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LON/00AH/LBC/2006/0074

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE COMMONHOLD AND LEASEHOLD
REFORM ACT 2002 SECTION 168(4)**

PROPERTY: FLAT 1 42 PLOUGH LANE PURLEY SURREY CR8 3QA
APPLICANT: Mr S CLACY
RESPONDENT: Ms A MOORE

TRIBUNAL

Mrs T I Rabin Chairman
Mr C Norman

Date of Tribunal's decision: 14th March 2007

FLAT 1 42 PLOUGH LANE PURLEY SURREY CG8 3QA

FACTS

1. The Tribunal was dealing with an application by the Applicant landlord, Stephen Geoffrey Clacy, for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent long leaseholder, Ms Angela Moore was in breach of covenant under the terms of the lease under which she held Flat 1, 42 Plough Lane, Purley Surrey CR8 3QA ("the Flat"). The covenants related to committing a nuisance or annoyance to the Landlord or the owner or occupier of any neighbouring property. The parties agreed that the matter be dealt with on papers only without a hearing and the Tribunal agreed to this.
2. The Flat is held under a lease dated 5th January 1990 ("the Lease") for a term of 125 years from 29th September 1989. The rent is £75 per annum. A copy of the Lease is in the file and the tenant's obligations are set out Clause 3. The matter was set down to be dealt with on documents only and without a hearing and it is this determination before the Tribunal.

EVIDENCE

3. The application before the Tribunal is for a determination that a breach of the Lease has been committed by the Respondent which would entitle the Applicant to seek an order for forfeiture of the Lease from the County Court. Section 168 of the 2002 Act provides that a landlord cannot serve a notice of forfeiture until (inter alia) a leasehold valuation tribunal has determined that a breach has occurred.
4. Under Section 168 (1) of the 2002 Act a landlord of a long lease may not serve a notice under Section 146 of the Law of Property Act 1925 in respect of a breach of covenant unless the requirements of Section 168(2) of the 2002 Act are complied with. For the purposes of these proceedings, no forfeiture proceedings can be commenced until the Tribunal has made a determination under Section 168(4) of the 2002 Act that a breach of covenant in the Lease has occurred.
5. The provision in the Lease in respect of which the Applicant seeks a determination that there has been a breach is contained in Clause 3.18 which states:

3.18 Not to use the Property or any part of it for any of the following nor allow anyone else to do so:
activities which are dangerous offensive noxious noisome illegal or immoral or which may become a nuisance or annoyance to the Landlords or to the owner or occupier of any neighbouring property

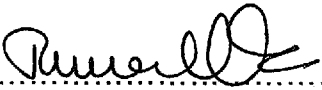
The main concern of the Applicant was that nuisance or annoyance was being caused by the Respondent.

6. The Applicant had received complaints from, Ms D Love, the tenant of another flat in the building who stated that the Respondent had sublet the Flat to South Thames Homes who had in turn further sublet the subject flat to tenants who have caused intolerable problems in the building. Ms Love set out a diary of disturbances suffered from one tenant, a young woman named Sinead, from September to December 2006 when a particularly troublesome person was residing at the Flat. There was produced a detained account of late night shouting and screaming, police raids on the subject flat, smashed windows shouting throughout the night and repeated shouting and banging throughout a number of nights and the need to call the police on more than one occasion to deal with the disturbances. Ms Love stated that the noise and banging are making it difficult for her to remain in her flat. The window in the subject flat has been smashed on more than one occasion and has not been repaired since the last damage.
7. The Respondent acknowledges that her tenants had sublet the Flat to a tenant who caused disturbance to the other occupants of the building. The Respondent asked South Thames Homes to remove the offending tenant and there is a letter from them confirming that the tenant vacated the subject flat on 13th February 2007. The Respondent stated that the Flat was to be sold and that the Flat would be empty whilst South West Homes undertook some remedial work.

DECISION

8. The power to determine that there is a breach of covenant is a serious matter. It can lead to an action which could result in the forfeiture of the Respondent's property and it cannot be invoked lightly. The Tribunal noted that there was only one tenant who had made a complaint about a breach of covenant from a building comprising five flats. Ms Love complained about the behaviour of two young boys who were previously occupants but there is no evidence of the nuisance caused by them. The account of disturbances and bad behaviour must have caused distress to Ms Love but the bulk of the disturbances appear to have been caused by Sinead. There is a letter from South Thames Homes stating that Sinead had left on 13th February 2007 and giving assurances that any future tenants would be more suitable.
9. The Tribunal noted that the offending occupant had vacated the Flat by the time the application was considered. There is no bar to subletting in the Lease and the tenant's obligation is limited to serving a notice on the landlord with the name. There is no doubt that a nuisance was caused within the meaning of Clause 3.18 of the Lease but the Respondent has made an attempt (albeit very late) to ensure that Sinead was removed and obtain an assurance that more suitable tenants would be allocated in the future. The Tribunal is also mindful of the fact that there were no further complaints from other occupants of the building.

10. Having taken all matters into account, the Tribunal does not find that there was a breach of the covenant not to cause nuisance or annoyance at the date of the hearing as Sinead had vacated on 13th February 2007 and the application is dismissed.

CHAIRMAN.....

DATED: 14th March 2007