



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)  
Formerly the Leasehold Valuation  
Tribunal**

**Case Reference** : **LON/00BD/LBC/2016/0003**

**Property** : **14 Tring Court, Waldegrave Park,  
Twickenham, Middlesex, TW1 4TH**

**Applicant** : **Tring Court Residents  
(Twickenham ) Limited**

**Representative** : **Dr M. A. Barrett**

**Respondent** : **Ms M. J. Hernandez**

**Representative** : **Mr Matthew Hearsum, Solicitor;  
Morrison's Solicitors LLP**

**Type of Application** : **Breach of covenant – Section 168  
Commonhold and Leasehold  
Reform Act 2002**

**Tribunal Members** : **Judge Lancelot Robson  
Mr P. S. Roberts Dip Arch RIBA**

**Date of Hearing** : **21<sup>st</sup> March 2016**

**Date of Decision** : **28th April 2016**

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**DECISION**

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## Decision Summary

- (1) The Tribunal determines that the Respondent is in breach of her lease dated 7<sup>th</sup> April 1982 (the Lease).
- (2) The Tribunal found that there had been a historic breach of:
  - (i) a regulation properly made by the Applicant pursuant to Clause (j) of the Second Schedule, by carrying a bicycle on more than one occasion through the common parts after 4<sup>th</sup> December 2015;
  - (ii) Clause 5 of the Third Schedule, as a consequence of her agents erecting a letting board on the external common parts on or about 2<sup>nd</sup> January 2016, and

The Tribunal notes that these breaches appeared to have been remedied prior to the hearing, but matters of relief are a matter for the County Court in any Section 146 proceedings founded on this Tribunal's decision, not for this Tribunal.
- (3) There had been no breach of:
  - (i) Clause (i) of the Second Schedule by allowing a student to occupy the premises notwithstanding the existence of a regulation purportedly made pursuant to Clause 13 of the Third Schedule
  - (ii) Clause 9 of the Third Schedule, which prohibits exposing of clothing etc. at the windows of the property,
  - (iii) Clause (l) of the Second Schedule which prohibits nuisance damage annoyance or inconvenience to the Lessors or their tenants, by making complaints of harassment, and by causing extra work to the company
- (4) The following issues were found to be Res Judicata, as the result of an agreement concluded by 4<sup>th</sup> December 2015 between the parties relating to a previous application to this Tribunal, which was settled by a consent judgment. Thus these issues were not decided by the Tribunal;
  - (i) late night comings and goings of Residents,
  - (ii) an under-tenant alleged to be aggressive and intimidating towards the Applicant's representatives,
  - (iii) leaving a bicycle and a pram in the common parts,
  - (iv) alleged parking in a restricted area,
  - (v) smoking in the garage,

- (5) The Tribunal makes the detailed determinations noted below. Also for ease of reference, the Tribunal has inserted extracts of the relevant law in Appendix 1.

### **Preliminary**

1. By an application dated 22<sup>nd</sup> January 2016 the Applicant applied for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) that breaches of the Lease had occurred, prior to the issue of a notice under Section 146 of the Law of Property Act 1925. The Respondent is the current Lessee.
2. Directions for hearing were made without a Case Management Conference on 28<sup>th</sup> January 2016. The Applicant made a more detailed statement of case as required by the Directions dated 14<sup>th</sup> February 2016. After delivery of the Applicant's documents bundle on 16<sup>th</sup> February 2016, the Respondent made undated written submissions shortly after 20<sup>th</sup> February 2016 in reply to the Applicant's statement of case, and the Applicant's bundle of documents. Those submissions (effectively the only Respondent's submissions allowed by the Directions) raised the issues of Res Judicata, and De Minimis. The Applicant made a further statement and delivered a further bundle not specifically required by the Directions on 14<sup>th</sup> March 2016, in reply to the Respondent's submissions relating to Res Judicata and De Minimis, but also commented further on submissions already in issue between the parties. The Respondent did not object to those submissions.
3. The Tribunal did not inspect the property, but it was agreed at the hearing that the building in which the property is situated is a four storey building containing 24 flats, with three communal staircases, each serving 8 flats, but no lifts. The subject property is on the first floor. The exterior common parts are extensive and include roadways and garages. The building is very close to the campus of St Mary's University in Twickenham.
4. The Applicant had brought a previous application pursuant to Section 168(4) of the Act in September 2015. This matter had been settled by consent with a formal admission by the Respondent that she had been in breach of the Lease, which was agreed on or before 4<sup>th</sup> December 2015 and embodied in a decision of the Tribunal by consent, dated the same day, declaring that a breach of the terms of the Lease had occurred.

