RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

In the Matter of Garages and Other premises at 63/65 Old Mill Way, Weston Super Mare, Somerset, BS24 7AS

and

In the Matter of 2 Applications under Section 168(4) of The Commonhold & Leasehold Reform Act 2002

DECISION

Applicant/Landlords:	Mr Michael Burton and Mrs Sheelagh Burton
Respondents/Lessees:	Mr Nicholas Evans and Mr Anthony Cuming
Premises:	Garages and Other Premises 63/65 Old Mill Way Weston super Mare Somerset BS24 7AS
Date of Applications:	1st November 2008
Date of Directions:	7th November 2008
Date of Inspection and Hearing of Application:	10.00 a.m. Wednesday, 21st January 2009
Venue of Hearing:	The Campus Highlands Lane Locking Castle Weston Super Mare Somerset BS24 7DX
Members of the Leasehold Valuation Tribunal:	Mr A D McCallum Gregg (Lawyer Chairman) Mr J S McAllister FRICS (Valuer Member) Mrs M Hodge Bsc (Hons) MRICS (Valuer Member)

1. The Application

1.1 These matters relate to 2 applications by the landlords pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that breaches of covenant of the respective leases have occurred and that those breaches of covenant are through the act or default of the lessees.

1.2 Both garages are adjacent to each other and are situated at the ground floor level of the premises. Each garage has a designated parking space in front of it and access to the garages is from the highway (Old Mill Way) under an arch and into the car parking area which is a tarmaced area at the rear of 63/65 Old Mill Way.

1.3 The landlords reside in part of premises which is immediately above the garages.

1.4 Neither garage has a number and they will, for the purposes of this decision therefore be identified as the left hand garage (Mr A D Cuming's garage) and the right hand garage (Mr N Evans's garage).

1.5 The alleged breaches which are more particularly set out in Paragraph 7(1) of this decision (see later) are referred to and set out in the third and fourth schedules of the lease dated the 17th November 2000 between Beazer Homes Limited of the one part and Linzi Ann Oldreive and Martin Paul Rogers of the other part and relating to the left hand garage (Mr Cuming's) and the lease dated the 15th of December 2000 made between Beazer Homes Limited of the one part and Lynne Fisher of the other part and relating to the right hand garage (Mr Evans's).

2. Inspection of the premises

2.1 Both garage premises were inspected by the Tribunal in the presence of the Applicant landlords. The left hand garage (Mr Cuming's) was inspected in the presence of his representative, Mr Andrew Morris, and the right hand garage (Mr N Evans's) in the presence of Mr Evans and his representative brother, Mr C Evans.

2.2 The left hand garage was empty and the premises had been vacated by Mr Cuming's tenant.

2.3 The right hand garage contained items of furniture and other personal equipment belonging to Mr N Evans.

2.4 Neither garage is supplied with the usual utilities of electricity or water.

2.5 Both garages are of similar construction with sufficient room for one car only and access to the garage is via a Gliderol roller door. Immediately in front of each garage there is a designated parking space.

3. The Law

3.1 Section 198 of the Commonhold and Leasehold Reform Act 2002 states as follows:-

"(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) that the tenant has admitted the breach, or

(c) a court in any proceedings or arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement has finally determined that the breach has occurred.

(3) That a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of a 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 the Leasehold Valuation Tribunal for a determination that a breach of covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection 4 in respect of a matter which –

(a) has been or is to be referred to an arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party.

(b) has been the subject of a determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement."

4. The Hearing

4.1 The hearing of these matters took place at The Campus, Highlands Lane, Locking Castle, Weston Super Mare, on Wednesday the 21st of January commencing at 10.45 a.m.

5. The Left Hand Garage (Mr Anthony Cuming)

5.1 Mrs Burton opened the case for the landlords and dealt first with the left hand garage (Mr Cuming's). The Tribunal were told that Mr Cuming took the property over in 2007 and let it to tenants. The children of those tenants were in the habit of playing in the parking area which Mrs Burton felt was dangerous. She further said that there was a problem with car parking right up to the garage door and that the garage door had been damaged as a result of this. She said that she and her husband had been abused and had been accused of being nosey neighbours. She had noticed that at one time there was a storage of gas bottles in the garage and had written to Mr Cuming to complain about it and asked him to address these problems. Copies of the correspondence was produced to the Tribunal. Since then the tenant had moved out and the garage has been cleared. The landlords were concerned that breaches of covenant may have invalidated the property insurance policy. Mrs Burton stated that she did not want possession of the garage, merely that the property be respected as it was her home and she

felt that if there was a fire she and her husband would lose their home as the insurance policy would be invalidated.

