

**Ref: LON/00AK/LSC/2009/0021**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT  
ASSESSMENT PANEL**

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

**Applicant: Panos Harald Panayi**

**Represented by: In Person**

**Respondent: Abosede Olubukunola Otunba - No appearance**

**Represented by: PK Property Services – No appearance**

**Premises: 3A Springfield Road, New Southgate, London N11 1RP**

**Hearing date: 28 May 2009**

**Members of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA  
Mr D D Banfield FRICS  
Mr L G Packer**

**Date of Tribunal's decision: 28 May 2009**

**3A SPRINGFIELD ROAD, LONDON N11 1RP**

**BACKGROUND**

1. This was an application, dated 9 March 2009, under s 168(4) of the Commonhold and Leasehold Reform Act 2002, for determination of alleged breaches of covenant or condition in the Lease of the premises, an upper flat in a building containing two flats, 3A (the upper, First Floor Flat) and 3B (the lower, Ground Floor Flat). The Landlord, Mr Panos Panayi, lives at the premises in the lower flat. The Lessee of the First Floor Flat (Mrs Abosede Olubukunola Otunba) who purchased that flat in September 2006, does not live at the property and is said to have returned to Nigeria. There has been limited contact with her managing agent, PK Property Services. The flat has until recently been occupied by tenants. The Lease, of which the parties are the assignees, is dated 7 April 1982 and demises the subject flat for a term of 99 years from 25 December 1981 at a ground rent of £40 p.a. for the first 33 years, £80 p.a. for the next 33 years and £120 p.a. for the remainder of the term.
2. Mr Panayi's application is in fact entitled "Application for forfeiture of 3A Springfield Road, New Southgate, London N11 1RP": however the jurisdiction of the LVT is restricted to determination of whether or not breaches of covenant or conditions in the Lease have occurred. By s 168(4) "A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that that a breach of a covenant or condition in the lease has occurred". Any application for forfeiture must be made to the court separately and after the LVT's determination that such sums are payable.
3. On 31 March 2009 the LVT held a Pre Trial Review which was attended by Mr Panayi, the Landlord. There was no appearance by either the Lessee or her managing agent although the clerk's file shows that the managing agent and the Respondent were both sent letters on 13 March 2009 notifying them of the PTR. The Tribunal's letter to PK Property Services, however, was returned by Royal Mail marked "addressee gone away". However the Respondent's letter was not returned.

Moreover when the LVT's Directions were sent out on 1 April 2009, again to PK Services at their usual office address and to the Respondent, to the address in London SE17 supplied by the Landlord and at which he had been sending all correspondence since 2006, the letter to PK Property Services was not returned, neither was the Respondent's, although nothing was heard from either.

4. At the PTR the Applicant Landlord identified breaches of the Lease in the following respects:

- (i) Failure to maintain the premises in breach of paragraph 4 of the Second Schedule;
- (ii) Failure to decorate the interior and exterior of the premises, in breach of paragraph 5 of the Second Schedule;
- (iii) Failure to keep all floors effectively covered to deaden noise (following installation of wooden flooring), in breach of paragraph 10 of the Second Schedule;
- (iv) Failure to give the Applicant Landlord access for the purposes of inspecting the condition of the flat despite demands to do so, in breach of paragraph 18 of the Second Schedule;
- (v) Failure to produce copies of the relevant insurance policies required by the Lease despite demands to do so, in breach of paragraph 20 of the Second Schedule;
- (vi) Failure to produce the assignment to her of the Lease for registration by the Applicant Landlord's solicitors, in breach of paragraph 24 of the Second Schedule.

5. The Applicant was informed that his complaints that the Respondent was in arrears of ground rent (in breach of paragraph 1 of the Second Schedule) and had not paid a registration fee in respect of the notice of assignment (in breach of paragraph 24 of the Second Schedule and paragraph 6 of the Sixth Schedule) were outside the scope of a s 168(4) application, since a determination respectively under s 27A of the Landlord and Tenant Act 1985 and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 would be required before the Lessee could be in breach of a covenant to pay such sums.

6. The Applicant was directed on or before Friday 17 April 2009 to file with the Tribunal and serve upon the Respondent a Statement of Case setting out details of the

alleged breaches including all factual statements and matters relied on, and to attach any relevant correspondence between the Applicant and the Respondent, together with any witness statements, an up to date Land Registry Official Copy of the Leasehold Title to the premises, details of any alternative known address of the Respondent and her letting agent, and the name and address of any known mortgagee of the Respondent. The Respondent was given until Friday 8 May 2009 to file a Statement of Case in answer. The case was then set down for hearing on 28 May 2009, preceded by an inspection of the subject property at 10am on the same day.

