Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/45UC/LBC/2005/0005

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

Property:	Flat 9, Downside Court and Garage 140, Sea Lane, Rustington, West Sussex BN16 2LG
Applicant:	Overstrand West Estates Limited (landlord)
Respondent:	Paul Anthony Waxman (1) Victoria Cappin (2) (tenants)
Date of Application:	14 July 2005
Directions:	15 July 2005
Further Directions:	2 September 2005
Hearing:	12 January 2006
Decision:	27 January 2006

Member of the Leasehold Valuation Tribunal

Ms J A Talbot MA Cantab
Mr N J Cleverton FRICS
Mrs J Morris

Ref: CHI/45UC/LBC/2005/0005

Property: Flat 9, Downside Court and Garage 140, Sea Lane, Rustington, West Sussex

Application

1. This was an application made on 14 July 2005 by the landlord, Overstrand West Estates Limited ("Overstrand"), for a determination whether a breach of covenant by the tenants, Mr Waxman and Ms Cappin, has occurred.

2. Directions were give by the Tribunal on 15 July 2005, proposing that the matter should be dealt with on the fast track without an oral hearing or inspection. Mr Waxman requested a hearing. Accordingly, the matter was set down for a hearing on 12 January 2006. Overstrand provided a bundle of documents containing Witness Statements and documents in support. The Respondents were required by the Directions to provide a Statement of case stating whether or not they agreed or contested the Application, but failed to comply.

3. Of the two Respondents, only Mr Waxman has been in correspondence with Overstrand and the Tribunal office.

Law

4. Section 168 subsections (1) and (2) of the Commonhold and Leasehold Reform Act 2002 provide that a landlord may not serve a notice under Section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless it has been finally determined, on an application to the Leasehold Valuation Tribunal under Section 168(4), that the breach has occurred.

5. A determination under Section 168(4) does not require the Tribunal to consider any issue relating to the forfeiture other than the question of whether a breach has occurred.

Lease

6. The Tribunal was provided with a copy of the lease of the subject flat. The lease is dated 9 June 1965 for a term of 99 years from 1 January 1965, extended by a Deed of Variation to 999 years from 29 September 1983, at an annual rent of a peppercorn. Apart from the extended term, the terms and conditions of the lease remain in force.

7. The Property is defined as "Land on the North Side of Sea Road, Rustington". The lease demises firstly, " all that flat known as No.9 Downside Court" and secondly, "all that lock-up garage erected on the Property and numbered 140", together with the right (amongst others) to use designated areas "for the parking of motor cars motor cycles or cycles only for temporary periods not exceeding three hours continuously at any one time".

8. Insofar as is material to the application, at Clause 2 the lease contains the following covenants on behalf of the tenants:

> "2(10) That the whole and every part of the demised premises shall at all times during the said term be used for the purpose of a private residence in one occupation only and in particular that the premises secondly hereinbefore demised shall not at any time during the said term be used otherwise than for housing a private motor car motor cycle cycle or perambulator.
>
> 2(11) That the Lessees will not assign sublet or otherwise part with possession of part or parts (as opposed to the whole) of the demised premises.

2(14) At all times during the said term to perform and observe all and singular the rules and regulations set forth in the Second Schedule hereto including any addition or variation of or substitution for the said rules and regulation or any of them notice of which shall be given to the Lessee as the Lessor may deem needful for the safety care and cleanliness of the Property or for securing the comfort and convenience of the tenants generally of the Property."

Inspection

9. The Tribunal inspected the property on 12 January 2006 before the hearing, accompanied by the landlord's managing agent, Mrs R A Tasker. The development consisted of 8 blocks of purpose-built flats, all 3 storey, built in the 1960's to a similar design all brick construction with part tile-hung elevations under a flat mineral felt roof, set in communal gardens. There were 84 flats in all, each with a garage. Downside Court faces Sea Road and the sea. Outside the block was a bay with 6 parking spaces.

