



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

Case Reference : **BIR/47UB/LBC/2017/0002**

Property : **Flat 3, Romsley Hill Grange, Farley Lane
Romsley, West Midlands, B62 OLN**

Applicant : **Samuel Parkes (Estates) Ltd**

Representative : **Mr M Stevens – CBT Solicitors**

Respondent : **Mrs Rosemary Edna Hancocks**

Representative : **N/A**

Type of Application : **Section 168 (4) of The
Commonhold and Leasehold Reform Act 2002**

Tribunal Member : **Mr I P Taylor BSc FRICS (Valuer Chair)**

**Date and venue of
Hearing** : **1st June 2017 – Paper submission only-
No Inspection**

Date of Decision : **13 June 2017**

DECISION

DECISION OF THE TRIBUNAL

1. The Tribunal determines that for the purpose of Section 168(4) of the Commonhold and Leasehold Reform Act 2002, **a breach of the following Covenants in the Lease has occurred;**

(1) Clause 7(e) of the Second Schedule in that a dog has been kept at the demised premises;

(2) Clause 7(a) of the Second Schedule in that the Respondent has not used the parking area in a considerate manner and based upon the rules and regulations imposed by the Applicant;

(3) Clause 3 (7) of the lease in that that the Respondent has allowed the front door of the demised premises to fall into disrepair.

BACKGROUND

2. The Applicant Landlord seeks a determination, under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent is in breach of the lease dated 1st June 1983 ("the Lease") for a term of 99 years from 24th June 1982.
3. On the 21st February 2017 the Applicant, Samuel Parkes (Estates) Ltd, applied to the First- tier Tribunal ("the Tribunal") requiring a determination accordingly.
4. Directions were issued by the Regional Judge on 23rd February 2017.
5. Further Directions were issued on 18th April 2017 relating to the failure of the Respondent to comply with previous Directions.
6. Thereafter, final Directions were issued on 4th May 2017 confirming that the Respondent had failed to comply, and, was thus barred from taking any further part in these proceedings.
7. The Tribunal has considered Statements of case, on behalf of the Applicant dated 6th March 2017 and further written Statement of case for the Applicant dated 26th May 2017.

THE ISSUES

8. From the submissions of the Applicant, there appear 3 main issues identified:
9. That the Respondent has kept a dog at the property from around September 2014 in breach of Clause 3 (16) and paragraph 7(e) of the Second Schedule of "the Lease";
10. That the Respondent has, from time to time, not parked in the correct parking space and has parked in an inconsiderate manner, and not complying with estate regulations, in breach of Clause 3(16) and paragraphs 1(b) and 7(b) of the Second Schedule of the "Lease";
11. That the Respondent has allowed the front door of the subject premises to fall into a state of disrepair in breach of Clause (7) of the "Lease".

THE RELEVANT PROVISIONS OF "THE LEASE"

12. Clause 3(7) - *"At all times during the said term to keep the interior of the demised premises in good decorative order and condition and in every seventh year and in the last year of the said term (how so ever the same is determined) to paint with two coats of quality paint and redecorate in a good and workmanlike manner all parts of the interior of the demised heretofore or usually so painted and decorated"*.
13. Clause 3(16) - *"To observe and perform all and singular the restrictions and stipulations contained in the Second Schedule and all other regulations which may from time be made by THE LANDLORD or THE COMPANY for the proper management or enjoyment of THE ESTATE and not to permit or suffer any act or thing which shall contravene the same AND.....to keep THE LANDLORD fully and effectually indemnified against any proceedings costs expenses or other liability whatsoever arising out of or incidental (a) any breach of this covenant....."*
14. The Second Schedule 1(b) - *"To use THE PARKING SPACE/GARAGE only as a parking space/garage for one private motor vehicle belonging to THE TENANT or his family"*.
15. The Second Schedule 7(a) - *"Not to do or permit or suffer anything in or upon the demised or any part thereof which may be or become a nuisance damage disturbance or annoyance to THE LANDLORD or the owners and tenants or occupiers of THE NEARBY premises or other tenants or the neighbourhood nor commit or suffer to be committed any waste spoil or destruction on THE ESTATE"*.
16. Clause 7(e) - *"Not to keep any animal or bird on the demised premises without first obtaining the written consent of THE LANDLORD which consent shall be revocable at any time"*.