She confirmed that the property was now vacant and that there was therefore no breach of any covenant at the moment. She also confirmed that she did not wish to vary the list of breaches that had been supplied to the Tribunal. Finally, she said that she was satisfied with the condition in which the garage had been left.

Mr Morris on behalf of Mr Cuming felt that this was an attempt to obtain possession, that the complaints were trifling in nature and that there had been no damage to the garage door. Furthermore, his instructions were that the items that had been stored in the garage were for domestic use only and that there had been no evidence that the premises were used for any business purposes. He further stated that Mr Cuming had never visited the property and all visits were through his letting agent. There was no evidence of any oil stains under the archway and any stains in front of the garage were small and in any event on part of the demise. He emphasised that there were no continuing breaches and in his view no substantive breach to justify any complaint.

Mr Burton felt that the gas bottles should have been stored outside. Mr Morris felt that the storage of a barbecue with gas bottles in a garage was perfectly normal.

Finally, Mr Morris made an application that the Applicants be ordered to pay the Respondents' costs in the sum of £250 plus VAT.

6. The Right Hand Garage (Mr Nicholas Evans)

6.1 Mrs Burton then gave evidence with regard to alleged breaches relating to the right hand garage by Mr Evans. Mrs Burton asserted that Mr Evans was a car dealer who had moved in to the premises in January 2007 and had on numerous occasions used the property for selling cars.

She had written to Mr Evans on the 21st of September 2007 and this correspondence was produced. Mrs Burton said that Mr Evans had accused her of being a nosey neighbour and said "What I do here is nothing to do with you." She said she felt threatened.

In answer to a question from the Tribunal she confirmed that there were no current breaches and that these were all historic breaches. Mrs Burton still felt that Mr Evans was bringing cars into the car park.

Mr Christopher Evans representing his brother then told the Tribunal that Mr Nicholas Evans was not a car dealer, he is a buyer of motor cars for Dunball Motors and none of their cars had ever come to his home.

He confirmed that he owned a blue BMW motor car as his personal transport and that he occasionally washed and valeted the car outside his garage as he was entitled to do. With regard to the allegation of parking in the garage

area, he maintained that he had permission from other owners to do this and produced copy letters from his bundle Nos 61, 67 and 69.

Mr Evans pointed out that there was no water or power available in the garage and felt that the use of an electric cable from his kitchen at No 65 was a perfectly safe and reasonable procedure. He accordingly denied causing any nuisance or any breach of covenant. He said that no petrol was stored on the premises and he felt that the applicants were merely seeking to try and regain possession of the garage. Mr Evans denied the excessive revving of cars. Finally, he also claimed the sum of £250 plus VAT from the landlords. Mr Evans stated that he had never conducted any business operations on the subject property.

7. The Findings of the Tribunal

7.1 The Tribunal then considered each of the allegations relating to both the left hand and the right hand garages and reached their conclusions based on the inspection of the premises, the papers before the Tribunal and the evidence that had been given to the Tribunal and those findings and conclusions are set out below.

Left Hand Garage (Mr A Cuming)

Alleged Breach	Findings of the Tribunal
Clause 4 – 3rd Schedule of the Lease Leaving petrol can on the driveway.	This was clearly temporary and did not constitute a breach.
Running a petrol driven lawnmower and petrol driven strimmer on the driveway and in the garage.	This was perfectly normal for domestic premises and was therefore reasonable.
Allowing children to ride bicycles and go-carts on the estate road.	There was no evidence in support of this.
Clause 10 – 3rd Schedule of the Lease Parking under the archway and obstructing access to estate road.	There was no evidence of this.
Using hazardous substances on the driveway and in the garage i.e. filling a lawnmower and strimmer with petrol.	The Tribunal felt that this was entirely reasonable.

The spilling of petrol and other hazardous substances on the driveway and estate roads.	The Tribunal could see no evidence of any permanent staining as a result of such spillage though some staining may have been within the curtilage of the premises.
Clause 8 - 4th Schedule – Lessees Covenants No copy of transfer notice	If this amounts to a breach of covenant it is a technical breach which has, in any event, now been rectified.
Clause 10 Parking a car so that damage was caused to the garage door.	The Tribunal inspected the garage door carefully and could see no evidence of such damage. Furthermore the Applicants stated that they were satisfied with the way in which the garage had been left.
Clause 11 Refusing entry to the garage etc.	Entry to the garage was requested in a letter of the 14th September 2008. The letter only gave 5 days notice. Furthermore it had not been sent by recorded or signed for delivery and it was therefore insufficient.
Clause 15 Storing hazardous substances i.e. gas bottles and petrol in violation of the lease resulting in the building insurance being void or voidable.	No evidence was produced that the insurance policy would have been void or voidable. The Tribunal did however feel that this may have constituted a breach. If it did the breach was historic and not current and had now been rectified.
Clause 16 To use the garage only as a garage for private vehicles and not for trade or business.	There was no evidence whatsoever that the garage had been used for anything other than domestic purposes.

