SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE No: CHI/45UH/LBC/2006/0011

B E T W E E N :-

J.E.B THATCHER LTD

Applicant/Landiord

AND

MR AND MRS M BLAKEY

Respondents/Tenants

PREMISES: 7 Chesswood Court
Chesswood Road
Worthing
West Sussex
BN11 2AH ("the Premises")

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr R Wilkey FRICS FICPD
Ms H Clarke

Hearing : 9th March 2007

1. The Application

1.1 The Applicant made an application dated 2nd November 2006 under Section 168 of the Commonhold and Leasehold Reform Act 2002 (hereinafter referred to as "CLARA") for a determination that the Respondents had breached various covenants contained in their lease of the Premises.

2. The Tribunal's Determination

2.1 The Tribunal determines that the Respondents were in breach of the covenant contained in clause 2(17) of their lease when they let the Premises to a company for the commercial purposes of that company. That breach has now, however, been remedied.

2.2 The Tribunal found that the Respondents had not, on the evidence presented to it, breached any other covenants of their lease.

REASONS

3. Respondents' covenants

3.1 The precise terms of the covenants in respect of which the Applicant sought a declaration as to whether there had been a breach by the Respondents were as follows:-

3.2 Clause 2(13) of the lease dated 5th February 1970 between J.E.B. Thatcher (Developments) Ltd (1) and Margaret Doreen Watts (2) ("the lease") provides as follows:-

"(13) Not to do or permit or suffer to be done any act deed matter or thing whatsoever whereby or by reason or means whereof (a) the risk or hazard of the premises or any other part of the building being destroyed or damaged by fire shall be increased or (b) any additional premium for insuring the same shall become payable or (c) any policy for such insurance may be rendered void or voidable."

3.3 Clause 2(17) of the Lease provides:-

"(17) Not to hold any sale by auction on any part of the Premises nor to use or permit the same to be used (a) for any illegal or immoral purpose or (b) for any purpose whatsoever other than as a self-contained private residential flat in the occupation of one family or household only."

3.4 Clause 2(18) of the Lease provides:-

"Generally not to do or permit or suffer to be done upon or in connection with the Premises or any part thereof anything which shall be or become or tend to be or become a nuisance annoyance or danger or a source of nuisance or annoyance or danger or cause damage to the Lessors the Lessees or other occupiers of any other parts of the Estate or any of them or to any neighbours adjoining or adjacent property or the owners or occupiers thereof."

3.5 By Clause 2(23) of the lease the lessee covenanted to perform and observe the restrictions stipulations and regulations set out in Schedule 4 of the lease. The relevant provisions of Schedule 4 are:-

i) "Not to use or play any musical or other instrument of any kind (including a piano or gramophone or radio or television loudspeaker) nor permit any singing or other entertainment likely to be noisy to take place (a) between the hours of 11 pm and 7 am so as to be audible outside the premises or (b) at any other time so as to cause annoyance to any other person or persons on the Estate or in the neighbourhood

and

ii) "Not to allow any person (of whatever age) under the control of the Lessee to loiter play or be noisy or cause any sort of annoyance to any other person or persons in or on any part of the Estate."

4. The Inspection

4.1 This took place immediately preceding the hearing on 9th March 2007. Chesswood Court is a purpose built block of 10 flats situated in a pleasant suburban road of reasonably substantial properties. A residential care home is situated directly opposite the Premises. There is a good-sized lawn and driveway in front of the building which is set back from the road and there is a lawned area and tarmaced parking area behind the building.

5. The hearing

5.1 This took place at the Tribunal office in Chichester. Present were Mr David Fitness, a Director of the Applicant company and Mr Mark Blakey one of the joint Respondents and lessee of Flat 7 Chesswood Court.

6. The Applicant's case

6.1 Following complaints from two tenants at Chesswood Court at the beginning of July 2006 the Applicant had cause to write to the respondents on 10th July 2006. The complaints were of loud music and shouting emanating from the Premises. The police were called after which all went quiet. In the morning the grass at the front of the building was littered with beer cans and other items and outside the Premises' kitchen window were used tea bags and a T-shirt. Cigarette burns were also found on the carpet of the communal hall.

The Applicant's letter concluded: "would you kindly ensure that your tenant refrains from this behaviour and shows some consideration for his neighbours."

