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12. The hearing took place at the Landmark Theatre, Ilfracombe on 4 November 2008. The Applicants appeared in person. The Respondent did not attend. A friend, Mr. Graham Pedlar, represented her.
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 - b. If so, what are the terms of the Respondent's lease?
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The Evidence

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21. The Applicants have subsequently produced documentary evidence, including a copy of the lease of the Flat, to show that:-

- 1) The freehold title to the Flat is registered under title number DN255997 and that the registered proprietors are the Applicants.
 - 2) The leasehold title to the Flat is registered under title number DN257421 and that the registered proprietor is the Respondent.
 - 3) The lease of the Flat is dated 16 November 1988. The lease was granted for a term of 999 years from 16 November 1988. The lease was registered in the name of the Respondent on 31 August 1999.
22. By clause 2 of the lease, the lessee covenanted with the lessor and with the lessee of the other flat comprised in the building *“(a) That the Lessee and the persons deriving title under her will at all times hereafter observe the restrictions set forth in the First Schedule”* to the lease.
23. Paragraph 5 of the First Schedule sets out a number of restrictions including *“no bird dog or other animal which may cause annoyance to any owner or occupier of the other flat comprised in the Building shall be kept in the demised premises; and no dog cat or other animal shall be kept in the demised premises without the written consent of the Lessor which consent may be revoked at the discretion of the Lessor.”*
24. Mrs. Longshaw gave evidence that the Respondent had kept 3 different dogs at the Flat over the years and that those dogs had on frequent occasions used both the courtyard and the hallway for the purposes of defecating and urinating. This has resulted in an unacceptable smell in the hallway. Further, the smell arising from the courtyard would come into the Applicants’ kitchen if they opened the kitchen window and would prevent them and their children from making proper use of the roof patio. It also caused a problem with flies. The Applicants had involved the Environmental Health Officer on a number of occasions resulting in temporary improvements of the situation.
25. Mrs. Longshaw said that on occasions the dog was left on its own in the Flat and it would howl for long periods. The howling would permeate the whole house and when this happened during the night, it would disturb the sleep of the Applicants and their 2 daughters aged 4 and 6. Mrs. Longshaw produced a diary of events produced for the Environmental Health Officer for the period from 28 March to 22 April 2008. This records a number of occasions when they were disturbed by the dog howling or barking. On the night of 28/29 March, it records the dog howling from 8pm to 1.30am.
26. On 8 April 2008, Mrs. Longshaw wrote to the Applicant warning that if the position did not improve, the Applicants would revoke their permission for the Respondent to keep a dog in the Flat. In the absence of a satisfactory response, the Applicants instructed solicitors, Brewer Harding and Rowe, who, on 8 May 2008 wrote to the

Respondent complaining about the noise and smell caused by the dog and saying:

"Under the terms of your lease you are not permitted to have a dog at the premises without the permission of our clients and any permission that our clients may have given at an earlier dated is hereby formally withdrawn. Accordingly we look forward to hearing from our client within the next 30 days that the dog is no longer resident at the premises. If you fail to abide by this then proceedings will follow."

On 16 July 2008, another firm of solicitors instructed by the Applicants, Toller Beattie, wrote to the Respondent giving formal notice that if the dog was not removed from the Flat by 1 August 2008, the Applicants would apply to the Tribunal.

27. Mrs. Longshaw said that they noticed at the beginning of September that there was no more barking and that they heard through the grapevine that the dog had been moved. She accepted that a dog had not been kept at the Flat since 1 September 2008 although a friend had heard another dog barking in the Flat recently.
28. Mr. Longshaw produced a DVD containing a film which he had taken on 2 and 3 August 2008. The film showed large amounts of what appear to be dog faeces in the courtyard on both dates. It also shows a dog defecating in the corner of the courtyard. Mr. Longshaw produced a CD containing about 80 still pictures which he had taken from 5 July 2008 onwards. These pictures again show what appear to be dog faeces in the courtyard. Mr. Pedlar did not object to the Tribunal viewing the film and pictures.
29. Mrs. Townsend gave evidence of hearing a dog barking for short periods between 8pm and 11pm on 2 occasions when she was baby sitting for the Applicants. She could not identify the dates other than to say that it was in 2008.
30. Mrs. Elliott gave evidence in accordance with her statement which records a strong smell in the hallway and on the roof patio when she visited the Applicants on 21 August 2008. She said that she had visited on many occasions over the summer of 2008 and had noticed a strong smell of dog in the hallway and had seen dog faeces in the courtyard.
31. The Respondent's evidence was contained in the documents which she had submitted to the Tribunal. Much of that is not relevant to the issues in dispute.
32. As set out at paragraph 19 above, the Respondent effectively puts the Applicants to proof of their entitlement to make this application. The Respondent has produced no positive evidence as to her ownership of the Flat or the terms on which she occupies it. The Respondent has

provided no further evidence or submissions to the Tribunal following the hearing on 4 November.

