

HM COURTS & TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL****COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 168(4)**

Applicant	Gateway Property Holdings Limited
Applicant's representative	Gateway Property Management Limited
Respondents	Mr Mark Leslie Haigh
Property	Flat 4, Rivermead Court, Portobello Road, Wakefield WF2 7JJ
The Tribunal	Mr A. Robertson (chairman) Mrs E Thornton-Firkin

Application

1. Gateway Property Holdings Limited, through their agents Gateway Property Management, applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2004 ('the Act') that breaches of covenant have occurred in the lease of 15 July 2005 relating to the property.

Preliminary

2. The Application was made to the Leasehold Valuation Tribunal ('the Tribunal') on 31 October 2011.
3. Directions dated 20 December 2011 sent to the parties stated that the Tribunal considered it appropriate for the matter to be dealt with by way of a paper determination but with the opportunity for the parties to request an oral hearing. No such request was made.
4. The Tribunal convened on 5 April 2012 without the parties to determine the application.

Facts and Submissions

5. The Applicant is the now proprietor of the freehold estate in the property which is subject to a leasehold interest vested in the Respondent. The Lease, dated 15 July 2005 is between Orion Development Limited ('the Lessor') and Mark Leslie Haigh ('the Lessee') and is for a term of 999 years from 1 February 2003.
6. The third schedule to the lease, headed Lessee's obligations has, according to the Applicants evidence, been breached, often on numerous occasions, in respect of clause 20 (not to make unreasonable noise) clause 13 (not to increase

risk of fire) clause 17 (make good damage caused) clause 24 (not to keep a cat, dog or other animal) clause 19 (not to leave.....refuse or rubbish.....) clause 42 (untidy garden) clause 45 breach of regulations – smoking in communal area, untidy garden, nuisance behaviour)

7. The Applicant, in accordance with Directions, submitted a written statement giving details of the alleged breaches and including a factual statement of Penelope Hitch of the Management Company. This catalogued the breaches which seemed to commence in November 2009, when a sub tenant of the Respondents was the subject of complaints from other occupants of Rivermead Court. Complaints were that nuisance was caused by young men visiting the lady sub tenant in the early hours of the morning (specifically in the early hours of 6, 7, 8 & 9 November 2010), using door entry buzzers of other flats when unable to gain entry to the common area and making excessive noise, Visitors were seen accessing the electrical cupboard.
8. A similar complaint was made in January 2010 regarding a party held by the sub tenant in Flat 4 on Saturday 16 January 2010.
9. In March 2010 similar complaints were received and the tenant of Flat 4 was also accused of keeping 2 large dogs which were put out in the back garden in the early hours of the morning and barked constantly.
10. The Respondent, on 20 March 2010 responded to telephone calls from the Management Company and advised them that he had served notice on his tenant.
11. In April 2010 further complaints were received by the Management Company regarding the tenant of No. 4.
12. In September 2010 another lessee (No. 12) reported that dogs at No 4 were barking all day and the tenant of No. 4 was allowing dog muck to pile up in the garden and decking area. The tenant of No. 5 also reported that dog muck was piled up under her (No. 5's) window and she could not open her window because of the smell. Further complaints from No.5 were made in February 2011 regarding early morning parties and noise from No. 4.
13. Further Complaints were made in September 2011 again regarding noise and this time too regarding a fire alarm having been set off deliberately by one of No.4s late night visitors.
14. Flat 7 complained about a noisy 24 hour party at No.4 on 10/11 September 2011. Further complaints were made about noise from parties in No.4 in October 2011 and beer bottles and cans were left all over the car park.
15. The Tribunal received statements from various lessees / tenants confirming particulars in the Applicant's statement.

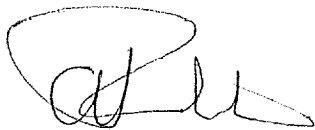
16. Following the Application to the Tribunal the Respondent advised the Tribunal that notice had been served on his tenant to take effect on or before 29 February 2012.
17. The Respondent did not respond to the Tribunal directions by submitting a response to the Applicants bundle nor to a reminder letter.

Law

18. Section 168(1) of the Act states " A landlord under a long lease of a dwelling may not serve a notice under Section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied".
19. Section 168(2) includes as a means of satisfying Section 168(1) "it has been finally determined on an application under subsection (4) that the breach has occurred".
20. Section 168(4) provides that a landlord under a long lease of a dwelling may make an application to a Leasehold Valuation Tribunal for a determination that a breach of a covenant in the lease has occurred.

Tribunal Decision

21. The Applicants written evidence of breaches of covenant in the lease is convincing. The Respondent has not sought to refute the evidence – merely to advise the Tribunal that notice has been served on his sub tenant.
22. The Tribunal is satisfied, on the evidence before it, that breaches of clause 4, 16, 17, 20 and 24 and the Third Schedule of the lease dated 15 July 2005 have occurred during the period November 2009 – January 2012.
23. The Tribunal determine that breaches of covenant have occurred.



Mr A. Robertson,
Chairman of the Leasehold Valuation Tribunal

13 April 2012