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**HM COURTS AND TRIBUNALS SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**OF THE**

**MIDLAND RENT ASSESSMENT PANEL**

BIR/00CN/LBC/2013/0001

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

Applicant: Shuttleworth Property Management Co.  
Limited (Co. Regn. No. 2778062)

Respondent: Ms Heather Pearce

Property: Flat 35, Hollymount, Hagley Road, Birmingham,  
B16 9LS

Application to LVT: 15 February 2013

Paper determination: 23 April 2013

Member of the Tribunal: Mr R Healey LLB Solicitor, Mr N Wint MRICS and  
Mr N Thompson FRICS

Date of determination: 15 May 2013

**Summary of the determination**

The Tribunal determines the Respondent to be in breach of two covenants contained in a Lease dated 30 July 1979 made between Percy Bilton Homes Limited of the one part and Raymond Mitchell of the other part; firstly by failure to obtain consent to assign the Lease (as required by clause 4(xvi)) and secondly by failure to give notice of assignment within the requisite period of 21 days (as required by clause 4(xv) of the Lease).

## Reasons for the determination

### Introduction

- 1 This is a determination on an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") made to the Leasehold Valuation Tribunal by Shuttleworth Property Management Co. Ltd ("the Applicant") for a determination that Ms Heather Pearce ("the Respondent") as leaseholder has breached covenants contained in her lease of Flat 35, Hollymount, 291 Hagley Road, Edgbaston, Birmingham B16 9LS ("the Property").
- 2 By the present application, the Applicant seeks to commence the necessary preliminary stage to the statutory forfeiture procedure, which was introduced by section 168 of the 2002 Act.
- 3 Section 168 (so far as material) provides as follows:  
*(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 ... 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*  
...  
*(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for determination that a breach of covenant or condition in the lease has occurred.*
4. In the present application the Applicant seeks such a determination from the Tribunal.

### Background

5. The relevant lease is dated the 30<sup>th</sup> July 1979 made between Percy Bilton Homes Limited of the one part and Raymond Mitchell of the other part ("the Lease").
6. Directions were issued by the Tribunal on 15 February 2013.
7. In accordance therewith Carol Nelson, AIRPM on behalf of the Applicant filed her statement of case incorporating a statement of truth with the Tribunal.
8. There is no statement of case before the Tribunal from the Respondent.

9. The Applicant produces a copy of the land registry property register entry showing that the Applicant is the registered proprietor of freehold land being numbers 1 to 18 Holly Mount, Hagley Road, Edgbaston, Birmingham, B16 9LS under title number WK199751.
10. Title number WK199751 includes a schedule of notices of leases and includes a reference at number 17 in the schedule to a lease of Flat 35 Holly Mount, Hagley comprising a ground floor flat and garage being the subject of a lease dated 30 July 1979 for 99 years from 25 December 1977 such lease being granted out of the freehold title.
11. The Applicant produces a copy of the HM Land Registry Property Register showing that the Respondent (here described as Heather Joy Pearce) and Kelly Joy Pearce are the registered proprietors of the leasehold interest comprised in the Lease registered under title number WM167890.
12. The Applicant produces a copy of the Lease and refers the Tribunal to clause 4(xvi) which reads as follows –

*4. The Lessee hereby covenants with the Lessor in the manner following that is to say:-*

*(xvi) Not to assign. . . . . the demised premises without the Consent of the Lessor in writing first being obtained. . . . . and to pay the Lessor its legal charges incurred in or in connection with the application for and in giving such Consent (such charges are hereby agreed at £10.00 together with Value Added Tax). . . . .*

13. The Applicant also refers the Tribunal to clause 4(xv) which reads as follows –

*(xv) Within 21 days next after the execution of every Transfer Assignment Underlease Charge or devolution of the Lessee's interest under this present Lease in the demised premises to give Notice in writing of such Transfer Assignment Underlease Charge or devolution and of the name quality and place or places of abode of the Transferee Assignee Chargee or other person or persons in whom the said interest is thereby vested to the Lessor's Solicitor and produce to him the instrument of such Transfer Assignment Charge or devolution and pay to him a fee of £5.00 for the registration of such Notice (together with Value Added Tax).*

### **Applicant's Case**

14. Carol Nelson for the Applicant submits that the Respondent has breached the covenants set out above in that the Respondent has failed to obtain consent to assign the Property and also failed to serve a notice of assignment within the time period of twenty one days specified in the Lease.

15. In support of these submissions Carol Nelson produces a notice of assignment dated 19 December 2012 from Wragge & Co LLP to Circle Residential Management Ltd confirming a sale of the Property to the Respondent.
16. Carol Nelson also produces a copy of a letter dated 4 January 2013 sent by Circle Residential Management Limited to the Respondent drawing her attention to the provisions of section 168 of the 2002 Act and the consequences of her failure to comply and inviting her to admit the breach thereby avoiding the necessity of an application to the Tribunal. No response was received.
17. On this evidence the Applicant requests the Tribunal to determine that the Respondent is in breach of covenant under the terms of clauses 4(xvi) and 4(xv) of the Lease

#### **Determination**

18. On the basis of the evidence presented by the Applicant the Tribunal determines the Respondent to be in breach of the covenant contained in clause 4(xvi) of the Lease by failure to obtain consent to assign and further in breach of the covenant contained in clause 4(xv) of the Lease by failure to register the assignment into the names of the Respondent and Kelly Joy Pearce within twenty one days of 19<sup>th</sup> December 2012 being the date of the assignment of the Lease.
19. The Tribunal has no jurisdiction to consider waiver, estoppel, or whether the Applicant has suffered loss or prejudice as a result of the Respondent's breaches.
20. The Tribunal has no jurisdiction under the present application to determine the reasonableness of administration charges but these may form the subject of a further application.

Roger Healey

Chairman

15 May 2013