FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/38UB/LBC/2019/0007**
Property	**:**	**Mount Pleasant, Hempton, Deddington, Oxfordshire, OX15 0QS**
Applicant	**:**	**Royal Institute for the Blind**
		Represented by Wilsons Solicitors LLP
Respondent	**:**	**Michael John Payne**
		Unrepresented
Date of Application	**:**	**4th July 2019**
Type of Application	**:**	**s168(4) of the Commonhold and Leasehold Reform Act 2004 ("CLARA")**
Tribunal	**:**	**Judge J.Oxlade** **M. Wilcox BSc MRICS**
Date and venue of Hearing	**:**	**2nd October 2019** **Mercure Banbury Whately Hall Hotel**

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DECISION

The Tribunal has no jurisdiction under section 168(4) of CLARA ("the Act") to find the Respondent's failure to comply with the repairing covenants in his lease, as asserted in the application, because the lease is not a "long lease", by operation of section 77(1) of the Act.

REASONS

1. The Applicant is the lessor of premises known as Mount Pleasant, Hempton. It is let to the Respondent by lease made on 7th July 2003 ("the lease"), with an unexpired term of just short of 34 years, and which requires the lessee to "keep the buildings on the demised premises in repair".

2. The Applicant says that the house is substantially out of repair and uninhabitable, to such an extent that the Lessee – believed to be in his 60's, and physically well - was moved into temporary Council accommodation in early 2018 as an emergency measure, since which time he has not returned to live at the demised premises.

3. As evidence of the building being out of repair, the Applicant relies on (i) a building inspection report compiled by Pinders, following an inspection on 21st June 2018, and (ii) two HRSS reports complied by David Barnicoat, an Environmental Health Technical Officer, who inspected the premises on both 7th and 21st June 2018.

4. The Applicant understands the Respondent to say that he would wish to return to live there, but cannot realistically do so until it is put it back into repair and does not have the resources to meet the estimated costs of putting it back into a habitable conditions, assessed by the Pinders report as approximately £103,000. Neither does the Applicant have the funds to bring the building back into repair.

5. However, the Applicant does not consider that it can simply leave the building to further deteriorate; aside from it being a wasting asset, more pressingly, it is adjacent to the highway. In the recent past, a failing chimney was brought to the Applicant's attention by the Fire Brigade; though not the Applicant's responsibility the Applicant organised and met the costs of repair.

6. The Applicant - through its' Senior legacy income manager - Mr. Pepper, has sought to engage with the Respondent to find a way forward, including discussing a deed of surrender, but without success. There has been no resolution, and so it has left the Applicant without any other realistic option than to reluctantly consider forfeiture of the lease.

7. The Applicant issued the application now before us, to secure findings of breach, prior to taking forfeiture action.

8. However, by the date of filing submissions on behalf of the Applicant, and for the benefit of the Tribunal and Respondent, the Applicant's Counsel took the view that the lease failed to meet the definition of "long lease" in section 77(1) and so was outwith the protection of section 168(4). The effect of such an interpretation is that the Applicant could proceed to issue and enforce a section 146 notice, without the Tribunal first making findings.

Hearing

9. The Applicant attended the hearing before the Tribunal on 2nd October 2019, at which the Respondent was not present, nor represented, and in respect of which he had not engaged at all, though the Tribunal was satisfied that the Respondent had been served with the application and notice of hearing.

10. The Applicant filed a bundle of documents, which included the lease, the application, the reports on condition, and submissions.

11. The Applicant sought a decision from the Tribunal that the subject lease was not a "long lease", and made detailed submissions. In the alternative, the Applicant invited the Chair of the Tribunal to sit in her capacity as a District Judge of the County Court, and go onto grant declaratory relief in accordance with CPR 40.20 - though conceding that in order to do so there would need to be an application before the County Court, but which (it was accepted) had not been made.

12. The Tribunal heard submissions and as a preliminary issue found that the lease was not a long lease; further, that the conditions did not exist for CPR 40.20 to apply. In the alternative, the request for declaratory relief could not be read into the application, and therefore something over which the Respondent would have not had notice. Accordingly, declaratory relief would not be granted.

Findings

13. The Tribunal finds that the lease is not a "long lease", recognising that Clause 2 of the lease, provides that the lease is terminable at any time after the death of the tenant, the length of notice is not more than 3 months, and it precludes assignment of the lease. It therefore fulfils all conditions set out in section 77(1) of the 2002 Act, to exclude it from being a "long lease".

14. The practical effect of this finding is that the Applicant was not obliged to make an application to the Tribunal for findings of breach, nor does the Tribunal have jurisdiction to make such findings.

15. Despite the Applicant's request, the Tribunal Chair declined to give declaratory relief in accordance with CPR 40.20, there having been no application made in the County Court, and as the Respondent had not been forewarned of such an application to be made.

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Judge J. Oxlade

9th October 2019