

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

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 168(4)

REFERENCE LON/00BE/LBC/2008/0039

PROPERTY FLAT 3, 41 RYE HILL PARK, LONDON SE15 3JN

PARTIES:

WESTLEIGH PROPERTIES LIMITED

Applicant

Ms M E ZALESKA

Respondent

Date of Application : 7th August 2008

Date of Determination : 16th December 2008

**Tribunal : Mrs H C Bowers BSc ECON MRICS MSc (Chair)
Mrs G Barrett JP**

Decision Date : 16th December 2008

REASONS/DECISION

A. BACKGROUND

1. This application under s168 (4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") seeking a determination of the breach of covenant or condition of the lease has occurred was made by the Westleigh Properties Limited. The Respondent to the application, Ms M E Zaleska is the leaseholder owner of flat 3, 41 Rye Hill Park.
2. Initial Directions were issued on 13th August 2008. Supplementary Directions were sent out on 30th September 2008 and specifically instructed that future correspondence to the Respondent should be sent to the subject property, to 29a Devonshire Road, London, SE23 3EN, to the Respondent's solicitors, Peter Otto & Co at 149 Rye Lane, Peckham, London, SE15 4ST and to the mortgagees Commercial Acceptance Limited of 23B Grove End Road, London, NE8 9DB.
3. Correspondence was received from the Respondent on 20th October 2008 from a new address and as a consequence the initial hearing date was vacated. A new hearing date was fixed for 16th December 2008. Neither party attended the hearing and therefore the Tribunal proceeded on the basis of the written representations before them.

B. EVIDENCE

4. There is a statement from Mr Amardeep Bansil, an employee of BLR Property Management, who are the managing agents of the subject property. Mr Bansil explained that there had been an accrual of arrears of service charge and ground rent in respect of the subject property. As a consequence there was a land registry search, where it was discovered that the subject property had been transferred to the Respondent on 1st November 2006 and a charge applied to the property.
5. On 22nd November 2007 and again on 11th January 2008, BLR Property Management wrote to the Respondent at 29A Devonshire Road, London, SE23 3EN, the address provided on the Land Register; requesting that the notice of transfer and charge should be provided. There was no response to this correspondence.
6. Subsequently the Applicant's agent received correspondence from the Respondent's solicitor's making enquiries regarding the property in relation to a prospective sale. BLR Property Management wrote to Peter Otto & Co Solicitors on 4th June 2008 advising them of the Respondent's failure to serve the notices of transfer and charge and failure to pay the relevant fee on the occasion of the transfer the respondent in November 2006.

7. In the Official copy of register of title for the subject property, it is noted that on 17th November 2006 Malgorzata Ewa Zaleska was registered as the proprietor of the leasehold interest in the subject property. Additionally on 17th November 2006 a charge was registered in respect of Commercial Acceptances Limited in respect of the above leasehold interest.
8. On 20th October 2008 a letter was received from the Respondent to indicate that she had only become aware of the pending action being taken in respect of the property. In this letter it is explained that Ms Zaleska's solicitor had failed to serve the notice of transfer and charge and consequently all demands for rent and service charge had been addressed to the previous leaseholder. Ms Zaleska states that correspondence had been sent to her old address and that she was making arrangements to pay the outstanding charges to the freeholder. There has been no further correspondence from the Respondent.

C. THE LEASE:

9. The lease of the subject premises is dated 30th April 1990 and is for an original term of 99 years from 30th April 1990. The original parties to the lease are Melbourne House Developments Limited, as Lessor and Colin James Harrison, as Lessee. The clause the Applicants rely upon is to be found under Clause 3(25) of the Lessee's Covenants. Clause 3(25), which is headed Register Devolution states " Within fourteen days after the execution of any assignment charge transfer or underlease or the assignment of an underlease or the grant of any sub-underlease out of an underlease or any transmission by reason of a death or otherwise affecting the Premises or any part thereof to produce to and leave with the Lessor for the time being a certified copy of the deed instrument or other document evidencing or affecting such dealing or transmission and on each occasion to pay to the Lessor or such agents a registration fee of Twenty Pounds (£20) plus Value Added Tax." .

D. THE LAW:

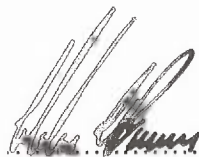
10. Section 168 of the Act deals with the requirement for a determination of a breach to be made before any Forfeiture Notice can be served. Section 168(1) states "*The Landlord under a long lease of a dwelling may not serve any Notice under s146(1) of the Law and Property Act 1925 in respect of a breach by a tenant of a covenant or condition of the lease unless sub-section (2) is satisfied.*"
"(2) *This sub-section is satisfied if:*
(a) *It has been finally determined or an application under sub-section 4 that the breach has occurred;*

- (b) *The tenant has admitted the breach; or*
- (c) *A court in any proceedings or in any arbitral tribunal and proceedings pursuant to a post-dispute and arbitration agreement has finally determined that a breach has occurred."*

Subsection (4) *"A Landlord under a long lease of a dwelling may make an application to the Leasehold Valuation Tribunal for a determination that a breach of covenant or condition of the lease has occurred."*

E. DECISION:

- 12. From the evidence available to the Tribunal we are satisfied that there was a failure to serve the notices of transfer and charge within fourteen days or at any subsequent time upon the Lessor, in accordance with Clause 3(25) of the lease. Additionally, we are satisfied that there was failure to pay a registration fee of Twenty Pounds plus VAT, also in accordance with Clause 3(25) of the lease. Accordingly by reason of the above we find that a breach of covenant or condition of the lease has occurred.



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Chairman

Dated.....16-12-08.....