



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

**Case Reference** : **LON/00BK/LBC/2014/0017**

**Property** : **7 Neville Court, Abbey Road,  
London NW8 9DD**

**Applicant** : **Twinterm Residents Management  
Limited**

**Representative** : **Mr Petts of Counsel**

**Respondents** : **Mr B. Emamian**

**Representative** : **None**

**Type of Application** : **For the determination of an alleged  
breach of covenant**

**Tribunal Members** : **Judge O'Sullivan**

**Date and venue of  
Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **9 June 2014**

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**DECISION**

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## **Decision of the tribunal**

### **The application**

1. The Applicant seeks a determination pursuant to s. 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent tenant is in breach of covenants contained in the lease.
2. Directions were made dated 14 March 2014 which set out the steps to be taken by the parties. In accordance with those directions a bundle has been lodged and both parties have served statements of case and evidence relied upon.
3. The tribunal did not consider an inspection of the property was appropriate given the nature of the dispute between the parties.

### **The Hearing**

4. A hearing took place on 16 May 2014 at 10am. The Applicant was presented by Mr Petts of Counsel with Mr Kan, a solicitor, also attending. Mr and Mrs Koukoullis, directors of the Applicant company also attended together with Mr Apperley, the managing agent. The Respondent attended in person with his wife and was not represented.
5. The Applicant is the freeholder of the property known as 7 Neville Court, Abbey Road, London NW8 9DD. The Respondent is the long leaseholder of the "Property" and is also the long leaseholder of Flat 6 but only Flat 7 is the subject of this application.
6. The breaches all relate to events at 3 parties held at the Property on 09/02/13, 19/04/13 and 28/10/13. It is not disputed by the Respondent that the parties took place but rather whether the events at those parties constituted a breach of covenant.
7. The relevant provisions of the Lease are set out in the Appendix to this decision.
8. The landlord had prepared a schedule which particularised the breaches. The landlord requested a specific finding in relation to each breach of covenant. The breaches complained of and the Respondents' response in each case is set out below;

**Party 09/02/12**

The Applicant says that the Respondent held a party on 9 February 2013 with in excess of 400 guests which continued until 1am. The breaches complained of are;

- a) *That at the party the guests spilled out into the communal parts of the building in breach of clause 2(xxvii)(f). The landlord estimates there were 400 people at the party. The landlord relies on the witness statement of Dean Atkin in support. Mr Atkin did not attend the hearing to give evidence and therefore could not be cross examined.*

This is denied by the Respondent. The tribunal was informed that this was a party arranged for his teenage son. He had hired two security guards to ensure that everything was kept in order. The Respondent says that the Applicant exaggerates matters and that there were probably around 80 guests at the party. The tribunal was referred to a copy letter from the Applicant at page 59 which states that there were 85 guests.

- b) *That the noise generated by the guests was substantial causing or tending to cause, annoyance or nuisance to other tenants in breach of clauses 2(xxvii)(d), 2(xxx) and rule 1 of the Third Schedule. Also that music was being played loudly until approximately 1am in breach of the same provisions.*

The Applicant relies again on the statement of Mr Atkin, the porter and his exhibited notes. It also relies on an email from Westminster City Council dated 8 May 2014 which confirms that a noise abatement notice was served on the Respondent.

The Respondent was not clear as to whether he had been served with an abatement notice. However he accepted that the noise levels at the party may have constituted a noise nuisance. He apologised for the noise. The tribunal heard that the Respondent felt he was being treated like a criminal and was disappointed that proceedings in the tribunal had been commenced.

- c) *That the tenant's guests caused damage to the decoration of the common parts of the building in the form of scuff marks in breach of clause 2(xvii)(d)*

The Applicant relies on the statement of Mr Atkin. It also relies on a letter from Mr Apperley, the managing agent to the Respondent dated 21 February 2013.

The Respondent denies any damage was caused. He says that there is no direct evidence of any damage and the scuff marks could have been occurred during the refurbishment.

- d) That the conduct of the tenants' guests injured or tended to injure the character of the building in breach of clause 2(xxvii)(d).*

The Applicant relied on the statement of Mr Atkin and the exhibited notes. It also further relies on the letter from Mr Apperley dated 21 February 2013.

The Respondent says simply that there is no real evidence in support.

### **Party 19/04/13**

The Applicant says that the Respondents held a party with approximately 150-200 guests which continued to approximately 11-11.30pm. The complaints made are similar to those above namely;

- e) That the noise generated by the guests was substantial causing or tending to cause, annoyance or nuisance to other tenants in breach of clauses 2(xxvii)(d), 2(xxx) and rule 1 of the Third Schedule. Also that music was being played loudly until approximately 1am in breach of the same provisions.*

The Applicant relies on the witness statement of the other porter, Mr Keith Ridley and the exhibited notes. Mr Ridley did not attend the hearing and could not therefore be cross examined. No abatement notice was served by Westminster City Council in respect of this party.

