

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Commonhold & Leasehold Reform Act 2002 Section 168**

**LON/00AX/LBC/2010/0006**

**Applicant: Mr Richard Power (Landlord)**

**Represented by In Person**

**Respondent: Ms Lucy Martinez (Tenant)**

**Represented by No Appearance**

**Interested Party: Bank of Ireland (Mortgagee in Possession)**

**Represented by: Mr W. Jacob; TLT LLP Solicitors**

**Re: Flat 3, 11 Kingston Hill, Kingston upon Thames KT2 7PW**

**Hearing Date: 8<sup>th</sup> March 2010**

**Tribunal:**

Mr L.W.G. Robson LLB(Hons) MCI Arb  
Mrs E. Flint DMS FRICS

**Preliminary:**

1. In an application received on 15<sup>th</sup> January 2010 the Applicant applied for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) that breaches of the lease of the property dated 27<sup>th</sup> November 1974 (the Lease) (subsequently extended by a further lease dated 11<sup>th</sup> June 2004 on the same terms) had occurred, prior to the issue of a notice under Section 146 of the Law of Property Act 1925. The Respondent is the current Lessee. An extract from Section 168 is attached as Appendix 1, and a copy of the Lease is attached as Appendix 2 below.
2. Pre-trial Directions were given on 20<sup>th</sup> January 2010. The Applicant made written submissions on 4<sup>th</sup> February 2010 supported by his witness statements dated 15<sup>th</sup> January and 4<sup>th</sup> February 2010. The Respondent made no written submissions and did not attend the hearing. The Respondent corresponded by email with the Tribunal. On 31<sup>st</sup> January 2010 she confirmed that she would not attend the hearing as she no longer lived in the UK, and stated that she was no longer the leaseholder.

### Hearing

3. At the hearing, the Applicant outlined the relevant provisions in the Lease requiring the lessee to comply with the requirements of the 4<sup>th</sup> Schedule. The relevant parts of Paragraph 20 of the 4th Schedule provide:

“Not at any time during the said term separately to assign transfer underlet or part with the possession or occupation of any part or parts of the flat ...Provided Always that:

(i)

(ii) on the occasion of any assignment or transfer of the flat in any underlease or tenancy agreement (which expression shall not for this purpose include any underlease or tenancy for a term not exceeding twenty one years granted at a rack rent without payment of a fine) of the flat there shall be inserted a covenant by the assignee transferee underlessee or tenant as the case may be directly with the landlord to observe and perform the covenants on the part of the Tenant and the conditions herein contained And the landlord shall be given not less than 30 days' written notice of any such assignment transfer underlease or tenancy agreement intended to be made

(iii) On the occasion of any proposed underlease or tenancy agreement relating to the flat for a term not exceeding twenty one years being considered there shall be obtained the prior written consent of the Landlord to such proposed underlease or tenancy agreement PROVIDED ALWAYS that no underlease or tenancy agreement shall be entered into for a letting of the flat unfurnished for a term not exceeding twenty-one years”

4. The Applicant submitted that the Respondent had committed three breaches of Paragraph 20 by:
- a) Not procuring a covenant from the underlessee directly with the landlord to observe the covenants in the Lease (subpara. (ii) above)
  - b) not giving 30 day's notice of the proposed underlease (subpara. (ii) above)
  - c) not obtaining the prior written consent of the landlord in writing to the underlease (subpara. (iii) above).
5. The Applicant then submitted evidence that the Respondent had obtained consent to a prior subletting following the Lease requirements as noted at para.5 above, but on the occasion of subletting to a Mr and Mrs Rabson on 24<sup>th</sup> November 2008 had failed to do so. The Respondent had previously emailed in very general terms of her intention to relet the property, and effectively agreeing to obtain an agreement between the Applicant and any sub-tenant. The Applicant submitted that this did not constitute an application for consent within the terms of Section 1 of the Landlord and Tenant Act 1988. The Applicant had emailed a draft licence to sublet on 20<sup>th</sup> November 2008 with a note of his requirements and also outstanding charges. On 25<sup>th</sup> November 2008 he noticed lights in Flat 3, and he emailed the Respondent enquiring about the licence, stating that he had not waived the covenant against subletting without consent. There then followed a series of emails culminating in the Applicant informing the Respondent that he considered

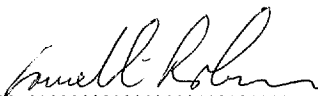
that she was in breach of the Lease, on 5<sup>th</sup> December 2009. The Respondent did not specifically respond to that letter, although she arranged for some documents which did not comply with the Applicant's requirements to be sent to him. No payment of any the outstanding charges was received. The subletting ended on 23<sup>rd</sup> May 2009.

6. The Interested Party made no submissions.

### **Decision**

7. The Tribunal considered the submissions and evidence. As a preliminary point, the Tribunal noted that despite the Respondent's statement, she remained the Leaseholder, and the Application correctly named her as the Respondent. The Tribunal did not accept the Applicant's submissions relating to the effect of the Lease as set out in paragraph 5a) and b) above. The correct construction of subparagraph 20 (ii) is that it relates to underleases exceeding 21 years. However the Tribunal accepted the Applicant's submission relating to subparagraph 20(iii) as it related to underleases for periods not exceeding 21 years. The evidence showed that the Respondent had failed to obtain the Applicant's prior written consent to the underlease. While the Tribunal noted that the underlease had subsequently ended by effluxion of time, the Applicant was entitled to a determination under Section 168(4).

8. The Tribunal therefore determined that a breach of a covenant or condition in the Lease had occurred and granted the application made by the landlord pursuant to Section 168(4) of the Act.

Signed...   
Chairman

Dated: 8<sup>th</sup> March 2010

### **Appendix 1**

#### **Section 168(4) Commonhold and Leasehold Reform Act 2002**

- (4) *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.*

### **Appendix 2**

**Lease dated 22<sup>nd</sup> November 1974**

**See attached**