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DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 168 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 AND SECTION 20C OF THE LANDLORD AND TENANT ACT 1985, as amended

Applicant: Mrs. Norma Sustins

Respondents: Mrs. Elizabeth Bailey

Premises: Flat 1, 88 Eltham Road, London, SE12 8UE

Date of Hearing: 11 April 2006

Date of the Tribunal' s Decision: 22 May 2006

Tribunal: Miss L. M. Tagliavini BA(Hons) DipLaw LLM
Mr. P. S. Roberts DipArch RIBA
Mrs. A. Moss

The Tribunal's Decision

1. This is an application by Mrs. Norma Sustins, who since May 1982 has been the head lessee of a building situate at 88 Eltham Road pursuant to a lease dated 23 February 1956 for a term of 55 ½ years from 5 July 1954 at a rent of £150 per annum with $3^{1/2}$ years remaining. Mrs. Sustins is also the lessee and occupier of Flat 2 in the building. The Respondent, Mrs. Elizabeth Bailey is the lessee of Flat 1, pursuant to a lease dated 21 March 1958 for a term of 55 ½ years from 5 July 1954 (less 10 days). The London Borough of Greenwich is the freeholder of the building, which comprises a detached house converted into seven flats with gardens to the front and rear. The Applicant occupies Flat 2 on the ground floor, access to which is gained by an entrance to the front of the building. Flat 1, the subject premises, is a basement flat, accessed by its own entrance to the side of the building where a communal entrance door is also located. Since 2002, Flat 2 has been occupied by the Respondent's daughter, Mrs. Watson, her husband and their young daughter.

2. The Applicant wishes to serve a forfeiture notice in the form of her draft section 146 Law of Property Act 1925 notice, in which she alleges a number of breaches of the terms of the lease. Consequently, the Applicant has made this application to the LVT pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002, seeking the Tribunal's determination as to whether there has in fact been a breach of covenant.

Issues

3. At an oral pre-trial review held on 9/11/05 (as amended on 22/11/05), the Tribunal identified the alleged breaches as those set out in the statement of Applicant dated 24/9/05 and more specifically identified in the draft section 146 notice exhibited to that statement. These include allegations over wrongful parking in the front driveway and garden area; using the premises as a business; causing damage to garden plants and trees and knocking down wooden posts, tipping over wheelie bins and strewing rubbish around the front garden; causing a nuisance by reason of the said acts; unauthorized subletting; non-payment of service charges; non-payment of costs incurred in respect of preparation of section 146 notice; unauthorised structural alteration to a rear window; installation of (NTL) wires or a satellite dish outside the front of the building and placing of flower pots outside the premises without written permission.

The Applicant's Case

4. At the hearing, the Applicant was represented by Mr. G. Bedloe, counsel. The Applicant gave evidence to the Tribunal both orally and by way of her witness statements dated 24/9/05 and 10/0/06. Mrs. Sustins stated that since 2002, the Respondent had allowed her tenants occupying the flat to park their cars so as to obstruct free access to the building. She also alleged that the Respondent's son-in-law had been selling cars from Flat 1 and was a conducting a business from there in breach of the terms of the lease. The Applicant produced edited CCTV footage captured from a camera fixed to the front inside the Applicant's flat, said

to be taken in about March 2005, and photographs (undated), of cars and vans said to belong to the Respondent's daughter and her husband. Mrs. Sustins told the Tribunal that she had repeatedly put notices on the cars telling them they were not allowed to park in front of the building but these had been ignored. In September 2002, in an attempt to reach a compromise, Mrs. Sustins agreed to the allocation of two spaces on an informal basis at the front of the house and which were to be used on a "first come, first served basis". However, this had not eased the problem and this permission to park, was revoked by her by a letter dated 29/3/05.

5. The Applicant also alleged that the Respondent and her daughter had cut down shrubs and bushes in the front and rear gardens without her permission and had removed the wooden bollards serving as a barrier to the grassed area to the front, driven over the grassed area and generally damaged the garden. In her CCTV tape, Mrs. Sustins showed a vehicle driven by the Respondent's family member over the grassed front area in order to gain access to the main road. Mrs. Sustains also produced photographs said to demonstrate the damage done by the Respondent and her family members to the front garden area.

