



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

Case Reference : CHI/00HY/LBC/2018/0014

Property : Flat 2, 15A Warminster Road, Westbury,
Wiltshire BA13 3PD

Applicant : R B Hicklin & D G J Conning

Representative : Bower & Bailey Solicitors

Respondent : Rachel Clare Shelbourne

Representative :

Type of Application : Determination of an alleged breach of
covenant

Tribunal Member(s) : Mr D Banfield FRICS

Date of Directions : 26 July 2018

DECISION

Decisions of the Tribunal

The Lessee Ms Rachel Clare Shelbourne is in breach of Clause 6 and clauses 2 and 7 of Part II of the Second Schedule of the lease dated 6 October 1989 Title number WT89932

The Application

1. The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that a breach of covenant contained in the Respondent's lease has occurred. In particular, the Applicant asserts that the Respondent keeps 2 dogs in her flat which cause noise nuisance by barking, foul the communal areas and have bitten a resident all contrary to Clause 6 and Second Schedule Parts II (2) and (7).
2. The Tribunal made Directions on 16 May 2018 which set out a timetable for the exchange of documents between the parties leading to the preparation of the determination/hearing bundle. It was indicated that the matter would be determined on the papers in accordance with Rule 31 of the Tribunal's procedural rules unless either party objected. No objections have been received and the matter is therefore determined with the assistance of the parties where received.

The Lease

3. The Lessee's covenants relevant to this application are as referred to in paragraph 1 above. Clause 6 requires the lessee to "observe the restrictions set out in Part II of the Second Schedule".
4. Clause 2 of the second schedule requires the lessee "To ensure that nothing is done in the flat that shall be a nuisance annoyance or inconvenience to the occupiers of the other flats" and clause 7 states "Not to keep any dog or other animal or creature in the Flat without the Lessor's prior consent in writing and such consent whether given or waived may be withdrawn at any time."

The Evidence

5. The Applicant's statement of case refers to the restrictions in the lease referred to above and says that despite not having landlord's consent she keeps two dogs.
6. The dogs cause noise and nuisance by barking and biting. They also foul the communal areas despite receiving a letter from Wiltshire Council's Environmental Health Officer.
7. Witness statements and emails have been provided referring to problems since 2016 culminating in the tenants of flat 3 asking to be released from their tenancy agreement due to the dogs.
8. Photographic evidence of fouling has been provided.
9. The Respondent has not provided a statement of case or responded in any way to either the Tribunal or the Applicant.

Discussion and Decision

10. I have first of all considered whether Ms Shelbourne has had sufficient opportunity to participate in these proceedings. Correspondence has been sent to the subject property which the Proprietorship Register

indicates is her address and I am satisfied that sufficient opportunity for her to participate has been given.

11. The witness statements, copy correspondence and photographic evidence is sufficient proof that at least one dog is kept at the flat and that at least one occupier has been caused annoyance. No evidence has been provided suggesting that the necessary landlord's consent has been obtained.
12. I therefore determine that the Lessee Ms Rachel Clare Shelbourne is in breach of Clause 6 and clauses 2 and 7 of Part II of the Second Schedule of the lease dated 6 October 1989 Title number WT89932

D Banfield FRICS

26 July 2018

RIGHTS OF APPEAL

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

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

S.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-dispute 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 a leasehold valuation tribunal for a determination that a breach of a covenant or 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.