FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: BIR/44UE/LBC/2024/0001**
Property	**: Apartment 6, Avon Heights, Swans Nest Lane Stratford upon Avon CV37 7LS**
Applicant	**: Avon Heights Property Management Limited**
Representative	**: Tracy Fearn**
Respondent	**: Mark and Lyn Tailford**
Type of Application	**: An application for an order that a breach of covenant or condition in the lease has occurred under section 168(4) of the Commonhold and Leasehold Reform Act 2002.**
Tribunal Members	**: Judge T N Jackson** **Mrs K Bentley**
Date and venue of hearing	**: 26 September 2024** **Video Hearing** **Midland Property Tribunal, City Centre Tower, 5-7 Hill Street, Birmingham, B5 4UU**
Date of decision	**: 1 October 2024**

DECISION

Decision

The Tribunal determines that the Respondents are in breach of the covenant in Clause 12 of Part I of the Fourth Schedule of the Lease.

Introduction

1. This is an application for the determination of breach under section 168 of the Commonhold and Leasehold Reform Act 2002. The application states that the Respondents have kept a cat at the Property in breach of Clause 12 of Part I of the Fourth Schedule of the Lease.

Procedural background

2. Directions dated 3 April 2024 were issued. Both parties provided bundles for the Tribunal. A video hearing was listed for 3 July 2024.

3. Despite being refused permission to introduce a further bundle of rebuttal evidence, the Applicant's representative had sent such a bundle on 14 June 2024, to which the Respondents objected.

4. On 3 July 2024, 2 hours before the hearing, the Respondents' sent an email to the Tribunal and the Applicant's representative including a letter which the Respondents wished to submit. The letter appeared to be a witness statement but in the form of a letter.

5. The parties attended a video hearing on 3 July 2024. However, the Tribunal determined that the time be used as a case management hearing due to the concerns regarding the documentation, much of which was not directly relevant to the case before the Tribunal. Directions 2 dated 30 July 2024 were issued in which the parties were reminded that the only matters before the Tribunal were:

    a. The interpretation of any relevant clause in the Lease and
    b. Evidence as to whether or not that particular clause had been breached.

6. Directions 2 advised that the Tribunal did not consider the following matters to be relevant:

    a. The alleged breakdown in relationship between the parties;
    b. The alleged motivation for the Applicant's representative's Tribunal application;
    c. Matters relating to the issue of the mobility scooter;
    d. Allegations regarding conduct at the 2024 AGM;
    e. Allegations regarding the appointment of Directors;
    f. Allegations of assault; and
    g. Whether the cat is a nuisance, as that is not pertinent to the clause as drafted.

7. However, Directions 2 advised that if the Tribunal determines that there has been a breach of covenant, the above matters may be relevant to any proceedings in the County Court for the enforcement of any such determination.

8. Both parties complied with Directions 2 and provided amended statements and bundles. The hearing was relisted for a video hearing on 26 September 2024.

9. On 30 August 2024, the Applicant's representative applied to debar several pieces of evidence submitted by the Respondents. The Tribunal gave the Respondents the opportunity to respond to the application, which they did via email on 17 September 2024. The Tribunal determined the application to debar evidence as a preliminary issue at the hearing.

Hearing

10. The hearing was held on 26 September 2024 by video. The Applicant's representative, Tracy Fearn attended with a witness Russell Davis, (a sole Director of the Applicant company from 2 January 2020 until February 2023 and a Director of the Lessor development company). Mark and Lynn Tailford attended with witnesses Squadron Leader Mark Marshall (Rtd), Michael James and Camilla Paske.

Preliminary issue

11. The Tribunal considered the Applicant's representative application to debar several pieces of evidence submitted by the Respondents in their response to Directions 2.

