

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER THE COMMONHOLD AND LEASEHOLD
REFORM ACT 2002 SECTION 168(4)**

PROPERTY: BASEMENT FLAT 41 RYE HILL PARK LONDON SE15
3JN

APPLICANT: WESTLEIGH PROPERTIES LIMITED

RESPONDENT: PHILIP JAMES CANTELL

Appearances

For the Applicant: Ms L Scott of Conways, Solicitors
There was no appearance by or on behalf of the Respondent

TRIBUNAL

Mrs T I Rabin Chairman
Mr D Edge FRICS

Date of Tribunal's decision: 14th July 2009

BASEMENT FLAT 14 RYE HILL PARK LONDON SE15 3JN

FACTS

1. The Tribunal was dealing with an application by the Applicant landlord, Westleigh Properties Ltd, for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent long leaseholder, Mr Philip Cantell was in breach of covenant under the terms of the lease under which he held the basement flat, 14 Rye Hill Park London SE15 3JN ("the Flat"). The covenant related to failing to serve a notice of assignment within fourteen days of any assignment.
2. The Flat is held under a lease dated 9th September 1997 ("the Lease") for a term of 99 years from 25th March 1996. The rent is £150 per annum, increasing every 33 years. A copy of the Lease is in Applicant's bundle ("the Bundle") and the tenant's obligations are set out Clause 3.

THE HEARING

3. The matter was set down for a hearing on 14th July 2009. Ms Lorraine Scott of Conways, solicitors, represented the Applicant. Mr Anthony Dean of Gateway Property Management Ltd, who did not give evidence, accompanied her. The Respondent did not attend nor did he send written representations.
4. The Tribunal considered the submissions made by the Applicant's representative and the documents in the Bundle before coming to its decision

EVIDENCE


5. The application before the Tribunal is for a determination that a breach of the Lease has been committed by the Respondent that would entitle the Applicant to seek an order for forfeiture of the Lease from the County Court. Section 168 of the 2002 Act provides that a landlord cannot serve a notice of forfeiture until (inter alia) a leasehold valuation tribunal has determined that a breach has occurred.
6. Under Section 168 (1) of the 2002 Act a landlord of a long lease may not serve a notice under Section 146 of the Law of Property Act 1925 in respect of a breach of covenant unless the requirements of Section 168(2) of the 2002 Act are complied with. For the purposes of these proceedings, no forfeiture proceedings can be commenced until the Tribunal has made a determination under Section 168(4) of the 2002 Act that a breach of covenant in the Lease has occurred.
7. The provision in the Lease in respect of which the Applicant seeks a determination that there has been a breach is contained in Clause 3.33 which states:
 - 3.33 Within fourteen days after the execution of an assignment, charge, transfer or underlease or the assignment of an underlease, or any

transmission by reason of death or otherwise affecting the Premises or any part thereof to produce 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 its agents a registration fee of Thirty Pounds (£30) plus Value Added Tax

8. The Applicant produced a copy of the Land Registry Registration which showed that the Flat had been owned by London Developments Ltd, the original lessee, who had transferred the lease to the Respondent in September 2008, although the assignment had not been registered at HM Land Registry until March 2009.
9. The Applicant had appointed BLR Management Ltd to be its managing agents until 1st June 2009 when the management was taken over by Gateway Property Management Ltd. The Applicant produced a letter from BLR Management Ltd confirming that no notice of assignment was received by them during the period of their management. Mr Dean had filed a statement in the Bundle, which also confirmed that Gateway Property Management Ltd had not received any notice of assignment. Mr Colin Baum, director of the Applicant and responsible for the supervision of the Flat also files a statement in the Bundle confirming that no notice of assignment had been received directly by the Applicant.
10. The Applicant's representatives stated that the Applicant had only been made aware that the Flat had been assigned during the course of County Court proceedings against London Developments Ltd. She said that the Applicant had obtained office copy entries of the Register in February 2009 prior to issuing proceedings and at that time the Flat was shown as in the ownership of London Developments Ltd, despite the fact that it had been assigned to the Respondent in September 2008.

DECISION

11. The power to determine that there is a breach of covenant is a serious matter. It can lead to an action which could result in the forfeiture of the Respondent's property and it cannot be invoked lightly. The Tribunal noted that the Respondent had failed to notify the Respondent of the assignment to him, even though there is a clear requirement for him to do so in Clause 3.33 of the Lease. The Applicant has produced comprehensive evidence of the Respondent's failure and the Respondent has chosen not to make any submission, despite being directed to prepare a statement of case by the Tribunal and having been warned of the potential risk of forfeiture
12. Having taken all matters into account, the Tribunal does find that there was a clear breach of the covenant to serve notice of assignment on the Applicant within fourteen days of the assignment of the Lease to him.

CHAIRMAN... 

DATED: 14th July 2009