10. The Tribunal did not inspect the interior of flat 9, but the occupying sub-tenant helpfully provided a copy of the Assured Shorthold tenancy agreement and confirmed that they did not use, or have access to, the garage.

11. The garage demised with the flat, number 140, was in a separate garage block containing garages for all the flats. The garages, all identical, were of brick construction under a flat mineral felt roof. The subject garage was fourth from the end of a row of 11. Mr Waxman did not give access to the garage so the Tribunal was unable to see inside. However, another garage happened to be open and was empty. The internal space measured 16'7" by 7'10" at the narrowest part.

Alleged Breaches

12. Overstrand alleged that Mr Waxman and Ms Cappin were in breach of the tenant's covenants at Clause 2(10) of the lease, by using the garage for storage purposes, in breach of the covenant that it should not be used otherwise that for housing a private motor car, motor cycle, cycle or perambulator; and at Clause 2(11), by subletting the flat without including the garage, in breach of the prohibition against parting with possession of part of the premises, as opposed to the whole.

13. In addition Overstrand alleged that Mr Waxman and Ms Cappin had failed to comply with additional Regulations notified to the tenants in accordance with Clause 2(14) of the lease.

Hearing

14. The hearing took place in Littlehampton on 12 January 2006. It was attended by Mr P Careless, solicitor for Overstrand, Mrs R A Tasker, managing agent, and Mr P C H Ingram, Vice Chairman of Overstrand. Mrs Collins observed. Despite requesting a hearing, neither Mr Waxman nor Ms Cappin attended and were not represented.

Facts

On the basis of its inspection, the documents produced and submissions made by the Applicant at the hearing, the Tribunal found the following facts:

15. Overstrand is a tenant's Management Company owning the freehold of the property. The tenants of each flat are shareholders. Mrs Tasker is the managing agent and also the Secretary. The Board of Directors have quarterly meetings which are minuted. Amongst other things, the Directors were concerned about problems with parking on the development,

where the bays designed for visitors were over-used or cars were parked on the estate roads causing potential access problems.

16. Since the lease was granted, the Regulations referred to at Clause 2(14) and the Second Schedule have been added to. Additional Regulations were approved by Overstrand in 1999 and March 2005, at Board meetings, and subsequently notified to each tenant by letter. The purpose of the Regulations was to benefit the development as a whole and to clarify the tenants' obligations under the terms of the lease.

17. Mr Waxman, who did not live at the property, sub-let Flat 9 by granting an Assured Shorthold Tenancy dated 12 January 2004 for a term of one year. His letting agents were Holmes & Company ("Holmes"). The sub-tenants are still in occupation. The property demised by the tenancy agreement is described as "the house (*sic*) known as 9 Downside Court including its garden". There is no mention of the garage, which was not included. At the inspection, the sub-tenant confirmed that they do not have use of, or access to, the garage.

18. In October 2004, when redecoration works were carried out to the garages, it came to Mrs Tasker's attention that garage 140 was being used for storage. She saw that it contained items covered with a sheet that took up part of the garage to the extent that there was not enough room for a car.

19. On 15 October, Mrs Tasker wrote to Mr Waxman. Holmes replied on 11 November on his behalf, stating: "Yes, the garage does currently contain a minimum amount of storage, which is there on a somewhat temporary basis". The letter further stated that furniture was being stored and that it would be "very inconvenient to Mr Waxman to have to take this small quantity of belongings to London". It also requested for permission "to allow the continuation of the storage".

20. At the Directors meeting in January 2005 this request was refused. By letter dated 17 January 2005 Mrs Tasker reported this, and stated that Mr Waxman was considered to be in breach of his lease on two counts: the garage should have been included in the sub-tenancy and the garage should only be used for a car. On 20 January Mrs Tasker inspected the garage by arrangement with Holmes, and found the same items being stored as before.

21. In subsequent correspondence, Mr Waxman, both via Holmes and in person, challenged the reasonableness of the lease terms and Regulations against storage. He objected to the inspections and Overstrand's refusal to permit storage. He contended that the garage was not big enough to house the tenants' car.

