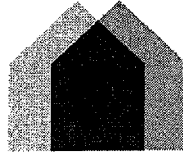


45



Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL FOR THE
LONDON RENT ASSESSMENT PANEL**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SECTION 168(4)

Ref: LON/00BK/LBC/2006/0067

Property: First and Second Floor Flats, 28 Peter Street, W1

Applicants: Allens of Mayfair Ltd

Represented by: B D Laddie, Solicitors

Respondent: Fringilla Properties SA

Members of the Leasehold Valuation Tribunal:

Mrs J McGrandle BSc MRICS MRTPI
Mr A Ring

1.0 Preliminary

1.1 The Applicants are the freeholders of 28 Peter Street, a shop and upper part comprising a ground floor retail unit (vacant) and two flats, one on the first floor and one on the second floor. The Respondent is a company registered in Panama who holds leases of both flats.

1.2 On 12 October 2006, the Tribunal received an application from B D Laddie acting on behalf of the freeholders for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that there had been a breach of the lease in the following respects:-

- That the Respondent is suffering and/or permitting both flats to be used for the purposes of prostitution, in breach of Clauses 3.11 and/or 3.12 and/or 3.13;

- That the Respondent has affixed or exhibited on the outside of the Building or displayed anywhere on the premises placards, signs, notices or advertisements other than a notice advertising the premises for sale, in breach of Clause 3.16;
- 1.3 In support of their application B D Laddie relied upon two reports, one from Mr Roger Mann, a Director of Finlay's Bureau of Investigation Ltd, a private detective agency, dated 12 May 2006 and one from Mr Derek Amis, a management surveyor, dated 22 August 2006. B D Laddie also stated that the Applicants had no knowledge of any sub-tenancies which may have been granted over either flat, nor knew of any legal basis on which the flats were presently occupied.
- 1.4 A copy of the application was faxed to the Respondent by the Tribunal and confirmation was received that the fax had been received on 13 October 2006.
- 1.5 Directions were issued by the Tribunal on 17 October 2006 following a pre-trial review held on that day. The Directions required from the Respondent a statement of case in reply to the application of 12 October 2006, the statement to be received by the Applicants and by the Tribunal no later than 10 November 2006. A brief right of reply, in the event of a statement being served, was given to the Applicants, the statement to be received by the Respondent and the Tribunal no later than 17 November 2006. The Directions were faxed to the Respondent on 17 October 2006 to a number given in the Applicants' statement of case and stated by them to have been used in previous court proceedings. Confirmation that the fax had been received was sent to the Tribunal.
- 1.6 No reply has been received from the Respondent to the Tribunal's Directions.

2.0 **Lease**

- 2.1 Each flat is held on an identical lease which is for a term of 99 years from 25 September 1995.
- 2.2 The following covenants in the lease are relevant:-

Clause 3.11: "To use the Premises for the purposes of a private residence in the occupation of one family only."

Clause 3.12: "Not to use the Premises for a sale by auction or for any trade business manufacture or profession or for any illegal or immoral act or purpose."

Clause 3.13: "Not to do on the Premises or bring or allow to remain upon the Premises anything that may be or become or cause a nuisance annoyance disturbance or inconvenience injury or damage to the Landlord its tenants or the owners or occupiers of adjacent Property or any Neighbouring Property."

Clause 3.14: "Not to assign underlet or part with possession of part only of the Premises"

Clause 3.15: "Within twenty-eight days of any assignment charge underlease or sub-underlease or any transmission or other devolution of any interest in or relating to the Premises to produce to the Landlord's solicitor for registration such deed or document or certified copy of it and to pay the Landlord's solicitor's charges of twenty pounds (£20.00) exclusive of VAT for the registration of every such document"

Clause 3.16: "Not to affix or exhibit on the outside of the Building or display anywhere on the Premises any placard sign notice or board or advertisement except a notice advertising the Premises for sale."

Clause 3.19: Not to commit any breach of planning control (such Term to be construed as it is used in the planning Acts) and to comply with the provisions and requirements of the planning Acts that affect the Premises and to indemnify the Landlord and keep the Landlord indemnified against all liability whatsoever including costs and expenses in respect of any contravention of planning control.

3.0 The Case for the Applicants

3.1 The Applicants commissioned an investigation from Finlay's Bureau of Investigation Ltd and the report of Mr Roger Mann is dated 12 May 2006. They also relied upon a witness statement dated 22 August 2006 of Mr Derek Ames, a management surveyor.

(1) Report of Mr Roger Mann – 12 May 2006

3.2 Mr Mann's agent had observed the property on 4 and 5 May 2006 and had found that the first floor flat was being used for the purposes of prostitution. In support of his findings, Mr Mann produced a schedule of comings and goings to the flats between the hours 1500-2100 on 4 May and 1200 to 1800 on 5 May. On each day numerous men of many nationalities had been seen to enter and leave the premises. In short, there was a regular stream of male visitors throughout the two periods of observation. On 4 May two females only were seen to enter (but not exit) and on 5 May two females were seen to enter and exit. In addition, there were photographs of signs on the door of the first floor flat advertising "new model". Other photographs produced by Mr Mann showed however that there were no signs displayed externally.

(2) Witness Statement of Mr Derek Ames 22 August 2006

3.3 Mr Ames made an internal inspection of both the first and second floor flats on 8 August 2006. A detailed note of his inspection and whom he met was included in his witness statement which is on file. Mr Ames concluded from his inspection that both flats were being used for illegal or immoral purposes at the time of his visit. He produced photographs of signs erected on the doors and landings of both first and second floor flats showing the services

offered. He also produced two police statements obtained from Westminster City Council, one showing that both flats were being used for prostitution during 1998/1999 and the other showing that the first floor flat was being similarly used in November 2001.

4.0 The Case for the Respondent

4.1 No case has been submitted.

5.0 Decision

5.1 The Tribunal met on Tuesday, 21 November 2006 to determine the application on the basis of written representations only.

5.2 No representations had been received from the Respondent challenging the Applicants' evidence – in fact no representations had been received at all.

5.3 The Tribunal finds that the undisputed evidence produced by the Applicants' two witnesses, Mr Mann and Mr Ames, is compelling. Accordingly, it determines that there have been breaches of covenant in respect of each of the two leases as follows:-

- That the premises have not been used for a private residence, in contravention of Clause 3.11;
- That the premises have been used for illegal or immoral purposes, in contravention of Clause 3.12;
- That the use of the premises has caused nuisance annoyance or disturbance to the landlord, in contravention of Clause 3.13;
- That signs have been affixed on the premises (other than a notice advertising the premises for sale) in contravention of Clause 3.16;
- That there has been a breach of planning control, in contravention of Clause 3.19.

5.4 So far as Clauses 14 and 15 are concerned, the Tribunal finds that the evidence is inconclusive and that on the balance of probability the Applicants have not demonstrated that there has been a breach of covenant.

Signed: J. McGrandle

Date: 22. 11. 2006

JG