



Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**LON/00BA/LBC/2008/0001**

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**Premises:** 97 Shaldon Drive, Mordan Surrey SM44BQ

**Applicant:** Amana Investment Ltd

**Represented by:** Ms Wood Counsel  
Glinert Davis Solicitors

**Respondents:** Mr Christopher Beanland  
Mr Michael Beanland

**Represented by:** Mr Christopher Beanland

**Tribunal:** Ms M.W. Daley LLB Hons  
Mr P Tobin FRICS MCI Arb  
Mr E Goss

**Date of Hearing:** 17/03/08

**Date of Decision:** 01/03/08

## 1. The Application

- (i) The Tribunal received an application dated 21st December 2007 under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 to determine whether the Respondent had breached a covenant or condition of his lease.
- (ii) The Directions, given on 3 January 2008 required -: i) the Applicant to prepare a bundle of the relevant documents by 28 January 2008, ii) The Respondent was required to prepare a bundle of documents, including a statement in response to the Applicant's case, setting out the full grounds for opposing the application (made by the Landlord), by the 15 February 2008, which was to include any documents or witness statements in support of the Respondent's case.
- (iii) Point 2 of the directions also stated -:" *The Respondents (Mr CJ Beanland and Mr M.N Beanland) are urged to seek independent legal advice, and to inform their mortgages (if any) as these proceedings may be a preliminary to forfeiture of their lease i.e. they could lose the house.*"
- (iv) The matter was set down for hearing on 17<sup>Th</sup> March 2008 at 10am.

## 2. Documents Received

### I. Applicant's bundle of documents

## 3. Matters in Dispute

The Directions given on 3 January 2008 informed the Applicant that the burden of proof would rest with the Applicant, and The Tribunal would need to be satisfied-:

- (a) That the leases include the covenant or condition relied on by the Applicant; and
- (b) That the alleged facts constitute a breach of that covenant or condition.

#### **4. The Law**

The relevant Law is set out below:-

#### **S.168 COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

(1) 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 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection is satisfied.

This subsection is satisfied if-

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(2) (b) The tenant has admitted the breach, or

(c) A court in any proceedings, or an arbitral Tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(3) 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.

#### **5. The Lease**

The lease dated 30 August 1960 made between Mrs Dorothy Beanland "the Original Lessee" and Abershaw Property Co Ltd. The Respondents succeeded to the lease On 14 August 1992.

The relevant terms of the lease are as follows:-

*“Clause 2 (5) To paint with two coats at least of good oil colour and in a proper and work like manner all the wood iron and other work in and about the demised premises previously or usually or which ought to be painted as to outside work in every third year and In the last year of the said term and as to the inside every seventh year....*

*Clause 2 (6) To maintain all fences forming part of the demised premises in their respective states and conditions as at the date of this lease (which stated and conditions are more particularly specified in the Third Schedule hereto...*

*Clause 2(9) To permit the Lessor or its agents at all reasonable times upon reasonable notice during the said term with or without workmen or others to enter the demised premises and examine the state of repair and condition thereof and during the last seven years of the said term take schedules or inventories of the fixtures and other things to be yielded up at the expiration of the said term.*

*Clause 2(18) Not to do or permit any waste spoil or destruction to upon the demised premises nor to do or permit any act or thing which shall or may become a nuisance damage annoyance or inconvenience to the Lessor or its tenants or the tenants or occupiers of the adjoining premises or to the neighbourhood.”*

## **6.The Inspection**

- 1) The Tribunal inspected the property on 17 March 2008. On inspection the Tribunal found that the property comprised a two-story semi detached house about 60/70 years old. It appears to be of traditional part rendered solid brick construction under a hipped, tile-clad roof it had a 2 storey gabled front bay.
- 2) The Tribunal was unable to gain internal access, but were able to see the front, side and rear elevations. The house was dilapidated and all the defects stated in the Witness Statement of Peter J Lascelles (Building Surveyor for the applicant) were apparent.

