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LONDON RENT ASSESSMENT PANEL

**DECISION ON AN APPLICATION FOR A DETERMINATION OF BREACH
OF COVENANT UNDER SECTION 168(4) OF COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

Case Reference: LON/00AX/LBC/2013/0015

Premises: 3 Treeby Court, 18 George Lovell Drive, Enfield,
London EN3 6WD

Applicant(freeholder): Fairfield Rents Limited

Representative: Mr Davies of Counsel

Respondent: Mr Michael Duane Clery

Application dated: 22 February 2013

**Leasehold Valuation
Tribunal:** Mrs O'Sullivan, Solicitor
Mr K.M Cartwright FRICS

**Date of Hearing and
Decision:** 26 April 2013

Decision

The Tribunal determines that there have been the following breaches of the terms of the lease:

- In breach of clause 2.9 the Respondent has failed to produce a certified copy of the assignment within one calendar month after it was executed or came into operation for the purpose of registration
- In breach of clause 2.9 the Respondent failed to pay the reasonable fee of £30 plus Vat in respect of the registration of the assignment
- In breach of clause 2.9 the Respondent failed to produce an original or certified copy of the charge dated 2 November 2007 for the purpose of registration
- In breach of clause 2.9 the Respondent failed to pay the reasonable fee of £30 plus Vat for registration of the charge
- In breach of clause 3.7.2 the Respondent failed to enter into covenants with the Lessor the Company and the Residents Association to observe and perform all the covenants by the Lessee with the Lessor the Company and the Residents Association contained in the Lease
- In breach of clause 3.7.2 failed to meet the costs of entering into the covenants with the Lessor the Company and the Residents Association

The Application

The Applicant freehold company asks for a determination that the lessee of the property known as 3 Treeby Court, 18 George Lovell Drive, Enfield London EN3 6WD, is in breach of a number of the covenants in its lease as follows:

- In breach of clause 2.9 the Respondent has failed to produce a certified copy of the assignment within one calendar month after it was executed or came into operation for the purpose of registration
- In breach of clause 2.9 the Respondent failed to pay the reasonable fee of £30 plus Vat in respect of the registration of the assignment
- In breach of clause 2.9 the Respondent failed to produce an original or certified copy of the charge dated 2 November 2007 for the purpose of registration
- In breach of clause 2.9 the Respondent failed to pay the reasonable fee of £30 plus Vat for registration of the charge
- In breach of clause 3.7.2 the Respondent failed to enter into covenants with the Lessor the Company and the Residents Association to observe and perform all the covenants by the Lessee with the Lessor the Company and the Residents Association contained in the Lease
- In breach of clause 3.7.2 failed to meet the costs of entering into the covenants with the Lessor the Company and the Residents Association

Directions were issued on 1 March 2013 further to which a bundle was prepared by the Applicant.

The Hearing

The application was heard on 26 April 2013. The Applicant was represented by Mr Davies of Counsel. The Respondent did not attend and was not represented.

The Lease

The Respondent holds a lease of the property dated 26 June 2000 for a term of 99 years from 24 June 1999 which was assigned to him on 13 December 2007.

The relevant parts of the covenants alleged to have been breached are as follows:

- Clause 2.9: *Within one calendar month after any such document or instrument as is mentioned below shall be executed or shall operate or take effect or purport to operate or take effect to produce to the Lessor's solicitors either the original or a certified copy of every assignment transfer mortgager or legal charge of this Lease of the Demised Premises and also every underlease of the Demised Premises for substantially the whole of the unexpired term and every assignment of such underlease and also any probate letters of administration order of court or other instrument effecting or evidencing a devolution of title as regards the term hereby granted or any such underlease for the purpose of registration and for such registration to pay a reasonable fee being not less than Thirty Pounds (£30)(plus VAT) in respect of each document or instrument so produced.*
- Clause 3.7.2: *.... Enters into covenants with the Lessor the Company and the Residents Association to observe and perform all covenants by the Lessee with the Lessor the Company and the Residents Association contained in this Lease the costs and expenses of the Lessor the Company and the Residents Association in entering into the covenants being borne by the new owner..*

The Applicant's case

1. The Tribunal heard that the Applicant had not realised the lease had been assigned until late 2012 when a search of the register of the leasehold title was made after ground rent arrears had accrued for some 5 years. The Applicant then discovered that the lease had been assigned to the Respondent on 2 November 2007. The Applicant then wrote to the Respondent by letter dated 3 October 2012 requiring that the position be regularised. No reply was received to that letter which was sent to the property address, this being the only address the Applicant has for the Respondent.