12. After considering the application and the Respondents' submissions, the Tribunal determined as follows:

    a. <u>Respondent 1's undated polygraph report</u>
    The Tribunal determined not to allow the report to be adduced as the Respondents had not complied with the requirements of Rule 19 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 as amended. The Respondents had not sought the permission of the Tribunal to adduce expert evidence. The written report did not comply with the requirements of Rule 19(5) in particular in relation to i) containing a statement that the expert understood their duty under Rule 19(1) and had complied with it, ii) containing a statement of truth and iii) being addressed to the Tribunal. It is not apparent from the report that the author knew it was going to be placed before a Tribunal for judicial purposes.

    In the absence of an expert, the Tribunal were unclear as to how a polygraph would record responses which related to a genuinely held but mistaken belief.

    In addition, polygraph reports are generally not admissible in Tribunal proceedings unless at the discretion of the Tribunal. Even then, such a report can't be used in evidence in its own right but is limited to being used to add weight to the evidence of a party.

    b. <u>Witness statement of Jagtar Singh</u>

In the absence of Jagtar Singh's attendance as a witness at the hearing, the Tribunal determined to exclude the statement as Jagtar Singh could not be cross examined.

c. Details of the Respondents' attempts to contact Russell Davis on 19 occasions and alleged 'undue influence'.
The Tribunal determined that the details of such contact should not be excluded. There is no property in a witness and either party can approach them. The Tribunal did not find any evidence of 'undue influence'. It is clear that the Respondents were seeking to obtain a response from Russell Davis as a follow up to a Whats app message he had sent to the Respondents on 20 March 2024 where he stated that he would call the following day. The query raised by the Respondents was on a key issue of dispute.

d. Witness statement of Squadron Leader Mark Marshall (Rtd)
The Tribunal determined that the witness statement should not be excluded. The Applicant's representative's concerns regarding alleged hearsay and lack of first-hand knowledge could be addressed by the Applicant's representative in cross examination, as the witness was present at the hearing.

e. 2nd witness statement of Mark Tailford
The Tribunal determined that the parts of the witness statement that related to attempts to contact Russell Davis witness statement should not be excluded for the reasons referred to in c) above. Further, Mark Tailford was present at the hearing and could be cross examined on any areas of concern. The Tribunal has determined that it is not accepting the polygraph statement and therefore the relevant parts of Mark Tailford's statement which refer to the same are excluded.

f. Witness statement of Michael James
The Tribunal determined that the witness statement should not be excluded. The Applicant's representative's concerns regarding alleged changes in his statement compared to an earlier version could be addressed by the Applicant's representative in cross examination as Michael James was present at the hearing.

Background

13. The Respondents moved into the Property on 23 October 2020. They were aware of Clause 12 of Part 1 of the Fourth Schedule of the Lease, ('Clause 12'), which provides that pets are not to be kept in the Property save with the Lessor's or it's managing agent's consent. They wished to bring a cat and dog to the Property. They sought the consent of Russell Davis in his capacity as Lessor and Director of the Applicant company. There is a dispute between the parties as to when the conversation took place, namely before or after they occupied the Property. The Respondents understood that they had got verbal agreement to the cat and the dog staying. Russell Davis says he gave permission for the dog only on compassionate grounds. Both pets were kept at the Property but the dog subsequently died. All residents and Russell Davis were aware that the cat was at the Property but no formal complaints were raised until after the Respondents

had raised an issue with the Applicant's representative regarding a mobility scooter being parked in a communal area by the residents of one apartment, one of whom was terminally ill and receiving palliative care at home. The Respondents alleged that this was in breach of the Lease and in a letter to the Applicant's representative dated 9 October 2023 stated that *'Sadly, rules are rules and they don't allow exceptions.'* It appears that a formal complaint regarding the keeping of the cat was then raised with the Applicant's representative. Relationships between the residents became strained following the Respondents' report of the mobility scooter. The Applicant's representative referred both matters to a solicitor. Following investigation and advice, the Applicant's representative advised that the location of the mobility scooter was not a breach of the Lease. In relation to the cat complaint, the Applicant's representative contacted the Respondents to obtain evidence of the consent required under Clause 12 of the Lease, as no evidence of such consent could be found in the records of the Lessor or Applicant company. The Respondents were aware of Clause 12 and say that prior to moving into the Property on 23 October 2020, they had obtained verbal agreement from Russell Davis in his capacity as Lessor for the pets. Russell Davis advised the Applicant's representative that he had only given consent for the dog for compassionate reasons. As the matter could not be resolved, the Applicant's representative applied to the Tribunal.