6. The Applicant alleged that £189.36 remains outstanding in respect of service charges for the maintenance of the premises and the insurance premium due in 2005. In early 2005, works described by Mrs. Sustins as "essential emergency works carried out to ensure renewal of insurance" were carried out to the building

At the same time, it was arranged for clearance of the pigeon nuisance from the building, which totaled £547. It was said £436.39 represented the Respondent's share of the maintenance and clearance of pigeons together with a further £324.38 in respect of the insurance. Of these sums, it was accepted by the parties that only £189.36 remained unpaid.

7. The Applicant alleged that the structure of the premises had been altered without permission by the installation of a rear window that was too small for the original opening. Mrs. Sustins alleged that this alteration had compromised the structural safety of the building and increased the excess on the insurance policy to £10,000.

8. The Applicant alleged that the Respondent caused nuisance to the other lessees of the flats by parking in the front; by removing dustbins from their designated area outside Flat 1 and placing them down the side of the driveway; by overturning wheelie bins; by removing stakes from the lawn serving as a border; damaging plants and shrubs and by harassing and being aggressive towards the Applicant and her sister. Part of the CCTV tape showed an incident where angry words were said to have been exchanged between the Applicant, her sister and Mrs. Watson although no audio was available.

9. Oral evidence was also given by Mr. Aleksander Karski in addition to his statement dated 12/11/05. In his evidence Mr. Karski described an incident on 6/2/05 where he had seen Mrs. Watson ramming a wheelie bin into Mrs. Sustin's

legs. He also described the work he had carried out on behalf of Mrs. Sustins in 2005, which comprised of main roof repairs, partial clearance of front garden and cutting back of overhanging trees for which he charged £1,600. He also described how cars were routinely parked outside Flat 1 making access to the communal front door difficult with child buggies and shopping.

10. The Applicant produced and relied upon numerous letters written since 2002 to the Respondent, complaining of the various breaches alleged as well as signs left on cars indicating there was to be "No parking".

The Respondent's Case

11. The Respondent was represented by student advisers from BPP Legal Advice Clinic, Ms M Griffiths and Ms H Kinch. Mrs. Bailey also gave evidence orally and by way of a written statement dated 20/12/05. Oral evidence was also heard from Mrs. Watson. Mrs. Bailey accepted it in her evidence, that her daughter and her son-in-law parked their cars outside Flat 1 on a regular basis but denied impeding access to the communal front door. Mrs. Bailey stated that there was no prohibition to parking at the front and that Mrs. Sustins did it all the time. She stated that they had received no complaints about this matter other than from Mrs. Sustins who had only started complaining when Mrs. Watson had taken up occupation of the flat in 2002, after her brother had spent some months renovating it.

12. Mrs. Bailey accepted that she had, together with her daughter trimmed bushes and pulled up weeds and generally tidied up the front garden area. She denied having done any work to the rear garden as she said she had been consistently denied access to it by reason of Mrs. Sustins' refusal to give her a key to the locked gate that allowed access to the rear garden from the front. Mrs. Bailey denied having chopped down trees but maintained that she had been attempting to improve the appearance of the garden and access to the building by trimming otherwise impeding growth, as she was required to do under the terms of her lease.

13. Mrs. Bailey accepted that some monies were owed in respect of the works that had been carried out on behalf of Mrs. Sustins to remove pigeons from the building in the sum of £186.39 remaining. Mrs. Bailey maintained she had paid the insurance premium together with all other charges for the works carried out by Mr. Karski, despite the absence of any section 20 notice informing her of the works before they began.

14. It was accepted by Mrs. Bailey that works to the window at the rear of the building in Flat 1 had been carried out without permission, written or otherwise being sought from the Applicant. However, the works had now been completed and were said by Mrs Bailey to be satisfactory. She did not accept that the structure of the building had in any way been compromised. Both Mrs Bailey and her daughter denied having knocked down any bollards/wooden stakes placed in the lawn as alleged but had been the acts of an ex-tenant. Mrs. Bailey did not

accept the accuracy of the CCTV tape as she claimed it was highly edited and did not show Mrs. Sustins pulling up the Respondent's plants and damage to the garden. Neither did it show the Applicant's car parked regularly outside her own flat both day and night.

15. It was said by Mrs. Bailey that she had not sub-let the flat to her daughter as she did not charge her any rent although her daughter paid for the amenities. Mrs. Bailey stated she regarded her daughter as a co-owner. Although Mrs. Watson's name did not appear on the land registry entry, Mrs. Bailey stated that she had bought the flat for her daughter while Mrs. Watson had been abroad.

