



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

**Case Reference** : CHI/00MR/LBC/2019/0011

**Property** : Flat 32 Oyster Quay, Port Way, Port Solent,  
Hampshire PO6 4TE

**Applicant** : Oyster Quay Management Ltd

**Representative** : Coffin Mews LLP

**Respondent** : Ms Toni Louise Kingsbury

**Representative** :

**Type of Application** : Determination of an alleged breach of  
covenant

**Tribunal Member** : Mr D Banfield FRICS

**Date of Decision** : 8 August 2019

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**DECISION**

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**Decisions of the Tribunal**

**It is determined that the Lessee Ms Toni Louise Kingsbury is in breach of Clause 9 of the Fourth Schedule of the lease dated 25 May 1989 Title number HP385113.**

## **The Application**

1. The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that a breach of covenant contained in the Respondent’s lease has occurred. The Applicant asserts that the Lessee has allowed a dog to be kept at the premises.
2. By Directions dated 17 April 2019 the Tribunal indicated that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal’s Procedural Rules 2013 unless a party objected in writing within 14 days. No objection has been received and the application is therefore determined on the papers.
3. The Directions provided a timetable for the exchange of documents between the parties leading to the preparation of a hearing bundle for the Tribunal’s use in making its determination.

## **The Lease**

4. The underlease is dated 25 May 1989 between (1) Regalian Homes Ltd, (2) Oyster Quay Management ltd and (3) Patricia Ida Slatter and is for a term commencing on 1 January 1988 and expiring on 28 December 2137. The Proprietorship Register indicates that the Lessee since 12 September 2002 has been Toni Louise Kingsbury. The Lessee’s covenants relevant to this application are;
  - a. Clause 6.6 requires the Lessee “To observe and perform the regulations set out in the Fourth Schedule hereto.....”
  - b. Clause 9 of the Fourth Schedule requires the lessee to “Not to keep any bird reptile dog or other animal in the Demised Premises without the previous consent in writing of the Management Company which may be given by the Management Company or their managing agents for the time being such consent to be revocable by notice in writing at any time on complaint of any nuisance or annoyance being caused to any owner tenant or occupier of any other flat in the Building”

## **The Evidence**

5. Extensive evidence has been provided by both Applicant and Respondent. At paragraph 1 of the Respondent’s witness statement she admits that she keeps a dog at her apartment but considered that due to the presence of other dogs the license (sic) was a formality.
6. In view of the admission given it is unnecessary for me to recite the remaining evidence here.

## **Discussion and Decision**

7. Clause 9 of the Fourth Schedule is clear that a dog or other animal may not be kept without obtaining the previous written consent of the Management Company or their managing agent. This is an absolute requirement and the Respondent admits that no such consent was

either sought or given. Given this admission there is no need for me to consider the extensive evidence on the behaviour of the dog, both for and against, as this would only become relevant if dealing with the revocation of a written consent previously given.

8. Given her admission that a dog has been kept without first obtaining written consent of the Management Company or their managing agents it is determined that the Lessee Ms Toni Louise Kingsbury is in breach of Clause 9 of the Fourth Schedule of the lease dated 25 May 1989 Title number HP385113.

D Banfield FRICS

8 August 2019

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

### **Appendix of relevant legislation**

#### **Commonhold and Leasehold Reform Act 2002**

##### **S.168 No forfeiture notice before determination of breach**

(1) 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 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) 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, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

**(4) 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 or condition in the lease has occurred.**

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.