### **THE INSPECTION**

7. The Tribunal inspected the subject property on the morning of 28 May 2009 in the company of the Applicant Landlord. No one attended for the Lessee or her managing agent. The Tribunal noted that the subject property was a detached house in a quiet, largely residential, road and opposite a small grassed open space. On one side of the property was a building, apparently in light industrial use, on the other side of a narrow lane or track which led to buildings at the rear, and afforded a good view of the side wall of the house, in which were noted some long standing staining from water discharge, a number of unfilled holes where pipes had been removed, some defective guttering at eaves level and some undecorated areas of filling around UPVC windows which had obviously been replaced since the most recent external decoration. The Landlord told us that the holes had been caused by the replacement of a defective boiler, which had been undertaken by the Council as the tenants, who had a baby under a year old, had not been able to contact the Lessee, but that they had not made good after this installation. There was similarly defective guttering on the front elevation, from which periodic discharge of rainwater had created marks on the window sill of the ground floor flat and damp marks on the wall of that elevation. The front of the house was also covered in (dead) ivy in need of removal, and the front garden (which according to the Lease and Lease Plan was the responsibility of the Respondent) was untidy, weed infested and generally unkempt, with two ornamental shrubs requiring pruning. The front door and door frame were in urgent need of decorating.

8. The Tribunal was able to gain access to the subject flat despite the absence of either the Respondent or her managing agents, as the Respondent's most recent tenants had left a key with the Landlord, in his capacity as their neighbour, so that he was able to look after the now empty flat. They noted that internally the flat was in reasonable condition, although the wooden floors covered with wood effect laminate were inevitably noisy when walked upon without close carpeting.

### THE HEARING

9. At the hearing there was again no appearance on the part of the Lessee or her managing agent. The Applicant Landlord told us that she had owned the flat since 2006 but that he had had no contact with her and only fleeting contact with the managing agent, whom he had met by chance when the latter was visiting the tenants in the Lessee's flat. He had taken the opportunity to mention his correspondence with the Lessee (dated 15 February 2008, 13 April 2008 and 25 August 2008) and had handed over a copy of his letter of 25 August 2008, expressing his concern at the lack of replies to his correspondence, which had been written to inform the Lessee that he had arranged for her gardening obligation to be carried out at a cost of £30, and removal of non domestic rubbish left in the garden by a previous tenant of hers at a cost of £25. He had also reminded her of £112.58 outstanding for unpaid ground rent and of her obligation to carpet the wooden floors in her flat, and taken up with her the uncontrolled spread of ivy across the front elevation and the overdue external decorating which was another of her obligations. His earlier letters had followed similar themes.


10. The Applicant said that there had been various tenants, and that the last family had stayed about 2 years. He presumed they had left because they were dissatisfied with the lack of maintenance of the building and that they had been particularly irritated as their boiler had been out of action for 7 weeks before they had managed to get the Council to replace it on environmental grounds. He said that he understood that the Council had expected to be reimbursed and this had resulted in a charge against 3A for the cost.

11. The Applicant said that he was concerned about regular maintenance of the subject property if the Lessee had in fact disappeared, as he had understood that she had returned to Nigeria and that her managing agent had gone there also. He had sent his Statement of Case to 3 addresses and also tried to contact her mortgagees, Redstone Mortgages PLC, who had an address on the City fringe, but they did not answer their telephone, did not have an email address, were not a well known or large company, and (he understood) were associated in some way with a German company. We noted that their address included a PO Box Number. The Applicant told us he had considered that this might be only a mailbox address but that he would pursue his initial inquiries in an effort to find a means of communicating with the Lessee. He had considered the possibility that the Lessee had an insufficient equity in the property (which had cost about £199,950 in 2006) to bother with letting and managing the subject flat and that she might never return from abroad. This gave him obvious concerns about the management of the building as he wished to go abroad himself for an extended period.

12. The Applicant accepted that he had not thought to obtain proof of postage of his letters and his Statement of Case and supporting documents but assured us that he had sent them to each address he had for the Lessee and her managing agent. The Tribunal was satisfied that he had sought to serve her with notice of his application to the LVT by all means open to him. He added that since she and her agent appeared to have disappeared he would now first pursue any inquiries of the mortgagees, which might be useful if they knew another address for her and were willing to let him have it or at least to forward a letter to her. He would then take advice from a solicitor about forfeiting the Lease so that appropriate arrangements could be put in place before lasting damage was caused to the building.

### DECISION

13. The Tribunal is satisfied that the **covenants listed under items (i) to (vi) in paragraph 4 above have been breached**, and determine accordingly.

Chairman.....   
Date..... 28.5.09