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Property
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**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BK/LBC/2011/0061

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL on an application under Section 168 of the Commonhold and Leasehold Reform Act 2002

Property: 2nd Floor Flat and 3rd Floor Flat, 52 Shepherd Market ,
London W1J 7QU

Applicant: Allens of Mayfair Limited (Landlord)

Represented by: B. D. Laddie, Solicitors

Respondent: Fringilla Properties S.A.

Represented by: No appearance

Date of Application: 21st June 2011

Date of Determination: 12th September 2011

Tribunal: Mr L.W. G. Robson LLB (Hons)
(Chairman)

Preliminary

1. By an Application received on 21st July 2011, the Applicant seeks a determination pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) that the Respondent is in breach of the leases (the Leases) of the 2nd Floor Flat, and the 3rd Floor Flat, 52 Shepherd Market, London W1J 7QU, both dated 7th May 1997.

2. Pursuant to the Tribunal's Pre-Trial Directions dated 22nd July 2011 the application was determined on the papers at the request of the Applicant on 12th September 2011.

Evidence

3. The Applicant submitted that the Lessee's covenants in the Leases (which are in substantially similar form) provide:

"3.11 To use the premises for the purposes of a private residence in the occupation of one family only"

"3.12 Not to use the premises for a sale by auction or for any trade business manufacture or profession or for any illegal or immoral act or purpose."

"3.13 Not to do on the premises or bring or allow to remain upon the premises anything that may or be or become or cause a nuisance annoyance disturbance or inconvenience injury or damage to the Landlord its tenants or the owners or occupiers of adjacent property or any neighbouring property"

"3.16 Not to affix or exhibit on the outside of the building or display anywhere on the premises any placard sign notice or board or advertisement except a notice advertising the premises for sale"

4. Further, Clause 6.1 of the Leases provides for re-entry and forfeiture for a breach of covenant.
5. The Applicant relied upon the statement of its surveyor (whose identity has been withheld by the Tribunal) dated 16th June 2011. He stated that the Applicant had first been alerted by correspondence from the City of Westminster Council commencing on 27th March 2009, complaining that both flats were being used for prostitution, supported by a police report dated 17th March 2009. The City of Westminster further stated that such use had continued for more than 10 years. In November 2010 Mr Ames visited the property on several occasions to supervise repairs to a failed gas main. He noted at that time that the 2nd Floor Flat and the 3rd Floor Flat were unoccupied during the day, but being used for prostitution in the evenings. He even met a maid on the stairs from one of the Flats. On 10th May 2011 he returned and took photographs of notices displayed on the landings and stairs, stating for example; "Stunning Models 2nd and 3rd Floors", "Models 2nd and 3rd Floors", "Gorgeous Hot Model", and "Come Upstairs to Flat 2 Hot Sexy Model". (Copies of these items were in the bundle). On 12th May 2011 he returned and knocked at the door of the 2nd Floor Flat. There he met the same maid, and a woman apparently in her late twenties wearing a dressing gown. In the Third Floor Flat he met one woman of a similar age wearing hot pants and a Tee shirt. The Applicant submitted that the evidence showed that the Flats were being used for prostitution, in breach of the Leases.
6. The Respondent made no submissions and took no part in the application.

Decision

7. The Tribunal decided on the balance of the evidence that both the Second Floor Flat and the Third Floor Flat were being used for prostitution. Such use was commercial, immoral, and a nuisance to nearby properties.
8. The Tribunal consequently determined pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002, that the Respondent, or other the current lessee, is in breach of clauses 3.11, 3.12, 3.13 and 3.16 of the Leases both dated 7th May 1997.
9. While not forming part of its decision, the Tribunal noted that the company search made in Panama on 8th October 2009 against the Respondent, and exhibited to the statement of the Applicant's solicitor (Exhibit SF1), reveals that the Respondent was dissolved on 26th August 2008. The Land Registry Search against the Applicant's title dated 27th July 2011 also reveals that the Respondent failed to register either of the Leases with the Land Registry. Thus it appears that the Applicant holds the leasehold interests granted by the Leases in trust for the Respondent, and since 26th August 2008 for such other person legally entitled to the property of a dissolved Panamanian company. The Applicant may wish to seek legal advice before proceeding further.

Signed: Lancelot Robson
Chairman



Dated: 12th September 2011