



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

Case Reference : **MAN/00BM/LBC/2016/0004**

Property : **18 Sandybrook Close, Tottington,
Bury, Lancashire BL8 3LB**

Applicant : **Avon Freeholds Limited**

Representative : **Scott Cohen Solicitors**

Respondent : **Peter John Stumbilich**

Representative : **N/A**

Type of Application : **Subsection 168(4) Commonhold
and Leasehold Reform Act 2002 –
application for an order that a
breach of covenant or condition in
the lease has occurred**

Tribunal Members : **Judge S Duffy**

**Date and venue of
Hearing/Determination** : **Paper determination on
24 June 2016**

Date of Decision : **24 June 2016**

DETERMINATION

Introduction

- 1. This is a decision on an application made to the Tribunal by Avon Freeholds Limited, the freeholder of 18 Sandybrook Close, Tottington, Bury, Lancashire BL8 3LB (“the subject property”), for a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that a breach of a covenant contained in the lease of the subject property has occurred.**
- 2. The Respondent and current leaseholder of the subject property is Mr Peter John Stumbilich.**

Background to the application

3. The subject property is described in the application as a “House converted into flats”. In December 2012 the Applicant acquired the freehold of the subject property which was subject to a lease granted on 13 January 1971, for a term of 999 years from 13 June 1971 (“the Lease”).
4. The present application relates to:
 - (a) An alleged failure to insure the subject property in accordance with the terms of the lease (Clause 2(vii)) of the Lease;
 - (b) An alleged failure to provide the Respondent with a copy of the insurance policy (Clause 2(vii)) of the Lease;
 - (c) An alleged failure to seek and obtain approval of the insurance from the Respondent of the Lease; and
 - (d) A failure to allow the Respondent entry to the subject property. The application has clearly been made as a result of several site visits to the subject property (Clause 2(v)) of the Lease.
3. In compliance with the Tribunal’s directions the Applicant has filed with the Tribunal a Statement of Case and a bundle of documents containing, copies of the Tribunal’s directions.
4. The Applicant has included with the bundle copies of letters dated 8 January 2016 from the Respondent direct and 5 and 16 February 2016 from Scott Cohen Solicitors. In these letters the Applicant informs the Respondent of the matters alleged at 4(a)–(d) above and that they amount to breaches of covenant.
5. The Respondent has not responded to any of the letters from the Respondent or its solicitors.
6. The Respondent has not complied with Tribunal’s directions and sent the bundle as required.

The repairing covenant

7. The Applicant, in its statement, claims that the breaches are pursuant to clauses 2 (v) and 2 (vii) whereby the Respondent covenants:-

Clause 2(v)

“To permit the Lessors their Surveyor or Agent with or without workmen and all reasonable times during the day to enter upon the said land and any buildings thereon and every part thereof to examine the state and condition of the same and thereupon the Lessors may serve upon the Lessee notice in writing specifying any repairs which they may deem necessary to be done and require the Lessee forthwith to execute the same and if the Lessee shall not within two calendar months after the service of such notice proceed diligently with the execution of such repairs then to permit the Lessors to enter upon the said land and execute such repairs and the cost shall be a debt due from the Lessee to the Lessors and be forthwith recoverable by action otherwise.”

Clause 2 (vii)

“To insure and keep insured any buildings or structures erected on the said land or any part thereof against loss or damage by fire in some Fire Insurance Office of repute to be approved of by the Lessors in a sum not less than the current market value thereof and to make all payments necessary for the above purpose within fourteen days after the same shall have respectively become payable and to produce on demand to the Lessors the several policies of such insurance and the receipt for every such payment.”

In the circumstances, the Applicant now claims that the Respondent has breached these clauses.

The Law

8. Section 168(1) of the 2002 Act provides:

“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 ... in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.”

Subsection (2) may be satisfied by any of three alternative conditions. The relevant condition in the present case is that “it has been finally determined on an application [to the Tribunal] under subsection (4) that the breach has occurred”.

9. Accordingly, the Applicant seeks a determination under subsection section 168(4) from the Tribunal and has therefore commenced the preliminary stage to the statutory forfeiture procedure introduced by the 2002 Act.

Determination

10. *The burden of proving that there has been a breach of covenant lies with the Applicant.*
11. *In determining the application the Tribunal took account of all the relevant evidence and submissions presented by the Applicant.*
12. *The directions made on 1 April 2016 make provision for the Respondent to provide a bundle setting out his case. Nothing has been received from the Respondent.*
13. *It follows that, according to the terms of clause of 2 (v), the Respondent has failed to allow the Applicant access to the subject property and that according to Clause 2(vii) it has failed to insure, obtain the necessary approvals and produce the necessary policies as required.*
14. In the absence of any contrary evidence or submissions from the Respondent, the Applicant has discharged the burden upon it and, in the circumstances, the Tribunal is compelled to determine that the Respondent has breached the covenants in clauses 2(v) and 2(vii) of the Lease.