



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

Case Reference : **MAN/00CY/LBC/2022/0157**

Property : **3 Bermerside House, Halifax HX3 0JY**

Applicant : **Bermerside House Management
Company Ltd**

Respondent : **Mr Nathan Stott**

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

Tribunal Members : **Mr Phillip Barber (Judge);
Mr A Hossain (Valuer)**

Date of Decision : **21 July 2023**

DECISION & REASONS

Decision

There has been no breach of the Respondent's lease and the application is refused.

Reasons

1. By this application, the Tribunal is asked to determine whether Mr Stott has breached a term of his lease by keeping at pet cat at the demised premises. The Tribunal has decided that he has not and the application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 is therefore dismissed.
2. Before a landlord can serve a notice under section 146(1) of the Law of Property Act 1925 to forfeit a long lease, an application has to be made to this Tribunal to establish that a breach of the lease has in fact occurred or the breach has been admitted. The application form itself avers that Mr Stott has admitted the breach, but we do not think this to be the case. He has admitted that he keeps a cat, and he has also admitted that he did not have written permission, but that does not mean he has admitted the breach. In fact, he denies that he has committed a breach. It follows that this Tribunal has jurisdiction under section 168(4) to determine whether a breach has occurred.
3. The facts are largely uncontested. Bermerside House (the "development") is a converted manor house, split into 16 apartments, 4 of which are on the ground floor. Mr Stott holds a long lease of the leasehold property known as 3 Bermerside House, a ground and lower ground floor apartment, having purchased the leasehold interest in January 2022. He moved into the property with his pet cat, largely unaware that this would cause a problem. The Applicant is the Management Company tasked with the management and maintenance of the development and which, as we understand things, also owns the freehold following collective enfranchisement. The Management Company employs Town and City Management Limited to manage the day to day running of the development.
4. Some months after he moved in, a complaint was made by a resident at the development about the cat and it was put to him that he was in breach of a term of his lease. Initially he asked for permission under the terms of his lease, but this was refused and thereafter communication and negotiation between Mr Stott and Town and City failed to resolve matters, resulting in this application.
5. Paragraph 4 to the second schedule of his lease provides, in so far as is relevant, the following:

"...no bird dog or other animal or pet which may reasonably be regarded as or reasonably likely to cause nuisance to any owner lessee or occupier of the other apartments in the building shall be kept in or on the demised premises without the consent in writing of the lessor"

6. The proper construction of that clause requires the Tribunal to be satisfied on balance that Mr Stott's pet cat can properly and reasonably be described as either causing a nuisance to the other occupiers or reasonably likely to cause such a nuisance.
7. "Nuisance" in this sense has a particular legal definition which is designed to prevent an animal or pet interfering with a co-occupier's quiet enjoyment of their apartment or reasonably likely to cause such an interference. There is an extensive body of caselaw which has developed over the years in relation to the issue of nuisance between neighbours but suffice it to say nuisance in this context is more than simply not being happy with the presence of a cat, it connotes a degree of intrusion and interference with the ability of neighbours to peaceably live in their respective flats.
8. Generally speaking, and in the view of the Tribunal, a single cat occupying a ground floor flat with access to the garden is highly unlikely to cause any interference with another occupier's quiet enjoyment of their property. A prohibition on pets is not unusual in a lease for understandable reasons. A barking dog, a large dog, an extensive collection of cats and such-like could quite reasonably be regarded as an interference with the quiet enjoyment of other occupiers, and a nuisance, but a single cat in a large ground floor apartment with access to the outside is an entirely different matter.
9. Several reasons have been put forward as to why Mr Stott's pet cat might cause a nuisance, which Mr Stott countered in his response. We will deal with them as follows.
10. There are concerns that the cat could move into the communal areas of the development and damage ornate fixtures and fittings. This has not happened, and we do not think it likely to happen. Mr Stott has provided photographs of his property and furnishings and there is no evidence of any cat damage. The soft furnishings are not clawed, and the woodwork is not scratched. The cat is let out into the garden via a French window and has otherwise no access to internal communal space.
11. There is concern about cat litter and cat food in the bins attracting rodents, insects and giving off a foul smell. We take judicial notice of the well-known fact that cats do not generally smell and, we think cats can be classed as clean animals. Mr Stott told us that his cat does not use cat litter and eats dried cat food and small cartons of fresh cat meat. These would not smell any more than any other form of food waste and so it is hard to understand how this might be perceived as a nuisance.
12. There is concern that the cat might foul the garden causing a problem for visitors, but as Mr Stott points out, there are other cats in the neighbourhood, and we doubt very much whether Mr Stott's cat might be a problem to those visiting the property. As he again points out, cats generally cover their waste so as not to attract other animals.

13. There was concern that wildlife might be affected by the cat, and whilst we acknowledge that this may well be the case, we do not think this constitutes a nuisance to other residents occupying the other properties. In any event we have little in the way of evidence with which we could properly determine that Mr Stott's cat constitutes a substantial risk to wildlife visiting the development.
14. There is concern that allowing a cat might lead other residents to take in dogs and other animals. What these other animals are is not spelled out, but this is a standard phrase in most leases and historically would have been designed to address the keeping of animals which can properly be defined as a nuisance. Whilst we accept that an increase in the keeping of pets in the property may well be a concern, we think it is misplaced. The terms of the lease do not constitute a blanket ban on the keeping of pets or other animals, only those which cause a nuisance or are likely to cause a nuisance. The term is clearly designed to allow residents to keep small unobtrusive pets such as a single cat in a ground floor property; a goldfish in a bowl; a hamster and such-like. Whilst we do not need to decide the point, a small dog in a ground floor flat might also be unlikely to cause a nuisance. However, there is a line which can be drawn and a large dog, a dog which barks, a cage full of parrots which squawk throughout the night, hens in the garden and such-like would probably be, and be likely to cause, a nuisance: but not a single pet cat.
15. Finally, one resident complains that Mr Stott's cat has been looking at him or her through the window. Mr Stott suggests that this may be a case of mistaken identity as there is another cat from a neighbouring property which might be looking through the said window. In any event, regardless of which cat it is looking through the neighbour's window it would be an affront to common sense for this Tribunal to decide that a cat looking through a window constitutes a nuisance such that a breach of a long lease has occurred and accordingly we discount it from our reckoning.
16. Accordingly, we do not think that Mr Stott has breached a term of his lease and he does not require the written permission of the lessor to keep a pet cat in his apartment. None of the complaints either individually or collectively stand up to scrutiny and whilst we acknowledge that the current Directors of the Management Company might not like him keeping a cat, they will not be able to forfeit his lease because of it.

Phillip Barber

Tribunal Judge

Date: 21 July 2023