

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 19 Aragon Lodge
Boleyn Court
Epping New Road
Buckhurst Hill
Essex IG9 5UE

Applicants : Boleyn Court Management Ltd
Represented by Miss. Hall (counsel)

Respondent : Andrew Paul Conway

Case number : CAM/22UH/LBC/2006/0001

Date of Application : 31st May 2006

Type of Application : For a determination that a breach of
covenant has occurred (Section 168(4) of
the Commonhold and Leasehold Reform
Act 2002 ("the 2002 Act"))

Hearing : On the 1st August 2006 at Packford's Hotel
16 Snakes Lane West, Woodford Green, IG8 0BS

Tribunal : Bruce Edgington (lawyer chair)
Raymond Humphrys FRICS
Frank James FRICS

DECISION

Decision

1. The Respondent is in breach of the terms of the underlease dated 14th December 1990 by erecting a satellite dish and affixing external wiring to the exterior of the building known as Aragon Lodge Boleyn Court, Epping New Road, Buckhurst Hill, Essex IG9 5UE.
2. The Tribunal makes no Order for payment of costs.

Reasons - introduction

3. This application is made pursuant to Section 168 of the 2002 Act which provides that a landlord cannot forfeit a lease by serving a notice under Section 146 of the **Law of Property Act 1925** without either the tenant having admitted a breach of covenant or there being a decision of a court, an arbitral tribunal set up by a post-dispute arbitration agreement or a Leasehold Valuation Tribunal which confirms that there has been a breach of covenant or condition of a long lease.
4. Boleyn Court was let to the Applicant on the 8th August 1988 for a term of 125 years from 1st July 1988. The Applicant sublet the property to Maurice Kitsberg and Phyllis Kitsberg on the 14th December 1990 under the terms of an underlease for 125 years less 3 days from 1st July 1988. The Respondent acquired the unexpired term in that underlease on the 14th January 2004 which is a long lease for the purpose of the relevant part of the 2002 Act.

The Covenants under the Underlease

5. By clause 3 of the underlease the Respondent covenants to observe the restrictions and stipulations set out in the 5th Schedule.
6. Paragraph 2 of the 5th Schedule provides that the tenant shall not "...erect or affix on or to the exterior of (Aragon Lodge, Boleyn Court) nor permit to be so erected or fixed any wireless, television or other aerial or other similar apparatus nor on or to the interior of a flat so that same is visible from the outside".
7. The parties agree that a satellite dish would be within the description of such apparatus.

The Alleged Breach

8. The Tribunal had a written statement from David Tomlinson, the company secretary to the Applicant, who is a resident in Boleyn Court. He said that in November 2005, he had a complaint from another resident that the Respondent had erected a satellite dish on the exterior wall outside the property.
9. Mr. Tomlinson also said that he then passed the matter to the managing agents, Countrywide Property Management who wrote to the Respondent on the 23rd November 2005 alleging breach of covenant and asking for the dish to be removed. They wrote again on the 22nd December 2005 in similar terms.
10. The dish was not removed and the matter was therefore passed to solicitors, Kenneth Elliott & Rowe, who wrote on the 13th February 2006 making a similar allegation and request.
11. The satellite dish was not removed and this application was made.

12. The Applicant has produced a copy of the underlease, the correspondence referred to and some photographs taken by Rod Willis, who is employed by the Applicant as Estate Porter and lives in the Porters Lodge at Boleyn Court. These photographs show a satellite dish on the balcony of the property.

The Respondent's case

13. In his written defence, the Respondent denies he is in breach of covenant. He says that he did fix a satellite dish after consulting with the Estate Porter who, it is said, agreed with the proposal (but see below on this issue).
14. He then goes on to say that he received the correspondence referred to above and took advice. As a result of that advice, he took the view that there was a problem and he removed the satellite dish from the wall and made good any damage. He has placed the satellite dish on the balcony but says that it is invisible from the road or any other flat.
15. He then produces his own photographs which include the exterior of his flat viewed from the ground and some satellite dishes on the outside walls of buildings in the development which he says are not his.

The Inspection

16. Aragon Lodge is one building in a reasonably sized estate of similar buildings with a gated entrance. A considerable effort appears to have been made to keep the estate well maintained and in good condition. The Tribunal was later told that there are 97 flats on the estate. There was a large satellite dish on each building which gives the appearance of either being or having been communal.
17. The Tribunal inspected the property from the outside and viewed the property, at Mr. Conway's invitation, from the inside. The members of the Tribunal went onto the balcony in question and inspected the satellite dish which is free standing. It had obviously been fixed at some stage as the fixing post was in a box on the balcony. The holes in the wall and fixing pins are visible and have not been filled and removed respectively.
18. As Mr. Conway suggested, the satellite dish is not visible from the road or any other part of the estate. However, it is clearly visible from the path below the balcony in question. However, what is very clearly visible to anyone is the external wiring going to various rooms in the property.

The Hearing

19. Mr. Conway, Miss. Hall (counsel), Mr. Tomlinson and Mr. Willis attended the hearing and the Tribunal was surprised to note that there had apparently been no direct communication between Mr. Conway and the committee of Boleyn Court Management Ltd. dealing with the issues in this case.

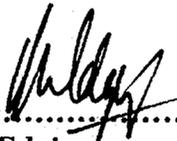
20. Miss. Hall presented her client's case succinctly. Her case was that no matter how one looked at the terms of the underlease, the presence of the satellite dish and the wiring constituted a breach of the terms. She then said that her instructing solicitors had served a costs schedule on Mr. Conway and she asked the Tribunal to decide that he was liable to pay those costs.
21. The Tribunal had not been given notice of this application and did not see the schedule which was presumably prepared in accordance with the Civil Procedure Rules.
22. Mr. Conway presented his case in a reasonable and reasoned way. He apologised that his solicitor had not prepared his 'defence' correctly because it was certainly not part of his case that anyone had given any approval to the erection of the satellite dish. His solicitor was on holiday at the moment. He acknowledged that he had not made the wall 'good' after taking the fixings off.
23. He expressed some surprise that no-one had come to see him about this issue and acknowledged that he was probably just as much to blame because he had not sought out any member of the management committee. He readily acknowledged that the management committee consisted of volunteers and that they do a very good job in keeping the estate in good condition.
24. He also readily acknowledged that if the Tribunal ruled against him, he would have to take everything down although he asked that the effect of any such decision be deferred until he returned from his holiday on the 16th August.
25. He said that the communal satellite dish for Aragon Lodge does not work, that the NTL cable system used by the estate is not as good as the Sky satellite system and that he felt that he wanted the most up to date technology. He mentioned that he had a daughter whose room had the balcony. He said that he thought Sky would be very keen on supplying the estate and he was perfectly prepared to deal with any negotiations.
26. He said that he did not want a satellite dish of his own and understood the concerns of the management committee which is why he had gone to such lengths to hide his dish. He agreed that appearance was important.
27. Mr. Tomlinson said that this had been the subject of discussion within the management committee and someone was investigating this whole question at the moment. The latest quote they obtained to install the latest digital equipment was £28,000 i.e. nearly £300 per flat and they did not think that the residents would want to pay this. The matter was being reconsidered.

Conclusions

28. The satellite dish at the property is clearly a breach of the terms of the underlease. At the moment, the dish is fixed to the exterior by the wires. However, even if the wires were to be re-routed so that they were not visible, the dish itself is still 'erected'. It does not have to be fixed to be a breach of

the terms of the underlease. Whether it is visible to onlookers is actually irrelevant.

29. An alternative way of interpreting the underlease would be to say that as the balcony is part of the flat, the satellite dish is not on the exterior of the building. For the avoidance of doubt, this Tribunal does not believe that this is a correct construction of the underlease. However, even if it were, the dish is clearly visible from the outside and is therefore still a breach as is the wiring which is fixed to the exterior and is part and parcel of the 'apparatus'.
30. The Tribunal has no general power to award costs in favour of a party. It does have the power to award costs up to a limit of £500 pursuant to paragraph 10 of Schedule 12 to the 2002 Act if a party has acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably **in connection with the proceedings**". In this case, Mr. Conway certainly could not be accused of any of these things in the presentation of his case in these proceedings.
31. By way of general comment, the Tribunal was sad to see the aggressive tone of the letters from the managing agents and the solicitors for the Applicant. Mr. Conway impressed the Tribunal as being a reasonable man and one could well understand his feeling of being persecuted by such letters when large satellite dishes were very prominent on each building anyway. If someone had just spoken to him and explained that this whole issue was under discussion and that matters were in hand to try to resolve the problem, these proceedings could well have been avoided. For this reason, the Tribunal hopes that the Applicant will think twice about trying to claim the costs of these proceedings from the Respondent.
32. The Tribunal also suggests that the management committee does urgently review what Mr. Tomlinson readily acknowledged was not the most up to date television system. Whilst people of a certain age may not have any need for all the latest television channels and may be reluctant to pay for their installation, people such as the Respondent with children want them.
33. More importantly however, from the point of view of the leaseholders generally, prospective purchasers of prestigious apartments will expect to have all the latest technology available and even £300 per flat in order to maintain property values on the estate may be a small price to pay.
34. The Tribunal does not have the power to defer the operation of its decision. However, it hopes and expects that forfeiture will not be necessary.



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Bruce Edgington

Chair

1st August 2006