(47)

Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**
**DECISION BY LEASEHOLD VALUATION TRIBUNAL for the**
**LONDON RENT ASSESSMENT PANEL**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 168(4)

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**Ref: LON/00BF/LBC/2006/0044**

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| **Applicants:** | Sycamore Manor Property Ltd<br>Sycamore Manor Management Ltd |
| **Respondent:** | Datacare Ltd |
| **Property:** | Flat 27 Sycamore Manor, 83 Woodcote Road Wallington Surrey SM6 0PP |

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## DECISION

1. The Tribunal finds that the replacement of the windows was a matter for which the Respondent should have obtained a formal licence from the freeholder under clause 2 (7) of the lease . It was clear from the evidence that no licence had been obtained for these works and it makes a declaration that the Respondent is in breach of his lease for failure to comply with clause 2(7).

2. The Respondent denied that its tenant had caused damage to the floors of the common parts of the building but agreed to pay £45 to the Applicants to resolve this issue .

3. We find that the Respondent had not taken adequate steps to investigate the problem of water leakage from its flat and by allowing it to recur and to cause damage to another flat we make a declaration that it is in breach of clause 2 (10) of the lease.

4. We are satisfied that the Respondent's sub-tenant, for whom the Respondent has responsibility, has caused a nuisance to adjoining occupiers and that the Respondent has not taken adequate steps to abate the nuisance. We make a declaration that it is in breach of clause 2(10) of the lease by causing a nuisance to other occupiers.

5. The Tribunal finds that the rules purportedly introduced by the Applicants in March 2004 are not binding on the Respondent because they were not formally proposed and voted on by the company in general meeting. For this reason alone we find that the Respondent is not bound by Applicants' rules and there was in this case no requirement for it to apply for a licence to sub-let .There is therefore no breach of covenant involved in this allegation.

6. The Tribunal orders the Respondent to pay to the Applicants the sum of £150 in reimbursement of the Applicants' hearing fee.

## REASONS

7. The Applicants brought an application to the Tribunal under section 168(4) Commonhold and Leasehold Reform Act 2002 (the Act) seeking a declaration that the Respondent had breached the covenants in its lease in various respects as detailed below. The Applicants also asked for an order that the Respondent reimburse the Applicants' hearing fees in connection with their application.

8. At the hearing which took place on 16 October 2006, the Applicants were represented by Mr M Hypolite of Counsel, and the Respondents by Mr J Broom a Director of the Respondent company. Mr J Cull, the company secretary of the Applicant companies was also present at the hearing.

9. The Respondent is the leaseholder of the property known as Flat 27 Sycamore Manor , 83 Woodcote Road Wallington Surrey SM6 0PP (the property) and the Applicants are the freeholder and management company respectively.

10. The breaches of covenant alleged by the Applicants are :

10.1 failure to obtain the landlord's licence prior to installing new windows contrary to clause 2(7) of the lease ;

10.2 causing damage to the floor of the common parts and to the interior of a neighbouring flat contrary to clause 2(10) of the lease;

10.3 causing noise disturbance contrary to clause 2(10) of the lease ;

10.4 failure to disclose details of a sub-tenancy contrary to clause 2 (12) of the lease ;

10.5 subletting without having obtained the prior licence of the landlord contrary to clause 2 (21) of the lease;

10.6 failure to give notice of an under-lease or to comply with the requirement to obtain a direct covenant from the sub-tenant contrary to clause 2(18).

11. The Applicants told the Tribunal that they were not pursuing items 4.4 and 4.6 above. Therefore those matters are not discussed in this document.

12. In relation to the allegation outlined at 4.1 above the Applicants said that although the windows formed part of the demise, the replacement of them would entail work which affected the structure and exterior of the property and thus required a licence under clause 2(7) of the lease. The Applicants asserted that the Respondent knew that he needed a licence for this work and had not obtained one .

13. The Respondent said that the letter on page 21 of the trial bundle gave him consent from the management company to proceed with the replacement windows and that he had spoken to the freeholder about this matter. He could not produce any evidence to show that he had obtained the freeholder's consent and his assertion that licences were not being granted at that time is contradicted by page 61 of the trial bundle. The breach in question had only been discovered in 2006 and no rent had been received for the property since September 2003. The Tribunal is satisfied that there has not been a waiver of the breach since its discovery by the Applicants.

14. The Tribunal asked the Respondent whether, if they found that a licence had been necessary the Respondent would be willing to apply for one. The Applicants were willing to grant a retrospective licence. The Tribunal pointed out to the Respondent that if the Tribunal found that there had been a breach of covenant the Respondent was in danger of the lease being forfeited and that it would therefore risk losing the flat.

15. The Tribunal then adjourned for the parties to discuss this issue but no agreement could be reached between them.

16. The Tribunal finds that the replacement of the windows was a matter for which the Respondent should have obtained a formal licence from the freeholder under clause 2 (7) of the lease . It was clear from the evidence before us that no licence had been obtained for these works and it makes a declaration that the Respondent is in breach of his lease for failure to comply with clause 2(7).

