



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

**Case Reference** : **MAN/OOCCM/LBC/2019/0013**

**Properties** : **99 Collingwood Court, Marlborough Park,  
Washington NE37 3ED**

**Applicant** : **Marlborough Park Services Limited**

**Respondent** : **Alexander Steven Bell**

**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** :

**Date of Decision** : **4 March 2020**

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**DECISION**

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## **Summary decision**

1. The Respondent has breached a covenant within his lease to keep the Property in good and tenable repair and condition.

## **Application**

2. Marlborough Park Services Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Mr Alexander Steven Bell has breached a Lessee's covenant within his lease of 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 Successor to the Leaseholder.
4. The application was made on 5 July 2019.
5. Directions made 31 August 2019 by Judge J Holbrook 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.
6. The Applicant's submissions in response to directions include copies of the Freehold and Leasehold Land Registers including the registered lease, a statement of case with submissions and copy correspondence between the Managing Agents appointed and the Respondent.
7. The Respondent has not communicated with the Tribunal.
8. The Tribunal convened on 4 March 2020 without the parties to determine the application.

## **The Lease**

9. The lease of the Property is dated 20 December 1989 and made between Regalian (Urban Renewal) Limited (1) Marlborough Park Services Limited (2) and Joanne Alison Watson (3) for a term of 125 years less 3 days from 1 April 1986.
10. Paragraph 1 of the Lease defines the Property including "..... all windows window frames and glass therein ....."
11. Paragraph 3(1)(l)(i) contains the Lessee's covenant "To keep the demised premises and all walls party walls sewers drain pipes cables wires and appurtenances thereto belonging (other than the parts thereof comprised and referred to in clause 5 hereof) in good and tenable repair and condition ....."
12. Paragraph 5 sets out management obligations which extend to roof and main structure boundary walls, fences, gutters and rainwater pipes, gas pipes, service pipes, entranceways, landings and stairways and common parts and the communal aerial system.

## **Law**

13. 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."
14. 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
15. 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."

## **Evidence and submissions**

16. The Applicant's evidence and submissions are detailed above. It is stated that "Following a site visit it was noted that the window to the front of the Property was broken." Following letters in March, June and July 2018 and April 2019, a site visit took place on 30 May 2019 "It was noted that the window was still in a state of disrepair."

## **Tribunal's conclusions with reasons**

Our conclusions are:

17. We have borne in mind the Lessee's obligations within the Lease particularly that identified by the Applicant.
18. Noting the extent of the demise within the Lease we are satisfied that the Lessee's obligation extends to the windows of the Property.
19. From the evidence provided by the Applicant we accept that the window was and remained in a state of disrepair throughout the period set out in the statement of case.
20. The Respondent has not communicated with the Tribunal to challenge the application and its underlying facts.
21. We conclude that the Respondent has failed to comply with his covenant identified above as claimed by the Applicant.

## **Order**

22. The Respondent has breached the covenant in respect of repair within his Lease of the Property.

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