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

Case Reference : LON/00BK/LBC/2014/0068

Property : 19, Evesham House, Hereford Road, W2 4PD
And Parking Space 19

Applicant : H.R Management Company Limited

Representative : Guillaumes LLP Solicitors

Respondent : Maria Carmel O'Connor

Representative : Acting in Person

Type of Application : Application for an order that a breach of
covenant or a condition in the lease has
occurred pursuant to Section 168(4) of the
Commonhold and Leasehold Reform Act 2002

Tribunal Members : Judge Shaw
Mrs S. Redmond MRICS

Date and venue of Hearing : 10 Alfred Place, London WC1E 7LR

Date of Determination : 21st October 2014

Date of Decision : 23rd October 2014

DECISION

Introduction

1. This case involves an application by H.R Management Company Limited (“the Applicant”) in respect of Flat 19, Evesham House, Hereford Road, London W2 4PD and parking space 19 (“the Property”). The Applicant is the freehold owner of Evesham House which comprises a number of separate flats with assigned parking spaces. The Respondent is Maria Carmel O’Connor (“the Respondent”) who is the leaseholder of Flat 19 at Evesham House, together with the use of the appropriate parking space.
2. By virtue of provisions contained within the First Schedule to the Lease held by the Respondent, the Respondent has covenanted:

“Not to obstruct or hinder the access of cars to and from the car parking spaces comprised in the building”

And

“No vehicle shall be parked or left standing in any part of the estate except in the parking space”

(“Parking space” is elsewhere defined in the lease as that allocated to each particular flat).

3. By application dated 19th August 2014, the Applicant has asserted that in breach of the above provisions of the Lease, and despite having been asked on numerous occasions to remove the vehicle, the Respondent continues to park her vehicle in the car park space allocated to Flat 20 at the property, rather than in her own space. The application has been supplemented by a witness statement prepared by Nicholas Michael Hughes which appears at page 12-14 of the bundle prepared for the Tribunal. In that witness statement Mr Hughes states that he is a property manager employed by HML Hawksworth who are managing agents appointed by the Applicant. He states that it came to his firm’s attention that the Respondent was parking her vehicle in the space

allocated to Flat 20 and accordingly the agents wrote to the Respondent on several occasions as particularised in his statement asking her to desist from this practice. In addition, a copy of the letter was placed on the car. Notwithstanding these requests, in March and April of this year the Respondent continued parking in the space for Flat 20. Solicitors were instructed who wrote to the Respondent and on 19th May 2014. She replied to that letter by way of telephone call and asserted that she had entered into an agreement with the “residents” of Flat 20 who had authorised her use of the parking space at Flat 20.

4. There then followed a series of emails on 28th May, 2nd June, 3rd June, 10th June and 4th July with the agents requesting the Respondent to provide evidence of any such agreement. She failed to provide such evidence and the Applicant has exhibited to its statement an email dated 4th July 2014 from someone called Maxine Martin who the Applicant contends is either the leaseholder of Flat 20 or somebody speaking on behalf of the leaseholder. That email dated 15 July 2014 is to the effect that the “occupant of Flat 19 does not have the authority to use our parking space”.
5. Given that there had been no provision of any evidence to an agreement to the contrary and given that the leaseholder of Flat 20, according to the Applicant, was denying any such authority, and given further that the unauthorised parking was continuing, this application has been made to the Tribunal for determination to the effect that a breach of the lease has occurred.
6. Under cover of a letter dated 24th September 2014, the Respondent has made a statement and produced certain exhibits. The statement is dated 22nd September 2014 and, summarising the position, she states that the managing agents and in particular a Miss Ahmed have behaved in an aggressive manner towards her and have “escalated” the situation “way beyond belief”. The Respondent’s case is that she has received no complaints from anyone concerning her use of the bay allocated to Flat 20 and that her use has been by

arrangement with the two previous leaseholders of Flat 20 over a period of many years. The current leaseholders have been difficult to contact, according to the Respondent, but she eventually succeeded in doing so in September of this year and spoke to the current leaseholder. Her evidence in her statement is that "He advised that he was more than happy to reach an agreement for me to continue his space once this situation with the management company was resolved".

7. She goes on to state that accordingly she made arrangements for the vehicle which was occupying her own space at No. 19 to be moved and has relocated her own vehicle to her allocated space and that she has not parked in the space at No. 20 since that time (presumably September this year).

8. On the basis of the above evidence, and indeed the Respondent's own statement, it seems clear that there has been a period during which the Respondent has parked her car in the No. 20 parking space without express authority from the current leasehold owner. This is in breach of the provisions of Schedule 1 to her lease and therefore on the balance of the evidence produced to the Tribunal, it seems to the Tribunal that it is indeed the position pursuant to Section 168(4) that a breach of covenant or condition in the lease has occurred. The breach of the above mentioned provisions occurred during a defined period of months earlier this year and according to the Respondent, the breach has now been cured. In a statement in reply from the Applicant, made by Miss Ahmed, it seems to be accepted that the breach has now been cured because Miss Ahmed states "The fact the the Respondent has, until recently parked in the car space for Flat 20 without providing evidence of authority to do so, was a breach of the lease". The qualification "until recently" seems to be recognition of the fact that the breach has now ceased. Miss Ahmed also states "Should she re-park her vehicle in this space again, without such consent, she will again be in breach of the terms of the lease." – which also infers that the breach at this stage has come to an end.

Conclusion

9. For the reasons indicated above, the Tribunal is satisfied that there has been a breach of the above mentioned provisions of Schedule 1 to the lease. The breach would appear to have occurred during a limited period between the departure of previous leaseholders who had authorised such use and the succession to the lease of Flat 20 by other leasehold owners. The use of parking bay 20 appears, on the evidence as referred to above, now to have come to an end. Accordingly, the Tribunal finds that a breach of the kind indicated has occurred. It will be for the Applicant to decide whether or not it wishes to take this matter any further and if it does so, for the County Court to decide what action, if any, is required.

JUDGE SHAW

23rd October 2014