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

Case Reference: LON/00AH/LBC/2012/0097

Premises: 50 Prestwood Gardens, CR0 2TW

Applicant: London Borough of Croydon

Respondent: Ms Olufemi Akintunde

**Tribunal: Mr M Martynski (Solicitor)
Mr J C Avery BSc FRICS**

**Representatives: Mr R Clarke (Counsel for the Applicant)
Ms O Akintunde (in person)**

Date of hearing: 14 September 2012

Date of decision: 10 October 2012

Decision summary

1. The Tribunal determines that the Respondent has breached clause 2 (8) of her lease in that in or about 6 June 2012 she permitted a nuisance, annoyance and disturbance to emanate from 50 Prestwood Gardens ('the Property').
2. The Respondent must pay to the Applicant the sum of £150.00 in respect of the fees paid by the Applicant to the Tribunal for the hearing.

Background

3. The Respondent is the long leaseholder of the Property which consists of a two-bedroomed flat on the first floor of a small block containing a total of six flats in total spread over three floors (two flats per floor). The block has a communal entrance leading to stairs and landings with each flat's front entrance door opening onto a landing.
4. The Respondent's lease is dated 16 January 1989 ('the Lease') and is for a term of 125 years from that date. The Respondent purchased the Property in 2005 and signed a deed dated 1 November 2005 in which she covenanted to comply with the terms of the Lease.
5. Clause 2(8) of the Lease is in the following terms:-

Not to do or permit anything in or upon the dwellinghouse or any part thereof which may be or become a nuisance annoyance or disturbance to the landlord or the owners or tenants or occupiers or users of any adjoining or neighbouring property (either inside or outside the Estate) or users of the public highway.

The 'dwellinghouse' is defined as '50 Prestwood Gardens' and by reference to a plan not shown to the Tribunal.

The evidence

6. Much of the evidence presented to the Tribunal (by way of witness statements and the oral evidence of Sharon Murphy, an Anti-Social Behaviour Enforcement Officer) was irrelevant and was almost all, so far as the matter complained of is concerned, hearsay and multiple hearsay.
7. Counsel for the Applicant helpfully narrowed the evidence on which he relied at the outset of the hearing and it is that narrowed evidence which is summarised and dealt with below.
8. It would appear from the evidence overall that problems started to occur at the Property in late 2011 or early 2012. According to the witness statement of PC Watling, (dated 6 June 2012) it was around this time that the police started to get complaints (from unidentified persons) of alleged drug dealing from the Property.

9. Ms Murphy referred to a letter of complaint from the unnamed resident of the flat beneath the Property dated 21 March 2012. A copy of this letter was produced to the Tribunal. The letter complained of water leaking from the Property for two years. Counsel for the Applicant informed the Tribunal that the Applicant did not intend to rely upon allegations of a water leak as nuisances. The letter also complains of abusive language from the occupants of the Property.
10. Ms Murphy stated that on 10 April 2012 she attended at the Property with the police who were executing a search warrant. She stated that there was a smell of cannabis at the block which got stronger inside the flat. There was also a strong smell of gas inside the flat. There were cigarette and joint butts in the communal parts of the block and there was graffiti and damage to the common parts. In the Property were two males, Elijah Thompson and Benjamin Thompson-Oritogun, another male, a female and a baby. A small amount of cannabis was found with some drug paraphernalia. It is important to note that the police recorded Elijah's date of birth as 20.6.91 (making him 21 years of age) and Benjamin's date of birth as 3.3.80 (making him 32 years of age). Some rooms had locks on them and Ms Murphy alleged that a cupboard had been converted into a bedroom. There was no evidence that the drugs at the property or that smell of cannabis and gas was causing a nuisance to neighbours and there was no evidence that the mess and damage to the common parts was the responsibility of the occupants of the Property.
11. In his witness statement dealing with the search, PC Watling said that the largest room in the flat was locked and that he was told by the occupants that this was the landlord's room and that it was locked as she (the landlord) did not live there but visited from time to time to collect the post. The officer said that inside this room he saw a large number of bags of clothes and property and that it appeared to be used as a storage room. The bed in the room was up on its side and up against the wall.
12. By letter dated 12 April 2012, Ms Murphy wrote to the Respondent advising her of the police search. Ms Murphy reminded the Respondent of her obligation under the lease not to cause or permit a nuisance. Ms Murphy said that she put this letter out for posting first class to the Respondent. The Respondent said in her evidence to the Tribunal that she never got this letter.
13. Ms Murphy said that on 18 April 2012 she received '*copies of the complaints made against the occupants of the property*'. These '*copies*' were not made available to the Tribunal. The complaints referred to by Ms Murphy were from unidentified persons which she said, '*varied from complaints about loud music being played late into the night, to complaints of shouting and fighting in the property as well as allegations of racial harassment, threatening and intimidating behaviour towards other local residents*'.
14. Evidence was then given by Ms Murphy from individuals identified as '*Residents 1, 2 and 3*'. She confirmed that these people were residents of the block in which the Property is situated and she said in oral evidence that she

had spoken to these residents directly. She had had contact with these residents in the days following 23 April 2012 when she had posted contact cards through letter boxes at the block in question.

