FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMG/LBC/2015/0018**
Property	:	**46 Padstow Avenue, Fishermead, Milton Keynes MK6 2ES**
Applicant	:	**Milton Keynes Council**
Representative	:	**Mr D Underwood – Counsel** **Mrs Jane Harrison, Private Sector Housing Manager for the Council**
Respondent	:	**Miss L A Allery**
Representative	:	**Non Attendance**
Type of Application	:	**Application for an order that a breach of covenant or condition of the lease has occurred**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr D Barnden MRICS** **Mr O N Miller BSc**
Date and venue of Hearing	:	**Stadium MK, Milton Keynes, MK1 1ST on 25th January 2016**
Date of Decision	:	**5th February 2016**

DECISION

DECISION

The Tribunal finds that there have been breaches of covenant and/or condition of the lease as set out in the findings section below.

BACKGROUND

1. On 13th October 2015 the Council made application to the Tribunal for an order seeking a determination that there had been a breach of covenant or condition of the lease as provided for in Section 168(4) of the Commonhold Leasehold Reform Act 2002 (the Act).

2. In the application the Council set out in their grounds confirming that the Respondent, Miss Allery, had acquired a 40% share of the ownership of the Property at 46 Padstow Avenue, Fishermead, Milton Keynes MK6 2ES (the Property) in April of 1983. Ownership of the Property is held under a shared lease which contains covenants as set out below relating to the repair and decoration of the Property, which the Council allege have not been complied with.

3. The grounds went on to set out the circumstances which led the Council to make the application with a form of chronology showing the attempts made to contact Miss Allery and to engage with her to avoid the application to the Tribunal.

4. In the bundle before us we had a copy of the lease, which is dated 15th April 1983, between Milton Keynes Development Corporation of the one part and the Respondent of the other. This confirms that this is a shared ownership lease containing provisions to enable the Respondent to increase her present 40% interest in the Property. There is, we understand, no suggestion that the Respondent has not been paying the rent as and when it fell due. What is alleged, however, that the lessee has failed to comply with her covenants under clause 4. In particular, clauses 4(4)(a) and (b).

5. These clauses read as follows:

   4(4)(a) To keep the demised premises and any additions subsequently made thereto and every part thereof and all sewers, drains and sanitary and water apparatus and other fixtures and fittings together with the fences marked with an inward 'T' on the plan annexed hereto in good repair and order and condition and free from litter.

   (b) To paint or otherwise treat all external parts of the demised premises usually painted or so treated once in ever fourth year of the said term with two coats of good quality paint or other suitable materials in a proper and workmanlike manner and once in every seventh year of the said term to paint, colour or otherwise treat with two coats of good quality paint or other suitable materials in a like manner all the inside of the demised premises and all additions thereto usually painted, coloured or treated.

6. The lease goes on to provide that the Council may have access to the Property to view the state of repair and to provide details of the want of reparation requiring the lessee to complete such works within a period of three months or sooner.

7. The bundles also included correspondence with Miss Allery, the first appearing to be around March of 2005 when they wrote to her at an address in Devon raising concerns about the condition of the Property and the fact that a lean-to porch had been erected without the permission of the Council. The only letter that there appears to be from the Respondent is dated 6th June 2015. In this letter she responds to correspondence from the Council, which had included schedules setting out works which the Council considered necessary to, alternatively, bring the Property to a watertight, or lettable condition. The response from Miss Allery, other than to query the rights upon which access was obtained and to challenge the figures shown in the schedules makes no comment with regard to the lack of repair or intentions with regard to the Property. We noted subsequent correspondence in this regard from the Council, particularly a letter of 16th July 2015.

8. In addition to this correspondence there were witness statements from a Kathryn Howes confirming her understanding was that the Respondent had vacated the Property in 2004 and that sub-letting was taking place. In 2011 she was informed by the Housing Needs Team that the Property was empty and in a state of disrepair. Photographs were then taken but it seems that, for example, no steps were taken to seek an Empty Dwelling Management Order.

9. Subsequent statements were made by Mrs Jane Harrison, the Private Sector Housing Manager who in her first statement indicated that she had little knowledge of the Property but in subsequent statements brought us up to date with the problems that had arisen from November 2015 onwards. It appears from these statements that there may have been squatters in the Property, although that is not certain, but what was clear from the Council's inspection was that the front door had been forced, electricity was being used and the Property continued to be in a neglected state. It appears that the Police may well have been involved and had arrested an individual for criminal damage where he gave his address as the Property. Further photographs were taken which were included in the bundle. We also had two schedules one setting out the costs of putting the Property into a watertight condition, which appeared to be some £16,585 and the other to put the Property into a lettable condition where the costs were estimated to be £38,825. We will return to those schedules in due course.

