

654



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

Case Reference : **MAN/OOBT/LBC/2015/0008**

Properties : **121 Croft Street, Hyde, Cheshire SK14 1BE**

Applicant : **Cheerupmate2 Ltd**

Respondent : **Franco De Luca Calce**

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

Tribunal Members : **Mr L Bennett (Tribunal Judge)
Mr J Holbrook (Tribunal Judge)**

Date of determination : **8 May 2015**

DECISION

Summary decision

1. The Respondent has breached covenants in respect of repair and maintenance in the Lease relating to the Property.

Application

2. Cheerupmate2 Ltd applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that breaches of covenant have occurred in the Lease dated 10 July 1948 relating to the Property 121 Croft Street, Hyde, Cheshire SK14 1BE.
3. The Respondent is the Leasehold owner of the Property registered with Leasehold Title GM710548.

Background

4. The Applicant is the successor to the Lessor's interest created by the Lease of the Property. The Respondent is the successor to the Lessee's interest.
5. The application was made on 19 March 2015.
6. Directions made 27 March 2015 by Judge Bennett 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 such request.
7. The Applicant's submissions attached to the application and in response to directions include copies of the Lease, an abstract of the Head Lease, office copies, photographs of the site of the Property and an explanation that in breach of the Lease the land is vacant, a former dwelling has been demolished and in place there are "Chattels and a dishevelled derelict shed."
8. The Respondent has not communicated with the Tribunal nor provided a response to the application.
9. The Tribunal convened on 8 May 2015 without the parties to determine the application.

The Lease

10. Paragraph 2(c) of the Lease dated 10 July 1948 contains the Lessee's covenant that he "Will during the term hereby granted keep the premises hereby demised in good and substantial repair and when necessary rebuild or replace the same with other premises of equal value."
11. The Habendum to the Lease refers to a house erected on the land and numbered 121 Croft Street.

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."

Tribunal's conclusions with reasons

Our conclusions are:

15. We note that the covenants specified by the Applicant. We accept from examination of the Title that a dwellinghouse was constructed on the site of the Property which on erection would cause the engagement of the Lessee's covenant for repair.
16. It is clear from the photographic evidence that a dwelling house is no longer present and has not been replaced. The current presence on the Property is not significant and cannot be considered any form of replacement.
17. We conclude that the Respondent has failed to observe the clearly expressed covenant in his Lease in respect of repair, maintenance and reinstatement.

Order

18. The Respondent has breached covenants in repair, maintenance and reinstatement within the Lease.