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Residential  
Property  
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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002]**

**Case Reference:** LON 00BC/LBC/2011/0113

**Premises:** First Floor Maisonette 249a Thorold Road Ilford  
Essex IG1 4HE

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**Applicant(s):** Northridge Estates Limited

**Representative:** Ms Amelia Becker

**Respondent(s):** Yusuf Zuber

**Representative:** Lint Group

**Date of decision:** 31<sup>st</sup> January 2012

**Leasehold Valuation  
Tribunal:** P L Leighton LLB (Hons) Chairman  
Mrs S Redmond B Sc Econ MRICS

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the respondent is in breach of clause 3 of the Fourth Schedule of the lease of the property known as first floor maisonette 249(a) Thorold Road Ilford Essex IG14HE ("the maisonette") in so far as it relates to the removal of the chimney breast but not otherwise
- (2) The tribunal does not find any further breaches of the terms of the lease on the evidence available.
- (3) The Tribunal makes no order that the Respondent shall pay the Applicant's costs in these proceedings .

### **The application**

1. The Applicant seeks a determination pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent is in breach of various clauses in his lease dated 19<sup>th</sup> November 1982 of the property known as first floor maisonette 249(a) Thorold Road Ilford Essex IG14HE ("the maisonette").
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. Following directions given on 8<sup>th</sup> December 2011 the matter came before the tribunal for a paper determination on 31<sup>st</sup> January 2012.

### **The background**

4. The property which is the subject of this application is a house divided into two self-contained maisonettes. The tribunal did not inspect the property as neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. The Respondent holds a long lease of the property dated 19<sup>th</sup> November 1982 which contains the following relevant provisions.

Clause 3 of the Fourth Schedule provides

*" not to maim injure or make any alteration to any part of the building forming part of the demised premises or any part of other premises referred to in Clause 3(4) hereof.*

Clause 2(5) of the lease provides

*" to permit the lessor and his duly authorised agents with or without workmen and others twice a year upon giving three days previous notice in writing at reasonable times to enter upon and examine the condition of the demised premises"*

in addition the respondent covenanted under clause 2 (10) as follows: –

*"to pay to the lessor all costs charges and expenses including legal costs and charges payable to the lessor's surveyor which may be incurred by the lessor incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 whether or not any right of re entry or forfeiture has been waived by the lessor or the lessee has been relieved under the provisions of that Act....."*

### **The issues**

6. The statement of Ms Becker alleged that the respondent had committed breaches of the lease as follows: –
7. (1) alterations had been carried out to the property which included the repositioning of the kitchen and bathroom and the partitioning of the bedroom and  
  
(2) the respondent had refused to grant the applicant's authorised agent access to the demised premises to examine the state and condition thereof.
8. With regard to the first allegation it was alleged that substantial alterations had been carried out to the property including the repositioning of the kitchen and bathroom the partitioning of a bedroom. However the original application only specified the removal of a chimney breast serving the property which resulted in the blocking of the chimney serving the flat below the maisonette
9. The problem with Ms Becker 's statement is that she makes reference to clauses of a lease which are not before the Tribunal. There is no clause 3(7) or 3(11) as referred to in her statement and the terms of those clauses stated are quite different from those stated in the lease provided. The Tribunal does not know whether she is referring to some other lease which is not before us.
10. In addition, although Ms Becker alleges that the Respondent failed to give access to the property she does not specify on which particular request the Applicants rely. The papers are in a rather disorganised state although it appears that appointments were made to visit the property by a surveyor in June 2011 and that a meeting took place but access could not be given as the tenant was abroad and no keys were available. Another meeting was proposed provisionally but could not be confirmed. Further attempts to contact Mr Yusuf appear to have been unsuccessful.

breaches as it considers that the failure to grant access may have arisen out of a misunderstanding and was not deliberate. The tribunal is also not satisfied of the other alleged alterations.

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Peter Leighton

Date: 31<sup>st</sup> January 2012

Appendix of relevant legislation

Section 168 of the 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 That 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied**

**(2) This subsection is satisfied if –**

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

**(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**

**4i A landlord under a long lease on 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) But a landlord may not make an application under subsection (4 in respect of a matter which**

**(a) has been or is to be referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party**

**(b) has been the subject of determination by court or**

**(c) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.**