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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	MAN/OOCK/LBC/2015/0007
Property	:	10 Embleton Road, North Shields NE29 8BB
Applicant	:	Starcrest Development Limited
Respondent	:	Mr John Robinson
Type of Application	:	Section 168(4) Commonhold and Leasehold Reform Act 2002
Tribunal Members	:	Jonathon Holbrook (Regional Judge) H A Khan (Tribunal Judge)
Date of Decision	:	14 July 2015

Decision

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Introduction

1. This is an application received by the Tribunal on 2 July 2013, from the freeholder, Starcrest Development Limited("the Applicant). The application is for a declaration pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 that the leaseholder Mr John Robinson ("the Respondent") is in breach of a covenant in the lease in respect of the property at 10 Embleton Road, North Shields NE29 8BB ("The Property") .

2. According to the application, the Respondent is in breach of clause 3(2) as he has let the property fall into disrepair.

3. Directions were given on 1 April 2015 and which have been complied with by the Applicant. The Respondent has not responded to the Landlords application. Furthermore, the Respondent has not acknowledged these proceedings and has failed to comply with the directions to submit a written response within the set timescale. The directions provided for the matter to be determined on paper, but gave any party the right to ask for an oral hearing. As no such request was made, the Tribunal determined the matter on the basis of the written materials.

Description

4. The property is said to be a semi detached house. The Tribunal did not inspect the property.

The Lease

5. The Tribunal were provided with a copy of the lease made on 1 March 1961 between the R Sleightholme Limited and James & Eleanor Robinson.

6. The relevant term of the lease is at clause 3.2 and which obliges the Respondent to;

   > 3 (2) during the said term to repair and keep in tenantable repair the dwellinghouse and other buildings at present or at any time hereafter upon the demised premises including all entrance gates paths drives sinks sewers drains pipes cables and party and other walls and fences from time to time when necessary to rebuild reconstruct or replace the same to the satisfaction of the Lessors Architect.

7. The Tribunal was provided with the Applicants statement of case dated 12 April 2015.

The Law

The relevant law is set out in section 168 of the Commonhold and Leasehold Reform Act 2002. It states

(1) 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.

(2) 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, or
(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal]for a determination that a breach of a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(b) has been the subject of determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(6) For the purposes of subsection (4), *"appropriate tribunal"* means—
(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) in relation to a dwelling in Wales, a leasehold valuation tribunal.

The Issue

8. The issue was whether the Respondent was in breach of the covenant set out at clause 3.2.

The Applicants Case

9. The Applicant case was that the Respondent has failed to maintain the Property and to keep the Property in repair as evidence. The Applicant provided a Schedule of Dilapidations prepared by Graeme Harker of Harrow Consulting Limited (dated 18 February 2015) as evidence of the breach.

The Respondents Case

10. The Respondent has played no part in these proceedings despite being given the opportunity to do so.

The Tribunals Decision

11. The Tribunal noted the covenant specified by the Applicant. The Tribunal, in particular, placed reliance on the Schedule of Dilapidations (dated 18 February 2015). This sets out the required work to be done to the premises in order that the premises are put into the condition they should have been in if the tenant had complied with its covenants contained in the within the lease of the premises dated 1 March 1961.

12. The Tribunal reminded itself that it was only being asked to determine if the Respondent was in breach of clause 3.2. Furthermore, although the Tribunal did not inspect the Property, it was provided with photographic evidence which was attached to the Schedule of Dilapidations.

13. The Respondent has not provided details or an explanation which demonstrates compliance with the covenant. This is despite being served with a copy of the survey and being asked to take corrective action by way of a letter sent by the Applicants representative on 9 April 2015.

14. The Tribunal, having considered all the evidence, determined that the evidence clearly points to a breach of clause 3.2 of the lease by the Respondent. The Schedule of Dilapidations clearly included items that came within the clause 3.2 such as entrance, paths and drives.

15. The Respondent has breached clause 3.2 of the lease by failing to keep the property tenantable repair.