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

Case Reference : CAM/22UG/LBC/2014/0009

Property : 53 Henry Laver Court, St Marys
Fields, Colchester CO3 3DY

Applicant : Barratt St Marys Ltd and
Balkerne Heights Residents
Association Ltd

Respondent : Stephen Maurice Smith

Type of Referral : 9th May 2014

Type of Application : For a determination that the
Respondent is in breach of a covenant
or condition in a lease between the
Parties (Section 168(4) Commonhold
and Leasehold Reform Act 2002)

Date of Determination : 9th October 2014

Tribunal : Judge Wilson
Mr Stephen Moll FRICS

DETERMINATION

DECISION

The Tribunal declined to make a Determination that a breach of a covenant or condition in the Lease referred to below had occurred.

REASONS

The Application

1. This was an Application made under section 168 (3) of the Commonhold and Leasehold Reform Act 2002 seeking a determination that a breach of covenant or condition in a Lease dated 26th August 2005 (the Lease) had occurred. Paragraph 5 of the First schedule of the Lease required that the tenant must "not keep at the premises any domestic pet without written permission of the Manager". The Applicant relied on evidence in the form of a witness statement from a Mr Barry Hepburn which was supported by a statement by a Mr Colin Carr.

The Law

2. Section 168 is as follows:

168 No forfeiture notice before determination of breach

- (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 (c.20) (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.
- (3) But a notice may not be served by virtue of subsection 2(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
- (4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred.
- (5) But a landlord may not make an application under subsection (4) in respect of a matter which –
 - (a) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (b) has been the subject of determination by a court, or
 - (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

Evidence

3. (1) *The Applicant*

Mr Hepburn's statement was dated 27th May 2014. It stated that a dog was present on the premises on 2nd April 2014. The dog had been witnessed at the premises on "other occasions", but those occasions were not specified. The statement also disclosed that there had been correspondence about a pet since 2013.

The Respondent

(2) The Respondent asserted in correspondence appearing in the bundle that while the dog was in the premises, it was merely accompanying a visitor.

4. The Tribunal decided that the evidence provided by the Applicant was insufficient to displace the Respondent's assertion that the dog was a visitor only. There was some evidence of the dog being present before the 2nd April, but only evidence on one specific date.

In order to found a determination that there was a breach, the Tribunal would have expected the Applicant to have presented the Tribunal with evidence of random visits to the property on specific dates and at specific times, perhaps supported by photographic evidence, so as to establish, on the balance of probabilities, that the dog was more than an occasional visitor.

.....
Graham Wilson

Dated: 9th October 2014

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