

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL, AND  
LEASEHOLD VALUATION TRIBUNAL**

**Case number: CHI/00HC/LBC/2010/0019**

**RE: FLAT 1 MANOR MEAD, 22 QUEENS ROAD,  
WESTON SUPER MARE, BS23 2LQ**

**Between**

**Mr and Mrs R Collia-Suzuki**

**Applicant (Landlord)**

**And**

**Ms S Zaliskyj**

**Respondent (Tenant)**

**An Application Pursuant to Section 168 of the Commonhold and Leasehold Reform Act 2002 for a Determination as to whether a breach or breaches of covenant have occurred.**

**Tribunal**

**Mr A D McC Gregg (Chairman)  
Mrs M Hodge BSc (Hons) MRICS**

**Date of inspection and hearing**

**19 November 2010**

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**DECISION**

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**1. The application**

- 1.1 This is an application pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 for a determination as to whether a breach or breaches of covenant have occurred.

**2. Inspection of the Premises**

- 2.1 The Applicants are the owners/occupiers of Flat 3, Manor Mead, 22 Queens Road, Weston Super Mare, BS23 2LQ and the Respondent is the owner/leaseholder of Flat 1 Manor Mead, 22 Queens Road, Weston Super Mare, BS23 2LQ.
- 2.2 The Respondent's lease includes the front garden area of 22 Queens Road.

- 2.3 Prior to the hearing of this application, the tribunal carried out an external inspection of the premises and an internal inspection of the front room of Flat 1 Manor Mead, 22 Queens Road as well as an inspection of the garden.

### **3. The Parties**

- 3.1 The Applicant is the landlord and freehold owner of 22 Queens Road, Weston Super Mare and holds the reversion immediately expectant upon expiry of the Respondent's lease.
- 3.2 The Respondent is the leaseholder of Flat 1 Manor Mead, 22 Queens Road, Weston Super Mare under a lease dated 10 day of January 1997 between Walter Lewis Fardon Broadbent and John Bisbet Carson and Joan Binnie Carson for a term of 999 years from the 1<sup>st</sup> day of January 1985 at a rent of £5.00 per annum.

### **4. The lease**

- 4.1 The clauses of the lease in respect of which the Applicants state that the Respondent is in breach are set out in the fifth schedule of the lease namely:-
- 4.2 Clause 1. "Not to use the Flat nor permit the same to be used for any purpose whatsoever other than as a dwelling or dwellings or for any purpose from which a nuisance can arise to the owners lessees and occupiers of the other flats comprised in the Property or in the neighbourhood or for any illegal or immoral purposes".
- 4.3 Clause 3. "No Piano pianola hi-fi system radio loud speaker or other mechanical or other musical instrument of any kind shall be played or used nor shall any singing be practised in the Flat so as to cause annoyance to the owners lessees and occupiers of the other flats comprised in the building or so as to be audible outside the flat between the hours of 11:00pm and 9:00am".
- 4.4 Clause 4. "No name writing drawings signboard slate or placard of any kind shall be put on or in any window on the exterior of the Flat or so as to be visible from the outside of the Flat no clothes or other articles shall be hung or exposed outside the Flat no flower boxes flower pot or other likely object shall be placed outside the Flat no mat shall be shaken out of the windows of the Flat and no bird dog or other animal which can cause annoyance to any owner lessee or occupier of the other flats comprised in the Building shall be kept in the Flat".

### **5. The Law**

- 5.1 The Commonhold and Leasehold Reform Act 2002 section 168 states:-  
1) A landlord under a long lease of a dwelling may not serve a notice under 146 (1) of the Law of Property Act 1925 (c20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless (2) is satisfied.

- 5.2 (2) This subsection is satisfied if –
- a) it has been finally determined on an application under sub section 4 that the breach has occurred.
  - b) the tenant has admitted the breach or
  - c) a court in any proceedings or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that a breach has occurred.
- (3) But a notice may not be served by a virtue of sub section (2) (a) until after the end of the period of 14 days beginning with the day after that which the final determination is made.
- (4) A landlord under a long lease of a dwelling may make an application to the leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred.
- (5) But a landlord should not make an application under subsection (4) in respect of a matter which
- a) has been, or is to be referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party
  - b) has been the subject of a determination by a court or
  - c) has been the subject of a determination by an arbitral tribunal Pursuant to a post dispute arbitration agreement.

