



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

**Case Reference** : CHI/29UE/LBC/2021/0007

**Property** : Beechwood Court, 99 London Road, River,  
Kent CT16 3PP

**Applicant** : Ian Humberstone

**Representative** :

**Respondent** : Cassie Anne McManus

**Representative** :

**Type of Application** : Breach of Covenant – S.168(4) Commonhold  
and Leasehold Reform Act 2002

**Tribunal  
Member(s)** : Judge D. R. Whitney

**Date of Decision** : 7<sup>th</sup> June 2021

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**Decision**

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## **Background**

1. The Applicant seeks a determination that the Respondent has breached clause 1 of the Second Schedule to her lease in that; *“The leaseholder and or their flat occupants have parked more than one vehicle at times in the car park and sometimes the vehicle has been a larger motorhome type vehicle. The property has a limited number of parking spaces and we have received complaints about parking for this flat from another leaseholder asking us to enforce the lease.”*
2. On 31 March 2021 the Tribunal directed that the application was to be dealt with on the papers. The parties did not request an oral hearing. The Tribunal has a bundle of papers and references in [] are to pages within that bundle.

## **The Law**

3. The relevant law is set out in section 168 of the Commonhold and Leasehold Reform Act 2002. Under this section a freeholder must seek a determination from the Tribunal that a leaseholder is in breach of the terms of their lease prior to the service of any notice pursuant to section 146 of the Law of Property Act 1925.
4. The issue for the Tribunal is simply has there been a breach of the lease?
5. In this instant case it is a question of determining what the lease allows. The leading authority on interpretation of a lease is Arnold v Britton & ors [2015] UKSC 36. In Arnold the Supreme Court in the leading judgment of Lord Neuberger set out the principles which should be applied in interpreting the meaning of a lease. In reaching its decision the Tribunal has had regard to the same.

## **Decision**

6. The Applicant suggests that they are not looking to take any enforcement action but seek a decision so that all parties are clear on the lease terms. I remind the Applicant that in making such applications it is for the Applicant to demonstrate that there is a breach of lease. That is the question for me to determine.
7. The Applicant suggests that the Respondent often parks more than one motor car in the communal car park of the block of flats, including parking what he describes as a motorhome [37 and 38]. By contrast the Respondent appears to dispute any alleged breach although she suggests a VW T4 van would not be in breach [39].
8. There are references to photographs however none are provided by either party. Very little evidence has been put forward by either party.

9. A copy of the lease is included [14-36] being a lease dated 11<sup>th</sup> November 1983 between Carlsden Properties Limited and John Francis Crowley. It appears to be accepted that the freehold is vested in the Applicant and the leasehold interest in the Respondent. The bundle contains no Land Registry entries.
10. Clause 2(14) of the lease [22] states that a lease holder in parking cars must ensure "...no obstruction is caused by the parking of cars in the entrance driveway or forecourt." The lease itself does not allocate any specific parking. The Second Schedule sets out the rights that the leaseholder is granted and states in respect of car parking that there is a right to "... Park a motor car on the car parking areas shown on the plan coloured brown." In my opinion the Second Schedule is the relevant part of the lease.
11. It is a question of interpretation with the starting point being that an ordinary natural meaning should be given to all terms of the lease. In my judgment it is possible to do so.
12. I find that the lease provides that the Respondent may park one motor car. The use of "a motor car" in the Second Schedule in my judgment should be interpreted as giving a right to park a single vehicle. If it was intended to provide a right for more than one vehicle the clause could have said so but it does not.
13. I have also considered what is "a motor car". In my opinion a common sense meaning should be applied to this so that a van or similar would not apply.
14. Despite the above being said I have seen no evidence that the Respondent has breached the terms of her lease. Whilst there are references to breaches these appear to be disputed by the Respondent. I remind myself that it is for the Applicant to prove on a balance of probabilities that a breach has occurred. On the basis of the evidence adduced I am not satisfied that he has done so.
15. The application is dismissed.

## **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 by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) 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.