

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL AND
LEASEHOLD VALUATION TRIBUNAL**

THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002, SECTION 168(4)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/23UB/LBC/2007/0020

Property: 4 Wellington Place
London Road
Cheltenham
Gloucestershire, GL52 6EW

Applicant: Wellington Place Cheltenham Limited

Respondents: Anthony Clark and The Birmingham & Midshires
Building Society

**Date of Inspection
And Hearing:** 19th November 2007

Members of the Tribunal: Mr A D McCallum Gregg (Chairman)
Mr P E Smith, FRICS
Mr S Fitton

Date Decision Issued:

**RE: 4 WELLINGTON PLACE, LONDON ROAD, CHELTENHAM,
GLOUCESTERSHIRE, GL53 6DW**

Background

1. Wellington Place Cheltenham Limited ("the Applicant") is the freehold owner of a building comprising 32 apartments and situated on London Road, Cheltenham.
2. All the apartments at Wellington Place are let under long leases granted by Countryside Residential (South West) Limited following the completion of the development of the entire premises in or about the year 2000.
3. The original lease with regard to Apartment 4 was granted on the 31st day of March 2000 to one Clarissa K Griffiths.

4. That lease (Pages 19-57 of the paginated bundle of documents before the Tribunal) contains a number of covenants.
5. The Applicant through their secretary, Mr Nicholas Geoffrey Lawrence of Cambray Property Management alleges, in his statement of truth annexed to the paginated bundle of documents (Pages 10-13) that there have been breaches of those covenants and seeks a declaration under Section 168(4) of the Commonhold & Leasehold Reform Act 2002 ("the Act") and is for a determination that a breach of covenant or condition in the lease in respect of the subject property has occurred so that Section 168(2) of the Act can be satisfied and that the Applicant may then serve a notice under Section 146(1) of the Law of Property Act 1925 and seek forfeiture of the lease.
6. The application is dated the 8th day of August 2007.
7. Directions in this matter were given on the 10th of August 2007.
8. The Respondent replied to the Applicant's case in his response dated the 14th of September 2007.

Inspection of the Premises

9. The Tribunal inspected the premises together with the garage and communal areas prior to the hearing on the 19th of November 2007.

The Law

10. Section 168 of the Act provides:-

No forfeiture notice before determination of breach

- (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 1925 (c.20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in that lease unless sub section 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) the court in any proceedings or an arbitration tribunal in proceedings pursuant to a post-dispute arbitration agreement has finally determined that the breach has occurred.
- (3) That a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of a period of 14 days beginning with the day after that on which the final determination is made.
- (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 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 a determination by a court, or
 - (c) has been the subject of determination by an arbitration tribunal pursuant to a post-dispute arbitration agreement.

The Hearing

11. The hearing of this application was scheduled to take place at 10.45 a.m. on the 19th of November in the Oval Room of The Pittville Pump Room, Pittville Park, Cheltenham, Gloucestershire, GL52 3JE. The hearing was attended by Mr Nicholas Lawrence, Company Secretary of Wellington Place Cheltenham Limited, Mr Donald Macmillan, past Chairman of Wellington Place, Cheltenham Limited and Mr Peter Glanville, Spokesman for Wellington Place Cheltenham Limited (all on behalf of the Applicant). Mr Philip Smart, Solicitor from Cowle & Smart and Mr Kenneth Rogers of Counsel represented the Respondent.
12. In addition there were a further eight interested parties in attendance at the hearing.
13. Prior to the commencement of the hearing the Tribunal received a joint request for further time to be allowed to enable the parties to continue with discussions. That application was granted.
14. When the hearing resumed Mr Glanville on behalf of the Applicant and Mr Rogers on behalf of the Respondent indicated that agreement had been reached between the parties and that it would therefore be no longer necessary for the Tribunal to hear the evidence from both parties and reach a determination on the issues.
15. It was agreed by both parties that the terms on which the matter had been compromised should form the basis of a Consent Order approved by the Tribunal, namely
 - (1) that the Respondent agrees to strictly adhere to the terms and conditions contained within his lease,
 - (2) that the Respondent agrees to accept the rules and regulations imposed by the management company in regards to this and subsequent lettings of the apartment,
 - (3) that the Respondent would allow the current tenancy to expire,
 - (4) that the Respondent would pay to the management company costs of £2,000 in regards to this matter to be paid by the 31st of December 2007.
16. By way of confirmation of this agreement the representatives of both parties signed a copy of a letter dated the 16th of November 2007 from Wellington Place Cheltenham Limited to Messrs Cowle Smart and a copy of that letter with the endorsement by way of confirmation is annexed to this order.

Order of the Tribunal

1. That both the application and the response be dismissed.
2. That a consent order in the terms indicated above is made on the 19th day of November 2007.



.....
Andrew Gregg
(Chairman)

16th November 2007

Cowle Smart
Solicitors
29 Leckhampton Road
Cheltenham
GL53 0AZ

*On behalf of the
applicant we consent to
an order in the above
below terms.*

*Peter Clavell
representative for
the applicant.*

Dear Sirs,

Re: 4 Wellington Place, Cheltenham

Thank you for your faxed letter dated 16th November.

To clarify the position:-

Your client, Mr Clark, agrees to the following terms:-

1. To strictly adhere to the terms and conditions contained within his lease.
2. To accept the rules and regulations imposed by the Management Company in regards to this, and subsequent, lettings of the apartment.
3. To allow the current tenancy to expire. *2000.10.16*
4. To pay the Management Company costs of ~~£3,334.35~~ in regards to this matter to be paid by 31st December 2007.

We look forward to receiving your confirmation today to the above, which can be ratified by the Tribunal on Monday 19th November 2007.

Yours faithfully

Nick Lawrence
Wellington Place Cheltenham Limited

*On behalf of the Respondent we consent
to an order in the above terms.*

*Kenneth Rogers
Counsel for the Respondent.*