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**H M COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AC/LBC/2012/0107**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

Applicant: The Brookdales Ltd  
Respondent: Mr S Cowen  
Property: 23 The Brookdales, Bridge Lane, London, NW11  
9JU  
Date of Decision: 20 November 2012

Leasehold Valuation Tribunal  
Mr I Mohabir LLB (Hons)

### **Introduction**

1. This is an application made by the Applicant under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination that the Respondent has breached more than one of the covenants and/or conditions in his lease of the property known as 23 The Brookdales, Bridge Lane, London, NW11 9JU ("the property").
2. The Respondent is the present lessee of the property pursuant to a lease granted BY M Bishop Ltd to Michael Allan Silver dated 4 May 1988 for a term of 99 years from 24 June 1987 ("the lease"). By a Deed dated 27 May 1992, the lease was surrendered and was re-granted for a term of 999 years from the same date and on the same terms. The Respondent took an assignment of the lease on or about 21 February 2011. The Applicant are the present freeholder.
3. By an application dated 5 September 2012, the Applicant made this application to the Tribunal seeking a determination that the Respondent had breached paragraph 9 of the lease in the following way.
4. By clause 4(s) of the lease, the tenant covenanted with the landlord to:  
*"To comply with and observe the regulations set out in the Second Schedule to govern the use of the Blocks and of the Estate and any further reasonable regulations that may be made by the Landlord."*
5. Paragraph 9 of the Second Schedule provides that *"all floors in the flat shall be close carpeted or covered by some other satisfactory sound deadening material"*.
6. On 12 September 2012, the Tribunal issued Directions in this matter. The Respondent has failed to comply with those Directions at all.

## ***Decision***

7. As directed, the Tribunal's determination took place on 20 November 2012 without an oral hearing and was based solely on the documentary evidence filed and served by the Applicant.
8. It was the Applicant's case that the Respondent had breached paragraph 9 of the Second Schedule of the lease by installing laminate type wooden flooring in the flat instead of carpet or satisfactory sound deadening material thereby causing a noise nuisance to Mr Karmelli, the lessee of Flat 19, which is situated immediately below the subject property.
9. In support of its case, the Applicant relied on the witness statement of Mr Philip Simmons dated 26 September 2012. He is the Director of Sadlers Estate & Property Management Ltd, the managing agents. He is also a Director of the Applicant company.
10. His evidence was that on 8 March 2012 Mr Karmelli informed him that the noise caused by persons walking on the laminate flooring in the subject property was intolerable. On 9 March 2012, Mr Simmons carried out an inspection and found that laminate flooring had in fact been installed by the Respondent. Subsequently, he wrote to the Respondent requesting that he remedy the breach of his lease by 3 April 2012. No response was obtained and on 18 April 2012 Mr Simmons instructed Male & Wagland, Solicitors, to commence proceedings. The Respondent also failed to respond to a letter before action and a section 146 Law of Property Act 1925 notice served by the solicitors.
11. On the basis of the unchallenged evidence provided by Mr Simmons, the Tribunal was bound to find that the installation of laminate wooden flooring by the Respondent in the property was a breach of paragraph 9 of the Second Schedule of the lease. It is clear that this term of the lease was intended to prevent precisely the noise nuisance to other

occupiers that occurred when the Respondent installed laminate flooring. In turn, this also amounts to a breach of the covenant contained in clause 4(s).

12. Accordingly, the Tribunal concluded that the installation of wooden laminate flooring by the Respondent in the property did amount to a breach of the lease as alleged by the Applicant. However, the Tribunal has received a letter dated 15 November 2012 from Solomon Taylor & Shaw, Solicitors, instructed by the Respondent, which states that he has now fitted carpets in the property. This is supported by photographs of what appears to be the interior of a flat where newly laid carpet is evident. If correct, it may well be that the finding of breach made in this decision *may* no longer be actionable.

#### **Costs & Fees**

13. The Applicant has made an application for the reimbursement of the fees it has paid to the Tribunal in making this application. It is made on the basis that the application became inevitable because of the failure on the part of the Respondent to respond in any way at all to letters before action. However, as the Tribunal understands it, no fees have been paid by the Applicant to have this application issued and heard. Accordingly, it makes no order in this regard.
14. For the same reasons, the Applicant also made an application under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002 for an award of costs against the Respondent on the basis that his conduct was frivolous, vexatious, abusive, disruptive or was otherwise unreasonable in this matter. The Tribunal was satisfied that the Respondent's conduct, whilst unhelpful, did not satisfy the high threshold that must be met before such an order can be made. Accordingly, it made no order for costs as sought.

Dated the 20 day of November 2012

CHAIRMAN..... I. Mohabir.....

Mr I Mohabir LLB (Hons)