33. The Respondent relies on 2 statements from Mr. Pedlar. Other than to confirm that the Respondent had received 2 letters from solicitors instructed by the Applicants and that the Respondent had a dog living with her until 1 September 2008, the content of the statements is not relevant.
34. In a letter to the Tribunal, the Respondent informed the Tribunal that since 1 September 2008, her dog had been living with her parents. That is supported by a number of letters copied to the Tribunal. Whilst a letter from the Respondent's mother tells of the behaviour of the dog since that date, nothing in that letter or any of the other letters refers to the behaviour of the dog whilst it was living with the Respondent.

Findings of Fact

35. Based on the documentary evidence provided by the Applicants, the Tribunal finds as a fact that the Applicants are the current lessors of the lease of the Flat which is owned by the Respondent. The lease is a long lease within the meaning given by section 169(5) of the Act. The lease contains covenants which are binding on the Respondent and may be enforced by the Applicants.
36. The Tribunal accepts the unchallenged evidence of Mr. and Mrs. Longshaw concerning the behaviour of the dog and the effect that it had on them and their family. The evidence of the other witnesses who gave evidence on their behalf supports the version of events given by the Applicants.
37. The Tribunal finds as a fact that the Respondent had a dog living with her at the Flat at all relevant times up to 1 September 2008.
38. The Tribunal finds as a fact that the Respondent's dog has behaved in such a manner as to cause annoyance to the Applicants. This annoyance arose in 2 principle ways. First the dog howled and barked whilst in the Flat causing annoyance to the Applicants and their daughters and, on occasions, disturbing their sleep. Second, the dog was allowed to defecate and urinate in the hallway and the courtyard causing a smell to permeate into the Maisonette and onto the roof patio, thereby reducing the Applicant's enjoyment of their property.
39. The Applicants say that this behaviour has been occurring over a long period of time but gave no direct evidence of it prior to 28 March 2008. The Tribunal finds as a fact that the Applicants suffered annoyance at least between 28 March and 1 September 2008.

Conclusions

40. The Tribunal is satisfied that the Applicants are "a landlord under a long lease" of the Flat within the meaning of Section 168(4) of the Act. They are entitled to make this application to the Tribunal.
41. Paragraph 5 of the First Schedule to the lease contains a number of restrictions relating to different matters, 2 of which relate to animals. The Tribunal is of the opinion that these restrictions are severable and form separate covenants. This means that there are 2 separate covenants in relation to dogs.
42. The first restriction prohibits the Respondent from keeping in the Flat any bird, dog or other animal which may cause annoyance to any owner or occupier of the other flat in 20 Highfield Road. This covenant stands on its own and is not dependent on the granting or withdrawal of consent. Based on the findings of fact already made by the Tribunal, it follows that the Respondent acted in breach of this covenant by keeping a dog in the Flat which caused annoyance to the Applicants during a period which started on 28 March 2008 at the latest and continued until 1 September 2008.
43. The second restriction prohibits the Respondent from keeping in the Flat any dog cat or other animal without the written consent of the Applicants which consent may be revoked by the Applicants at their discretion. The Applicants accept that, until 8 May 2008, the Respondent had their consent to keep a dog at the Flat. That consent was withdrawn by the letter dated 8 May and that withdrawal took effect on the expiry of 30 days from the date of that letter, namely 7 June 2008. It follows that during the period from 7 June to 1 September 2008, the Respondent acted in breach of the covenant by keeping a dog in the Flat without the written consent of the Applicants.
44. In the circumstances the Tribunal determines that the Respondent has acted in breach of the covenants in her lease of the Flat by:-
 - 1) keeping a dog in the Flat which caused annoyance to the Applicants during a period which started on 28 March 2008 at the latest and continued until 1 September 2008.
 - 2) keeping a dog in the Flat without the written consent of the Applicants during the period from 7 June 2008 to 1 September 2008.
45. In their further submissions dated 27 November 2008, the Applicants ask the Tribunal to make an order that the Respondent should pay the legal costs that they have incurred in making this application. They rely on clause 3(d) of the lease which contains a covenant by the lessee to pay any costs incurred by the lessor for the purpose of or incidental to the preparation of a notice under section 146 of the Law of Property Act 1925.

