

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

Case No: CHI/43UG/LBC/2009/0011

In the matter of Section 168(4) of the Commonhold & Leasehold Reform Act 2002
("the Act")

In the matter of Flat 2, 218 Station Road, Addlestone, Surrey KT15 2PH ("The
Premises)

Between:

218 Station Road Addlestone Limited "Applicant/Landlord"

and

Michelle Kerr "Respondent/Lessee"

DETERMINATION 25 AUGUST 2009

Tribunal: Mr D Agnew BA LLB LLM (Chairman)
 Mr D Lintott FRICS
 Miss J Dalal

DETERMINATION AND REASONS

DETERMINATION

The Tribunal determines that the Respondent is in breach of her Lease of the Premises
by having taken down and removed an internal wall at the premises.

REASONS

1. Background

- 1.1 On 28 May 2009 the Applicant applied to the Tribunal for a determination
 under Section 168(4) of the Act that the Respondent was in breach of her
 Lease by having altered the property by taking down and removing an internal
 wall contrary to Clause 3(6) of the said Lease.

- 1.2 On 5 June 2009 directions were given by the Tribunal that this application would proceed on the basis of written representations and documents only without a formal hearing as provided for by Regulation 13 of the Leasehold Valuation Tribunal's (Procedure) (England) Regulations 2003 as amended by Regulation 5 of the Leasehold Valuation Tribunal's (Procedure) (Amendment) (England) Regulations 2004.
- 1.3 The directions also provided for the Applicant to file and serve its formal statement of case by 26 June 2009 and for the Respondent to reply thereto within 21 days thereafter. The directions also stated that the Tribunal would wish to inspect the premises before making their determination and that the parties would be notified of the time and date of the inspection.
- 1.4 A statement of case was duly received from the Applicant dated 25 June 2009 but no statement of case or any other communication was received by the Tribunal office from the Respondent.

2. The Applicant's Case

- 2.1 The Applicant produced office copies of the Respondent's Registered Title at HM Land Registry which showed that she was the registered proprietor of the Premises as from 23 June 2008. The Lease is stated to be for a term of 99 years from 25 December 1989 and is dated 3 August 1990. The original parties to the Lease were Paul Ronald Anderson and Tracey Ann Prior. The Tribunal was furnished with a copy of the Lease.
- 2.2 The Applicant pointed out that Clause 3(6) of the Lease contains a covenant on the part of the Lessee to "not make any structural alterations in or additions to or cut maim alter or injure any of the walls or timbers or alter the internal arrangement of the demised premises or any part thereof".

2.3 In a witness statement containing a statement of truth Mr David Smethurst who is a director of the Applicant company which owns the freehold of the premises stated that shortly after the Respondent had purchased the premises he became aware that alterations had been carried out to them by the Respondent in that she had removed the wall between the kitchen and the front living room. His evidence is that he attended at the premises on the evening of 1 October 2008 in order to discuss the matter with the Respondent and he saw for himself that the wall between the kitchen and the living room had been removed. He tried to discuss matters with the Respondent but she was not prepared to discuss the matter with him.

2.4 The Tribunal saw correspondence between the secretary of the Landlord company and the Respondent and also correspondence from the Applicant's solicitors to the Respondent in which the Landlord or their solicitors were pointing out the breach to the Respondent. Although the Respondent did not admit the breach in writing neither did she deny it. She said that she took over the flat when it was in a dilapidated state and that she had to get on with her "internal decorations". She admitted however that she was not aware of the "rules and regulations" concerning the flat.

3 Inspection

3.1 The Tribunal attended at the premises for an inspection at 10.00 am on 25 August 2009 as previously notified to the parties. There was no response when the Tribunal pressed the front door entry system for Flat 2 and therefore the Tribunal was unable to gain admission to the premises in order to see the situation for themselves.

4. The Law

4.1 Under Section 168(4) of the Act it is provided that: “the Landlord under the long lease of a dwelling may make an application to a Leasehold Valuation Tribunal for a determination that a breach of covenant or condition in the Lease has occurred”.

5. The Determination

5.1 The only evidence which the Tribunal had available to it was that of Mr Smethurst for the Applicant. The Respondent had submitted no evidence to the Tribunal at all. Mr Smethurst’s evidence was therefore unchallenged. Although the Tribunal had not had the opportunity of seeing the alleged alterations for itself the Tribunal noted that at no time when challenged by the Landlord, the Landlord’s solicitors or in the application to the Tribunal had the Respondent denied that she had carried out the alterations without the Landlord’s consent. The Tribunal had no reason to doubt that what Mr Smethurst said in his witness statement was correct and that the Applicant has therefore proved its case on a balance of probabilities.

5.2 The Tribunal therefore determined that the Respondent was in breach of her Lease in altering the premises by taking down and removing the wall between the kitchen and the living room.

Dated this 25th day of August 2009

Signed

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D Agnew BA LLB LLM
Chairman