FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AH/LBC?2019/0094 (CVPREMOTE)**
Property	**:**	**41 St Ann's Way, South Croydon, CR2 6DN**
Applicant	**:**	**St Ann's Way Residents Association Limited**
Representatives	**:**	**Mr Richard Horne**
Respondents	**:**	**Mr Andrew Cripps**
Representative	**:**	**Did not attend**
Type of Application	**:**	**Application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	**:**	**Judge Professor Robert Abbey** **Ms Sue Coughlin MCIEH**
Date of Video Hearing	**:**	**22 July 2021**
Date of Decision	**:**	**26 July 2021**

DECISION

Decisions of the Tribunal

(1) The Tribunal grants the application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002.

(2) The reasons for our decision are set out below.

The background to the application

1. The Applicant seeks an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. The application concerns alleged breaches ("the alleged breaches") carried out at **41 St Ann's Way, South Croydon, CR2 6DN** ("the property.").

2. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows but with sub-section (4) shown in bold by this Tribunal:

> *(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 a leasehold valuation 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.

3. The applicant is the freehold owner of the buildings and estate at St Ann's Way, South Croydon, CR2 6DN ("the estate"). The respondent is the lessee of a long residential lease of the property within the estate holding under a lease made on 5 July 1960 that the applicant seeks to forfeit pursuant and subsequent to this application before the Tribunal. The respondent is not in occupation of the property as it is let to an occupational tenant, (the sub-tenant).

4. The application before the Tribunal was issued by the applicant on or about 13th November 2019. The applicant alleges in its application several breaches of the lease covenants. In particular and in detail the applicant says there are breaches of lease clauses more particularly described and listed in the applicant's trial bundle. These will be considered in detail in this decision.

5. The Tribunal needs to establish from the evidence presented to it whether or not, on the balance of probabilities, the respondent has acted in such a way that he is in breach of a covenant or covenants in the lease and as detailed in paragraph 4 above.

The hearing

6. This has been a remote hearing which has been consented to by the parties attending. The form of remote hearing was coded as CVPREMOTE - use for a hearing that is held entirely on the MoJ Cloud Video Hearing Platform with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle of many pages, the contents of which we have recorded and which were accessible by all the parties.

7. In the context of the Covid 19 pandemic and the government social distancing requirements the Tribunal did not consider that an inspection was possible. However, the Tribunal was able to access the detailed and extensive paperwork in the trial bundle that informed their determination including extensive video evidence. In these circumstances it would not have been proportionate to make an inspection given the current circumstances and the quite specific issues in dispute.

8. The Tribunal had before it an electronic bundle of papers prepared by the applicant in the form of a PDF file. This containing copies of documentation and registered title copies and a copy of the lease as well as copy correspondence.

9. The respondent failed to appear at the hearing. Accordingly, Mr Cripps was not present but the Tribunal decided to proceed in his absence in accordance with Rule 34 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8) as the Tribunal was satisfied that the parties had been notified of the hearing or that reasonable steps had been taken to notify the parties of the hearing; and the Tribunal considered that it was in the interests of justice to proceed with the hearing. The Applicant attended by their representative Mr Horne and were ready to proceed with their application. In fact, it was apparent from the Tribunal papers that the respondent had failed to engage with the process in any way. He had not complied with any Direction issued by the Tribunal and had failed to produce any paperwork whatsoever. The Tribunal therefore had nothing from the respondent to assist the Tribunal in dealing with this application. When asked by the Tribunal the applicant confirmed that Mr Horne their representative had personally delivered all relevant and appropriate documentation on the respondent by delivering it personally to the respondent's home address.

10. The applicant is bound by the covenant contained in clause 3(b) of the lease that says: -

> 3 (b) *That if so, required by the Lessee the Lessor will enforce the covenants for repair and insurance and any covenants the breach whereof adversely affects the Lessee or the demised premises entered into by the other Lessees on the said Estate on the Lessee's indemnifying the Lessor against all cost and expenses in respect of such enforcement and providing such security in respect of all costs and expenses as the Lessor may reasonably require.*

11. The application was submitted at the request of the Lessees Mr and Mrs Kandala (the Kandala' s) at 37 St Ann's Way, the respondents adjoining premises.

12. Rights of appeal available to the parties are set out in the annex to this decision

The issues and the decision

13. The only issue for the Tribunal to decide is whether or not a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. Having heard evidence and submissions from the Applicant and from the Respondent and having considered all of the documents provided, the Tribunal determines the issues as follows.

14. As can been seen from the trial bundle there are two alleged breaches that refer to two lease clauses namely: -

- clause 2(p) including a requirement not to cause nuisance, damage, annoyance or inconvenience-

- Clause 2(m) – the tenant's covenant to comply insurance requirements

15. The first and perhaps most serious breach relates to the sub-tenant and his conduct that the applicant says is in breach of lease covenant 2(p). This covenant says that the tenant must not do or permit any waste spoil or destruction to or upon the demised premises nor to do or permit any act or thing which shall or may be or become illegal or immoral or a nuisance damage annoyance or inconvenience to the lessor or its tenants or the tenants or occupiers of the adjoining premises or to the neighbourhood.

