



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

Case Reference : LON/00BB/LBC/2016/0025

Property : 70 Westgate Apartments, 14
Western Gateway, London E16 1BN

Applicant : MG GR Ltd

Representative : Scott Cohen Solicitors

Respondent : Christopher Paul Clacken

Representative : MJD Solicitors

Type of Application : Breach of covenant

Tribunal Members : Judge Nicol

Date of Decision : 21st June 2016

DECISION

Decision of the Tribunal

The Tribunal has determined that there has been a breach of paragraph 15 of the Fifth Schedule to the lease of the subject property but not of paragraph 1(a) of the same.

The Tribunal's reasons

1. The Applicant is the lessor of the subject property, Y&Y Management are the managing agents and the Respondent is the lessee. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that a breach

of covenant has occurred. In particular, it is alleged that the Respondent's sub-tenant has kept a dog at the subject property which has caused a nuisance. The Tribunal issued directions on 21st April 2016 and has now determined the application on the basis of the papers provided, without a hearing.

2. The lease contains the following clauses:-

4. THE TENANT FURTHER COVENANTS with the Landlord and with the lessees from time to time of all other parts of the Building to perform and observe the stipulations set out in the Fifth Schedule hereto to the intent that such stipulations shall be mutually enforceable between the Tenant and the said lessees of other parts of the Building
8. It is hereby agreed that notwithstanding anything herein contained or implied to the contrary:
 - (c) Any covenant by the Tenant whether positive or negative shall be deemed to extend to an obligation to ensure that subtenants and any third parties who can be directed by the Tenant or by any of the foregoing comply therewith

THE FIFTH SCHEDULE

Tenant's Covenants with the Landlord
and other lessees of the Building

1. (a) Not to do or permit or suffer to be done in the Apartment and/or in the Building anything which may cause damage or inconvenience or be or become a nuisance or annoyance to the Landlord or to the lessee or occupier of any other flat or part of the Building or to any person lawfully in the Building or in the neighbourhood generally (and the generality of this paragraph shall not be restricted by the remaining paragraphs of this Schedule)
 15. Not to keep any bird dog reptile or other pet or animal whatsoever (whether domesticated or not) in or on the Demised Premises without the previous consent in writing of the Landlord (and the Landlord shall have an absolute discretion as to whether to issue such consent) such consent to be revocable at will by the Landlord by notice in writing and provided further that nothing herein contained or implied shall in any way restrict any other covenants and obligations herein contained
3. It is important to note that the Tribunal's role under the Act is to determine simply whether there has been a breach of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture is irrelevant at this stage. Much of the material from both parties goes to the latter issue and therefore is not addressed in any detail in this decision.
4. There is no dispute between the parties that the Respondent's sub-tenant, Lucia Dosova, kept a small dog in the subject property for at

least some time. By letter dated 15th April 2016 Ms Dosova said that the dog had now gone. Mr Yaron Hazan, an employee of Y&Y Management, attached to his witness statement dated 18th May 2016 stills from the building's CCTV system showing a small dog being brought into the building. At paragraph 15 of his witness statement dated 1st June 2016, the Respondent replies that Ms Dosova has said the dog still visits from time to time so that her son can see him.

5. The Tribunal cannot be satisfied from this evidence, particularly without the opportunity to assess the credibility of any witnesses in person, that the Applicant has proved that the dog is still kept at the subject property but there can be no doubt that it was for some time up to around April 2016.
6. The Respondent nevertheless denies that this constitutes a breach of paragraph 15 of the Fifth Schedule on the basis that he is not responsible for the actions or omissions of his sub-tenant. He relies on the case of *Roadside Group Ltd v Zara Commercial Ltd* [2010] EWHC 1950 (Ch) in which Kitchin J held that a lessee was not in breach of a covenant prohibiting parking on a forecourt when his sub-lessee parked cars there.
7. In the Tribunal's opinion, the *Roadside* case confirms the principle that a lessee is not necessarily liable to the lessor for the activities of their sub-lessee but otherwise is merely an example of the court interpreting the particular lease clauses in front of it. The Tribunal must look at the actual terms of the lease in this case. The Applicant rightly submits that clause 8(c) extends the Respondent's obligation under paragraph 15 of the Fifth Schedule to his lessee.
8. The Respondent makes much of the limitations on his ability to act against his tenant. He seems to think that illegal action or a lawful eviction are the only remedies he has to ensure a dog kept by his tenant is removed. He exhibited Ms Dosova's assured shorthold tenancy to his witness statement and it clearly contains a prohibition on pets without consent which mirrors that in the subject lease. The Tribunal has no idea why the Respondent has not considered injunction proceedings to enforce the covenant. In any event, as already alluded to, these are matters only relevant to relief from forfeiture.
9. The Respondent has also protested that the Applicant is acting unfairly and inconsistently by not taking action against other residents with dogs or other pets. The Applicant has asserted that they do take such action if and when they are aware of the pets in question. In fact, there is no evidence to support the Respondent's claim and so, even if it were relevant, the Tribunal would be bound to find against him on this point.
10. Therefore, the Tribunal must conclude that there has been a breach of paragraph 15 of the Fifth Schedule to the Respondent's lease.

11. However, the Tribunal is unable to determine that there has been any nuisance, whether sufficient to breach paragraph 1(a) of the Fifth Schedule or at all. The Applicant simply has no evidence of any nuisance. There is evidence that other residents have complained about the presence of the dog in apparent breach of the lease but nuisance is another matter. There is a partially-redacted e-mail dated 23rd March 2016 in which the writer, apparently a neighbour, mentions the dog barking but that seems to have been raised as evidence of the dog's presence in the building rather than as an objection to the noise.

12. A letter dated 4th May 2016 from the Applicant's solicitors lists other potential nuisances, namely noise from children, bicycles being left in corridors, signage being removed and misuse of a fire door. However, it is far from clear that the Applicant intended to rely on these allegations in this application which, presumably, is why the Respondent has not sought to address them. They are not particularised nor mentioned in any other document, including the application itself. Moreover, there is again a lack of any evidence as to the truth or source of any of these allegations.

Name: NK Nicol

Date: 21st June 2016