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**LEASEHOLD VALUATION TRIBUNAL for the**  
**LONDON RENT ASSESSMENT PANEL**

**DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL**

**S 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**REF: LON/00BK/LVT/2008/0001**

**Address: Flats 6,9,24,28,36,42 and 48 Landward Court, Harrowby Street,  
London W1H 5HB**

**Applicant: Heartpride Ltd.**

**Respondents: Prabitha Shah (Flat 6) Jai Krisham Kaushal Ranjina Kaushal  
Anita Kaushal and Tej Bahadur (Flat 9) Mohammed Roshanaii Merali Dewji  
and Siddika Mohammed Roshanali Meali Dewji (Flat 24) Padma Rekha  
Kanthan (Flat 28) Riyaz Hussein Rajabali (Flat 36) Sandip Patel (Flat 42)  
Sonal Patel (Flat 48)**

**Tribunal: Mrs JSL Goulden JP**

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1. The Applicant, Heartpride Ltd. has, through its solicitors Lucas McMullan Jacobs, made applications all dated 12 February 2008 (and received by the Tribunal on 26 March 2008) under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that there has been a breach or breaches of covenant in the leases of Flats 6,9,24,28,36, 42 and 48 Landward Court, Harrowby Street, London W1H 5HB ("the flats"). The Applicant's solicitors requested that all the applications be consolidated.

2. The application merely describes Landward Court Harrowby Street London W1H 5HB as purpose built flats. The Applicant is the freeholder and the Respondents are the leaseholders of their individual flats at the property as set out above. A copy of each of the Respondents' leases, together with the relevant Land Registry entries deducing title, has been provided to the Tribunal.

3. In respect of each Respondent, the Applicant maintains that each Respondent has sublet the premises for the purposes of temporary sleeping accommodation as defined in Section 25 of the Greater London Council (General Powers) Act 1973 (as amended) and that this constitutes a breach of Clauses 8(a) and (c), 9 and 15(a) of the Fourth Schedule to each lease and Clause 2 of the Fifth Schedule to each lease. All leases appear to be in the same form.

4. Directions of the Tribunal were issued on 30 April 2008.

5. The matter was set down for a paper hearing and this was noted in the Tribunal's Directions. No written request has been received from any of the parties for an oral hearing.

### **The Applicant's case**

6. The Applicant relies in the main on correspondence and/or documentation produced between its solicitors and the City of Westminster, supported by a witness statement of Peter Black, Property Manager employed by Galliard Homes Ltd. Mr Black was instructed to *"supervise these proceedings on behalf of Heartpride Ltd. which is a company in the control of Galliard Homes"*.

### **The Respondents' case**

7. Although the Tribunal received notification that in respect of two of the flats, namely Flats 6 and 24, solicitors had been instructed, no written representations to the Tribunal have been received from or on behalf of any of the Respondents.

### **THE TRIBUNAL'S DETERMINATION**

8. Although most of the evidence produced is of a similar nature, in order to assist the parties, the Tribunal considers that it would be helpful to deal with the evidence for each flat under separate headings.

9. As a general comment, the Applicant's case was patchy. No information was supplied as to how and when the Applicant was first aware that there had been alleged breach or breaches of the lease or leases; no copy of the "warning letters" from City of Westminster sent in 2004 have been produced; and no explanation has been given for the delay since 2004 and the present date. Some of the correspondence appears either incomplete or duplicated. Although the Applicant's bundles referred to *"Legal Submissions"* none were included. Further, the witness statement of Mr Black was not of great assistance to the Tribunal since it would appear that he had no additional personal knowledge of the circumstances and relied on correspondence and/or documentation which had already been provided by the Applicant's solicitors.

