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Case Number: CHI/00HG/LBC/2013/0023



**HM COURTS & TRIBUNALS SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**PROPERTY:** 8a Edgar Terrace, Lipson, Plymouth, PL4 7HQ

**Applicant:** Mr R H Maggs

**and**

**Respondent:** Mr G N Turney

**In The Matter Of**

**Section 168(4) Commonhold and Leasehold Reform Act 2002**

**Tribunal**

Mr A Cresswell (Lawyer Chairman)

Mr M Woodrow MRICS (Valuer Member)

**Date of Hearing:** 6 June 2013

**Appearances:** Mr A Dyke for the Applicant  
Mr Turney in person

**DETERMINATION**

**The Application**

1. On 9 April 2013, Mr Dyke made an application on behalf of the Applicant freeholder of the property, to the Leasehold Valuation Tribunal for the determination of whether there has been a breach of covenant by the lessee, the Respondent, Mr Turney.

**Preliminary Issues**

2. The lease supplied by the Applicant relates to 8a Edgar Terrace. The original lease was between different parties, but it is clear from official copies of the title registry that the Applicant is the landlord/lessor and the Respondent the tenant/lessee of 8a, and that the original lease dated 2 July 1986 is the contract between the parties, and contains the covenants and conditions of that contract. The lease is for a term of 999 years commencing on 25 March 1986.

**Inspection and Description of Property**

3. The Tribunal inspected the property on 6 June 2013 at 10.45 hours. Present at that time were the Applicant and Respondent and Mr Dyke, although Mr Dyke did not enter the property. The property in question consists of a two-storey mid-terrace house divided so as to comprise two self-contained residential units.
4. The Applicant is the freeholder of No 8a (broadly the ground floor) and the leaseholder of No 8 (broadly the first floor). The Respondent is the freeholder of No 8 and the leaseholder of No 8a.
5. The building is reached via a flight of steps up from the pavement, the Respondent's door being at the top of the steps and the door to the Applicant's flat being to the right of that as the building is faced. This means that the Applicant, when entering from the roadway, walks to the top of the steps to a point outside the front door of the Respondent's flat and then turns to his right so as to then face his own front door, a very short distance away.

**Summary Decision**

6. This case arises out of the Landlord's application, made on 9 April 2013, for the determination of whether there has been a breach of covenant. The Tribunal has determined that the Landlord has demonstrated that there has been a breach of covenant. The Respondent is in breach of the covenant relating to the requirement of written consent for the keeping of a domestic pet in paragraph 3 of Part II of the Third Schedule of the Lease and he was in breach of the covenant regarding nuisance in paragraph 1 of Part II of the Third Schedule of the Lease. The Respondent was not, however, in breach of any covenant relating to the Applicant's reserved easement of passage on foot in paragraph 2 of Part III of the First Schedule of the Lease.

**Directions**

7. Directions were issued on 12 April 2013.
8. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
9. This determination is made in the light of the documentation submitted in response to those directions, the evidence and submissions of the parties at the hearing.

**The Law**

10. The relevant law is set out in section 168 Commonhold and Leasehold Reform Act 2002.
11. Section 168(1) and (2) Commonhold and Leasehold Reform Act 2002 provide that a landlord may not serve a notice under Section 146 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) of the 2002 Act that the breach has occurred.

12. 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. The Tribunal's jurisdiction is limited to that question and cannot encompass claims outside that question, nor can it encompass a counterclaim by the Respondent; an application under Section 168(4) can be made only by a landlord.

### **The Lease**

13. The following are relevant Clauses of the Lease.

#### FIRST SCHEDULE

##### Part III

##### Exceptions and Reservations

2. The right of the owners and occupiers of the upper flats to pass on foot over the path and steps in the front garden.

#### THIRD SCHEDULE

##### Part I

##### TENANTS COVENANTS

- (17) To abide by and observe the regulations set out in Part II of this Schedule

##### Part II

##### Regulations as to user of the Lower Flat

1. Not to do or suffer or permit to be done or suffer any act matter or thing which may be or become a nuisance or annoyance to the Landlord or the occupiers of the Upper Flat and not to carry on or suffer to be carried on in the Lower Flat any trade or business or use or suffer the same to be used for any illegal or immoral purpose but to use the same as a private dwelling only in the occupation of one family
3. Not to keep in the Lower Flat any domestic pet or other animal without the previous written consent of the Landlord

### **The Applicant's Case**

14. The Applicant asked the Tribunal to determine three distinct alleged breaches of covenant and the Tribunal was specifically referred to the above detailed provisions of the Lease. The Tribunal has, accordingly, limited its consideration to the three alleged breaches and the provisions of the Lease relied upon by the Applicant and his legal representative.

15. The Applicant complains of three breaches which are, broadly, that the Respondent keeps three dogs in the Lower Flat without the Applicant Landlord's written consent, that the Respondent blocks the Applicant's free passage to and from the door of his flat when he frequently positions himself with a chair at the top of the steps leading to the entrances to the building and that the Respondent has frequently subjected him to music of a volume sufficient to constitute a nuisance to him until late at night and, on many occasions, into the early hours of the morning.

16. The Applicant told the Tribunal that he had advised the Respondent when he moved into the Lower Flat on or about 5 August 2011 that there was a covenant which prevented the Respondent from keeping dogs at the flat. The Applicant told the Tribunal that he was actually not averse to the Respondent keeping the dogs at

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the flat and wished that he himself was able to keep a dog and that he offered the Respondent the use of his rear garden for the dogs and offered to look after them.