### **Hearing**

5. The hearing commenced 30 minutes late at 10.30am. Although both parties and their witnesses had appeared by 10.00am, Mr Hearsom's train had been delayed. However he had telephoned the Case Officer prior to 10.00am to advise of his situation, and again at 10.15am. He arrived at 10.20am. In the circumstances, the Tribunal was prepared to delay the start of the hearing pending his arrival.

6. Dr Barrett then handed in several further documents. It was unclear to the Tribunal at that point whether the evidence they contained was disputed or relevant. The Tribunal took the preliminary view that it would decide whether to allow these documents in evidence, if it became necessary for a party to rely on them. In the event, they did not add materially to the evidence, so the Tribunal had no need to decide on the matter.
7. On a preliminary point, Dr Barrett noted that no plan was attached to the witness statement of Ms Collins. There was a plan at Page A76 of the bundle but it was not as good as the plan at Page A193. Mr Hearsam had no objection, and the Tribunal was content to use whichever plan was most informative, for the issues in hand.
8. On a further preliminary point, Dr Barrett complained that he had been unaware that the Respondent had a legal representative, in which case he would have considered instructing a legal representative himself. The directions did not refer to a legal representative being appointed for the Respondent. Mr Hearsam stated that he had first contacted Dr Barrett in October 2015, and a copy of his letter was in the bundle. The previous claim had been settled with his firm, Morrisons, acting for the Respondent. He also noted that the address for the Respondent stated by the Applicant in the Application was specifically stated to be Morrisons. The Tribunal decided that there was no prejudice to the Applicant, particularly as the case apparently being made by the Respondent was substantially set out in her formal statement of case. The Applicant had made a written Reply without a Direction to that case. Also it was clear from the application and statements that the Applicant was aware that the Respondent was legally represented at the outset of the present application, and also that he had some familiarity with legal procedures.
9. On a last preliminary point, Dr Barrett stated that the Respondent had not supplied a copy of the tenancy agreement until the Respondent's submissions had been made, and that this was very late for him to deal with it. Mr Hearsam stated that paragraph 5.1 of its statement of case in the application (see page A3 of the bundle) showed that the Applicant was aware of the true situation when that statement was made. The Tribunal decided that the Applicant had had sufficient notice of the agreement to be able to proceed.

#### Res Judicata

10. Mr Hearsam then raised the preliminary point noted in the Respondent's written statement of case, that a number of matters complained of by the Applicant were subject to either the principles of Res Judicata, or De Minimis. He referred to the Respondent's statement of case which referred to the rule in Henderson v Henderson in support, which, he submitted, demonstrated the Court's general reluctance to allow the same or related parties to relitigate issues which either were, or should have been raised in previous proceedings. He considered that the matters noted in the Applicant's statement of case at paragraphs 5.5 – 5.9 (excluding 5.8) all occurred prior to the issue of the first claim by the

Applicant on 30<sup>th</sup> September 2015. Those proceedings were compromised by the Consent Order made in that case, LON/00BD/LBC/2015/0104. The only exceptions to that rule did not apply to this case, e.g. fraud, or material new facts unknown to the parties. He agreed that the item mentioned in item 5.8 was still a “live” issue, but most of the other items referred to in 5.5 – 5.9 occurred in July or August 2015, and the parking dispute occurred on 22nd September 2015, before the issue of proceedings. Relating to item 5.6, the (under) tenant complained of was now living in Sweden, all the Respondent had from that tenant was the email in the bundle, and as Dr Barrett had already noted, it did not contain a statement of truth.

