

## UPPER TRIBUNAL (LANDS CHAMBER)



**UT Neutral citation number: [2011] UKUT 436 (LC)**

**UTLC Case Number: LRX/100/2010**

## TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***LANDLORD AND TENANT – lease construction – whether landlord is entitled to entry through agent – whether tenant can refuse entry to landlord’s agent – whether breach of lease***

**IN THE MATTER OF AN APPEAL FROM A DECISION OF THE  
LEASEHOLD VALUATION TRIBUNAL**

**BETWEEN    BEAUFORT PARK RESIDENTS MANAGEMENT    Appellant**  
**LIMITED**

and

**MR ABDOLREZA SABAHIPOUR**      **Respondent**

**Re: 139 Beaufort Park  
London NW11 6DA**

**Before: Her Honour Judge Walden-Smith**

### Decision on Written Representation

## **DECISION**

### **Introduction**

1. This is an appeal by way of review from the decision of the Leasehold Valuation Tribunal for the London Assessment Panel dated 23 June 2010 under section 84(3) of the Commonhold and Leasehold Reform Act 2002. Permission was refused by the LVT and granted by the President on 31 August 2010. The matter was originally to be by way of an oral hearing but was determined to be suitable for a hearing by way of written representations by order made on 29 August 2011.

2. The issue between the parties is an interpretation of the provisions contained in an Underlease of the premises known as 139 Beaufort Park, London NW11 6DA (“139 Beaufort Park”) and whether the Appellant landlord is entitled to enter the premises by its proclaimed agent, Mr Jim O’Brien. There is a personal conflict between the Respondent and Mr O’Brien. The Respondent does not wish to allow him entry onto his premises, although he will allow others to attend on behalf of the Appellant landlord. The Appellant landlord says that this is a matter of principle. It is not for a tenant to dictate the identity of the agent the landlord wishes to attend the premises in accordance with the terms of the lease.

### **The Factual Background**

3. Mr Sabahipour, the Respondent to this appeal, is the leasehold owner of 139 Beaufort Park pursuant to an underlease which is for a term from 29 September 1976 (“the Lease”). The LVT decision letter refers to the lease term being 999 years (less 20 years), whereas the Lease refers to 126 years. I am not clear as to where this discrepancy arises but it is not material to the decision that I have to make. It may be that there has been an extended term. The lessor of 139 Beaufort Park is Beaufort Park Residents Management Limited (“Beaufort Park Residents”), the Appellant in this appeal. Beaufort Park Residents is a management company and is owned by the leasehold owners of the flat who all take a share in the management company.

4. The block of flats comprises 141 flats with garages in 7 purpose built blocks each of 3 stories, built in 1938, and all held on long leases.

5. Mr James Anthony (“Jim”) O’Brien is the leasehold owner of 121 Beaufort Park. He has been a Director and the Secretary of Beaufort Park Residents since 3 October 2006.

6. Mr Sabahipour had reported to Beaufort Park Residents in or about 2008 that there was a leak in his property. It is Mr Sabahipour’s understanding that the leak is caused by a broken pipe situated within the communal parts of the building and it is his contention

that the disrepair is therefore the responsibility of Beaufort Park Residents. Mr Sabahipour is keen to have the pipes on his property inspected and for any necessary works to be carried out. Mr Sabahipour is content for any “suitably qualified person” to enter the premises, for example Dalkia Limited, who are apparently paid by Beaufort Park Residents to maintain the boilers and pipework. He will not allow Mr O’Brien entry because he does not accept that he has any authority or that he is suitably qualified to enter and inspect the leak.

7. Mr Sabahipour alleges that Mr O’Brien has instructed the managing agents employed by Beaufort Park Residents not to communicate with him on any issues nor provide him with any services; that he has not been assisted with complaints that he has with respect to his neighbour (again on the instructions of Mr O’Brien); and that Mr O’Brien has threatened to take action against him if he installs a television satellite dish even though other tenants have been allowed to install such satellite dishes.

8. It is not my role to determine whether any of these allegations against Mr O’Brien have any foundation. It is plain that the relationship between them, for whatever reason, is not a good one. I will simply comment that if, and I do not have any evidence save for the allegations that this is happening, Mr O’Brien is behaving in any of the ways that are suggested by Mr Sabahipour then that is reprehensible and should be stopped.

9. Mr O’Brien’s statement for the purposes of this appeal provides that he is the “first point of contact in matters of reported leaks and water ingress in the block.” He says that this is because he has a “detailed knowledge of the heating and domestic service systems within the flats. The leak was reported in an area in the bathroom which contains a series of pipes, only one of which is the sole responsibility of BP [Beaufort Park Residents] being the heating pipe. Upon receipt of a complaint I need to attend the property to assess and trace the leak.” He goes on to say that his role includes the oversight and co-ordination of the various persons and companies instructed by Beaufort Park Residents to carry out services and that he liaises with the managing agents, refers instructions and directs management. He says that the Dalkia engineers are contracted solely to service the boiler house and have never dealt with the matter of tracing or investigating leaks within the system (that is, I presume, within the individual flats). He says that external contractors are instructed once he has attended and traced the problem and ascertained whether it is a matter for Beaufort Park Residents to pursue.

10. A stalemate was reached between the parties. Mr Sabahipour complained of a leak that he wanted fixed. Beaufort Park Residents wanted to inspect his property through its agent Mr O’Brien. Mr Sabahipour, because of the personal difficulties between them, would not allow Mr O’Brien entry but would allow entry to any other qualified agent.

