

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No. CH1/21UD/LBC/2005/0009

Property: Flat 11, Park Lane Mansions, Eversfield Place,
St. Leonards-on-Sea, East Sussex, TN37 6DD

Parties: Flathold Limited ("the Applicant/Landlord")

and

Kim Nicholls ("the Respondent/Tenant")

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. The Application

This application is an application dated 29th September 2005 under S.168(4) of the Commonhold and Leasehold Reform Act 2002 that the above named Tenant/Respondent is in breach of covenant of her lease as detailed below. This section of the Act was brought into force with effect from 28th February 2005 by the Commonhold and Leasehold Reform Act 2002 (Commencement No. 5 and Savings and Transitional Provisions) Order 2004. The Act states under S.168(4) that

"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."

2. Preliminaries

The Tribunal issued written directions dated 7th October 2005, notifying the parties that the matter is to be considered without an oral hearing, i.e. on the basis of written representations, as evidence, unless the Tenant/Respondent objected within 28 days of 7th October 2005. No such objection has been received by the Tribunal. Accordingly the matter has been determined by a single Chartered Valuation Surveyor Chairman based on written representations without an oral hearing.

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL 6
LEASEHOLD VALUATION TRIBUNAL**

Case No. CH1/21UD/LBC/2005/0009

Property: Flat 11, Park Lane Mansions, Eversfield Place,
St. Leonards-on-Sea, East Sussex, TN37 6DD

Parties: Flathold Limited ("the Applicant/Landlord")

and

Kim Nicholls ("the Respondent/Tenant")

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. The Application

This application is an application dated 29th September 2005 under S.168(4) of the Commonhold and Leasehold Reform Act 2002 that the above named Tenant/Respondent is in breach of covenant of her lease as detailed below. This section of the Act was brought into force with effect from 28th February 2005 by the Commonhold and Leasehold Reform Act 2002 (Commencement No. 5 and Savings and Transitional Provisions) Order 2004. The Act states under S.168(4) that

"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."

2. Preliminaries

The Tribunal issued written directions dated 7th October 2005, notifying the parties that the matter is to be considered without an oral hearing, i.e. on the basis of written representations, as evidence, unless the Tenant/Respondent objected within 28 days of 7th October 2005. No such objection has been received by the Tribunal. Accordingly the matter has been determined by a single Chartered Valuation Surveyor Chairman based on written representations without an oral hearing.

3. Alleged Breach of Covenant

The Applicant/Landlord has contended that the Tenant/Respondent has breached clause 9 of the Fourth Schedule of the lease by keeping a dog at the flat without the permission of the Landlord.

4. The Applicant's Representations

In support of their application the Applicant/ Landlord's Solicitors have sent to the Tribunal the following documents:-

- (a) Statement of Case dated 29th September 2005.
- (b) Schedule of documents, i.e.
 - 1. Freehold office copy entries and filed plan - 13, 14 and 15 Eversfield Place title number HT128880.
 - 2. Copy Lease Flat 11 Park Lane Mansions dated 11th December 1992.
 - 3. Leasehold Office copy entries 11 Park Lane Mansions title number ESX190748.
 - 4. Copy letter from Oakfield P M Limited (Managing Agents) to the unnamed leaseholder 11 Park Lane Mansions dated 20th April 2005.
 - 5. Copy letter from Catherine Keys-McLean, Tenant of Flat 3, to Oakfield P M Limited dated 7th May 2005.
 - 6. Copy letter from Rice-Jones & Smiths, Applicant/ Landlord's Solicitors, to Mrs. K. Nicholls, 11 Park Lane Mansions dated 24th June 2005.

The Applicant/Landlord refer in particular to clause 9 of the Fourth Schedule of the lease which states

- "9. Not to keep any bird, reptile, dog or other animal in the Demised Premises without the previous consent in writing of the Lessors which may be given by the Lessors or their Managing Agents for the time being such consent to be revocable by notice in writing at any time on complaint of nuisance or annoyance being caused to any Flat Owner or occupier of any other flat in the Building."

The demised premises is defined in the lease

"The Flat specified in paragraph 3 of the Particulars as the same is shown edged red on the plans annexed hereto including as to the Flat"

Paragraph 3 of the Particulars state "Flat Plot No. 2 on the Lower Ground Floor". The Tribunal has not inspected the property but has carefully considered a copy of the lease and the lease plan provided. The plan having been received by the Tribunal on 9th December 2005.

Accordingly it is clear to the Tribunal that the demised premises is a lower ground floor flat with what appears to be an area of yard or garden at the rear with access off the bedroom. It is one of 35 flats in the building/block.

Furthermore the Applicant/Landlord's Managing Agents wrote to the Respondent/Tenant on 20th April 2005 requesting, "..... the dog to be removed from the premises within the following seven days as per the compliance with the lease" The Applicant/Landlord state that the Respondent/Tenant has ignored this letter.

The Applicant/Landlord also refer to the letter dated 7th May 2005 from the Respondent/Tenant of Flat 3 to the Managing Agents in which she complains about the barking of the dog which is apparently left in the garden of the flat during the day and at night.

The Applicant/Landlord also refer to their Solicitor's letter dated 24th June 2005 which states

"..... We are writing to inform you that unless the dog is removed from the premises within 14 days, we will apply to the Leasehold Valuation Tribunal for a determination that you are in breach of your lease and thereafter seek to forfeit."

The Applicant/Landlord stated that the Respondent/Tenant has also ignored this letter.

5. The Respondent's Representations

No written representations have been received by the Tribunal from the Tenant/Respondent.

6. Consideration

Unfortunately the Respondent/Tenant has appeared to have ignored the above mentioned letter on behalf of the Applicant/Landlord and has also ignored the above mentioned Tribunal's directions plus a letter from the Tribunal dated 11th November 2005.

As a result there is no evidence currently before the Tribunal that the Respondent/Tenant has not received all the relevant documents referred to above.

The wording of the relevant clause of the lease is clear and unambiguous. The written evidence on behalf of the Applicant/Landlord clearly states that the Respondent/Tenant has left a dog at the flat without the Applicant/Landlord's permission and that the dog is kept in the courtyard/garden of the flat. Furthermore another tenant in the building has complained of the continual barking of the dog at all hours of the day or night. The Respondent/Tenant has not produced any evidence to the Tribunal to refute these allegations.

W. Decision

Having regard to all the written evidence received by the Tribunal, they determine that a breach of covenant by the Respondent/Tenant has occurred in that she has kept a dog in the flat without the prior written consent of the Lessors in contravention of the lease of the demised premises.

Dated 13th December 2005

A handwritten signature in black ink, appearing to read 'J. S. McAllister', with a long horizontal flourish extending to the right.

J. S. McAllister, F.R.I.C.S.
Chairman

A Member of the Panel appointed by the Lord Chancellor