

# Residential Property Tribunal Service

## Midland Rent Assessment Panel

BIR/00CQ/LBC/2006/0005

Decision of The Leasehold Valuation Tribunal on an application under s168(4) of the Commonhold & Leasehold Reform Act 2002 ('the Act')

Applicant;	David Glass Triton Investments Limited
Respondents:	Mr Walsh & Ms Swain, Mr R J Brandist, and Ms J S Griffith
Subject properties;	16, 22, & 46 Rosaville Crescent Allesley Coventry CV5 9BP
Application to the Tribunal:	25 <sup>th</sup> October 2006
Date of Determination:	22 <sup>nd</sup> February 2007

### Introduction

1. The application seeks a determination from the Tribunal that a breach of covenant or condition in the respective leases has occurred. The breach complained of is the refusal by the Respondents concerned to comply with their obligation to insure the demised premises.
2. The original application also included other properties but, following the provision of evidence that appropriate insurance arrangements had been made in respect of those properties, the Applicant has withdrawn them, leaving the application outstanding in respect of the three subject properties.
3. The leaseholders were informed of the application by letter on the 7<sup>th</sup> November 2006 and directions were issued initially on the 10<sup>th</sup> of November 2006, but, following the return of some of the correspondence, undelivered, the directions were reissued on the 18<sup>th</sup> December 2006, addressed both to the Respondents by name and to "the leaseholder." In similar form, copies of all correspondence between the Applicant and the Tribunal were sent, but no reply received from the Respondents. A warning was included that if the Tribunal made a determination that they were in breach of lease, the Applicant may make an application to the court which may result in the Respondents losing their homes and that they were advised to consult with a solicitor or a Citizens Advice Bureau. Further time was allowed for a response, but none was forthcoming.
4. The application requested that the matter could be determined on consideration of the documents alone and without a hearing. The directions issued by the Tribunal stated clearly that the Tribunal would proceed without a hearing under the provisions of Regulation 13 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 unless either party requested in writing before 9<sup>th</sup> January 2007 that a hearing be held. As no such request has been made, the Tribunal has proceeded to a determination

based upon written submissions received only from the Applicant, none from the Respondents.

5. The Applicant submitted a claim for their costs incurred in this matter.
6. No inspection of the property has been undertaken, as this is not considered necessary.

### **Evidence**

7. The lease provided is for a term of 99 years from the 25th December 1961 and is therefore a "long lease" having the meaning given by sections 76 and 77 of the Commonhold and Leasehold Reform Act 2002, as required under the provisions of s169(5) of the Act. The properties each comprise a maisonette or flat and garage and fall within the definition of a "dwelling" also required under the same provisions.
8. The Applicant has provided a statement that the lessees concerned are in breach of the covenant contained within their leases at clause 2(j) which reads:

'At all times during the said term to insure and to keep insured the said maisonette and garage in the joint names of the Lessor and the Lessee (and his Mortgagee) from loss or damage by fire with the Royal Insurance Company Limited and (subject as hereinafter provided) in the Lessor's Agency to the full value thereof (such value to be determined by the Lessors) and to make all payments necessary for the above purposes within seven days after the same shall respectively become payable and to produce to the Lessors or their Agents on demand the Policy or Policies of such insurance and the receipt for every such payment Provided Always that if any Mortgagee of the demised premises shall so require the insurance may be effected in the joint names of the Lessors the Lessee and the Mortgagee and in the Mortgagee's Agency'

9. The Applicant has confirmed that all the leases concerned are in the same form.
10. None of the Respondents have provided any evidence that they have complied with the provisions of the said clause.

### **Determination**

11. The Tribunal finds that there has been a breach of clause 2 (j) of the relevant leases in that no insurance has been effected by the Respondents.
12. The Tribunal has no powers to make an award for any costs incurred by the Applicant in this matter.



Date: **23 FEB 2007**