



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

**Case Reference** : **MAN/30UD/LBC/2015/0025**

**Property** : **22 Athol Street North, Burnley,  
Lancashire BB11 4BS**

**Applicant** : **Cheerupmate2 Ltd**

**Respondent** : **Allan Fergus Gladstone**

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

**Tribunal Members** : **Mr L Bennett (Tribunal Judge)  
Mr J Holbrook (Tribunal Judge)**

**Date of determination** : **23 November 2015**

**Date of Decision** : **1 December 2015**

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**DECISION**

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## **Summary decision**

1. The Respondent has breached covenants in respect of repair and maintenance in the Lease relating to the Property.

## **Application**

2. Cheerupmate2 Ltd applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that breaches of covenant have occurred in the Lease dated 4 July 1877 relating to the Property 22 Athol Street North, Burnley, Lancashire BB11 4BS.
3. The Respondent is the Leasehold owner of the Property registered with Leasehold Title LA72879.

## **Background**

4. The Applicant is the successor to the Lessor's interest created by the Lease of the Property. The Respondent is the successor to the Lessee's interest.
5. The application is dated 24 September 2015.
6. Directions made 30 September 2015 by Judge Bennett 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 such request.
7. The Applicant's submissions attached to the application and in response to directions include copies of the Lease, office copies of the Freehold and Leasehold Titles, photographs of the Property and an explanation that in breach of the Lease there has been a failure to keep the dwelling in good and sufficient repair: "This house is neglected and in serious disrepair....." The application was accompanied by copies of notices and correspondence sent to the Respondent."
8. Additionally, the Applicant states that the Respondent has failed to allow inspection of the Property or engage with the Lessor although a specific Lease covenant is not identified.
9. The Respondent has not communicated with the Tribunal nor provided a response to the application.
10. The Tribunal convened on 23 November 2015 without the parties to determine the application.

## **The Lease**

11. The Schedule to the Lease dated 4 July 1877 contains the Lessee's covenant that he "....during the term granted to maintain in good and sufficient repair and condition upon the land demised ....."

## **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. We note that the repair covenant specified by the Applicant. We accept from examination of the Title and the photographic evidence that a dwellinghouse was constructed on the site of the Property which on erection would cause the engagement of the Lessee's covenant for repair.
16. It is clear from the photographic evidence that the Property is in a poor state of repair and not in a state consistent with the Lease covenant.
17. We conclude that the Respondent has failed to observe the express covenant in the Lease in respect of repair and maintenance.

## **Order**

18. The Respondent has breached the covenant for repair and maintenance within the Lease.