## **The proceedings**

11. An application was made to the LVT by Beaufort Park for a determination pursuant to the provisions of section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Mr Sabahipour is in breach of the terms of the Lease. If determined that Mr

Sabahipour is in breach then that would result in Beaufort Park Residents as landlord being permitted to serve a section 146 notice so as to forfeit the Lease. Section 168 provides as follows:

- “(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 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 is has been finally determined on an application under subsection (4) that the breach has occurred
  - (b) ...
  - (c) ...
- (3) ...
- (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.”

12. The LVT determined that Mr Sabahipour was not in breach of the terms of the Lease. It found as follows:

“We do not think that the Respondent’s refusal to admit Mr O’Brien into his home can fairly be described as a breach of his lease. It is clear that these two men have a difficult relationship. It is surprising that the Applicants should make an issue out of this. We reject the submission that the Applicants can insist on who attends on inspection. It is common ground that the Respondent will allow access to check on the source of the leak. Indeed the Respondent having reported the leak and having suffered water ingress wishes to have the problem investigated and sorted out as soon as possible. Despite his knowledge of the heating system we do not accept that it is necessary for Mr O’Brien to be present when a plumber carries out an inspection. Nor do we understand why either Dalkia Limited or the appointed managing agents cannot make arrangements for the inspection ... the Respondent is perfectly entitled to refuse Mr O’Brien access to his flat. To describe this as a breach of his lease when he is not refusing access in principle is untenable.”

13. Reading between the lines, it appears that the LVT thought that Beaufort Park Residents were being “heavy-handed” in bringing the application under section 168(4) of the 2002 Act which paves the way for a forfeiture action to be brought. It seems that the LVT were not only concerned with the possible consequences of a finding that Mr Sabahipour was in breach of his lease, but that if he was willing to let others into his flat then there was no problem. While I have some sympathy for that view, it is not the issue to be determined.

14. The issue to be determined is a simple one. By the terms of the Lease what class of person does Mr Sabahipour have to allow into his property; and does Mr O'Brien fall within that class of person. If he is outside the class of person that Mr Sabahipour has to allow in by virtue of the provisions of the Lease then he is not obliged to let him in; if he is within that class of person then Mr Sabahipour must allow him entry in accordance with the terms of the Lease and a failure to do so would make him in breach of the terms of the Lease.

## **The Lease**

15. The relevant terms of the Lease are these. Clause 5 provides that the Lessor hereby further covenants with the Lessor:

“(iii) To co-operate at all times with the Lessor and all others interested in Beaufort Park in all measures necessary for repairing maintaining and upholding Beaufort Park and in particular and without prejudice to the generality of the foregoing to permit the Lessor and its Surveyors or Agents with or without workmen and others at all reasonable times to enter upon the Flat for the purpose of examining the state and condition thereof ...”

16. This is a very widely worded clause – the lessee is obliged by way of covenant to permit the Lessor, its Surveyor or Agents, with or without workmen, access to the premises. The LVT set out that it rejected the submission that the Applicant can insist on who attends an inspection. In fact the submission was that the Respondent cannot dictate who carries out the inspection. That submission is correct. So long as the person who is seeking access comes within the definition of being the Lessor, its Surveyor or its Agent then access must be given by the lessee; so long as the purpose of entry is for “examining the state and condition” of the flat.

17. I have no doubt that Mr O'Brien is properly an agent of Beaufort Park Residents. He is the Secretary and a Director of Beaufort Park Residents, and has been since 2006. The minutes of 25 November 2008 further show that he chaired the Directors' meeting and that he had reported that he had incorporated a management role into his position, dealing with day to day issues, emergencies, resident issues, such as service charges, repairs and maintenance. It also shows that it was agreed that he should be paid an annual stipend for his work of £3,500 (one of the Directors had suggested a stipend of £10,000 which he refused).

18. In all the circumstances, therefore, it is clear that Mr O'Brien does fall within the class of persons that the lessee must permit access and, on the basis that the purpose of his access is to investigate the pipes and the potential cause of the leak which is plainly an examination of the “state and condition” of the premises, he is entitled to be given access by Mr Sabahipour. He is not entitled to access for any other purpose at this time.

## **Conclusion**

19. For the reasons set out above, Mr O'Brien is entitled to access under the terms of the Lease. The Lessor, Beaufort Park Residents, sought a determination under section 168(4) of the 2002 Act. Such a determination would permit Beaufort Park Residents to institute section 146 forfeiture proceedings. That would plainly be a draconian step if Mr Sabahipour, in light of the outcome of this appeal and my construction of the terms of the Lease, would be willing (albeit reluctantly) to allow Mr O'Brien to inspect in accordance with the terms of the Lease.

20. In the circumstances, while I make it clear that Mr O'Brien is entitled to access 139 Beaufort Park for the purpose of inspection in accordance with the terms of clause 5(iii) of the Lease, I am not going to make a determination under section 168(4) of the 2002 Act at this time. If Mr Sabahipour fails to provide such access, on reasonable notice, within a period of 6 weeks from the date of this judgment, then Beaufort Park Residents have permission to apply for a determination based upon evidence that there has been such a failure. Any such application for a determination should be made clearly for my attention. To this extent, therefore, the appeal is allowed.

Dated 21 November 2011

Her Honour Judge Karen Walden-Smith