



799

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

**Case Reference** : **MAN/00FD/LBC/2017/0011**

**Property** : **213A Frodingham Road  
Scunthorpe  
North Lincolnshire  
DN15 7NS**

**Applicant** : **Yingxue Wen**

**Representative** : **Ashley Connell, Hetts Solicitors**

**Respondent** : **Oliver Dale**

**Representative** : **N/A**

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

**Tribunal Member** : **Deputy Regional Valuer N Walsh  
Judge J Holbrook**

**Date and venue of  
Hearing** : **Determined without a hearing**

**Date of Decision** : **16 October 2017**

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**DECISION**

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## DECISION

**Breaches of covenants in the lease of the Property (dated 24 August 2007) have occurred by reason of the Respondent failing:**

- **“To keep the Property (including any additions after the date of this lease) in good repair”.**
- **“To paint the outside of the window frames and doors of the property in every 4th year of the Lease Period using at least two coats of good quality paint and in the same tints and colours as approved by the landlord in writing”.**
- **“To allow the Landlord, on giving at least seven days’ notice, to enter the property to inspect the state of it”.**

## REASONS

### Background

1. On 19 July 2017, an application was made to the First-tier Tribunal (Property Chamber) under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that breaches of covenants or conditions have occurred in a lease of a property known as First Floor Flat 213 Frodingham Road, Scunthorpe, DN15 7NS (“the Property”).
2. The lease in question (“the Lease”) is dated 24 August 2007 and was made between the Landlord D&G Property Limited and the Tenants Jaswinder Singh Dhaliwal and Bikamajit Singh Gill. It was granted for the term of one hundred and ninety-nine years from 01 June 2007 with a reserved annual rent of one peppercorn.
3. The Property comprises a first-floor self-contained flat, which is situated above a ground floor commercial occupation, a bakery. The Building is constructed of red brick under a slate pitched roof and appears to be situated within a terrace dating from the late Edwardian period.
4. The Applicant is the Freeholder of the Building known as 213 Frodingham Road, Scunthorpe, which is subject to the long leasehold interest on the first-floor flat, as detailed in paragraph 2 above. The Respondent to the application is the long leaseholder of the first floor flat known as 213A Frodingham Road. He does not reside at 213A Frodingham Road and the Property appears in a very dilapidated and neglected condition from the photographs and submissions submitted.

5. On 31 July 2017, the Tribunal gave directions for the conduct of the proceedings. The parties were informed that this matter was considered suitable for a determination without an oral hearing unless either party gave notice that they wished a hearing to be listed. As no such notification was received, the Tribunal has determined the matter on the basis of the evidence provided in the application and in the written submissions provided by the Applicant and Respondent in response to directions.
6. The Tribunal did not inspect the Property.

### **Law**

7. A prerequisite for the forfeiture of a lease (otherwise than for a breach of a covenant to pay rent) is the service of a notice under section 146(1) of the Law of Property Act 1925. However, section 168(1) of the Commonhold and Leasehold Reform Act 2002 provides that a landlord under a long lease of a dwelling may not serve such a notice unless section 168(2) of the 2002 Act is satisfied.
8. One of the ways in which section 168(2) may be satisfied is for it to be finally determined by the Tribunal (upon an application by the landlord under section 168(4)) that a breach of a covenant or condition in the lease has occurred.

### **The relevant covenant in the Lease**

9. The Applicant set out in their application the covenants or conditions in the Lease alleged to have been breached as:
  - 4.6.1 – “To keep the Property (including any additions after the date of this lease) in good repair”.
  - 4.6.3 – “To paint the outside of the window frames and doors of the property in every 4<sup>th</sup> year of the Lease Period using at least two coats of good quality paint and in the same tints and colours as approved by the landlord in writing”.
  - 4.7 – “To allow the Landlord, on giving at least seven days’ notice, to enter the property to inspect the state of it”.

