anthony Worthington trading as Macadamia Properties of the other part. The original lease is dated 30 April 1971 and made between E.L.Sealy Esq. of the one part and Miss P Booth of the other part.
6. The Applicants are the freeholders of 13 Stockleigh Road,
7. Clause 7 of the First Schedule to the lease includes the words “*no bird dog or other animal which may cause annoyance to any owner lessee or occupier of the other flats comprised in the Mansion shall be kept in the flat*”.
8. The Applicant alleges that a dog has been kept in the flat; In a statement signed by Elizabeth Sheila Hyde (page 12 of the bundle) she states that “Mike Burnhope has a dog called Beaner, a Staffie. She was with him while he was working on the flat and moved in when he did. I have not seen the dog recently” In a statement dated 26 June 2014 (page 14) Rowena Rowling states that “The first man to move into the boarding house, who also carried out the renovations, has a dog”
9. In her statement dated 4 August 2004 (pages 47&48) the Respondent states that whilst the Applicant suggests it is an absolute prohibition “it is only if the pet causes an annoyance. I am advised that, due to the wording of the covenant, I cannot be liable for acts of my under-tenants but, even if I could, such liability would not arise until I was put on notice of the “annoyance”. The Applicants have not provided any evidence that the dog was an annoyance and most certainly have not raised any such issue with me in this regard, even prior to their application. I have spoken with Mr Bale who lives in the garden flat and he states that the dog is friendly and does not bark. He also states he has not seen the dog “mess” in the area. There is therefore, no breach of this restriction”

The Findings on the Purported Breach

10. This matter satisfies the requirements set out in paragraph 7 of the Practice Statement “Composition of Tribunals in the Property Chamber on or after November 2013” this determination is consequently made by a Member of the First- tier Tribunal sitting alone.

11. The Tribunal determines that Clause 7 of the First Schedule is an absolute restriction on the keeping of any bird, dog or other animal which has the potential to cause annoyance to any owner lessee or occupier of the other flats and it is not necessary therefore to provide proof of actual annoyance.
12. It is clear from the statements referred to in paragraphs 8 & 9 above that at some time a dog was kept at Flat 2 and the Tribunal therefore determines that a breach has occurred.

The Costs of the proceedings

13. The lessee says that the costs incurred by the Applicants should not be regarded as relevant costs in determining the amount of any service charge payable by the Respondent pursuant to S20C Landlord and Tenant Act 1985 due to;

- (i) In the knowledge that the Respondent is taking steps to recover possession from two of the tenants
- (ii) Without first notifying the Respondent of the alleged breaches for which they assert she is liable; and
- (iii) Without any real evidence or foundation.

14. The Applicants say that;

- (i) Proceedings were begun on 27 May but it was not until 22 July that the Respondent informed the Applicants that she was in the process of evicting the tenants.
- (ii) The Respondent was notified by letter and email dated 16 April of the remaining breaches relating to the use of the flat and keeping a dog.
- (iii) The Respondent has admitted the flat was let on separate tenancies.
- (iv) Evidence of car sales.
- (v) Admits dog kept in flat.

- (vi) Evidence of insurance costs provided.

Decision of the Tribunal

15. Whilst costs do not necessarily follow the award, in this case the Applicant has been wholly successful in the matter that remained before the Tribunal. In addition I am not satisfied that the dispute would have been resolved without the action taken. I therefore decline to make an order under s.20C Landlord and Tenant Act 1985.

RIGHTS OF APPEAL

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

Appendix of relevant legislation

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.

Landlord and Tenant Act 1985

20C Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Practice Statement

Composition of Tribunals in the Property Chamber on or after 15 November 2013

7. A decision that disposes of proceedings must be made by a Judge of the First-tier Tribunal or another member of the First-tier Tribunal who has been authorised to chair proceedings sitting alone but in the following circumstances may be decided by a Judge or a Chairman sitting with one or two other members
- a, Where the matter includes a dispute of fact or opinion
 - b, Where the matter requires the application of special expertise; and/or
 - c, Any other case where, in the view of the Regional Judge, the overriding objective requires there to be more than one member.