

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SECTION 168(4)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/29UQ/LBC/2006/0007
Property:	Apartment 7 Fairlawn House 22 Mount Sion Tunbridge Wells Kent TN1 1UE
Applicants:	Buxton Homes (Mount Sion) Limited Fairlawn House Management (Tunbridge Wells) Limited
Respondent:	Mr. Neil Butcher.
Date of Hearing:	17th November 2006
Members of the Tribunal:	Mr. R. Norman (Chairman) Mr. R. Athow FRICS MIRPM
Date decision Issued:	24 NOVEMBER 2006 .

RE: APARTMENT 7, FAIRLAWN HOUSE, 22 MOUNT SION, TUNBRIDGE WELLS, KENT, TN1 1UE.

Background

1. Apartment 7, Fairlawn House, 22 Mount Sion, Tunbridge Wells, Kent, TN1 1UE is "the subject property". The application before the Tribunal is under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 and has been made by "the Applicants" who are Buxton Homes (Mount Sion) Limited, the landlord and freeholder of the subject property and Fairlawn House Management (Tunbridge Wells) Limited the management company. Mr. Neil Butcher is the lessee of the subject property and is "the Respondent".

2. The application is for a determination that a breach of a covenant or condition in the lease in respect of the subject property has occurred so that Section 168 (2) of the Commonhold and Leasehold Reform Act 2002 can be satisfied and the Applicants may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease.

3. With the application was included a copy of a lease of the subject property and a statement from Ms Katherine Cheung a property manager employed by County Estate Management Limited, which company is retained by the Applicants as managing agent in respect of the subject property.

4. On the 1st September 2006 directions were given which included notice to the parties that the Tribunal proposed to determine the application on the basis only of written representations and without an oral hearing and the parties were given the opportunity to object to that procedure. Neither party has objected to that procedure. Directions were also given as to the supply by the Applicants of their case to the Respondent and to the Tribunal and the supply by the Respondent of his case to the Applicants and to the Tribunal.

5. By a letter dated 29th September 2006 Messrs. Keogh Caisley, Solicitors representing the Applicants, supplied the documents comprising the Applicants' case and indicated that this had been copied to Messrs. Mischo de Reya the Solicitors representing the Respondent. The Applicants' documents included a statement by Mrs. Schinas which had not been signed because she had gone on holiday abroad but Messrs. Keogh Caisley stated they would supply a signed copy as soon as possible. A signed copy of the statement was received under cover of their letter dated 11th October 2006 and it was indicated that this had been copied to Messrs. Mischo de Reya.

6. Nothing has been received by the Tribunal from the Respondent or from anyone acting on his behalf except for two letters from Messrs. Mischo de Reya dated 4th October 2006 and 2nd November 2006. The letter of the 4th October 2006 stated that the Respondent is actively marketing the subject property and asked for a stay of proceedings. The letter of the 2nd November 2006 stated that the Respondent was being victimised because he had complained about the amount of money the landlord was expending on decorating the exterior of the building and that he had identified potential contractors who could carry out the works for a much lower cost. As to the keeping of animals it was stated that there had been other animals in the block since the date the Respondent took up occupation, that the Applicants had known about this and had taken no action. As to the dog it was stated that when initial concerns were raised about noise, the Respondent purchased an expensive sonic anti-barking device and that there matters rested until the end of 2005, that the dog is presently quiet and well-trained, that it is being blamed for "messing" the communal gardens when in fact that had been carried out by foxes and that the Respondent now takes the dog to the office with him. It was again pointed out that the Respondent had put the subject property up for sale.

7. The Tribunal on the 17th November 2006 decided to deal with the application on the basis only of written representations and without an oral hearing and also decided that in the particular circumstances an inspection of the subject property was not required.

Determination

8. We found that a breach of the covenants contained in paragraphs 7 and 11 of Part two of the Eighth Schedule to the lease of the subject property had occurred in that:

(a) the Respondent had kept a dog in the subject property without the prior written consent of the management company and

(b) by the noise and bad behaviour of that dog the Respondent had permitted or suffered in the subject property an act or thing which became a nuisance, annoyance or inconvenience to the tenants or occupiers of some of the other apartments at Fairlawn House.

9. The reasons for our determination appear below.

Reasons

10. The letters of 4th October 2006 and 2nd November 2006 received from Messrs. Mischon de Reya do not dispute that the dog has been kept in the subject property without consent but challenge the allegations of nuisance.

11. We note in the statements provided by the Applicants and in copies of correspondence that the only responses to the complaints, received by the Applicants or on their behalf, were contained in letters from Messrs. Mischon de Reya. The first letter was dated the 19th April 2006 in which it was stated that the Respondent had kept the dog in the subject property for a considerable number of months and that to the best of his knowledge the neighbours had not complained. The second letter dated the 8th May 2006 stated that the Respondent had placed the subject property on the market and that the threatened court proceedings would be wholly unnecessary.

12. We have before us on behalf of the Respondent only the letters from his Solicitors to contradict the statements of Ms Cheung (two statements), Mrs. Neeves, Mr. Maxwell and Mrs. Schinas. On a balance of probabilities we accept the contents of those statements.



R. Norman
Chairman