

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL FOR THE**  
**LONDON RENT ASSESSMENT PANEL**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SECTION 168(4)

**Premises:** Upper maisonette, 57 Ling Road, London E16 4AW

**Applicant:** Campion House Estates Limited (Landlord)  
**Represented by:** Mr Crispin Speaight, Company Secretary

**Respondent:** Mrs Eudora Eriwari Osalor  
**Represented by:** Not present and not represented

**DECISION**

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1. This is a landlord's application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition in a lease has occurred.
2. The application is dated 22nd April 2006. On 17th May 2006 directions were given for the determination of the application. The Respondent has not participated in the proceedings and did not comply with the directions.
3. The hearing took place at 10 Alfred Place London WC1 on 12 July 2006.

**THE LAW**

4. Section 168 of the Commonhold and Leasehold Reform Act 2002, so far as is relevant, provides as follows:
  - “(1) 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 (c.20)(restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
  - (2) This subsection is satisfied if –
    - (a) it has been finally determined on an application under subsection (4) that the breach has occurred...
  - (3) .....
  - (4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) ....”

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

## THE APPLICANT’S CASE

6. The Applicant owns the freehold of 57 Ling Road, Canning Town, London E16 4AW. The property is registered at H.M. Land Registry under Title No. EGL175008. The copy of the register (dated 12th July 2006) shows that the Applicant became the proprietor on 6th March 1997 and that the registered office is 5 College Mews, St Anne’s Hill, London SW18. The application to the Tribunal shows the Applicant’s registered office as 41 North Road, London N7 9DP.
7. Mr Speaight produced a copy of the entries at the Land Registry Title No. EGL 69650 dated 22nd June 2006 which showed that the Respondent was the long lessee of the upper maisonette at that property. The lease is dated 19th December 1997 (“the lease”) for a term of 99 years from 24th June 1976 at a ground rent of £22 per annum. The parties to the lease are Gillian Rhodes Hunt and Deirdre Rhodes Seignior (1) and Jeffrey Frank Snoad and Maureen Snoad (2). The Land Registry entries show that the benefit of the lease was assigned to the Respondent on 25th January 2005 and registered on 27th April 2005. The Tribunal was provided with a copy of the lease. By clause 3(8) of the lease, the Tenant covenants with the Landlord as follows:

*“Within one month after every assignment assent transfer underlease or mortgage of the upper maisonette to give notice thereof in writing with full particulars to the Landlords solicitors and if required to produce such assignment assent transfer or underlease and in the case of a devolution of the interest of the Tenants not perfected by an assent within twelve months after the happening thereof to produce to the Landlords solicitors the Probate of the Will or Letters of Administration under which such devolution arose and to pay to the Landlords solicitors a registration fee of Five pounds in respect of each such assignment assent transfer underlease mortgage or devolution.”*
8. Mr Speaight explained to the Tribunal that although the covenant required the tenant to give notice to the landlord’s solicitors the landlord did not have solicitors in respect of this property. His evidence was that neither the Respondent nor anyone acting on her behalf had asked the landlord for the name of its solicitors.
9. Mr Speaight explained to the Tribunal that the previous Tenant was More Investments Limited. The landlord’s insurance brokers had told him in or about June 2005 that the insurance premium had not been paid by the tenant. The landlord therefore wrote to More Investments Limited about unpaid insurance and ground rent but received no response.
10. On 7th November 2005 the landlord carried out a search of the Land Registry which revealed that the registered owner of the property was the Respondent and that her interest had been registered on 27th April 2005. The search also revealed that there

was a charge on the property in favour of Halifax Plc. On 7th November 2005 the landlord wrote to Halifax Plc notifying them that the landlord had received no notice of the assignment or mortgage. On 23rd November 2005 the landlord received a letter from Birmingham Midshires (the successor to the Halifax) saying they had no interest in the property. The landlord wrote to the Land Registry on 24th November 2005 and received a letter dated 25th November 2005 stating that the Respondent was the registered proprietor and that there was a charge on the property in favour of National Westminster Home Loans Limited registered on 22nd November 2005.