The Issues

14. The Respondents accept that Clause 12 provides that pets are not to be kept in the Property save with the Lessor's or it's managing agent's consent. The Respondents also accept that they were aware of the Clause before buying the Property and that they have kept a dog (since deceased) and a cat since moving into the Property in October 2020. They accept that they have no written consent but say they have a verbal agreement for the cat and the dog to be kept in the Property.

15. The first issue therefore relates to whether Clause 12 requires the consent to be written. If it does not need to be written consent, a further issue is whether, as a matter of fact, consent was given verbally by Russell Davis to keep a cat and a dog at the Property.

The Lease

16. The Property is a second-floor apartment in a recently constructed residential development of 7 high end apartments. By Lease dated 23 October 2020, between Castle Homes of Warwick Developments Limited (Lessor) and Mark Tailford and Lynn Joan Tailford (Lessees), the Property, was demised for a term of 999 years from 1 July 2020 at a ground rent of £1 per annum (subject to review) subject to service charges and the payment of a premium of £757,000.

17. The Property and Apartment 7 were occupied from mid-October 2020. The remaining apartments were sold between 30 June 2021 and 22 February 2022.

18. Russell Davies is the Finance Director of Castle Homes of Warwick Developments Ltd. The Applicant company became the freehold owner of the building on 15 May 2023. The Applicant company has 7 shareholders. The Applicant company also acts as Property Manager for the Lessor. Russell Davis was the sole Director of

the Applicant company from 2 January 2020 to 1 February 2023. Mrs Tailford was Director of the Applicant company from 1 February 2023 to 6 July 2023, following which the Applicant's representative was appointed as a Director. Morten Illum was a Director between March 2023 and October 2023.

19. Clause 2 of the Lease provides:

'*Interpretation*
Where in this Lease the context so admits

2.1 references to 'the consent of the Lessor or words similar to that effect are references to a consent in writing signed by or on behalf of the Lessor and "approved" or "authorised" or words to similar effect mean (as the case may be) approved in writing or authorized by or on behalf of the Lessor'.

20. Clause 8.2 of the Lease provides:

'The Contracts (Rights of Third Parties) Act 1999
The Lessor and Lessee agree that

8.1 save where expressly provided in Clause 5.1 hereof this Lease shall not be construed as providing nor purporting to confer a benefit on any person who is not a party to this Lease pursuant to the Contracts (Rights of Third Parties) Act 1999

8.2 the Lessor and the Lessee may by agreement vary this Lease without the consent of any third party to whom the right of enforcement of any of its terms has been expressly provided save for the Lessee's Covenants set out in Part I of the Fourth Schedule hereto.'

21. Clause 12 of Part 1 of the Fourth Schedule of the Lease provides that the Lessee covenants with the Lessor and the Owners of the other Apartments:

'Pets
Not to keep any bird dog or other animal or pet in the Premises save with the Lessor's or its managing agent's consent'.

22. Clause 13 of Part II of the Fourth Schedule (Covenants by Lessee with Lessor) provides:

'To pay costs
To pay to the Lessor on an indemnity basis all proper and reasonable costs fees and charges and expenses (including legal costs bailiffs fees and surveyors fees) incurred by the Lessor

13.1 attendant upon or incidental to every application made by the Lessee for a consent or licence required or made necessary by the provisions of this Lease and whether the same be granted or refused or proffered subject to any lawful qualification or condition or whether the application be withdrawn'.

