



Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/OOAQ/LBC/2008/0020**

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

Applicant: Ms Emma Cravitz.  
Respondent: Mrs Louise Kagzi Hager.  
Property: 55 Graham Road, Harrow Middlesex HA3 5RP  
Date of Application: 30 April 2008

**Leasehold Valuation Tribunal:** Mrs S O'Sullivan  
Miss M Krisko MRICS  
Mrs L Walters

**Date of Tribunal's Decision:** 29 July 2008

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**Background**

- A. The Tribunal has received an application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that there has been a breach of covenant of the lease of 55 Graham Road, Wealdstone, Middlesex, HA3 5RP (the "Property").
- B. In the application the Applicant also sought a declaration that the Applicant or its representative be allowed access to the Property in accordance with the Lease. The Tribunal does not of course have jurisdiction to give such a declaration, which is a matter for the County Court.

- C. A copy of the lease of the Property was provided to the Tribunal. The lease is dated 17 June 1977 and is made between Chestram Property Co. Limited (1) and Miss J.S Mayhew (2) (the "Lease"). The Lease is for a term of 999 years from 25 March 1977 and subject to the terms and conditions contained therein.
- D. The Tribunal issued its Directions on 14 May 2008.
- E. The issue in dispute is whether the Respondent has committed the various breaches of clause 2 of the Lease as set out in the application.
- F. The Applicant set out matters in support of the application in the "Statement of Particulars of Breaches of Covenant" attached to the application. No representations were received from the Respondent. However the Respondent did attend the Tribunal offices on 9 July 2008 and left a letter dated 27 March 1987. This letter appeared to relate to the identity of the freeholder in 1987. On attending at the Tribunal offices the Respondent also informed the clerk that she would not be allowing the Tribunal access to the Property nor would she attend the hearing the next day.
- G. The Tribunal noted from the official copy of the register of title of the Property that a bankruptcy restriction had been entered on the title on 11 March 2008 in respect of a bankruptcy order made against the Respondent by the High Court, court reference number 8142 of 2007. Accordingly the Tribunal directed that a copy of the application and statement in support be served on the Trustee in Bankruptcy who should be given 14 days in which to make any submissions before the Tribunal made their decision. This was served on the Trustee in Bankruptcy by facsimile on 10 July 2008. No response was received to that letter.

### **Inspection**

The Tribunal inspected the Property at 10.30am on 10 July 2008. Attending the inspection were the Applicant's mother, acting on her behalf and the Applicant's father, Mr Cravitz. The Respondent did not attend and the Tribunal were unable to gain access to the Property and so carried out an external inspection of the Property only. The Property is a ground floor maisonette in a two storey terraced property. The Tribunal saw that there were areas of rot in the windowsills to the front of the Property and that the exterior of the window frames and sills were in need of redecoration. The Tribunal were able to view the rear garden in part from the rear window of the property upstairs although this did not enable a close inspection. The garden was seen to be untidy although the Tribunal noted that it was tended in part and somewhat overgrown to the rear with a small patio area surrounded by a few planted pots and in which a chair was placed. A basic form of building had been added on to the ground floor rear of the Property although it could not be seen whether this was an extension to the living area or a shed. The drains to the

rear of the Property were also seen but the Tribunal could not make a close inspection to ascertain their condition. However no smell from the drains was detected at the time of their visit.

### **The Applicant's case**

1. The Applicant was represented by her mother, Mrs Cravitz, at the hearing and her husband, Mr Fink. The Applicant, in its statement of case dated 4 June 2008 and in evidence given at the hearing, maintained that the Applicant was in breach of various covenants in the Lease as follows:

- (a) In breach of clause 2(3) the Applicant maintained the windows were in a visible state of disrepair and do not close. In addition the Applicant said that there was a smell coming from the drains but that the Respondent had refused access to the Property to allow inspection.
- (b) In breach of clause 2(4) the Applicant said the Respondent had failed to paint the exterior of the window frames and believed that the interior of the Property had not been painted for some years.
- (c) In breach of clause 2(5) the Applicant said that the Respondent would not allow either the Applicant or workmen to enter the Property.
- (d) In breach of clause 2(12) the Applicant said that the Respondent had failed to produce any insurance policy to them.
- (e) In breach of clause 2(16) the Applicant said that the Respondent's garden was in a terrible condition and very overgrown. The Applicant was also concerned that it presented a health hazard and that various structures erected out of polythene and pieces of wood looked to be very unsafe and unsightly.