- 4.8 – “If the Landlord gives the Tenant notice of any failure to do repairs required by the Lease, to start the work within one month, or immediately in case of emergency, and to proceed with it diligently. In default, the Landlord is entitled to enter the Property to do it, and the Tenant must pay the cost of it on demand”.
  - 4.9 - “To clean all plate glass windows in the Property at least once every month”
  - 4.10 - “To allow anyone who reasonably needs access in order to inspect, repair or clean neighbouring property, or any sewers, drains, pipes, wires or cables serving neighbouring property, to enter the Property at any reasonable time. The person requiring access must give at least seven days’ notice and make good any damage to the Property promptly”.
10. The Applicant’s in their Statement of Case also claimed that the Tenant is in breach of following additional clauses within the Lease:
- 4.15 - “To allow the Landlord to enter the Property at any reasonable time, after giving at least seven days’ notice, to inspect it and value it for insurance purposes”.
  - 4.16 - “Not to act in a way which will or may result in the insurance of the Building being void or voidable, or in the premium for it the being increased, nor to allow anyone else to do so”.
  - 4.19 - “Not to use the Property, or any part of it, for any of the following, nor allow anyone else to do so: activities which are dangerous, offensive, noxious, noisome, illegal or immoral, or which are or may become a nuisance or annoyance to the Landlord or to the owner or occupier of any neighbouring property”.

## Evidence and submissions

11. The Applicant asserts that the Property has been vacant, uninhabitable and in a very poor state of repair for many years. The freeholder contends that the Property has been in this condition for over 4 years and enclosed a Google Street View image dating from July 2015 in her bundle, which shows one of the first-floor windows to be broken and boarded over with plywood. It is claimed that in or around 2013 the majority of the windows in the flat were broken, as was the entrance door. This allegedly allowed trespassers to enter the Property for anti-social purposes, such as drug use and vandalism. Faced with this and the resulting rainwater ingress to the commercial bakery on the ground floor below, the commercial tenants took it upon themselves to board over the windows and door to secure and protect the Property.
12. The Applicant claims that she has been unable to gain access to the Property, despite requests being made to the Respondent for access to be provided. The Applicant believes that there is no electricity or water supply currently at the Property and that the interior is in a serious state of disrepair suffering from fire damage, rotten floorboards and serious dampness. This, the Applicant contends, is supported by the repeated water leakages into the ground floor bakery. The freeholder also cites that this is adversely affecting her ability to secure a long term letting of the ground floor on standard commercial terms.
13. The Respondent emailed and wrote to the Tribunal, in response to the Applicant's Statement of Case. Mr Dale outlined that he experienced problems at the flat a number of years ago, particularly when the Property was vandalised to such an extent that the Property required fully renovating. The Respondent advises that he could have, but was unaware at the time, brought a claim against the Building's insurers.
14. The Respondent outlines that he noticed a hole in the roof over 5 years ago. He asserts that he reported this to the then management agents, Eddisons, because the Landlord is responsible for the repair of the roof. The Respondent contends that it is the hole the roof that is causing the rainwater ingress to the ground floor bakery. He questions how the water penetration to the ground floor premises can be being caused by the broken windows on the first floor when the window openings have been boarded over.
15. Mr Dale contends that it is impractical to renovate the flat until the roof is repaired. Although, he states that this is his ultimate intention because the flat is costing him money while it is uninhabitable through continuing mortgage and council tax payments. The Respondent is concerned that the Freeholder Applicant is seeking to acquire the flat for free and he questions her motives in bring these proceedings, especially as she was aware of the flat's condition when she purchased the freehold in March this year.

16. Finally, the Respondent outlines that he “more than happy” to meet with the Freeholder and go through a schedule of works required, timescales or even discuss selling the property.

