FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AF/LBC/2020/0029**
Property	:	**14 Eaton Court, Kemnal Road, Chislehurst, Kent, BR7 6NB**
Applicant	:	**Eaton Court Chislehurst Management Ltd**
Representative	:	**Ms Newman, Director**
Respondent	:	**Mr Nicholas David Jackson**
Representative	:	**In person**
Type of Application	:	**Determination of an alleged breach of covenant**
Tribunal Members	:	**Judge W Hansen (chairman)** **Charles Norman FRICS**
Date and venue of Hearing	:	**Remote hearing on 12 November 2020**
Date of Decision	:	**16 November 2020**

DECISION

Decision of the Tribunal

The Tribunal determines that the Respondent has breached the covenant contained in paragraph 14 of the Sixth Schedule of the lease dated 1 May 1979, which covenant has been incorporated into the lease dated 20 December 2017 by clause 6.2 thereof, by keeping a dog in the demised premises without the written consent of the Applicant or the Landlord.

Background

1. By an application dated 4 May 2020 the Applicant seeks a determination pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached the covenant contained in paragraph 14 of the Sixth Schedule to a lease dated 1 May 1979 ("the Old Lease"). The original parties to the Old Lease were Global Homes Limited as Developer, the Applicant as the Management Company and Gavin Donald Maxwell and Deborah Elaine Maxwell as Tenant.

2. In fact, the title position, as it now is, needs to be explained. The Respondent is the tenant of 14 Eaton Court ("the demised premises"). Eaton Court consists of 4 purpose built blocks, each comprising six 1-2 bedroom flats. The Respondent was registered at HM Land Registry under title number SGL789031 as leasehold proprietor of the demised premises on 11 December 2019, having completed his purchase on 22 November 2019. His predecessor in title was granted a new lease dated 20 December 2017 ("the New Lease") pursuant to section 56 of the Leasehold Reform, Housing and Urban Development Act 1993 in place of the Old Lease. The parties to the New Lease were Shortlift Limited as the Landlord, Barry McDonnell as the Tenant and the Applicant as the Manager. The term of the New Lease was 189 years less 10 days from 25 March 1978. That term of years is now vested in the Respondent. As is the custom, the New Lease incorporated by reference the covenants contained in the Old Lease, referred to therein as the Existing Lease, as appears from Clause 6.2 of the New Lease which provides as follows:

> *"The Tenant and the Manager mutually covenant with each other and as a separate covenant with the Landlord that they will throughout the New Term perform and observe the several covenants provisos and stipulations contained in the Existing Lease (…) as if they were repeated in full in this Lease with such modifications only as are necessary to give effect to this demise and*

the provisions of this Lease and as if the names of the Landlord and the Tenant and the Manager were substituted for those of the lessor and the lessee and the management company respectively in the Existing Lease.

3. The Applicant is therefore the Manager under the New Lease and is entitled, as is Landlord, to the benefit of the covenants contained in the Old Lease. One such covenant in the Old Lease, which has by virtue of Clause 6.2 of the New Lease been incorporated into the New Lease with the necessary changes to reflect the parties to the New Lease, is that contained in paragraph 14 of the Sixth Schedule which provides as follows:

> *"The Lessee shall not keep or allow to be kept on the Demised Premises any cats dogs or other domestic pets or animals of any kind with the exception of a small cage bird without first obtaining the written consent of the Management Company and the Developer (such consent not to be unreasonably withheld)…"*

4. It is common ground that the Respondent keeps a nine-year dog in the demised premises where he lives with his two daughters. It is also common ground that he has never sought the consent of the Applicant as Manager or the Landlord to his keeping a dog on the demised premises. He says he was misled by his conveyancing solicitors, Amphlett Lissimore, and/or the agents who marketed the demised premises, Langford Russell, into believing that he was allowed to keep pets at the property. There is no report on title or any other documentary evidence to this effect, but even if there were, it is irrelevant to the question of whether the Respondent is in breach of covenant by keeping a dog on the premises.

5. The Applicant now seeks a determination that the Respondent is in breach of covenant by keeping a dog on the premises. The Applicant's managing agents wrote to the Respondent on at least two occasions in January 2020 once the issue came to light in December 2019. The Respondent did not engage with that correspondence and has not engaged with subsequent correspondence. He has never sought consent to keeping a dog. He has, rather belatedly, responded to the proceedings by way of an undated letter in which he explains that he was misled by both his solicitors and the agents who marked the demised premises and to which he attaches medical evidence explaining that his daughter is suffering from a serious medical condition. It was not immediately obvious what the relevance was of this sensitive medical evidence but the suggestion appears to be that the dog provides comfort to his daughter at a very difficult time. There is, in fact, no medical evidence before us to support this contention but again, with respect and not wishing in any way to downplay the significance of his daughter's

medical condition, this suggestion is irrelevant to our determination. It may become relevant in due course in other proceedings, but it is not relevant to our determination. There is, for example, no suggestion in the Lease that there is an exemption for "therapy" dogs. It may be the practice of the Manager to give its consent to keeping a therapy dog on the premises, if the medical evidence exists to support the need for a dog on medical grounds, but that is not the question before us and the Respondent has never sought consent on this or any other basis.

6. So the bald facts are these. The Respondent admits and we find that he is keeping a dog on the demised premises. The Respondent further admits and we find that he never sought, still less obtained, the consent of the Manager or the Landlord to keeping a dog on the demised premises.

Determination

7. Section 168(4) of the Commonhold and Leasehold Reform Act 2002 provides a follows:

> *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.*

8. The Applicant seeks a determination that the Respondent has breached the covenant set out above against keeping a dog on the premises without consent (such consent not to be unreasonably withheld).

9. In view of our findings of fact set out in paragraph 6 above, we determine that the Respondent has breached and remains in breach of the covenant contained in paragraph 14 of the Sixth Schedule to the Old Lease as incorporated into the New Lease pursuant to Clause 6.2 thereof.

Name: Judge W Hansen **Date:** 16 November 2020