## **6. The Applicant's Case**

The applicants allege 3 specific breaches of covenant namely:-

- 6.1(1) That between the 3 March 2010 and 25 July 2010 there were numerous incidents involving the playing of loud music that had been audible in the Applicants' flat and also outside the flat sometimes continuing throughout the night until 5am as were more specifically set out in the schedule accompanying the applicants case and in breach of Clause 3 of schedule 5 of the lease.
- 6.1(2) An allegation relating to the use of the property so as to cause a nuisance to others and using the property for an illegal purpose. Specifically, the allegation was that the Respondent's son, Caro, has been allowed to use the property to rehearse for his job as a disc jockey playing loud music to harass other lessees as well as using the property for the taking of illegal drugs and in breach of Clause 1 of Schedule 5 of the lease.
- 6.1(3) An allegation that the respondent had allowed clothes to be hung or exposed outside the flat and in the garden of the flat and in breach of Clause 4 of Schedule 5 of the lease.
- 6.2 In relation to the first allegation (6.1(1)) the applicants gave oral evidence in support of the allegation and produced a DVD which had been viewed by the Tribunal members prior to the hearing and which purported to corroborate the allegations set out in the schedule.
- 6.3 The Quality of the DVD was however limited, as some of the video clips were not taken in daylight. Also there was no independent dating and

timing of the incidents referred to in the oral evidence given by the applicants. Other than the inclusion of the screen computer showing the date and time, at the beginning of clip 5 when the Applicant allegedly recorded the Respondent's son and his friends in the garden.

- 6.4 The Tribunal also noted that notwithstanding the involvement of the local authority and the police there was no corroborative evidence from any independent third party or source of these allegations. Other than the inclusion of the screen of a computer showing the date and time, at the beginning of clip 5 when the Applicant allegedly recorded the Respondent's son and his friends in the garden.
- 6.5 In relation to the second allegation (6.1(2)) the applicants gave evidence that they had smelt cannabis smoke emanating from the premises. Furthermore, they produced photographs from the respondent's Facebook one of which was an entitled "Jack with Spliff" and which had clearly been taken in the respondent's flat. Another was entitled "Caro (the respondent's son) skinning up".
- 6.6 In the applicants first bundle of evidence there were further photographs taken in the respondent's flat marked respectively "Pringles Pipe Mark 1 and Pringles Pipe Mark 2". The second photograph features a sachet with what looks like a cannabis leaf printed on it.
- 6.7 In relation to the final allegation (6.1(3)) that the respondent had allowed clothes to be hung or exposed outside the flat and in the garden, this again was supported by photographs that accompanied the applicant's statement of case.

## **7. The Respondent's Case**

- 7.1 In relation to the first allegation (noise 6.1(1)) the Respondent denied this allegation and in her evidence she produced a schedule disputing many of the dates and times of the alleged disturbances and producing evidence that she and her son Caro were absent from the property at those dates and times and staying with friends or colleagues at Longleat, in London and elsewhere.
- 7.2 In relation to the second allegation (use of the property for an illegal purpose 6.1(2)) the Respondent stated initially that she did not allow smoking in the flat. When pressed however, she agreed and accepted that the photographs that had been produced by the applicant were those of her son Caro and taken in the flat. She stated however that she did not countenance the smoking of drugs or illegal substances and that any smoking that was evidenced in the photographs to which the Committee was referred concerned only the smoking of legal substances some of which were herbal.
- 7.3 In relation to the third allegation (allowing clothes to be hung or exposed outside the flat (6.1(3)) the respondent accepted that this breach had occurred stating that she was not aware of the restriction in her lease at

that time and that she had ceased using the garden for the drying or airing of clothes since being made aware by the Applicants of the breach.

## 8. The Findings of the Tribunal

- 8.1 The Playing of Music (6.1(1)). The evidence of the Applicants had been clearly refuted by the Respondent and the Tribunal felt that there was insufficient corroborative evidence of this allegation particularly from independent sources and statutory bodies.
- 8.2 The Tribunal therefore felt that the Respondent should have the benefit of the doubt and concluded that there was insufficient evidence to justify a finding that there had been a breach of covenant on this ground.
- 8.3 The use of a property for an illegal purpose (6.1(2)). The Tribunal were entirely satisfied from the evidence given by the applicants and more particularly the corroborative photographs and comments from the respondent's son's own Social Network Services posts that the premises had been used for the smoking of cannabis and or the taking of illegal substances.
- 8.4 In that respect, there had therefore been a breach of covenant.
- 8.5 Allowing clothes to be hung or exposed outside the flat (6.1(3)), the Respondent admitted this breach and accepted the allegation which was supported by photographic evidence but stated that the breach had only occurred as a result of her not appreciating the restriction in the lease. The Tribunal accordingly found that there had been a breach of this covenant also.



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Andrew D McC Gregg

Dated... 7<sup>th</sup> December 2010 .....