6.2 A tenant complained to the Applicant of similar behaviour on or about 28th July 2006. Details of this incident were not passed on to the Respondents. Instead, on 31st July 2006 the Applicant wrote to the Respondents a letter headed: "Notice of Breach of Covenant". This then set out the wording of the clauses in the Respondents' lease which it was alleged had been breached. Details of the conduct which it was being alleged constituted the breaches were not however given. This letter concluded with a requirement to remedy the breaches. The letter was similar in form to a Section 146 Law of Property Act 1925 notice but without details of the behaviour said to constitute the breach. Consequently the Respondents could not know from this document what it was being alleged the Respondents' occupier had done.

6.3 The same tenant who had previously complained to the Landlord wrote to the Applicant on 14th August 2006 to report that someone had thrown a brick at the window of the Premises and had broken the glass. The culprit was not identified. Another tenant, it was said, was looking for somewhere else to live due to the behaviour of the occupier of Flat 7 at the Premises.

6.4 The Applicant wrote to the Respondent Mr Blakey again on 15th August 2006 to say that during an incident on 18th July 2006 some tiles affixed to the front elevation of the building had been broken and the cost of repairs (£50.00 plus VAT) would be charged to the Respondents. Further that the cost of clearing the broken glass from the window of the Premises on 14th August 2006 would be charged to them at a cost of £15.00. This letter said that a detailed record of time expended as Landlord was being kept and that the Applicant would seek to recover those costs from the Respondents. The Applicant said it intended taking legal action against the occupier and required to know his name and that if this was not supplied an application for disclosure would be made to the County Court.

6.5 The Applicant's trial bundle contained a letter from the Respondent Mr Blakey to the Applicant dated 11th September 2006 asking for written details of the complaints against the occupier of the Premises so that appropriate action could be taken.

6.6 The Applicant said that he had been told by his insurance broker that the situation with regard to the Premises could possibly result in an increased insurance premium being payable.

6.7 It was the Applicant's case that the Respondents had not been pro-active, but rather re-active in dealing with the complaints against their occupier and that this was not good enough. Consequently it was claimed that the Respondents had suffered or permitted the behaviour which was causing a nuisance or annoyance to other lessees and that they were therefore in breach of the covenants contained in their lease.

6.8 The Applicant acknowledged that there had been no recurrence of bad behaviour since November 2006 but Mr Fitness was still concerned about subletting to a company which was in the business of providing accommodation for youngsters referred by the local authority.

7. <u>The Respondents' case</u>

7.1 Mr Blakey said that the lease of the Premises was vested in his wife and himself. They had sub-let the Premises to a company, Caburn Support Services, of which they were Directors. This sub-letting was effected in October 2005 and was for one year. Caburn Support Services is in the business of providing services to a wide range of people with differing needs for support. Some of those "clients" are very young children: others are elderly. Sometimes the support provided includes the provision of accommodation. A number of premises are owned by the Respondents for this purpose, others are rented from private landlords.

7.2 As far as the Premises are concerned Mr Blakey took legal advice on acquiring them and was told that it was in order for him to acquire the lease and carry out his intention of subletting to Caburn Support Services.

7.3 He said that as far as the person occupying the Premises in July to August 2006 was concerned he had only received two letters of complaint from the Landlord. On receipt of the first, his Manager had been asked to speak to the occupier and obtain an assurance that there would be no repetition of the behaviour complained of. Mr Blakey said that such an assurance was given. When he received the Section 146 type letter of 31st July 2006 he says he telephoned Mr Fitness and asked him to supply written details of the behaviour alleged to have breached the covenants. Again, on receipt of the letter of 15th August 2006 he says he spoke to Mr Fitness to ask for written details but none had been supplied until the Applicant's Statement of Case in these proceedings. He also received a telephone call from one of the other lessees and again he asked her for short written details. He maintained that although his manager spoke to the occupier after these complaints he was only able to do so in general terms because he did not have written details to put to the occupier. The occupier blamed an occupier of another flat in the block for any bad behaviour that had occurred.

7.4 The occupier of the Premises vacated them in November 2006. Since December 2006 the Respondents have let the Premises under an Assured Shorthold Tenancy direct with the tenant. Mr Blakey has given Mr Fitness an assurance that all future arrangements would be direct between the Respondents and tenants over 18 years of age on Assured Shorthold Tenancies.

