



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 Section 168(4)

Ref :LON/00AK/LbC/2006/0076

Address: Flat 38 Haslam Court, Waterfall Road, London N11 1NU
Applicant: Flats & General Management Limited
Representative: Shoosmiths, Solicitors
Respondent: Michael John Richards

Background

1. On 16 November 2006 the Applicant applied to the Leasehold Valuation Tribunal for a determination pursuant to s 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent was in breach of a covenant contained in Clause 2(8) of his Lease "To permit the Lessors and the Management Company and their respective duly authorised surveyors or agents with or without workmen and others at all reasonable times upon giving three days previous notice in writing.... to enter into and upon the Demised Premises or any part thereof to view the condition thereof...".
2. On 28 November 2006 the Tribunal issued the Tribunal's standard Directions setting the case down for determination on the paper track on 18 January 2007 (in default of any request for an oral hearing) with a view to issuing a determination in the week commencing 22 January 2007.

3. On 25 January 2007 the Tribunal duly considered the case as evidenced by the papers on the file. The application disclosed that the subject property was a 1 bedroom second floor flat in a purpose built block believed to have been built in the 1930s and subject to a Lease dated 5 October 1976 made between Castle Lane Securities(1), Haslam Court Management (2) and Branco Frank Love (3) under which the property was demised for a term of 99 years from 25 December 1975 at a rent of £30 p.a. rising to £120 and additional rent. The Lease had been vested in the Respondent since 11 April 1983.

The Applicant's Case

4. On behalf of the Applicant, Ms Marie Batchelor of Shoosmiths, Solicitors, stated that the application had been generated by an incident on 2 May 2006 in which the managing Agents had required to enter the subject flat because a leak, reported by the tenant of an adjacent flat, appeared to be coming from the Respondent's flat and the Respondent declined to allow a plumber to enter the property. As a result of refusal of access at the time of this emergency, the managing agent sent a written notice to the Respondent on 27 June 2006 informing him of their wish to inspect the property in accordance with Clause 2(8) of the Lease, offering "a mutually agreeable time" and pointing out the Respondent's obligation to allow access in accordance with his Lease, but the Respondent has apparently not, to date, allowed access to the property. It is also stated that the Applicant is reluctant to use the power given in the Lease under the same Clause 2(8) to enter "in case of emergency without notice" in case this should be in contravention of the Protection from Eviction Act 1977, and because of their desire to minimise costs: it was also noted that the Applicants were unsure whether the Respondent was occupying the property or not although it appeared that no alternative address was held for him. The managing agents also stated that "Mr Richards occupies the property from time to time" and that proceedings were being taken simultaneously in the LVT for recovery of unpaid service charges under reference LON/AK/LSC/2006/159.

The Respondent's case

5. No response whatever had been received from the Respondent, despite despatch of the case documentation, including the Directions, to him at the subject property.

Decision

6. Following consideration of the evidence the Tribunal determined that there was insufficient evidence to decide that the Respondent was in breach of covenant. The managing agents appear to be aware that the Respondent occupies the subject flat only "from time to time" and it is not in the Tribunal's opinion sufficient to determine (on the basis of the scant details of the emergency incident and the failure to answer one letter when it is known that the Respondent is periodically away, possibly for extended periods) that he is in breach of covenant. There could be many explanations for both these outcomes, none of which need necessarily be a positive denial of

access. As there was no oral hearing, and no evidence from the plumber who attended at the time of the leak or from the managing agent who accompanied the plumber on that occasion, and no enquiries had apparently been made as to reasons for the Respondent's absence, or attempts to show that he had received notice of the proceedings, it is in the opinion of the Tribunal premature to conclude that the Respondent has refused access within the meaning of Clause 2(8) of the Lease. If the Applicant requires access for emergency purposes it is highly unlikely that this would be sufficient for any breach of the provisions of the Protection of Eviction Act.

7. Accordingly the application is dismissed.

Tribunal: Mrs F R Burton LLB LLM MA
Mr F Coffey FRICS
Ms T Downie MSc

Chairman:.....

Dated: 7/2/07