

S 46



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

**Case Reference** : **MAN/00CA/LBC/2013/0018**

**Property** : **45 Westminster Avenue, Netherton,  
Bootle, Merseyside L30 5QY**

**Applicant** : **One Vision Housing**

**Representative** : **Croftons, Solicitors**

**Respondent** : **Mr J S Howard**

**Representative** : **N/A**

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

**Tribunal Members** : **Judge J Holbrook  
Judge M Davey**

**Date and venue of  
Hearing** : **Determined on the papers**

**Date of Decision** : **25 November 2013**

---

**DECISION**

---

## DECISION

**Breaches of covenant in the lease of the Property (dated 8 January 1990) have occurred by reason of the Respondent having failed (1) to keep the Property in tenantable repair; (2) to permit the Applicant to enter the Property to inspect its condition; and (3) to prevent anything being done on the Property which may become a nuisance.**

## REASONS

### Background

1. On 14 August 2013 an application was made to the First-tier Tribunal (Property Chamber) under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition has occurred in a lease of a property known as 45 Westminster Avenue, Netherton, Bootle, Merseyside L30 5QY ("the Property").
2. The lease in question ("the Lease") is dated 8 January 1990 and was made between The Metropolitan Borough Council of Sefton (1) and Robert Greenwood (2). It was granted for a term of 125 years from 1 April 1984 at a peppercorn rent.
3. The application was made by One Vision Housing, which owns the reversionary interest in the Property and is the current landlord under the Lease. The application was made on the basis of an alleged breach of covenants to repair the Property; to permit the landlord to enter the Property to inspect its condition; and against permitting anything to be done on the Property which may be a nuisance.
4. The Respondent to the application is John Simon Howard of 45 Granville Road, Liverpool L15 2HP, the current tenant under the Lease.
5. On 12 September 2013 the Tribunal gave directions for the conduct of the proceedings. The parties were informed that this matter was considered suitable for a determination without an oral hearing unless either party gave notice that they wished a hearing to be listed. As no such notification was received, the Tribunal proceeded to determine the matter on the basis of the evidence provided in the application and in written submissions provided by the parties in response to directions. The Tribunal did not inspect the Property.

### Law

6. A prerequisite for the forfeiture of a lease (otherwise than for a breach of a covenant to pay rent) is the service of a notice under section 146(1) of the Law of Property Act 1925. However, section 168(1) of the

Commonhold and Leasehold Reform Act 2002 provides that a landlord under a long lease of a dwelling may not serve such a notice unless section 168(2) of the 2002 Act is satisfied.

7. One of the ways in which section 168(2) may be satisfied is for it to be finally determined by the Tribunal (upon an application by the landlord under section 168(4)) that a breach of a covenant or condition in the lease has occurred.

### **The Lease**

8. Clause 2(5) of the Lease provides that the tenant covenants with the landlord:

“To keep the Flat and every part thereof in tenantable repair (including good decorative repair) throughout the term hereby granted ...”

9. Clause 2(6) of the Lease provides that the tenant covenants with the landlord:

“To permit the Landlord and its agents with or without workmen and others twice a year at reasonable times to enter upon and examine the condition of the Flat and thereupon the Landlord may serve upon the Tenant notice in writing specifying any repairs necessary to be done and require the Tenant forthwith to execute the same ...”

10. Clause 2(8) of the Lease provides that the tenant covenants with the landlord:

“Not to do or permit or suffer to be done in or upon the Flat anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Landlord or to the tenants of the Landlord or neighbouring owners or occupiers ...”

### **Evidence and submissions**

11. The Applicant alleges that the Respondent has left the Property unoccupied and untended for a number of years and that he has permitted it to fall into disrepair as a result. The condition of the Property has become a nuisance to neighbouring residents, and has caused damage to the flat below. The Respondent has failed to respond to the Applicant's requests for access or to notices requiring repairs to be effected.
12. The Applicant's submissions included a witness statement given by Ms Angela Middleton, the Applicant's Area Housing Officer with responsibility for managing tenancies in the locality. Ms Middleton gave evidence of the problems which had been encountered with the Property (which is a flat comprising the middle floor of a three-storey

purpose built block). In 2011, she discovered that pigeons had gained access to the Property – which was unoccupied – by means of broken windows. In 2012, Ms Middleton had to deal with flooding at the Property following the theft of radiators and pipe work. The flooding caused significant damage to the flat beneath the Property.

13. A witness statement was also provided by Mr James Southern, the Applicant's Sales Co-ordinator with responsibility for managing leases. My Southern's evidence was that, in 2011, he had attempted to contact the Respondent to require him to repair the broken windows at the Property. On receiving no response, the Applicant arranged for the necessary repairs to be carried out and for the Property to be boarded up. Both Mr Southern and Ms Middleton stated that the Applicant has had difficulty in letting adjacent flats because would-be tenants have been put off by the condition of the Property.
14. No submissions were received from the Respondent.

### **Conclusion**

15. The evidence produced by the Applicant makes a strong case in support of its assertion that the Respondent has breached each of the covenants in the Lease which are described in paragraphs 8 – 10 above. In the absence of any contrary evidence from the Respondent, the Applicant is entitled to a determination that a breach of these covenants has occurred.