



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/OOBK/LBC/2015/0116**

Property : **Flat 103 Dorset House, Gloucester
Place, London NW1 5AE**

Applicant : **Dorset House Residential Limited**

Representative : **Dale & Dale Solicitors**

Respondents : **Mr Rupert Clifford Chadwick (1)
Mrs Nehir Firat Chadwick (2)**

Representative : **None**

Type of Application : **For the determination of an alleged
breach of covenant**

Tribunal Members : **Judge O'Sullivan
Mr D Jagger MRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **12 January 2016**

DECISION

Decision of the tribunal

The Tribunal determines that there has been a breach of clause 2(5) and paragraph 14 of the Third Schedule of the Lease

The application

1. The Applicant seeks a determination pursuant to s. 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent tenants are in breach of covenants contained in the lease.
2. Directions were made dated 5 November 2015 which set out the steps to be taken by the parties and provided for this matter to be considered by way of a paper determination, that is, without the presence of the parties. In accordance with those directions both parties have served bundles containing their statements of case and evidence relied upon.

The Applicant's case

3. The Applicant is the landlord of the property known as Flat 103 Dorset house, Gloucester Place, London NW1 5AE (the "Property") and the Respondents are the long leaseholders of the Property.
4. The Applicant set out its case in the application. The lease of the Property is dated 8 December 1976 and is made between Buckingham Properties limited (1) and Simon Staal (2) (the "Lease").
5. The Applicant relies on clause 2(5) of the Lease and paragraph 14 of the Third Schedule to the Lease in which it says the lessee covenants as follows;

"Not to allow suffer or permit any flower boxes pots or other things of a similar nature to be placed outside of the windows of the Flat nor on any balcony in the Flat other than the window boxes of a pattern and colour to be approved by the Lessor nor any outside blinds awnings sun umbrellas or other attachments to be made to the Flat or any balcony or roof garden without the previous consent first being obtained from the Lessor. "

6. The Applicant says in breach of clause 2(5) of the lease and paragraph 14 of the Third Schedule the leaseholders have placed flower boxes and pots as well as chairs and other items on the balcony without having obtained Lessor's approval and have permitted other attachments to the balcony likewise without prior written consent. Photographs are relied upon. It is further submitted that the balcony does not form part of the tenant's demise. It is said that the photographs clearly demonstrate that the hanging baskets and numerous flower pots have been there for some time but that at no time has permission been

requested. The Applicant objects to the flower pots and garden furniture as the pots said to be causing damage to the flat roof to the commercial premises below, the balcony is unsightly and as the area is not kept clean and the items may cause danger should they fall to those walking below. The Applicant further says that it does not totally disallow flower pots on the balcony but that the leaseholders must liaise with the managing agents to agree the number and placing.

7. The Respondents have not made any statement of case. The Respondents did request an extension of time in which to serve a statement of case which was granted to 7 December 2015 but no statement has been received. However the tribunal does have a copy letter from the Respondents to the Applicant's solicitors dated 27 November 2015 which raises several issues, none of which are relevant to the application. However from correspondence contained in the bundle it appears that they believe that the balcony forms part of their demise and on this basis they deny that there has been any breach of covenant.

The Law

8. 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 covenant or condition in the lease has occurred.”

The Tribunal's decision

1. The Tribunal is satisfied that there has been a breach of clause 2(5) of the Lease and paragraph 14 of the Third Schedule to the Lease in that flower pots and items of garden furniture have been placed on the balcony without landlord's consent as shown clearly by the photographs attached to the application. We accept that the balcony does not form part of the Respondents' demise but that access is allowed to the balcony provided that no nuisance or annoyance is caused to the occupier of Flat 102. It is unfortunate that the Respondents have not liaised with the managing agents to agree which items could be kept on the balcony as the landlord has confirmed that items may be kept on the balcony with prior consent.
2. The Tribunal notes that the Property is subject to a charge to National Westminster Bank Plc dated 20 February 2004. The Tribunal directs that a copy of this determination is sent to National Westminster bank within 14 days of the date of this decision.

Name: S O'Sullivan

Date: 12 January 2016