### **The lease provisions**

10. The Tribunal has considered the provisions in the leases relied on by the Applicant which are as follows:-

#### **Fourth Schedule (Tenant's Covenants with the Landlord)**

**8(a) Not to assign transfer let or part with possession of part only of the Flat**

**8(c) Not to underlet the whole of the Demised Premises without the prior written consent of the Landlord which shall not be unreasonably withheld in the case of an intended underlessee who covenants with the Landlord to comply with the provisions herein contained (excluding the covenant for the payment of the Rent only but including the covenants for the payment of the various service charge proportions for which the Tenant is liable) limited to the term of such underlease provided that no such consent shall be required for an underletting of greater than 6 months but less than three years in the form of an assured shorthold tenancy or such other tenancy**

**agreement as does not create security of tenure beyond the contractual term of such underletting**

**9 To use the Flat as a single private dwelling only**

**15(a) To comply with all requirements whatsoever of any local or other competent authority corporation or others in relation to the Demised Premises and to comply at the Tenant's own expense with any notices whatsoever served by any such authority or others whether on the Landlord or the Tenant in relation to the Demised Premises**

**Fifth Schedule (Tenant's Covenants with the Landlord and other lessees of the Block and the Estate)**

**2 Not to use the Flat for any illegal or immoral purpose or for the purpose of any trade or business but to use it for only the purpose of private residential occupation**

**Flat 6 Landward Court**

11. In a letter written by the Director of Planning and City Development to the Applicant's solicitors and dated 5 June 2007, it was stated that planning officers, on behalf of the City Council, visited Flat 6 on 20 July 2004 and spoke to one of the occupants. In the case of this flat, the City Council stated *"The length of their stay was 1 month. They arrived 3 weeks prior to the date of the inspection (13 July 2004) and were departing 1 week after the date of the inspection (3 August 2004) a total of 6 people occupied the flat. Rent was paid for the stay to their school as part of an all inclusive study abroad programme. It was on this basis that the first set of warning letters were issued to all those with a material interest in the property, dated 4 August 2004.*

*Another site visit was carried out by planning officers, on behalf of the City Council. They visited Flat 6 on the 9 May 2007 and spoke to one of the occupants. The occupants stated that they were staying for 1 month. They arrived 3 weeks prior to the date of the inspection (18 April 2007) and were departing 1 week after the date of the inspection (16 May 2007). A total of 7 people occupied the flat. Rent was paid for the stay, and its cost was included in the total cost for their study abroad programme. Subsequently a second set of warning letters were issued to all those with a material interest in the property dated 14 May 2007."*

12. The letter concluded that it was the intention to proceed with the issue of an enforcement notice, and on 6 July 2007 a Notice under S330 of the Town and Country Planning Act 1990 was served by City of Westminster on the Applicant requesting certain information in order to enable City of Westminster to take enforcement action under the statutory provisions in relation to the unauthorised use of Flat 6 as temporary sleeping accommodation (also known as short term letting as defined in S25 of the Greater London Council (General Powers) Act 1973, as amended.

13. On 14 December 2007, City of Westminster wrote to the Applicant by recorded delivery to advise that the City of Westminster had issued an enforcement notice under S172 of the Town and Country Planning Act 1990 as amended in respect of

the unauthorised change of use of Flat 6 from permanent residential use to use as temporary sleeping accommodation, and a copy of that notice was enclosed.

14.No evidence of rectification has been received from the Respondents and neither they nor their solicitors have participated in proceedings before the Tribunal.

15.On the evidence provided, the Tribunal determines that there has been no breach of Clause 8(a) of the Fourth Schedule to the lease but there has been a breach of Clauses 8(c), 9 and 15(a) of the Fourth Schedule to the lease and Clause 2 of the Fifth Schedule to the lease.

### **Flat 9 Landward Court**

15. The letter referred to from City of Westminster in paragraph 11 above is also headed Flat 9 Landward Court. It appears from that letter that planning officers visited Flat 9 on the same date as they visited Flat 6 but, unfortunately, under the heading "Flat 9", the Director of Planning and City Development refers throughout to Flat 6. This may well be a typing error, but the information contained therein cannot, for that reason be relied on.

16. However, be that as it may, a S 330 Notice was served on the Applicant in respect of Flat 9 on 4 July 2007 in the same terms as set out in paragraph 12 above, followed by a letter sent to the Applicant by recorded delivery on 23 January 2008, again in the same terms as set out in paragraph 13 above. That letter enclosed a copy of the enforcement notice which had been issued in respect of Flat 9.

17. No evidence of rectification has been received from the Respondents and they have not participated in proceedings before the Tribunal.

