Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/45UH/LBC/2006/0006

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

Property: 30 Broadwater Hall, South Farm Road, Worthing, West Sussex, BN14 7BP

Applicant: Sandford Estates Limited (landlord) (Countrywide Property Management)

Respondent: Dejan Andrew Pollard & Adam Christopher Pollard (tenants)

Date of Application: 8 August 2006

Directions: 15 September 2006

Decision: 10 December 2006

The Leasehold Valuation Tribunal

Ms J A Talbot MA Cantab (Solicitor)
Chairman

Ref: CHI/45UH/LBC/2006/0006

Property: 30 Broadwater Hall, South Farm Road, Worthing, West Sussex BN14 7BP

Application

1. This is an application received on 8 August 2006 by the landlord, Sandford Estates Limited, through its solicitors Brethertons, for a determination as to whether a breach of covenant by the tenants, Mr D A Pollard and Mr A C Pollard, have occurred.

2. Directions were give by the Tribunal on 15 September 2006, proposing that the matter should be dealt with on the fast track without an oral hearing. Neither party requested a hearing. Accordingly, the matter was determined by a Chairman sitting alone on the consideration of the documents.

3. The Directions provided for the Applicant to provide a Statement of Case setting out the grounds of the Application together with all documents upon which it intended to rely, and for the Respondents, if they contested the Application, to provide a Statement in Reply. The Applicant's solicitors complied with the Directions but the Respondents did not. In fact, they have not responded in any way to the Application, either by contacting the landlord's solicitors or the Tribunal office.

Law

4. Section 168 subsections (1) and (2) of the Commonhold and Leasehold Reform Act 2002 provide that a landlord may not serve a notice under Section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined, on an application to the Leasehold Valuation Tribunal under Section 168(4), that the breach has occurred.

5. A determination under Section 168(4) does not require the Tribunal to consider any issue relating to the forfeiture other than the question of whether a breach has occurred.

Lease

6. The Tribunal was provided with a copy of the lease of flat number 30 and garage at the property. The lease is dated 29 September 1977 and is for a term of 99 years from 21 October 1974, at a ground rent of £25 and rising thereafter.

7. Insofar as is material to the application, the lease contains the following covenants on the part of the tenants:

Clause 2(11):

"not to make any alteration or additions to the flat or any part thereof or cause damage to the structure thereof".

Clause 2(15):

"not to commit or permit the commission of any nuisance in or in connection with the flat".

Clause 2(19):

"to comply with all reasonable directions of the landlord or their managing agents concerning the management or administration of the building".

Clause 2(25):

"no external wireless or television aerial shall be erected".

8. The flat is stated at Clause 1 to be situated on the first floor and edged red on the annexed plan. There is no full description or definition of the flat in the lease. However, for the purposes of the repair and maintenance covenants, the lease provides, at Clause 4, that the tenant is responsible for structural repair of *"all walls wholly within the flat and all walls separating the flat from any inside part of the building"* and *"the structural repair of all windows and window frames belonging to the flat"*, whilst at Clause 3, the landlord is responsible for keeping in good repair and condition *"all the roofs and outside walls of the building"*.

Alleged Breaches

9. The landlord alleged that the tenants had breached Clauses 2(11),(15),(19) and (25) of the lease by erecting a satellite dish on the external structure of the property.

Inspection

10. No formal inspection of the property was carried out. From external observation it was noted that the property comprised a first floor flat in a small modern purpose-built development built in the 1970's consisting of 11 blocks each containing 3 flats. Flat 30 was on the first floor with flat 29 below and flat 31 above. A circular satellite dish was clearly visible affixed to the external wall outside flat 30.

Consideration

11. The landlord's case was that the tenants had installed the satellite dish without permission and ignored 3 written requests from the managing agents, Countrywide, to remove it. A statement was produced from Debby Cowley, the property manager, to the effect that she had carried out a routine exterior inspection on 21 October 2005 and saw the satellite dish erected on the external structure and serving flat 30.

12. Attached to the Statement were copies of letters dated 22 November 2005, 9 May 2006 and 8 June 2006. All the letters stated that the satellite dish was in contravention of the lease and that it should be removed immediately. The letters were sent to the flat as this was the only correspondence address held by the managing agents for the tenants, who had not supplied any alternative address. The tenants did not reply.

13. On 7 July 2006 the landlord's solicitors, Brethertons, wrote a more detailed letter to the tenants specifying the alleged breaches of the lease and stating *"our client is not prepared to tolerate such persistent breaches of the lease. Should the satellite dish not be removed and all damage to the structure of the property made good, our client will be left with no alternative but to seek forfeiture proceedings"*.

14. In addition the letter stated *"we note our client has previously written to you suggesting that they would have no objection to the block erecting and making use of a communal satellite dish. We will leave you to contact our client directly in this regard"*. Ms Cowley stated that in the interests of good management it was not feasible for each leaseholder to erect individual satellite dishes and confirming that the landlord had no objection to installing a communal dish.

15. The Tribunal was asked to determine whether the erection of the satellite dish amounted to a breach of the tenants' covenants at Clause 2(11),(15),(19) and (25) of the lease.

Decision

16. The Tribunal considered the covenants alleged to have been breached. There was no dispute on the facts: the satellite dish was obviously in place outside flat 30 and had not been removed despite several written requests.

Clause 2(11)

17. The Tribunal did not accept that there was a breach of this covenant, which refers only to alterations or additions to the flat itself. Regrettably the lease does not contain a clear description or definition of the flat or the building. However, it can be inferred from the respective repairing obligations that the tenant is liable only for the interior walls of the flat. This covenant only prohibits the tenant from altering, adding to or damaging the structure of the interior of the flat.

Clause 2(15)

18. The Tribunal did not accept that the presence of the satellite dish constituted a nuisance. The legal definition of nuisance is unreasonable interference with use or enjoyment of land. The Statement of Case, drafted by solicitors, contained no legal analysis of how the satellite dish caused nuisance. No evidence was put before the Tribunal to show that any other residents were inconvenienced by, or had complained about the satellite dish. The dish may well be unsightly, but this is a matter of opinion and does not amount to a nuisance in the legal sense. The breach of this covenant was therefore not made out.

Clause 2(19)

19. The Tribunal was however satisfied that the tenants had failed to comply with the landlord's request, via its managing agents, to remove the satellite dish. The Tribunal accepts that this was a reasonable request made in the context of good management of the block as a whole, and agreed with the view that it would not be feasible or desirable for all residents to install their own satellite dishes.

20. The Tribunal noted that the Respondents had failed to respond at all to the written requests and the final warning and that their conduct in this regard was unreasonable and ill-judged. The Tribunal further considered that the landlord's offer to erect a communal satellite dish was sensible and reasonable. This covenant had therefore been breached.

Clause 2(25)

21. Finally the Tribunal considered whether the satellite dish fell within the definition of *"an external wireless of television aerial"* as provided for in this covenant, which is an absolute prohibition on the erection of such an appliance. On balance, although the covenant does not refer directly to a satellite dish, the Tribunal decided a satellite dish was a type of aerial, in that it was electronic device used to receive and transmit broadcast signals relayed by satellite, with the sole function of providing the user with a wider range of TV stations. Therefore this covenant had been breached.

Determination

22. For the reasons given above, the Tribunal determines that the erection of a satellite dish on the external structure of flat 30 Broadwater Hall is a breach of Clauses 2(19) and 2(25) of the lease.

23. For the reasons given above the Tribunal determines that there has been no breach of Clause 2(11) and Clause 2(15).

Dated 10 December 2006

Ms J A Talbot, solicitor, Chairman of the Tribunal