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**HM COURTS & TRIBUNALS SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

**Property** : 61 Wyndcliff Road  
Bordesley Green  
Birmingham  
B9 5BD

**Applicant** : Midland Heart Limited  
20 Bath Row  
Birmingham  
B15 1LZ

**Respondents** : Mohammed Nadeem and Ms Shabana Zarin  
61 Wyndcliff Road  
Small Heath  
Birmingham  
B9 5BD

**Case number** : BIR/00CN/LBC/2013/0002

**Date of Application** : 20<sup>th</sup> March 2013  
[Received in completed form 17<sup>th</sup> April 2013]

**Type of Application** : Application under section 168 (4) of the  
Commonhold & Leasehold Reform Act 2002  
for an order that a breach of covenant has  
occurred.

**The Tribunal** : N R Thompson (Chairman)  
S J Duffy

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**ORDER**

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1. The Tribunal orders that a breach of covenant has occurred under Clause 3 (14) of the lease of the property [not to part with possession of the whole of the premises otherwise than in accordance with specified terms].

## Reasons

### Introduction

2. This is the decision on an application to the Leasehold Valuation Tribunal by Midland Heart Limited for a determination under section 168 (4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") seeking an order that a breach of covenant has occurred in respect of the lease dated 10<sup>th</sup> September 1986 under which the Respondents hold the Property.
3. Section 168 (1) of the Act provides that a landlord under a lease of a dwelling may not serve notice under section 146 (1) of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in a lease unless subsection (2) is satisfied. Subsection (2) may be satisfied in one of three ways – if the tenant admits the breach; if a court or arbitral tribunal has finally determined that the breach has occurred; or (of particular relevance in the present case) if a Leasehold Valuation Tribunal, on an application by the landlord under sub-section (4), has finally determined that the breach has occurred. It is important to appreciate that an application by the landlord under section 168 (4) of the Act may lead to the service of a section 146 notice under the Law of Property Act 1925 and a subsequent application to the Court for an order for forfeiture of the lease.
4. The property is held by the Respondent by virtue of a shared ownership lease between the Copec Two Housing Association Limited (1) and Mr A G and Mrs S Y Dawson (2), dated 10<sup>th</sup> September 1986 for a term of 99 years from that date, at an annual rent which is subject to two yearly reviews.
5. Following receipt of the application, the Tribunal wrote to the Respondents on a number of occasions making them aware of the application and forwarding Directions which, inter alia, invited them to make written submissions in response to the application. No such representations were however received.
6. As the Applicant had asked for the matter to be considered on the basis of written representations and without an oral hearing, the Tribunal therefore indicated in writing and with appropriate notice to both parties that it would proceed on that basis and determine the application in accordance with Regulation 21 of the Regulations.

### **Representations by the Applicant:**

7 The Applicant indicated in the application that it had evidence that the Respondents were not in occupation of the Property and appeared to have been subletting it. A Witness Statement prepared by the current occupier, Mr Amar Gasmi, was produced to the Tribunal in support of that submission, together with a written report from Mr Christian Harmon, a Senior Investigations Officer with Birmingham City Council which set out the dates and identities of those individuals known to have been associated with or to have occupied the Property since March 2007. The last known date of any association by the Respondents with the Property was shown in the report as being 8<sup>th</sup> May 2007.

8 Against that background, the Applicant contended that the Property was being sublet contrary to Clauses 3 (14) (a) and 3 (14) (b) of the lease:

***Clause 3 (14) (a):** Not to assign underlet mortgage charge or part with possession of part only of the premises and not to dispose or part with possession of the whole of the Premises otherwise than in accordance with the provisions of sub-clause (b) hereof*

***Clause 3 (14) (b):** Not to assign mortgage or charge the whole of the Premises without the previous written consent of the Landlord such consent not to be unreasonably withheld and subject as provided in sub-clause (15) hereof **PROVIDED ALWAYS** that no consent shall be required to a first Mortgage or first Charge of the whole of the property to a Building Society within the meaning of the Building Societies Act 1962 (and such a building society in respect of such a Mortgage or Charge shall be deemed to be approved for the purposes of Clause 6 hereof)*

[For completeness, Clause 3 (15) referred to above says:

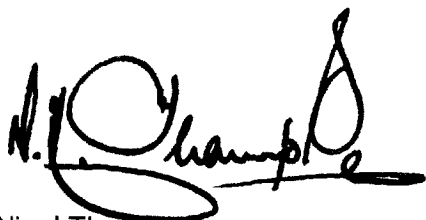
*Not to assign mortgage or charge the premises without assigning or mortgaging or charging (as the case may be) to the same person the rights conferred by Clause 2 of the Fourth Schedule hereto.]*

### **Representations by the Respondent:**

9 As indicated above, no response to correspondence or submission of evidence was received from the Respondents.

**Determination:**

- 10 On the basis of the evidence of the Applicant, the Report from Mr Harmon and the Witness Statement of Mr Gasmi, the Tribunal accepts that the Property was being sublet at the date of the application.
- 11 In considering whether such subletting constitutes a breach of covenant, the Tribunal noted in particular the wording in Clause 3 (14) (a) ... ***“not to dispose or part with possession of the whole of the Premises otherwise than in accordance with the provisions of sub-clause (b) hereof.”*** As can be seen from the wording of sub-clause 3 (14) (b) above, only assignment mortgage or charge are covered by that wording - not parting of possession.
- 12 Accordingly, the Tribunal determines that the subletting of the Property constitutes a breach of the terms of the lease under which the Respondents hold the Property and so orders.



Nigel Thompson  
Chairman  
Midland Leasehold Valuation Tribunal

Date: 14 JUN 2013