7.5 Although the Respondent had not complied with the Tribunal's directions in providing a copy of the lease between the Respondents and their company or the terms upon which the occupiers were occupying the premises, Mr Fitness was able to supply a copy of the lease to the company at the hearing as this had been supplied to him by Mr Blakey and Mr Blakey produced a copy of the agreement between the company and its client and the terms of the Assured Shorthold Tenancy to the current sub-tenant.

8. The Law

8.1 Sec 168 of CLARA provides that:-

"(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 (C20) (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, ...

(3) .....

(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 a covenant or condition in the lease has occurred."

8.2 Prior to the hearing the Tribunal provided the parties with a copy of an extract from Hill & Redmond's Law of Landlord and Tenant concerning covenants for use as a private dwellinghouse and on the meaning of the phrase "permitting and suffering." The parties were also given a copy of the report of the case of Falgor Commercial SA v Alsabahia Inc 277 EG 185-189. These materials were given to the parties so that they would have the opportunity of commenting on them as the Tribunal would be referring to them when making its determination.

9. The Determination

9.1 As far as the behaviour of the occupier of the Premises in July and August 2006 was concerned the Tribunal accepted that the behaviour as described in the correspondence and incident notes had occurred. The Respondents, who did not reside at Chesswood Court, were not in any position to deny the behaviour as alleged. It was no doubt of considerable annoyance and possibly frightening to other residents and they were right to protest that they should not be expected to suffer this sort of behaviour. The Tribunal had much sympathy therefore for the other lessees but its task was to determine whether or not the conduct of the occupier also constituted a breach by the Respondents of the terms of their lease.

9.2 The behaviour complained of was not committed by the Respondents themselves, but the question was had they suffered or permitted the conduct? The Tribunal had seen the tenancy agreement between the Respondents and Caburn Support Services. This contained a provision that the tenant was "not to do or suffer to be done in the Property anything which may be or become a nuisance or annoyance to the landlord or the tenants or occupiers of any adjoining premises ....." Further, in Caburn's agreement with the occupier the latter was required to agree to be "sensitive to the needs of other people in the housing block where I live. I will not make lots of noise that will disrupt their home life i.e. banging doors, playing loud music." Thus by these clause, the Respondents were expressly not suffering or permitting conduct which might cause a nuisance or annoyance to the lessees. The Tribunal decided that in such circumstances a lessee who has included such a clause in a sub tenancy cannot be said to suffer or permit conduct until they are aware of the conduct taking place and have failed to take reasonable steps to prevent its recurrence. Consequently, the conduct giving rise to the first letter from the Applicant of 10th July 2006 could not be said to have been allowed to occur by the Respondents. Further, the Tribunal considered that the Respondents acted appropriately in asking their manager to speak to the occupier and require an assurance that this behaviour would not be repeated. Thereafter there was only one further letter to the Respondent which referred to two incidents, one where the window was smashed

and the other when tiles were broken from the front of the building. The Tribunal found that there was no evidence to prove that these incidents were caused by the occupier of flat 7. The window and tiles could have been broken by any passing vandal. There were also two or three telephone calls from either Mr Fitness or a tenant. Mr Blakey had asked for written details which were not provided until after these proceedings had been commenced.

9.3 In all the circumstances the Tribunal did not find that the Respondents had been in breach of Clause 2(18) or of the Fourth Schedule to the lease. It is reasonable for a tenant in Mr Blakey's position to be given details of the behaviour that is being complained of. The Tribunal considered that Mr Fitness could have been more helpful in this regard and could have sought to work with Mr Blakey to resolve the problem rather than take a more confrontational approach. On the other hand the tribunal considered that Mr Blakey could have taken down details of the alleged conduct over the telephone without insisting that the complaints be in writing. The Tribunal hopes therefore that in future should there be any problem concerning the behaviour of a sub-tenant the parties will endeavour to work together better than was the case in July and August 2006. As it was, the Tribunal considered that Mr Blakey had taken reasonable steps to deal with the alleged breaches of covenant on the information supplied to him.

9.4 Clause 2 (17) of the lease, however, prohibits the lessees from using the Premises for any purpose whatsoever other than as a self-contained private residential flat in the occupation of one family or household only. From October 2005 to October 2006 the Premises were let to a company which was in the business of providing for profit accommodation to those in need of services through the agency of the local authority social services department. The Tribunal found that this was in breach of Clause 2 (17) of the lease. In the case of Falgor Commercial SA v Alsabahia Inc referred to above there was a similar situation. Here the user clause was " not to use or occupy the flat otherwise than as a single private residence in one occupation only." Occupational licences were granted in return for a monetary payment to people having no connection with the company. It was held that this was in breach of covenant.