Submissions

Claue 12- Issue of written consent

23. The Applicant's representative says that despite extensive investigations, there is no evidence of written consent, thereby by implication, suggesting that the consent needs to be written

24. The Respondents say that Clause 12 does not refer to written consent and therefore verbal consent was sufficient to meet the provisions of the clause.

25. The Tribunal referred the parties to Clause 2 of the Lease, (Interpretation Section) which did not appear to have been considered by either party in their submissions but which, in the Tribunal's view, was at the heart of the matter. As the parties were unrepresented, the Tribunal adjourned for an hour to allow both parties to consider the Lease provisions before continuing with the hearing.

26. After the adjournment, the Respondents accepted that they had not been aware of Clause 2 of the Lease and that it did appear that written consent was required and that they had no such written consent. However, they submitted that in agreeing verbally, Russell Davis had varied the Lease as provided by Clause 8.2 of the Lease, so that the provisions of Clause 2 regarding interpretation of the Lease did not apply to Clause 12. They also submitted that Russell Davis, in his capacity as Director of the Applicant company, (as distinct from his capacity as Lessor) and Michael James were 'third parties' under Clause 8.2, both of whom had verbally agreed to the Respondents keeping pets and the Lease was thus varied.

27. The Applicant's representative disagreed with those submissions and stated that they were a misinterpretation of Clause 8.2 of the Lease.

Issue of alleged verbal agreement

28. The Applicant's representative alleges that following extensive investigations of the Applicant company's records, there are no records of any consent or verbal agreement to keep pets in the Property. Upon making enquiries of Russell Davis, he advised the Applicant's representative that he had given verbal consent to the Respondents to keep the dog at the Property on compassionate grounds as the dog had had to be rehomed following the illness of the father of one of the Respondents and the dog 'looked to be on its last legs' and therefore it was a short- term situation. As so, it didn't need to be in writing. The verbal agreement was contingent on getting the approval of the owner of Apartment 7, Michael James, which was the only other apartment that had been sold at that time and the other apartments were vacant. His evidence was that this conversation occurred after the Respondents had moved in and he had seen them with the dog which was quite large.

29. His oral evidence was he did not give consent for the cat as the Lease prevented the keeping of pets without consent and this was to protect other residents at the apartments who may not agree with pets in the development and who bought the apartments on that basis. Once the Applicant company had sold all 7 flats, his practice was to allow the residents to manage the development themselves as far

as possible and therefore it was open for all of the residents to agree whether or not a pet was allowed to be kept by a resident and such an agreement between residents could be accommodated by written consent under the Lease.

30. On 19 December 2023, Russell Davis rang the Respondents in response to a phone call from them after they had received letters from the Applicant's representative regarding the cat and the alleged breach of the Lease. Russell Davis says he attempted to act as a broker as relationships had become strained following the mobility scooter complaint and subsequent complaint regarding the cat. His evidence is that as the Respondents were unwilling to act on his suggestion to apologize for the mobility scooter complaint, he was unable to assist any further. He says he did not respond to the Respondent's numerous attempts at contact to discuss the matter as he was unable to assist in the situation It was a matter for the residents to resolve. Further he had had a bereavement in January 2024 and was dealing with estate issues. He denies, as is alleged by the Respondents, that in that conversation he had confirmed giving consent for the cat or that he would send an email to confirm that consent had been given for the cat. He was clear in his oral evidence that he had never given verbal consent for the cat as that would have impacted on other residents. Such consent would need to be written in accordance with the Lease. Verbal consent was given for the dog to be at the Property for compassionate reasons only.