46. The Applicants did not make their application at the hearing and the Respondent has not had an opportunity to reply to the application. On that ground alone, the Tribunal would be justified in refusing the application for costs.
47. Paragraph 10 of schedule 12 to the Act gives the Tribunal power to award costs in limited circumstances. The only circumstances applicable in this application are where a party *"has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings."* The Tribunal has received no evidence to show that the Respondent has acted in such a manner. By not responding to letters from the Applicants' solicitors, the Respondent has left the Applicants with no alternative but to pursue this application and to prove that they are entitled to a determination but, in the opinion of the Tribunal, that does not amount to action which would entitle the Applicants to an order for costs under paragraph 10.
48. The application for costs is refused. The Applicants may still be entitled to recover their legal costs as a matter of contract under the lease but that is not a matter which may be dealt with by the Tribunal.

Mr. J G Orme
Chairman
Dated 15 December 2008

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- 1) The freehold title to the Flat is registered under title number DN255997 and that the registered proprietors are the Applicants.
 - 2) The leasehold title to the Flat is registered under title number DN257421 and that the registered proprietor is the Respondent.
 - 3) The lease of the Flat is dated 16 November 1988. The lease was granted for a term of 999 years from 16 November 1988. The lease was registered in the name of the Respondent on 31 August 1999.
22. By clause 2 of the lease, the lessee covenanted with the lessor and with the lessee of the other flat comprised in the building *“(a) That the Lessee and the persons deriving title under her will at all times hereafter observe the restrictions set forth in the First Schedule”* to the lease.
23. Paragraph 5 of the First Schedule sets out a number of restrictions including *“no bird dog or other animal which may cause annoyance to any owner or occupier of the other flat comprised in the Building shall be kept in the demised premises; and no dog cat or other animal shall be kept in the demised premises without the written consent of the Lessor which consent may be revoked at the discretion of the Lessor.”*
24. Mrs. Longshaw gave evidence that the Respondent had kept 3 different dogs at the Flat over the years and that those dogs had on frequent occasions used both the courtyard and the hallway for the purposes of defecating and urinating. This has resulted in an unacceptable smell in the hallway. Further, the smell arising from the courtyard would come into the Applicants' kitchen if they opened the kitchen window and would prevent them and their children from making proper use of the roof patio. It also caused a problem with flies. The Applicants had involved the Environmental Health Officer on a number of occasions resulting in temporary improvements of the situation.
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Respondent complaining about the noise and smell caused by the dog and saying:

"Under the terms of your lease you are not permitted to have a dog at the premises without the permission of our clients and any permission that our clients may have given at an earlier dated is hereby formally withdrawn. Accordingly we look forward to hearing from our client within the next 30 days that the dog is no longer resident at the premises. If you fail to abide by this then proceedings will follow."

On 16 July 2008, another firm of solicitors instructed by the Applicants, Toller Beattie, wrote to the Respondent giving formal notice that if the dog was not removed from the Flat by 1 August 2008, the Applicants would apply to the Tribunal.

27. Mrs. Longshaw said that they noticed at the beginning of September that there was no more barking and that they heard through the grapevine that the dog had been moved. She accepted that a dog had not been kept at the Flat since 1 September 2008 although a friend had heard another dog barking in the Flat recently.
28. Mr. Longshaw produced a DVD containing a film which he had taken on 2 and 3 August 2008. The film showed large amounts of what appear to be dog faeces in the courtyard on both dates. It also shows a dog defecating in the corner of the courtyard. Mr. Longshaw produced a CD containing about 80 still pictures which he had taken from 5 July 2008 onwards. These pictures again show what appear to be dog faeces in the courtyard. Mr. Pedlar did not object to the Tribunal viewing the film and pictures.
29. Mrs. Townsend gave evidence of hearing a dog barking for short periods between 8pm and 11pm on 2 occasions when she was baby sitting for the Applicants. She could not identify the dates other than to say that it was in 2008.
30. Mrs. Elliott gave evidence in accordance with her statement which records a strong smell in the hallway and on the roof patio when she visited the Applicants on 21 August 2008. She said that she had visited on many occasions over the summer of 2008 and had noticed a strong smell of dog in the hallway and had seen dog faeces in the courtyard.
31. The Respondent's evidence was contained in the documents which she had submitted to the Tribunal. Much of that is not relevant to the issues in dispute.
32. As set out at paragraph 19 above, the Respondent effectively puts the Applicants to proof of their entitlement to make this application. The Respondent has produced no positive evidence as to her ownership of the Flat or the terms on which she occupies it. The Respondent has

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provided no further evidence or submissions to the Tribunal following the hearing on 4 November.

33. The Respondent relies on 2 statements from Mr. Pedlar. Other than to confirm that the Respondent had received 2 letters from solicitors instructed by the Applicants and that the Respondent had a dog living with her until 1 September 2008, the content of the statements is not relevant.
34. In a letter to the Tribunal, the Respondent informed the Tribunal that since 1 September 2008, her dog had been living with her parents. That is supported by a number of letters copied to the Tribunal. Whilst a letter from the Respondent's mother tells of the behaviour of the dog since that date, nothing in that letter or any of the other letters refers to the behaviour of the dog whilst it was living with the Respondent.

