

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



In the matter of Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) and

In the matter of 137 Caroline Way Eastbourne, East Sussex BN23 5AX (“the Property”)

Between:

Marina Village (Eastbourne) Management Company Limited (Applicant)

And

B Bastien (Respondent)

DECISION WITH REASONS

This Matter was determined without an oral hearing on the 6th January 2009.

Date of issue: 12th January 2009

**Tribunal: Mr Robert Wilson LLB Solicitor
Mr J N Cleverton FRICS**

SUMMARY DECISION

1. The Tribunal determines that there has been a breach of covenant by the Respondent in respect of the lease of the Property.

APPLICATION

2. The Applicant seeks a determination from the Tribunal that the Respondent has committed a breach of the lease dated the 6th January 2004 under which he holds the Property made between George Wimpey South London Limited (1) The Applicant (2) and Anthony David Light (3) (“the lease”)
3. The breach of the Lease that the Applicant alleges the Respondent has committed, is a breach of the terms of paragraph 6(a) of the third schedule of the Lease by allowing a nuisance, annoyance, disturbance or inconvenience to occur at the Property.
4. Paragraph 6 of the third schedule of the Lease contains a covenant by the lessee with the lessor *not to do or omit to be done on the Property or the development any act matter or thing which may be or become a nuisance annoyance or disturbance or inconvenience to the Company the Management Company or the Registered Proprietors of the titles to any part or parts of the development or the estate or which may prejudicially affect the Property or the development or the estate or which may damage the service insulations and not to play any musical instrument electronic recording television or radio which may be audible outside the Property between 11pm and 8am.*

THE LAW

5. The law relating to the matter is contained within Section 168(4) of the act which provides that a landlord under a long lease of a dwelling may apply to a Leasehold Valuation Tribunal for a determination that a breach of covenant or condition in the lease has occurred.
6. It follows that the function of the Leasehold Valuation Tribunal, when such an application is made, is purely that of determining the factual position and no more.
7. The Tribunal has given due notice of its intention to determine this matter without a hearing, as it may do so pursuant to regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 (“the Regulations”).

INSPECTION

8. The Tribunal inspected the Property on the morning of its determination. It is a flat on the second floor in a modern purpose built four storey block of flats being part of a large residential development known Marina Village Sovereign Harbour, Eastbourne. The flat has a ground floor car parking space. Some of the flats in the block have a seafront view. The communal areas are landscaped and presented to a high standard. The Tribunal did not carry out an internal inspection.

THE EVIDENCE

9. The Tribunal considered this matter on the basis of the documentary information provided by the parties and without an oral hearing. The Applicant had filed a witness statement signed by Stephen Holt solicitor and dated the 5th November 2008 which contains a statement of truth. The statement exhibits a number of letters from the managing agents to the Respondent enumerating complaints from residents of the estate claiming excessive noise originating from the Property, foul language and damage to the communal areas allegedly carried out by the occupants' children. One such letter contains the paragraph, "we understand that the tenant has a number of children who regularly will be found running riot within the communal areas of the Property or within the grounds and who, we understand, have been seen causing damage within the block. The female tenant can also be heard regularly screaming at the children in the grounds from the flat windows with her comments largely a string of swear words. We are informed that there have been incidents within the flat that have caused concern to other flat owners and the police have also attended on occasion to deal with the situation within the flat".
10. A resident's letter exhibited as part of the statement states that, "the police have been called to the Property on a weekly basis and the tenants are abusive and disrespectful of both the other residents and the Property itself. The shouting and screaming which emanates from the Property is audible at the end of the street".
11. The statement also exhibits an email from PC Ed Faulkner a police officer of the Eastbourne Neighbourhood Specialist Team. This email dated the 11th December 2007 states, "there have been a number of incidents in 137 Caroline Way over recent weeks and months which have all involved the male who resides at this address. Many of these have resulted in him being arrested for various offences. On occasions neighbours have become involved in the incidents which have caused considerable concern for the other residents of the road".
12. The statement further contains a number of copy letters sent by residents of the estate to the managing agent. These letters complain of abusive and loud language emanating from the subject Property. One letter reads as follows, "I have been considering over the past two weeks whether or not to complain again about the tenants of number 137. I did write several weeks ago and did not receive a reply. Recently again however the language coming from that flat has been appalling. Visitors to our neighbour heard them from (*following words not decipherable*) and we are all feeling extremely concerned that the level of behaviour in this development has deteriorated and the flats will be unsellable".
13. Another letter states, "I am writing regarding the increasingly obnoxious behaviour from the tenants of number 137 Caroline Way. My small granddaughter aged 4 has recently been staying with me. Twice daily she and her father have had to pass this Property on their way to the beach and we have heard filthy and obscene language coming from the flat on each occasion. This is quite obviously totally unacceptable. I feel that we have all been more than patient with this family. We have endured over a long period of time a succession of terrible language and behaviour from children and adults alike".