17. The Applicant told the Tribunal that, after leaving his flat on 5 or 12 March 2012 and finding the Respondent on his collapsible chair at the head of the steps and drinking, he was angry and he reminded the Respondent that he was in breach of restrictive covenants regarding his dogs and allowing the Applicant free passage.

18. Since seeing his solicitor in August 2012, the Applicant had installed a CCTV camera which focused upon the head of the shared access entrance steps, the area immediately outside the Respondent's front door. The Applicant presented stills from the CCTV coverage showing the Respondent sitting on a collapsible/camping type chair at the head of the steps, sometimes drinking and sometimes making obscene gestures at the camera.

19. The Applicant told the Tribunal that he had become annoyed at the Respondent's habit of sitting at the head of the steps. He also told the Tribunal that, apart from an initial argument with the Respondent when both parties had become angry, the Respondent would always move when he approached and had never made him wait. He told the Tribunal that the parties did not speak on these occasions. He added he would always check his CCTV before leaving his flat as he wished to avoid confrontation with the Respondent.

20. The Applicant had kept a log of the occasions when music emanating from the Respondent's flat had disturbed his sleep. Save for three occasions when the Applicant complained that a friend of the Respondent had produced loud music beyond midnight, the concern related more to thoughtlessness on the part of the Respondent in a shared accommodation where there was very limited containment of noise. There was a large number of occasions when this thoughtlessness in terms of the volume of the Respondent's music had continued beyond midnight.

21. The Respondent determined to strike back and he played Classic FM on timer from 8am to 11pm each day. Indeed, this could clearly be heard during the Tribunal's inspection from within the Respondent's flat.

### **The Respondent's Case**

22. The Respondent told the Tribunal that he had been given oral permission by the Applicant to keep his three dogs in the flat. He accepted, however, that he had not read the covenants about animals in his Lease before taking ownership of the flat. He also accepted that the Applicant had told him about the covenants on the occasion in early March 2012 when there had been the angry exchange over his sitting on his chair at the head of the steps. He also accepted that the Applicant's solicitor had referred to the covenant in his letter to the Respondent of 31 August 2012, when the Respondent was asked to desist from his breaches of covenant. The Respondent told the Tribunal that he then read his Lease and saw that there were covenants about the dogs.

23. The Respondent accepted that he often sat on his collapsible chair at the head of the entrance steps and immediately outside his front door, as he felt he was entitled to do, it being his property. He told the Tribunal that he always immediately moved when he either heard the Applicant at his door on exit or when he saw the Applicant at the foot of the steps on entry. There had never been any unpleasantness save for the first occasion when he was angrily challenged by the Applicant and responded in similar vein.

24. The Respondent denied that he played his music at a loud volume, but accepted that he played music until the early hours and accepted also that on three occasions there may have been loud music when a friend was present.

**Consideration and Determination**

The Dogs

25. The Tribunal finds it clear from examination of the Lease that the Respondent is required to obtain the written consent of the Applicant (his landlord) if he wishes to keep in his flat a domestic pet. The Respondent does not have the written consent of the Applicant. Whilst it was clear from the evidence that the Applicant had only pressed this issue when he was annoyed about the issues of free passage and music, he did make it known to the Respondent that he was in breach of covenant in March 2012 and again in August 2012 when his solicitor wrote to the Respondent. There is only one finding open to the Tribunal, notwithstanding that the Applicant was quite content for the Respondent to keep his dogs in the Lower Flat until the relationship soured, and that is that the Respondent is in breach of the covenant in paragraph 3 of Part II of the Third Schedule of the Lease relating to the requirement of written consent for the keeping of a domestic pet.

Free Passage

26. The Tribunal was not pointed to a covenant by the Respondent not to prevent free passage by the Applicant to his flat, but accepts that it may be implicit that such a requirement exists for the proper enjoyment by the Applicant of the easement of the right of passage reserved to him by paragraph 2 of Part III of the First Schedule of the Lease.

27. The Tribunal finds that there is no breach here of any covenant. There was no evidence before the Tribunal to suggest other than that the Respondent had consistently provided the Applicant with a free right of passage on foot over the path and steps in the front garden. The whole of the front garden, including the steps, is included in the Respondent's demise and the Respondent is entitled to enjoy his property and entitled to place a moveable chair upon his property so long as he does not extinguish or prevent the right of the Applicant to pass on foot.

The Noise

28. The Tribunal finds that the Respondent was unaware of any concerns of the Applicant about the volume of his music until he received the Applicant's solicitors' letter of 31 August 2012. Indeed, the Applicant told the Tribunal that he had never brought his concerns orally to the Respondent's attention.

29. It was clear, however, that the Respondent had not taken any action to reduce the sound level after the solicitors' letter of 31 August 2012 and the Tribunal finds that he was in breach of the covenant regarding nuisance in paragraph 1 of Part II of the Third Schedule of the Lease. Whilst the Tribunal noted that the Applicant had engaged in a "tit for tat" measure by playing his own radio loudly for the period 8am to 11pm, the Tribunal's role is solely to determine whether the Respondent is in breach of any of the specified covenants of the Lease, because that is the only application that is before the Tribunal.

**General**

30. The Tribunal finds it unfortunate that this matter should have had to be brought before it. The issues between the parties will be solved only by mature reflection by each of the parties and a real will by both to share cooperatively the building in which both live.

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*A. Cresswell*

**Andrew Cresswell (Chairman)**

**Date 14 June 2013**

**A member of the Southern Leasehold Valuation Tribunal**

**Appointed by the Lord Chancellor**