



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

Case Reference : **MAN/OOBY/LBC/2019/0005**

Property : **58 Boswell Street, Liverpool L8 0RW**

Applicant : **Onward Homes Limited**

Respondent : **Amanda June Ellis**

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

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

Date of determination : **5 June 2019**

Date of Decision : **7 June 2019**

DECISION

Summary decision

1. The Respondent has breached the repairing covenant in her lease relating to 58 Boswell Street, Liverpool L8 0RW.

Application

2. Onward Homes Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Ms Amanda June Ellis has breached a Lessee's covenant within the lease of 58 Boswell Street, Liverpool L8 0RW (the Property).

Background

3. The Applicant is the proprietor of the freehold and successors to the Lessor's interest created by the lease of the Property. The Respondent is the current Leaseholder.
4. The application was made on 14 March 2019.
5. Directions were made 3 April 2019 by Regional Judge Duffy. They 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 and to date the Tribunal's has not received any response from the Respondent to its directions.
6. The Applicant's submissions in compliance with directions include copies of the Freehold and Leasehold Land Registers, copy relevant lease, a statement of case and an expert report detailing the condition and defects at the Property as at 26 and 27 February 2019, as prepared by Mr Crompton MRICS.
7. The Tribunal convened on 5 June 2019 without the parties to determine the application.

The Lease

8. The Lease dated 14 April 1948 is made between The Metropolitan Railway Surplus Lands Company Limited (1) and Alexander Elliott (2) (the Lease) for a term of 999 years from 25 March 1948.
9. The Lease contains under clause 2(3) the following Lessee covenant in respect of repair:

"that the lessee will throughout the said term at the expense of the Lessee and without being thereunto required well and substantially repair cleanse maintain amend and keep the said demised premises and all fixtures and additions thereto and all sewers drains watercourses and cesspools and other appurtenances thereto in good and tenantable repair and condition."

Grounds, evidence and submissions

10. The grounds of the application are that the Respondent has breached the repairing obligation contained in the Lease as set above. The Applicant advises that it first became aware of the disrepair when it received formal notification of such from Liverpool City Council in a letter dated 31 October 2018. On inspection the Applicant found the Property to be in a state of substantial disrepair and estimated that the Property may have been abandoned up to 5 years previously.
11. The Applicant also enclosed an expert report in support of its case. In his report Mr Compton details extensive structural defects and major items of disrepair arising from a combination of vandalism, lack of repair and the abandonment of the Property. Extensive photographic evidence is also appended to the report. The list of defects extends to 18 items and include the presence of dry rot, missing or broken windows, collapsed ceilings, the failure of the original timber bressamer beam spanning the front bay window to highlight but a sample of the items noted.

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. The evidence that the Property is in a substantial state of disrepair is overwhelming. The exhibits to Mr Compton's expert report provide persuasive illustration of such.
16. The Lease covenant referred to is clear and we find that the Respondent has been in breach by failing to keep the property in good repair. As such the Applicant is entitled to a determination that this covenant has been breached.

Order

17. The Respondent has breached the following covenant within the Lease of the Property; clause 2(3).

N A Walsh
Deputy Regional Valuer
5 June 2019