16. The applicant maintains that there has been a pattern of behaviour on the part of the sub-tenant over a long period of time that causes a breach of this lease clause. The Kandala' s say that the conduct of the sub-tenant has been completely unacceptable and is such that continuing breaches of this lease covenant have occurred. They say this aggressive anti-social behaviour has continued throughout their occupation, a period now exceeding 11 years. The prolonged level of abuse and annoyance has taken its toll and has now led to serious mental and physical health issues for Mrs Kandala. The applicant confirmed that throughout this period they had written on several occasions to the respondent about the behaviour of the sub-tenant to no avail. Simply put the applicant says that the respondent has largely failed to respond constructively to their letters or take any action to avert the sub- tenant's behaviour for a period exceeding 11 years.

17. The applicant asserts that "The set of alleged breaches are of the same kind of activity i.e. anti-social abusive, aggressive, intimidating and offensive abusive language and behaviour, nuisance damage capable of causing a housing nuisance, annoyance, harassment, alarm and distress or inconvenience to occupiers of the adjoining residential premises and the neighbourhood emanating from the maisonettes at the Estate, No 41 ('the maisonette'), which is occupied by a tenant of the Respondent who resides under an Assured Shorthold Tenancy. Additionally, fire damage, annoyance and inconvenience to occupiers of the adjoining premises No 43, No 37 or to the neighbourhood. Accordingly, the issue is not just whether the underlying conduct has occurred, but whether in the circumstances that amount to a breach by the Respondent who had not taken the matter raised with him seriously to warrant any action, he did not take any reasonable steps or at all which he could have done to address the issues that have arisen with his tenant…."

18. In 2010 the sub-tenant was issued by the Police with a harassment warning. At about this time the subtenant had set fire to the respondents back garden, (The Tribunal saw video evidence of this) and this fire burnt down not only the respondent's wooden fence but also that of the adjoining premises No 43, including a garden shed. All correspondence from the applicant to the respondent to make good the damage was, they say ignored. The cost of the repair to the fence etc. was met by the Residents Association.

19. The sub-tenant allowed his dog to foul the front gardens and also walked across open plan lawns that were in the ownership of other tenants and where there were no paths. Recently he has allowed the washing of cars on garage forecourts that are not part of the demise of the property. He also persistently parks or allows to be parked cars belonging to his invitees across the front of the garage belonging to the Kandala' s thereby stopping them from accessing their garage property.

20. In their witness statement the Kandala' s assert that "More recently the sub-tenant abuse and threats of violence to us have become intense and unbearable and have had no alternative other than to report his abusive language to the police several times. We again reported it to the resident's association and they wrote to the respondent, they have informed us the respondent had not replied setting out what if any action they will take or have taken a position. Mr Andrew Cripps, the Respondent's lack of any meaningful response to address the problem is entirely unacceptable to us. The abuse towards us had increased, once again he has taken to screaming and shouting directly at us through his windows and around the estate, we re-reported the abuse to the police [Reference No: 31307 on 26 October 2019 and again CAD 5592 on 31 October 2019] and once again to his landlord Mr Andrew Cripps via St Ann's Way Residents Association Ltd. We believe the police have spoken to him about his behaviour over several years but his landlord i.e., Mr Andrew Cripps has not responded to our complaint nor taken any action or any sanctions against his sub-tenant.

21. The residents Association recently informed us that a notice requiring possession was served on the subtenant by Mr Andrew Cripps. The subtenant immediately took to making repeated offensive sexual gestures to me Mrs Swati Kandala. He has continued to be aggressive and abusive towards us, and we have received obscene telephone call throughout the night for a period exceeding a year, the telephone number was always withheld, on one occasion they forgot to withhold their telephone number, we then called the number and was met with laughter, the call was from the subtenant's daughters, we informed them that the matter will be reported to the police [Police crime report no: 3809285/20]

22. We cannot begin to explain the accumulative negative effect this has had on us as a family and on our young son who has lived through all of

this abuse throughout his young life. I Swait Kandala has suffered bouts of depression and anxiety, and have had to seek medical intervention. I have been prescribed anti-depression medication and other medication to help with further physical disorder. I do not believe I should be expected to live with the sub-tenants abusive and offensive behaviour any longer."