11. Mr Hearsom suggested that paragraphs 5.5 – 5.9 were designed to oppress the Respondent. He further noted that in paragraph 5.4 of the Applicant’s first statement, seeking legal advice by the Applicant was referred to. The Applicant had not suggested why Henderson v Henderson was not applicable. He agreed that a number of issues before the Tribunal would remain to be determined by the Tribunal.
12. Dr Barrett submitted that he was representing 24 leaseholders. He had obtained advice from the Leasehold Advisory Service. In connection with the first proceedings he had been advised that there was no purpose in adding to the Application at that stage. He had not been advised that he could do so. The case revolved around paragraph (l) of the Second Schedule to the Lease. He submitted that it was within the Tribunal’s rules to consider these items. The Respondent had a history of flouting the rules. It would be most unjust if the Tribunal decided to dismiss these items. He was particularly keen to make the claim in Nuisance, as it contained an allegation of harassment. The Respondent had admitted the breach in the previous application. The present application was a great waste of time. The circumstances had changed. The nuisance had deepened. It showed great disregard of the Lease by the Respondent. The Applicant also submitted that the Respondent’s bundle was not numbered in accordance with the Directions. It questioned the role of Mr Hearsom. The statement of case prepared by him did not indicate his role. Some statements in the statement of case were not supported by witness statements or statements of truth, e.g. asserting that signboards had been “removed the same or immediately the next day”. It was unclear if such assertions were being made by the Respondent or Mr Hearsom.
13. The Tribunal adjourned to consider its decision. It noted that the matters affected by the Res Judicata plea appeared now to be historic and involved the alleged behaviour of the sub-tenants. Although the Respondent, within reason, had to take responsibility for the actions of her sub-tenants, there was evidence before the Tribunal that where she had considered that a complaint made by Dr Barrett had substance, she had taken the matter up with the tenants, or the tenants themselves had taken some action to deal with the issue, even if the actions taken were not always to the Applicant’s satisfaction. The Applicant had achieved all it had claimed for in the previous settled proceedings, and in particular it

had an uncontested declaration of a breach of covenant by the Tribunal for the purposes of Section 168, which it had used in negotiations with the Respondent. Further ventilation of historic issues appeared to serve no useful purpose, particularly when it was clear that feelings on both sides ran high. Also the Tribunal decided that it was bound to take account of the decision in Henderson v Henderson (1843) 3 Hare 100. Relating that decision to the present case, it decided that the effective date by which both parties had agreed in writing to the terms of settlement was 4<sup>th</sup> December 2015. Mr Hearsam argued for the earlier date of 30<sup>th</sup> September 2015, when the Applicant had commenced proceedings. However, the Tribunal decided that the Applicant could not pursue any further putative breaches until after the date of the agreement. In practice however, at that date, no further events which might have affected the Applicant's view of the proposed settlement had occurred. Since the issues raised were historic, relatively minor, and some were disputed, the Tribunal decided that it should, in the interests of the public purse, limit its examination to those items which were more serious, and of ongoing concern between the parties. Nevertheless the following items remained "live" in this application, and the Applicant was entitled to have a determination of them;

- a) student occupancy (Para. 5.1 of the application)
- b) Clothing etc. shown at a windowsill (Para. 5.2)
- c) Nuisance by (i) making allegations of harassment and (ii) extra work caused to the Applicant's officers (Paras. 5.3 and 5.4)
- d) Bicycles carried through the common parts 5.8)
- e) Letting boards erected in the grounds (5.11)

The Tribunal further decided that any similar events occurring before 4<sup>th</sup> December 2015, would still be considered as evidence in relation to events occurring after that date.

14. The Tribunal then reconvened the hearing to advise the parties of its decision, with written reasons to follow (see above). It informed the parties that the issues raised by the Applicant in its statement of case at paragraphs 5.1, 5.2, 5.3, 5.4, 5.8, and 5.11 would be decided by the Tribunal.
15. Dr Barrett, Ms C. Collins and Mr J. Capon gave oral evidence following their witness statements and were examined at the hearing. Ms Joffe also gave a written witness statement, but neither party asked her to give oral evidence. Mr P. Fitzgerald sent an email letter, although it was very brief, and was not set out as a formal witness statement. He was not available to give oral evidence. For ease of reading, the Tribunal has summarised the parties' respective cases and its decision under the individual headings noted below.
16. Dr Barrett stated that he had no experience of appearing before the Tribunal. He considered that the Applicant's case relating to para. 5.11 (letting boards) was sufficiently documented in the bundle. Also he

considered that the issue of bicycles raised in para.5.8 could be decided on the papers.

a) Student Occupancy (Para. 5.1)