Fox LJ said that:

> "the test is... whether the lessee is using the flat as the lessee's private residence. The answer to that in my view is that the lessee is not. The defendant is not using the flat as the defendant's private residence in any sense. It is not a case of a company using property for its directors or its staff or its own guests. Each of those clauses... might have sufficient nexus with the defendant company as such to justify regarding their occupation as that of the defendant company itself. But what we have here is a situation that the defendant company is using the flat, not for any private residential purpose of its own, but as a residence for such members of the public as are acceptable to the defendant."

9.5 The Tribunal considered that this was precisely the situation in this case. There had therefore been a breach of clause 2 (17) of the lease. This has been remedied by the direct letting between the Respondents and the residential sub-tenant and whilst this type of arrangement subsists the Tribunal does not consider that the Respondents are in breach of this particular clause of the lease. There is no restriction on subletting in the lease.

9.6 There was a suggestion from the Applicant that by letting the Premises to the type of person in need of services through the auspices of the local authority this would "tend to be or become a nuisance annoyance or danger to the lessors the lessee or other occupiers..." as provided in clause 2(18) of the lease. This suggestion comes from the 'applicant's statement of case where it states: " Given the clear intention of the Respondents for the actual and intended use of the premises it would seem that the landlord and other interested parties remain at ever present and continuing risk from the persons who will be allowed to occupy them." The Tribunal rejected any suggestion that subletting to such a class of persons would in itself necessarily "tend to" become a nuisance or annoyance or danger to the landlord or other lessees if that is what the Applicant meant by the passage quoted from its statement of case.

9.7 The Tribunal found that there was no evidence to show that the Respondents' actions had either put the building's insurance in jeopardy or that there was likely to be an increase in premium in breach of clause 2(13) of the lease.

Dated this 17th day of April 2007

.....

D Agnew LLB LLM

Chairman

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE No: CHI/45UH/LBC/2006/0011

B E T W E E N :-

J.E.B THATCHER LTD

Applicant/Landlord

AND

MR AND MRS M BLAKEY

Respondents/Tenants

PREMISES: 7 Chesswood Court
Chesswood Road
Worthing
West Sussex
BN11 2AH ("the Premises")

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr R Wilkey FRICS FICPD
Ms H Clarke

Hearing : 9th March 2007

1. The Application

1.1 The Applicant made an application dated 2nd November 2006 under Section 168 of the Commonhold and Leasehold Reform Act 2002 (hereinafter referred to as "CLARA") for a determination that the Respondents had breached various covenants contained in their lease of the Premises.

2. The Tribunal's Determination

2.1 The Tribunal determines that the Respondents were in breach of the covenant contained in clause 2(17) of their lease when they let the Premises to a company for the commercial purposes of that company. That breach has now, however, been remedied.

2.2 The Tribunal found that the Respondents had not, on the evidence presented to it, breached any other covenants of their lease.

REASONS

3. Respondents' covenants

3.1 The precise terms of the covenants in respect of which the Applicant sought a declaration as to whether there had been a breach by the Respondents were as follows:-

3.2 Clause 2(13) of the lease dated 5th February 1970 between J.E.B. Thatcher (Developments) Ltd (1) and Margaret Doreen Watts (2) ("the lease") provides as follows:-

"(13) Not to do or permit or suffer to be done any act deed matter or thing whatsoever whereby or by reason or means whereof (a) the risk or hazard of the premises or any other part of the building being destroyed or damaged by fire shall be increased or (b) any additional premium for insuring the same shall become payable or (c) any policy for such insurance may be rendered void or voidable."

3.3 Clause 2(17) of the Lease provides:-

"(17) Not to hold any sale by auction on any part of the Premises nor to use or permit the same to be used (a) for any illegal or immoral purpose or (b) for any purpose whatsoever other than as a self-contained private residential flat in the occupation of one family or household only."

