FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00KC/LBC/2018/0007**
Property	**:**	**40 Dukes Court, The Mall, Dunstable, LU5 4HW**
Applicant	**:**	**Sicanta Flat Management Limited**
Representative	**:**	**Pictons Solicitors LLP and at the hearing by Mr Ian Russell, Director and Chairman of the Applicant Company**
Respondent	**:**	**Dalia Sabri**
Representative	**:**	**Mr S Sabri, the husband of Mrs D Sabri, who also attended**
Type of Application	**:**	**Application for a breach of covenant or condition of a lease pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Tribunal Judge Dutton** **Mr D Barndon MRICS** **Mr N Miller BSc**
Date and venue of Hearing	**:**	**County Court at Luton on 24th October 2018**
Date of Decision	**:**	**12th November 2018**

DECISION

DECISION

1. **The Tribunal finds that there has been a breach of covenant or condition of the lease for the reasons set out below.**
2. **The Tribunal determines the costs of the Applicant's solicitors to be £4,165.81 to include the fees payable to the Tribunal of £300, as set out below.**

BACKGROUND

1. This was an application for a determination that there had been a breach of covenant or condition of the lease of the property at 40 Dukes Court, The Mall, Dunstable (the Property). The allegation made against Mrs Sabri is that her tenant, apparently a Miss Rosie Winchester, either by herself or through visitors to the Property, had acted in an anti-social manner including allegations of being found lying unconscious and in an inebriated state on the staircase and further having urinated on that staircase. It is alleged also that litter had been thrown from the flat as well as items of clothing and children's toys. There were allegations of excessive noise, apparently at all hours of the day and in addition that a tenant had placed a skip for an extended period of time in Princes Court car park without permission.

2. A further allegation was that lighted cigarette butts had been thrown from the window which constituted both a fire hazard and a health and safety issue. These matters had been in existence for a while yet it was alleged that Mrs Sabri had taken no course of action to prevent them continuing.

INSPECTION

3. We were able to the exterior of 40 Dukes Court in the company of Mr Sear who apparently lived at No 37 on the ground floor. Whilst in the course of this inspection Mr Sabri the husband of the Respondent attended. We noted to the rear of the Property that there were a large number of cigarette butts on the grass, the majority of which clearly aligned with the windows from the subject flat. However, there was also a number of cigarette butts further along which we concluded may well have come from another flat.

4. 40 Dukes Court is a 2 bedroomed second floor flat in a purpose built block of 12 flats. There are two stairwells each serving 6 flats. The building is constructed of brick with an interlocking concrete tile roof. The original timber windows have for the most part been replaced with UPVC, including those of the subject property. Externally the building is in good condition for its age and type.

5. Flat 40 has an open plan living room/kitchen, one double bedroom, one single bedroom and a bathroom with bath, separate shower, wash basin and WC. There was evidence of some plaster cracking in the main bedroom, but otherwise the flat was in good order internally.

6. In support of the allegations made we had in the papers before us a witness statement of Ian Russell who is the Director and Chairman of the Applicant company. The company is the owner of the freehold as well as undertaking the management of the block. The statement went on to allege there had been anti-social behaviour with the tenant since around May of 2017 and listed those items which we have referred to above. It has to be said that it is not clear that Mr Russell had evidenced any of these items other than on an occasion when apparently a cigarette had been flicked close to him. The allegations, therefore, are somewhat third hand as those persons named, for example Mrs Bliss, Mrs Blakey, Mr Sear had not themselves made any statements. For example, the allegation that the tenant was inebriated and had urinated on the stairs was passed to Mr Russell by a builder working at the Property. When Mr Russell arrived, whilst there did appear to be urine visible as well as wet under garments, there was no sign of the person who had caused this problem.

7. The witness statement went on to deal with contact that Mr Russell had with his solicitors and with Mr Sabri. It appears that time had been given to the Respondent to issue notices seeking the removal of the tenant from the Property, but these appear to have been incorrectly completed and certainly at the time of the hearing, Miss Whitely was still in occupation.

