



DECISION BY THE RESIDENTIAL PROPERTY TRIBUNAL
SERVICE
ON APPLICATION UNDER SECTIONS:
COMMONHOLD & LEASEHOLD REFORM ACT 2002 –
SECTION 168(4)

Applicant: Southwood Park Limited

Respondent: Clement & Jennifer Halfon

Re: 36 Southwood Park, Southwood Lawn Road, London, N6 5SG.

Application date: 20th July 2005

Hearing date: 9th February 2006

Appearances:

Mr J Clargo	- Counsel
Mr M Comport	- Dale & Dale Solicitors
Mr M Charman	- Parkgate Aspen Limited
	For the Applicants
Mr R Hermon	- Conway & Co Solicitors
	For the Respondent

Members of the Residential Property Tribunal Service:

Mr G Bowden TD MA FRICS
Mr C Kane FRICS
Mrs L Walter MA(Hons)

Introduction

1. This is an Application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (hereinafter called “The Act”), which 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 a covenant or condition in the lease has occurred.

2. The Applicant-Landlord, Southwood Park Ltd, were the freeholders of a building known as Southwood Park, Southwood Lawn Road, Highgate, London N6 5SG (hereinafter called “the building”). The Respondents were lessees of Flat 36 in the building holding under a lease for a term of 150 years from 24 June 1982.
3. The subject flat had been let on a short term basis. The Applicant’s Statement of Case set out the points which were originally at issue (Trial Bundle p.7&8). The Applicant contended that the Respondents had
 - (i) Failed to lay down and maintain carpet with underfelt or other suitable floor covering of a similar nature (contrary to clause 3(4) and Paragraph 18 of the Third Schedule of the Lease);
 - (ii) Underlet the flat for a term exceeding one years without prior written consent of the Applicant (contrary to Clause 3(10)(d) of the Lease);
 - (iii) Allowed the flat to be used for the occupation of flat sharers (contrary to Clause 3(4) and Paragraph 1 of the Third Schedule to the Lease).
 - (iv) Permitted the behaviour of occupants of the flat to cause a nuisance or annoyance to the owners, lessees and occupiers of other flats in the building (contrary to clause 3(4) and paragraph 1 of the Third Schedule to the Lease).
4. The Applicant originally claimed a determination on:-
 - (i) That the Respondents are in breach of covenant in the four instances set out above;
 - (ii) That the Applicant is entitled to serve by reason of the various breaches of covenant, notices pursuant to Section 146 of the Law of Property Act 1925;
 - (iii) That the Applicants’ costs of and occasioned by the application should be recoverable in due proportion as service charges under the lease and

directly recoverable from the Respondents under clause 2(7) of the Lease.

Hearing

5. At the Hearing the Applicant was represented by Mr J Clargo, of counsel. He stated that he had been informed that the subject flat had now been vacated by the tenants and that in the present circumstances the only point now at issue for the Tribunal to determine was the question of floor covering, (para 3(i) above).
6. Mr R Hermon, solicitor, on behalf of the Respondents, confirmed that the subject flat had been vacated by the previous tenants, and was at the time of the Hearing unoccupied.
7. Mr Hermon also confirmed that carpeting had not been laid in the flat. He explained the circumstances why this had not been done already and the intention to carry out the necessary work in the near future. There were reasons which the Tribunal could understand, but were not factors which the Tribunal could take into account in deciding the matter of fact as to whether there was appropriate carpeting in the flat, and whether the absence of such carpeting constituted a breach of covenant.

Decision

8. The Tribunal noted that it was a matter of agreement between Mr Hermon and Mr Clargo that at the time of the Hearing there was no carpeting in accordance with paragraph 18 of the Third Schedule of the Lease, viz:-

"The lessee shall cover the floors in the flat by laying down and maintaining carpets with underfelt or other suitable floor covering of a similar nature."

9. Accordingly the Tribunal determined that there had been a breach of this covenant by the Respondent Lessee.
10. The Tribunal further determined that the:

Applicant is entitled to serve a notice pursuant to Section 146 of the Law of Property Act 1925.
11. The Applicant's costs in relation to this Application are recoverable as services charges under the Lease and directly recoverable from Respondent under clause 2(7) of the Lease.

Signed:

G Bowden TD MA FRICS

Dated: 17 February 2006