**Applicant's Case**

17. The Applicant submitted that the Respondent had admitted this breach as she had acknowledged that since 4<sup>th</sup> August 2015 one of the occupants (Mr Capon) was a student. This was in breach of Clause (l) of the Second Schedule, Item L.1 of the management regulations of the estate, set in accordance with Clause (j) of the Second Schedule and Clause 13 of the Third Schedule to the Lease. Student occupation was also precluded by the insurance clause and the current policy. The Respondent compounded the breach by removing the name of the student occupant from the tenancy agreement and classifying him as an "authorised occupant". The Applicant considered that the Settlement Order admitting breach of the covenant restricting occupation only by a single family dealt with this matter. (Additionally in its statement of 14<sup>th</sup> February 2016, it submitted that the Respondent was in breach of Paragraph (s) of the Second Schedule to the Lease by failure to register sub-lettings within 21 days, but this item was late, and was not pressed in the Applicant's third statement. The Tribunal therefore did not consider this issue, but notes that it has made a finding under Section 168(4) on other matters, so the issue now seems of little consequence).

**Respondent's case**

18. The Respondent referred to the terms of Paragraph (i) of the Second Schedule, and submitted that on 4<sup>th</sup> August 2015 the Respondent let the property to Mr Capon, Ms Collins, and Mr Felix King (the First Tenancy). Mr Capon and Ms Collins were a couple, therefore a family, but the presence of Mr King meant that all the tenants were not a single family. This had been the subject of the previous application, which was settled by the consent order. The Applicant was estopped from seeking any further relief in relation to the First Tenancy. Mr King left the property as a result of the consent order. The First Tenancy was surrendered and a new tenancy (the Second Tenancy) was granted in favour of Ms Collins. There Mr Capon was described as an authorised occupier. Ms Collins and Mr Capon were a single family, and therefore there was no breach of Paragraph (i) of the Lease. The Respondent agreed that paragraph L1 of the Supplemental Regulations stated that lettings to students or to a college/university for student housing purposes were not permitted, Mr Capon worked part-time, but was a full-time student on an undergraduate course due to finish in June 2016. There was no breach of Paragraph L1 as the property was let to Ms Collins only, who was not a student, and the property was let as a private residence and not for student housing purposes. The restriction was on letting to more than one student, if Mr Capon was a student then he was only one student.

## Decision

19. The Tribunal considered the evidence and submissions. The Lease provides:

Second Schedule Paragraph (i) –

*“Not to use or occupy nor permit the Flat to be used or occupied for any purpose whatsoever other than as a private residence in the occupation of a single family and not to use or permit the Garage to be used other than for the garaging of a private motor car”.*

Second Schedule Paragraph (j)

*“To comply with and observe the Management regulations set forth in the Third Schedule hereto and such amendments or additional regulations as the Association may (consistently with the provisions of this Lease) make to govern the use of the Estate Buildings and the Site in the general interests of the residents”*

Third Schedule Paragraph 13

*“Each Lessee shall observe such other rules and regulations (either in addition to or by way of substitution of these Regulations) as the Association or Lessors may think desirable for securing the safety comfort or convenience of the occupiers of the Estate Buildings”*

Management Regulation L1 (PA36 of the bundle) provides:

*“L1. For building insurance and other reasons, lettings not permitted include (i) for social housing purposes or where the rent of tenants is paid by the Local Authority or the Department of Social Security, (ii) to holidaymakers, or for short term lets of less than six months, and (iii) to students or a college/university for student housing purposes.”*

20. The Tribunal considered the Lease as a whole in some detail and decided that in the absence of a specific prohibition against student occupation in the Lease, on its proper construction, it was inconsistent with the Lease to attempt to prohibit student occupation by making regulations which prevented student occupation. The Lease remains at all times the governing document representing the agreement between the parties. Regulations prohibiting new categories of occupier, or insurance requirements restricting student use not mentioned in the Lease, were invalid. The Applicant had put forward no cogent reason or case law in support of its position. The Tribunal also noted in this context that the Lease did not specifically exclude illegal or immoral use of the Flat. Although such use is excluded by the general law, many well drafted leases contain such an exclusion. The Tribunal considered that the omission indicated that the draftsman had given little consideration to the question of use, beyond the specific exclusion in Paragraph (i). The Tribunal further noted that in reply to a question from Mr Hearsom, Dr Barrett took the view that the effect of the prohibition he argued for, was



that if an occupant became a student, he or she would have to move out. The Applicant's letter to the Respondent dated 15<sup>th</sup> July 2015 also made it clear that letting to families with children was "unlikely to be suitable" as they would be likely to breach other rules relating to noise etc. This interpretation of the Lease seemed quite draconian. The Tribunal decided that the implied restriction argued for by the Applicant could not be imposed without a specific provision in the Lease. As there was no such provision in the Lease, there had been no breach of the Lease by virtue of Mr Capon's occupation, whether alone or with others.

