



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

**Case Reference** : MAN/00CK/LBC/2018/0017

**Property** : 5 Praetorian Drive, Wallsend, Tyne & Wear  
NE28 6RQ

**Applicant** : E&J Ground Rents No23 G Limited

**Representative** : Town & City Management Limited

**Respondent** : Mr D Leitch

**Type of Application** : Commonhold and Leasehold Reform Act 2002  
Section 168(4)

**Tribunal Members** : Mr I D Jefferson TD BA BSc FRICS  
Mr I R Harris MBE BSc FRICS

**Date of Determination** : 23 April 2019

**Date of Decision** : 31 May 2019

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**DECISION**

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## **DECISION**

1. The Tribunal determine that a breach of covenant has occurred in respect of the lease of 5 Praetorian Drive, Wallsend, Tyne & Wear NE28 6RQ.

### **Background**

2. The Applicant is the freeholder, and the Respondent the current leaseholder of the property. By Application dated 7 November 2018 the Tribunal was requested to make a determination under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 (the Act) as to whether or not a breach of covenant has occurred in respect of the lease dated 30 May 1997 relating to the property.
3. Directions were issued by the Tribunal dated 20 December 2018. They made provision for each party to submit a statement of case, initially from the Applicant, then the Respondent, then a brief right of reply by the Applicant. It was stated that the Tribunal did not consider an inspection would be required. Neither party requested a hearing and the Tribunal therefore convened on 10 April 2019 and considered the submissions from both parties in arriving at its determination.

### **The Lease**

4. The Applicants submitted a copy of the lease dated 30 May 1997 between the original parties with an original term of 999 years from 1 January 1996 in respect of a second floor flat then known as Plot 3 Roman Court, Wallsend, Tyne & Wear. The lease makes provision for payment of ground rent and there are the usual covenants by both parties with the Lessees covenants set out in the Fourth Schedule.
5. In addition a copy of the Land Registry OCE Leasehold Title TY336432 was also included confirming that the current leaseholder is the Respondent.
6. Of relevance to the Application paragraphs 8 & 9 within the Fourth Schedule as follows:
  8. To use the Property only as a private dwelling house and not to carry on thereon any trade manufacture or business of any kind
  9. No act matter or thing which shall or may be or become or grow to be a public or private nuisance or a damage annoyance or inconvenience to the Lessor or any occupier of the Other Flats or any other part of the Estate or which may lessen the value of any such property shall be carried on made or done or suffered on the Property

## **The Law**

7. 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 in respect of a breach by a tenants of a covenant or condition in the Lease unless subsection (2) is satisfied”.*

Section 168(2)(a) states:

*“This subsection is satisfied if-*

- a. It has been finally determined on an application under subsection (4) that the breach has occurred,*
- b. The tenant has admitted the breach”*

Section 168(4)(a) states:

*“A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred”.*

## **The Applicants Submission**

10. The Applicants submitted a succinct but comprehensive statement of case enclosing copy application form, directions, and various title documents and their statement of case. In addition a brief reply dated 8 March 2019 to the Respondents submission was also received and considered.
11. In brief the Applicants, by way of letters to the Respondent, dated 30 November 2017, 11 January 2018, and throughout August 2018 identified various items of equipment being stored both within the block of flats, and externally around the building which they considered to be a breach of the Lease, causing both fire and health and safety concerns and requested that all be removed.
12. By way of the brief reply to Tribunal the Applicants stated they made a re-inspection of the Property on 18 February 2019 and enclosed further photographs confirming that various items were still in place externally.
13. The Applicants appear to allege that the Respondent is in breach of both paragraph 8 and 9 of the Fourth Schedule of the Lease but the main thrust of their argument would seem to be paragraph 9 i.e. in respect of illegal storage of items rather than breach of the user clause.

### **The Respondents Submission**

14. The Respondent submitted a single letter dated 9 February 2019 in which he acknowledged receipt of the Applicants statement of case and stated that he had taken appropriate steps to remove all items that were being stored. He invites that the Applicants re-inspect and apologises for any inconvenience or nuisance caused stating that it will not happen again.

### **Tribunals Findings and Decision**

15. The Tribunal considered the Lease and in particular the Lessees covenants. The Tribunal find little or no evidence that the Respondents have been or are carrying on a business in contravention of the Lease term. However, from the evidence submitted it seems clear that the Respondent previously ran a landscape business, which is no longer trading but various chattels relating to that business be they ladders, steps, lawnmower, fuel storage containers, sign boards etc. were stored within the block of flats, and externally contrary to paragraph 9 of the Fourth Schedule of the Lease.
16. Whilst it appears that some of the items have been removed by the time of the Applicants re-inspection in February 2019 it is clear that not all had been removed as stated by the Respondent in their letter dated 9 February 2019. In any event compliance after the event does not eradicate an earlier breach.
17. The Tribunal therefore determine that a breach of covenant namely in respect of Paragraph 9 of the Fourth Schedule of the Lease in relation to this property has occurred. Neither party made any requests in respect of costs and this Tribunal makes no order as to costs.

**Tribunal Judge : I D Jefferson**  
**23 April 2019**