### **Conclusion on breach of covenant**

17. Based on the Applicant’s and Respondent’s submissions it would appear that a number of key facts are agreed by the parties and are not in dispute. Importantly, it is not disputed that the flat is in a very poor state of disrepair and requires complete renovation.
18. It is also clear from the photographic evidence and from the submissions of both parties, that this has been the situation for certainly a number of years and quite likely as far back as 2013. It is apparent that a significant number of windows are broken (at least 3 from the photographs supplied) and that the entrance door is boarded up and some of the windows are too. It is hard to tell from the photocopies of photographs supplied but it would appear to the Tribunal that not all the windows, both those where the glazing is intact and broken, are boarded over.
19. It is evident from the photos enclosed within the Applicant’s Statement of Case that a number of slates on the roof, in particular on the rear elevation, are loose and raised and this may be a cause of water penetration. This Tribunal does not however have jurisdiction to determine breaches of Landlords’ covenants. The Respondent will need to consider the merits of pursuing this matter outside of these proceedings to the County Court, should he wish to seek a remedy for an alleged breach of the Landlord’s repairing covenant within the Fourth Schedule of the Lease. While the Tribunal has had regard to the condition of the roof, it is nevertheless satisfied that the overall state of disrepair is such to make a finding that the Respondent is in breach of clauses 4.6.1 and 4.6.3, to keep the Property in good repair and to paint the outside of window frames and doors at four yearly intervals.
20. The Applicant has also included in her bundle two letters, dated 6 April and 20 June 2017 respectively, in which her representative served the required 7 days’ notice on the Respondent to inspect the property and requesting inspection facilities to be made available. The Tribunal notes that the Respondent has in communicating with the Tribunal indicated that he is happy to meet and allow an inspection of the Property to take place. Nevertheless, there has been no firm date or appointment offered by the Respondent despite his Landlord’s written requests. On the balance of probability, the Tribunal therefore finds that the Respondent is in breach of clause 4.7:

“To allow the Landlord, on giving at least 7 days’ notice, to enter the Property to inspect the state of it”

21. In respect of the alleged breach of clause 4.8 within the Lease, the Tribunal notes that the Applicant's representative wrote to Respondent on 6 April stating:

"We also hereby give you notice under clause 4.8 of the lease to immediately carry out repairs to the property and bring it up to a reasonable standard of good repair within one month of the date of this letter".

While on the face of it this gives the Respondent Tenant notice to effect repairs, what repairs should these be? Would it suffice to replace the broken windows, the back door and effect repairs to the exterior or does this extend to include an extensive refurbishment of the interior itself. While it is self-evident the Property is in poor repair, the Tribunal finds that the notice given is too ambiguous and not specific enough to qualify as service of an effective notice for the purposes of clause 4.8.

22. Similarly, under 4.9 is it reasonable to expect the tenant to clean monthly the windows, when the majority of the windows are broken and to do so would be both ineffectual and dangerous. The Tribunal thinks not, and therefore cannot find that this clause has been breached because it is inoperable.
23. Concerning clauses 4.10 and 4.15, the Tribunal has seen no evidence that any requests to inspect have been made in respect of repairing or cleaning neighbouring property, etc. nor in respect of inspecting and valuing the Property for the purposes of insurance. The Tribunal cannot therefore find any grounds to find that that these clauses have been breached by the Respondent.
24. The Tribunal has not been presented with any evidence that the Building is:
- a. Insured, with a relevant building insurance policy in place. (Although it is noted that this is a condition of the lease – clause 5.2)
  - b. That the disrepair of the flat is such to void the terms and conditions of the policy, or a future policy and;
  - c. That the premium has or is likely to be adversely affected by the condition of the first-floor flat.

While the Tribunal could well imagine that the present condition of the flat may adversely affect the likelihood of securing insurance and the level of premiums, there is insufficient evidence presented to make such a finding and to determine a breach in respect of clause 4.16 of the Lease.

25. In respect of the alleged breach of clause 4.19, the Tribunal accepts that the Property has been used in the past for anti-social behaviour. The fact that the flat has been boarded up to secure the Property and to keep trespassers out is, on the balance of probabilities, evidence of this. What is clear, however, is that the Respondent did not personally "use the Property" for these undesirable activities. Further, it is unclear that he "allowed anyone else to do so". When these activities were noticed the ground floor commercial tenants appear to have acted to address the issue and secure the Property. There is therefore insufficient evidence for the Tribunal to conclude that the Respondent "allowed anyone else to do so" because of ongoing and sustained inaction to secure and maintain the Property. The Tribunal can see the argument that it would be incongruous that the ground floor commercial tenant would act and incur personal expense if the Respondent had not demonstrated that no action was likely to be taken within a reasonable timeframe, either by perhaps his inaction or by being unresponsive to requests to secure the Property. However, the Tribunal is conscious that it is also possible that the tenants of the bakery took swift action to address the situation given the serious and adverse impact on them and their business. The Tribunal therefore finds that there is insufficient evidence to determine a breach has occurred under clause 4.19.
26. In conclusion, we therefore find that a breach has occurred in respect of clauses 4.6.1, 4.6.3 and 4.7 on the facts presented. The Applicant is therefore entitled to a determination to that effect.