

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL

Commonhold & Leasehold Reform Act 2002 s.168

LON/00AW/LBC/2007/0008

Address: Flat 5, 48 Tite Street
London SW3

Applicant: Northumberland & Durham Property Trust Ltd

Respondent: Mastermind Holdings GMBH
(formerly Lersch Holding GMBH)

Tribunal members: Mr NK Nicol
Mr N Martindale
Mr D Wills

1. The Applicant applied on 1st February 2007 for a determination under s.168 of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached clause 4(1) of its lease. In its Statement dated 27th March 2007, the Respondent has stated:
 - 3.1 The Respondent accepts that it is in technical breach of clause 4(1) of the Lease;
 - 3.2 The Respondent accepts that the Applicant is entitled to a determination to that effect.

2. The Applicant granted the Respondent a lease dated 3rd August 2004 of Flat 5, 48 Tite Street, London SW3 until 25th December 2174 in succession to a previous lease dated 8th September 1986 containing the following clauses:-
 3. THE Tenant HEREBY COVENANTS with the Lessors as follows:-
 - (4) In accordance with the Tenant's covenants in that behalf hereinafter contained to repair decorate and make good all defects in the repair decoration and condition of the demised Premises of which notice in writing shall be given by the Lessors to the Tenant within two calendar months next after the giving of such notice
 - (5) Not at any time during the said term to make any alterations in or additions to the Demised Premises or any part thereof or to cut maim alter or injure any of the walls or timbers thereof or to alter the landlords' fixtures therein without first having made a written application (accompanied by all relevant plans and specifications) in respect thereof to the Lessors and secondly having received the written consent of the Lessors thereto (such consent not to be unreasonably withheld or delayed)

4. THE Tenants HEREBY COVENANTS with the Lessors and with and for the benefit of the other tenants in the Building that throughout the term the Tenant will:-
 - (1) Repair maintain renew uphold and keep the Demised Premises and all parts thereof ... in good and substantial repair and condition ...
3. On 27th June 2005 the Applicant granted the Respondent a licence in accordance with clause 3(5) of the lease to carry out works of alteration within 36 weeks. The Respondent gutted the subject property, namely the upper two floors of the building, leaving a shell open to the elements. They then stopped work for the most part. On 12th December 2006 the Applicant served on the Respondent a notice under clause 3(4) of the lease but no work was carried out in consequence.
4. The current condition of the building is described in the report of Cliff Kennedy MRICS dated 15th February 2007 and there is no need to repeat the details here. Potter Raper, on behalf of the Respondent, do not dispute Mr Kennedy's description and commented in a report dated 23rd March 2007 that Mr Kennedy "states that no progress to the interior of the flat has progressed since July 2006 and that the flat is left as an empty shell. Unfortunately we would have to agree with this statement." The experts disagree as to whether temporary measures to keep the building watertight are adequate and over some of the details of the required remedial works but the Tribunal is not concerned with that.
5. The relevant parts of s.168 of the Commonhold and Leasehold Reform Act 2002 state:-
 - (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 (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, ...
 - (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 covenant or condition in the lease has occurred.
6. It is clear and admitted that the Respondent has breached clause 4(1) of its lease as described in full in the aforementioned report of Mr Kennedy and the Tribunal so determines.
7. It is equally clear that the Respondent is in breach of clauses 3(4) and (5). The Respondent objected in Submissions dated 27th March 2007 to any determination being made in respect of these clauses on the basis that they were not referred to in the original application. However, they were mentioned in Submissions on behalf of the Applicant dated 2nd March 2007. The Tribunal conducts its proceedings in a sufficiently flexible way, in accordance with relevant procedural regulations, to allow allegations to be made in this way – indeed, there is no prescribed form for the application in the first place. The Respondent has had sufficient time to respond and has suffered no prejudice. Moreover, it is difficult to see in the circumstances of this case what the Respondent would actually have to say which could answer the case against them.

8. Therefore, the Tribunal further determines that the Respondent has breached clauses 3(4) and (5) of the lease.
9. The Applicant has also asked the Tribunal to determine that the Respondent has breached terms of the licence. Beyond the determination in respect of clause 3(5), that would not appear to be within the Tribunal's jurisdiction under s.168 and therefore no further determination is made on that issue.

Chairman *N.K. Nicol*
Mr N.K. Nicol

Date: 11th April 2007