8. We no written submissions by Mrs Sabri or by her husband. They did attend the inspection but had made no statements, which was not helpful.

9. Mr Russell having given his evidence we asked Mr Sabri if he had any questions which he did not. He did, however, tell us that the Council had indicated they had an intention to re-house his tenant hopefully before the end of the year.

10. It was said that a previous tenant had caused some damage to the flat and that they had been responsible for the skip.

11. In the course of Mr Sabri addressing us, Mr Russell told us that he had spoken to other tenants in the block all of whom denied that they were smokers and that, therefore, the bulk of the cigarette butts in his view must have come from the tenant or visitors to the subject property. As to the drunkenness point, Mr Sabri doubted that this would have been Miss Whitely because at this time should have been around four months pregnant. There was no clear evidence to show that it was her that had caused this problem.

12. A number of the breaches are no longer continuing. For example, the bikes and other paraphernalia associated with a young family are now put away and the only issue which it appears to now exist is that of the cigarette ends being thrown from the window. Mr Sabri told us that he wished this matter to end. He confirmed that the tenant should be out of the Property by the end of November. Mr Russell said that he would be prepared to let the matter rest for the moment provided that he received a copy of the letter from the Council confirming their intention to re-house.

13. We then hear briefly on the question of the fees charged by Pictons, which was set out in a letter to the Tribunal of 17th October 2018 and which included a schedule of costs. Mr Russell told us that he had indeed instructed Pictons and confirmed

that he had had meetings with Pictons and that also there had been meetings at Pictons with Mr Sabri. He confirmed the number of letters that he recalled had been sent to him and that the hourly charging rate increase had been conveyed to him. He confirmed also that the fees claimed are consistent with the amounts that the Applicants have paid to Pictons.

DECISION

14. We will deal firstly with the allegation that there has been a breach of lease. We bear in mind that this flat is on the top floor of a three-storey block occupied by a young mother and three children. The fact that pushchairs and other paraphernalia may on occasions may have appeared in the common parts is we suspect a fact of life. If the tenant is now to be re-housed, then these are not issues that should continue. Certainly, at the time of our inspection there was no evidence of this paraphernalia having been left of the stairways or in the entrance. There were some items stored outside the front door. The allegations concerning drunkenness and abusive behaviour are not supported by any direct evidence. Nor did we see any evidence of clothing being hung or thrown from the subject flat.

15. What was obvious to us was the large number of cigarette butts which had been thrown onto the grass immediately below the windows from the subject property. We are, therefore, prepared to accept on the evidence that we have seen and on the basis that it was not, in truth, denied by Mrs Sabri, that certainly there has been unsociable, vexatious and annoying behaviour on the part of the tenant which would lead to a breach of certainly paragraph 2 under part three of the schedule to the lease. This says as follows:

"Not to do or permit to be done any act or thing in or upon the demised premises of any part thereof or any part of the property which may or grow to be a damage, nuisance or annoyance to the lessor or the company or any of the occupiers or other parts of the property or to the neighbourhood."

We are not convinced that the throwing of cigarettes onto the grass would constitute a problem which may affect the insurance. The hanging or exposing of clothes or other items at paragraph 7 of part 3 may have taken place, but it was not apparent at the time of our inspection and of course there is no evidence other than hearsay that this has occurred. The burden of proof rests with the Applicant.

16. In the circumstances, therefore, we are prepared to find that there has been a breach of covenant or condition of the lease in relation to the disposal of cigarette ends. We hope, however, that if Miss Winchester is re-housed perhaps to more suitable accommodation not three floors up, these problems will cease to apply. Indeed, Mr Russell took a very pragmatic and reasonable view in confirming that he would not instruct Pictons to take any enforcement action provided he had confirmation from Mr Sabri that the Council were taking steps to re-house Miss Whitely.

