



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

Case Reference : CHI/29UL/LBC/2014/0033

Property : Flat 6,
83-85 Harbour Way,
Folkestone,
CT20 1LZ

Applicant : Eanswythe House Residents Limited

Representative : Matthew Cussens, Company Secretary, of
Flat 4, 83-85 Harbour Way,

Respondent : Charlotte Vaughan-East

Representative :

Type of Application : Application for an order that a breach of
covenant has occurred section 168(4) of
the Commonhold and Leasehold Reform
Act 2002

Tribunal Member(s) : Judge Tildesley OBE

Date of Notice : 2 February 2015

DECISION TO STRIKE OUT

1. The Applicant alleged that the Respondent had broken the covenant under the lease relating to the prevention of nuisance disturbance or annoyance to other residents. Essentially the Applicant was saying that the floors in flat 6 were not adequate to contain the noise emanating from the occupants of flat 6.
2. An Application under section 168(4) can only be accepted by the Tribunal if it was made by the landlord. Under the terms of the lease enclosed with the application, Mrs J M Eiles or her successors in title was the landlord for the purpose of enforcing the covenant preventing noise nuisance disturbance or annoyance. This Application appeared to be made either in the name of Mr Cussons in his capacity as tenant of flat 4 or as secretary of Eanswythe House Residents Limited.
3. The Tribunal was therefore, minded to strike out the above application on the ground that it was not made by the landlord entitled to enforce the relevant covenant. A notice to this effect was sent to the parties inviting representations by **19 January 2015** on why the Application should not be struck out.
4. On 6 January 2015 Mr Cussons of Flat 4 advised the Tribunal that the leaseholders at Eanswythe House exercised their right to buy the freehold in 2002. The freehold was vested in Eanswythe House Residents Limited, of which Mr Cussons was the Company Secretary. Ms Vaughan-East, the Respondent, made no representations.
5. Despite Mr Cussons' representations the Tribunal strikes out the Application for the following reasons:
 - The grounds of the Application make it clear that this application concerned an alleged nuisance by the tenant of flat 6 which interfered with the quiet enjoyment of Mr Cussons in respect of his leasehold interest in flat 4. There was no evidence with the Application that the activities of the occupiers of flat 6 were causing an alleged nuisance to the landlord. Further there was no evidence from the directors or minutes of meetings of the company that the landlord had agreed to take on this action on behalf of Mr Cussons.
 - The circumstances of the alleged breach related to the structural condition of the floors. It would appear that Mr Cussons was not saying that the present occupiers of flat 6 were generating excessive noise. According to Mr Cussons, the floors were not adequate and so the noise was always present. Mr Cussons used the expression "the floors make noise". Given those circumstances the Tribunal is satisfied that Mr Cussons had not made out a prima facie case that the tenant of flat 6 has done an act or thing which constituted nuisance disturbance injury or annoyance or inconvenience.
6. Mr Cussons may have a right of Appeal against this decision if he can establish the application was brought on behalf of the landlord. Alternatively the landlord itself can submit a fresh application which if

done should set out the grounds for why the tenant of flat has done an act or thing which constituted a nuisance disturbance injury or annoyance or inconvenience in accordance with the wording of the covenant.

RIGHTS OF 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