



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

Case Reference : **MAN/00EY/LBC/2019/0027**

Property : **17 Hampstead Mews, Blackpool. FY1
2SG**

Applicant : **Finsbury Gardens (Blackpool) Property
Management Limited**

Representative : **Keebles LLP**

Respondents : **Mr Christopher J Hale and Miss
Katharine Beswick**

Representative : **In Person**

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

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S.D. Latham**

**Date of
Determination** : **29th January 2020**

Date of Decision : **6th February 2020**

DECISION

Decision

1. The Tribunal determines Christopher John Hale and Katharine Beswick are in breach of Clause 3 (11) and Paragraph 11 of the First Schedule of the Lease dated 20th August 1997.

Application

2. This is an application by Finsbury Gardens (Blackpool) Property Management Limited (“the Applicant”) for an order, pursuant to Section 168(4) of the Commonhold & Leasehold Reform Act 2002 (“the Act”).
3. The Applicant claims that there have been breaches of the covenants contained in Clause 3(11) and Paragraph 11 of the First Schedule of the Lease dated 20th August 1997 and made between the Applicant (1), Kensington Developments Limited (2) and Michael John Higgins (3) (“the Lease”).
4. The Lease relates to 117 Hampstead Mews, Blackpool (“the Property”).
5. The Lease was assigned to the Respondents on 17th December 1996.
6. The Property is a first floor flat in a building comprising 6 flats.
7. Directions relating to the application were issued on 15th October 2019, providing for the filing of additional documentation and statement by both the parties and thereafter for the application to be determined without an inspection or hearing.
8. The Respondents have not responded to the application, nor filed any documentation as directed.
9. Neither party requested a hearing.
10. The matter was listed for determination on 29th January 2020.

The Law

11. Section 168 of the Act provides that before a landlord may apply to forfeit any lease for a breach of either a covenant or condition of the lease by the tenant, it must have been determined that a breach has occurred. This can be done either by a determination under 168(4) of the Act, by the tenant admitting the breach, or by a court making a determination.
12. Section 168 (4), under which the present application is made, provides as follows:

“A landlord under a long lease of a dwelling may make an application to a First-tier Tribunal for a determination that a breach of covenant or condition of the lease has occurred”

The Lease

13. Clause 3(11) of the Lease provides:

“Not to do or permit upon the Demised Premises or the Development any act or thing which shall or may be or become a nuisance damage or annoyance or inconvenience to the Underlessor or their tenants or

the occupiers of any adjoining or neighbouring premises or the neighbourhood”.

14. Paragraph 11 of the First Schedule provides:

“No bird dog or other animal shall be kept in any Flat which shall cause annoyance to other Tenants or after the keeping shall have been objected to by the Underlessor nor shall any blind flower pot or window box be kept of places in the windows of or outside any Flat after such objection by the Underlessor”.

Submissions

15. The Applicant provided a Schedule of the alleged breaches of the covenants, commencing on 1st October 2012 and continuing at the time of the application. The complaint is the Respondents have kept cats at the Property and have failed to remove them despite having been requested to do so on more than one occasion.
16. In support of their application, the Applicant provided a copy of a Complaints Log, from 2013-2017, showing complaints from other tenants within the block. The complaints relate primarily to the presence of cat faeces and urine in the common parts and that this was from cats owned by the Respondent.
17. The Applicant provided copies of letters sent to the Respondents regarding the same issue from 2012 to 2019. On the 25th July 2019 a Letter before Action was issued requesting the animals be removed from the Property.
18. The Applicant provided statements by Kelvin Burton, the site manager of the managing company appointed by the Applicant, Homestead Consultancy Services Limited and Gerry McFaden, the Health and Safety Officer employed by the same company.
19. Mr Burton stated he had attended the Property in May 2019 and had spoken with Mr Hale. Mr Hale had confirmed pets were kept at the Property, acknowledged they caused a nuisance, but they belonged to Miss Beswick and would not be removed. Mr Burton further stated cleaning companies now refused to carry out work at the development because of the fouling in the common areas and the futility of cleaning the same. He now had to take measures to sterilise the common areas because of the pet fouling. It is causing a nuisance to the other tenants within the development.
20. Mr McFaden stated he had spoken with Miss Beswick who was unable to confirm how many cats were in the Property as she had lost count. He also advised he had spoken with a plumber who had worked at the Property, but had been bitten by fleas and had had to burn his clothes.
21. The Applicant provided photographs of pet fouling and a cat appearing to have a bed in the common parts.

Determination

22. The Tribunal considered the Applicant's evidence and the failure of the Respondents to respond to the application.
23. The Tribunal considered there was clear evidence the Respondents' pets caused the pet fouling in the common parts. This had not been denied.
24. The Tribunal noted that the Respondents have admitted there are cats at the Property and they would not be removed.
25. The Applicant has requested the Respondents remove the cats from the Property on at least two occasions.
26. The Tribunal therefore determines the Respondents have failed to comply with both Clause 3(11) and Paragraph 11 of the First Schedule and are in breach of them.

Tribunal Judge J Oliver
29 January 2020