

**SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**

**In the matter of the Commonhold and Leasehold Reform Act 2002  
Section 168**

Case No: CHI/00MR/LBC/2009/0018-29

**Between:**

Tristmire Limited (Applicant/Landlord)

and

Frank Duncan Jones  
North End Developments Limited  
Richard Llewellyn  
Keith James Holt  
Paul Leslie Cooper  
Dennis Peter Walkley  
Sean Lawrence Cavendish  
Karl Ballard  
Charles Robert William Savage  
Michael John Doyle  
Northgate Property Limited

(Respondents/Lessees)

**Premises:** 176 London Road Portsmouth PO2 9DP

**Date of Inspection:** 6 April 2010

**Hearing:** 3 June 2010

**Tribunal:** Mr D Agnew BA LLB LLM Chairman  
B H R Simms FRICS MCI Arb

**Background:**

1. On 17 July 2009 the Applicant applied to the Tribunal under Section 168 of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that the Respondents had breached various covenants of the leases of unit 3 and suites 4-14 at the premises.
2. A pre-trial review was held at the Tribunal offices on 17 December 2009 at which the Applicant and its solicitor Mr Dalton appeared, as did counsel and solicitor for National Westminster Bank plc who was the chargee of the leasehold interests in unit 3 and suites 4-14 at the property. The charges gave the Bank locus to deal with the application on behalf of the Respondents. Various directions were given at the

pre-trial review including the requirement that the parties file and serve statements of case and witness statements.

3. The applicant duly filed a statement of case and witness statements of Mr Atkins, a Director of the Applicant company and Mr Dalton its solicitor. No statement of case or witness statements was filed on behalf of the Respondents.

#### **Inspection:**

4. The Tribunal inspected the property on 6 April 2010. No one appeared for either the Applicant or the Respondent at the inspection. The Tribunal found that the property was fenced off from the surrounding area by high boarding and locked gates. The Tribunal was able to see, however, that the property had been reduced to a mere concrete shell. The outer cladding and windows of the building had been taken away as had most of the internal walls save for the main concrete structure.

#### **The First Hearing**

5. A hearing was fixed to take place immediately after the inspection on 6 April 2010. When no one appeared for the parties at the hearing telephone enquiries were made of the Applicant's solicitors and the Tribunal office was told that the case had been settled and no one would be attending the hearing.
6. Before any decision was promulgated the Tribunal office received a fax from the Applicant's solicitors dated 12 April 2010 in which they apologised for failure to attend the hearing and that the information that had been given to the Tribunal office in the absence of the solicitor who was dealing with the matter had been incorrect. He did wish the Tribunal to proceed to make a determination as, although a settlement had been reached with the National Westminster Bank plc on behalf of itself and the lessees that (inter alia) the bank would no longer be defending the application the Applicant still needed to proceed to forfeit the leases and a pre-requisite for this was a determination under Section 168 of the Act.
7. Accordingly the matter was relisted for hearing. As it appeared that the matter could be dealt with by way of a paper determination the necessary notices were issued and the case was listed for a paper determination on 3 June 2010. As regulations permit a paper determination to be carried out by a single member of the Tribunal this was effected by one member of the Tribunal originally appointed to deal with this case, namely Mr D Agnew.

#### **The Evidence**

8. The Applicant is the head lessee of the property at 176 London Road North End Portsmouth for a term expiring on 31 December 2999. The

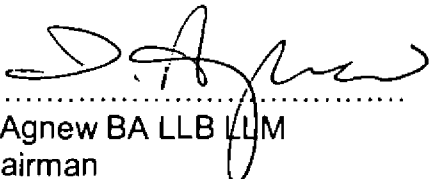
Respondents are the lessees of the units in the property. They were granted under-leases for a term of 125 years from 24 June 2004. These under-leases were varied on 30 November 2006.

9. All the under-leases contain covenants, inter alia, as follows:-
  - a) "to maintain and keep the property including the glass in the windows and doors, the service connections within and serving the property only and all heating and sanitary apparatus within the property and all the landlord's fixtures and fittings therein in good and substantial repair."
  - b) "to maintain and keep all electrical and other appliances in good and substantial repair and condition"
  - c) "not without the consent of the landlord to make any additions or alterations to the property nor remove any of the landlords fixtures and fittings and not to commit or suffer any wilful or voluntary waste or spoil to the property"
10. It is the Applicant's case that although it was aware that the Respondents wished to convert the building from commercial use as offices to residential flats and it entered into the lease variations to enable that to happen and whilst it was generally aware of what was happening to the property it had received no request to consent to the alterations to the property and Landlord's consent had therefore never been given.
11. As stated above, there was no evidence from the Respondents to controvert the Applicant's evidence.

### **The Determination**

12. Having read the statement of case and the witness statements of Mr Dalton and Mr Atkins filed in support of the application and having seen the current state of the property the Tribunal does make a declaration that the Respondents have breached the covenants in their leases by failing to maintain and keep the property including the glass in the windows and doors in good and substantial repair, in having failed to maintain and keep all electrical and other appliances in the property in good and substantial repair and condition, in having carried out alterations to the property without the Landlord's consent, in having removed the Applicant's fixtures and fittings from the property and in having committed or suffered wilful or voluntary waste to the property.

Dated this 10<sup>th</sup> day of June 2010

  
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D. Agnew BA LLB LLM  
Chairman