THE LAW

17. Section 168 of the Common and Leasehold Reform Act 2002;

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

THE APPLICANTS SUBMISSION

Keeping of Dog

18. The Applicant submitted that from around June 2014, a dog has been kept at the subject premises in breach of Clause 3(16) and Paragraph 7 (e) of the Second Schedule of the "Lease".
19. The Applicant produced a letter dated 31st January 2017, which was sent to the Respondent, listing the dates of sightings, and, furthermore, photographic evidence of the Respondent walking her dog.
20. The Applicant produced a further witness statement confirming that, the Lady in the photographic evidence walking a dog, was the Defendant Mrs Rosemary Hancocks and that she had no permission to keep the animal at the Demised premises.
21. The witness statement further confirmed that no other lessee has current permission to keep a dog, but, with one lessee having been given permission to keep a cat in order that vermin are kept to a minimum within the building.

Car Parking

22. The Applicant submitted that, at various times, the Respondent has parked in an inconsiderate manner, by not parking within the designated parking spaces, and blocking access to another Tenant's garage. That this was in breach of Clause 3(16) and paragraphs 1(b) and 7(b) of the Second Schedule of the "Lease";
23. The Applicant submitted that despite warnings, the Respondent continued with this inconsiderate behaviour.
24. The Applicant produced a letter dated 31st January 2017, listing the issues between 3rd September 2014 through to 13th January 2017.
25. The Applicant also produced a further witness statement submitting that there was nuisance, inconsiderate behaviour and poor parking within the parking areas, and indeed, explaining the submitted photographic evidence in more detail.

The Front Door

26. The Applicant submitted that on the 19th October 2016 the front door of the demised premises was damaged by the Police whilst making a forced entry.
27. It would appear, that whilst there is a new door awaiting fitting, the old door is still in situ. That this is in breach of Clause (7) of the "Lease".

28. The Applicant produced, within the letter dated 31st January 2017, confirmation of this fact and requesting that the new door be fitted "*as soon as possible*" and photographic evidence as to the state of the door.
29. Following the Applicants further witness statement, it was confirmed that, the door had still not been fixed nor replaced.

TRIBUNAL FINDINGS

30. The Tribunal would remind the parties that this decision is just one stage in any action for forfeiture of the lease. This Tribunal makes findings of facts and considers those facts against the lease provisions. If any findings of breach of lease are found, then a party may pursue forfeiture. Naturally, such a claim would be subject to the Court considering "relief" against forfeiture.
31. The Tribunal considered the submitted breach of keeping a dog at the Demised premises without Landlords consent. The Applicant's submission that this was a clear breach of Paragraph 7 (e) of the Second Schedule of the lease, is accepted by the Tribunal. The evidence submitted, by way of photographic evidence, was compelling, and indeed, the clear lengths that the Applicant went to, by way of written requests, was sufficient to prove the breach.
32. The Tribunal considered the submitted breach in relation to the car parking. The Applicant's submission, that this was a clear breach of Clause 3(16) and paragraphs 1(b) and 7(b) of the Second Schedule of "the lease", is accepted by the Tribunal. The evidence submitted by way of photographic evidence, was compelling, and indeed showed the clear lengths that the Applicant went to, by way of written requests, in order to provide sufficient proof of a breach.
33. Finally, the Tribunal considered the submitted breach, relating to the front door of the subject premises, being in disrepair. The Applicant's submitted that this was a breach of Clause (7) of the "lease" which is accepted by the Tribunal. Again, photographic evidence was submitted together with further evidence of written request to remedy the breach.

COSTS

34. In further submissions, the Applicant provided a "statement of costs" to the Tribunal.
35. There has also been no application under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
36. Therefore, the Tribunal makes no Order in relation to costs.

APPEAL

37. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).
38. Any Application received for permission to appeal must identify the decision of the Tribunal to which it relates (i.e give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Ivan P Taylor BSc FRICS – Valuer Chair