

Landlord & Tenant: Tenant Cannot Refuse Entry to Landlord's Chosen Agent

The Case of *Beaufort Park Residents Management Ltd v Mr Abdolresza Sabahipour* [2011] UKUT 436 (LC)

The Facts

Beaufort Park comprised 141 residential flats in 7 blocks owned by Beaufort Park Residents Management Ltd ('Beaufort').

The flats were occupied by residents under long leases and Mr Sabahipour was the leasehold owner of No.139 Beaufort Park. In clause 5(iii) of his lease, Mr Sabahipour covenanted:

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 ... to permit the Lessor and its Surveyors and Agents with or without workmen and others ... to enter upon the Flat for the purpose of examining the state and condition thereof ...

In or around 2008, Mr Sabahipour notified Beaufort of leak in his flat. Mr Sabahipour claimed that the leak was caused by a broken pipe located in the communal parts of Beaufort Park and that Beaufort was obliged to carry out the work necessary to stop the leak. In the circumstances, Beaufort wanted its agent, Mr James O'Brian, to enter Mr Sabahipour's flat for the purpose of investigating the complaint and tracing the cause of the leak.

Although Mr Sabahipour said that he was content to allow any suitably qualified person to enter his flat, he refused to allow Mr O'Brian to enter it – the relationship between Mr Sabahipour and Mr O'Brian was described politely by the Lands Tribunal as "*not a good one*".

Beaufort issued an application in the Leasehold Valuation Tribunal ('the LVT') for a determination that Mr Sabahipour was in breach of the terms of his lease. If the LVT made such a determination, Beaufort would be entitled to serve a section 146 notice on Mr Sabahipour with a view to forfeiting his lease.

Mr Sabahipour opposed Beaufort's application on the ground that Mr O'Brian was not suitably qualified to investigate the cause of the leak.

Despite it accepted that Mr O'Brian had knowledge of the heating system in Mr Sabahipour's flat, the LVT decided in favour of Mr Sabahipour and dismissed Beaufort's application.

Beaufort appealed to the Lands Tribunal on the ground that it was not for a tenant to dictate the identity of a landlord's agent wishing to attend premises in accordance with the terms of a lease.

The Lands Tribunal's Decision

Her Honour Judge Walden-Smith considered clause 5(iii) of Mr Sabahipour's lease then formulated a simple, two-part test:

1. What class of person did Mr Sabahipour have to allow into his flat; and
2. Did Mr O'Brian fall within that class of person.

HHJ Walden-Smith found that Mr Sabahipour was obliged to permit Beaufort's 'agents' to enter his flat if the purpose of entry was for 'examining the state and condition' of the flat.

HHJ Walden-Smith also found that (a) Mr O'Brian was Beaufort's agent and (b) his intended entry into Mr Sabahipour's flat was for the purpose of investigating the pipes and the potential cause of the leak and so this plainly constituted an examination of the flat's state and condition.

In the circumstances, Mr Sabahipour was obliged to allow Mr O'Brian entry into his flat for this particular purpose and a failure to do so would constitute a breach of the terms of his lease.

HHJ Walden-Smith allowed Beaufort's appeal and ordered that Beaufort be permitted to re-apply for a determination that Mr Sabahipour was in breach of the terms of his lease if he failed to allow Mr O'Brian access within a period of 6 weeks from the date of her judgment.

The Message For Landlords

Although the case of *Beaufort v Mr Sabahipour* related to a residential flat, it is equally applicable to commercial premises such as offices, shops and warehouses.

From a legal perspective, the Lands Tribunal's decision provides useful assistance to landlords faced with awkward tenants who choose to be as uncooperative as possible. The decision can be relied upon by landlords, and their preferred agents, to persuade such awkward tenants to allow entry into their premises.

However, there is a more glaring commercial perspective. If the tenant says that he is content to allow any suitably qualified person to enter his premises to carry out an inspection but just not the landlord's preferred agent, a quicker and more cost-effective solution may be for the landlord to simply appoint another agent to enter the tenant's premises.

With respect to Beaufort, Beaufort admitted that it issued its application in the LVT, and pursued its appeal through the Lands Tribunal, as a matter of principle (and, we assume, in the hope of forfeiting the awkward tenant's lease).

Richard Moss Solicitors

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