

**LEASEHOLD VALUATION TRIBUNAL  
OF THE  
MIDLAND RENT ASSESSMENT PANEL**

BIR/00CN/LBC/2006/0004

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

<b>Applicant:</b>	Birmingham City Council (freeholder)
<b>Respondent:</b>	Mohammed Younis Sultan (leaseholder)
<b>Subject property:</b>	110 Bristol Road Birmingham West Midlands B5 7XH
<b>Application to LVT:</b>	22 September 2006
<b>Member of the Tribunal:</b>	Mr. A.P.Bell MA LLB
<b>Date of determination</b>	<b>1 2 DEC 2006</b>

## INTRODUCTION

1. This is a determination on an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") made to the Leasehold Valuation Tribunal on 22 September 2006 by Birmingham City Council ("the Applicant"), the freeholder of the house and premises at 110 Bristol Road Birmingham B5 7XH (the subject property), for a determination that Mohammed Younis Sultan ("the Respondent"), the leaseholder of the subject property, has breached five covenants in his lease.

2. Section 168(1) of the 2002 Act provides:

"A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 ... in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied"

Subsection (2) may be satisfied by any of three alternative conditions. The relevant condition in the present case is that "it has been finally determined on an application [to the Leasehold Valuation Tribunal] under subsection (4) that the breach has occurred".

The Applicant seeks such a determination from the Tribunal.

3. According to the Applicant's information the subject property has been unoccupied for many years and this is the last known address of the Respondent. The Applicant has confirmed that it has not received a response from the Respondent to its application to the Tribunal.
4. The Tribunal by its Directions dated 6 October 2006 the Tribunal notified the parties that it intended to proceed without an oral hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 as amended and that it would then make its determination between 11 December 2006 and 22 December 2006 and notify the parties of its determination thereafter. However, by the Directions of the Tribunal both parties were informed that either of them could request a hearing in which case a hearing would be held on a date to be notified to the parties. No such request for a hearing was made by either party and the Tribunal proceeded to determine the application without a hearing.

## THE BACKGROUND TO THE APPLICATION

5. The Respondent holds the subject property under an Underlease from the Birmingham City Council dated 7 September 1981 for a term of 99 years (less the last three days thereof) from 25 March 1976 at an escalating ground rent.
6. The Applicant claims that the Respondent has breached the following tenant's covenants contained in Clause 4 of the lease:

### Clause 4(3)

"To pay all rates taxes charges assessments outgoings and impositions whatsoever which may be charged or imposed on the said premises".

### Clause 4(5)

"To paint grain varnish and colour all the external wood and ironwork and parts usually painted grained varnished and coloured of the said premises once in every third year of the said term with three coats of good quality paint or other suitable materials in a proper and workmanlike manner and once in every seventh year of the said term to paint colour grain paper and varnish in like manner all the inside of the said premises usually painted coloured grained papered and varnished and all additions thereto with two coats of good oil and white lead paint in a property and workmanlike manner".

### Clause 4(6)

"At their own expense and to the satisfaction of the Council as often as need shall require to repair and at all times keep in good and tenantable order and repair the said premises and all sinks gutters drains sewers and sanitary apparatus used in connection therewith and at the expiration or sooner determination of the said term to yield up the same to the Council in such repair and condition".

### Clause 4(7)

"To put and at all times during the said term to maintain the gardens and grounds of the said premises in good order and properly planted and carefully to preserve free from disease all the timber trees and all ornamental and fruit trees bushes and shrubs which are or may at any time during the said term be growing on the said premises and to remove any fruit trees which may have become so diseased as to be incapable of cure and also to replace any fruit trees that may die or may be removed as aforesaid".

### Clause 4(20)

"Not to do cause permit or suffer upon the said premises anything which may be or become a nuisance or annoyance or which may cause damage to the Council or other tenants or the occupiers of the neighbouring land and premises of the Council".

7. In the circumstances the Applicant has commenced the preliminary stages of the forfeiture procedure.

8. **INSPECTION**

The Tribunal inspected the subject property externally on 1 December 2006 but was not able to obtain access to inspect the interior. The Tribunal found from its inspection that the Respondent had failed to paint all the external doors and window frames for a very long period well in excess of three years, not replaced broken tiles on the roof, allowed both the front and rear garden to become totally overgrown with weeds and numerous very tall leylandii trees so as to become an appalling eyesore.

9. **DETERMINATION OF THE TRIBUNAL**

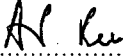
The Tribunal having inspected the subject property externally and having considered the written representations of the Applicant (including the Schedule of Dilapidations and Wants of Repair dated 1 August 2006 prepared by Mark Hilton behalf of the Applicant ("the Schedule")) determines that the Respondent has breached the following covenants in the lease:

- (a) the covenant in Clause 4(5) of the lease to paint the external part of the subject property in every third year of the term
- (b) the covenant in clause 4(6) of the lease to keep the subject property in good and tenable repair and condition
- (c) the covenant in Clause 4(7) of the lease to keep the garden and grounds of the subject property in good order
- (d) the covenant in Clause 4(20) of the lease not to do cause or permit or suffer upon the subject property anything which may be or become a nuisance or annoyance or which may cause damage to the Applicant or other tenants or the occupiers of the neighbouring land and premises of the Applicant, as clearly evidenced by the justified complaints made to the Applicant by Mr. Throp who lives at 112 Bristol Road.

10. The Applicant also claims that the Respondent has failed to make recent payments of the ground rent with the consequence that the Respondent owes the Applicant £100 in rent arrears, which the Tribunal found amounted to a breach of Clause 4(2) of the Respondent's lease rather than Clause 4(3) as referred to in the Witness Statement of Noreen Kazi dated 22 September 2006 and 20 October 2006. As the failure to pay the ground rent is outside the

scope of the procedure set out in section 146 of the Law of Property Act 1925 it is also outside the scope of the Tribunal's jurisdiction under section 168 of the 2002 Act and the Tribunal makes no determination in respect of the breach of Clause 4(2) of the Respondent's lease.

SIGNED

  
.....

A.P. Bell  
Chairman

DATED

12 DEC 2006