

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
RENT ASSESSMENT COMMITTEE  
LEASEHOLD VALUATION TRIBUNAL  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SECTION 168(4)

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LON/OOAH/LBC/2009/0049

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**Premises:** Ground Floor Flat, 307 Grange Road, South Norwood, London SE25

**Applicant:** Mr. Stephen Geoffrey Clacy

**Represented by:** LMD Management

**Respondent:** Ms. Rachel Louise Bartley

**Represented by:** Did not appear and was not represented.

**Tribunal:** Ms. LM Tagliavini, LL.M, DipLaw, BA Hons,  
Mr. M Cartwright, FRICS  
Ms. J Dalal

**Hearing Date:** 27th August 2009

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1. This is an application made by the Applicant pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002, seeking a finding by the Tribunal that the Respondent is in breach of the terms of her lease. The subject premises comprise a flat on the ground floor of a property divided into ground and first floor flats known as 307 Grange Road, and a lower ground floor flat known as 242B Mersham Road. The Respondent's interest is held pursuant to a lease dated 30th April 1999, for a term of 99 years from 1993 at a ground rent of £100 per annum for the first 33 years rising to £200 for the next 33 years, and £400 per annum for the remainder of the term.

2. In the application, the Applicant asserted that the Respondent was in breach of clauses 3(15) and 3(24) and the Fourth Schedule of the lease, which prescribed acts of nuisance and noise. The Applicant relied on the evidence of Ms. Amber Goldsmith, the occupier of the basement flat who had written various letters in 2008, complaining of excessive noise, creaking floorboards and a vibrating fridge emanating from the Respondent's flat. Despite the Applicant's written assertion that oral evidence from Ms. Ambrose, Mr. Clacy and Ms. Michelle Butter (managing agent) would be adduced before the Tribunal, no witnesses were in fact called.
3. In proving its case the Applicant relied solely on the said letters of Ms. Ambrose and despite reference to an inspection carried out in the subject premises by someone on behalf of the Applicant, no written report was presented, detailing the condition of the floorboards or identifying the cause of the creaking. The Tribunal were unable to assess the credibility of Ms. Ambrose or question her on her allegations of noise nuisance, which the Tribunal, many of which appeared to have occurred during reasonable hours, and were largely not identified as necessarily being caused or permitted by the Applicant herself or by a permitted third party. Further, there was no independent objective evidence in the form of complaints made to, or action taken by, any Local Authority Environmental Health Officer to support the assertions made by Ms. Ambrose. Further, there was no evidence of any complaints from the first floor occupier, (if any).
4. The Tribunal was not satisfied that the Applicant's burden of proof had been met. The Tribunal finds that the Applicant has not been able to demonstrate on the balance of probabilities that the acts complained of by Ms. Ambrose have occurred or been caused or permitted by the Respondent. The Tribunal was not able to determine whether the cause of the creaking floorboards was due to the Respondent's breaches, or due to failing joists and therefore the responsibility of the Applicant. Further, the Tribunal finds that the Applicant has not proved that the noise complained of by Ms. Ambrose was either

excessive, unreasonable or fell outside the permitted times prescribed in the Fourth Schedule.

5. Therefore, the Tribunal finds that no breaches of the Respondent's lease have been established and dismisses this application.



Chairman: LM Tagliavini

Dated: 27th August 2009