Findings of Fact

35. Based on the documentary evidence provided by the Applicants, the Tribunal finds as a fact that the Applicants are the current lessors of the lease of the Flat which is owned by the Respondent. The lease is a long lease within the meaning given by section 169(5) of the Act. The lease contains covenants which are binding on the Respondent and may be enforced by the Applicants.
36. The Tribunal accepts the unchallenged evidence of Mr. and Mrs. Longshaw concerning the behaviour of the dog and the effect that it had on them and their family. The evidence of the other witnesses who gave evidence on their behalf supports the version of events given by the Applicants.
37. The Tribunal finds as a fact that the Respondent had a dog living with her at the Flat at all relevant times up to 1 September 2008.
38. The Tribunal finds as a fact that the Respondent's dog has behaved in such a manner as to cause annoyance to the Applicants. This annoyance arose in 2 principle ways. First the dog howled and barked whilst in the Flat causing annoyance to the Applicants and their daughters and, on occasions, disturbing their sleep. Second, the dog was allowed to defecate and urinate in the hallway and the courtyard causing a smell to permeate into the Maisonette and onto the roof patio, thereby reducing the Applicant's enjoyment of their property.
39. The Applicants say that this behaviour has been occurring over a long period of time but gave no direct evidence of it prior to 28 March 2008. The Tribunal finds as a fact that the Applicants suffered annoyance at least between 28 March and 1 September 2008.

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Conclusions

40. The Tribunal is satisfied that the Applicants are “a landlord under a long lease” of the Flat within the meaning of Section 168(4) of the Act. They are entitled to make this application to the Tribunal.
41. Paragraph 5 of the First Schedule to the lease contains a number of restrictions relating to different matters, 2 of which relate to animals. The Tribunal is of the opinion that these restrictions are severable and form separate covenants. This means that there are 2 separate covenants in relation to dogs.
42. The first restriction prohibits the Respondent from keeping in the Flat any bird, dog or other animal which may cause annoyance to any owner or occupier of the other flat in 20 Highfield Road. This covenant stands on its own and is not dependent on the granting or withdrawal of consent. Based on the findings of fact already made by the Tribunal, it follows that the Respondent acted in breach of this covenant by keeping a dog in the Flat which caused annoyance to the Applicants during a period which started on 28 March 2008 at the latest and continued until 1 September 2008.
43. The second restriction prohibits the Respondent from keeping in the Flat any dog cat or other animal without the written consent of the Applicants which consent may be revoked by the Applicants at their discretion. The Applicants accept that, until 8 May 2008, the Respondent had their consent to keep a dog at the Flat. That consent was withdrawn by the letter dated 8 May and that withdrawal took effect on the expiry of 30 days from the date of that letter, namely 7 June 2008. It follows that during the period from 7 June to 1 September 2008, the Respondent acted in breach of the covenant by keeping a dog in the Flat without the written consent of the Applicants.
44. In the circumstances the Tribunal determines that the Respondent has acted in breach of the covenants in her lease of the Flat by:-
 - 1) keeping a dog in the Flat which caused annoyance to the Applicants during a period which started on 28 March 2008 at the latest and continued until 1 September 2008.
 - 2) keeping a dog in the Flat without the written consent of the Applicants during the period from 7 June 2008 to 1 September 2008.
45. In their further submissions dated 27 November 2008, the Applicants ask the Tribunal to make an order that the Respondent should pay the legal costs that they have incurred in making this application. They rely on clause 3(d) of the lease which contains a covenant by the lessee to pay any costs incurred by the lessor for the purpose of or incidental to the preparation of a notice under section 146 of the Law of Property Act 1925.

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46. The Applicants did not make their application at the hearing and the Respondent has not had an opportunity to reply to the application. On that ground alone, the Tribunal would be justified in refusing the application for costs.
47. Paragraph 10 of schedule 12 to the Act gives the Tribunal power to award costs in limited circumstances. The only circumstances applicable in this application are where a party *"has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings."* The Tribunal has received no evidence to show that the Respondent has acted in such a manner. By not responding to letters from the Applicants' solicitors, the Respondent has left the Applicants with no alternative but to pursue this application and to prove that they are entitled to a determination but, in the opinion of the Tribunal, that does not amount to action which would entitle the Applicants to an order for costs under paragraph 10.
48. The application for costs is refused. The Applicants may still be entitled to recover their legal costs as a matter of contract under the lease but that is not a matter which may be dealt with by the Tribunal.



Mr. J G Orme
Chairman

Dated 15 December 2008

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Dated 15 December 2008