16. In evidence, Mrs. Watson denied that her husband had carried on a car sales business from the flat. She stated that his hobby was rebuilding cars and that he often had one or two around although these were not usually parked on the driveway, but elsewhere. Mrs. Watson also denied that the CCTV footage shown by Mrs. Sustins accurately reflected the situation as it was heavily edited. Mrs. Watson stated that the incident on tape showing some exchange of words between the parties, herself and the Applicant's sister, Mrs. James did not accurately reflect the incident as it was said that it had been initiated by Mrs. Sustins' aggressive attitude towards Mrs. Bailey on that occasion. Mrs. Watson denied pulling up posts, stating she had been heavily pregnant at the time of this alleged incident and had not put a tarpaulin over Mrs. Sustins' plants, but only over weeds to prevent their re-growth.

Inspection

17. The Tribunal made an external inspection of the subject building and found it to be a large detached converted house set back from a busy main road with access over a driveway to the front and a grassed area. The Tribunal found the property to be poorly maintained externally. The front garden was reasonably tidy although a large number of refuse and recycling bins were lined up down parts of the driveway rather than in the designated bin bay directly outside Flat 1. The rear garden, to which entry was made through a locked gate to the side, (although access could also be gained from the street bordering the rear of the building), was generally unkempt and overgrown and not obviously divided into the plots shown on the lease plan for the subject premises. The Tribunal noted the lack of parking space both at the property and in the immediate area generally.

The Tribunal's Decision

18. The Tribunal noted both from the tone of the correspondence and their demeanour at the hearing of this application, the acrimonious relationship that existed between the parties and reflected in their evidence. Generally, the Tribunal found the evidence of Mrs. Sustins to be exaggerated and unreliable. Where the parties' evidence conflicted, the Tribunal preferred the evidence of Mrs. Bailey as being more accurate and reliable. The Tribunal found the CCTV footage to be of almost no value as it was not properly verified as to the time and date; was obviously highly edited and failed to show anything other than a number, of mostly unidentified cars parked outside the building on unidentified dates and for

unspecified periods. Footage of a person walking around a car with the bonnet raised was said to establish the business of selling cars from the subject premises but the Applicant offered little no corroborating evidence. Similarly, the Tribunal found limited evidential help from the photographs exhibited by Mrs. Sustins as they were undated and showed various cars parked outside the building but no evidence to establish to whom they belonged (other as admitted by the Respondent); bruises to Mrs. Sustins' leg after her alleged assault by Mrs. Watson for which no criminal charges were brought; pictures of the garden at various times (but not dated) and a wheelie bin lying on the ground with its contents strewn across the garden.

19. As a matter of law the Tribunal must take as its starting point the express terms of the lease for the subject premises. Clause 1 of the subject lease describes the demised premises as:

> *"......ALL THAT flat or suite of rooms situate on the basement floor of the building known as number 88 Eltham Road in the City of London which said building is hereinafter called "the said building" and is delineated on the plan annexed hereto and which said flat or suite of rooms is more particularly delineated and described in the Plan numbered One annexed hereto and thereon edged red and is known as Flat 1 Number 88 Eltham Road aforesaid (hereinafter called "the demised premises")*

20. *Clause 2(5)* states the lessee is:

> *"............to maintain and keep the gardens, shrubberies, drives and gravel paths belonging to number 88 Eltham Road in reasonable order and cultivation and not without the previous consent in writing of the lessor to cut down or destroy any ornamental or other trees, shrubs and bushes therein and will keep the same from hurt or damage and as often as any of them shall die or be destroyed will plant others in their stead and in like manner prevent them from injury or damage..."*

21. The Applicant alleges that in breach of this clause the Respondent has damaged the front and rear gardens. The Tribunal finds, having inspected the property, no evidence of trees shrubs or bushes having been cut down or destroyed as alleged. It was accepted by Mrs. Bailey that together with her daughter they had carried out gardening works to the front and general clearance in accordance with the terms of the lease. The Tribunal finds that Mrs. Bailey had caused no damage to the rear garden, or anyone instructed by her and that access to this part was severely limited by the Applicant's unreasonable refusal to provide a key this gate to the Respondent.

