



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

Case Reference : **MAN/30UHG/LBC/2020/0004**

Property : **2nd Floor Flat, 22 Thornton Road,
Morecambe LA4 5PE**

Applicants : **Adi and Danielle Jiagbogu**

Respondent : **Lisa Marie Law**

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

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

Date of determination : **13 March 2020**

Date of Decision : **16 March 2020**

DECISION

Summary decision

1. The Application is struck out.

Application

2. Adi and Danielle Jiagbogu apply for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Lisa Law has breached a Lessee's covenant within her lease of the Property.

Background

3. The Applicants are the Proprietors of the Freehold and Successors to the Lessor's interest created by the lease of the Property. The Respondent is the Successor to the Leaseholder.
4. The application was made on 13 February 2020.
5. A letter dated 25 February 2020 notified the Applicants: "The Tribunal's preliminary view is that it does not have jurisdiction to determine this application as the Tribunal only has power to determine whether or not there has been a breach of Covenant. If the applicant believes there has been a breach of Covenant he must specify the Covenant which he believes has been breached. However, in this case the applicant is seeking that the Tribunal identifies where there has been a breach of an unspecified clause in the lease and to apportion liability for repairs. Both of these requests are outside the jurisdiction of the Tribunal." The letter gave notice that if the application was not withdrawn it will be determined whether it should be struck out.
6. The Applicants' response refers to the extract of the lease identified within the application form and stated the claimant has not been in contact in respect of damage and asks that the Tribunal decides whether the clause applies to the front wall and railings of the building of which the Property forms part and whether the Lessee having ignored her obligation is in breach.
7. The Respondent has not communicated with the Tribunal.
8. The Tribunal convened on 13 March 2020 without the parties to determine the application.

The Lease

9. The lease of the Property is dated 5 February 1975 and made between Guido Joseph Marguarite Heylen and Dorothy Haylen (1) Christopher John Evans (2) for a term of 999 years from 1 November 1975.
10. Paragraph 3 of the Lease contains the Tenants Covenants with the Landlord and Paragraph 4 contains the Landlord's Covenants with the Tenant.

11. Paragraph 5(2) of the Lease states: "It is hereby agreed and declared that any defect in the said pipes wires drains sewers and services serving both the said second floor flat and the remainder of the said property the cost of repair or the renewal of which is not the liability of the Public Authority supplying any service shall be repaired or renewed at the joint and equal expense of the owners for the time being of the said second floor flat and the remainder of the property and with all others who may be authorised by the Landlords"

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."
15. Regulation 9 (2) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 provides that the Tribunal must strike out the whole or part of the proceedings or case if the Tribunal (a) does not have jurisdiction in relation to the proceedings or case or that part of them

Evidence and submissions

16. The Applicants' state that the front wall and railings at the front boundary of the building in which the Property is located require repair following damage. The Respondent has failed to contact them.
17. The Applicants point to an issue in determining whether ground level front wall and railings are part of the communal areas.

Tribunal's conclusions with reasons

Our conclusions are:

18. The Tribunal's jurisdiction is to determine whether a lessee's covenant has been breached. The Clause within the Lease identified by the Applicants contains an agreement and declaration between parties which may give rise to a contractual obligation but is not expressed as a covenant nor does it constitute such.

19. In the light of our consideration 18, it is not appropriate for us to consider the obligations that may arise under the agreement and declaration nor whether underlying damage falls within that obligation.
20. The Tribunal does not have jurisdiction as the matters are outwith Section 168(4) of the Act. Accordingly the application is struck out under Regulation 9(2)(a).

Order

21. The application is struck out.

**L J Bennett
Tribunal Judge
16 March 2020**