

**Southern Rent Assessment Panel and Leasehold Valuation Tribunal**

**Case No. CHI/00ML/LBC/2007/0004**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

**Property:** Flat 25 Courtenay Gate, Courtenay Terrace,  
Hove BN3 2WJ

**Applicant:** Courtenay Gate Lawns Ltd (landlord)

**Respondent:** Ms S L Shaw (tenant)

**Date of Application:** 23 March 2007

**Directions:** 27 March 2007

**Decision:** 29 May 2007

**Member of the Leasehold Valuation Tribunal**

Ms J A Talbot MA (Solicitor)  
Chairman

**Ref: CHI/00ML/LBC/2007/0004**

**Property: Flat 25 Courtenay Gate, Courtenay Terrace, Hove BN3 2WJ**

### **Application**

1. This was an application made on 23 March 2007 by solicitors Dean Wilson Laing on behalf of the landlord, Courtenay Gate Limited, for a determination as to whether a breach of covenant by the tenant, Ms S L Shaw, has occurred.
2. Directions were issued by the Tribunal on 27 March 2007, proposing that the matter should be dealt with on the papers without an oral hearing or inspection. Neither party requested a hearing. Accordingly, the matter was determined by a chairman sitting alone on the consideration of documents.
3. The Directions also provided that the applicant should provide all documents upon which it intended to rely and that if the respondent intended to contest the application she should produce a statement in reply. The applicant complied with the Directions, but the respondent has not. Indeed she has not made any contact with the Tribunal office in response to the application.

### **Law**

4. Section 168(1) and (2) of the Commonhold and Leasehold Reform Act 2002 provides that a landlord may not serve a notice under Section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined, on an application to the Leasehold Valuation Tribunal under Section 168(4), that the breach has occurred.
5. A determination under Section 168(4) does not require the Tribunal to consider any issue relating to forfeiture other than the question of whether a breach has occurred.

### **Lease**

6. The Tribunal was provided with a copy of the lease of Flat 25 Courtenay Gate. The lease is dated 20 April 1977, and is for a term of 125 years from 25 March 1973, at a ground rent of £45 and rising thereafter.
7. Insofar as is material to the application, the lease contains the following covenant on the part of the tenant:

*"Clause 3: The tenant hereby covenants with the lessor to observe and perform the obligations in the Fourth Schedule.*

*Fourth Schedule Paragraph 8(b): not to assign transfer or part with possession of the flat as a whole without the previous consent in writing of the lessor such consent not to be unreasonably withheld".*

### **Alleged Breach**

8. The applicant alleges that Ms Shaw has breached Clause 3 and Paragraph 8(b) of the Fourth Schedule by failing to obtain the consent of the landlord

prior to the transfer of the lease to a Mr Magdy Sadi Khayal on 14 November 2006.

### **Consideration**

9. On 11 January 2007, Dean Wilson Laing ("DWL"), solicitors for the applicant, received a letter from Alun James & Co ("AJ") solicitors for Mr Khayal, stating: "please note that by a Deed dated the 14 November 2006 the above property was transferred to our client by the above named lessee(s)". The heading referred to "25 Courtenay Gate, Terrace [sic], Hove, East Sussex" and to the "lessee" as Susanna Lucy Shaw.
10. DWL replied on 15 January 2007 informing AJ that no consent to assign had been requested, and that a retrospective licence would be required together with an undertaking as to costs and personal and financial references for Mr Khayal. The letter also stated that the seller (Ms Shaw) was in breach of the terms of the lease.
11. AJ replied on 22 January 2007 asking for information about service charges and stating they were "taking steps to liaise with" their client, but making no other comment about the lease terms, undertakings or references. Several further letters from DWL were sent during February and March 2007, clearly setting out their position, referring to forfeiture and giving a series of deadlines, which were not met. AJ did not write again until 7 March 2007. No undertakings were given. Apparently they were still "in the process" of dealing with DWL's requests. Nothing further was heard from them, despite further reminders, and on 27 March 2007 DWL applied to the LVT.
12. In the meantime, Ms Shaw made contact by telephone with DWL, who replied by email on 28 March 2007 and by letter on 13 April 2007 informed her of the position and recommending her to take independent advice. They also referred her to the LVT's Directions. It would appear that Ms Shaw has not taken advice, as her only substantive reply to DWL, by email on 28 March 2007, was in these terms: "I authorise the transfer of the lease to the above address into Magdy Sadi's name".

### **Decision**

13. From the evidence and facts found, as set out above, it is clear to the Tribunal that no consent to assign was requested by Ms Shaw before the transfer of the lease to Mr Khayal. No attempt has been made since 14 November 2006 either by Ms Shaw or Mr Khayal's solicitors to rectify the position by obtaining retrospective licence to assign, despite being given every opportunity to do so. In addition the Tribunal would comment that the undertaking as to costs and the references requested by DWL are standard practice and not unreasonable in these circumstances.
14. The lease terms are equally clear. Clause 3 contains the tenant's covenant with reference to the Fourth Schedule. Paragraph 8(b) states that prior written consent is to be obtained for any transfer, and this was clearly not done.

**Determination**

15. For the reasons given above, the Tribunal determines that the failure to obtain prior written consent to the transfer is a breach of Clause 3 and Paragraph 8(b) of the Fourth Schedule of the lease.

**Dated 29 May 2007**



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**Ms J A Talbot MA**  
**Solicitor**  
***Chairman of the Tribunal***