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HM COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 168(4) of
the Commonhold & Leasehold Reform Act 2002.

Case No. CHI/29UH/LBC/2012/0001

Property: Flat 6 Union Street, Maidstone, Kent ME14 1EY

Between:

Mercia Investment Properties Limited
("the Applicant /Landlord")

and

Mr Ralph and Mrs Caroline Blake
("the Respondents/Tenants")

Members of the Tribunal: Mr Sanjay Lal Lawyer/Chairman

Date of the Decision: 7th March 2012

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Landlord pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination by the Tribunal as to whether there has been a breach of covenant of a lease of the Property dated 22nd November 1991 between Steven George Parfitt and Darryl Mark Jones (the landlord) and Malcom James (the tenant). This lease was subject to a Deed of Variation and grant of a new lease dated 5th April 2011 between the Landlord and Rufus Alexander Hodge. The lease was granted on the same terms as the original lease.

2. The factual background of the matter can be set out fairly shortly. The Applicant is the Landlord of the Property and the Respondents are the Tenants of the Property. The Respondents became the Tenants of the Property on 5th April 2011 pursuant to an assignment of the leasehold interest from Rufus Alexander Hodge to the Respondents.
3. On 18th May 2011, the Respondents sent a notice of Assignment to the Applicant's managing agents, Circle Residential Management Limited. This was received on 19th May 2011.
4. On 16th December 2011, Circle Residential Management Limited wrote to Respondents' solicitors requesting the Respondents to admit that they had breached a covenant of the lease by serving the notice of assignment beyond the time limit specified in the lease. Circle Residential Management Limited offered to waive the breach in consideration of a payment of £500 plus VAT being sent by the Respondents within seven days.
5. On 30th December 2011, the Applicant made an application to the Tribunal under Section 168(4) of the Commonhold and Leasehold Reform Act for an order that a breach of covenant by the Respondents had occurred.
6. On 4th January 2012, Directions were issued by the Tribunal. In accordance with these Directions, the Applicant filed its Statement of Case on 17th January 2012 and the Respondents' solicitors have written to the Tribunal on 8th February 2012 admitting to the breach of covenant and consenting to the Application.
7. The parties have agreed that this matter is to be determined on the basis of written representations alone and without an oral hearing.

The Applicant's Case

8. The Applicant has referred the Tribunal to the terms of the original lease and in particular clause 3(16) which provides that:
" within one calendar month after any such document or instrument as is hereinafter mentioned shall be executed or shall operate or take effect or purport to operate or take effect to produce to the Landlord's solicitors every transfer of this Lease or mortgage or legal charge of this Lease... .."
9. The Applicant claims that the Respondents are in breach of clause 3(16) of the lease as notice of assignment should have been served by them no later than 4th May 2011. The Applicant has asked the Tribunal to determine whether a breach of covenant has occurred.

The Respondents' Case

10. As stated in point 6 above, the Respondents have not contested the Application and have admitted the breach of covenant, as alleged.

Decision

11. In the circumstances the Tribunal decides that there has been a breach of covenant by the Respondents, namely a technical breach of clause 3(16) of the lease. The Tribunal does however note, following its analysis of the history of the matter above, that the Applicant has not suffered any prejudice as a result of this breach. Be that as it may the Applicant succeeds in this matter.

Chairman..........

Date.....*7/3/12*.....