31. The Respondents allege that they were aware of the need to check prior to buying the apartment, whether permission was required to keep pets. They allege that IN September 2020 prior to moving in, they spoke to Russell Davis, (as the appropriate person as the Lessor), on site who gave permission verbally for a cat and dog to be kept in the Property provided that Michael James of Apartment 7, had no objection. Russell Davis was to speak to Michael James about it. On asking Russell Davis whether written permission was required, he said' it was not necessary'. The Respondents checked the Lease and noted that the relevant clause did not refer to consent being written and therefore they did not seek written permission.

32. Both pets moved into the Property in Oct 2023 and have lived there since, although the dog has since died. The Respondents say that the cat is an indoor cat that does not cause a nuisance and Russell Davies, and the residents, including the Applicant's representative in her capacity as Director of the Applicant company, have been aware, throughout, that the cat lives there. There have been no complaints regarding the cat until an issue arose in relation to a mobility scooter kept in the communal area about which the Respondents complained to the Applicant's representative.

Decision

Issue of written consent

33. Having read the Lease in its entirety, we determine that the Clause 2 applies to the Clause 12 and therefore written consent is required to keep pets in the Property. That interpretation is based on the normal construction of Clause 2. The formality of the need for written consent is recognized by the arrangements set out in Clause 13 of Part II of the Fourth Schedule which allows a Lessor to require indemnification of the costs of providing consent where it is required.

34. We do not accept the Respondents' submissions that Clause 8.2 allows a Lessor and Lessee to vary the Lease verbally. On the construction of Clause 2, we find that Clause 2 also applies to the provisions of Clause 8.2 so that any agreement between the Lessor and Lessee as to variation of the Lease also has to be written. Irrespective of the construction of the Lease, it would be nonsensical to have a 999 year Lease where verbal agreements could be made at any time to vary the provisions of the Lease without any documentary evidence. How would the parties know at any time what the Lease provisions were? How would a subsequent purchaser know what the current Lease provisions were by which they would be bound? Further, Russell Davis' evidence was that in discussions with the Respondents he had never had the intention to vary the Lease as alleged. Without such intention there can be no agreement to vary.

35. Neither do we accept the Respondents submissions that Clause 8.2 allows the Lessor and Lessee to vary Clause 12 if third parties agreed. That is misunderstanding the construction of the Clause. Clause 8.2 refers to 'without the consent of any third party' rather than 'with the consent of any third party'. We find that on a proper construction of the Lease, whilst Clause 8.2 allows the Lessor and Lessee to vary the Lease, it excludes any variation to the Lessee's covenants 'with the Lessor and the Owners of other apartments' as set out in Part I Fourth Schedule, of which the Clause 12 is part. The purpose of Clause 8.2 is to protect the Lessee's covenants that are made with the other Owners of the Apartments, not to dilute them by the Lessor and Lessee unilaterally varying them to the possible disadvantage of the other Owners.

36. We therefore find that Clause 12 of Part I of the Fourth Schedule required written consent. The Respondents have been clear throughout that they have never had written consent. Therefore, the Respondents have breached the covenant set out in Clause 12 of Part I of the Fourth Schedule.

37. If we are wrong on that issue, we went on to consider whether there was a verbal agreement between the Respondents and Russell Davis, and if so, its' terms.

Issue of alleged verbal agreement

38. We heard evidence from the Applicant's representative, both Respondents and all of the witnesses.

39. We attached weight to the Applicant's representative's evidence that investigation of the Applicant company records showed no evidence of written consent or reference to the verbal agreement.