18. On the evidence provided, the Tribunal determines that there has been no breach of Clause 8(a) of the Fourth Schedule to the lease, but there has been a breach of Clauses 8(c),9 and 15(a) of the Fourth Schedule to the lease and Clause 2 of the Fifth Schedule to the lease.

### **Flat 24 Landward Court**

19.A letter from City of Westminster to the Applicant relating to Flat 24 and dated 23 July 2007 states, inter alia "*a recent inspection of the above property has revealed that it remains in unauthorised use as temporary sleeping accommodation, or for the purposes of short-term letting. This use continues despite the warning letter sent to you on 4 August 2004 requesting that it cease. I now write to inform you that I intend to proceed with the issue of an enforcement notice*".

20.A letter from City of Westminster to the Applicant's solicitors and dated 6 September 2007 confirmed that at that stage no enforcement notices had yet been served in respect of Flats 24,28,36,42 and 48:

21. In a letter from City of Westminster to the Applicant's solicitors and dated 2 September 2008 it was stated, inter alia *"on the 12 July 2007 Mary O'Shaughnessy and Chidi Akiti carried out an inspection of Flat 24 Landward Court, Harrowby Street. Upon inspecting the premises an occupant named as Dan Gruttadaro was found, and informed the inspectors that there were 3 adults present, and their usual country of residence was the United States. The inspectors were informed that the occupants arrived on the 11 or 12 June 2007 and would be leaving on the 20 July 2007. Their maximum stay was for 9 days. This was organised through the Pepperdine university, and the rent was paid through an all inclusive study package. On the 28 July 2004 S Hughes and J Masini inspected the premises and found an occupant by the name of Mr Al-Jarulla. The officers from the City Council were informed that the occupant arrived on 28 July 2004 and departed on the 31 July 2004, a maximum stay of 3 days"*

22. Howman & Co., solicitors acting for the Respondent lessees of Flat 24, wrote to the Applicant's solicitors on 20 June 2008. This letter states, inter alia *"..we have only just been instructed in this matter and therefore we are still looking into the background of the matter to assess the position but it appears that our clients have a sub lease with Hotel Vienna plc and they were assured by Hotel Vienna plc that they would not use the premises for temporary sleeping accommodation. However we have written to this party demanding a full explanation of who is occupying this flat and on what basis"*. Letters from Howman & Co to the Applicant's solicitors (dated 17 July 2008) indicated that they would be able to take full instructions from their clients and prepare a witness statement in reply and (dated 21 July 2008) their clients intended to defend the proceedings. However no further correspondence has been produced or written representations or witness statements received.

23. Notwithstanding the letters from Howman & Co, and also that no copy of the enforcement notice was enclosed within the bundle, the Tribunal has taken into account the City of Westminster's letter of 2 September 2008 which appears to confirm that the breach or breaches is continuing and also a copy of a letter written by the Applicant's solicitors to the City of Westminster and dated 9 April 2008 which confirms that the Applicant had received a copy of the enforcement notice which was dated 28 March 2008.

24. No evidence of rectification has been received from or on behalf of the Respondents.

25. On the evidence provided, the Tribunal determines that there has been no breach of Clause 8(a) of the Fourth Schedule to the lease, but there has been a breach of Clauses 8(c), 9 and 15(a) of the Fourth Schedule to the lease and Clause 2 of the Fifth Schedule to the lease.

### **Flat 28 Landward Court**

26. A letter from City of Westminster to the Applicant relating to Flat 28 and dated 23 July 2007 states, inter alia *"a recent inspection of the above property has revealed that it mains in unauthorised use as temporary sleeping accommodation, or for the purposes of short-term letting. This use continues despite the warning*

*letter sent to you on 4 August 2004 requesting that it cease. I now write to inform you that I intend to proceed with the issue of an enforcement notice."*

27. A S 330 Notice was served on the Applicant in respect of Flat 28 on 8 January 2008 in the same terms as set out in paragraph 12 above. No copy of a subsequent letter referring to the enforcement notice was produced within the bundle, but a copy of an enforcement notice relating to Flat 28 and dated 28 January 2008 has been produced.