b) Clothing etc. shown at windows (5.2)

**Applicant's Case**

21. The Applicant submitted that the Respondent was in breach of Paragraph 9 of the Third Schedule to the Lease and/or Para.M8 of the Management Regulations which stipulate that clothing and/or other item are not to be exposed at windows of the Flat. Breaches were noted on 2<sup>nd</sup> September, 14<sup>th</sup> October, 12<sup>th</sup> and 14<sup>th</sup> – 16<sup>th</sup>, 19, 21<sup>st</sup> and 22<sup>nd</sup> December 2015, as well as other unrecorded occasions when clothing or bedding was being hung or exposed at windows of the Flat. The Applicant offered photographs of items at the windows concerned. Dr Barrett believed that the same item had been left exposed at a bedroom window for days, particularly in December, which he believed was a sports shirt. He was also of the opinion that the bedding shown at the living room window was being used as a temporary shield for someone sleeping behind it. The general attractiveness of the block was being spoiled.

**Respondent's Case**

22. The Respondent submitted that the latest version of the Management Regulations did not contain a Para. M8. During heavy rain a pipe in or near the roof of the building drips water onto the front bedroom windowsill of the Flat. The dripping creates a loud percussive noise which prevented one of the then tenants, Mr King, who slept in that bedroom, from sleeping. He left the property in January 2016. On evenings of heavy rain, Mr King placed a tea towel or T shirt on the windowsill to deaden the noise so that he could sleep. A recording of the noise was offered with Ms Collins' statement. On the (specific) dates alleged Mr King had forgotten to remove the item from the windowsill.
23. The Respondent denied that there was a breach of Paragraph 9 of the Third Schedule. On its true construction Paragraph 9 prohibits hanging laundry out of the window, which was a reasonable restriction. Placing a single item on the windowsill to prevent noise from a leaking pipe was not a breach of that restriction.

**Decision**

24. The Tribunal considered the evidence and submissions. Paragraph 9 of the Third Schedule to the Lease provides:

*“No clothes window boxes flower pots or other articles shall be hung or exposed and no mat or carpet shall be shaken at the windows of the Flat”*

Regulation M8 provides:

*“Windows must be dressed in a conventional manner with proper curtains and not left undressed or draped with sheets or flags or other materials”*

25. At the hearing, there was some dispute as to whether there was a pipe above the windowsill as alleged by the Respondent, or if there was that it was the Applicant’s responsibility, or if the problem had been reported. There was also dispute as to whether Regulation M8 (which was new) had been published to the Respondent or her tenants.
26. The Tribunal, having looked closely at the photographs noted that in fact there was a pipe above the window concerned. Also it noted that the items shown on the exterior of the windowsill in the photographs were apparently immediately below the pipe, and clearly not spread out to dry. The Tribunal decided that their positioning and appearance were consistent with the Respondent’s evidence. The Tribunal also decided that arguments over liability and reporting the problem were not relevant at this stage in view of its decisions noted below. The Tribunal further decided that it was more likely than not that Para. M8 had been published to the Respondent at some time prior to December 2015.
27. It was not alleged that the dripping pipe concerned was the responsibility of the Respondent. The Tribunal decided that the items left on the outside of the windowsill were there to alleviate a noisy drip, and thus no breach of the Lease had occurred in respect of those items. That situation would, of course, change once the drip had been stopped.
28. Relating to items hung behind the window, the Applicant argued for an interpretation of Paragraph 9 which included items hung or visible from outside the windows. The Respondent argued that only items outside the window were restricted. The Tribunal decided that on its proper construction, Paragraph 9 was not as extensive in its effect as the Applicant suggested for two reasons. Firstly, the words in the list of prohibited items; “clothes... or other articles” would, according to their plain natural meaning, connote items likely to be found on the exterior of a window such as window boxes and flower pots, particularly in view of the words “hung or exposed”. Secondly the sentence goes on to prohibit the shaking of mats and carpets “at the window”. The normal purpose of shaking a mat or carpet is to get rid of dust. Shaking them inside the window would be rather unwise. For each of these reasons the Tribunal decided that the words “at the window” connoted items hung, or exposed, or shaken outside the window. Thus items hung internally were not restricted. The Applicant also argued that Para. M8 dealt with the issue, but as noted previously, the Management Regulations are limited by the intentions articulated in the Lease. Also Para. M8 itself was

