



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

Case Reference : **MAN/30UD/LBC/2015/0028**

Property : **34 Athol Street North, Burnley,
Lancashire BB11 4BS**

Applicant : **Cheerupmate2 Ltd**

Respondent : **Mohammed Yousaf**

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 : **23 November 2015**

Date of Decision : **1 December 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 4 July 1877 relating to the Property 34 Athol Street North, Burnley, Lancashire BB11 4BS.
3. The Respondent is the Leasehold owner of the Property registered with Leasehold Title LA391895.

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 is dated 24 September 2015.
6. Directions made 30 September 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, office copies of the Freehold and Leasehold Titles, photographs of the Property and an explanation that in breach of the Lease there has been a failure to keep the dwelling in good and sufficient repair: "This house appears neglected and in disrepair...." The application was accompanied by copies of notices and correspondence sent to the Respondent."
8. Additionally, the Applicant states that the Respondent has failed to allow inspection of the Property or engage with the Lessor although a specific Lease covenant is not identified.
9. The Respondent's solicitors submitted by letter dated 6 October 2015: "It is clear that this application is ill founded and probably an abuse of process. The Property has been boarded up for some time as a result of the Local Authority's intention to obtain a compulsory purchase order"
10. The Respondent's statement refers to the CPO, disrepair brought about by tenants and that Burnley Borough Council intended to declare a CPO. The Respondent notes that the Applicant bought this and adjacent properties after they had been boarded up and was aware of the position. It comments adversely on the Applicant's intentions and with reference to a Consulting Engineer's report appended upon the commercial sensibility of bringing the Property into repair.

11. The Applicant has submitted a reply to the Respondent's statement.
12. The Tribunal convened on 23 November 2015 without the parties to determine the application.

The Lease

13. The Schedule to the Lease dated 4 July 1877 contains the Lessee's covenant that he ".....during the term granted to maintain in good and sufficient repair and condition upon the land demised"

Law

14. 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."
15. 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
16. 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:

17. We note that the repair covenant specified by the Applicant. We accept from examination of the Title and the photographic evidence 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.
18. It is clear from the photographic evidence that the Property is in a poor state of repair and not in a state consistent with the Lease covenant. This is confirmed by the Respondent's submissions and Engineer's report.
19. We conclude that the Respondent has failed to observe the express covenant in the Lease in respect of repair and maintenance.
20. The Respondent submits that the application is an abuse of process and does so by reference to the Applicant's true intentions. This is not a matter for the Tribunal, there is nothing in the application which would indicate an issue

falling within the accepted meaning of “abuse of process.” Reference is made to commercial advantage. Whether or not this is the case we find no merit in the Respondent’s submission.

21. The Respondent suggests that it is commercially unrealistic to bring the premises into an acceptable state of repair. This is not a matter that would negate the covenant. It may be more appropriately raised in an application for relief from forfeiture.

Order

22. The Respondent has breached the covenant for repair and maintenance within the Lease.