28. No evidence of rectification has been received from the Respondents and they have not participated in proceedings before the Tribunal.

29. On the evidence provided, the Tribunal determines that there has been no breach of Clause 8(a) of the Fourth Schedule to the lease, but there has been a breach of Clauses 8(c), 9 and 15(a) of the Fourth Schedule to the lease and Clause 2 of the Fifth Schedule to the lease.

### **Flat 36 Landward Court**

30. A letter from City of Westminster to the Applicant's solicitors dated 19 July 2007 confirmed that *"a recent inspection of (Flat 36) indicates that an unauthorised material change of use has taken place, from permanent residential use to use as temporary sleeping accommodation, which is also known as 'short term letting'... retrospective planning permission is unlikely to be obtained however as it is one of the City Council's fundamental planning policies to prevent the loss of permanent residential units.."* The letter warned of enforcement action.

31. A subsequent letter from City of Westminster to the Applicant's solicitors dated 6 September 2007 stated that Flat 36 had last been inspected on 13 July 2007, that planning officers had spoken to the occupants who had confirmed that they were staying at Flat 36 for less than 90 days and were paying rent for their stay. At that stage no enforcement notice had been served.

32. It would appear from correspondence that a Notice dated 8 January 2008 was served under S330 of the Town and Country Planning Act 1990, although no copy was produced. No evidence of rectification has been received from the Respondents and they have not participated in proceedings before the Tribunal.

33. On the evidence provided, the Tribunal determines that there has been no breach of Clause 8(a) of the Fourth Schedule to the lease, but there has been a breach of Clauses 8(c), 9 and 15(a) of the Fourth Schedule to the lease and Clause 2 of the Fifth Schedule to the lease

### **Flat 42 Landward Court**

34. A letter from City of Westminster to the Applicant's solicitors dated 19 July 2007 confirmed that a recent inspection of Flat 42 *"has revealed that it remains in unauthorised use as temporary sleeping accommodation, or for the purposes of short-term letting. This use continues despite the warning letter sent to you on 4 August 2004 requesting that it cease. I now write to inform you that I intend to proceed with the issue of an enforcement notice."*

35. It would appear from correspondence that a Notice dated 8 January 2008 was served under S330 of the Town and Country Planning Act 1990, although no copy was produced. No evidence of rectification has been received from the Respondents and they have not participated in proceedings before the Tribunal.

36. On the evidence provided, the Tribunal determines that there has been no breach of Clause 8(a) of the Fourth Schedule to the lease, but there has been a breach of Clauses 8(c), 9 and 15(a) of the Fourth Schedule to the lease and Clause 2 of the Fifth Schedule to the lease.

**Flat 48 Landward Court**

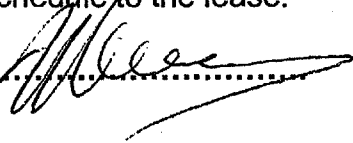
37. A letter from City of Westminster to the Applicant's solicitors dated 19 July 2007 confirmed *"a recent inspection of (Flat 48) has revealed that it remains in unauthorised use as temporary sleeping accommodation, or for the purposes of short-term letting. This use continues despite the warning letter sent to you on 4 August 2004 requesting that it cease. I now write to inform you that I intend to proceed with the issue of an enforcement notice"*.

38. A subsequent letter from City of Westminster to the Applicant's solicitors dated 6 September 2007 advised that planning officers had inspected Flat 48 on 13 July 2007 and spoken to the occupants who confirmed that they were staying at Flat 48 for less than 90 days and were paying rent for their stay. At that stage no enforcement notice had been served.

39. It would appear from correspondence that a Notice dated 8 January 2008 was served under S330 of the Town and Country Planning Act 1990, although no copy was produced. No evidence of rectification has been received from the Respondents and they have not participated in proceedings before the Tribunal.

40. On the evidence provided, the Tribunal determines that there has been no breach of Clause 8(a) of the Fourth Schedule to the lease, but there has been a breach of Clauses 8(c), 9 and 15(a) of the Fourth Schedule to the lease and Clause 2 of the Fifth Schedule to the lease.

CHAIRMAN.....



DATE.....24 September 2008.....