3.4 Clause 2(18) of the Lease provides:-

"Generally not to do or permit or suffer to be done upon or in connection with the Premises or any part thereof anything which shall be or become or tend to be or become a nuisance annoyance or danger or a source of nuisance or annoyance or danger or cause damage to the Lessors the Lessees or other occupiers of any other parts of the Estate or any of them or to any neighbours adjoining or adjacent property or the owners or occupiers thereof."

3.5 By Clause 2(23) of the lease the lessee covenanted to perform and observe the restrictions stipulations and regulations set out in Schedule 4 of the lease. The relevant provisions of Schedule 4 are:-

i) "Not to use or play any musical or other instrument of any kind (including a piano or gramophone or radio or television loudspeaker) nor permit any singing or other entertainment likely to be noisy to take place (a) between the hours of 11 pm and 7 am so as to be audible outside the premises or (b) at any other time so as to cause annoyance to any other person or persons on the Estate or in the neighbourhood

and

ii) "Not to allow any person (of whatever age) under the control of the Lessee to loiter play or be noisy or cause any sort of annoyance to any other person or persons in or on any part of the Estate."

4. The Inspection

4.1 This took place immediately preceding the hearing on 9th March 2007. Chesswood Court is a purpose built block of 10 flats situated in a pleasant suburban road of reasonably substantial properties. A residential care home is situated directly opposite the Premises. There is a good-sized lawn and driveway in front of the building which is set back from the road and there is a lawned area and tarmaced parking area behind the building.

5. The hearing

5.1 This took place at the Tribunal office in Chichester. Present were Mr David Fitness, a Director of the Applicant company and Mr Mark Blakey one of the joint Respondents and lessee of Flat 7 Chesswood Court.

6. The Applicant's case

6.1 Following complaints from two tenants at Chesswood Court at the beginning of July 2006 the Applicant had cause to write to the respondents on 10th July 2006. The complaints were of loud music and shouting emanating from the Premises. The police were called after which all went quiet. In the morning the grass at the front of the building was littered with beer cans and other items and outside the Premises' kitchen window were used tea bags and a T-shirt. Cigarette burns were also found on the carpet of the communal hall.

The Applicant's letter concluded: "would you kindly ensure that your tenant refrains from this behaviour and shows some consideration for his neighbours."

6.2 A tenant complained to the Applicant of similar behaviour on or about 28th July 2006. Details of this incident were not passed on to the Respondents. Instead, on 31st July 2006 the Applicant wrote to the Respondents a letter headed: "Notice of Breach of Covenant". This then set out the wording of the clauses in the Respondents' lease which it was alleged had been breached. Details of the conduct which it was being alleged constituted the breaches were not however given. This letter concluded with a requirement to remedy the breaches. The letter was similar in form to a Section 146 Law of Property Act 1925 notice but without details of the behaviour said to constitute the breach. Consequently the Respondents could not know from this document what it was being alleged the Respondents' occupier had done.

6.3 The same tenant who had previously complained to the Landlord wrote to the Applicant on 14th August 2006 to report that someone had thrown a brick at the window of the Premises and had broken the glass. The culprit was not identified. Another tenant, it was said, was looking for somewhere else to live due to the behaviour of the occupier of Flat 7 at the Premises.

6.4 The Applicant wrote to the Respondent Mr Blakey again on 15th August 2006 to say that during an incident on 18th July 2006 some tiles affixed to the front elevation of the building had been broken and the cost of repairs (£50.00 plus VAT) would be charged to the Respondents. Further that the cost of clearing the broken glass from the window of the Premises on 14th August 2006 would be charged to them at a cost of £15.00. This letter said that a detailed record of time expended as Landlord was being kept and that the Applicant would seek to recover those costs from the Respondents. The Applicant said it intended taking legal action against the occupier and required to know his name and that if this was not supplied an application for disclosure would be made to the County Court.

6.5 The Applicant's trial bundle contained a letter from the Respondent Mr Blakey to the Applicant dated 11th September 2006 asking for written details of the complaints against the occupier of the Premises so that appropriate action could be taken.

6.6 The Applicant said that he had been told by his insurance broker that the situation with regard to the Premises could possibly result in an increased insurance premium being payable.

6.7 It was the Applicant's case that the Respondents had not been pro-active, but rather re-active in dealing with the complaints against their occupier and that this was not good enough. Consequently it was claimed that the Respondents had suffered or permitted the behaviour which was causing a nuisance or annoyance to other lessees and that they were therefore in breach of the covenants contained in their lease.

