SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

In the matter of Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") and

In the matter of Flat 30, Furze Croft, Furze Hill, Hove, East Sussex BN3 1NF ("the Property")

Between:

Furze Croft Management Company Limited **(Applicant)**

and

Barry Green and Susan Green **(Respondent)**

DECISION WITH REASONS

This Matter was determined without an oral hearing on the 1st September 2009.

Date of issue: **14th September 2009**

Tribunal: **Mr Robert Wilson LLB Solicitor**
Mr J N Cleverton FRICS

SUMMARY DECISION

1. The Tribunal determines that at the date of determination there is no breach of covenant by the Respondents in respect of the lease of the Property.

APPLICATION

2. The Applicant sought a determination from the Tribunal that the Respondent had committed a breach of the lease dated the 31st May 1978 under which they hold the Property made between Roderick Properties (Esher) Limited (1) and Abraham Leslie Apel (2) ("the lease")

3. The breach of the lease that the Applicant alleges the Respondent has committed is a breach of the terms of paragraphs 16 and 17 of the fourth Schedule to the Lease.

4. The relevant part of paragraph 16 says, "*On the occasion of every assignment of the demised premises for the term hereby granted and in every underlease of the whole of the demised premises to insert a covenant by the assignee directly with the landlord to observe and perform the covenants on the part of the Tenant and conditions herein contained and for this purpose to give to the Landlord or its agents not less than Thirty days written notice of any such assignment underlease or tenancy agreement intended to be made.*"

5. The relevant part of paragraph 17 says, "*within one month after every assignment transfer underlease or devolution of or transfer of title to give to the Landlord notice in writing of such disposition with full particulars thereof and to pay to the Landlord or Landlord's solicitors at their offices a fee of £10 in respect of each such registration.*"

6. The Application statement dated the 5th June 2009 alleges that the transfer of the property to the Respondents does not contain the covenant referred to above and furthermore that the Respondents have failed to enter into a separate covenant and have also failed or refused to register the transfer or pay the landlord the registration fee.

THE LAW

7. The law relating to the matter is contained within Section 168(4) of the Act which provides that a landlord under a long lease of a dwelling may apply to a Leasehold Valuation Tribunal for a determination that a breach of covenant or condition in the lease has occurred.

8. It follows that the function of the Leasehold Valuation Tribunal, when such an application is made, is purely that of determining the factual position and no more.

9. The Tribunal has given due notice of its intention to determine this matter without a hearing as it may do so pursuant to regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 ("the Regulations").

THE EVIDENCE

10. The Tribunal considered this matter on the basis of the documentary information provided by the parties and without an oral hearing. The Tribunal considered the following documents filed by the Applicant:

    10.1 Miscellaneous correspondence from the Applicant's solicitors to the Respondents.

    10.2 Deed of Covenant dated 30 January 2009 and made between the Respondents and the Applicant.

10.3 Correspondence between the Applicant's solicitors and the Leasehold Valuation Tribunal.

10.4 Application statement dated 5th June 2009

THE TRIBUNAL'S DECISION

11. The Tribunal's papers included a letter from the Applicant's solicitor confirming that the Deed of Covenant required pursuant to paragraph 16 of the lease had been received by them on 15 June 2009. However they contended that the registration fee of £10 was still outstanding. On 29 June 2009 the Applicant's solicitors sent a letter to the Tribunal office confirming that they had now received the registration fee which meant that the breaches complained of had all been remedied.

12. The Tribunal considered the Deed of Covenant dated 30 January 2009. In the recitals at paragraph 2, it is recited that the transfer of the property to the Respondents took place on the 30 January 2009, the same date as the Deed of Covenant. It is not clear from the Tribunal's papers when the Applicant's solicitors received the Deed of Covenant, but there is evidence to suggest that it was received some time after 30 January 2009 and indeed after the Applicant had made the application to the Tribunal. Likewise it is not clear when the registration fee was received, but the evidence suggests that it was some time after 30 January 2009 when the transfer to the Respondents was apparently completed.

13. Although directions were issued by the Tribunal giving the Respondent an opportunity to contest the application, no statement or any documents were received by the Tribunal by or on behalf of the Respondents.

14. Bearing in mind the above and taking into account the evidence filed by the Applicant, the Tribunal is satisfied that initially there was a breach of the lease in so far as the Respondents failed to enter into the Deed of Covenant or pay the registration fee within the prescribed period set out in lease.

15. However, at the date of determination it is common ground between the parties that the breaches complained of had been cured and all made good by the Respondents.

16. Bearing in mind that the breaches had been made good by the end of June 2009, the Tribunal is surprised that the Applicant's solicitors should not have seen fit to withdraw the proceedings, thereby saving public money. The Tribunal is of the view that the expense of a determination could have been avoided. In these circumstances it makes no order in relation to the reimbursement of the application fee.

Chairman _____
R.T.A. Wilson LLB

Dated 14th September 2009