

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE****LEASEHOLD VALUATION TRIBUNAL**

Case number : CAM/42UF/LBC/2008/0005

- Property** : 32 St John's Street, Bury St Edmunds, Suffolk IP33 1SN
- Application** : For determination that the Respondent is in breach of a covenant or condition in a lease between the parties [Commonhold and Leasehold Reform Act 2002, s.168(4)]
- Applicants** : Peter & Avril Hay, Troston Cottage, Troston, Bury St Edmunds, Suffolk IP31 1EX
- Respondent** : Nicholas Tomkins, 32 St John's Street, Bury St Edmunds above

**DECISION**

following a paper determination

Handed down 18<sup>th</sup> August 2008**Tribunal** : G K Sinclair, R Thomas MRICS, R S Rehahn**Summary**

1. For the reasons which follow the tribunal determines that the Respondent is in breach of the covenant contained in clause 2(2) of his lease dated 13<sup>th</sup> November 1981, namely by failing to pay Council Tax in respect of the flat at 32 St John's Street, Bury St Edmunds for the periods 1<sup>st</sup> April 2002 to 1<sup>st</sup> December 2006 and again from 31<sup>st</sup> January 2008 to May 2008 (and probably continuing).

**The law**

2. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides :
  - (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,
    - (b) the tenant has admitted the breach, or
    - (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
  - (3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

- (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) ...
3. Section 169 contains supplementary provisions which this decision need not record.
  4. The question whether a lease is forfeit therefore remains one for the court, as is the exercise of its discretion to grant relief against forfeiture; an issue which in the context of a long lease is likely to be of considerable concern to any mortgagee of the tenant's leasehold interest.

#### **The lease**

5. As noted above, the relevant lease is dated 13<sup>th</sup> November 1981. The original parties were Christopher John Whatling and his wife Janet Yvonne Whatling (as landlord) and Nicholas Tomkins (as tenant). The term granted is a period of ninety nine years from 1<sup>st</sup> November 1981, at a yearly rent of £12 payable in half-yearly instalments and by way of further rent a specified contribution towards the Service Charge.
6. The demised premises are described as being  
ALL THAT suite of rooms (hereinafter called "the Flat") known as 32 St Johns Street Bury St Edmunds aforesaid as the same is more fully described in the First Schedule hereto being part of the building shown on the plan attached hereto and marked "A" and thereon edged red (hereinafter called "the Building") ...
7. The tenant's principal covenants appear in clause 2, that which is material to this enquiry appearing at clause 2(2) and reading :  
To pay all rates taxes duties assessments charges impositions and outgoings which may now or at any time be assessed charged or imposed upon the flat or any part thereof or the owner or occupier in respect thereof

#### **Manner of determination**

8. As the tribunal office has received no response to the application and directions from the Respondent (who was served at the address of the demised premises), and the evidence provided disclosed that an inspection would be of little assistance, no inspection was arranged. The tribunal received no request for an oral hearing so elected to deal with the application by way of a determination on the papers provided.
9. The tribunal notified HBOS plc, c/o Walker Morris, solicitors of 12 King Street, Leeds LS1 2HL (named in the application as mortgagee of the Respondent tenant's interest in these unregistered premises) of the making of this application to the tribunal. Despite this, to date neither HBOS plc nor its solicitors have responded.
10. In making its determination the tribunal had before it, in addition to the application form and a copy of the lease, a witness statement dated 5<sup>th</sup> June 2008 by Mark Merriam, the Applicants' solicitor. To this was exhibited a letter dated 7<sup>th</sup> May 2008 from Mrs Ann Parry-Jones, Revenues and Benefits Manager at St Edmundsbury Borough Council. The letter confirmed that Council Tax remained unpaid in respect of the flat, with the debt

covering two discrete periods : 1<sup>st</sup> April 2002 to 1<sup>st</sup> December 2006 and again from 31<sup>st</sup> January 2008 until the date of the letter. Court action had been taken in respect of what were described as "substantial arrears" and recovery was being actively pursued. What payment had been made during the period December 2006 to January 2008 was not explained, nor why.

**Determination**

11. Based upon the evidence produced by the Applicant, and with a complete lack of interest in these proceedings shown by either the tenant or his mortgagee, the tribunal has no hesitation in finding that the tenant is indeed in breach of covenant, viz by failing to pay substantial arrears of Council Tax levied in respect of the demised premises.

Dated 18<sup>th</sup> August 2008

LS:

Graham Sinclair – Chairman  
for the Leasehold Valuation Tribunal