### **The Tribunal's determination**

1. 2.S 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") states:

**"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"**

2. The Tribunal has considered the lease terms and, in particular, the tenant's covenants contained in Clauses 2(3), (4), (5), (12) and (16) which are set out below:

**"2(3) ..well and substantially to repair and at all times during the said term to keep in good and substantial repair the demised premises and all sewers drains roads services pavings and pathways and walls belonging thereto and the fences thereof and all other buildings and erections which at any time may be upon any part of the demised**

**2(4) IN every third year of the said term and in the last year thereof whether determined by effluxion of time or otherwise to paint all the external woodwork and ironwork and other parts usually painted with two coats of good quality paint...**

**2(5) To permit the Lessor and its Surveyors or agents with or without workmen and others twice or oftener in every year during the said term at reasonable times in the daytime to enter upon the demised premises and every part thereof to view the condition of the same...**

**2(12) To keep all buildings ...insured in the name of the Lessor.... and (to) produce to he Lessor on demand the Policy of such insurance and the receipt for such premiums**

**2(16) To keep the gardens beds and pathways hereby demised in a neat and tidy condition"**

3. The office copy Land Registry entries under Title Number MX83628 are dated 5 July 2006 and show the Applicant as the Registered Proprietor of the Property with Absolute Title.
4. The Tribunal saw disrepair to the exterior of the window frames at the Property. However the terms of the Lease as to the demise are ambiguous and it is not clear whether the Respondent is obliged to keep the windows in repair. The Tribunal did note however on inspection that the windows had not been painted for some time and accordingly determined there has been a breach of clauses 2(4).
5. The Tribunal was unable to gain access to the interior of the Property and had no evidence from the Applicant as to the condition of the interior save as to what they "assumed". The Tribunal was therefore unable to find that there has been a breach of the obligation to paint the interior of the Property contained within clause 2(5).
6. The Tribunal accepted the evidence of the Applicant in relation to the attempts to request access to inspect the Property and had been provided with copies of a letter dated 22 November 2006 from the Applicant and a letter dated 29 January 2007 from the Applicant's solicitors written to the Respondent requesting access. Evidence was also given that various oral requests had been made. Accordingly the Tribunal determined that there has been a breach of the obligations to

permit access to the lessor and its workmen contained within paragraph 2(5).

7. In relation to the insurance the Tribunal did not have sufficient evidence to determine whether the Respondent had failed to insure the Property and as the provisions in the Lease relating to the demise of the Property were unclear the extent of the Respondent's obligation to insure was likewise in doubt. However the issue for the Tribunal to decide was whether the Respondent had failed to provide a copy of the insurance policy in breach of paragraph 2 (12). On the evidence before it the Tribunal determined that there had been a breach of paragraph 2(12).
8. In relation to the garden the Tribunal did not accept that the garden was in so poor a condition as that painted by the Applicant. The Tribunal heard that the garden had not been tended since 2001. On inspection however it was seen to be tended at least in part and the Tribunal did not accept that it represented the health hazard suggested by the Applicant. The Tribunal accepted that the garden was a little overgrown in part but did not find that there had been a breach of the covenant contained within clause 2(16).
9. The Tribunal therefore determined that there has been a breach or breaches of clauses 2(4), 2(5), and 2(12) of the Lease under S168 (4) of the Act.
10. The Applicant also made an application for the reimbursement of fees in relation to photocopying costs and the costs of travel and parking in the sum of £28.69 pursuant to Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. The Tribunal are only able to make such an order if the Respondent had acted frivolously, vexatiously, abusively or otherwise unreasonably in connection with the proceedings. The Tribunal had heard evidence from the Applicant that the Respondent had not acted "rationally". However the Tribunal were not persuaded that the Respondent had acted frivolously, vexatiously, abusively or otherwise and so declined to make the order.

Signed.....

**Chairman: Mrs S O'Sullivan**

**Date 29 July 2008**