RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SECTION 168(4)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	**CHI/21UD/LBC/2007/0002**
Property:	**Flat 67** **Albany Court** **Robertson Terrace** **Hastings** **East Sussex**
Applicant:	**Albany Court Hastings Limited**
Respondent:	**Dr. C.M. Hargrave**
Date of Hearing:	**31st August 2007**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. R. A. Wilkey FRICS FICPD** **Mr. T.W. Sennett MA MCIEH**
Date decision Issued:	

RE: FLAT 67 ALBANY COURT, ROBERTSON TERRACE, HASTINGS, EAST SUSSEX.

Background

1. Albany Court Hastings Limited ("the Applicant") is the lessor of Flat 67 Albany Court, Robertson Terrace, Hastings, East Sussex ("the subject property"). Dr. C.M. Hargrave ("the Respondent") is the lessee of the subject property.

2. The application before the Tribunal is under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") and is for a determination that a breach of a covenant or condition in the lease in respect of the subject property has occurred so that Section 168 (2) of the Act can be satisfied and the Applicant may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease.

3. Section 168 of the Act provides:-

No forfeiture notice before determination of breach

(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,
(b) the tenant has admitted the breach, or
(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(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) But a landlord may not make an application under subsection (4) in respect of a matter which-
(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(b) has been the subject of determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

The hearing

4. The hearing was attended by Mr. C. Langdon, a Director and Chairman of the Applicant and Mr. A.M. Whelpton of Messrs. Stephen Rimmer & Co. Solicitors representing the Respondent.

5. From the documents supplied and the submissions made by Mr. Langdon and Mr. Whelpton it seemed to us that probably there was no dispute that there had been a breach by the Respondent of a covenant or condition in the lease and that the matter in dispute was whether or not there had been a waiver of the breach by the Applicant. We therefore sought to clarify the matter and Mr. Whelpton accepted that Dr. Hargrave had allowed a tenant to move into the subject property in breach of paragraphs 19 and 20 of Schedule 6 to the lease.

Determination

6. Having received that admission we found that there had been a breach by the Respondent of covenants or conditions contained in paragraphs 19 and 20 of Schedule 6 to the lease. If there had been a waiver of the breach then that would not change the fact that there had been a breach but would determine whether or not the Applicant would be able to rely on that breach in order to take proceedings to forfeit the lease. The question of whether or not there had been a waiver was beyond our jurisdiction.

7. Indeed now that the breach had been admitted, it appeared to us that Section 168 (2)(b) of the Act was satisfied and there was no longer need for a determination by the Leasehold Valuation Tribunal under Section 168 (4) of the Act.

8. Mr. Langdon made an application for costs because had the admission been made earlier there would have been no need to make the present application and he would not have had to spend time researching the law, submitting the application and preparing for and attending the hearing.

9. Mr. Whelpton submitted that he had applied for and been granted an adjournment of the hearing arranged for 21st May 2007 in order to try to reach a settlement of the matter and that he had been using his best endeavours to achieve a settlement but had been unsuccessful.

10. In many proceedings costs are said to follow the event and the successful party may expect to be awarded costs. However, in these proceedings the position is governed by paragraph 10 of Schedule 12 to the Act which provides that only in certain circumstances may costs be awarded. In relation to this application the Tribunal could award costs only if of the opinion that the Respondent had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

11. We considered carefully all the information we had received and determined that the conduct of the Respondent in connection with the proceedings did not give rise to the circumstances in which costs could be awarded and consequently no order as to costs is made.

R. Norman
Chairman