22. Overstrand sent a letter before action to both Mr Waxman and Ms Cappin on 14 February 2005, and has continued to take the same position regarding the alleged breaches of the lease terms.

Decision

23. The Tribunal concluded without difficulty, from the facts found, that the continued storage of furniture in the garage amounted to a clear breach of the tenant's covenant at Clause 2(10) of the lease, not to use the garage "otherwise than for housing a motor car, motor cycle or perambulator". Storage of any other items was plainly not permitted under the terms of the lease, as repeated and clarified in the Regulations.

24. Despite not being able to inspect the interior of the garage, the Tribunal accepted the evidence of Mrs Tasker, who had twice seen the stored items in the garage. It also took account of the clear admission in the letters from Holmes, which stated that furniture was being stored, and the fact that Mr Waxman has at no stage denied that the storage was continuing.

25. Mr Waxman's dispute as to the reasonableness of the lease terms and Regulations did not detract from the fact that there was a clear breach of the lease. The Tribunal made no findings on this issue, as its jurisdiction is limited to whether there has been a breach of covenant. However, from the evidence before it, the Tribunal was satisfied that the Applicant had the power to make the Regulations, and had done so properly.

26. Similarly, the Tribunal had no difficulty in deciding that Mr Waxman was further in breach of Clause 2(11) of the lease by sub-letting the flat without including the garage. This was clear from the Assured Shorthold tenancy agreement. It was puzzling that Mr Waxman had asserted that his tenants could not use the garage because their car was too large, when in fact they did not have the right to use the garage in any event.

27. It may be arguable that these breaches could be very simply remedied by Mr Waxman removing the stored items from the garage and varying the Assured Shorthold tenancy agreement to include the garage. However, the Tribunal does not have the power to consider these issues, which would ultimately be matters for the County Court to decide, should Overstrand serve a Notice under Section 146 of the Law of Property Act 1925 and should Mr Waxman not remedy the breaches as required.

Determination

28. For the reasons given above, the Tribunal determines that the storage of furniture in garage number 140 is a breach of Clause 2(10) of the lease, and that sub-letting of Flat 9 without including the garage is a breach of Clause 2(11) of the lease.

Dated 27January 2006

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Ms J A Talbot MA Cantab.
Chairman

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Decision:	27 January 2006
Decision sent:	31 January 2006
Appeal:	28 February 2006
Refusal:	13 March 2006

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA Cantab
Mr N J Cleverton FRICS
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Property: Flat 9 and Garage 140, Downside Court, Sea Lane, Rustington, West Sussex BN16 2LG

Background

1. The decision in this case is dated 27 January 2006 and was sent to all the parties on 31 January.

2. By letter dated 28 February, received at the Tribunal office in Chichester on 2 March, the 1st Applicant, Mr P A Waxman, appealed against the decision.

3. In that letter Mr Waxman stated that he had been travelling abroad and was writing at the earliest opportunity during a temporary return.

4. All correspondence was sent to Mr Waxman's London address. Despite evidently spending much time abroad, he did not provide an address for correspondence outside the UK.

Decision

5. Where a party makes an application to a Tribunal for permission to appeal to the Lands Tribunal, the application must be made to the Tribunal within 21 days of the date when the reasons were sent to that party.

6. In this case, the time limit for applying for permission to appeal expired on 20 February. Mr Waxman's application is therefore out of time.

7. The Tribunal has the power to extend this time limit providing an application for an extension is made within the 21 days. Mr Waxman did not apply for an extension within 21 days. It is therefore not possible to extent the time limit to admit Mr Waxman's application for permission to appeal.

8. However, in any event, the Tribunal would not have allowed permission to appeal. Mr Waxman's letter contains no grounds for appeal. Any appeal would have had no reasonable prospects of success. The Tribunal is satisfied that there are no arguable errors of law in its decision, and that it was entitled to reach the conclusions that it did on the evidence before it.

Dated 13 March 2006

J Talbot

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Ms J A Talbot MA Solicitor
Chairman