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HM COURTS & TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 168(4) of
the Commonhold & Leasehold Reform Act 2002.

Case No. CHI/21UD/LBC/2012/0002

Property: Flat F, 7 Magdalen Road, St Leonards On Sea, East Sussex, TN37 6EG

Between:

Charles Packe

("the Applicant /Landlord")

and

Melisande Securities Limited

("the Respondent/Tenant")

Members of the Tribunal: Mr Sanjay Lal Lawyer/Chairman

Date of the Decision: 7th March 2012

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Landlord pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination by the Tribunal as to whether there has been a breach of covenant of the lease of the Property dated 21st March 1989 between Mark Moulvi and Colin Bristow.
2. The factual background of the matter can be set out fairly shortly. The Applicant (together with Linda Packe) is the Landlord of the Property and the Respondent is the Tenant of the Property. The Respondent became the Tenant of the Property on 26th July 2011.

3. On 2nd November 2011, the Applicant's managing agents, Circle Residential Management Limited sent a letter to the Respondent informing them that a breach of covenant of the lease had occurred as the Respondent had not served a notice of assignment of the lease within the time period specified in the lease. The managing agents invited the Respondent to admit the breach within 7 days, otherwise an application would be made to the Tribunal for a determination of the alleged breach at a cost of £250 plus VAT.
4. On 29th December 2011, the Applicant made an application to the Tribunal under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for an order that a breach of covenant by the Respondent had occurred.
5. On 4th January 2012, the Tribunal issued Directions. In accordance with these Directions, the Applicant filed its Statement of Case on 17th January 2012 and the Respondent's solicitors filed a Response on 14th February 2012.
6. The parties have agreed that this matter is to be determined on the basis of written representations alone and without an oral hearing.

The Applicant's Case

7. The Applicant has referred the Tribunal to the terms of the lease and in particular clause f of the Second Part of the Third Schedule to the lease which provides that:
" within one calendar month after any such document or instrument as is hereinafter mentioned shall be executed or shall operate or take effect or purport to operate or take effect to produce to the Lessor's solicitors a certified copy of every transfer of this Lease or mortgage or legal charge of this Lease..... "
8. The Applicant claims that the Respondents are in breach of clause f of the Second Part of the Third Schedule to the lease as no notice of assignment of the lease has been served. The Applicant has asked the Tribunal to determine whether a breach of covenant has occurred.

The Respondent's Case

9. The Respondent has denied that notice was not given to Applicant. The Respondent claims that verbal and e-mail communications with the Applicant were made regarding certain alleged prior breaches of the lease. The Respondent claims that the Applicant was aware of the assignment of the lease to the Respondent as the managing agents were sending invoices to the Respondent. The Respondent claims that there may have been a technical default in receipt of the notice of assignment but since the Applicant knew the identity of the Respondent, this has been rectified.

Decision

10. The Tribunal notes that the Respondent has changed its solicitors and that all the documentary evidence may not be available. However, on the information provided, the Tribunal considers that there has been a breach of covenant by the Respondent, namely a technical breach of clause f of the Second Part of the Third Schedule to the lease. The Tribunal does however note, following its analysis of the history of the matter above, that the Applicant has not suffered any prejudice as a result of this breach. Be that as it may, the Applicant succeeds in this matter. The Tribunal makes no other Orders.

Chairman..........

Date..........