15. Resident 1 complained of a group of men who congregated outside the block causing a nuisance.
16. Resident 2 said that there was a problem with a group of men who went to the Property relating to 'drug dealing and anti-social behaviour'. This resident said that every day a group of up to 12 males hung around the block, inside and out (including in the Property) and that they were drinking and smoking cannabis. This person had heard fighting from the Property and had called the police on two occasions.
17. Resident 3 made complaints about 'the group' and their intimidating behaviour and said the problems had been going on 'for the past few months'.
18. The Tribunal was shown an email dated 13 May 2012 from the unnamed resident of the flat below the Property complaining of water leaking from the Property on 12 May. That resident said that on complaining to the occupants of the Property he/she was subjected to abuse. This email also complained of noise nuisance and loud music from the Property and stated that this had been reported to the Council numerous times. A further complaint from this resident was made of the noise of fighting, shouting and things smashing from the Property on 13 May and further threats from the occupiers that day. The resident expressed concern for his/her safety.
19. The Tribunal was shown an attendance note dated 16 May 2012. That attendance note recorded the details of a telephone conversation between a Ms Kerry Bonaparte, a Tenancy Officer, and the Respondent. In that telephone conversation, the Respondent told Ms Bonaparte that she was at the Property with a plumber trying to resolve the leaking. The note goes on to record the conversation as follows; *'I informed Miss A that her tenants have been also causing noise nuisance in the property, I advised her that this is unacceptable.....'*
20. Ms Murphy showed the Tribunal an email sent from PC Watling dated 20 May 2012. In that email, the officer said that police were called to the flat beneath the Property and had heard from the occupant there that he/she had suffered with loud music played during the night from the Property and that there had been fights in the Property where police had been called. The occupant also complained of leaking from that flat. It was also recorded that a male in the property had thrown glasses from the Property.
21. The Tribunal was shown a letter from the Applicant addressed to the Respondent dated 29 May 2012 which Ms Murphy said was hand delivered to the Property. That letter referred to the complaints of anti-social behaviour that had been made in respect of the Property and asked the Respondent to take action to deal with the issue.

22. Ms Murphy stated in her statement that on 6 June 2012 she was contacted by Resident 2 who had told her that large groups of people were still congregating around the Property and that there was loud music from the Property 'until all hours'.
23. The Tribunal was shown an attendance note made by Ms Murphy dated 20 June 2012. In that note she recorded that when she spoke to the Respondent on 20 June the Respondent told her that the young man who was living in the flat had now left, he had been in trouble with the police and she (the Respondent) had been trying to support him. The Respondent said that another family member by the name of Ben was now living at the Property. Ms Murphy said that the Respondent had confirmed that Ben was the man who had been living at the Property with Elijah. The attendance note went on to record that the Respondent sent Ms Murphy a text on 21 June saying that, in respect of the occupant of the flat, she had '*asked him to move back to mum's place which will happen this weekend*'.
24. On 21 June 2012 a closing order was made in the Croydon Magistrates Court closing the Property for a period of three months from that date.
25. The Respondent filed a witness statement and gave evidence at the hearing. She told the Tribunal that she spent two or three nights a week at the Property and the rest of the time at her partner's property. She stated that Ben, a relative of hers who was at university, had come to live at the Property in November or December 2011 and that he was decorating the Property for her. She denied that anyone else was living at the Property for the period in question but said that relatives would stay there from time to time and that they wanted security, hence the locks on the doors. She stated that by April 2012, Ben was still in the process, some four or five months later, of decorating the flat.
26. The Respondent showed the Tribunal a letter dated 30 May 2012 which she said she had sent to the local authority. Ms Murphy had said that she had no record of receiving this letter. The letter referred to Ms Murphy's letter of 29 May and said; '*I apologise for the noise that has been coming from my flat as this particular relative is a teenager and invites his friends round all of the time. This will not happen again.*' The letter ended; '*This matter is being resolved and I assure you that there will be no further noise nuisance from this flat*'.
27. The Tribunal was shown copies of two tenancy agreements made in respect of the Property dated 18.12.11 and 27.2.12, both had been submitted to the Applicant in respect of housing benefit applications. The earlier agreement gave Benjamin Thompson-Oritogun as the tenant, the later one gave the name of the tenant as Elijah Thompson. The Respondent denied that she was subletting the Property during the time in question and denied any knowledge of these tenancy agreements.