INSPECTION

10. We inspected the subject Property in the company of Mrs Harrison and Mr Chiltern, a colleague on the morning of 25th January 2016. The weather was dry if somewhat overcast. We were not able to gain access to the Property as the front door appeared to be secured, although there was clear evidence of a forced entry at some point in the past. The entrance porch was in a poor condition with broken glass still in situ and with a brick which possibly appeared to have been used to affect an entry. The front garden of the Property was in a neglected and overgrown state, further a ridge tile was missing and below that a tile to the front roof was also missing exposing the timber work beneath. The gutters, both to the front and rear were overgrown. A window to what appeared to be the living room was also cracked. The exterior of the Property had not been decorated for some time. The meter cupboard for the electricity was broken but it appeared that electricity was being used suggesting that there may be some occupancy, although there was not clear evidence of this on our inspection.

11. A view of the rear was obscured but we could see that the rear garden was also in an overgrown state and that there was a general feeling of neglect. There was no doubt in our view that the Property would tend to blight neighbouring houses and was an eyesore.

HEARING

12. At the Hearing the Council was represented by Mr Underwood of Counsel and Mrs Harrison accompanied him. Application was made to adduce the latest statement from Mrs Harrison which we agreed but an application that had been put forward in correspondence to debar the Respondent was not pursued.

13. Mr Underwood told us that the application was intended to establish a breach of the lease in respect of clauses 4(4)(a) and (4)(b) which we have set out above. He told us that there had been a long history of wanton neglect by the Respondent causing significant dilapidation. The front garden was overgrown, there were broken windows as well as missing window glass, roof tiles were also broken. We were asked by the Council to make a finding that there had been a breach of these terms of the lease and that in his view the word *'keep'* in clause (4)(a) included a need to put into repair as necessary.

14. We discussed with Mr Underwood the work set out in the schedule that we have referred to above and which we will return to in the findings section of the decision. It was Mr Underwood's submission to us that this Tribunal did not have the right to comment on the schedule of works. The only issue before us was whether there had been a breach of the lease and that if we did comment on the schedules we were straying into the jurisdiction of the County Court when dealing with any relief from forfeiture.

15. Mrs Harrison and Mr Underwood, however, were at pains to draw to our attention that the Council did not wish to take possession of the Property if that could be avoided. The Council requirement was that the Property be brought back into a proper condition so that it can provide three bedroomed accommodation for a family and was not a blight on the neighbourhood. We were told that the Council had tried to make contact with those occupiers as may be living in the Property without success and that futile attempts had been made over a long period of time to engage with the Respondent with a view to her fulfilling her obligations under the terms of the lease.

THE LAW

16. The law applicable to a determination for a breach is to be found at Section 168(4) of the Act and we have borne that in mind. We accept that our jurisdiction is to determine whether or not a breach has occurred. It is not for us to determine whether there should be a relief from forfeiture that being within the jurisdiction of the County Court.

FINDINGS

17. We are satisfied from our inspection and from the submissions made to us on behalf of the Council that the Respondent is in breach of her obligations under

clauses 4(4)(a) and 4(4)(b). It is quite clear that the roof is need of urgent works as we suspect there is water ingress, the guttering is in places overgrown and needs clearing. There is broken glass to the porch area which is both dangerous and unsightly as well as a cracked pain of glass to what appears to be the living room. It is quite clear that the Property has not been decorated for some considerable time and the front and rear gardens are in an overgrown and untidy state. The Property certainly affects the use and enjoyment of neighbouring houses and we are satisfied, therefore, that the Respondent has breached the terms of her lease.

18. Although we were urged by Mr Underwood not to comment on the schedule of works contained within the papers we consider that it is appropriate to do so. We do not consider this strays into the jurisdiction of the County Court. Our concern is that in suggesting costs to put the Property in a watertight condition of over £16,000 that may well have deterred the Respondent from engaging with the Council. A number of items of work set out on both schedules were, in our view, more than would be required to put the Property into a state of repair. Certainly it needs decorating but we are not convinced that it is appropriate that there should be any investigation as to whether or not asbestos is present. This is a residential Property which the Respondent bought from the original development corporation and a Property built in the early 1980s would likely have artex ceilings which may well have some minimal asbestos element. The works with regard to the entrance porch would seem to be unreasonable given that the Council first complained that this porch should not have been in existence. A number of other items of work seem to us to have no relevance to making the Property watertight. This includes, for example, taking down the brick-built hearth in the lounge. There is also a requirement to deal with floor coverings and tiled finishes. Strangely also a requirement to demolish the extension to the rear of the Property. These examples of the items of work which are included in the schedule bring quite extensive costs with them and do not in our view reflect a breach of the lease. We would, therefore, urge the Council to review the works that are required to the Property to make it watertight and to see whether it is possible to engage with the Respondent with costings that may not be so off-putting.

19. We should, however, make it quite clear to Miss Allery that she cannot continue to adopt an 'ostrich' approach to this matter. She has a capital interest in this Property which she is risking. Works need to be done and it is clearly her obligation under the terms of the lease to carry out those works. If there is a problem in funding them then she should make contact with the Council to see what steps could be taken to bring this Property up to a habitable condition, remove the blight to the neighbourhood and perhaps either enable the house to be sold or to be let and to be used as three bedroomed accommodation for a family in Milton Keynes.

Judge: *Andrew Dutton*

A A Dutton

Date: 5th February 2016

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.