



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

Case reference : **MAN/30UK/LBC/2019/0009**

Property : **Flat 154, Mountbatten Close, Trafalgar Walk, Ashton-on-Ribble, Preston, PR2 2EX**

Applicant : **Britannia Quay (Preston) LTD**
Representative : **Asia Munir of PM Legal Services**

Respondent : **Mr Mohammed Hanif**
Representative :

Type of application : **Breach of Covenant**

Tribunal member(s) : **Judge J White**
Valuer J Faulkner

Venue : **Northern Residential Property First-tier Tribunal, 1st Floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH**

Date of decision : **24 January 2020**

DECISION

The Decision

1. The Respondent has breached paragraph 13 of the First Schedule in his lease relating to noise nuisance.

Application

2. Britanna Quay (Preston) Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Mr Mohammed Hanif has breached Lessee's covenants within the lease of Flat 154, Mountbatten Close, Trafalgar walk, Ashton-on-Ribble, Preston, PR2 2EX (the Property).

Background

3. The Applicant is the Head Lessor and Landlord of the development, known as Britannia Quay, consisting of 236 leasehold flats over 3 floors. On 20 May 2003 the Respondent became the tenant of the Property, located on the second floor.
4. The Property was let under the terms and conditions of the lease signed by the parties to this application and the freeholder. The specific covenants referred to within the application are contained at clause 4 and paragraph 13 of the First Schedule. They refer to issues of noise nuisance.
5. The application was made on 17 May 2019. The Applicant indicated that it would be content with a paper determination. They submitted a bundle of documents including a statement of case, the lease, land registry documents and a witness statement together with supporting documents.
6. Despite the lapse of time the Respondent has not responded to the application in any way.
7. The Tribunal convened on 24 January without the parties to determine the application. It decided that there was enough evidence to determine the application without the need for an inspection, directions or hearing. The Respondent had not engaged with the complaints made or process so far. The Applicant had submitted a detailed bundle setting out their case. It would not be proportionate or in the interests of justice to adjourn.

The Issues

8. The Applicant's statement of case refers to the lease obligations and that noise nuisance has been reported emanating from the Property for a number of years. In particular, other residents of Britannia Quays:
 - (i) are able to hear movement within the Property; and
 - (ii) report noisy late-night gatherings at the Property particularly starting after midnight on a Friday and continuing until after 3 am.
9. Under Clause 4 of the lease the Respondent has agreed to observe and perform all management restrictions set out in the First Schedule. The First Schedule paragraph 13 states that "*no tenant shall make any undue*

noise in a Flat at any time or permit any musical or other audible sounds outside the flat”

10. The witness statement of Mr Bowler in addition refers to a breach of para 3 of the First Schedule, in that the Respondent has wooded floors. Paragraph 3 states *“no tenant shall reside or permit any other person to reside in a Flat unless the floors of all rooms (except the kitchen, bathroom and W.C.) and the internal entrance hall and corridors thereof are suitably covered”*[62]

The Law

11. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (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 (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."
12. 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
13. 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."

Applicants evidence

14. The Applicants Statement of case is detailed above. They have submitted a Witness statement of Mr Blower of flat 98 Mountbatten Close who is a director of Diceris Investments Ltd. He lives there with his son who has autism. The flat is directly below the Property.
15. Mr Blower sets out a history of noise nuisance at paragraphs 18-28. At paragraph 28 he states *“I have kept a noise nuisance diary logging the worst disturbances at particularly unsociable hours between 11pm-7am.”*
16. At paragraph 29 he states that *“following a recent inspection by Michael Heaton, a director of the Applicant company, it has transpired that the Respondent has solid flooring at the Property”*.
17. This statement is supported by the following evidence [64-73]:
 - (i) An email consisting of complaints about the noise dated 26 October 2018 followed by a letter to the Respondent dated the same day.
 - (ii) An email consisting of complaints about the noise dated 12 November 2018 followed by a letter before claim to the Respondent dated 29 November 2018.

- (iii) An email to the consisting of complaints about the noise dated 23 April 2019, 16 May 2019, 2 August 2019 followed by a letter to the Respondent dated the same day
- (iv) Noise nuisance diary from 29 November 2018- 14 August 2019 detailing 35 separate instances mainly after 1 am and consisting of raised voices, shouting, raucous laughter, floorboards creaking, doors slamming, loud TV.

18. Mr Bowler at para 35 in his Witness Statement sets out the remedies he wishes the tribunal to order.

Our Determination

19. The evidence that the Respondent has caused sustained noise nuisance in breach of paragraph 13 of the First Schedule is made out. Mr Bowler's statement and exhibits provide direct evidence, including a diary, that is persuasive. There were no reasons to disbelieve his evidence, though no other tenants or anyone from the management company provided any corroboration. It was supported by emails and a letter before claim. It is common for other tenants not to want to put any complaints to a court or tribunal. The Respondent has not denied any noise nuisance.
20. The evidence that the Respondent has hard floors in breach of paragraph 3 of the First Schedule is less clear. Mr Bowler's statement refers to an inspection by the Applicant's management company though is no direct evidence from them. The diary refers to creaking floors and nothing more. the tribunal are unable to reach a conclusion on this.
21. Mr Bowler has requested an order restraining the Respondent from further breach. We are not able to do so when making a determination in accordance with the statutory provisions. The Applicant may take further actions following our determination that a breach of covenant has occurred.

Order

22. For the reasons given, the application is allowed, we find that the respondents are in breach of paragraph 13 of the First Schedule of the lease

Cost applications

23. There were no cost applications and we found no grounds to make an order for costs.

Judge J White
24 January 2020

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 Tribunal 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 for 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 (i.e. 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.