



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

Case Reference : **CHI/46UC/LBC/2013/0038**

Property : **Flat 6 Champion House, Frankel
Avenue, Swindon, Wiltshire SN25
2GY**

Applicant : **Eyre & Johnson Ground Rents No 1**

Representative : **DMA Chartered Surveyors
(Managing Agents)**

Respondent : **Mr Gupreet Nijjar**

Representative : **Unrepresented**

Type of Application : **Determination of an alleged breach
of covenant under section 168(4) of
the Commonhold and Leasehold
Reform Act 2002**

Tribunal Member : **Mr Jeremy Donegan (Tribunal
Judge)**

**Date of Paper
Determination** : **14 January 2014**

Date of Decision : **20 January 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that a breach of the covenant at paragraph 25 of the third schedule to the lease of Flat 6 Campion House, Frankel Avenue, Swindon, Wiltshire SN25 2GY (the Property) has occurred. Details of the breach are set out at paragraph 17 of this decision.

The application

1. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant or condition in the lease has occurred in relation to the installation of a satellite dish to the exterior of the Property.
2. The application was submitted to the tribunal on 05 November 2013 and directions were issued on 13 November 2013. These provided that the case would be determined on the paper track. None of the parties has objected to this or requested an oral hearing.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The Property forms part of Campion House (the Block), which is a purpose built block, containing 12 flats. The Applicant is the freeholder of the Block. The Respondent is the leaseholder of the Property. The Respondent does not live at the Property; rather he sublets it to one or more tenants.
5. The tribunal did not consider that an inspection of the Property was necessary, nor would it have been proportionate to the issues in dispute.
6. The Respondent holds the Property on a long lease. The specific provisions of the lease are referred to below, where appropriate.
7. The Applicant's case was set out in the application form dated 05 November 2013. Further information was contained in a letter from the Applicant's managing agents, DMA Chartered Surveyors (DMA) to the tribunal, dated 06 January 2014. The Respondent has not served any statement of case or contested the application.
8. The Applicant produced a hearing bundle that included copies of the application, lease, relevant correspondence and two photographs of the exterior of the Property.

The lease

9. The lease is dated 04 November 2008 and was made between Bellway Homes Limited (Landlord) and David John Mooring and Rebecca Madeline Mooring (Tenant).
10. By clause 3.1 of the lease the Tenant covenanted to observe and perform the covenants set out in the third schedule.
11. Paragraph 25 of the third schedule obliges the Tenant

Not to display or hang any window boxes clothes washing aerials satellite dishes or any similar telecommunication transmission or reception apparatus or thing from the Property (except aerials placed there by the Landlord)

The issues

12. The sole issue to be determined by the tribunal is whether the Respondent is in breach of paragraph 25 of the third schedule to the lease by displaying or hanging a satellite dish from the Property (or allowing it to be hung).

Submissions

13. The Applicant relies on two photographs of the exterior of the Property, the first is dated 17 October 2013 and the second is dated 05 January 2013. The first photograph shows a satellite dish secured to an external wall of the Property with a wire leading into the Property through one of the windows. The second photograph shows the dish secured to the exterior of one of the windows of the Property, with a wire leading in through the window.
14. The Applicant also relies on correspondence passing between the Applicant and the Respondent. DMA wrote to the Respondent, regarding the satellite dish, on 13 May, 14 June, 30 August and 08 and 17 October 2013. There was also a letter from the Respondent to DMA, dated 23 June 2013.
15. In his letter of 23 June 2013 the Respondent stated "*I have informed my tenant of the satellite issue and they have assured me that they will be removing it within the foreseeable future*". In their letter of 17 October 2013, DMA pointed out that the satellite dish was still in situ and that they would be submitting an application to the tribunal "*..for a determination of a breach of the Lease*".

16. Having considered all of the documents provided, the tribunal has made the following determination.

The tribunal's decision

17. The tribunal determines that a breach of paragraph 25 of the third schedule to the lease has occurred in that a satellite dish has been displayed and hung from the Property. The position of the dish has changed. In the first photograph it was secured to an external wall. In the second photograph the dish is secured to the exterior of a window. In both cases the dish has been displayed and hung from the Property.

Reasons for the tribunal's decision

18. The two photographs clearly show that the satellite was displayed and hung from the Property. The Respondent has not contested the application. Further he acknowledged the existence of the satellite dish in his letter to DMA dated 23 June 2013.
19. The fact that the satellite dish might have been fitted by the Respondent's tenant/s, rather than the Respondent, does not alter the position. A breach of the lease has occurred in that a satellite dish has been displayed and hung from the Property. The Respondent was informed of the existence of the dish in the letters from DMA and has failed to remove it.

The next steps

20. The tribunal has determined that a breach of the lease has occurred. They recommend that the Respondent remedies this breach, as soon as possible, by removing the satellite dish. If the Respondent fails to remedy the breach then it is highly likely that the Applicant will take further action. That action could include service of a Notice under section 146 of the Law of Property Act 1925, with a view to forfeiting the lease and possible Court Proceedings to repossess the Property.
21. The tribunal strongly recommends that the Respondent seeks independent legal advice upon this decision.

Name: Jeremy Donegan

Date: 20 January 2014

Permission to 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

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 the appropriate 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.

(6) For the purposes of subsection (4), “appropriate tribunal” means –

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) In relation to a dwelling in Wales, a leasehold valuation tribunal.