

LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/00AC/LBC/2012/0115

Premises: 25 THE BROOKDALES, BRIDGE LANE,
LONDON, NW11 9JU

Applicant: THE BROOKDALES LIMITED

Representative: MESSRS MALE & WAGLAND, SOLICITORS

Respondent: MR JONATHAN WEISSBRAUN

Representative: IN PERSON

Date of hearing: 26 NOVEMBER 2012

Appearance for Applicant: MR T DEAL OF COUNSEL

Appearance for Respondent: DID NOT ATTEND & WAS NOT REPRESENTED

Leasehold Valuation Tribunal: MS E SAMUPFONDA LLB (HONS)
MR J BARLOW FRICS

Date of decision: 4 DECEMBER 2012

Decision of the tribunal

- (1) For the reasons set out below, the tribunal determines that the Respondent has breached clause 13 of the Second Schedule to the lease.
- (2) The tribunal finds that the circumstances under which it can make an order under schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002 have been made out. It orders that the Respondent pays to the Applicant the sum of £500.

The application

1. The Applicant seeks a determination pursuant to s.168 (4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent is in breach of covenants contained in the lease by keeping a dog in his flat. In particular the Applicant asserts that the Respondent is required by Clause 4 (s) "To comply with and observe the regulations set out in the Second Schedule" and Clause 13 of the Second Schedule provides that the Respondent will not "keep have permit or suffer to be upon the flat any animal bird or other pet without permission in writing of the Landlord first obtained which permission would be revocable at any time."

The background

2. The property, which is the subject of this application, is a first floor 2 bedrooms 2 bathrooms luxury flat.
3. Directions for the future conduct of the case were made on 15th October 2012. The Respondent failed to comply but apologised for this in the faxed letter. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The hearing

4. Mr T Deal of Counsel appeared on behalf of the Applicant. He was accompanied by Mr Philip Simmons, Director of Sadlers Estate & Property Management Ltd, the managing agents for "The Brookdales" and also Director of "The Brookdales Ltd" the Freeholder. The Respondent did not appear and was not represented. He faxed a letter to the tribunal on the morning of the hearing in which he explained that due to ill health he would not be attending. He denied the allegation and stated, "I can confirm that the alleged breach of covenant (keeping a pet in the flat) as particularised in the applicants witness statement did not occur." There was no application for the hearing to be adjourned therefore the tribunal decided to proceed in his absence.

5. On the balance of probabilities the tribunal found the following facts. The Respondent is the registered proprietor and lessee of the subject property. He has lived in the flat for about 6 years.
6. From about March 2012, Mr Simmons received complaints from various neighbours that the Respondent has a large dark dog. In response to those complaints, Mr Simmons has made several visits to the property. Although access has been denied, he has not seen the dog, he has however heard it barking and scratching on the inside of the front door of the flat as recently as last week.
7. The neighbours report seeing the dog which is they say is large and dark in colour. The neighbours have informed Mr Simmons that they are not willing to openly testify for fear of recriminations. The tribunal reminded Mr Simmons of its inquisitorial function, meaning that it has a duty to make due enquiries and establish the facts in order to make its determination. He responded by explaining that he had spoken directly to the complainants and they were afraid to support their complaints in writing.
8. Mr Simmons has also received complaints from his contractor gardeners who had cleaned up faeces from within the enclosed garden. On one occasion in early March 2012, Mr Simmons required his contractor cleaners to steam clean the internal common parts of dog faeces.
9. The tribunal noted that the Respondent's position is that there has been no breach and that in his view the Applicant has not submitted any material evidence to support the claim.

Tribunal's jurisdiction

10. Section 168(4) of the 2002 Act provides

(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 (c20)(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.

(d) Not relevant to these proceedings

(e) A landlord under long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that the breach of a covenant or condition in the lease has occurred.

Decision

11. The tribunal considered the submissions made by Mr Teal, Mr Simmons' evidence and all the information before it. Mr Simmons gave his evidence clearly and cogently. He was in the tribunal's view a credible witness. He attested to the fact that he had spoken to the complainants directly, that he had visited the property on some 15 occasions and had as recently as last week heard a dog barking and scratching from within the flat. He had also received complaints from the gardener and required the common parts to be steam cleaned of dog faeces.
12. The Respondent makes a bare denial and nothing more. He has not made a witness statement or produced any evidence. He did not comply with the directions and he has failed to respond to the Applicant's solicitors' letters. Other than the faxed letter that he sent to the tribunal on the morning of the hearing, the Respondent has not engaged in any meaningful way with these proceedings. The tribunal's jurisdiction is limited to awarding costs in accordance with Schedule 12 paragraph 10 of the 2002 Act.

Application under s.20C and refund of fees

13. At the end of the hearing, Mr Teal made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application/ hearing. An application for costs was also made under Schedule 12 paragraph 10 of the 2002 Act. Having heard Mr Teal and taking into account the determination above, the tribunal orders the Respondent to refund any fees paid by the Applicant and to pay to the Applicant the sum of £250 pursuant to Schedule 12 paragraph 10 of the Act within 28 days of the date of this decision.

Chairman: Evis Samupfonda

Date: 4th December 2012