ambiguous. Parties could litigate interminably over the meaning of “proper” curtains and materials. The Tribunal should be slow to become involved in subjective matters. The Tribunal therefore decided that Para.M8 was not relevant. The hanging of what appeared to be a bed spread or duvet across the interior lower third of the living room window was not a breach of the Lease.

- c) Nuisance by (i) making allegations of harassment and (ii) extra work caused to the Applicant’s officers (Paras. 5.3 and 5.4)

### **Applicant’s Case**

29. The Applicant submitted that the Respondent’s complaints since 27<sup>th</sup> October 2015 of harassment were false and vexatious. These were also in breach of Paragraph (l) of the Second Schedule and Paragraph 13 of the Third Schedule of the Lease. Given that harassment under various enactments had potential criminal liability, the Applicant submitted that the full extent of contact with the sub-tenants was the delivery of a Welcome Pack through the door, two handwritten notes through the door, one standard “please remove” notice on a bicycle, a chance encounter in the grounds of the estate with Dr Barrett, and another chance-encounter with Ms Joffe while she was fixing a “no parking notice” to an inappropriately parked vehicle. The Applicants agents at all times had only had proper dealings with lessees and sub-tenants. The Respondent had perpetuated a pernicious claim concerning harassment by the sub-tenants. In correspondence the Applicant’s agents had refused to agree not to contact the tenants as it would prevent them from doing their job.
30. Relating to the issue of extra work caused to the Applicant’s staff, Dr Barrett noted 86 recorded hours and many more unrecorded hours (estimated by Dr Barrett at the hearing to be about 200 hours) spent writing letters to the Respondent, her solicitor and others, and preparation of the two Section 168 applications. This was in breach of paragraph L2 of the Management Regulations. She had wasted an enormous amount of time, money and effort by failing to co-operate with the Applicant’s agents and ensuring her sub-tenants did likewise. She had failed to take her responsibilities as a lessee seriously and posed a fundamental challenge to the viability of the management of the estate.

### **Respondent’s Case**

31. The Respondent led evidence on this point by offering Ms Collins and Mr Capon for oral examination on their witness statements, who were duly cross-examined by Dr Barrett. The Respondent submitted that the reference to “nuisance” in the Lease was limited to matters arising from the use of the property. The Tribunal was not obliged to make a finding relating to harassment, and in any event an allegation of harassment was a different issue.
32. The Respondent noted that the paragraph of the letter dated 27<sup>th</sup> October 2015, forming the basis of the Applicant’s complaint relating to allegations of harassment stated;

*“Those negotiations are being affected by the tenants complaining to our client that they are being harassed by the Company. Whilst our client makes no comment about the effect or intention of your correspondence, taking a practical view, our client’s efforts are likely to be more successful if you do not contact the tenants any further.”*

That letter was written with the intention of updating the Applicant on the progress of the Respondent’s negotiations with her tenants in respect of surrender of the First tenancy. Dr Barrett had taken exception to the use of the word harassment. There had then followed a number of exchanges of correspondence dealing with the harassment issue (over 100 pages from the Applicant, it was stated). The correspondence had been continued by the Respondents because the Applicant would not agree to refrain from contacting the tenants further.

33. As to the extra work, the Respondent denied that the Respondent was in breach of Paragraph L2 of the Regulations. Any unnecessary time spent by the Applicant was the result of the unreasonable and disproportionate manner in which the Applicant had dealt with the Respondent and her tenants.

