



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

Case Reference : **BIR/44UE/LBC/2019/0008**

Property : **48 Tredington Park, Hatton CV35 7TT**

Applicant : **Hatton Park No.2 Management
Company Limited**

Representative : **LMP Law Limited**

Respondent : **Mr David Webber**

Representative : **Unrepresented**

Type of Application : **Determination of an alleged breach of
covenant (Section 168(4) of the
Commonhold and Leasehold Reform
Act 2002)**

Tribunal Judge : **Dr Anthony Verduyn**

Tribunal Valuer : **Mr V. Chadha**

**Date of Site Inspection :
And Hearing** : **23rd January 2020**

Date of Decision : **27th January 2020**

DECISION

1. On 23rd October 2019 the Tribunal received from the Applicant an application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for an order that a breach of a covenant or a condition in a lease has occurred.
2. On 30th October 2019 the Tribunal issued Directions.
3. The Tribunal has considered the Statement of Case signed by LMP Law Limited, solicitors to the Applicant.
4. The Respondent has failed to comply with Directions. He failed to acknowledge any of the letters sent to him by the Tribunal. He was barred from taking further part in the proceedings with effect on 3rd January 2020 by reason of non-compliance with the order to provide a Statement of Case.
5. Neither party requested an oral hearing.

The Lease

6. The Property is held under the terms of a lease dated 24th August 2001 and made between AC Lloyd Holdings Limited (1) the Applicant (2) and the Respondent (3) whereby the Property was demised for a term of 999 years from 1st January 2000 at a peppercorn rent (“the Lease”).
7. The Property is subject to a mortgage in favour of TSB Bank PLC.
8. The Applicant alleges breach by the Respondent as lessee of his covenant at Clause 2(viii):

“To keep the Premises and all fixtures and fittings (including the Lessor’s fixtures and fittings) therein in good and tenantable repair decoration and condition throughout the continuance of this demise including the renewal and replacement of all work or damaged parts and to maintain and uphold and whenever necessary for whatever reason rebuild reconstruct and replace the same and at the expiration or sooner determination of the said term peaceable to surrender and yield up to the Lessor all and singular the Premises TOGETHER WITH all additions thereto and all Lessor’s and other fixtures and fittings (if any) in such good and tenantable repair decoration and condition and in accordance with the terms of this covenant in all respects”

Deliberation

9. The Tribunal attended to inspect the Property on the morning of 23rd January 2020. The Respondent did not attend the inspection. The agent for the Applicant Managing Company attended and exercised its rights to enter the Property (pursuant to paragraph 2 of the Fifth Schedule to the Lease: “Such rights of access to and entry upon the Premises by ... the Management Company ... as are necessary for the proper performance of their obligations thereunder ...” and Clause 4(6) in respect of the common form leases for Hatton Park for the Management Company “To take all reasonable steps to enforce the observance and performance by the Lessees of other Flats and Houses in the Building of the covenants and conditions in the Leases of the other flats and Houses which fail

to be observed and performed ...”). At the invitation of the agent the Tribunal made a short visual inspection of the Property.

10. The Property is a ground floor flat within a converted building. Entry is via a common hallway with staircase to upstairs flats and via a lobby shared with the other ground floor flat. The Property comprises hallway with two cupboards off, lounge, bathroom and one bedroom. Whereas the flat contained possessions of, presumably, the Respondent, it had plainly not been occupied for some years (three or more according to the agent): services had been disconnected, and in respect of water, that was done by the agent following a suspected leak (in fact, water was not emanating from the Property). Heavy layers of dust were to all surfaces and cobwebs were prolific. The Applicant’s Statement of Case appended photographs of extensive condensation damage and mould, and this was very apparent in the kitchen and bathroom, and to window ledges and surrounds. Even were services reconnected, the Property was not fit for human habitation. Kitchen units’ doors and surfaces were particularly badly affected by mould. The Tribunal considers that the Property has been evidently uninhabited for a very considerable period of time, consistent with the comment on the agent. There was disrepair in the bathroom behind the toilet at floor level, where the skirting-board had failed.

Decision

11. Having considered the Applicant’s Statement of Case and photographs, and having inspected the Property as described above, the Tribunal determines that there is a breach of covenant in respect of disrepair to the bathroom and by reason of the property not being in good and tenantable decoration and (especially by reason of the extensive mould growth throughout the kitchen) condition.
12. Pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 the Tribunal determines that a breach of lessee’s covenants contained in Clause 2(viii) of the Lease has occurred.

Tribunal Judge Dr Anthony Verduyn

Dated 27th January 2020