Clause 18 Storing petrol for use in the petrol mower and strimmer in the garage and smoking whilst in the garage.	The Tribunal felt that if this were a breach it was a technical breach and that it was reasonable to store a small can of petrol for domestic use. There was no evidence of anybody smoking whilst in the garage.

Right Hand Garage - (Mr M Evans)

Alleged Breach	Findings of the Tribunal
Bringing sundry vehicles on to the property for minor repairs and washing. Running electric cables across the estate road.	The Tribunal saw no evidence of "sundry vehicles" being brought onto the property for minor repairs. The only evidence was the washing and valeting of Mr Evans' personal car. This and the running of electrical cables across the estate road was felt entirely normal and reasonable.
Allowing contractors to obstruct estate roads.	The Tribunal made no finding on this matter.
Clause 10 Parking sundry vehicles on the estate roads that obstruct the parking of other owners.	There was no evidence of sundry vehicles obstructing the parking of other owners.
Allowing other sundry vehicles to park on the estate roads and blocking the access of other owners.	Again, there was no evidence whatsoever of this allegation. There was however a photograph of one contractor's vehicle but that was not causing any obstruction.
Not having an environmental licence for commercially washing sundry vehicles.	There was no evidence whatsoever of commercially washing vehicles and indeed the lack of a water supply to the garage made this allegation most unlikely.

Clause 16 – Schedule 4 – Lessees Covenant Using the garage to store car washing equipment in pursuit of a business.	There was no evidence of this.
Clause 17 Prolonged excessive revving of engine of motor vehicles.	There was no evidence of this. Indeed a letter from the resident at No 61 refuted this allegation.
Not to keep any petrol stored on the property apart from the petrol in the tank of a motor car.....	If this amounted to a breach, the Tribunal felt it was a technical breach and not of sufficient severity or material enough to justify this complaint or find that there had been any breach of covenant.

7.2 The Tribunal accordingly dismisses the complaints in respect of both garages and finds that either no breaches of covenant or conditions in the lease have occurred or that such alleged breaches are trivial, de minimis and have been rectified.

It follows that the applications under Section 168(4) of the Commonhold & Leasehold Reform Act 2002 are dismissed.

8. Costs

8.1 The remaining issue that the Tribunal were asked to consider by both the Respondent Lessees was the issue of costs.

Sub Section 10 of Schedule 12 of the Commonhold & Leasehold Reform Act 2002 enables a Leasehold Valuation Tribunal to determine that one party to proceedings shall pay the cost incurred by another party in connection with the proceedings in the following circumstances:-

10(2) "That he has made an application to the Leasehold Valuation Tribunal which is dismissed in accordance with the regulations made by virtue of Paragraph 7 or (b) He has in the opinion of the Leasehold Valuation Tribunal acted frivolously, vexaciously, abusively, disruptively or otherwise unreasonably in connection with the proceedings".

10(3) The amount which a party to the proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed (a) £500 or (b) such other amount as may be specified in the procedure regulations.

Notwithstanding the earlier finding of the Tribunal, the Tribunal accepts that the applicant landlords were genuinely concerned that there had been breaches of covenant or condition especially as they lived in a flat directly above the two garages. They therefore concluded that the applications had not been frivolous or vexacious and no award of costs is made.

Dated this 5th day of February 2009

Signed.....