6.8 The Applicant acknowledged that there had been no recurrence of bad behaviour since November 2006 but Mr Fitness was still concerned about subletting to a company which was in the business of providing accommodation for youngsters referred by the local authority.

7. <u>The Respondents' case</u>

7.1 Mr Blakey said that the lease of the Premises was vested in his wife and himself. They had sub-let the Premises to a company, Caburn Support Services, of which they were Directors. This sub-letting was effected in October 2005 and was for one year. Caburn Support Services is in the business of providing services to a wide range of people with differing needs for support. Some of those "clients" are very young children: others are elderly. Sometimes the support provided includes the provision of accommodation. A number of premises are owned by the Respondents for this purpose, others are rented from private landlords.

7.2 As far as the Premises are concerned Mr Blakey took legal advice on acquiring them and was told that it was in order for him to acquire the lease and carry out his intention of subletting to Caburn Support Services.

7.3 He said that as far as the person occupying the Premises in July to August 2006 was concerned he had only received two letters of complaint from the Landlord. On receipt of the first, his Manager had been asked to speak to the occupier and obtain an assurance that there would be no repetition of the behaviour complained of. Mr Blakey said that such an assurance was given. When he received the Section 146 type letter of 31st July 2006 he says he telephoned Mr Fitness and asked him to supply written details of the behaviour alleged to have breached the covenants. Again, on receipt of the letter of 15th August 2006 he says he spoke to Mr Fitness to ask for written details but none had been supplied until the Applicant's Statement of Case in these proceedings. He also received a telephone call from one of the other lessees and again he asked her for short written details. He maintained that although his manager spoke to the occupier after these complaints he was only able to do so in general terms because he did not have written details to put to the occupier. The occupier blamed an occupier of another flat in the block for any bad behaviour that had occurred.

7.4 The occupier of the Premises vacated them in November 2006. Since December 2006 the Respondents have let the Premises under an Assured Shorthold Tenancy direct with the tenant. Mr Blakey has given Mr Fitness an assurance that all future arrangements would be direct between the Respondents and tenants over 18 years of age on Assured Shorthold Tenancies.

7.5 Although the Respondent had not complied with the Tribunal's directions in providing a copy of the lease between the Respondents and their company or the terms upon which the occupiers were occupying the premises, Mr Fitness was able to supply a copy of the lease to the company at the hearing as this had been supplied to him by Mr Blakey and Mr Blakey produced a copy of the agreement between the company and its client and the terms of the Assured Shorthold Tenancy to the current sub-tenant.

8. The Law

8.1 Sec 168 of CLARA provides that:-

"(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 (C20) (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, ...

(3) .....

(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 a covenant or condition in the lease has occurred."

8.2 Prior to the hearing the Tribunal provided the parties with a copy of an extract from Hill & Redmond's Law of Landlord and Tenant concerning covenants for use as a private dwellinghouse and on the meaning of the phrase "permitting and suffering." The parties were also given a copy of the report of the case of Falgor Commercial SA v Alsabahia Inc 277 EG 185-189. These materials were given to the parties so that they would have the opportunity of commenting on them as the Tribunal would be referring to them when making its determination.

9. The Determination

9.1 As far as the behaviour of the occupier of the Premises in July and August 2006 was concerned the Tribunal accepted that the behaviour as described in the correspondence and incident notes had occurred. The Respondents, who did not reside at Chesswood Court, were not in any position to deny the behaviour as alleged. It was no doubt of considerable annoyance and possibly frightening to other residents and they were right to protest that they should not be expected to suffer this sort of behaviour. The Tribunal had much sympathy therefore for the other lessees but its task was to determine whether or not the conduct of the occupier also constituted a breach by the Respondents of the terms of their lease.

