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H M COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 168(4)

Applicant: Fee Simple Investments Limited

Respondent: Shuman Ahmed

Property: 79 Willmer Road, Birkenhead, Merseyside, CH42 0JD

Tribunal: Mr A Robertson
Mrs E Thornton-Firkin

Application

1. Fee Simple Investments Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the Act') that a breach of covenant has occurred in the lease dated 22 August 1985 relating to the property.

Preliminary

2. The application was made on 28 November 2011.
3. Directions dated 5 January 2012 stated that the Tribunal considered it appropriate for the matter to be dealt with by way of a paper determination but with the opportunity for the parties to request an oral hearing. No such request was made.
4. The Tribunal convened on 29 March 2012 without the parties to determine the application.

Facts and Submissions

5. The Applicant is the proprietor of the freehold estate in the property which is subject to a leasehold interest now vested in the Respondent. The lease, dated 22 August 1985 is between Suburban Homes Limited (the Lessor) and Julie Roberts (the Lessee), and is for a term of 999 years from 22 August 1985.
6. Paragraph 6(g) of the Lease provides that the Lessee may not 'assign underlet charge or part with possession of the said property without the previous consent in writing of the Lessor at the cost of the Lessee, such consent not to be unreasonable withheld.
7. The Applicant says an assignment has taken place without the Lessor's consent.

8. The Respondent, through his solicitors 174 Law, has admitted that due to an administrative oversight requisite notice of his purchase was not given to the Respondent. The Respondent appears to now be seeking retrospective consent but it is clear from the Applicants correspondence that this has not been given.

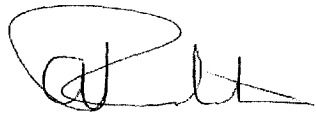
Law

9. Section 168(1) of the Act states 'A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant on condition in the Lease unless subsection (2) is satisfied'.
10. Section 168(2) includes as a means of satisfying Section 168(1) 'it has been finally determined on an application under subsection (4) that the breach has occurred.'
11. Section 168(4) provides that a landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

Tribunals Decision and Reasons

12. The Lease requires the Lessors written consent before an assignment.
13. An assignment without such consent has taken place. This is now admitted by the Respondent.
14. The Tribunal is not concerned with any question of relief from forfeiture – it must merely determine whether there has been a breach.
15. The evidence clearly points to a breach of the covenant contained in clause 6(g) of the lease.
16. The Tribunal determine that a breach of covenant in the lease has occurred.

Signed:



A Robertson (Chairman of the Leasehold Valuation Tribunal)

Date: 29 March 2012