40. We did not find the Respondents to be credible. Their version of events has been inconsistent and has changed throughout the case. We accept that some of the inconsistency may be due to the lack of knowledge of legal terminology. However, reference by both Mr and Mrs Tailford to a 'pet policy' having been approved by Russell Davis and used as evidence of the 'verbal agreement' was clearly incorrect. The 'pet policy' was actually a paragraph included in some Health and Safety Guidelines attached to the July Avon Heights Quarterly Review of 1 July 2023 when Mrs Tailford was Director of the Applicant company. The paragraph related to cleaning up after animals and related mainly to dogs and cats permitted to be

kept outside. It was not a 'pet policy'. The Guidelines had been 'cut and pasted' and were generic rather than particular to Avon Heights. Paragraph 15 of Mrs Tailford's witness statement dated 26 August 2024 confirmed in her oral evidence that '*the Applicant company was aware of pets in the building and that as no shareholders/owners/resident/ tenants had commented on this, it was logical to assume that permission had been obtained*' was, in our view, misleading. Whilst we accept that the Applicant company through the Applicant's representative and the residents were aware of the cat's presence, that is not the same as permission having been obtained. We consider that consent in this context has to be express rather than consent through inaction. Paragraph 22 of Mr Tailford's statement dated 26 August 2024 refers to the 'pet policy' and comments that *'This specifically mentions both dogs and cats and it clearly indicates that pets have been permitted. This is also proof of permission. 'If you are permitted to keep a cat outside, make sure to tidy up after it as well'. At the time of sending this review, it was only Apartment 6, Avon Heights who had a cat'*. We find Mr Tailford's statement also misrepresents the situation. The Health and Safety paragraph was cut and pasted, did not specifically refer to Avon Heights and does not actually say that pets have been permitted.

41. In previous Directions, we asked that the Respondents produce evidence from the conveyancing transaction. However, Mr Tailford told us that the documents were archived at the solicitor's office and it would take time and expense to retrieve them. Whilst we appreciate that there will be time and expense in solicitors retrieving the relevant documents, Mr Tailford chose to prioritise getting a polygraph test rather than getting an estimate of the cost and timescales involved in retrieving the documentation to assess whether it was reasonable.

42. In our view, it is implausible that purchasers of a £757,000 apartment who have been put on notice that the Lease requires consent for the keeping of pets would not have ensured that any 'verbal agreement' was reduced to writing as part of the conveyancing transaction or indeed at any time thereafter, as without such evidence, they are, on the face of it, in breach of the Lease. Indeed, Mr Tailford's evidence was that on being given verbal agreement by Russell Davis, the Respondents checked the Lease to see if the agreement did need to be in writing (but unfortunately did not read the Clause 2 Interpretation). The Respondents have not offered any contemporaneous documentary evidence referring to the verbal agreement such as email, text, Whats app between themselves and Russell Davis to confirm and evidence the alleged agreement on what they say was a very important issue to them.

43. Further, it lacks credulity that if,as they allege, the Respondents had obtained verbal agreement in September 2020 when the Lease had not yet been completed and had been so concerned to check the Lease to clarify whether it was required in writing, they would not think to raise the matter with their conveyancing solicitor. This would have allowed the solicitor to check the terms of the draft Lease and to ensure that any verbal agreement was documented before completion of the Lease, (whether it was required in writing or not), as it was clearly an important issue for the Respondents and also potentially a breach of a covenant in the Lease without any evidence as to the agreement. If the conveyancing solicitor had been made aware of the verbal agreement before the completion of the Lease, it would have been his professional responsibility to

ensure that it was documented as otherwise his clients would be exposed to allegations of breach of covenant.

44. Mr Tailford also prioritized trying to obtain a copy of a transcript of the phone conversation between himself and Russell Davis on 19 December 2023 in which he alleges that Russell Davis confirmed that he had given permission for the cat. Mr Tailford has not provided any direct evidence from either his or Russell Davis's phone providers that such a transcript is legally available for himself or Russell Davis to seek a copy.

45. The Respondents rely on the evidence of other witnesses to support the nature of the verbal agreement. However, none of those witnesses were present when the alleged agreement was made and they can only repeat what they were told by Mr Tailford, which may have been incorrect.

