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LON/00AC/LBC/2006/0054

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 168 (4) OF THE COMMONHOLD & LEASEHOLD REFORM ACT 1985 (AS AMENDED)**

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| **Applicant:** | Lakeside Developments Limited |
| **Respondents:** | The Chestnuts (Bromley) Management Company Limited |
| **Representative:** | Mr. T Griffin, Company Secretary |
| **Re:** | 1-10 The Chestnuts, Oaklands Road, Bromley, BR1 3SJ |
| **Hearing dates:** | 4th October 2006 |
| **Appearances:** | For the Applicant: Non Attendance |
| | For the Respondent: Mr. Griffin |

**Members of the Residential Property Tribunal Service:**

**Miss S J Dowell BA (Hons)**
**Mr. I B Holdsworth**

REF: LON/00AC/LVT/2006/54

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE**

**LONDON RENT ASSESSMENT PANEL**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 168(4)

**Premises:** 1 - 10 The Chestnuts, Oaklands Road, Bromley, BR1 3SJ

**Applicant:** Lakeside Developments Limited (Landlord)
**Represented by:** Acting for themselves but no representative present at hearing.

**Respondent:** The Chestnuts (Bromley) Management Company Limited
**Represented by:** Mr T. Griffin, Company Secretary

## DECISION

1. This is a landlord's application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition in a lease has occurred. It relates to an alleged breach of a lease dated 8th September 1989 and made between Berkeley Homes (Kent) Limited (1) and The Chestnuts (Bromley) Management Company Limited (2) and Mr and Mrs D. Marsh (3) in respect of Flat 4 The Chestnuts by the management company in relation to a covenant on the part of the management company in the Seventh Schedule to insure the buildings on the estate (which is defined in the First Schedule of the lease).

2. By a letter dated 12th September 2006 from the Tribunal the parties were notified that there would be a preliminary hearing to decide if the Tribunal had jurisdiction to hear this application. Previously a letter dated 23rd August 2006 to the Applicant from the Tribunal stated,

> "*The Tribunal may not have jurisdiction. Section 168 of the Commonhold and Leasehold Reform Act 2002 relates to breaches by a tenant and the management company does not appear to be a tenant*".

**The Law**

3. Section 168 of the Commonhold and Leasehold Reform Act 2002 (the Act):
**No forfeiture notice before determination of breach**

Section 168 of the 2002 Act, so far as it is relevant, 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 (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.

(2) This subsection is satisfied if –

(a) it has been finally determined on an application under subsection (4) that the breach has occurred....

(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

(5) ...."

4. A determination under section 168(4) does not require the Tribunal to consider any issue relating to forfeiture other than the question of whether or not a breach has occurred.

**The Hearing**

5. A hearing was held on 4th October 2006. The Applicant neither attended nor was represented at the hearing. The Respondent was represented by Mr Griffin, Company Secretary of The Chestnuts (Bromley) Management Company Limited.

**The Lease**

6. The lease which the Applicant submitted to the Tribunal is described in paragraph 1 above. There is no demise to the management company, the demise of Flat 4 being between the lessor (Berkley Homes (Kent) Limited) and the lessee (Mr and Mrs Marsh). The current freehold owners are Lakeside Developments Limited. We were not given the name of the current lessee. The management company is named as a party to the lease and is subject to covenants specified in the Seventh Schedule. These include, at paragraph 2, a covenant to keep all buildings on the estate insured in the joint names of the developer (lessor) and the management company with an agency or some reputable insurance office to be stipulated by the developer.

**The Applicant's Case**

7. The Tribunal proceeded on the basis that the Applicant's case was set out in writing in its letters to the Tribunal of 7th August 2006, 29th August 2006, 14th September 2006 and 25th September 2006. The Applicant had not sent Mr Griffin a copy of the letter of 25th September 2006 and the Tribunal gave Mr Griffin a copy of this letter at the beginning of the hearing.

8. The Tribunal wrote to the Applicant in the terms set out in paragraph 2 above on 23rd August 2006. The Applicant's response to this letter is dated 29th August 2006 and states "*now as to the matter raised by the Procedural Chairman as you can see from the copy Lease enclosed, the Management Company is indeed a party to the Lease. Thus I cannot see that there is a problem of jurisdiction?*". There was no submission that the Respondent was a tenant.

9. The Applicant's letter of 25th September 2006 submitted that there had been a breach of the lease by the management company and the Applicant relied on the fact that the application was made under section 168(4) of the Act by the landlord under a long lease for a determination that a breach of covenant or condition in a lease had occurred and that there was no mention of the word "tenant" in section 168(4). The landlord also stated in its letter that "patently there is a breach of lease" although the details of the alleged lease were not specified.

**The Respondent's Case**

10. Mr Griffin explained that the building is made up of ten flats all let on long leases and that all the lessees were shareholders in the Respondent management company. As far as Mr Griffin was aware all the leases were drawn in the same form as the sample lease of Flat 4 which had been provided by the Applicant. Mr Griffin submitted that the management company was not a tenant within the meaning of section 168 of the 2002 Act as there was no demise to the company, not even of the common parts of the block.

11. Mr Griffin provided the Tribunal with a copy of a letter from the landlord to him dated 24th July 2006 which informed him that an application was to be made to the Leasehold Valuation Tribunal following which an application to the county court would be made for forfeiture of the lease (although which lease was not specified).

12. Mr Griffin accepted that section 168(4) does not mention the word tenant but submitted this subsection is to be read as part of section 168 as a whole which specifically refers to a breach by a tenant of a covenant or condition in a lease in section 168(1).

**Decision**

13. The Tribunal has determined we do not have jurisdiction to hear this application and our reasons are set out below.

14. Section 168 of the 2002 Act is headed "**No forfeiture notice before determination of breach**". Forfeiture in simple terms means recovering of possession from a leaseholder thereby putting an end to the lease. The lease upon which the Applicant relies contains provision for forfeiture at clause 5. This clause specifically refers to non-compliance with covenants by the lessee but there is no mention of the management company.

15. The Applicant is correct that section 168(4) does not mention the word "tenant". It appears that the Applicant, in its submissions in its letter of 25th September 2006, has conceded that the management company is not a tenant. However for the avoidance of doubt we find that the management company is not a lessee/tenant within the meaning of the Act or at all. There is no grant of a demise or a letting by the landlord to the management company in the lease and therefore the management company cannot be a tenant.

16. The Applicant is wrong in its submission that because section 168(4) does not mention the word "tenant" that the Tribunal has jurisdiction to hear the application. Section