



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

Case Reference : **LON/00BF/LBC/2021/0056**

HMCTS Code : **P: Paper remote**

Property : **8 New Colebrook Court, 61 Stanley Road, Carshalton, Surrey, SM4 5LL**

Applicant : **New Colebrook Court Management Ltd**

Representative : **Gregsons, Solicitors**

Respondent : **Barbara Devaney**

Representative : **N/A**

Type of Application : **Determination of an alleged breach of covenants**

Tribunal Members : **Tribunal Judge I Mohabir
Mr A Harris LL.M FRICS FCI Arb**

Date of Decision : **12 January 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers, which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no one requested the same.

Introduction

1. This is an application made by the Applicant under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that the Respondent has breached various covenants and/or conditions in her lease.
2. The Respondent is the leaseholder of the property known as 8 New Colebrook Court, 61 Stanley Road, Carshalton, Surrey, SM4 5LL (“the property”) pursuant to a lease dated 17 February 1984 (“the lease”). The property is one of 24 residential flats in a purpose built block arranged over three floors including communal gardens, garages and parking spaces. The Applicant and the Respondent are the current lessor and lessee respectively.
3. It is the Applicant’s case that in or about August 2019, the Respondent let the flat to the current occupiers, Chris and Tina Johnstone (“the Occupiers”). Apparently, since their occupation began, the Occupiers and/or their visitors have continually disrupted the lives of the other lessees living there by allegedly committing various acts of smoking drugs in the property, causing regular and severe noise nuisance, littering and various acts of antisocial behaviour.
4. The evidence relied on by the Applicant in support of the allegations above is set out in the following witness statements:
 - (a) Andrew Corden dated 28 October 2021. He is a Property Manager from the current Managing Agent, CEC PM Ltd, setting out what attempts were made to abate the Occupiers behaviour.

- (b) Gerarda Bridget Brownrigg dated 29 October 2021. She is a Director and owner occupier of Flat 4. Her witness statement sets out her evidence in relation various alleged acts of noise nuisance, drug use and littering since the Occupiers commenced their occupation. It includes a detailed diary of noise events over a protracted period showing that the noise nuisance does not arise from a few incidents.
- (c) Kim Michelle Merrick dated 28 October 2021. She is the owner occupier of Flat 18. Her witness statement sets out her evidence in relation various alleged acts of noise nuisance and drug use since the Occupiers commenced their occupation.
- (d) Cheryl Leslie Hill dated 28 October 2021. She is the owner occupier of Flat 5. Her witness statement sets out her evidence in relation various alleged acts of noise nuisance and drug use since the Occupiers commenced their occupation.
- (e) Segun Adebayo dated 28 October 2021. He is the owner occupier of Flat 2. His witness statement sets out his evidence in relation various alleged acts of noise nuisance and drug use since the Occupiers commenced their occupation.
- (f) Sona Ravindra Patel dated 29 October 2021. She is the occupier of Flat 3. Her witness statement sets out her evidence in relation various alleged acts of noise nuisance and drug use since the Occupiers commenced their occupation.
- (g) Andrew McCarrol dated 29 October 2021. He is the occupier of Flat 6. His witness statement sets out his evidence in relation various alleged acts of noise nuisance and drug use since the Occupiers commenced their occupation.

5. It is not intended to set out the particulars of the allegations contained in each of the factual witness statements, as these are self-evident.
6. As the Tribunal understands it, the attempts made by the managing agents failed to abate the alleged acts of drug use, noise nuisance, littering and anti-social behaviour by the Occupiers.
7. Therefore, on 12 August 2021, the Applicant applied to the Tribunal for a determination that the Respondent had breached one or more covenants and/or conditions in the lease.
8. On 7 October 2021, the Tribunal issued Directions to both parties as to the filing and service of their evidence. The Respondent has not complied at all with the directions nor has she engaged in any way in these proceedings. The Tribunal directed that the application would be dealt with on the basis of the evidence filed by the parties and there would be no oral hearing unless either party requested one. No such request has been received by the Tribunal.

Lease Terms

9. Paragraphs 13 and 15 of the Fourth Schedule of the Lease contain covenants on the part of the lessee to observe and perform all “Regulations” and “all covenants and stipulations affecting the Demised Premises”.
10. The Fifth Schedule of the Lease sets out a number of Regulations, which the lessee must observe, including:
 - “2. No wireless television record player or musical instrument shall be played or noise created in such manner as to cause annoyance or nuisance to the occupants of neighbouring premises or property or so to be audible outside the Demised Premises between the hours of 11.00 p.m. and 7.30 am....”.

11. Paragraph 7(b) of the Fourth Schedule of the Lease contains a covenant by the lessee “Not to use the Demised Premises or any part thereof nor allow the same to be used for any illegal or immoral or improper purpose and not to carry on any trade business or profession therefrom”.
12. The Fifth Schedule also contains the following Regulations:
 - “1. The Demised Premises shall not be used for any illegal immoral or improper purpose... or for any other purposes which may be injurious to the reputation of the Estate or of the Lessor.

 8. Any gardens or grounds of the Estate may be used for normal recreational purposes but not so as to cause annoyance to the lessees or occupiers of other premises on the Estate and no obstruction shall be caused nor any child or children allowed to play or loiter in the entrance halls stairways or passages of the Estate Buildings.”
13. In paragraph 10(b) of the Fourth Schedule of the Lease, the lessee covenants “Not at any time to assign transfer underlet deal or part with possession of the whole of the Demised Premises or permit or suffer the same to be done without the previous consent in writing of the Lessor such consent not to be unreasonably withheld...”.

Decision

14. The determination in this case took place on 12 January 2022 and was based solely on the evidence filed by the Applicant. As stated earlier, the Respondent has not filed or served any evidence and has not participated in these proceedings. It is important to note, therefore, that the application was determined on the basis of the Applicant’s unchallenged evidence.

15. Based on that evidence, the Tribunal made the following findings:
- (a) that the various allegations of noise nuisance by the Occupiers contained in the Applicant's witness statements occurred in breach of paragraph 13 and 15 of the Fourth Schedule and paragraph 2 of the Fifth Schedule in the lease.
 - (b) that the Occupiers and/or their visitors have used cannabis in the property and/or in or about the estate variously from time to time as set out in the Applicant's witness statements in breach of paragraph 1 and 8 of the Fifth Schedule of the lease.
 - (c) that the Respondent has sublet the property without the Applicant's consent in breach of paragraph 10(b) of the Fourth Schedule.
16. The Tribunal does not find that the Occupiers and/or their visitors have caused any parking obstruction in breach of paragraph 13 of the Fifth Schedule or failing to dispose of rubbish in accordance with paragraph 9 of the Fifth Schedule because these issues were not "pleaded" in the application, and therefore, do not form part of the Applicant's case. They were only raised for the first time in the Applicant's position statement and the factual witness statements and did not form the basis on which the Tribunal gave directions.

Name: Tribunal Judge I Mohabir

Date: 12 January 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office, which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).