

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/00HN/LBC/2007/0001

Decision of the Leasehold Valuation Tribunal on application made under Section 168
of the Commonhold and Leasehold Reform Act 2002

Applicant:	3 Hengist Road Freehold Limited
Respondent:	Miss Dawn Woodhouse
Re:	Flat 6, 3 Hengist Road, Bournemouth
Date of Application	15 th January 2007
Date of Inspection	None
Date of Hearing	None
Venue	None
Appearances for Applicant	None
Appearances for Respondent	None

Members of the Leasehold Valuation Tribunal

M J Greenleaves	Lawyer Chairman
P Turner-Powell FRICS	Valuer Member

Date of Tribunal's Decision:	30th	March	2007
---------------------------------	------	-------	------

Decision

1. The Tribunal determined that for the purposes of Section 168 of the Commonhold and Leasehold Reform Act 2002 (the Act) breaches of covenant on the part of the Lessee, Dawn Woodhouse (the Respondent), have occurred in respect of Flat 6, 3 Hengist Road, Bournemouth.
2. The covenants in respect of which breaches have occurred are contained in a Lease ("the lease") dated 30th November 1988 and made between Stephen Victor Luker and Robert Oram (1) and Brian David Hoffman (2).
3. The breaches of covenant relate to non-payment of ground rent, maintenance charges (including insurance premium) and fees payable by Dawn Woodhouse (the Respondent) to 3 Hengist Road Freehold Limited (the Applicant). The sums payable but unpaid total £1,700 as follows:

Date in Applicant's schedule)	Item	Sum payable £
1 st July 2004	Ground Rent	50
	Maintenance Charge	50
1 st October 2004	Maintenance Charge	75
1 st January 2005	Maintenance Charge	275
1 st April 2005	Maintenance Charge	75
1 st July 2005	Maintenance Charge	75
1 st October 2005	Maintenance Charge	75
1 st January 2006	Maintenance Charge	275
1 st April 2006	Maintenance Charge	75
1 st July 2006	Maintenance Charge	75
1 st August 2006	Tribunal Fees	250
1 st October 2006	Maintenance Charge	75
1 st January 2007	Maintenance Charge	275
	Total	£1,700

Reasons

Introduction

4. This application was made by the Applicant on 15th January 2007 under Section 168(4) of the Act seeking a determination that a breach of covenant or condition in the lease on the part of the Applicant had occurred.
5. On 2nd February 2007 the Tribunal had made directions (inter alia) giving due notice of the Tribunal's intention to proceed on the basis of written representations and documents without a hearing. No objection had been received to the matter proceeding in this way.
6. The directions also provided for the Respondent, if she intended to contest the application, to send to the Applicant and the Tribunal a statement of reasons for so doing.
7. The Respondent had not provided any such statement and indeed had taken no part in the proceedings. Accordingly the Tribunal determined the case on the basis of the written evidence and submissions received from the Applicant.

Consideration

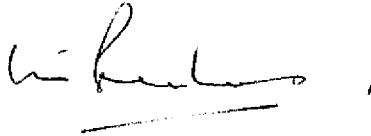
8. The Tribunal considered all the written submissions and evidence provided by the Applicant and the relevant law.
9. The Applicant produced a schedule which showed a nil balance due as at 1st May 2004, but since then sums had become due up to and including 1st January 2007 totalling £2,087.37 and it claimed that the Respondent was in breach of covenant for non-payment of each of the items making up that total.
10. Those items included ground rent, maintenance charge (including insurance premium), interest, Tribunal fees and the Respondent's costs in connection with another Tribunal application. (That had been an application before a Leasehold Valuation Tribunal (CHI/00HN/LSC/03/35) for determination of the reasonableness of maintenance charges). So far as the sums set out in this present decision are maintenance charges, all of those sums (save for that due on 1st January 2007 which had not been the subject of that application) were determined by that Tribunal as reasonable. Further that Tribunal had required the Respondent to reimburse to the Applicant the Tribunal fees of £250).
11. In this present application the Applicant produced copies of a series of letters written to the Respondent. They referred to invoices enclosed, but the Tribunal did not have copies of any of those invoices. The Respondent had not denied those invoices had been received and the Tribunal considered therefore that it should assume that they had been enclosed and therefore received by the Respondent.
12. The lease.
13. So far as material to the issues in this case, the relevant provisions are:

- a. Clause 1 whereby the lessee covenants in accordance with the Third Schedule.
 - b. The Third Schedule contains the following provisions:
 - i. "To pay the rent hereby reserved during the term at the times and in manner stipulated in this lease without any deduction whatsoever". (The rent is stated to be payable on 25th June in every year
 - ii. "To pay all rates taxes assessments charges impositions and outgoings which may at any time during the term be assessed charged or imposed upon the demised premises or the owner or occupier....."
14. The Applicant says that the Respondent's mortgagor, Nationwide Building Society, had paid charges raised against the Respondent but will now only do so on the basis of legally correct procedures; that the mortgagor is becoming increasingly wary about making any further payments. The Applicant's schedule showed a payment made by the mortgagor on 6th March 2004 resulting in the nil balance referred to above.
15. There is no other evidence that the Respondent has been the lessee either before or since 1st May 2004, but the Tribunal found it could rely on the Applicant's evidence set out in the preceding paragraph so that it could make any finding against the Respondent as Lessee of Flat 6.
16. Of the different types of item claimed by the Applicant, the Tribunal found as follows:
- a. Maintenance charge. In respect of each item claimed, the Tribunal found that each item was due, had been duly demanded but not paid. Every such non-payment was found to be a breach of covenant.
 - b. Ground rent. The Tribunal was prepared to accept that proper written demands had been made for each item of ground rent up to and including that due in June 2004. However, by virtue of the Landlord and Tenant (Notice of Rent)(England) Regulations 2004 which came into force on 28th February 2005, significant additional requirements were imposed as to the contents of the notice. The Tribunal considered it probable that an unrepresented freeholder might well be unaware of those requirements and therefore that the demands made for ground rent in 2005 and 2006 probably did not comply, so that there have been no valid demands for ground rent for those years. For that reason only the Tribunal did not find that there had been breaches of covenant for non-payment of rent for those years.
 - c. Interest. The Tribunal found that the payment provisions in the lease as outlined above did not provide for payment of interest on any late payments. The Tribunal therefore did not find any breach of covenant had occurred for non-payment of interest demanded.
 - d. Tribunal Fees. The Tribunal found that the fees of £250 which the previous Tribunal had required the Respondent to reimburse to the Applicant fell within the lease provision set out at 17.b.ii above in that

reimbursement was an imposition by that Tribunal on the owner. Accordingly non-payment constituted a breach of covenant.

- e. Applicant's costs of previous Tribunal. The Tribunal did not find that these additional costs fell within that provision set out at 17.b.ii above or any other payment provision of the lease. The Tribunal did not find therefore that non-payment was a breach of covenant.

17. The Tribunal made its decisions accordingly.



Chairman
A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor