

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

BIR/00FK/LBC/2005/0001

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

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| <u>Applicant:</u> | Mr G Taylor (freeholder) |
| <u>Respondent:</u> | Mr N Redfern (leaseholder) |
| <u>Subject property:</u> | 34 Derrington Leys Alvaston Derby DE24 0SB |
| <u>Application to LVT:</u> | 18 May 2005 |
| <u>Member of the Tribunal:</u> | Professor N P Gravells MA |
| <u>Date of determination:</u> | 22 JUL 2005 |

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 by Mr G Taylor, the freeholder of the house and premises at 34 Derrington Leys, Alvaston, Derby DE24 0SB ("the subject property"), for a determination that Mr N Redfern, the leaseholder of the subject property, has breached a number of covenants in the lease.
- 2 The application was made on 18 May 2005. The applicant, represented by Bemrose and Ling Solicitors, requested that the application be determined without a hearing and on the basis of written representations only. The Tribunal wrote to the respondent on 25 May 2005, copying the application and the accompanying documents and seeking his agreement to the determination of the application without a hearing. Having received no reply, the Tribunal wrote to the respondent again on 8 June 2005, notifying him that, unless, no later than 11 July 2005, either party made a written request for a hearing, the Tribunal intended to proceed without a hearing, in accordance with the provisions of regulation 13 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 (as amended). The respondent was informed that the Tribunal proposed to determine the application as soon as possible after 11 July 2005 on the basis of the documents accompanying the application together with any further written representations received by the Tribunal no later than 11 July 2005. The Tribunal therefore invited the respondent to make written representations on the application.
- 3 The Tribunal received no reply from the respondent and proceeded to determine the application without a hearing.

The background to the application

- 4 The subject property is a ground floor maisonette, one of four maisonettes in a block, of which the applicant is the freeholder. Each maisonette has its own garden. The respondent leaseholder holds the subject property under a lease, dated 19 June 1984, for a term of 99 years from 25 March 1983 at an escalating ground rent. The lease was assigned to the respondent on 3 November 2004.
- 5 Towards the end of 2004 the applicant became aware that a large amount of rubbish had accumulated in the garden of the subject property. The applicant states that the nature of the rubbish suggested that extensive internal work had been carried out on the subject property; and the photographs submitted by the applicant, showing internal household fittings, would appear to substantiate that suggestion.
- 6 The applicant asserts that the continued presence of the rubbish in the garden of the subject property must inevitably adversely affect the use and enjoyment of the leaseholders of the other maisonettes in the block. He asserts that there is evidence that the rubbish is attracting vermin and that the rubbish poses a serious health hazard.
- 7 Despite repeated written requests, initially from the applicant and subsequently from applicant's solicitors, to clear the rubbish, there has been a complete lack of response from the respondent.

8 In the circumstances, the applicant claims that the respondent has breached a number of covenants and conditions in the lease and he has commenced the preliminary stages of the forfeiture procedure.

9 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.

Representations of the parties

10 On the basis of the facts outlined in paragraphs 4-7 above, the applicant claims that the respondent has breached the following tenant covenants and conditions in the lease:

- "not to do or permit or suffer to be done any act or omission which in the opinion of the Lessor will prejudice any adjoining maisonette" (clause 2(c));
- "to observe and perform the covenants and conditions in Part III of The Schedule" (clause 2(n)).

Part III of The Schedule includes the following conditions:

- "not to do or permit or suffer to be done on the Demised Premises any act to the damage or annoyance of the Lessee of the Upper Floor Maisonette or the adjoining Maisonettes" (paragraph 2);
- "to cultivate the garden of the Demised Premises and thereafter to maintain the same in a clean and tidy state and condition" (paragraph 3).

11 The applicant also claims that the respondent has failed to pay the ground rent due on 25 March 2005.

12 In addition, the letter dated 19 April 2005 from the applicant's solicitors to the respondent may be interpreted as implying that the respondent is in breach of two further tenant covenants in the lease, namely:

- "to insure and keep insured the Demised Premises ... and if so required by the Lessor the Lessee shall produce evidence that the covenant is being performed" (clause 2(j));
- "to permit the Lessor ... at least twice a year ... at reasonable times to enter upon the Demised Premises ... to examine the state and condition of the same" (clause 2(g)).


13 As noted, the respondent submitted no representations.

Determination of the Tribunal

14 On the basis of the written representations and evidence available, the Tribunal determines that the respondent has breached those covenants and conditions in the lease referred to in paragraph 10 above.

15 In relation to the alleged failure to pay the ground rent due on 25 March 2005 (paragraph 11 above), since any such failure 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.

16 In relation to the matters referred to in paragraph 12 above, in the absence of further information, the Tribunal makes no determination.

Signed 
(Professor Nigel P Gravells (Chairman))
22 JUL 2005
Dated

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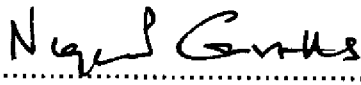
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