



**Residential
Property**
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/29UM/LBC/2010/0003

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

Premises: Flat B, 301 High St Sheerness Kent ME12 1UT

Applicants: Influential Consultants Ltd (Landlords)

Respondents: Mrs C M Willens (Tenant)

Date of Certificate: 22 March 2010

Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM

CERTIFICATE OF CORRECTION

- 1 The decision in the above numbered case was made on 22 March 2010.
- 2 It has been brought to the Tribunal's attention that the promulgated decision contains typographical errors which are corrected as set out below.
- 3 In paragraph 13 of the decision, lines 3 and 4, the word 'Applicant' should be substituted for the word 'Respondent'.
- 4 In paragraph 18 of the decision, lines 3 and 4, the word 'Applicant' should be substituted for the word 'Respondent'.

5 In paragraph 19 of the decision , line 1, the word 'Applicant' should be substituted for the word 'Respondent' and the word 'Respondent' substituted for the word 'Applicant'.

6 In all other respects the decision as previously promulgated stands unaltered.

Signed
Frances Silverman
Chairman
12 April 2010



**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/29UM/LBC/2010/0003

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

Premises: Flat B, 301 High St Sheerness Kent ME12 1UT

Applicants: Influential Consultants Ltd (Landlords)

Respondents: Mrs C M Willens (Tenant)

Date of paper determination : 19 March 2010

Date of Decision: 22 March 2010

Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM

DECISION

The Tribunal declares that the Tenant is not in breach of the covenant contained in 3(5) of her lease.

REASONS

1 The Applicant is the landlord and freeholder of the premises known as **Flat B, 301 High St Sheerness Kent ME12 1UT** (the property). The Respondent Tenant is the current leaseholder under a lease dated 23

February 1990 and made between Daniel O'Grady (1) and M A Freeley and V Freeley (2) (the lease).

2 By an application dated 21 January 2010 the Applicant sought a declaration from the Tribunal that the Respondent is in breach of covenant in relation to the provisions contained in clause 3(5) of the lease.

3 The parties agreed that the matter should be dealt with on a paper hearing and the Tribunal took into account the bundle of documents and statements supplied by both parties.

4 The Tribunal did not consider it necessary to inspect the property.

5 The property comprises a first floor flat in an end of terrace late Victorian house in a residential street in Sheerness . There are two other flats in the building.

6 By clause 3(5) of the lease the tenant covenants : ' to permit the landlord and persons authorised by the landlord at reasonable times and on giving reasonable prior written notice (except in case of emergency) to enter the flat and examine the state of repair and condition thereof and to repair and make good all defects decay and want of repair for which the tenant is responsible....'.

7 On 18 January 2010 the Applicant wrote to the Respondent informing her of his intention to commission a specialist survey of the building because of suspected movement to the structure. He did not in that letter specifically request entry to the property nor state that entry would be required on a given date.

8 This letter appears to have been intended to be sent by fax but was in fact posted to the Respondent from France on 19 January 2010 and was not received by her until after she received the Respondent's fax of 20 January 2010.

9 The Applicant's fax of 20 January does request entry by the Applicant's surveyor to inspect and refers to clause 3(5) of the lease.

10 The Applicant did not however instruct his surveyor until 20 January 2010 on which date the surveyor wrote to the Respondent advising that they would telephone to arrange an appointment to inspect. Assuming that the letter under discussion was posted by ordinary first class post , the earliest date on which the Respondent could have received it would have been Thursday 21 January 2010.

11 However on 21 January 2010 the Applicant made an application to the Tribunal for an order under s 168(4) CLARA 2002 alleging that the Respondent was in breach of covenant.

13 The Respondent had replied to the Applicant's fax of 20 January on the same day indicating that she had not received his letter of 18 January , requesting further information (which the Respondent did not supply) and indicating that she did not consider that the Respondent's request complied with clause 3(5) of the lease and asking him to withdraw his instruction (to the surveyor to inspect).

14 It is Tribunal's view that clause 3(5) of the lease does give the right to the landlord to inspect the flat to view its state and condition . Since the presence of or suspected presence of structural movement could affect the interior of the flat (and thus affect the tenant's repairing obligations under the

lease) the landlord would be within his rights to ask to inspect in the circumstances put forward in the present case.

15 Further, the landlord is entitled to authorise an agent, such as his surveyor, to carry out the inspection on his behalf . The tenant would be in breach of covenant to refuse entry to the landlord's properly appointed agent.

16 However, although in principle the Applicant has the right to inspect for the purpose he requires and may do so through the medium of his surveyor , acting as the landlord's agent, he may only do so on reasonable notice except in case of emergency.

17 There is no suggestion of there being an emergency in the case under discussion.

18 The Tribunal considers that in the present case the amount of notice given to the Respondent was patently unreasonable. The first indication she received from the Respondent that an inspection was needed was on 20 January 2010 and the Respondent presented his application to the Tribunal on the following day.

19 Had the Respondent given the Applicant reasonable notice, after which she had refused access, the Tribunal would have been minded to grant this application .

20 Since inadequate notice was given and the situation was not an emergency, the application is refused.



Frances Silverman
Chairman

22 March 2010