22. *Clause 2(8)* states the lessee will:

(i) *At all times during the said term to pay and contribute with the tenants of the other flats in the said building a proportionate part (calculated as hereinafter provided) of the expense of making repairing and maintaining the boundary walls and fences and all gates easements and appurtenances belonging to or used or capable of being used by the lessees in common with the lessor and the other tenants in the building and the expenses in connection with the upkeep and maintenance of the garden belonging to the building and to keep the lessor indemnified in respect thereof.*

(ii) *The proportion of such expense to be paid by the lessees shall be such proportion thereof as the net rateable value for the time being of the premises shall bear to the net rateable value for the time being of the building."*

23. The Applicant alleges that the Respondent has failed to contribute towards the cost of the works to the roof and exterior of the house. The Tribunal finds that this clause does not relate to those works but only to works concerning the gardens and fences etc. as stated in the express terms of the lease. The cost of any

works of clearance to the garden said to be included on the invoice of Mr. Karski have not been sufficiently identified so that the Respondent may know what is alleged to be due from her in respect of that sum. In any event sums already paid by the Respondent are likely to have met the cost of any garden clearance.

24. *Clause 2(10)* states the lessee will:

> *"From time to time during the said term to pay all costs charges and expenses incurred by the lessor in respect of the demised premises in abating a nuisance and executing all such works as may be necessary for abating a nuisance in obedience to any notice served by the local authority."*

It is alleged by the Applicant that the Respondent had failed to pay her contribution towards the cost of abating the nuisance caused by the pigeons at the building. The Tribunal finds that such costs are recoverable only in respect of a nuisance at the demised premises. In this instance the works of clearing a pigeon infestation are not works of abatement of a nuisance to the demised premises but to the building in which it is situate.

25. *Clause 2(12)* states the lessee:

> *"Will not commit or allow to be committed any waste spoil or destruction upon or to the demised premises or any building erection or thing at any time during the term standing or being in or upon the same or during the last 15 years of the term to any tree or shrub growing in or open the same and will not at any time during the term fell destroy or injure lop or chop any of the timber or timber like trees or pollards reserved to a superior lessor by the head lease."*

It is alleged by the Applicant that trees and shrubs in the front garden have been damaged by the Respondent; that vehicles have been driven over the grass at the

front causing damage and bollards removed by Mrs. Watson. The Tribunal has already found as a fact that neither the Respondent nor her daughter have caused damage to the front or rear gardens. The Tribunal also finds as a fact that Mrs. Watson did not remove or damage the (wooden) bollards or posts as alleged. Although there is photographic evidence of such posts lying on the ground it can be seen from them, that some of these posts were already in a poor and rotten state and could reasonably have fallen out of place. The Tribunal finds that Mrs. Sustins has not satisfied the evidential burden on her to show that on the balance of probabilities the Respondent caused this alleged damage.

26. Further, the Tribunal finds that Mrs. Sustins has failed to establish the damage alleged to have been done to the garden and has produced no evidence of works to the garden necessitated by the repair to such damage. The Tribunal has seen the CCTV tape of a vehicle driving over part of the front garden, where it was blocked in by the Applicant's car. However, the Applicant has been unable to establish any damage caused on this occasion to this grassed area. In any event, it is the Tribunal's opinion that this clause does not refer to damage to the communal front garden but to the demised premises and the specific part of the garden reserved to Mrs. Bailey under her lease.

27. *Clause 2(17)* states the lessee is:

> *"Not to make any structural alteration or addition whatsoever in or to or about the demised premises or any part thereof or any alteration or*

addition to the plan or elevation on the building as shown on the plan annexed hereto without the previous consent in writing of the lessor and superior lessor."

28. The Respondent accepts that a window replacement at the rear of the premises was carried out without the Applicant's written consent. The Applicant alleges that the window did not meet the required standards and the Respondent has caused damage to the building. Having inspected the building the Tribunal could see that the window put in was too small for the original window opening and that the work of making good has been done to a poor standard. Although part of the structure, the Tribunal does not accept that the installation of the new window has damaged or compromised the structure in the way alleged by the Applicant or that as a result an excess of £10,000 has been added to the building's insurance policy. The Applicant produced no evidence of these claims and the Tribunal finds these are further examples of Mrs. Sustins' tendency to exaggerate her evidence.

29. *Clause 2(18)* states that the lessee is:

    "Not to exercise or carry on or permit to be used exercised or carried on upon the demised premises any trade or business whatever but will keep and use and occupy the premises hereby used as a private residence."

30. The Tribunal finds as a fact that the Respondent or any family member did not carry on a business by selling cars from the front of the building or from the premises themselves, as demised. The Tribunal finds the evidence relied upon by Mrs. Sustins of a person walking around the opened bonnet of a car and a "for sale" sign in the window of another, to be woefully inadequate. Although, Mr. Watson may have, over the years sold one or two of his cars from home, this cannot by any stretch of the imagination said to be "carrying on a business".

