FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/00HN/LBC/2021/003**
Property	**:**	**Ground Floor Flat,** **13 Richmond Wood Road** **Charminster, Bournemouth BH8**
Applicant	**:**	**Kim Nicholas**
Respondent	**:**	**James Howe**
Representative	**:**	**Coles Miller Solicitors LLP**
Type of Application	**:**	**Section 168 of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Judge D Dovar** **Mr Bourne MRICS** **Mr Gammon MBE**
Date and venue of Hearing	**:**	**11th May 2021, Remote**
Date of Decision	**:**	**14th May 2021**

DECISION

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1. This an application for the determination of breach under s.168 of the Commonhold and Leasehold Reform Act 2002. The application sets out four alleged breaches of the Respondent lease, which is a lease for 999 years from 30th September 1992.

2. The four allegations are:

   a. a failure to pay insurance premiums under paragraph 1 of Schedule 4;

   b. a failure to comply with the requirements under paragraph 1 and 2 of Schedule 4 in that the Respondent did not provide quotes for roof works in time;

   c. a breach of paragraphs 1 and 9 of Schedule 3 in that the Respondent had kept dogs without consent;

   d. a breach of paragraph 10 of Schedule 3, in that the Respondent blocked the Applicant's access.

3. The Applicant represented himself and the Respondent was represented by Mr Andrews of Coles Miller Solicitors LLP. We heard evidence from the parties as well as oral submission, with Mr Andrews providing written submissions.

Insurance

4. At the hearing the Applicant confirmed that he wished to withdraw the first allegation relating to non-payment of insurance premiums. He wished to pursue these sums through another application and so

permission was given by the Tribunal to withdraw that allegation to clear the way for that application.

5. It is worth noting that the Respondent accepted that some sums were owed, as set out in a letter dated 4th October 2018, by the Applicant's then solicitors, Ellis Jones. However, the parties had not reached agreement on precisely how much and the Respondent had not paid the sums he considered were owed.

Section 20C notice, (para 1 and 2, Sched 4)

6. On 31st January 2018, the Applicant served a section 20 notice on the Respondent relating to proposed roof works. As was confirmed in his oral evidence, the Applicant had misunderstood the consultation procedure as set out by s.20 of the Landlord and Tenant Act 1985. He said after taking advise he had considered that he needed to serve the notice and that the Respondent would then be required to provide quotes for the works.

7. Section 20 requires, in the case of proposed major works, the landlord to carry out consultation with leaseholders in order to recover more than £100 from each for the cost of those works. It does not, as the Applicant considered to be the case, require the leaseholders to provide quotes. It does give them at least 30 days in which to make observations on the proposed works and to nominate a contractor from whom the landlord should obtain a quote. However, this is optional, the leaseholder is entitled to remain silent in the face of a s.20 notice. It follows that this breach is not made out.

Pets (paras 1 and 9, Sched 3)

8. The next allegations were more complicated and arose out of the Respondent keeping dogs at the Property.

Paragraph 9: keeping pets

9. The lease prohibits the leaseholder from keeping pets without consent. By paragraph 9 of the Third Schedule, the leaseholder was

> *'Not to keep any animals birds or other pets in or upon the Demised Premises except with the consent of the Lessor ….'*

10. Mr Andrews on behalf of the Respondent pointed out that there was no requirement of 'written' consent, just consent. Other parts of the lease did provide for certain matters to be put in writing, such as written notice under Clause 4 (c) and (d) for access, but not this paragraph. He therefore contended that the absence of the requirement for writing, meant that less formal consent would be sufficient, including implied consent from conduct.

11. The Respondent accepted that he had kept dogs at the Property. One had died a few years ago, but another remained. He also accepted that he did not ask the Applicant for consent before bringing the dogs to the Property, nor had there been any discussion about it or any express consent given.

12. However, despite the lack of discussion or express consent, he relied on the fact that he had had a cat prior to the dogs, that the Applicant was aware of that and had even stroked the cat, and had not raised any

issue about keeping pets. It was therefore suggested that this provided a general consent to any pet at any time. The Respondent candidly accepted that at the time he took in the dogs, he was not aware that his lease prohibited him from keeping pets without consent.

13. The Tribunal does not consider that this amounted to any consent, let alone a very wide and general consent for pets as asserted by the Applicant. Whilst written consent was not required by the lease, the Tribunal considers that it had at the very least to be express consent. In any event, it was difficult to see how stroking a cat and not raising an issue with keeping a cat, could be taken as implied consent for two dogs. This was a lease for a term of 999 years and the Tribunal does not consider that a provision that had been expressly included could be so readily rendered redundant.

14. Accordingly, at the time, around 10 years ago, when the Respondent had brought the dogs into his property, he was in breach of the terms of his lease.

15. It was then said that by reason of the fact that no action had been taken by the Applicant until this application, either consent had been given and/or the breach had been waived and/or there was an estoppel.

