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**FIRST-TIER TRIBUNAL PROPERTY CHAMBER**  
**(RESIDENTIAL PROPERTY)**

Case Reference : CHI/43UE/LBC/2013/0024  
Property : Flat 23 Bridge Court, Bridge Street, Leatherhead,  
Surrey KT22 8BW  
Applicant : Bridge Court Freehold Limited (the Landlord)  
Representative : Mr Angus Storar of Downs Solicitors LLP  
Respondent : Mr Martin George Seidel (the Tenant)  
Representative : --  
Type of Application: Section 168(4) Commonhold and Leasehold  
Reform Act 2002 – Application for an order that a  
breach of covenant or a condition in the lease has  
occurred  
Tribunal Members : Judge P.J. Barber Chairman  
Mr P.D. Turner-Powell FRICS Valuer Member  
Miss J. Dalal Lay Member  
Date and venue of 15<sup>th</sup> July 2013 Court 3 Reigate County Court  
Hearing : Hatchlands Road Redhill RH1  
6BL  
Date of Decision: 19th July 2013

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**DECISION**

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## Decision

(1) The Tribunal determines in accordance with the provisions of Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant has occurred, being a breach by the tenant of the obligations imposed pursuant to Clause 4.1 and Clause 15 to Part II of the Eighth Schedule of the Lease dated 10<sup>th</sup> October 2008.

(2) The Tribunal further determines, in connection with the application by the Respondent under Section 20C Landlord and Tenant Act 1985, not to make any order.

## Reasons

### INTRODUCTION

1. The application is made by the Applicant, for the Tribunal to determine whether or not a breach of covenant in the lease dated 10<sup>th</sup> October 2008 made between Bridge Court Freehold Limited (1) Mary Cuthbertson Macfarlane (2) ("the Lease") has occurred in relation to the keeping by the Respondent of a dog in his flat, known as 23 Bridge Court, Bridge Street, Leatherhead, Surrey KT22 8BW ("the Flat").
2. In broad terms, the complaint made by the Applicant as landlord, is that the Respondent tenant is keeping, or allowing to be kept, a dog in the Flat, contrary to the provisions of the Lease. The Flat was purchased by the Respondent in early 2009 and the dog, a golden labrador, appears to have been introduced to the Flat in or about April 2012. Certain correspondence ensued as between the Respondent and Gill Smith of White and Sons, the Applicant's managing agents; the Respondent sought consent to keep the dog but this was refused. The Respondent was aggrieved, since he claimed that there was already at least one other dog being allowed by the Applicant to stay in Bridge Court.
3. A copy of the Lease was produced to the Tribunal; the Lease contains the following relevant provisions :-

Clause 4:

*"The Lessee for the mutual protection of the Lessor and the lessees of the Flats hereby covenants :*

*4.1 To observe and perform the obligations on the part of the lessee set out in Parts One and Two of the Eighth Schedule"*

Clause 15, Part Two, Eighth Schedule :

*"No animal or bird shall be kept in the Demised Premises or any part thereof without the written consent of the Lessor which consent may be revoked at any time in the event of such animal or bird causing annoyance to any owner lessee or occupier of the other flats in the building."*

4. Directions were issued by the Tribunal on 15<sup>th</sup> April 2013 inter alia requiring the Applicant to serve a statement of case setting out the detail of the alleged breaches together with an indexed and paginated bundle of all the documents upon which the Applicant seeks to rely in support of its case and further requiring the

Respondent, if he wished to oppose the application, to serve a statement in response together with a bundle similarly indexed and paginated.

### **INSPECTION**

5. The Tribunal's inspection took place in the presence of Mr Storar representing the Applicant; Mr Seidal was present in person together with his partner, the dog's owner, Ms Krista Hughes.
6. The Flat is a second floor flat and a garage is included in the demise; Bridge Court consists of a block of purpose built flats arranged over four floors and constructed in or about the 1970s. The block has a flat roof and the external elevations are of face brick with part tile hanging.
7. The Flat is approached via a main communal front door which provides access to Flats 18-25 Bridge Court. There is no lift; access to the Flat is obtained by flights of stairs laid to carpet, with metal handrails and plain emulsion painted walls. There is a parking area and also garages to the rear.

### **THE LAW**

8. Section 168 of the Commonhold and Leasehold Reform Act 2002 (as amended by Regulation 141 of the Tribunals and Inquiries, England and Wales Order No. 1036 of 2013) provides that :

*"168 – No Forfeiture Notice before determination of breach*

*(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 (c.20) (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) that 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 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 the 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 the appropriate tribunal for a determination that a breach of a covenant or a 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 arbitration agreement to which the tenant is a party*
- (b) has been the subject of determination by a court, or*

(c) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement

(6) For the purposes of subsection (4), "appropriate tribunal" means-

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to a dwelling in Wales, a leasehold valuation tribunal"