Andrew McCallum Gregg (Chairman)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

In the Matter of Garages and Other premises at 63/65 Old Mill Way, Weston Super Mare, Somerset, BS24 7AS

and

In the Matter of 2 Applications under Section 168(4) of The Commonhold & Leasehold Reform Act 2002

DECISION

Applicant/Landlords:	Mr Michael Burton and Mrs Sheelagh Burton
Respondents/Lessees:	Mr Nicholas Evans and Mr Anthony Cuming
Premises:	Garages and Other Premises 63/65 Old Mill Way Weston super Mare Somerset BS24 7AS
Date of Applications:	1st November 2008
Date of Directions:	7th November 2008
Date of Inspection and Hearing of Application:	10.00 a.m. Wednesday, 21st January 2009
Venue of Hearing:	The Campus Highlands Lane Locking Castle Weston Super Mare Somerset BS24 7DX
Members of the Leasehold Valuation Tribunal:	Mr A D McCallum Gregg (Lawyer Chairman) Mr J S McAllister FRICS (Valuer Member) Mrs M Hodge Bsc (Hons) MRICS (Valuer Member)

1. This matter relates to 2 applications under Section 168(4) of the Commonhold & Leasehold Reform Act 2002.se matters relate to 2 applications by the landlords pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that breaches of covenant of the respective leases have occurred and that those breaches of covenant are through the act or default of the lessees.

2. The Tribunal inspected the premises at 10.00 a.m. on Wednesday the 21st of January 2009 and the hearing of these applications took place later that morning. The decision of the Tribunal was published on the 5th day of February 2009.

3. On the 23rd of February 2009 the Residential Property Tribunal Service received a letter from Mr Nicholas Evans dated the 19th of February 2009.

4. In that letter Mr Evans has requested that the Tribunal reconsider its decision concerning the question of costs and that he be reimbursed for his costs on the grounds that the application against him was unreasonable and without merit.

5. At the hearing on the 21st of January 2009 representations were made with regard to the question of costs and those representations were considered by the Tribunal.

6. In Paragraph 8 of its decision dated the 5th of February 2009 the Tribunal referred to the question of costs in detail and in particular concluded that the "Applicants had not acted frivolously, vexaciously, abusively, disruptively or otherwise unreasonably in connection with the proceedings".

7. Accordingly the Tribunal made no order as to the payment of costs.

8. Mr Evans' letter of the 19th of February does not add anything to the evidence already heard and considered by the Tribunal.

9. It follows that there is no reason to go behind the decision that has already been carefully considered and made by the Tribunal.

10. Accordingly Mr Evans' request for the Tribunal to reconsider the order with regard to costs and make an order for reimbursement of his costs is refused.

Dated this 25th day of February 2009

Signed.....
Andrew McCallum Gregg (Chairman)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

In the Matter of Garages and Other premises at 63/65 Old Mill Way, Weston Super Mare, Somerset, BS24 7AS
CASE NO: CHI/00HC/LBC/2008/0025

and

In the Matter of 2 Applications under Section 168(4) of The Commonhold & Leasehold Reform Act 2002

RESPONSE BY THE TRIBUNAL TO A REQUEST BY THE APPLICANT FOR LEAVE TO APPEAL AGAINST THE DECISION OF THE TRIBUNAL DATED THE 5TH OF February 2008

Applicant/Landlords:	Mr Michael Burton and Mrs Sheelagh Burton
Respondents/Lessees:	Mr Nicholas Evans and Mr Anthony Cuming
Premises:	Garages and Other Premises 63/65 Old Mill Way Weston super Mare Somerset BS24 7AS
Date of Applications:	1st November 2008
Date of Directions:	7th November 2008
Date of Inspection and Hearing of Application:	10.00 a.m. Wednesday, 21st January 2009
Date of Decision:	5th February 2009
Venue of Hearing:	The Campus Highlands Lane Locking Castle Weston Super Mare Somerset BS24 7DX
Members of the Leasehold Valuation Tribunal:	Mr A D McCallum Gregg (Lawyer Chairman) Mr J S McAllister FRICS (Valuer Member) Mrs M Hodge Bsc (Hons) MRICS (Valuer Member)

1. This matter relates to 2 applications under Section 168(4) of the Commonhold & Leasehold Reform Act 2002. These matters relate to 2 applications by the landlords for a determination that breaches of covenant of the respective leases have occurred and that those breaches of covenant are through the act or default of the respondents/lessees.

2. The Tribunal inspected the premises at 10.00 a.m. on Wednesday the 21st of January 2009 and the hearing of these applications took place later that morning. The decision of the Tribunal was published on the 5th day of February 2009.

3. On the 27th of February 2009 the Residential Property Tribunal Service received a letter the applicant/landlord by way of an appeal against that decision.