31. *Clause 2(19)* states the lessee is:

> *"Not to do or permit or to be done any act or thing in or upon the demised premises which shall or may be or grow to the annoyance nuisance damage or disturbance of the lessor or her assigns or their tenants."*

It is alleged by the Applicant that the Respondent breached this term by carrying on a business; parked cars in front of the building thereby causing an obstruction; removed and overturned a wheelie bin causing damage to the grass and an obstruction; dumped rubbish at the front of the building; removed bollards; damaged grass and tress at he front of the building; pulled up trees, shrubs at the front and back of the building and harassed the Applicant and threatened her. The Tribunal finds that the acts alleged and complained of by the Applicant do not concern acts within the demised premises. It is the Tribunal's view that this clause is designed to prevent acts of nuisance from within the premises e.g. the keeping of a noisy dog or playing loud music. It does not concern the acts alleged by the Applicant in this case and the Tribunal is therefore, not required to make

findings of fact in respect of these allegations so far as they are said to give rise to a breach of this clause of the lease.

32. However, the Tribunal has already made findings of facts in respect of the alleged damage to the gardens and bollards and the carrying of the business in favour of the Respondent and against the Applicant. Having seen and heard the evidence, the Tribunal finds that the Respondent did not cause damage or an obstruction by way of an overturned wheelie bin and the Tribunal accepts that Mrs. Bailey picked it up shortly afterwards. The Tribunal finds that the parking of cars to the front has not obstructed the entry to the building by other occupiers. It is accepted by the Respondent that parking is on a "first come first served basis" and therefore Mrs. Bailey (or Mrs. Watson) equally could not complain about another's tenant's car being parked in front of her flat so long as she could gain access to it and to the building. The lack of complaints from the other tenants in the building, with the exception of a generalized complaint from Mr. Karski, indicated to the Tribunal that Mrs. Sustins had grossly exaggerated this matter.

33. It was clear to the Tribunal that the relations between the parties and their family members are extremely poor. The Tribunal does not find that Mrs. Bailey or any family member has threatened or harassed the Applicant as alleged, but finds that both parties are equally at fault by their provocative actions. The Tribunal would have expected a criminal charge might have been brought against Mrs. Watson in

respect of the alleged assault and consequent injury displayed by Mrs. Sustins, but this has not happened.

34. *Clause 2(21)* states the lessee:

> *"Will not do or suffer to be done anything by means whereof the validity of the insurance hereinafter mentioned may be in any wise endangered or impeached or which may be hazardous or noisome or injurious or offensive to the lessor and/or the superior lessor or their respective properties or to any of her or their tenants or under tenants."*

It is alleged by the Applicant that the Respondent's actions of replacing the rear window has jeopardized the building insurance. The Tribunal finds no evidence of this as the Applicant has not produced any letters from the insurance company to this effect but has simply stated that this is the case. It is evident to the Tribunal that the building has over the years been poorly maintained and as a result emergency works were necessary to the roof, amongst other more minor items before an insurance policy could be renewed. The policy has been renewed but the policy itself was not produced to the Tribunal.

35. *Clause 2(23)* states the lessee:

> *"Will not at any time during the last seven years of the term except in every case with the previous consent in writing of the lessor and the superior lessor assign underlet or otherwise part with the possession of this present lease or the demised premises or any part thereof for all or any part of the said term."*

It is alleged by the Applicant that the Respondent has sub-let the demised premises or otherwise parted with the whole of possession to Mr. and Mrs. Watson. The Tribunal finds that the occupation of the premises by the

Respondent's daughter is a "family" arrangement. Mrs. Bailey stated that she comes and goes from the premises although does not live there. She stated she does not demand or expect rent from her daughter in respect of the latter's occupation but that bills incurred by her daughter such as electricity and gas would be paid by her. In any event, it appears that Mrs. Watson's occupation in 2002 falls outside of the seven-year limitation period applicable here.

36. *The Third Schedule* states the lessee is:

> *"(i) To furnish and keep furnished so far as conditions allow all the front windows of the flat with curtains corresponding in style and colour with this in the front windows of the other flats in the building."*
>
> *(ii) No wireless, pole or aerial or other pole or wire shall be placed or fixed to the exterior of the premises or in thee garden belonging to the building."*
>
> *(iii) No flower box flower pot or other objects to be placed outside the premises without the written consent of the lessor first obtained."*

It is said that the Respondent has breached this clause by installing a window not in keeping with the building; installed a satellite dish at the back of the building and installed flower boxes without first obtaining the consent of the landlord. Mrs. Bailey denied and the Tribunal accepts, that she did not install a satellite dish at the premises and did not have the NTL cables laid at the property, but found them already in place on the assignment to her of the lease. The Tribunal has already made finds in respect of the rear window installed by the premises. Although, it was accepted by Mrs. Bailey that her daughter had put flower boxes

outside the flat they had now been removed although the Applicant had not complained about their placement initially and implicitly gave her consent. At the hearing, the Applicant did not seek to rely on this allegation and Mr. Bedloe made no written submissions in respect of it.

Parking

37. It was clear to the Tribunal; that the primary cause of the disputes between the parties stems from the parking of cars in the front driveway. There is no clause in the lease that provides for this. *Clause 1 of Schedule 1* states:

> *" Rights and benefits granted to the Lessees"*
>
> *1.The exclusive use of that part of the garden at the rear of the demised premises shown and coloured green on plan number 2 annexed hereto together with a right of way on foot only over the land coloured brown on the said plan in common with the Lessor and the Lessees of the other flats in the said building;*
>
> *2.The free right of passage at all times and for purposes to and from the building;*
>
> *3.....................*
>
> *4.The use in common with the other tenant and occupiers of the said building of the lawns and flower beds situate in the front and in the rear of building each tenant contributing a fair proportion of the upkeep thereof.*

38. There is no corresponding burden placed on the lessees (the Respondent) that they must not do anything to hamper other lessess' right of passage to and from the building – the burden is all on the lessor to ensure that right is not impeded. It is submitted by counsel for the Applicant that this is a right of way only and does

not a confer a right to park. In support of this Mr. Bedloe relies on the case of Jalnarne v Ridewood (1991) 61 P & CR 143 relating to easements and not of great assistance in this case. The Tribunal finds as a matter of construction that the lease does not prohibit parking and were that intended the lease would have expressly stated this. However, the Tribunal is asked only to decide whether the parking is a breach of the terms of the lease. This is a lease drawn up in the 1950's when cars were becoming increasingly more widely owned and the building itself has a front area large enough to accommodate car parking for some, if not all of the flats' occupiers. The Tribunal finds as a fact that Mrs. Sustins regularly parks her car outside her flat both day and night and expects to be able to do so. However, unlike clauses 1 and 4 of schedule 1, which impose a common right amongst all lessees to enjoy the common parts of the gardens there is no such common right (or obligation) imposed on the lessees in respect of clause 2 schedule 1, the burden is all on the lessor to ensure that the Respondent has free right of passage to her flat. Further, the Applicant attempts to link the Respondent's parking of cars as a breach of clause 2(19) of the lease, which refers only to creating a nuisance at or on the demised premises. As already stated, the front garden and drive do not form part of the demised premises and therefore the parking of cars on the driveway does not, in any event constitute a breach of this term of the lease.

39. In conclusion, the Tribunal finds that the Applicant, with one exception has not made out any breaches of the terms of the lease as alleged in her draft section 146

notice. The only exception, is the installation of the rear window which forms part of the structure without the prior written consent of the landlord, which the Tribunal finds is undersized and poorly installed. The Tribunal finds that minimal damage has been done to the structure and has added little to the already existing unsightly and uncared for appearance of the building generally. Neither has this window installation compromised the buildings insurance. Therefore, the Tribunal finds the breach of the terms of the lease of minimal impact. We are invited by the Respondent's representatives to find that the breach has been waived by the Applicant by reason of her continued demands for the payment of service charges after she was aware of this breach. The Tribunal does not find that Mrs. Sustins has waived this breach as the demands are for sums already incurred. Had Mrs. Sustins asked for the work to the window to be re-done and accepted this work as satisfactory, she would then be regarded as being either estopped or having waived her right to rely on the breach. This is not the case here.

40. In conclusion the Tribunal finds that the Respondent has breached clause 2(17) of the lease in that she has altered the structure of the building without the prior written permission of the Applicant and makes a declaration to that effect. All other claims by the Applicant fail. Although, the Respondent makes an application pursuant to section 20C Landlord and Tenant Act 1985, the Tribunal finds that it is not an appropriate application as this is an application pursuant to

section 168 of the 2002 Act. In light of the findings above the Tribunal finds that no orders for ("vexatious") costs are appropriate on this application.

Chairman: W P Tagliavini

Dated: 22/5/06