### **Decision**

34. The Tribunal considered the evidence and submissions. It appeared to the Tribunal that the problem at the heart of this application was the inter-action between the Applicant’s agents and the sub-tenants. The Applicant, on the basis of its correspondence and statement produced to the Tribunal as well as evidence at the hearing, disapproved of occupation by students and others who might be likely to breach its Regulations. The Applicant’s agents had assiduously attempted to enforce the Regulations, and had spent a great deal of time so doing. The sub-tenants, again from the evidence in their statements, and at the hearing, considered that they were constantly under surveillance by the Applicant’s agents. Their definition of harassment was a feeling of not being wanted, and being spoken to in a way so as to make them feel unwelcome. That was how they felt. The Tribunal noted that the verbal encounters between them appeared limited to three (not two) incidents. The parties’ accounts of these incidents considerably disagreed, but all were initiated by the Applicant’s agents, attempting to enforce the rules, and during which neither party was prepared to give ground as to whether a breach had occurred or not. The matters in issue related to items which the Tribunal has decided were Res Judicata. The Tribunal accepted the Respondent’s submission that it was not obliged to decide whether there was harassment by either side. The question in fact before the Tribunal is whether nuisance within the terms of the Lease had occurred.
35. Paragraph (1) of the Second Schedule provides:

*“not to do or permit any waste spoil or destruction to or upon the demised premises nor to do or permit any act or thing which shall or maybe or become a nuisance damage annoyance or inconvenience to the Lessors or their tenants or the tenants or occupiers of any adjoining premises and in particular of any other Flats or to the neighbourhood or whereby any insurance for the time being effected on the demised premises may be rendered void or voidable or whereby the rate of premium may be increased. ”*

36. The Tribunal noted that the Applicant is apparently also now the Freeholder and Lessor of the Flat, and no point was taken by the Respondent that it was not the Lessor. The Tribunal decided that Paragraph (l), properly construed, relates to the use of the Flat, and not to any other matter. The matters complained of by the Applicant relate to exchanges between the parties on the proper interpretation of the rules, occasioned by disagreements as to their effect, ultimately leading to applications to this Tribunal for resolution. While both parties might consider the other side’s position to be annoying, inconvenient or even a nuisance in the general sense of those words, the airing of genuine disagreements which are then referred to a legal forum for resolution do not fall within the ambit of Paragraph (l). The remedy for the Lessor, if one exists, is on the question of costs.

d) Bicycles carried through the common parts (5.8)

37. The Applicant submitted that the Respondent was in breach of Para. E5 of the Management Regulations, and thus also Paragraph (j) of the Second Schedule and Paragraph 13 of the Third Schedule of the Lease, by virtue of a bicycle being carried through the communal areas of the block by an occupier of the Flat on 21<sup>st</sup> January 2016 and again on 25<sup>th</sup> January 2016, as observed by Dr Barrett, and also on other reported but unrecorded occasions.

38. The Respondent admitted that Mr Capon had brought his bicycle through the hallway of the block on 21<sup>st</sup> and 25<sup>th</sup> January 2016. Mr Capon was unaware at the time that this was prohibited. No damage was caused to the hallway. Mr Capon in evidence confirmed that he had been unaware of the prohibition, but on being advised of it had stopped doing so. He also mentioned that his bicycle had been stolen from outside the Block the evening before the hearing. The Respondent submitted that these minor incidents were not in fact a breach of the Lease, or were De Minimis.

39. Paragraph E5 of the Management Regulations provides:

*“Bicycles are not to be left in any entranceway, stairway or landings in accordance with item 3 of the Third Schedule. Similarly bicycles are not to be brought into or carried through any of the entranceways [or?] other interior spaces of Tring Court. This, along with other considerations, is to ensure that walls, carpets or painted areas are not unnecessarily marked, soiled or damaged.”*

40. Paragraphs (j) of the Second Schedule and 13 of the Third Schedule are set out above.

In addition Paragraph 3 of the Third Schedule provides:

*“The communal parts of the Estate Buildings shall not be encumbered with bicycles prams boxes or other objects and entrance doors to flats shall remain closed.”*

41. The Tribunal decided that the facts were not in dispute, although at the hearing there had been a discussion as to whether other incidents had occurred. It seemed likely that incidents had occurred prior to 25<sup>th</sup> January 2016, but for the Tribunal’s purposes, two incidents were capable of amounting to a breach of Paragraph E5. The Respondent did not seek to argue that Para. E5 did not comply with the terms of the Lease, and this was probably wise. Clearly, a legitimate concern is to prevent obstacles in fire exits, and to prevent damage to the common parts. On the question of De Minimis, the Tribunal notes that the Upper Tribunal has recently ruled in Vine Housing Co operative Ltd v Smith [2015] UKUT 0501 (LC) that the First-tier Tribunal should decide only if a breach has occurred, and it should thus leave the question of De Minimis or other matters of relief to the Court if a notice under Section 146 of the law of Property Act 1925 is subsequently issued. The Tribunal therefore declares that the Respondent is in breach of Paragraph (j) of the Second Schedule and/or 13 of the Third Schedule to the Lease.
- e) Letting boards erected on the Estate (5.11)