17. We turn then to the question of costs. These costs are sought under the terms of the lease at clause 2(5) which says as follows: *"To pay all costs, charges and*

expenses (including solicitors' costs and surveyors' costs) incurred by the lessor for the purpose of or incidental to the preparation and service of a notice under section 146 and 147 of the Law of Property Act 1925 (including any such fees payable in respect of the preparation and service of any schedule of dilapidation) notwithstanding that the forfeiture may be avoided otherwise than by relief granted by the Court."

18. Section 168 of the Commonhold and Leasehold Reform Act 2002 (the Act) says at sub-section 1 *"that a landlord under a long lease may not serve a notice under section 146(1) of the Law of Property Act 1925 in respect of breach by a tenant of a covenant or condition of the lease unless sub-section 2 is satisfied."* Sub-section 2 requires a determination of an application under sub-section 4 that a breach has occurred. Sub-section 4 says as follows: *"A landlord under a long lease of a dwelling may make an application to the appropriate Tribunal for a determination that a breach of covenant or condition in the lease has occurred."*

19. Accordingly, as a condition precedent to being able to issue a section 146 notice the landlord needs to obtain a finding from us that a breach of the lease has taken place. We are, therefore, satisfied that the costs of Pictons are costs which have been incurred under the terms of the lease.

20. <u>We now turn to those costs which are set out in a statement prepared for the hearing on 24th October.</u> We have no particular challenge to the fee earners charging rates of £230 plus VAT. The personal attendances and correspondence appears to be borne out by the discussions we had both with Mr Sabri and with Mr Russell. Accordingly, we would allow those elements in the sum claimed.

21. It is not clear what the attendances on others may be. If this is on the Tribunal it seems to us that this is not a charge which should be paid by the Respondent and we therefore disallow that. There are also estimated costs for the solicitors attending the site inspection and the hearing which did not take place and accordingly those must be removed. For the costs associated with attendances we allow £1,771 plus VAT.

22. We then looked at the schedule of work done on documents, which we must say we found to be somewhat excessive. There are 8 headings and we will respond to those in the order set out.

    1. Preparation of application. We accept that an hour may have been spent on producing this document and accordingly a charge of **£230 is allowed**.
    2. We are not aware of any consent order and accordingly this sum is disallowed.
    3. Considering the client's information and photographs at one hour seems somewhat excessive but we will nonetheless **allow that at £230.**
    4. We do not see that it is the responsibility of the Applicant to determine whether or not the notice served by the Respondent seeking possession is effective or not. In those circumstances, we would **disallow the £115 claimed** at item 4.
    5. Perusal of documents and file and preparing witness statement. The period of three hours seems excessive particularly when this is work done by a Grade A fee earner. We consider that two hours would be sufficient for this and would therefore **allow the sum of £460**.

6. Insofar as amending the witness statement is concerned, we have seen that document by Mr Russell and we are struggling to see how 1½ hours could have been spent in amending it. **We would allow an hour which would give a figure of £230.**

7. The preparation of a bundle is not the work that needs to be undertaken by a Grade A solicitor. If we allow the preparation time at 1½ hours it seems to us that under National Grade 2 a guidance of hourly rates issued by the Ministry of Justice, an hourly charge of £111 for a trainee solicitor would be appropriate. That would give a **charge of £166.50**.

8. The same can be said of the preparing of the costs bundle. Whilst this may need to be checked and signed by a partner, given the length of same that should have taken no more than two units and we would therefore allow £88 for the preparation and £46 for checking which **gives a total of £134 for that element.**

23. The application and hearing fees are liabilities that Mrs Sabri should bear and those total £300.

24. In respect of the works done on the schedule, we having assessed them as above, calculate that the total sum due under the schedule for documents is £1,450.50. The total costs liability for costs we assess at £3,221.50 with VAT thereon of £644.30 making a total liability before the Tribunal fees of £3,865.80. Adding the £300 due gives a total liability of **£4,165.81** and we find that that is the sum which is payable in respect of the costs claimed under the terms of the lease which we have highlighted above.

Andrew Dutton

Judge: A A Dutton

Date: 12th November 2018

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.