

727



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

Case Reference : **MAN/OODA/LBC/2016/0013**

Property : **12 St James Quay, 4 Bowman Lane, Hunslet
Leeds LS10 1HG**

Applicant : **Brewery Wharf Management Ltd**
Represented by : **Norton Connor Solicitors**

Respondent : **Mrs Beryl Christine Marshall**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Section 168(4)**

Tribunal Members : **Laurence Bennett (Tribunal Judge)**
Jonathan Holbrook (Tribunal Judge)

Date of decision : **10 August 2016**

DECISION

Summary decision

1. The Respondent has breached a covenant in her lease by failing to comply with a regulation in respect of the keeping of a pet in the Property.

Application

2. Brewery Wharf Management Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Mrs Beryl Christine Marshall has breached Lessee's covenants within the lease of the Property 12 St James Quay, 4 Bowman Lane, Hunslet, Leeds LS10 1HG.

Background

3. The Applicant is the proprietor of the freehold and successors to the Lessor's interest created by a lease of the Property. It is also the Management Company named as a party in the lease of the Property. The Respondent is the successor Leaseholder.
4. The application was made 23 May 2016.
5. Directions made 12 July 2016 by Judge J Holbrook included "The Tribunal considers it appropriate for the matter to be determined by way of a paper determination....." The directions gave opportunity for the parties to request a hearing. Neither party made such request.
6. The Applicant's submissions in response to directions include copies of the Freehold and Leasehold Land Registers, copy lease, a copy of the amended regulation within the lease, a statement of case with submissions, relevant correspondence with the Respondent, photographs showing the Respondent/Family with the dog within the flat development and other photographic evidence.
7. The Respondent has replied. Her submissions culminate with an email dated 1 August 2016 in which she states she has applied for a licence to keep the dog and has made arrangements to remove him from the Property. It includes: "As a result of the above I will not be contesting the Tribunal."
8. The Applicant has requested a formal determination and an order for costs.
9. The Tribunal convened on 10 August 2016 without the parties to determine the application.

The Lease

10. The Lease dated 3 December 2004 is made between Barratt Homes Limited (1) Brewery Wharf Management Limited (2) Vasanthi Rajasekaran (3) (the Lease).
11. Paragraph 3.21 of the Lease contains the Lessee's covenant to comply with regulations. The regulations are found at Schedule 1 of the Lease. Regulation 15 subsequently amended includes "Not to keep any pets in the premises except with the prior consent of the Landlord."

Law

12. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (the Act) states: "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."
13. Section 168(2)(a) states: "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
14. Section 168(4)(a) states: "A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred."

Evidence and submissions

15. The application is not now resisted. The evidence provided by the Applicants and the Respondent's implied and expressed acceptance that she has allowed the keeping of a dog in the premises without consent is conclusive.

Tribunal's conclusions with reasons

Our conclusions are:

16. Following 15 we determine that the Respondent has failed to comply with her covenant identified above as claimed by the Applicant.
17. The Applicant has requested an order for payment of its costs but no further details are given. In the Tribunal jurisdiction costs do not follow the event. The Applicant's attention is drawn to guidance within a recent Upper Tribunal decision reviewing the Tribunal's cost powers [2016] UKUT 0290 (LC). Should the Applicant wish to proceed it is directed that they provide a schedule of costs and submissions. On receipt, further directions will be made.

Order

18. The Respondent has breached her covenant within the Lease of the Property by failing to comply with a regulation in respect of the keeping of a pet in the Property.