

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

PROPERTY: BASEMENT FLAT 66a PONT STREET LONDON SW1X
0AE

APPLICANT: 66 PONT STREET LIMITED

RESPONDENT: Ms SARA AL-AMOUDI

TRIBUNAL

Mrs T I Rabin Chairman
Ms M Krisko
Dr A Fox

Date of Tribunal's decision: 8th December 2006

BASEMENT FLAT 66a PONT STREET LONDON SW1X 0AE

FACTS

1. The Tribunal was dealing with an application by the Applicant landlord, 66 Pont Street Limited, for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent long leaseholder, Ms Sara Al-Amoudi was in breach of covenant under the terms of the lease under which she held the Basement Flat at 66a Pont Street London SW1X 0AE ("the Flat"). The covenants related to the payment of service charges and ground rent payable under the terms of the lease. The Applicant requested that the matter be dealt with on papers only without a hearing and the Tribunal agreed to this.
2. The Flat is held under a lease dated 18th August 2003 ("the Lease") for a term of 999 years from 18th August 2003. The rent is a peppercorn (if demanded). A copy of the Lease is in the file and the tenant's obligations to pay service charges are set out Clause 3.5 and the Fifth Schedule. The matter was set down to be dealt with on documents only and without a hearing and it is this determination before the Tribunal today.

EVIDENCE AND DECISION

3. The application before the Tribunal is for a determination that a breach of the Lease has been committed by the Respondent which would entitle the Applicant to seek an order for forfeiture of the Lease from the County Court. Section 168 of the 2002 Act provides that a landlord cannot serve a notice of forfeiture until (inter alia) a leasehold valuation tribunal has determined that a breach has occurred.
4. The power to make a determination under Section 168(4) of the 2002 Act does not extend to a failure by a tenant to pay a service charge within the meaning of Section 18 of the Landlord and Tenant Act 1985 ("the 1985 Act") or an administration charge within the meaning of Part 1 of Schedule 11 of the 2002 Act. If a landlord wishes to exercise a right of re-entry or forfeiture for failure to pay a service charge or an administration charge, the procedure is governed by Section 81(1) of the Housing Act 1996 ("the 1996 Act") which provides that no such action can be taken until the charge is determined by a leasehold valuation tribunal as being payable by the tenant or the tenant has admitted the amount is so payable and, if a determination is made by a leasehold valuation tribunal, the landlord may not exercise the right of re-entry or forfeiture until after the end of the period of 14 days beginning with the day after the final determination has been made (Section 81(2) of the 1996 Act).

5. It follows that the Tribunal has no jurisdiction to hear the application before it today. To provide such jurisdiction an application must be made under Section 27A of the 1985 Act for a determination that the service charge demanded was reasonably incurred and properly payable by the Respondent before seeking to exercise the right of forfeiture. The Tribunal also noted that the service charge demand filed in this matter did not fully comply with Section 47 of the Landlord and Tenant Act 1987.
6. Accordingly this application is dismissed on the grounds that the Tribunal has no jurisdiction to determine the application.

CHAIRMAN.....

DATED 11th December 2006