The Tribunal's view of the evidence

28. The first question is whether there was any evidence of a nuisance, annoyance or disturbance in or upon the Property. The second question is, if there is such evidence, whether the Respondent 'permitted' that nuisance annoyance or disturbance.
29. The Tribunal did not find the Respondent to be a credible witness. The Tribunal considered it unlikely that the Respondent would tolerate Ben to take so long to decorate the Property. Further, the Respondent referred to Ben as a 'teenager'. When it was put to her that Ben was in fact a man in his thirties, she said that she viewed him as a teenager. The Tribunal considers it highly improbable that anyone would refer to a man of over 30 years of age as a teenager.
30. Ms Murphy's attendance note of 20 June 2012 is very detailed. That level of detail indicated that she was properly recording what she had been told by the Respondent. She recorded that the Respondent had said that a young man had been living at the Property before Ben. The Tribunal considers that this man was more likely than not, Elijah. Ms Murphy recorded that the Respondent said that Ben was now living at the Property.
31. Taking this evidence with the evidence of PC Watling when he was in the Property on 10 April 2012, the Tribunal concluded that it was more likely than not that the Respondent was not living at the Property during the time in question and that she was either subletting it to Ben and Elijah or that they had her permission to stay there.
32. The Tribunal not is satisfied that the letter dated 21 March from the resident living beneath the Property is evidence upon which it could rely of a nuisance 'in or upon' the Property. The allegation of abuse from the occupants of the Property was too vague, there was no detail as to what that abuse was or where it came from.
33. The letter dated 12 April 2012 advising the Respondent of the raid on the Property on 10 April was properly sent and would have been received by the Respondent, but that letter did not identify any breach of the covenant '*Not to do or permit anything in or upon the dwellinghouse or any part thereof which may be or become a nuisance annoyance or disturbance*'. The matters the letter referred to were not a breach of covenant as there was no evidence at that stage, on which the Tribunal was prepared to rely that the activities complained of at the Property were causing a nuisance annoyance or disturbance to neighbours.
34. The Tribunal cannot accept the evidence from Ms Murphy she received on 18th April which has been referred to earlier in this decision. That evidence was too vague, was unsupported by any note and the complainants were completely unidentified.
35. The evidence given by Ms Murphy of what she was told by the person identified as 'Resident 2' in April 2012 could have been evidence on which the

Tribunal was prepared to rely had that evidence indicated the approximate dates of the alleged nuisances. There was nothing in the evidence from Residents 1 or 3 given in April 2012 to Ms Murphy that established any nuisance 'in or upon' the Property.

36. The Tribunal does accept the email of 13 May 2012, referred to above, as evidence of a nuisance of noise, fighting, smashing and loud music from the Property. That evidence can be identified as coming from the flat beneath the Property and sets out sufficient detail to establish various types of nuisance in taking place around the time of that email.
37. The Tribunal finds that the Respondent was put on notice of a nuisance (noise from the Property) by way of the telephone call from Ms Bonaparte to the Respondent on 16 May 2012.
38. As to the evidence from PC Watling's email of the 20th May, it appears that it refers to records of complaints made by the occupier of the flat beneath the Property regarding various nuisances from the Property. Some of the complaints appear to have been made on the 13, 15 and 16 May 2012 but is not clear what was complained about on each of those days.
39. The Respondent admitted receiving the letter from Ms Murphy dated 29 June 2012. That letter clearly puts her on further notice of the problems at the Property.
40. The Tribunal accepts the evidence from Resident 2 via Ms Murphy that in or about 6 June 2012 there was a further nuisance from the Property by way of loud music. This is accepted as Resident 2 can be identified as a resident of the block in question who is known to Ms Murphy and to whom Ms Murphy has spoken. It is clear that the nuisance complained of was contemporaneous with the complaint itself. We know from other evidence given by Ms Murphy that this resident had other complaints concerning the Property even if those other complaints did not amount to clear evidence of a nuisance coming directly from the Property.
41. Given the Tribunal's findings on the evidence, it seems to the Tribunal that the Respondent clearly knew who was at the Property and that she was aware that there was a nuisance coming from the Property. As the residents were not tenants at the Property, the Respondent was in a position to either take action to control their actions or to remove them from the Property at any time.

The Tribunal's decision

42. The Tribunal finds that the Respondent was on notice of a breach of covenant by way nuisance at the Property from 16 May 2012. The Tribunal is satisfied that after the Respondent was put on notice of the nuisance, there was a further nuisance at the property in or about 6 June as described above. The Tribunal finds that the Respondent permitted a nuisance at the Property by failing to take action to either remove the occupants at the Property (who

were, by her own evidence, not anything other than licensees) or to curb their activities in some other effective way.

43. As the Applicant has been successful in this application, the Tribunal orders that the Respondent must pay to the Applicant the sum of £150.00 in respect of the fees paid by the Applicant to the Tribunal for the hearing.

Chairman:



Mark Martynski

Date:

10 October 2012

Appendix of relevant legislation

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.