2. Counsel confirmed that the Applicant has received no communications from the Respondent. No correspondence has been returned. Counsel did not believe that any enquiry agent had yet attended at the property although this would take place if the Applicant went on to serve a notice under section 146.
3. The Tribunal likewise has not received any communications from the Respondent.

The Law

4. Section 168(4) provides that;

"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."

The Tribunal's decision

5. The Tribunal determines that there has been a breach of the covenants set out above.
6. The Tribunal notes that the property is subject to a charge to Webb Resolutions Limited dated 2 November 2007. The Tribunal directs that a copy of this determination is sent to Webb Resolutions Limited within 14 days of the date of this decision.



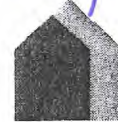
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Sonya O'Sullivan Chair

26 April 2013



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LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/OOBB/LBC/2013/0002

Premises: First Floor Flat, 166 New Barn Street, London E13
8JW

Applicant(s): CAT Investments Limited

Representative(s): Circle Residential Management Ltd

Respondent(s): Kishan Neville Fernando

Date application received: 4 January 2013

Tribunal: D D Banfield FRICS
K M Cartwright JP FRICS
Mrs J Clarke JP

Date of Decision: 29 April 2013

DECISION

That by altering the layout of the flat a breach of clause 5(h) of the lease dated 23rd January 2006 has occurred.

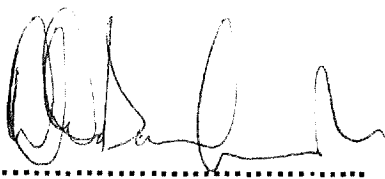
INTRODUCTION

1. The applicant seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the respondent is in breach of clause 5(h) of his lease which provides that the respondent is *not to carry out alterations or additions to the property nor erect any other buildings of a permanent or structural nature save with the prior written approval of the landlord and the owner of the other premises*. The applicant asserts that, in breach of that lease, the respondent has changed the layout of the property. (By erecting a stud wall to create an additional bedroom.)
2. Directions were issued on 10 January 2013 requiring that the respondent advise the tribunal of the names of any mortgagee and of any sub-tenants or occupiers of the property together with a timetable for the exchange of documents leading to a hearing on Wednesday 13 March 2013.
3. On 6 March 2013 Messrs Dryden Fairfax, solicitors acting for Mortgage Agency Services Number 5 Limited wrote to the tribunal advising that their client took possession of the property on 8 October 2012 and that the landlord was advised of this on 10 October and Circle Residential management on 17 October 2012. Messrs Dryden Fairfax also asked for the hearing to be adjourned for them to arrange the removal of the wall referred to. Circle Residential Management objected to the adjournment which was nevertheless granted.
4. On 11 March 2012 Messrs Dryden Fairfax wrote to the tribunal confirming that the stud wall referred to had been removed and enclosing photographs in confirmation.
5. By a letter dated 25 March the tribunal varied the directions of 10 January 2013 providing a new timetable for the exchange of documents and that the matter would be determined by a paper determination during the week commencing 29 April 2013.
6. The respondent did not prepare a bundle of documents to be used at any hearing and the tribunal therefore relied on the bundle prepared by the applicant's representative.

7. The applicant argues that the tribunal's jurisdiction is limited to determining whether a breach has occurred and may not take into account whether that breach may have been remedied. In support of this they refer to the Lands Tribunal case of GHM (Trustees) Limited v Barbara Glass and David Glass (LRX/153/2007)

DECISION

8. The facts of this case do not appear to be in dispute. There are photographs of the wall complained of at tab 4 (item 15). Reference is also made by Messrs Dryden Fairfax to the removal of the wall in their letter of 11 March 2013 and confirmed by a photograph. The only question therefore is whether the alterations comprised a breach of the lease and what affect their removal has on the tribunal's determination.
9. Clause 5(h) of the lease is clear and unambiguous in that alterations are not permitted without prior consent. The applicant states that no such consent was sought or given and that is not disputed by the respondent. We therefore determine that a breach has occurred.
10. We then looked at whether the removal of the wall had any affect on our decision and we determine that it doesn't. The guidance given by the President of the Upper Tribunal as set out in the GHM case referred to above is clear in stating that the LVT's jurisdiction is limited to determining whether a breach has occurred. *Whether a breach is material or has been remedied are....not under the terms of section 168, a matter for the LVT.*



.....

D D Banfield FRICS

Chairman