## 7. The Hearing

- 1) At the hearing Counsel for the Applicant Ms Wood referred the Tribunal to page 8 of the bundle the office copy entry. Ms Wood stated that Dorothy Beanland had left the property by will to her sons Mr M.N Beanland and Mr M.N Beanland.
- 2) Page 21 of the bundle was a copy of the grant of probate. Ms Wood then referred the Tribunal to clause 2 (5) and 6 of the lease, Clause 5 required the Respondent to paint the exterior of the property every three years. Clause 6 required the Respondents to maintain the fences and clause 9 which required the Lessee to permit the landlord or their agents to enter and inspect the premises. Clause 2(18 prohibited the tenant from being a nuisance to adjoining occupiers or committing acts of waste.
- 3) Counsel stated that the Respondent was in breach of those clauses. Counsel called Mr Philip Lascelles a building surveyor. His report dealt with the external condition of the property which was set out in a letter dated 17th October 2007. His letter, which was supported by photographic evidence, stated that the property was in a very dilapidated state. This was expanded on by his letter dated 11 December 2007 which stated that -:
  - (i) The garden was completely over-grown and neglected.
  - (ii) The area of pebble dashing to the chimneystack was showing signs of becoming loose and detached.
  - (iii) The window and doorframes were severely neglected and rotten.
  - (iv) The garden fencing was in very poor condition and required replacing.
  - (v) And that the exterior had not been decorated within the last four years.
- 4) Mr Christopher Beanland did not challenge this evidence.
- 5) Counsel then called Mr Andrew Saffrin who was company director for the Applicant Company. His evidence was set out in his witness statement at page 57. In his statement he stated that the property was transferred on 19 June 2002.
- 6) His evidence was that he had visited the property about 18 months ago, following a complaint from the occupant of a neighbouring property. He had written to the tenant to gain access, and had returned to the property

accompanied by Ms Claudette Wildman, (who was from the Local authority) and was dealing with complaints about fox and rodent infestation.

- 7) Mr Saffrin stated that he had not been able to gain access, and the tenant had only opened the door after the police had been called, and had indicated that they would force access. The Tenant had then gone out into the back garden.
- 8) At Paragraph 8.8 to paragraph 9 of his statement Mr Saffrin set out his attempts to gain access to the premises.
- 9) Mr Beanland indicated that he had problems receiving mail (There was no mail flap in the door of his property). He stated that his next-door neighbour had put letters into his back garden, however he had not opened these, as along with the letters, his neighbour had written to him complaining about the state of the back garden. Mr Beanland, also stated that there had been foxes in his garden, and that these letters may have been used as bedding by the foxes.  
He did not deny that the letters asking for access had been sent, he simply denied receiving them for the reasons set out above.
- 10) He stated that he had painted the exterior sometime in 2002, and that the damage had occurred after that date. He was aware that the fencing needed replacing, however he had been unemployed since 1998 and was saving up in order to be able to finance this work.
- 11) He also produced a letter from his GP concerning his medical condition, which he put forward, as a reason that he had not been able to attend to matters.
- 12) He stated that he had misread the lease concerning the frequency of repairs, and also stated that his reading of the lease was that anything other than the cost of routine repairs needed to be shared between himself and the Applicant.

- 13) In cross-examination, he accepted that his neighbour might have been upset about the foxes in the garden; he did not however accept that his use of the premises constituted a nuisance and annoyance to the tenant.
- 14) Counsel in her closing submissions invited the Tribunal to find on the evidence before it that the tenant was in breach of clause 2(5), 2(6) and 2(9) and that the premises was kept in such a manner as to constitute a nuisance and annoyance to the adjoining occupier in accordance with clause 2 (18)

## **8. The Decision of the Tribunal**

- 1) At the beginning of the hearing the Tribunal reiterated point 2 of the directions, that the Respondent was urged to seek legal advice from a citizens advice bureau.
- 2) The Tribunal has considered the evidence presented by the parties, and the evidence, gathered as a result of inspecting the property.
- 3) The Tribunal finds on a balance of probabilities that the Respondents are in breach of clause 2(5) and 2(6) and 2(9) of the lease.  
The Tribunal heard direct evidence from the respondent that he had not painted the exterior of the property since 2002, this was in breach of clause 2(5)
- 4) The Tribunal find that the property was in poor condition, and that the areas of pebble dashing to the chimneystack were showing signs of becoming loose and detached. (The window and door frames were neglected and rotten and that the garden fencing was in very poor condition and required replacing in breach of clause 2(6) of the lease
- 5) The Tribunal find on the evidence that the Respondent had not permitted the Applicant access to the property in accordance with clause 2 (9)
- 6) The Tribunal find, that at the date of the hearing there was no evidence, of infestation at the premises. The Tribunal had not been able to gain access to the premises and were unable to determine whether there had been waste spoil or destruction. The Tribunal finds that on a balance of

probabilities that the tenant is not in breach of clause 2(18) at the date of the hearing.

- 7) The Tribunal note that although it is not a matter for this tribunal that clause 2(11) of the lease provides the Applicant with a potential remedy that would not involve forfeiture of the lease

Signed



Dated

2-4-08.