46. We found Russell Davis to be a credible and compelling witness. His evidence has been consistent throughout. His explanation for not returning the numerous contacts made by the Respondents on the issue was entirely credible. This was a dispute between residents in a development where all the apartments had been sold and his view was that it was for the residents to resolve. A complaint regarding the presence of the cat had only arisen following the Respondents' complaint regarding a mobility scooter which appears to have soured relationships between the residents. He had attempted to act as a broker between the parties to assist in a resolution but this was not possible. Further, at the time, he was dealing with a sick close relative and subsequent bereavement in January 2024.

47. Russell Davies is an experienced developer of apartments and uses a solicitor to draft the leases for each development. The Lease is in a standard form and, from his evidence, he is conscious of the impact of leaseholders' actions on each other in such developments and the need to ensure that clauses such as Clause 12 are included to protect the enjoyment of apartments for all residents. We accept his evidence that shortly after the Respondents moved into the Property, he gave verbal agreement to allow the Respondent's dog to be kept in the Property on compassionate grounds, as it was likely to be in the short term as he considered that the dog was 'on its last legs' and as yet, 5 of the 7 apartments were vacant. This was subject to the agreement of Michael James who was moving into Apartment 7 at around the same time as the Respondents. He discussed the matter with his business partner. The dog was large and may have been off putting to potential buyers and affect sales of the apartments. We accept that Russell Davis did not give consent for a cat, as his view was that it was specifically prohibited by the Lease, with which provisions he was familiar. Any such permission would have needed to be referred to the solicitor acting for the Lessor development company to document as part of the transaction, as it was a formal consent required under the Lease. However, he commented that in particular circumstances, if all the residents agreed that a cat could be kept, then appropriate consent could be sought under the provisions of the Lease and this avenue had been open to the Respondents throughout the whole dispute. That would not be a variation of the Lease but rather written consent provided in relation to a clause in the Lease which required consent.

48. We attached weight to the oral evidence of Michael James that whilst he had been asked about the dog by the Respondents and Russell Davis, he had never been asked about a cat. He was not aware initially that a cat was being kept in the Property and did not know when it had arrived. He considered the dog was old and 'on its last legs' and therefore the dog being in the Property was not going to be a long-term problem.

49. We attached little weight to the evidence of Squadron Leader Mark Marshall (Rtd), as whilst it provided context of the need for the Respondents to check whether they needed permission to keep pets based on his own experience as a flat owner, he had no direct evidence himself of what Russell Davis had or had not said to the Respondents but rather was limited in his knowledge to what the Respondents had told him as to the alleged agreement.

50. We attached little weight to the evidence of Camilla Paske. It related to a conversation between herself, the Respondents, Russell Davis and a site foreman Ivor when being allowed to view Apartment 7 before it was occupied. Whilst we accept that there may have been conversation regarding pets and cat names, that does not necessarily translate to Russell Davis knowing that a cat was going to be kept at the Property by the Respondents. Whilst in her statement she referred to conversation regarding the Respondents pets getting used to being in an apartment after their previous home, this could apply to the dog for whom Russell Davis had given permission and therefore would not think to query the conversation. Further, her knowledge of the alleged conversation between the Respondents and Michael James is based solely on what the Respondents had told her rather than any direct knowledge.

51. As we prefer the evidence of Russell Davies, we find that verbal agreement was given on compassionate grounds for the dog to be kept at the Property but that no verbal agreement was given for the cat. We therefore find that had the Lease not required written consent, there was no verbal agreement in relation to keeping the cat at the Property and therefore there was a breach of the covenant in Clause 12 of Part I of the Fourth Schedule.

Obiter

52. Much of the earlier documentation in the case relates to matters which may be relevant to any enforcement proceedings in the County Court if the Applicant company decides to seek enforcement of the breach of covenant. We have not commented on whether we consider the Respondents to have a genuine but mistaken belief that they were given permission to keep the cat at the Property or whether they have known since the beginning that they had no permission for the cat, as that is relevant to enforcement rather than our determination as to whether there was a breach.

Costs

53. Neither party made an application for costs and we make no such order.

Appeal

54. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson