



Residential
Property
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**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

LON/00AG/LBC/2008/0032

Applicant: Mrs Sheila Banks

Respondent: Mr Paul Stanley Castle

**Property: Garden Flat, 56 Parliament Hill, London
NW3 2TL**

**Leasehold Valuation Tribunal: Ms Helen Carr
Mr Collins BSc FRICS
Mrs Barrett JP**

Date of Decision 5th January 2009

Decision

The Tribunal determines that no breach of covenant or condition has occurred.

Background

1. The Applicant is the freehold owner of 56 Parliament Hill, a semi-detached four storey house which has been converted into four flats. The Applicant occupies two of the flats, one on the ground floor and one on the first floor. The second floor flat is let on an assured shorthold tenancy.
2. The garden flat which is the subject property of this applicant is let on a ninety nine year lease which was granted by the applicant to Patricia Ann Williamson on 24th July 1990. The demise of the flat includes the garden to the property.
3. The Respondent purchased an assignment of the long leasehold in September 2001. He has never lived in the property which has been let on a succession of assured shorthold tenancies.
4. On 9th July 2008 the Applicant applied under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) for a determination as to whether the Respondent had breached the terms of lease.
5. The Tribunal issued Directions on 17th July 2008. It identified the key issues as
 - a. Whether the Respondent has granted a sub-tenancy including a clause permitting pets to be kept at the property
 - b. Whether the Respondent and/or his sub-tenant has in fact kept or allowed animals (a dog and two cats) onto the Premises and into the rear garden
 - c. If so, whether this is in breach of the covenants in the lease

The Hearing

6. The hearing of this application took place on 5th January 2009.
7. Neither the Applicant, Mrs S Banks, nor the Respondent, Mr P Castle were represented. Mrs Banks was accompanied by Mr J Gavin.
8. Mrs Banks drew the attention of the Tribunal to particular clauses in the lease. The most relevant clause for the purpose of her application is paragraph 3 of the third schedule. This provides that 'No clothes or other articles shall be hung or exposed outside the flat or shall be shaken out of the windows of the flat and no animal pet dog or bird shall be kept on the demised premises without the written permission of the lessor which shall not be unreasonably withheld'.
9. Mrs Banks then explained to the Tribunal that Mr Castle's predecessor in title had kept dogs in the property which had caused her considerable difficulties, in particular destroying the condition of the garden and causing problems with the neighbours.
10. Mr Castle admitted to the Tribunal that the current tenants of the property kept 2 cats and a small pedigree dog. He had been aware of this when he had rented them the flat, and had arranged for his lawyer to amend the assured shorthold tenancy agreement to grant permission for this. He informed the Tribunal that if he had realised that he needed Mrs Bank's permission for the presence of

the animals he would have requested it. He then asked Mrs Banks if she would remedy the breach of covenant by giving her consent to the presence of the animals.

11. Mrs Banks initially refused to give her consent. In her opinion any dog, of whatever size, had the potential to damage the garden and cause difficulties with the neighbour. She suggested that the only pet whose presence she would agree to would be a goldfish. She argued that reasonableness had to be understood in the context of the history of the difficulties she has had with dogs and the terrible effects that this had had on her day to day life.
12. Whilst acknowledging that badly behaved dogs can cause occupiers considerable difficulties, the Tribunal considered that Mrs Bank's refusal in the particular circumstances of the application would be unreasonable. It is not unreasonable for a tenant to keep a small pedigree dog and two cats in a flat which has the benefit of a garden, provided that the pets do not cause a nuisance. There was nothing in the application which suggested that the pets had caused a nuisance. Indeed the application was based upon the presence of the pets without permission rather than any particular difficulties they had caused.
13. When the Tribunal explained its thinking to Mrs Banks she stated that she would give permission for the presence of these particular animals on the property to the date of the termination of the tenancy on 7th April 2009. Mr Castle then undertook to ask for permission for the presence of pets on the premises either if the current tenants renewed their lease or if a new assured shorthold tenancy was granted to tenants with pets.
14. On that basis the Tribunal determined that there was no breach of paragraph 3 of the third schedule for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002.
15. Mrs Banks is reminded that forfeiture is an extremely draconian and frequently disproportionate remedy for alleged breaches of the lease and that freehold owners have to show some resilience in the face of relatively minor breaches by occupiers who are generally responsible citizens. On the other hand Mr Castle is reminded that the terms of the lease represent the contract between him and Mrs Banks and the obligations therein should be treated with due respect.

Signed



Dated

5 - 01 - 2009