

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



**Residential  
Property**  
TRIBUNAL SERVICE

S.168(4) Commonhold & Leasehold Reform Act 2002

**DECISION & REASONS**

Case Number: CHI/29UH/LBC/2007/0009

Property: Flat 14 The Cloisters  
Ham Lane  
Lenham  
Maidstone  
Kent ME17 2PZ

Applicant (Landlord): F.T.Z. Limited

Respondent (Tenant): Mr J R Russell

Date of Application: 17 April 2007

Date of Decision: 2 July 2007

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)  
Mr M Loveday BA (Hons) MCI Arb

**INTRODUCTION**

1. This is an application by the landlord under S.168(4) of the Commonhold & Leasehold Reform Act 2002 for the determination of whether there has been a breach of covenant.
2. The application is dealt with on the fast track without a formal oral hearing. The case has been decided having regard only to written representations made by the parties.
3. Directions for the conduct of the case were issued dated 20 April 2007. The directions included the formal notice under Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended, notifying the parties of the Tribunal's intention to proceed on the basis only of written representations. No objection was made by the parties to this form of procedure.
4. The Applicant provided a statement and various documents in support of its case, generally in accordance with the directions. The Respondent made no statement or response.

## **APPLICABLE LAW**

5. S.168 of the Commonhold & Leasehold Reform Act 2002 makes it a condition precedent that a landlord may not serve a notice under S.146(1) of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless a Leasehold Valuation Tribunal has determined that the breach has occurred.

## **LEASE**

6. The lease of the property is made on 20 December 1993 between Redchip Ltd (the lessor), Shirley Elsie Wood (the lessee) and Ham Lane Management (1993) Ltd (the company).
7. The Tribunal has had regard to the entire lease document when coming to its decision but the covenant in the lease directly relevant to this application is as follows:

*"2(10) Within one month after the date of any assignment assent transfer underlease assignment of underlease mortgage charge or release or discharge of any mortgage charge or Grant of Probate or Letters of Administration or other disposition of or parting with possession or devolution of title as regards the term hereby granted to give notice thereof in writing separately in each case with particulars thereof to the Lessor and pay a reasonable fee of not less than Ten Pounds (£10.00) plus V.A.T. in respect of each such registration"*

## **EVIDENCE**

8. The Tribunal did not inspect the property.
9. The Applicant submitted a Statement of Case by Martin Paine, authorised by the Applicant to make such a statement.
10. By a telephone call from the Respondent's predecessor in title to the Applicant's managing agents, the Applicant became aware that the Respondent's predecessor in title had assigned the leasehold interest in the property on 21 December 2006.
11. The Respondent is shown as the proprietor of the leasehold interest on the Land Registry office copy entries, with the entry being made on 1 February 2007.
12. No notice has been received by the landlord in relation to the assignment.
13. The Respondent has not made a statement to the Tribunal and did not provide any evidence that a notice had been given.

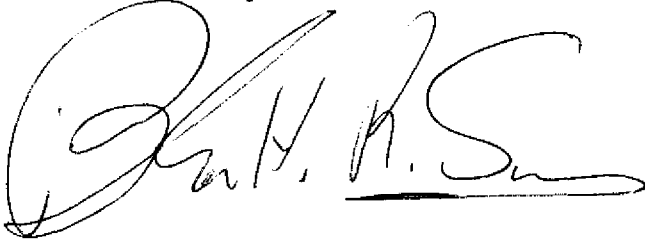
## **CONSIDERATION**

14. The lease clause 2(10) clearly states that on any transfer of the leasehold interest, the lessee is required to give notice in writing, with particulars, to the lessor and to pay a reasonable fee.
15. No notice has been given and the Tribunal is satisfied that there has been a breach of the lease covenant.

**DETERMINATION**

16. There has been a breach of the lease covenant sufficient to satisfy the requirements of S.168(4) Commonhold & Leasehold Reform Act 2002.
17. Failure to serve notice in writing on the lessor is a breach of clause 2(10) of the lease.

Dated 2 July 2007

A handwritten signature in black ink, appearing to read 'Brandon H. R. Simms', written over a horizontal line.

Brandon H R Simms FRICS MCI Arb  
Chairman