



LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER Section 168 (4) TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 And SECTION 27A OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00BJ/LBC/2011/0099 and  
LON/00BJ/LSC/2012/0102 (by way of  
consolidation)

**Premises:** Flat 3, 42 Thrale Road, Streatham London SW 16  
1NX

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**Applicants:** Mr Abdul Majeed and Mrs Begum Musarrat  
Majeed

**Representative:** Did not appear and were not represented

**Respondent:** Valentine Nathaniel Ellis

**Representative:** Did not appear and were not represented

**Date of hearing:** 23 April 2012

**Leasehold Valuation  
Tribunal:** Ms M W Daley LLB (hons)  
Mr R Humphrys FRICS

**Date of decision:** 09  
May 2012

## The Tribunal's decision and reasons

### The Decision

1. The Tribunal has determined that the Respondent is not in breach of Clause 3(f) of the lease which states-: *Not to make any structural alterations or structural additions to the Flat nor to erect any new buildings thereon or remove any of the Landlord's fixtures without the previous consent in writing of the Lessor such consent not to be unreasonably withheld.*
2. The Tribunal find that the Applicant has provided no evidence upon which the Tribunal is entitled to determine on a balance of probabilities that a breach of the terms of the lease occurred as alleged in the application.
3. **Accordingly the Application for a determination that a breach of covenant or condition in the lease has occurred is refused.**
4. **That the Tribunal determine that the Application under section 27A of Landlord and Tenant Act 1985 is withdrawn in accordance with Regulation 7 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003**
5. The Relevant Regulation is set out in the appendix.
6. At the hearing neither party was represented or chose to appear in person. The Tribunal therefore made its determination on the documents before it. These documents were-:
  - the Application to the Tribunal,
  - the copy lease,
  - the directions dated 24.02.12,
  - letter dated 27.01.12 from the Applicant Mr Abdul Majeed.

## The Background

7. The Applicants applied to the Leasehold Valuation Tribunal on 26 September 2011 for a determination that a breach of the lease had occurred. The Applicants cited two grounds that is (i) that there were arrears of service charges and insurance contributions and (ii) that the Respondent had made unauthorised alterations to the premises.
8. In the Application the alleged breach was set out by the Applicant that the Respondent had:-
  - *Changed the internal layout without the Lessors written consent, i.e. removal of internal walls and forming new doors openings and/or removing existing doors.*
  - *Refurbishment of flat without permission such as installing a new bathroom and kitchen.*
9. On 21 December 2011 the Tribunal wrote to the Applicants in the following terms “ ... *Your application has been considered by a chairman. The tribunal’s provisional view is that Section 168 of the Commonhold and Leasehold Reform Act 2002 ... does not apply to non-payment of ground rent, insurance premiums, and service and administration charges ... Subsection 169(7) of the Act specifically excludes failure to pay service and administration charges ... Consequently you may wish to consider withdrawing your current application and making fresh applications under section 27A of the Landlord and Tenant Act 1985. If the application is not withdrawn it will be listed for a short jurisdictional hearing...*”
10. Subsequently the Applicant issued a further application under section 27A of the Landlord and Tenant Act 1985.
11. Directions were given on 24 February 2012. The Directions stated that the service charge claim received on 31 January 2012 Application No LON/00BJ/LSC/2012/0102 and LON/00BJ/LBC/2011/0099 be consolidated.

12. Paragraph 6 of the Directions required the Applicant to provide a statement of case to the Tribunal and Respondent on or before 9 March 2012. The statement shall be accompanied by copies of all demands for service charge accounts and copies of any supporting documentation ... In addition, the applicant shall provide up to date Office Copy Entries of both his and the respondent's title to the property, together with the evidence on which he wishes to rely that the respondent has changed the internal layout of the property and carried out refurbishment works without permission. Finally, the applicant shall provide copies of all demands for any administration charge that has been demanded in relation to these matters.

### **The Hearing**

13. At the hearing the Tribunal noted that the directions had not been complied with. The Tribunal also noted that three letters had been sent to the Applicants by the Tribunal on 28 February 2012, 3 April 2012 and 20 April 2012. The first letter dated 28 February 2012 informed the Applicants that there was a hearing fee of £150.00 which should be paid by 13 March 2012. The letter dated 3 April asked for the fee to be paid "in full by 13 April 2012" and that if fee remains unpaid after the due date: *"the application may be treated as withdrawn in accordance with Regulation 7 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003"* ("The Tribunal Regulations")

14. The Applicants did not comply with the requirements and on 20 April 2012 the Tribunal notified the Applicant that the application under section 27 A of the Landlord and Tenant Act 1985 would not be heard.

### ***The Reason for the Tribunal's decision***

15. The Tribunal in reaching its decision, noted that the onus was upon the Applicants to prove that a breach had occurred, other than the assertions made in the original application. No additional evidence had been provided and the Applicants had not attempted to comply with paragraph

- 6 of the Directions, or otherwise appear and provide oral evidence of why they have been unable to comply.
16. The Tribunal has no evidence that the premises have been altered in any way, or that the alteration is in breach of the lease.
17. For the reasons set out above the Tribunal is not satisfied that the alleged facts constitute a breach of that covenant.
18. For this reason the application must fail.
19. Accordingly the Tribunal finds that the terms of the lease have not been breached and make no determination in accordance with section 168 (2) of The Commonhold and Leasehold Reform Act 2002.
20. The determination under section 27A of the Landlord and Tenant Act 1985. The Tribunal noted that regulation 7 (2) of the Tribunal regulations states: (2) Where a fee remains unpaid for a period of one month from the date on which it becomes due, the application shall be treated as withdrawn unless the Tribunal is satisfied that there are reasonable grounds for not to do so”
21. The Tribunal has not been provided with any information from the Applicants upon which it can determine that there are reasonable grounds for not treating the application as withdrawn. The Tribunal has considered this in the light of guidance given by the Tribunal that the fee would need to be paid, and the comprehensive directions, which set out the essential information that would have been required for a section 27A Application.
22. The Applicants were originally given an extension from the original requirement to pay the hearing fee by 13 March 2012. Given this, and in the absence of any additional compelling information, and indeed compliance with direction 6, the Tribunal considers that in all the circumstances that application shall be deemed to be withdrawn.

Signed



Dated

9<sup>th</sup> May 2012

## Appendix

### *Section 168 (2) of Commonhold and Leasehold Reform Act 2002*

*(4) 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 covenant or condition in the lease has occurred.*

*(5) But a landlord may not make an application under (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 a court, or*

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