### **HEARING & REPRESENTATIONS**

10. The hearing was attended by Mr Storar and Mr George Dallas of the managing agents White & Sons. Mr Seidal was accompanied by his partner Ms Krista Hughes.
11. Mr Storar submitted for the Applicant that there was only one issue, namely whether a breach of the relevant covenant in the Lease had occurred; he referred to Clause 15 in Part Two of the Eighth Schedule of the Lease and confirmed that the Applicant had at no stage given its consent to the keeping of a dog at the Flat. In regard to the letter dated 15<sup>th</sup> October 2012 which had been sent to the Respondent by Downs LLP, Mr Storar said that the section in the letter which reads "*...although it is accepted that the refusal of consent must not be unreasonable.*" was not in fact correct, since the covenant is absolute. Mr Storar submitted that the restriction contained in the covenant requiring no animal to be kept without consent, is an absolute one; the only caveat is that if any consent is given, then it may be revoked if the animal concerned causes a nuisance. Mr Storar further submitted that there was in fact no requirement that the Applicant must, in making any decision concerning the giving of consent or otherwise, do so only by reference to specified criteria or policy; he submitted that the Applicant's discretion was absolute. Mr Storar further said that the LVT decision in *Banks -v- Castle* which had been referred to by Mr Seidal in his bundle, was distinguishable on the basis that in that case, the covenant was expressed in conditional, and not absolute terms - "*...no animal pet dog or bird shall be kept on the demised premises without the written permission of the lessor which shall not be unreasonably withheld.*" Mr Storar submitted that even if it had been necessary for the Applicant to act reasonably in the giving or withholding of consent, the Applicant had in any event been reasonable in so withholding consent on the basis that (1) the keeping of a dog in a second floor flat was not considered by the Applicant to be appropriate (2) the Applicant had concern as to potential wear and tear in communal areas and (3) there was a risk of possible nuisance.
12. Mr Seidel said that he had been in communication with White & Sons during 2012, in relation to his request for permission to keep a dog; his view was that the decision to refuse consent was inconsistent with the decision regarding the dog at Flat 1 and not based on any identifiable terms or conditions. Mr Seidel referred to the letter dated 15<sup>th</sup> October 2012 which he had received from the Applicant's solicitors, Downs LLP. Mr Seidel further referred to the e-mail advice which he had obtained from the Leasehold Advisory Service and added that the dog concerned had a limited life expectancy in any event owing to a medical condition. Mr Seidel submitted that in the circumstances consent was being unreasonably withheld; he further submitted that the Applicant was being inconsistent in the matter, since it was allowing a dog to be kept at Flat 1 Bridge Court. Mr Seidel suggested that the owner of Flat 1 may be related to a director of the Applicant company and that

consequently there may be an issue of bias. Mr Seidel said he had consulted with the other residents in the block of which the Flat forms a part, and that none of them had any active opposition to his being allowed to keep a dog in the Flat. As regards the view of the Applicant that if a dog was allowed to be kept in the Flat it would result in additional wear and tear in communal areas, the Respondent denied this and submitted that the dog has always been clean on arrival and he pointed to the condition of the communal parts as viewed during the inspection.

13. Mr Seidel made further reference to the Tribunal case of *Banks –v- Castle LON/00AG/LBC/2008/0032* in which he said it was noted that there was nothing in the application which suggested the pets had caused a nuisance.

### **CONSIDERATION**

14. The Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred, and the submissions of the parties. The Tribunal noted that the covenant contained at Clause 15 to Part Two of the Eighth Schedule of the Lease is expressed in absolute terms, without any qualifying provisions which might for example require that any consent must not be unreasonably withheld or delayed, or providing for any appeal mechanism or for the imposition of conditions to any consent. In coming to a decision the Tribunal must give significant weight to the words actually contained in the Lease, as opposed to extraneous matters. It was regrettable that Downs LLP had suggested in their letter of 15<sup>th</sup> October 2012 that any refusal of consent must not be unreasonable, only to retract such view at the hearing. Nevertheless it is persuasive that the construction of the Lease is such that the prohibition on keeping an animal or bird, without obtaining consent, is expressed in absolute terms. The fact remained that no consent had been issued and accordingly it followed that the keeping of a dog in the Flat is in breach of the relevant covenant. The Tribunal was further of the view that even if it was a requirement that consent should not be refused unreasonably, the reasons given on the Applicant`s behalf by Mr Storar for it having withheld consent were adequate, taking into account the Applicant`s general management obligations towards all the lessees in the block, including its covenant to lessees to allow them peaceable and quiet enjoyment.
15. Having determined that a breach of covenant has occurred, the Tribunal further considers it just and equitable in all the circumstances, in regard to the application under Section 20C in respect of costs, not to make any order disallowing the landlord`s costs in connection with these proceedings from being taken into account in determining the amount of any service charges payable by the lessees in the block. Accordingly no order is made to exclude such costs or any of them.
16. The Tribunal`s decision is of necessity made by reference to the provisions of the Lease and is not in any way a reflection of the behaviour of the dog concerned which, during the inspection, appeared to be quiet and well behaved.
17. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal  
appointed by the Lord Chancellor

## Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.