16. There was a dispute of fact as to whether or not the Applicant had consistently objected to the dogs, or whether the first time he had told the Respondent to remove them was through a letter from his solicitor in October 2018. Given the parties had fallen out a considerable time

ago and that one of the dogs had bitten the Applicant on the arm in about 2016 the Tribunal finds it hard to believe that he did not object to their presence as he asserts. In any event, absence of objection does not of itself amount to consent as required under the lease terms.

17. It was then suggested by Mr Andrews that if there had not been a general consent at the outset, due to the passage of time, consent was to be implied. When pressed as to when this would have occurred, he suggested around 6 years after the dogs had arrived. The Tribunal struggled with this approach, at best it might be said that failure to take action was an indication that consent had been granted in the past, but the Respondent did not go so far as to say there had ever been an express consent.

18. As for waiver, it was said that the breach had been waived due to the subsequent demand for insurance contributions. Whilst that may well be the case, that the right to forfeit had been waived, but that is not a matter that is for this Tribunal. This Tribunal only has to determine whether a breach has occurred. Of course, this may have significant ramifications for the Applicant if he were to seek to forfeit or even serve a forfeiture notice under s.146 of the Law of Property Act 1925.

19. Finally it was said the Applicant was estopped from alleging a breach. Estoppel, in most cases, requires a party to demonstrate three elements. Firstly that a representation has been made. Secondly, that it has reasonably been relied on. Thirdly that the person relying on it, has done so to their detriment. Mr Andrew was unable to identify

what representation had been made to form the basis for the estoppel. It seemed that given that there had been no discussion, let alone consent, over bringing in the dogs, it was hard to see what representation there could have been, and therefore even harder to see what detrimental reliance could follow. Indeed, the Respondent does not even appear to have been aware that he was prohibited from keeping dogs. At its highest, it might be that had the Applicant enforced the covenant earlier, the Respondent and his partner may not have become so attached to their dogs and would have been able to rehome them earlier with less emotional distress. However, this is not sufficient to support a claim for estoppel.

20. Accordingly, the Tribunal considers that the Respondent was in breach of covenant in that he kept and keeps pets at the property without consent, contrary to paragraph 10 of the Third Schedule.

Paragraph 1, nuisance

21. Paragraph 1 of the Third Schedule prohibits the leaseholder '*Not to use the Flat …for any purpose whatsoever other than as a private dwelling in the occupation of one family only nor for any purpose from which a nuisance can arise…'*

22. The keeping of dogs within the Property is not something that falls within this prohibition which is aimed at the use to which the Property is put. This is further confirmed by: a.) the fact that the keeping of pets is separately dealt with; and b.) more temporary nuisances emanating from the Property are dealt with in other parts of

the Third Schedule, such as under paragraph 4, which deals with noise.

Obstruction to Right of Way (para 10, Sched 3)

23. The final breach alleged is that of paragraph 10 of the Third Schedule, which provides that the Leaseholder is

> *"Not to obstruct or permit the obstruction of the common entrance porch shown edged blue on the plan or the driveway leading to the building or any of the footpaths in the grounds thereof"*

24. The Respondent accepted that he does park various vehicles in front of a dropped kerb on the highway which obstructs access to the entrance of the Property by vehicles. He has done so since he acquired his lease around 15 years ago and his partner has also done so.

25. Mr Andrews maintained that this was not an obstruction for the purposes of the paragraph as it did not occur within the Property itself, but outside on the highway.

26. The Tribunal does not consider that the restriction is as narrow as suggested by the Respondent. It does not prescribe that the conduct of the leaseholder is limited to that taking place within the Property. It prohibits the Respondent obstructing the Applicant from accessing the common entrance and driveway. The Tribunal is supported in this view by the fact that in other instances in this schedule of the lease specific reference is made to acts occurring withing the Property

which are prohibited (such as paragraph 4 which prohibits some singing 'in or upon the Demised Premises').

27. Accordingly, the Tribunal finds that the Respondent has breached paragraph 10 of the Third Schedule by parking vehicles on the highway by the dropped kerb which obstruct the Applicant's access by vehicle to the driveway. This has occurred on numerous occasions for the past 15 years.

28. The Applicant made further complaint that obstruction had been caused by the Respondent placing building items on the driveway. The Tribunal is not satisfied that this allegation is made out. The only photograph provided in support did not show any obstruction. The other evidence appeared to be that some items had been placed on the driveway, but they appeared to have been so fleeting that they would not have amounted to an obstruction.

Conclusion

29. The Tribunal determines that there has been a breach of paragraphs 9 and 10 of the Third Schedule of the lease. In respect of the former, the Tribunal makes it clear that it is not within its jurisdiction to consider whether or not the right to forfeit for the breach of keeping a particular dog has been waived due to the subsequent demands for insurance premiums made by the Applicant. If the Applicant is to take this matter any further, then he should consider whether that is in fact the case.

30. The Tribunal has not made any order for costs, either under Section 20C of the Landlord and Tenant Act 1985 or under Rule 13 of the Tribunal Procedure Rules 2013. If either party wishes to make any application they should do so within 14 days of receipt of this decision.

Judge Dovar

RIGHTS OF APPEAL

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.