



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/OOBY/LBC/2018/0003**

Properties : **350 & 352 Westminster Road, Bootle
Liverpool L4 3TF**

Applicant : **Property Investment London Limited**
Represented by : **PDC Law**

Respondent : **Mr Kieran Lennan**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Section 168(4)**

Tribunal Members : **Laurence Bennett (Deputy Regional Judge)
Niall Walsh (Deputy Regional Valuer)**

Date of determination : **08 May 2018**

Date of Decision : **10 May 2018**

DECISION

Summary decision

1. The Respondent has breached a covenant in respect of repair in the leases relating to the Properties.

Application

2. Property Investment London Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Mr Kieran Lennan has breached Lessee's covenants within the leases of the Properties 350 & 352 Westminster Road, Bootle, Liverpool L4 3TF.

Background

3. The Applicant is the proprietor of the freehold and successors to the Lessor's interest created by the leases of the Properties. The Respondent is the successor Leaseholder.
4. The application was made on 21 February 2018.
5. Directions were made 19 March 2018 by Judge J Holbrook included "The Tribunal considers it appropriate for the matter to be determined by way of a paper determination....." The directions gave opportunity for the parties to request a hearing. Neither party made a request.
6. The Applicant's submissions in response to directions include copies of the Freehold and Leasehold Land Registers including the registered leases, a statement of case with submissions, a witness statement with statement of truth by Mr L L S McEwan, a Director of the Applicant and a copy Condition Survey Report with photographs by BWP Construction & Property Consultants dated May 2017.
7. Correspondence to the Respondent's registered address has been returned "not at this address." Copies sent to another address elicited a response from a new occupier stating that the Respondent had not lived there for over 6 years.
8. The Respondent has not communicated with the Tribunal.
9. The Tribunal convened on 27 April 2018 without the parties to determine the application.

The Lease

10. The demises to the Respondent originate from a lease first made 1896 made between The Right Honourable Frederick Arthur Earl of Derby (1) William Dransfield (2) (the Lease) for a term of 999 years from 25 March 1895.
11. The Lease contains the Lessee's covenant "And also will at all times during the said Term keep all the buildings now standing or hereafter to be erected upon the Land hereby demised and their respective Appurtenances in good order and tenantable repair and condition."

Law

12. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (the Act) states: "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 the Lease unless subsection (2) is satisfied."
13. Section 168(2)(a) states: "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
14. Section 168(4)(a) states: "A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred."

Evidence and submissions

15. The Applicant's evidence and submissions are detailed above.
16. The BWP report sets out instructions to undertake a condition survey to record the current condition of the building fabric. It is noted that the Properties are currently vacant and have been so for some time, ground floor doors and windows have been blocked up/secured. Photographs show extensive vegetation growth in the gutters, mortar joints to brickwork and stonework, there are areas of blown and eroded brickwork, fallen stone work, smashed glazing, boarded windows, rotting woodwork, pigeon ingress and evidence of rats and areas of fly-tipping.

Tribunal's conclusions with reasons

Our conclusions are:

17. We have borne in mind the Lessee's obligations clearly contained in the covenant identified by the Applicant.
18. Mr McEwan's witness statement gives a history of the acquisition, the reason the Consultant's report was obtained and the assertion that the tenant has failed to keep the Properties in repair.
19. The condition report confirms Mr McEwan's assertion. We find the Properties are in an advanced stage of disrepair unequivocally below the level of repair required by the Lessee's covenant.
20. The Respondent has not communicated with the Tribunal, noting the service attempted we are satisfied this is sufficient. The office copies of the Land Registers containing the Respondent's addresses are dated 4 April 2018. Letters were sent to that address.
21. Following the above we determine that the Respondent has failed to comply with his covenant identified above as claimed by the Applicant.

Order

22. The Respondent has breached the covenant in respect of repair contained within the Lease relating to the Properties.

L J Bennett
Tribunal Judge
10 May 2018