17. The Applicants alleged that damage had been caused to the floor coverings of the common parts of the property by the Respondent's tenant . The damage was said to have been caused by dragging furniture over the floors when the Respondent's current tenant took up occupation. The damage had been partially rectified by re-polishing the floors at a cost to the Applicants of £45. The Applicants felt that this charge should be the responsibility of the Respondent and not added to the general service charge payable by all Leaseholders . The Respondent denied that its tenant had caused the damage but agreed to pay £45 to the Applicants to resolve this issue .

18. The Applicants alleged that the Respondent was in breach of clause 2(10) of the lease by allowing water to escape from flat 27 causing damage to the ceiling of flat 19 which was immediately below flat 27. This had been a recurrent problem and the tenant of the affected flat had complained to the Applicants (see pages 27,26,28,40). The Respondent had, after being

directed by the Tribunal to do so, obtained a plumber's report (page 73) which said that the plumbing installations were in good order but which did not check the main soil pipe, nor the kitchen pipes and did not address the question of whether water could penetrate to the lower flat because of an inadequate seal on the bath or floor of flat 27. The irregular but recurrent incidences of water penetration are more suggestive of causation through occupier activity (eg an overflowing bath or water seeping via a faulty seal around the bath or floor edges) than of a plumbing fault or rainwater penetration. The Respondent had not addressed this matter with its tenant. There had been no problems of water penetration in any other flat in the block.

19. The water leak was not denied by the Respondent and Mr Broom said that he had visited the flat on each occasion when the matter had been raised with him. The Respondent did not deny that there had been water penetration nor that there had been damage to flat 19. We find that the Respondent had not taken adequate steps to investigate the problem of water leakage from its flat and by allowing it to recur and to cause damage to another flat we find that it is in breach of clause 2 (10) of the lease.

20. The Applicants alleged that the Respondent was in breach of clause 2(10) of the lease in that it had caused nuisance to adjoining occupiers through excessive noise. Complaints had been received from three adjoining occupiers (see pages 42-46) relating mainly to the playing of loud music. The local council had also been notified of the problem. A statement from the Respondent's tenant (page 59) admitted that she had turned up the volume on her radio. This problem started in February 2006 and was ongoing, the most recent complaint having been made on 9 October 2006. Mr Broom said he did tell the sub-tenant about the complaints and he was not going to renew the sub-tenancy when it expired. The problem of noise had been specifically raised at the Directions hearing which preceded the present hearing thus the Respondent must have been fully aware of the problem but seems not to have taken any steps to remedy the situation. We are satisfied that the Respondent's sub-tenant, for whom the Respondent has responsibility, has caused a nuisance to adjoining occupiers by playing loud music and that the Respondent has not taken adequate steps to abate the nuisance. We find that it is in breach of clause 2(10) of the lease by causing a nuisance to other occupiers.

21. The Applicants' final allegation concerned sub-letting without having obtained a licence to do so. Clause 2 (21) of the lease entitled the management company to introduce rules and regulations for the proper management of the block and they purported to have done so at a management company meeting in March 2004 at which Mr Broom was present. The purpose of the restriction on sub-letting was partly to ensure that the insurance of the block was not vitiated by the occupation of certain classes of tenant which had been excluded from cover by the Applicant's insurance policy. Another reason for introducing the licence requirement was in order to simplify the process of giving notice to the freeholder following devolutions in title.

22. Mr Broom said that he did attend the meeting in March 2004 but maintained that it was not properly conducted. He maintained that the Respondent was

not bound by the Applicant's regulations because the Respondent had not extended its lease and the original lease did not require the tenant to obtain a licence.

23. The existence of the sub-tenancy was admitted by the Respondent, The Applicants had asked the Respondent to apply for a licence but it had not done so. The Applicants were still willing to grant a licence if the Respondent made an application.

24. The Tribunal finds that the rules purportedly introduced by the Applicants in March 2004 are not binding on the Respondent because they were not formally proposed and voted on by the company in general meeting. No formal procedure was used to introduce the rules and no proper minute of the meeting exists. For this reason alone we find that the Respondent is not bound by Applicants' rules and there was in this case no requirement for it to apply for a licence. There is therefore no breach of covenant involved in this allegation.

25. The Applicants made an application to the Tribunal for an order that the Respondent reimburse the Applicants their hearing fee of £150.

26. Most, if not all of the issues before the Tribunal could and should have been resolved between the parties without need to refer the matters to the Tribunal. Mr Broom had received legal advice throughout the proceedings but appeared to have been intransigent and obtuse in his approach to resolving the dispute. He had been warned at the Directions hearing that the Respondent was in danger of losing the flat through forfeiture but he had still done nothing to achieve a settlement with the Applicants. The Applicants had expressed a willingness to grant the necessary licences but Mr Broom had declined to apply. All of the breaches alleged were capable of resolution at very little cost to the Respondent but it had either refused to remedy them (eg the licence issue) or had not taken adequate steps to try to remedy them (water leakage and noise). In these circumstances we feel it is appropriate to require the Respondent to pay to the Applicants their hearing fee of £150 and we order it to do so.

27. The Applicants were advised that meetings of the management company and any rules introduced under clause 2(21) of the lease must comply with normal Companies Acts procedures relating to meetings, resolutions and minutes.

28. The Respondent was warned that a finding that it was in breach of covenant could lead to the forfeiture of the lease. In other words, it is in danger of losing its flat. It was also told that while the dispute continued it would be difficult to sell or mortgage the flat.

Chairman .....

Date 24 October 2008