



HM Courts  
& Tribunals  
Service

426



Residential  
Property  
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 168 OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002

**Case Reference:** LON/00AX/LBC/2011/0112

**Premises:** 48 Grove Crescent, Kingston-upon-Thames,  
Surrey KT1 2DG

---

**Applicant(s):** Mrs Ailsa Christina Helen Ferrelly

**Representative:** In person, assisted by Mr A F Tresigne

**Respondent(s):** Mr James Hanbury Slade (tenant)

**Representative:** No appearance

**Date of directions:** 2<sup>nd</sup> December 2011

**Date of decision:** 3<sup>rd</sup> February 2012

**Leasehold Valuation  
Tribunal:** Mr Adrian Jack, Mr Trevor Sennett

## **Procedural**

1. By an application received by the Tribunal on 28<sup>th</sup> November 2011 the landlord sought a declaration pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 that the tenant was in breach of a number of covenants of the lease.
2. The Tribunal gave directions on 2nd December 2011. The tenant did not comply with the directions.
3. The Tribunal held a hearing on 3<sup>rd</sup> February 2012. The landlord attended assisted by Mr Tresigne, a retired solicitor. The tenant did not appear and did not make any representations.

## **Facts, law and discussion**

4. The property is the ground floor flat. The demise consists of the flat and parts of the front and rear gardens. The lease is dated 8<sup>th</sup> April 1983 and grants a term of 199 years from the date of the lease.
5. The landlord complains that the tenant is in breach of a number of the covenants of the lease. She has, however, only applied under section 168 of the 2002 Act. This section does not apply to complaints of non-payment of rent or of service charge: see section 146(11) of the Law of Property Act 1925 and section 169(7)(a) of the 2002 Act.
6. The landlord's first complaint is that contrary to clause 2(1) of the lease the tenant has failed to pay the rent. For the reasons just stated, on the current application the Tribunal has no jurisdiction. We should add that in any event no rent is owed at present, because the landlord has not complied with the requirements of sections 47 and 48 of the Landlord and Tenant Act 1987 and of the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. (Copies of this legislation are available online at [www.legislation.gov.uk](http://www.legislation.gov.uk).)
7. The same applies to the second complaint, an alleged breach of clause 2(17), non-payment of insurance. Insurance is a service charge. The Tribunal has jurisdiction under section 27A of the Landlord and Tenant Act 1985, but by reason of the failure to serve formal notices nothing is currently owed by the tenant.
8. The third complaint is that the tenant has failed to pay his electricity bill (resulting in his being cut off), his water rates and his council tax contrary to clause 2(2) of the lease. This contains a covenant:

“To bear pay and discharge all rates taxes duties charges assessments impositions and outgoings whatsoever whether parliamentary parochial or of any other description now or hereafter assessed charge or imposed upon or payable in respect of the premises or any part thereof or upon the owner or occupier thereof.”

9. The electricity and water are no longer parliamentary or parochial charges, but they do potentially come under the heading “of any other description.” However, electricity is not “imposed on or payable in respect of the premises”: it is payable in respect of the actual use of power. Nor is the payer necessarily the owner or occupier. According non-payment of electricity is not in our judgment caught by this clause. Water charges are however, imposed on the premises and in our judgment non-payment of these is a breach. Likewise council tax is a tax on the occupier of the premises, so non-payment is a breach.
10. The fourth complaint is of a failure to keep the premises in good condition contrary to clause 2(3) of the lease, in particular by failing to remedy wood rot, rising damp and disrepair of the kitchen. This breach is made out. The Tribunal notes, however, (and without deciding) that the tenant may be able to serve a counternotice to any section 146 notice under the Leasehold Property (Repairs) Act 1938.
11. The fifth complaint is a failure to permit the lessor to enter the premises under clause 2(4) of the lease. This sub-clause requires the tenant to permit the landlord to enter “upon reasonable prior notice”. The only notice relied upon by the landlord was a letter dated 20<sup>th</sup> August 2011. This letter says: “I also need to gain access myself in order to inspect the property for any signs of repeat subsidence...” It does not name a date. In our judgment in order for there to be a breach of clause 2(4) the landlord must specify a time and date. The letter of 20<sup>th</sup> August is effectively just inviting the tenant to cooperate in granting entry. Accordingly in our judgment there is no breach.
12. The sixth complaint is a breach of clause 2(7), not to “leave the premises untenanted or uncared for.” In our judgment this breach is made out. The tenant has abandoned the premises and left the flat and gardens in a state of disrepair.
13. The seventh complaint is a breach of clause 2(16): “To keep the gardens neat and free of weeds.” The tenant has abandoned the gardens which are growing wild with no weeding being done. This breach is made out.
14. The eighth complaint is a repeat of the second claimant.
15. There were no applications in respect of costs.

16. As the parties will have seen, the steps necessary to obtain forfeiture of a lease are in some measure highly technical. The Tribunal urges the parties to obtain specialised legal advice.

### DECISION

The Tribunal accordingly determines

- (1) that the tenant is in breach of the following clauses of the lease in the following way:
- (a) Clause 2(2) by failing to pay the water charges and the council tax;
  - (b) Clause 2(3) by failing to keep the premises in good condition, and in particular by failing to remedy extensive wood rot, rising damp and disrepair of the kitchen;
  - (c) Clause 2(7) by leaving the property untenanted and uncared for;
  - (d) Clause 2(16) by failing to keep the gardens neat and free of weeds; and
- (2) that there be no orders in respect of costs.



Adrian Jack, Chairman 3<sup>rd</sup> February 2012