4. The grounds and reasons for that appeal are set out below together with the decision of the Tribunal.

	Grounds		**Response**
4.1	*(We were hoping that the Tribunal would have made provision in its findings to ensure that similar breaches by these tenants did not occur again.)*		The Tribunal has no power to give such an assurance or make any order with regard to potential future breaches of covenant.
4.2	*(Some of the findings of the Tribunal do not take into account the evidence provided at the time of the hearing and others have assumed answers without being discussed at the hearing).*		The Tribunal totally refutes this suggestion and thoroughly considered all the evidence presented to it before making its decision.
4.3	*The defence for Mr Cuming was not received until the 20th of January which was the day before the hearing and did not give us enough time to produce the evidence Mr Cuming's solicitor requested regarding the insurance.*		If this was the case the applicants should have requested an adjournment. This matter was not raised as an issue by the applicants at the hearing.

	Grounds		Response
4.4	*The shorthold tenancy agreement issued by Mr Cuming's letting agents to his tenant states that he must inform them of any lease covenants and restrictions attached to the property. Mr Cuming clearly did not do this and although the tenant has now moved out we would ask the Tribunal if Mr Cuming is going to make any future tenants aware of their obligations regarding the lease.*		Such a request is not within the jurisdiction of the Tribunal and this question should have been/should be put to Mr Cuming or his agents.
4.5	*The Tribunal state in Clause 11 that a letter sent to Mr Cuming on the 14th of September requesting a garage inspection only gave him 5 days notice and assumes in its findings that this letter was not sent Recorded. We were not asked to confirm this at the hearing but we do have a recorded delivery receipt for this letter and know that Mr Cuming signed for and received it on the 17th September 2008 giving him 10 days notice of an inspection against the 7 days stated in the lease. All letters sent to Mr Cuming were sent First Class Recorded.*		This matter had no bearing on the issues considered by the Tribunal.
4.6	*Clauses 15 and 18. The photographs submitted with our original claim show the tenants storing hazardous gas bottles and petrol in the garages.....the appeal against the Tribunal's decision that this is just a technicality because of the potential danger to us and our property and ask the Tribunal to reconsider its decision not to limit the use of the garage to the parking of a car as per Clause 16 and by the definition therein.*		The Tribunal came to its conclusions and made its decision on the factual evidence produced at the hearing.

	Grounds		Response
4.7	*We would point out that although there is shared access of the parking area, there is no shared ownership. The land up to the rear parking spaces was transferred to us in June 2001 as per Title Register No ST195993 issued by the Land Registry. A copy of this was available at the hearing but we were not asked to produce it.*		It was for the applicant/landlord to produce to the Tribunal such documents and evidence in support of their case as they wished. They chose not to produce this document which was not included in the applicant's bundle before the Tribunal.
4.8	*The photographs submitted clearly show vehicles not parked within parking bays.....we feel that the Tribunal should have taken into consideration the ownership of the land and made a ruling to restrict parking outside the designated parking bays.*		The Tribunal has no power to make such an order or ruling.
4.9	*Our claim against Mr Evans was that he bought and sold cars from our property which although we did not have photographic proof, we have seen and heard with our own eyes. He disputes this and claimed he had never been self employed but employed by a company called Dumball Motors as a buyer. He was not asked by the Tribunal to prove this although it was an important part of our claim.*		The status of Mr Evans' employment was raised at the hearing and he responded to it. If the applicant/landlord was not satisfied with his response then he should have requested either further proof from Mr Evans or an adjournment.
4.10	*Mr Evans' garage is 40 feet from his property as seen by the Tribunal on their visit. To get to his garage from his rear gate he has to cross our parking area. The drive through and the parking area of No 69. As stated he has no power or water in the garage therefore to facilitate the use of a vacuum cleaner he has to cross our parking area with the cable and the same with a hosepipe when he is washing his vehicles. This means that he restricts our movements when he is carrying out these procedures*		In response to a question from a member of the Tribunal Mr Evans confirmed that this extension cable was plugged in to the kitchen at No 65 for the purpose of vacuuming the inside of his car. This issue was thoroughly aired at the hearing and the landlord/applicants given every opportunity to comment on restriction of movements, the possibility of damage to their car and of tripping over cables and hoses. The Tribunal's decision was made on the factual evidence produced at the hearing.

	and there is a possibility of damage to our car and of tripping over the cables and hoses. This therefore constitutes a nuisance and Health and Safety hazard. We appeal against the Tribunal's findings that this is normal and not unreasonable.		

5. It follows that there is no reason to go behind the decision that has already been carefully considered and made by the Tribunal.

6. Accordingly the request by the applicant/landlords for an appeal against the Tribunal's decision is refused.

Dated this 11th day of March 2009

Signed.....
Andrew McCallum Gregg (Chairman)

The above is the decision of the Tribunal in this case. If the applicant/landlord is still dissatisfied with that decision he is at liberty to refer the matter to the Lands Tribunal within 14 days.