### **Applicant’s Case**

42. The Applicant submitted that on 2nd January 2016, and on or about 27<sup>th</sup> July 2015, the Respondent breached Paragraph 5 of the Third Schedule to the Lease by allowing the erection of an estate agent’s advertising sign board within the Estate without permission from the Applicant. Item G11 of the Management Regulations prohibited the erection of sale and letting boards within the Estate.

### **Respondent’s Case**

43. The Respondent agreed that the sign boards had been erected. The sign boards had been erected without her authority. The sign board erected on 2<sup>nd</sup> January had been erected by her agent, against her express instructions, and it had been removed immediately she had been informed about it. The first she had known of the board previously erected was upon reading the Applicant’s statement of case. The Respondent denied that there had been a breach of the Lease because the signs had not been erected upon her instructions, the sign was not erected on or in any windows or the exterior of the Flat, and in any event the matter was De Minimis.

### **Decision**

44. The Tribunal considered the evidence and submissions. Paragraph 5 of the Third Schedule provides:

*“No name writing drawing signboard notice placard or advertisement of any kind shall be put on or in any windows or the exterior of the Flat (other than a notice to be approved by the Association indicating that a particular Flat is to be sold or let)”*

Para.G11 of the Management Regulations provides:

*“Under no circumstances are “For Sale” or “To Let” signs to be erected within the estate”*

45. Again, the facts were not in dispute. Although the Tribunal accepted the Respondent’s stated ignorance of the signs, they were erected by her agents, and she was obliged to take responsibility for them. The signs had apparently been removed prior to the hearing, which made the breaches historic. Nevertheless, the Tribunal refers to its decision above (relating to the bicycle), and the effect of the Vine Housing case. The Tribunal accepted that it was reasonable and proper for the Applicant to make a Rule under the Second and Third Schedules to control advertising signs on the Estate, as Paragraph 5 of the Third Schedule was designed to prevent the erection of unsightly signs etc. Allowing them to be erected within the Estate would, in the Tribunal’s view, merely displace a problem foreseen in the Lease, rather than solve it. The Tribunal decided that the Respondent had breached Paragraph 5 of the Third Schedule of the Lease and Para.G11 of the Management Regulations on 2<sup>nd</sup> January 2016.

#### **Reimbursement of Fees paid to the Tribunal**

46. No application in respect of fees and costs was mentioned in the original application, and thus no provision was made in the Directions for submissions on this point. In its second Statement of Case, (on 14<sup>th</sup> February 2016) the Applicant applied for an order for the Respondent to pay its fees paid to the Tribunal for this application (presumably pursuant to Rule 13 of the First-tier Tribunal (Procedure)(Property Chamber) Rules 2013). At the hearing, this matter was not mentioned by either party. The Tribunal has therefore made no decision on this issue. However both parties remain free to make another application under the Rules, if so advised. For clarity, the Tribunal notes that on the evidence and submissions presently before it, it would not be minded to make an order in favour of either party. Thus full written submissions on this point would be advisable if any party wished to pursue a Rule 13 or Section 20C application.

**Judge Lancelot Robson**

**28th April 2016**

## Appendix 1

### **Section 168 Commonhold and Leasehold Reform Act 2002**

- (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 (c20) (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) 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 a 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 resolution agreement to which the tenant is party,
  - (b) has been the subject of determination by a court, or
  - (c) has been the subject of a determination by an arbitral tribunal pursuant to a post-dispute resolution arbitration agreement.

### **169 Section 168: supplementary**

- (1) – (6) ....
- (7) Nothing in Section 168 affects the service of a notice under Section 146(1) of the Law of Property Act 1925 in respect of a failure to pay-
  - (a) a service charge (within the meaning of section 18(1) of the 1985 Act), or
  - (b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).

### **Section 20C**

- (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 court, 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

**The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013**

Regulations 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
  - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
    - (i) an agricultural land and drainage case,
    - (ii) a residential property case, or
    - (iii) a leasehold case; or
  - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on application or on its own initiative.