11. On 14th December 2005 Mr Speaight wrote to “NatWest Mortgages Services” and informed them that the solicitors acting for Mrs Osalor had failed to serve notice when she acquired the property in April 2005. This letter made no mention of the lease nor the alleged breach, but stated he required Notice of Transfer and Notice of Charge.
12. On 20th December 2005 National Westminster Home Loans Limited replied but with reference to a different property.
13. On 3rd January 2006 Mr Speaight wrote again to “NatWest Mortgages Services” enclosing a copy of his letter of 14th December 2005 and asked that they ensure that their solicitors served “notice of mortgage”.
14. On 14th February 2006 Mr Speaight wrote to Mrs Osalor notifying her that under the terms of her lease she is obliged to advise the landlord formally of any assignment or transfer. The letter informs Mrs Osalor that she is in breach of the terms of her lease. However the letter does not quote the covenant in the lease nor does it advise the Respondent that the landlord has no solicitors and that the notice should be served on them.
15. On 14th February 2006 Mr Speaight wrote to “the Head of Legal Services, NatWest Mortgages Services” again. This letter refers to the letter to Mrs Osalor “as a first stage in proceedings for breach of lease”. It does not refer to the relevant clause in the lease nor does it point out that any notice should be served directly on the landlord and not the landlord’s solicitors, which do not exist.
16. On 20th March 2006 National Westminster Home Loans Limited replied to the landlord referring to arrears of ground rent and service charges, but not the alleged breach of lease.
17. The last letter written by the landlord to the tenant is dated 14th February 2006 and was sent by recorded delivery. This letter does refer to a breach of lease and warns that if the breach is not rectified within twenty-one days an application to the Leasehold Valuation Tribunal will be made. This letter was sent by recorded delivery and was returned to the post office marked “NOT AT THIS ADDRESS. Please return to sender”.

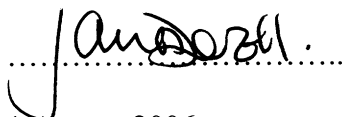
## **DETERMINATION**

18. Once the landlord has obtained a determination by this Tribunal that a breach of the lease has occurred the landlord may, once a period of fourteen days has elapsed from the determination being made, serve a notice of forfeiture under the Law of Property

Act 1925, section 146. The effect of forfeiture is to terminate the lease. There is therefore a high burden on the landlord to prove that (a) the lease includes the covenant which is alleged to have been broken and (b) that the facts constitute a breach of that covenant.

19. Having considered the copy lease with which we were provided we are satisfied that the lease contains the covenant set out in paragraph 6 above and that if this covenant is not observed and performed clause 5 of the lease provides that the right to forfeit the lease will arise.
20. Our first concern was that the covenant contained in clause 3(8) of the lease may be frustrated. It is arguable that it is impossible for the tenant to perform the covenant as on Mr Speaight's evidence, the landlord did not have solicitors at the time the covenant should have been performed or at all. The requirement is that within one month after every transfer of mortgage of the upper maisonette notice must be given in writing with full particulars to the landlord's solicitors. It is arguable that a covenant which is temporarily impossible to perform would be suspended until it became possible to perform it. In this case although we accept that the tenant and/or her solicitors has not asked for this information, Mr Speaight's evidence was that for the purposes of this property the landlord did not have solicitors. In those circumstances the tenant could not have served the notice on the landlord's solicitors.
21. In the alternative our view is that the Applicant has not discharged the burden of proof as he did not satisfy us that the landlord's solicitors had not received notice. Mr Speaight did not give us the name of the company's solicitors nor did he produce a letter from his solicitors confirming that no notice had been served.
22. Further, or in the alternative, we were satisfied on the evidence from Mr Speaight that no letters had been sent either to the Respondent nor her mortgagee informing them that the requirements of clause 3(8) had been unilaterally varied so that it was not necessary to inform the landlord's solicitors but that notice to the landlord's registered office would be sufficient to comply with the terms of the lease. The Land Registry entries in relation to the freehold title with which we were provided are dated 12th July 2006 and show the registered owner's address as 5 College Mews, St Anne's Hill, London SW18. It is possible, although we accept it is a remote possibility, that the Respondent's solicitors wrote to this address on completion of the transaction.
23. In conclusion, the making of a determination under section 168(4) of the Act has very serious consequences for the Respondent and we determine that, on the evidence before us, we are not satisfied that a breach of clause 3(8) of the lease has occurred.

Signed:

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Dated:

1 August 2006.....

Tribunal: Jane Dowell BA (Hons) (Chairman)  
Mr C. Kane FRICS  
Mrs A. Moss