The Respondent says that there were only 14-15 teenagers at the flat and denies that a nuisance occurred. It is said that the party was only for 2-3 hours to celebrate Easter break.

- f) That damage was caused to the shrubs outside the property in breach of clause 2(xxvii)(d).*

The Applicants rely on the witness statement of Mr Ridley and a letter to the Respondent dated 3 May 2013. The Respondent says that there is no evidence to show that any damage to the shrubs was caused by their guests. He points to the fact that the shrubs are outside the property and that people often sit on them.

- g) That the conduct of the tenants' guests injured or tended to injure the character of the building in breach of clause 2(xxvii)(d).*

The Applicant again relies on the statement of Mr Ridley and correspondence dated 3 May 2013. The Respondent again says there is no evidence of this breach.

**Party 28/10/13**

The Applicant says that the tenants held a party with approximately 200 guests. The party was stopped by the Westminster City Council Noise Team

- h) That in breach of clauses 2(xxvii)(d) a guest assaulted the porter's wife and verbally assaulted a neighbour.*

The Applicant relies on the witness statement of Mr Atkin and letters from Mrs Jill Koukoullis dated 11 and 13 November 2013 respectively. The Respondent says he knew nothing about such allegations and say there appears to be no evidence.

- i) That the noise generated by the guests was substantial causing or tending to cause, annoyance or nuisance to other tenants in breach of clauses 2(xxvii)(d), 2(xxx) and rule 1 of the Third Schedule. Also that music was being played loudly until approximately 930pm when the party was stopped by the Westminster noise abatement team.*

The Applicant relies on the witness statement of Mr Atkin, a letter from Mr Koukoullis and the noise abatement notice served by Westminster City Council.

- j) That in breach of clause 2(xxvii)(d) the guests were loitering the communal areas.*

The Applicant relies on the letter of Mr Koukoullis dated 13 November 2013. The Respondent simply denies the allegation.

- k) That the conduct of the tenants' guests injured or tended to injure the character of the building in breach of clause 2(xxvii)(d).*

The Applicant relied on the statement of Mr Atkin and the exhibited notes. It also further relies on the letter from Mr Koukoullis dated 13 November 2013. The allegation is simply denied by the Respondent.

## **The Law**

9. Section 168(4) provides that;

*“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.”*

## **The Tribunal’s decision**

1. The tribunal noted and accepted from the documentation before it that Westminster City Council had served noise abatement notices on two occasions in respect of the parties held on 9 February 2013 and 28 October 2013. In view of the service of these notices and the landlord’s evidence in this regard the tribunal was satisfied that on both occasions the following breaches had occurred pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002:
  - a) That the noise generated by the guests was substantial causing or tending to cause, annoyance or nuisance to other tenants in breach of clauses 2(xxvii)(d), 2(xxx) and rule 1 of the Third Schedule.
  - b) That music was being played loudly until approximately 1am in breach of clauses 2(xxvii)(d), 2(xxx) and rule 1 of the Third Schedule.
2. However in relation to all other alleged breaches the Tribunal was not impressed with the quality of evidence produced by the Applicant. It relied principally on the witness statements of the two porters. However they did not attend the hearing and could not therefore be cross examined. Given that the majority of the alleged breaches were denied it was unfortunate that the evidence of the witnesses could not be tested. The tribunal was therefore unable to give any substantial weight to their witness evidence.
3. Likewise the Applicant also relied on a series of letters from the managing agent and directors of the Applicant company to the Respondents. This evidence was not in the form of proper witness statements and therefore had no statement of truth. None of these individuals gave any evidence to the tribunal and likewise their evidence could not be tested. The contents of this correspondence also contained many disparities between the case put for the Applicant in other regards. By way of example, on the number of people at the party on 9 February 2013 the head porter Mr Atkin estimated the number of people at that party to be in excess of 400. However in OGR Stock

Denton's letter of 3 May 2013 they were instructed that there were in excess of 85 guests. No reason was given for this disparity.

4. There was a disappointing lack of evidence in relation to alleged breaches such as the damage to common parts. The tribunal would expect to see contemporaneous photographs of any damage to common parts or shrubs and none were provided. There was no satisfactory evidence of the alleged assaults or loitering by guests.
5. As far as the allegation that the conduct of the tenants' guests injured or tended to injure the character of the building in breach of clause 2(xxvii)(d) the tribunal was not satisfied on the evidence before it that this was the case. The tribunal has upheld only the nuisance complaints in relation to two of the parties. The tribunal was not satisfied that these two isolated parties some time part were in a breach of clause 2(xxvii)(d) of the Lease.
6. The tribunal was therefore not satisfied on the evidence before it that any of the other breaches complained of had occurred.
7. The Tribunal notes that the Property is subject to a charge to the Bank of Scotland dated 20 September 2007 and to a charge to Bridgeco Limited dated 11 June 2012. The Tribunal directs that a copy of this determination is sent to both companies within 14 days of the date of this decision.
8. The Respondent is advised to take independent legal advice.

**Name:** S O'Sullivan

**Date:** 9 June 2014