



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

**Case Reference** : **MAN/00BY/LBC/2019/0010**

**Property** : **88, Hartington Road, Liverpool, L8 0SH**

**Applicant** : **Onward Homes Limited**

**Respondent** : **Dr Madan Lal**

**Type of Application** : **Determination under Section 168  
Commonhold and Leasehold Reform Act  
2002**

**Tribunal Members** : **Mr J R Rimmer  
Mr J Faulkner**

**Date of Decision** : **9<sup>th</sup> November 2019.**

**DECISION**

© CROWN COPYRIGHT 2019

## **Order**

**The Tribunal finds that there has been a breach of covenant committed by the Respondent, as alleged by the Applicant, in respect of the lease of 88, Hartington Road, Liverpool, as set out at paragraph 14, below.**

## **Introduction**

- 1 This is an application under Section 168 Commonhold and Leasehold Reform Act 2002 to determine whether or not there has been a breach of covenant relating to a lease of 88, Hartington Road, Liverpool. The Applicant is Onward Homes Limited and the application is dated 14<sup>th</sup> April 2019. It contains an outline of the alleged breach of covenant, subsequently expanded in the Applicant's statement in support of its case.
- 2 The Respondent to these proceedings is the assignee of lease of the property in question dated 1<sup>st</sup> October and made between the Earl of Sefton (1) and Emily Ann Roberts (2) for a period of 999 years from 25<sup>th</sup> March 1944. The Applicant is the current freeholder. The property in question is a part of that demised under that 1944 lease.
- 3 The Applicant make a single allegation. The lease contains a covenant by the leaseholder:  
“(and) will at all times during the said term keep all the buildings which now or shall hereafter be erected upon the said demised premises and their respective appurtenances in good and substantial repair and condition”
- 4 In view of the nature of the allegations and the information provided by the parties to the proceedings it was considered necessary for the Tribunal to inspect the premises, but neither party requested a hearing before the Tribunal. The matter has therefore been concluded on the basis of the papers submitted by the parties and what it saw upon its inspection.

## **The Law**

- 6 Section 168 Commonhold and Leasehold Reform Act provides as follows:
  - (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... (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in a 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)...

(4) A landlord under a long lease of a dwelling may make an application to (the First-tier Property Tribunal) for a determination that a breach of covenant or condition in the lease has occurred

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

(a) has been, or is to be, referred to arbitration pursuant to a post

(b) dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of a determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

9 Section 169(5) gives the expression “landlord” the same meaning as in the whole of Part 2 of the Commonhold and Leasehold Reform Act, the significance of which is reflected below.

### **Submissions**

10 The Applicant provided a statement of case in support of its case and setting out the manner in which it considered that the covenant had been breached by the Respondent. It relied in support upon a professional report from a qualified surveyor, Ian Crompton MRICS, thorough in its assessment of the current condition of the premises.

11 The Respondent outlined the difficulties that he has had in relation to the upkeep of the property and his intentions to seek to enfranchise his interest therein. He does not appear to seek to challenge the Applicant’s assertions in relation to the condition of the premises.

12 The tribunal received a number of other submissions, both before and after its inspection of the premises that related, primarily, to a separate matter of possible enfranchisement of the leasehold interest. This is entirely discrete from that being considered here in relation to a finding as to whether, or not, a breach of covenant has occurred.

### **Inspection**

13 The Tribunal inspected 88, Hartington Road on the morning of 8<sup>th</sup> November 2019. The were admitted, in the company of a number of representatives of the Applicant, by the Respondent.

- 14 The property is substantial double fronted house. It no doubt existed upon the plot at the time of the 1944 lease given its appearance and construction. It is in an extremely dilapidated state; indeed, the Tribunal members did not consider it safe to inspect the property beyond the interior hallway. Floors and ceilings were in varying states of decay and the staircase was unguarded and undoubtedly dangerous.
- 15 **The Tribunal is entirely satisfied from its inspection that the property is not in any condition that might amount to “good and tenable repair” within the meaning of the covenant referred to at paragraph 3, above. The inspection confirmed the view of the Applicant’s surveyor, to the extent that the Tribunal could safely investigate it.**
- 16 The condition of the property is such that the Tribunal does not need to explore the niceties of what amounts to good and substantial repair and condition, so far is it from such condition.
- 17 It does however observe that the covenant is clear that the obligation is to keep the property in such condition and not necessarily put it in that condition. In the absence of any argument that the condition predates the granting of the lease, if that was ever ascertainable now, it is clear that the covenant has been breached.

Judge J R Rimmer  
02 December 2019

