

Residential
Property
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Case reference: LON/00AH/LBC/2008/0056

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

Property: Ground Floor Flat, 35 Galpins Road, Thornton Heath,
CR7 6EL

Applicant: Mahmood Bharwani

Respondent: Josephine Okagbue

Date of application: 29 October 2008

Date heard: 12 February 2009

Appearances: Mr and Mrs Bharwani for the applicant

Ms Okagbue and Mr Stanley Patrick for the respondent

Tribunal: Lady Wilson
Mr D D Banfield FRICS
Mr L G Packer

Date of decision: 24 February 2009

1. This is a landlord's application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that a breach of a covenant or condition in the respondent's ("the tenant's") lease has occurred.

2. The application was made on 29 October 2008 and heard on 12 February 2009. The hearing was attended by the landlord, Mr Bharwani, and his wife, and by the tenant, Ms Okagbue, and her son, Mr Stanley Patrick, all of whom gave evidence.

3. 35 Galpins Road ("the property") is a late Victorian house which has been converted into two flats, both let on long leases. The freehold of the property and the lease of the first floor flat are owned by the landlord, and the lease of the ground floor flat is owned by the tenant. The landlord bought the freehold in or about November 2002 and the tenant bought the ground floor flat in June 2003. The ground floor flat has been occupied or partly occupied by Mr Stanley Patrick, the tenant's adult son, since the autumn of 2004. The first floor flat has been occupied by a sub-tenant of the landlord since about December 2006

4. The lease of the ground floor flat is dated 16 June 1988. By clause 1 of the lease the part of the property demised to the tenant is identified by the first schedule, which defines the demised property by reference to a plan on which the demised property – ie the property let to the tenant – is shown edged in red. This includes the subject of the present dispute, which is a small piece of land at the front of the building, described on the lease plan as "ground floor garden", adjacent on one side to the communal front path leading to the front door of the building and on the other side to a small piece of land described as "first floor garden". We were told that in June 2000, when the tenant bought her lease, and at other material times, both of these small areas of land have been covered with concrete and have not been separated from each other, or from the communal front path, or from the pavement, by a physical barrier. Thus they now together form a small forecourt at the front of the building.

5. The lease has been twice varied by deed, first on 26 February 1993 and then again on 7 October 2002, and although a new plan was said in the first deed of variation to be substituted for the existing plan, it seems quite clear that it was only the plan of the internal layout of the ground floor flat which was varied, and the lease plan showing the disputed front area remains valid and binding on the parties.

6. The application under section 168(4) contains a number of allegations, some of them clearly not within the tribunal's jurisdiction under section 168(4) of the Act. Such allegations include those relating to general harassment and abusive behaviour and to parking on the public highway in a manner which is said to prevent the landlord or his tenant from exercising their right to park a vehicle on the first floor flat's portion of the forecourt. None of these, if proved, would be a breach of "a covenant or condition in the tenant's lease".

7. Essentially, the landlord's complaints which, if proved, fall within section 168(4) all relate to alleged parking of cars by the tenant or a member of her family on the part of the front area which was not demised to her. The landlord puts these allegations partly as trespass on space not demised and partly as likely to cause damage to the forecourt or to increased insurance premiums. Neither the potential damage nor the possibility of increased insurance premiums appeared to be supported by evidence.

8. The lease, which is not well drafted, does not give any rights to the tenant to use any part of the property which is not demised to her except as set out in the second schedule, paragraph 1 of which (as varied by the first deed of variation) gives her:

The full and free right and liberty ... in common with all other persons entitled to the like right at all times by day or night for all purposes incidental to the occupation and enjoyment of the Demised Premises but not further or otherwise to go pass and repass over along and across the entrances staircases yards and paths forming part of

the curtilage of the Building shown as hatched blue and green on the plan [ie the path leading to the front door];

and, paragraph 4 of which gives her:

The right at all reasonable times and as often as may be necessary upon giving forty-eight ... hours previous notice in writing (except in cases of emergency) to enter any part of the Building for the purpose of complying with any of the covenants on the part of the Lessee herein contained which cannot otherwise be complied with the lessee making good forthwith any damage thereby caused.

9. The fourth schedule to the lease contains the regulations which, by clause 2(19), the tenant covenants to observe. They include:

6. The Lessee shall not have any right to use any portion of the Building other than the Demised Premises and for the purpose of ingress and egress other than the hall staircase and passages leading thereto save as is permitted under clause 4 of schedule 2 hereto.

10. It is thus clear that there is no provision in the lease which enables the tenant lawfully to park a car on any part of the forecourt which is not demised to her.

11. The landlord has provided a written statement of case which includes a "chronology of events" and photographs. Some of the photographs (at pages 123, 124 and 126) show a car with registration number B10 NRJ diagonally parked across the forecourt and, clearly, partly on space not demised to the tenant. Mr Patrick agreed that this was his car and it was parked partly in space not demised to the tenant and that he had on occasions parked in space not demised. He said that he had asked the sub-tenant of the ground floor flat, who did not own a car, if he would object if he parked in the front area, and the sub-tenant had said that he would not object. He said that he

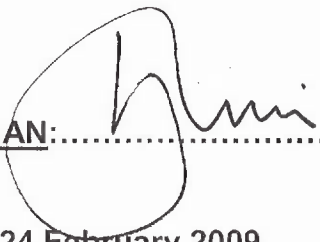
did not own another car shown in other photographs parked on the non-demised space and he did not know who did.

12. The tenant did not dispute her son's evidence but considered that it was her and her family's or sub-tenants' right to park on the forecourt on which, in her view, there was sufficient space to park two cars. She said there were two parking spaces in front of every house in the street.

Decision

13. It is clear from Mr Patrick's evidence, which we accept, that breaches of a covenant or condition in the tenant's lease have occurred, in that, on occasions, a car belonging to Mr Patrick, the tenant's son, has been parked in space not demised to the tenant and on which her lease gives her no right to park. We accept that the sub-tenant of the ground floor has told Mr Patrick that he does not object to his parking in the non-demised space but in our view he has no authority to do so and, in any event, the question whether there has been a waiver of the terms of the lease is not within our jurisdiction (see the decisions of the Lands Tribunal in *Swanston Grange (Luton) Management Limited v Langley-Essen* (LRX/12/2007) and *GHM (Trustees) Limited v Glass* (LRX/153/2007)).

CHAIRMAN:.....



DATE: 24 February 2009