



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

**Case Reference** : CHI/21UD/LBC/2021/0018

**Property** : 14 Bohemia Road, St Leonards on Sea,  
TN37 6RB

**Applicants** : Nicholas Iain Mckinlay

**Representative** : Michael Blandy Solicitors

**Respondent** : Nicholas Paul Ferguson and Shirley  
Elizabeth Ferguson

**Representative** :

**Type of Application** : Breach of the lease dated 15<sup>th</sup> August 1988

**Tribunal Member(s)** : Judge S Lal

**Date of Decision** : 8 November 2021, on the papers

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**DECISION**

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1. The Applicant is the freeholder of 14 Bohemia Road, St Leonards on Sea, TN37 6RB (“the Property”). The Applicant is also the leaseholder of the first floor flat at the Property.
2. The Respondents are the leaseholders of 14A Bohemia Road, being the basement flat at the Property. They hold the leasehold pursuant to a lease dated 15<sup>th</sup> August 1988 for a period of 99 years from 25<sup>th</sup> March 1988 (“the Lease”).

3. The Applicant claims that the Respondents are in breach of the repairing obligations contained in Clause 4 of the Lease. As a result of the Respondents breaches, the Applicant claims that this has caused the insurance on the Property to be voided due to the condition of the basement flat. The premium for reinsuring the Property has as a result increased threefold.

### **The Applicant's case**

4. The Applicant's case for breach of the repairing obligations under the Lease is based on a survey obtained by the Applicant from the surveyor, Hugh Conlin, on 19<sup>th</sup> October 2020. The purpose of the survey was to assess the condition of the basement flat and to recommend the remedial work required to bring the flat into a habitable condition. At the time of the survey, the basement flat was unoccupied and the surveyor noted that it appeared to be "in a derelict condition and uninhabitable".
5. The surveyor's report made around forty recommendations to bring the flat into a habitable state. The main issues appear to be the wiring of the flat, safety issues regarding the heating system and repairs required to both the interior and exterior of the flat.
6. The Applicant has been notified by the insurers of the Property that the insurance will not be renewed if the basement flat remains vacant and the remedial repairs are not carried out to legal and regulatory standards.
7. The Applicant claims that he has endeavoured to address the surveyor's recommendations with the Respondents but that relations with the Respondents have broken down. Although Mrs Ferguson moved back into the flat in November 2020, nothing was resolved and the Applicant claims that Mrs Ferguson and her partner Mr Saunders became confrontational with the Applicant's wife and himself.
8. On 15<sup>th</sup> January 2021, the Applicant's solicitor sent a letter to Mr Ferguson referring to the surveyor's report and clearly outlining the nature of the alleged breaches of Clause 4 of the Lease and further action which the Applicant was intending to take in the form of an Application to the Tribunal for a declaration of breach of lease if no action was taken by the Respondents.
9. Mr Ferguson replied to the Applicant's solicitor's letter on 3<sup>rd</sup> February 2021 and Mrs Ferguson wrote to the Applicant on 8<sup>th</sup> February stating that she would now be dealing with the matter due to Mr Ferguson's ill health. The Applicant's solicitor replied to Mrs Ferguson on 24<sup>th</sup> February 2021 asserting that the Respondents had not made any attempt to set out how they were intending to remedy the breaches of the Lease. The Applicant's solicitor pointed out the significant concerns regarding the wiring in the basement flat, the disrepair of the interior of the flat and the insurance issues, all of which he asserted constituted breaches of Clause 4 of the Lease. The Applicant's solicitor made it clear in this letter that if there was no reply within 14 days, an application for breach of the Lease would be made to the Tribunal.

## **The Respondent's Case**

10. The Respondents have not submitted a formal response to the Tribunal. In his letter of 20<sup>th</sup> January 2021 to the Applicant's solicitor, Mr Ferguson expresses regret that the situation has progressed in the way it has. Mr Ferguson claims in this letter that the Applicant has not made clear what the breaches of Lease are. He attempts to be conciliatory but offers no clear assurances of when the repairs are to be commenced.
11. In her letter of 8<sup>th</sup> February to the Applicant's solicitor, Mrs Ferguson does not offer any timescale for addressing the items in the surveyor's report. She asserts that until the Applicant makes repairs to the exterior of the Property, any attempt by herself to have work done to the interior of the flat "would prove fruitless"

## **The Decision**

12. The Tribunal has read the bundle of documentation including the witness statement of the Applicant, the surveyor's report and recommendations (together with the photographic evidence) and the correspondence between the parties. A copy of the entire Lease was not included in the Bundle but the Tribunal has considered the terms of the extract from Clause 4 of the Lease.
13. Clause 4 of the Lease provides that:

*"The lessee hereby covenants with the lessor and with the owners and lessees of the other flats comprised in the block the lessee will at all times hereafter:-*

*(A)(i) Remedy all defects and keep the interior of the flat in good and substantial repair and condition and in particular (but without prejudice to the generality of this covenant) so as to give support shelter and protection to the parts of the block other than the flat as is consistent with the due performance of the lessee's obligations herein contained.*  
*(ii) Without prejudice to the generality of clause (A)(i) above the interior of the flat includes (a) the internal partition walls (b) the glass and all moveable and opening parts of the windows and of the front door of the flat (c) the ceilings (d) the floors above the level of the joists or concrete (e) the interior faces of the walls (f) all cisterns tanks sewers drains sanitary and water apparatus pipes cable wires and appurtenances thereto belonging used exclusively by the occupants of the Flat and within the boundaries thereof"*

*4(D)*

*"Not do or permit to be done any act or thing which may cause any increased or extra premium to be payable for insurance of the flat or the block or any part thereof or which may render void or voidable any policy or policies of such insurance and to repay to the lessor all expenses*

*incurred by reason of any breach of this covenant committed by the lessee.”*

14. The Tribunal is satisfied from reading the surveyor’s report and recommendations and observing the photographic evidence that the Respondents are in breach of their obligations to remedy all defects and keep the interior of the basement flat in good and substantial repair and condition pursuant to clause 4 (A) of the Lease. The surveyor, Mr Conlin, had full access to the flat as it was empty when he carried out his inspection. Mr Conlin reported that the flat was “in a derelict condition and uninhabitable” and the photographic evidence supports this. He clearly outlined around forty issues which needed to be addressed by the Respondents to ensure the basement flat was made habitable.
15. The Tribunal considers that the Respondents have been given detailed information of the work which is necessary to repair the interior of the flat and do not appear from the documentation to be making any attempt to commence the works. The Tribunal understands that Mr Ferguson is not in good health but Mrs Ferguson appears to be adopting delaying tactics rather than showing a willingness to commence work on the basement flat. The Tribunal considers that the Respondents have been given adequate time and information to commence repairs to the basement flat and this they have not done.
16. The Tribunal has not seen any correspondence from the insurers but given the state of the basement flat, the Tribunal is content to rely on the Applicant’s assertions that the insurance is now voidable or only available at a substantially higher premium. The Tribunal therefore considers that the Respondents are also in breach of clause 4(D) of the Lease.
17. In this Application for breach of the Lease, the Tribunal therefore finds in favour of the Applicant.
18. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk), which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
19. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
20. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

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Judge S Lal