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493



**LEASEHOLD VALUATION TRIBUNAL  
SOUTHERN PANEL**

**Case Reference: CHI/00MW/LBC/2013/0009**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2003**

**Applicant: PAUL DENHOLM AND SUSAN BROWELL**

**Respondent: JANET ROSSETTI**

**Property: FLAT 4 LAINSTON GRANGE,  
APPLEY RISE  
RYDE, ISLE OF WIGHT  
PO33 1LF**

**Date of Hearing 1<sup>ST</sup> MAY 2013**

Leasehold Valuation Tribunal

Mr D. R. Whitney LLB(Hons)  
Mr N. I. Robinson FRICS

## **Introduction**

1. This matter concerns an application by the Freeholder of Lainston Grange, Appley Rise, Ryde, Isle of Wight PO33 1LF (“the Property”) that the Respondent, who is the Leaseholder of Flat 4 (“the Flat”) at the Property, has breached the terms of her lease. The Respondent is a leaseholder under a lease dated 6<sup>th</sup> September 1982.
2. The Applicant made application dated 4<sup>th</sup> January 2013. The application alleges that in breach of the terms of the lease the Respondent has placed flower pots or similar items outside the Flat. It is alleged by the Applicant this is in contravention of the lease.
3. The Tribunal issued Directions on 16<sup>th</sup> January 2013. The Respondent was to file a statement of case by the 8<sup>th</sup> February 2013. The Applicants were to file and serve a bundle by 11<sup>th</sup> March 2013. The Applicants did file a bundle upon which the Tribunal replied. The Respondent wrote to the Tribunal on 21<sup>st</sup> March 2013 and save for this letter no other documents have been received from her.

## **The Law**

4. The relevant law for the Tribunal to apply is set out in section 168 of the Commonhold and Leasehold Reform Act 2002 as set out below:

Section 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

## **Discussion**

5. The Applicant relied upon a written statement of case. The Applicant alleges that the Respondent has placed various flower and window boxes outside her flat on communal areas of the property. Further the Applicant states that their solicitors wrote to the Respondent and requested that she remove the various boxes as they were a breach of the lease. The Applicant says she has not done so.

6. The Applicant referred the Tribunal to the lease dated 6<sup>th</sup> September 1982. A copy of the lease was provided to the Tribunal. The relevant clauses of the lease referred to by the Applicant were:

Clause 2:

“The Tenant hereby covenants with the Lessors and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of the other flats comprised in the Estate that the Tenant and the persons deriving title under him will at all times hereafter observe the restriction set forth in the First Schedule hereto.”

Paragraph 6 of the First Schedule provides:

“no clothes or other articles shall be hung or exposed from the windows of the Flat  
No flower box pot or other like object shall be placed outside the Flat except where  
provided: and no mat shall be shaken out of the windows of the Flat”

7. In her letter to the Tribunal of 21<sup>st</sup> March 2013 the Respondent says that she has removed the window box from her windowsill in January 2013 and has advised the Applicant of this. With regards to the plant pots upon the communal areas she advises that these remain in place and other leaseholders who regularly use that area as access to their flats agree to them remaining. The Respondent refers to the fact that the Applicant (who also own a flat in the building) do not use this accessway to reach their flat.

## **DECISION**

8. Under the lease the Respondent under clause 2 specifically covenants to comply with the First Schedule and with regards to this application paragraph 6 of the same. The Respondent has breached these terms of the lease by placing or causing to be placed flower boxes or window boxes on the external parts of the Property.
9. The Respondent has in her letter of 21<sup>st</sup> March 2013 admitted the conduct complained of by the Applicant in their application. It is not for this Tribunal to determine the severity or otherwise of such breach. Our jurisdiction is simply to determine whether there has or has not been a breach of this lease.
10. For these reasons the Tribunal determines the application in favour of the Applicant.

Signed

David R. Whitney LLB(Hons)

Lawyer Chair

2<sup>nd</sup> May 2013