

SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL

CHI/24UC/LBC/2009/0015

Decision of the Leasehold Valuation Tribunal on application made under  
Section 168 of the Commonhold and Leasehold Reform Act 2002

Applicant:	Chalet Hill Residents Limited
Respondent:	Mr A J Lowe
Re:	<b>26 Chalet Court, Chalet Hill, Ashmead, Bordon Hants</b>
Date of Application	9 <sup>th</sup> July 2009
Date of Inspection	26 <sup>th</sup> October 2009
Date of Hearing	26 <sup>th</sup> October 2009
Venue	Petersfield Town Hall
Appearances for Applicant	Ms C Parnell, & Mr R Leslie, Tyser Greenwood Estate Management
Appearances for Respondent	Mr A J Lowe in person & Ms Janice Fletcher
Also attending	Mr W Dunt & Ms Kathy Dent

Members of the Leasehold Valuation Tribunal

M J Greenleaves	Lawyer Chairman
D Lintott FRICS	Valuer Member
Mrs M Phillips	Lay Member

Date of Tribunal's Decision: 2nd November 2009

**Decision**

1. The Tribunal determined for the purposes of Section 168 of the Commonhold and Leasehold Reform Act 2002 (the Act) that no breaches of covenant have occurred on the part of Mr A J Lowe (the Respondent), in respect of the flat known as 26 Chalet Court, Chalet Hill, Ashmead, Bordon Hants ("the premises")

2. The covenant in respect of which the Applicant alleged there had been breach is contained in a Lease ("the lease") dated 18 July, 1989 made between Fleet Homes Limited (1) and Brian Malcolm Chapple (2) being a lease of the premises for a term of 99 years from 24th December 1993, namely:
  - a. Clause 2 of the lease whereby the lessee covenants with the Lessors and with the owners and lessees of the other flats comprised in the estate that the lessee and the persons deriving title under him will at all times hereafter observe the restrictions set forth in the First Schedule.
  - b. Paragraph 8 of the First Schedule ("the paragraph") states "Not without the consent of the Company in writing to keep any animal bird or other pet in the flat if any objection thereto is communicated in writing to the Lessors by the owner or occupier of any flat in the Building which the Flat forms part".

### **Reasons**

#### **Preliminary**

3. This was an application by the Applicant under Section 168 of the Act for determination that the Respondent was and is in breach of covenant of the lease in respect of the premises. The lease of the premises was at all material times assigned to the Respondent.
4. The Company is the residents' company.

#### **Inspection**

5. The Tribunal inspected the premises and the exterior of the block known as Chalet Court, Ms Fletcher having given the Tribunal access to the Flat. The Flat is on the 2nd Floor and for the purposes of this application the Tribunal noted only that there was within it a dog basket and dog feeding bowls.

#### **Hearing**

6. Prior to the hearing the Tribunal had received written submissions and evidence from the Applicant and the Respondent.
7. Ms Parnell, for the Applicant, stated
  - a. that Mr Lowe has been and is still keeping a dog in his flat without authority from either the managing agents or the residents' association despite letters and e-mails and that he was not reading the terms of the lease correctly. She said that Mr Lowe keeps the dog in his flat and walks it in the grounds where it deposits excrement. She thought the present dog had been kept in the flat since the beginning of 2008;
  - b. they had received verbal complaints but none in writing;

- c. she interpreted the paragraph so that the consent of the company was required in the first place if any animal etc was to be kept in the flat; if any complaint was then received, that consent could be withdrawn. She submitted that the clause should be read in two separate sentences so that the part starting with the words "if any objection to ..." was a provision quite separate from the first part.
8. Mr Lowe fully accepted that he had been keeping a dog, a Staffordshire Bull Terrier, in his flat since July 2008 and submitted that he was entitled to do so under the terms of the paragraph in question. He particularly drew attention to a his e-mail to the managing agents dated 11th September 2008 in which he set out his interpretation of the paragraph, particularly that any objection to the keeping of the pet had to be communicated in writing and had to be a reasoned objection; that he had not at that time, or indeed since, had any confirmation that there had been a written objection.

### **Consideration**

9. We have considered the evidence and submissions presented to us in writing and at the hearing.
10. The relevant and undisputed facts are:
  - a. Mr Lowe has been keeping a dog in the flat since July 2008 ;
  - b. no written objections to him doing so have been made.
11. The issue for determination by the Tribunal is the meaning of the paragraph and then to apply it to the facts.
12. The terms of the paragraph are set out above.
13. The Applicant considers that the paragraph should be read in two distinct parts. If that is right we would accept that the first part of the paragraph would provide simply for no pet or animal to be kept in the flat without the residents' company's consent. However, the second part of the paragraph would simply constitute a condition (commencing with the word "if") without any provision as to what is to happen in the event of that condition applying.
14. We accept that the paragraph is not well drafted. However, we do not accept that it is ambiguous and we cannot create an interpretation from the paragraph by dividing it into two parts. If we could, we would conclude that the Lessor's consent is an absolute precondition to the keeping of animals and pets in the flat. However, that would then leave us with meaningless words in the second part of the paragraph. That would create a real difficulty in interpretation which could not be resolved.
15. We cannot find that there is any possibility of interpreting this clause in more than one way. It can be better understood, perhaps, by reading it with the condition first, so that "if there is any written objection to keeping animals, etc in the Flat, the Respondent could not then have any animal in the flat without the company's consent in writing". We

are completely satisfied that that is the meaning of the entire paragraph.

16. In the context of that meaning of the paragraph, because on the evidence there has been no written objection, the company's consent to the Respondent keeping an animal in the flat has not arisen so that there has been no breach of the paragraph.

17. The Tribunal made its decision accordingly.

(signed)

M GREENLEAVES

Chairman  
A member of the Southern  
Leasehold Valuation Tribunal  
appointed by the Lord Chancellor