9.2 The behaviour complained of was not committed by the Respondents themselves, but the question was had they suffered or permitted the conduct? The Tribunal had seen the tenancy agreement between the Respondents and Caburn Support Services. This contained a provision that the tenant was "not to do or suffer to be done in the Property anything which may be or become a nuisance or annoyance to the landlord or the tenants or occupiers of any adjoining premises ....." Further, in Caburn's agreement with the occupier the latter was required to agree to be "sensitive to the needs of other people in the housing block where I live. I will not make lots of noise that will disrupt their home life i.e. banging doors, playing loud music." Thus by these clause, the Respondents were expressly not suffering or permitting conduct which might cause a nuisance or annoyance to the lessees. The Tribunal decided that in such circumstances a lessee who has included such a clause in a sub tenancy cannot be said to suffer or permit conduct until they are aware of the conduct taking place and have failed to take reasonable steps to prevent its recurrence. Consequently, the conduct giving rise to the first letter from the Applicant of 10th July 2006 could not be said to have been allowed to occur by the Respondents. Further, the Tribunal considered that the Respondents acted appropriately in asking their manager to speak to the occupier and require an assurance that this behaviour would not be repeated. Thereafter there was only one further letter to the Respondent which referred to two incidents, one where the window was smashed

and the other when tiles were broken from the front of the building. The Tribunal found that there was no evidence to prove that these incidents were caused by the occupier of flat 7. The window and tiles could have been broken by any passing vandal. There were also two or three telephone calls from either Mr Fitness or a tenant. Mr Blakey had asked for written details which were not provided until after these proceedings had been commenced.

9.3 In all the circumstances the Tribunal did not find that the Respondents had been in breach of Clause 2(18) or of the Fourth Schedule to the lease. It is reasonable for a tenant in Mr Blakey's position to be given details of the behaviour that is being complained of. The Tribunal considered that Mr Fitness could have been more helpful in this regard and could have sought to work with Mr Blakey to resolve the problem rather than take a more confrontational approach. On the other hand the tribunal considered that Mr Blakey could have taken down details of the alleged conduct over the telephone without insisting that the complaints be in writing. The Tribunal hopes therefore that in future should there be any problem concerning the behaviour of a sub-tenant the parties will endeavour to work together better than was the case in July and August 2006. As it was, the Tribunal considered that Mr Blakey had taken reasonable steps to deal with the alleged breaches of covenant on the information supplied to him.

9.4 Clause 2 (17) of the lease, however, prohibits the lessees from using the Premises for any purpose whatsoever other than as a self-contained private residential flat in the occupation of one family or household only. From October 2005 to October 2006 the Premises were let to a company which was in the business of providing for profit accommodation to those in need of services through the agency of the local authority social services department. The Tribunal found that this was in breach of Clause 2 (17) of the lease. In the case of Falgor Commercial SA v Alsabahia Inc referred to above there was a similar situation. Here the user clause was " not to use or occupy the flat otherwise than as a single private residence in one occupation only." Occupational licences were granted in return for a monetary payment to people having no connection with the company. It was held that this was in breach of covenant.

Fox LJ said that:

> "the test is... whether the lessee is using the flat as the lessee's private residence. The answer to that in my view is that the lessee is not. The defendant is not using the flat as the defendant's private residence in any sense. It is not a case of a company using property for its directors or its staff or its own guests. Each of those clauses... might have sufficient nexus with the defendant company as such to justify regarding their occupation as that of the defendant company itself. But what we have here is a situation that the defendant company is using the flat, not for any private residential purpose of its own, but as a residence for such members of the public as are acceptable to the defendant."

9.5 The Tribunal considered that this was precisely the situation in this case. There had therefore been a breach of clause 2 (17) of the lease. This has been remedied by the direct letting between the Respondents and the residential sub-tenant and whilst this type of arrangement subsists the Tribunal does not consider that the Respondents are in breach of this particular clause of the lease. There is no restriction on subletting in the lease.

9.6 There was a suggestion from the Applicant that by letting the Premises to the type of person in need of services through the auspices of the local authority this would "tend to be or become a nuisance annoyance or danger to the lessors the lessee or other occupiers..." as provided in clause 2(18) of the lease. This suggestion comes from the `applicant's statement of case where it states: " Given the clear intention of the Respondents for the actual and intended use of the premises it would seem that the landlord and other interested parties remain at ever present and continuing risk from the persons who will be allowed to occupy them." The Tribunal rejected any suggestion that subletting to such a class of persons would in itself necessarily "tend to" become a nuisance or annoyance or danger to the landlord or other lessees if that is what the Applicant meant by the passage quoted from its statement of case.

9.7 The Tribunal found that there was no evidence to show that the Respondents' actions had either put the building's insurance in jeopardy or that there was likely to be an increase in premium in breach of clause 2(13) of the lease.

Dated this 17th day of April 2007

.....

D Agnew LLB LLM

Chairman