



Case Reference : CHI/00HC/LBC/2015/0012

Property : 45, Williton Crescent,
Weston-Super-Mare,
Somerset BS23 4QY

Applicant : NSAH(Alliance Homes) Limited

Representative : Bevan Brittan LLP, Solicitors

Respondent : Mr Richard Pruen

Representative :

Type of Application : Alleged breach of covenant

Tribunal Members : Judge D. Agnew

**Date and venue of
Hearing** :

Date of Decision : Paper determination on 4th November
2015

DECISION

Background

1. On 1st July 2015 the Applicant applied to the Tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination that the Respondent has breached a covenant of the lease of his property at 45 Williton Crescent, Weston-Super-Mare, Somerset BS23 4QY (“the Property”). It was alleged that the Respondent had breached paragraph 24 of the Fifth Schedule to the lease.
2. Directions were issued on 7th July 2015 providing a timetable for the parties to file and serve their statements of case and for the case to be determined on the papers alone without an oral hearing unless either party objected. Neither party did object.
3. On 27th July 2015 the Applicant’s solicitors wrote to the Tribunal to advise that the Respondent had appeared at Bristol Crown Court charged with an offence arising out of the conduct alleged to have constituted the breach of covenant and that the Respondent was to undergo an assessment by a consultant psychiatrist. The Tribunal was concerned as to whether a litigation friend needed to act on behalf of the Respondent. A copy of the psychiatrist’s report was forwarded to the Tribunal by the Applicant’s solicitors in which it concluded that the Respondent was fit to plead and stand trial. The Tribunal was prepared to accept that this indicated that the Respondent had capacity to conduct the Tribunal proceedings.
4. However, the Respondent has taken no part in the proceedings and has failed to file and serve a statement of case as required by Directions. On 17th September 2015 an order was sent to the Respondent that should he fail to comply with the direction to serve his statement of case by 30th September 2015 he could be debarred from taking any further part in the proceedings. There was no response to that order. Consequently, insofar as it is necessary to do so the Tribunal hereby orders that the Respondent be debarred from taking any further part in these proceedings.

The Applicant’s case

5. The Applicant’s case is that the Respondent has breached paragraph 23 of the Fifth Schedule to his lease of the Property. This is a covenant requiring the lessee:-

“not to do or permit to be done upon or in connection with the Property or the building anything which shall be or tend to be a nuisance (including a noise nuisance) annoyance or cause damage to the Council or its Tenants or any of them or to any neighbouring adjoining or adjacent property or the owners or occupiers thereof.”

6. The Applicant stated that on 18th March 2015 at approximately 6.45 pm the Respondent went to the flat below his of which Miss Rachel Huxtable was the tenant. He tried to enter Miss Huxtable's flat but as the door was locked he was unable to do so. He later returned to Miss Huxtable's flat at about 10pm with a chainsaw. Miss Huxtable was in her flat and her son was asleep in bed. The Respondent set the chainsaw going and revved up the motor. Miss Huxtable's partner approached her flat and tried to enter through the door. Although the Respondent put his foot in the doorway Miss Huxtable's partner managed to close the door. At that, the Respondent began to cut through Miss Huxtable's door with the chainsaw and Miss Huxtable, her partner and son escaped from her flat via the balcony. The police were called and arrested the Respondent. He was subsequently charged with causing criminal damage, affray, using violence to secure entry and uttering threats to kill. The criminal proceedings are ongoing in Bristol Crown Court.
7. The account of the Respondent's actions is verified in witness statements made by a number of witnesses to the incident, namely Ramune Ratkeviciute, Barry Tydeman, Kerry Gibson and Shakira Sheppard. It is also supported by Louise Walker who is an Antisocial Behaviour Officer with the Applicant, although most of her evidence is hearsay.

The Respondent's case

8. As stated above, the Respondent has not submitted a statement of case or participated in any way in these proceedings the report of his consultant psychiatrist states that he has interviewed the Respondent on a number of occasions and it would appear that the Respondent has confirmed to him that he did use the chainsaw to cut through Miss Huxtable's front door. It was his intention to scare Miss Huxtable's partner, not to harm him.

The lease covenant and legal titles

9. Paragraph 23 of the Fifth Schedule to the Respondent's lease is as set out in paragraph 5 above. The lease is dated the 22nd January 1990 and was made originally between Woodspring District Council and Mrs AC Dare and Mr PR Johnson.
10. A copy of the freehold title has been produced to the Tribunal showing the Applicant as the registered proprietor of the freehold interest in the block containing the Respondent's flat and thus entitled to the benefit of the lessee's covenants.

The Tribunal's determination

11. Whilst either a plea of guilty by the Respondent in the criminal proceedings or a conviction would have put the matter beyond a peradventure, there is more than sufficient evidence for the Tribunal to find, on a balance of probabilities, that the Respondent has breached the covenant contained in paragraph 23 of the Fifth Schedule to his lease. The witness statements from the neighbours and the content of the Defendant's own psychiatric consultant's report confirm the Applicant's allegations that the Respondent used a chainsaw to cut through the front door of his neighbour, Miss Huxtable's, front door. This alone would at the very least have caused a nuisance or annoyance to her. No doubt it terrified her causing her, her son and partner to flee via the balcony of their flat. This Tribunal is not concerned with the reason for the Respondent's behaviour or what his intentions were in acting as he did. It is simply concerned to determine whether the Respondent's actions did in fact breach the aforesaid paragraph 23. The Tribunal does so find and determines that the Respondent has breached that covenant in his lease.

Dated the 4th November 2015

Judge D. Agnew

Appeals

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.