14. Directions were issued by the Tribunal on the 17th October 2008 which provided, amongst other things, for the Applicant to file and serve its witness statement and supporting documents by the 7th November 2008 and for the Respondent to reply within 21 days of receipt of the Applicant's documentation stating why he contested the application and the reasons why he did so.
15. The Respondent has failed to file a witness statement and his defense amounts to little more than two letters of denial one from his solicitor and the other from one of the occupants. The letter of denial from the occupant is signed by a Lucy Shepherd and addressed to 'Brian' who we take to be the Respondent. This letter is undated and contains a denial in the following terms, "I have only met two other residents and I have never been rude to them. My children do not run riot or play football in the common areas. I am sick to death of people accusing me and my children and I want to no who is saying this as my children are not the only children that live here".

THE TRIBUNAL'S DECISION

16. The Tribunal noted that the nuisance /noise has not been caused by the Respondent himself but by his tenants. However it is no defense in law to the breach of covenant complained of, for the Respondent to say that it was not him but his tenants who committed the breach. The covenants in the lease are to be strictly complied with. The prohibition on causing a nuisance or annoyance is an absolute one. In the case of *Prothero v Bell* (1906) 22TLR370 it was held that if the covenant is an absolute covenant that a prohibited act shall not be done, the tenant will be liable if the prescribed act occurs and it will be no defense that the tenant did not himself commit the breach and that he did not permit or suffer it to happen. In *Halsbury's Laws of England, Landlord and Tenant Volume 27*, it is stated that where the covenant is against any act, which may lead to annoyance, nuisance or disturbance, this covenant is broken by anything which disturbs the reasonable peace of mind of an adjoining occupier. The Tribunal is satisfied that abusive and loud language has emanated from the Property and that the police have attended at the property to make arrests. The Tribunal believes that these incidents could and indeed have reasonably disturbed the peace of mind of an adjoining occupier.
17. Having regard to the above the Tribunal has concluded that there is sufficient evidence on a balance of probabilities to satisfy it that the Respondent has breached paragraph 6 of the third schedule of the lease and that a nuisance or annoyance has been caused to other residents and to the management company. This nuisance consists of bad/abusive language emanating from the Property. The Tribunal is satisfied that there has been sufficient noise emanating from the Respondent's flat at various times to have caused nearby residents to keep a note of it and write letters of complaint to the managing agents. We consider that they would have been unlikely to have written such letters had the language not been a nuisance/annoyance (of whatever degree) to them. The neighbourhood police officer corroborates the letters by confirming a number of incidents resulting in arrests taking place at the subject Property. The officer also confirms that these incidents have caused considerable concern for the other residents of the road. We have no reason to doubt the content of the police officers report and we place due weight to this email as it is written by a disinterested party. In the light of the content of letters from both the residents and the managing agents and the email from the police, the letters of denial submitted by the Respondent are not in the Tribunal's view credible and do not amount to a satisfactory defense.

18. The Tribunal finds that the allegations of bad behaviour and damage caused by the children residing at the Property have not been proved. The Tribunal does not feel able to conclude, on the evidence presented to it, that there was any such bad behaviour and or damage and cannot conclude from the very limited information provided that even if there had been such behaviour or damage that such acts would in themselves necessarily amount to breach's of covenant.

Signed

Chairman _____
R.T.A.Wilson LLB

Dated 12th January 2009