



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

Case reference **CHI/40UC/LBC/2013/0013**

Property **11 St Peter's Road.
Burnham-on-Sea,
Somerset, TA8 1HB**

Applicant **Mercia Investment Properties Ltd ("the Landlord")
(Circle Residential Management Ltd)**

Respondent **David Shirvington
Rachel Suzanne Shirvington ("the Tenant")**

Interested Party: **Governor and Company of the Bank of Ireland**

Tribunal member: **Judge Professor David Clarke**

Date of Determination: 14 August 2013

DECISION

The Application

1. This is an application by the Landlord under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for the determination of whether there has been a breach of covenant. The Application is dated 18 February 2013. It was addressed to David and Rachel Suzanne Shirvington ("the Respondent/Tenant") who were the tenants of the property known as 11 St. Peter's Road, Burnham on Sea, Somerset, TA8 1HB ("the Property") under a lease ("the Lease") dated 6 March 1975 for a period of 99 years from 1 November 1974.
2. By a Directions Order dated 22 February 2013, notice was given by the Tribunal that it proposed to deal with this Application on the basis of written representations only. This proposal was not contested.
3. By a Further Directions Order dated 4 June 2013, the Governor and Company of the Bank of Ireland was constituted an Interested Party for the purposes of these proceedings. By a second Further Directions Order dated 20 June 2013 a direction was made that service of documents on the Interested Party shall be substituted for service upon the Respondent/Tenant. (By way of an aside, the Applicant, through its agents, sent a late letter to the Tribunal, dated 1 August 2013, suggesting that the Bristol and West Building Society was the mortgagee and therefore also an Interested Party. That suggestion is misconceived since it is a matter of public knowledge that the Bristol and West BS no longer exists, and was taken over by the Bank of Ireland).
4. Written representations have been received on behalf of the Applicant/Landlord and on behalf of the Interested Party.

The Facts

5. The Application alleges breach of the covenant contained in Clause 2(h) of the Lease, namely, to comprehensively insure and keep insured the Property during the term granted in an Insurance office of repute to the full value and (inter alia) to produce to the Landlord on demand the policy of such insurance and the receipts for all payments.

6. The only evidence presented in support of the Application is a letter from Circle Residential Management, on behalf of the Landlord, dated 8 February 2013 addressed to the Tenant at the Property requesting a copy of the buildings insurance certificate and policy 'by return'. The Applicant's own statement of case says that 'it only became aware' of the alleged breach of covenant as a consequence (presumably, because there was no reply).

7. The Interested Party has produced to the Tribunal evidence that, as mortgagee of the Property, it took possession of the Property under its mortgagee powers on 11 December 2012 and adequately insured the property from that date. It has produced to the Tribunal, and to the Landlord, a copy of the policy effecting that insurance. It has not been suggested to the Tribunal that the policy so in force is in any way inadequate or fails to meet the requirements of the covenant to insure in the Lease.

8. The Interested Party further contends that the Landlord was aware, before 18 February 2013, through its agents, that possession had been taken by them and that the Respondent Tenants were no longer in residence at the Property. The Landlord has not contended to the contrary. Consequently, it is contended that the Tenant was not given adequate or reasonable opportunity to respond to the alleged breach of covenant before the application was issued on 18 February 2013.

Decision

9. It is clear that this application must fail. There is no evidence whatever produced that there was a failure to insure prior to 11 December 2012. At the time the Application was made, the Interested Party was in possession as mortgagee and a full policy of insurance was in place. If the request had been sent to the Interested Party on 8 February, or a copy of the letter to the Respondent at the Property had been copied to the Interested Party, I have no doubt that the policy of insurance would have been produced in good time.

10. I do not have to determine whether the issue of an application, just 10 days after an unanswered request for a copy of the policy had been sent, could have sufficed as evidence of non insurance. It certainly could not when, as here, the Tenant was not in possession and the Applicant knew that was the case. But I doubt, even in the absence of the Interested Party taking possession, that it could have been sufficient.

11. The Application is dismissed.

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Professor David Clarke
Judge of the First Tier Tribunal, Property Chamber (Residential Property)