23. Mr Horne also produced a witness statement for the Tribunal In it he asserted that "The respondent's sub-tenant set fire to his back garden, as a result, the wooden fence was beyond repair at No 41 and the adjoining premises No 43 {Evidenced by video} no attempt was made to repaired or replaced the fire damage, not by either the sub-tenant or the Respondent, despite notifying and asking the Respondent make good the fire damage to both his and the adjoining property. Soon after taking up residence at 41 St Ann's Way, the sub-tenant would walk his dog across my lawn and the lawn of five other properties at the front of the estate daily, he would allow his dog to foul our lawns. He had no justifiable reason for pretending ignorance that our private gardens/lawns were public lands since his rental property has the same frontage with a garden/lawn similar to all of ours, any pretence ignorance must be seen as self-serving and false. In any event, allowing his dog to foul on lands around the estate even if public land is an offence in Croydon. The Dogs (Fouling of Land) Act 1996 is in force. Therefore, I allege a clear breach of clause 2(p) of the lease. "

24. He went on to confirm that he "eventually reported the incidents to the Police. The Police did go and speak to the sub-tenant about his behaviour. The sub-tenant did not refrain from his aggressive and abusive conduct, after I had reported his behaviour to the police, instead became even more abusive and threatening. The day after the police spoke to him, he deposited a large pile of his dog's waste directly in front of my garage door. This was in direct defiance to my complaint made to the police and the Respondent. Since that time on every occasion, we crossed each other on the street, he is aggressive and abusive towards me, while walking past my home he looks directly into my home making offensive gestures towards me including offensive abusive language. This has gone on for over eleven years now."

25. In deciding if this conduct might be considered a breach of this covenant the Tribunal considered if *"reasonable people, having regard to the ordinary use of a house for pleasurable enjoyment, would be annoyed or aggrieved by what is being done", (Tod-Heatley v Benham* [1888] 40 ChD 80). The Tribunal was satisfied that this was clear evidence of completely anti-social behaviour on the part of the sub-tenant that amounts to conduct that is both a nuisance and or annoying. "Nuisance and annoyance" encompass such acts as threatening behaviour, use of bad language, graffiti and vandalism. It has also been held to include racial and sexual harassment: *Woking BC v Bistram* (1993) 27 H.L.R. 1, CA, and Kensington *& Chelsea RLBC v Simmonds* (1997) 29 H.L.R. 507, CA)". In the light of this the Tribunal

is satisfied that the conduct of the sub-tenant described above amounts to a breach of covenant.

26. The Tribunal did note in the trial bundle an email dated 17 October 2019 from Mrs Cripps in response to a letter from the applicant complaining about the sub-tenant's conduct. She said in that email that "I apologise for any inconvenience/damage caused and please be advised I am taking this matter extremely seriously. We will of course give him Notice if he continues to behave in this way". The sub-tenant remains in occupation notwithstanding.

27. The second breach relates to the lease insurance requirements. The insurance provision of the Lease is at Clause 2(m) and this requires the Lessee to -

> *"Forthwith to insure and at all times during the said term to keep insured the demised premises and all buildings erections and fixtures of an insurable nature which are now or may at any time during the said term be erected or placed upon or affixed to the demised premises against loss or damage by fire and other perils normally insured under a Householders Comprehensive Policy in the opinion of the Surveyor to the Lessor represents the full value thereof (including Architect's Surveyors' and Civil Engineers fees of such value at the current scales for the time being of the Royal Institute of British Architects the Royal Institution of Chartered Surveyors and the Institution of Civil Engineers) in the joint names of the Lessor and the Lessee whether or not in conjunction with the name or names of any person or persons legally or beneficially interested in the demised premises And also to insure such other risks for such amounts which in the opinion of the Surveyor to the Lessor may from time to time be considered necessary And whenever required to produce to the Lessor or its agents the policy for every such insurance and the receipt for the last premium thereof And in the case of the demised premises or any part thereof shall at any time during the said term be destroyed or damaged by fire then and as often as the same shall happen with all convenient speed to lay out all moneys received in respect of such insurance in rebuilding repairing or otherwise reinstating the demised premises in a good and substantial manner to the satisfaction of the surveyor for the time being of the Lessor and in the case the moneys received in respect of the said insurance shall be insufficient for the purpose to make good the deficiency out of the Lessee's own money"*

28. The Lease, therefore, states that building insurance is the responsibility of the Lessee but the Lessor is to be named as a joint party on the policy. The applicant was able to show to the Tribunal in the trial

bundle details of the insurance maintained by the respondent where the insurance is with First Direct Household Policy -MH0700658047 and where St Ann's Way Residents Association Ltd i.e., the Lessor is not named as a joint party on the insurance policy. This is a breach of covenant 2(m).

29. In the case of *GHM (Trustees) Limited v Glass* (2008) LRX/153/2007 which is a decision of the Lands Tribunal about a lease clause, the then President George Bartlett QC wrote that

> *"The jurisdiction to determine whether a breach of covenant has occurred is that of the LVT. The question whether the breach has been remedied….is a question for the court in an action for forfeiture or damages for breach of covenant…. The breach of covenant has not ceased to exist by reason of the fact that the landlords now know of the assignment and the names of the assignees".*

30. The effect of the Lands Tribunal decision is clear. This Tribunal need only determine whether a breach has occurred. The tribunal is satisfied that in the light of the evidence set out above, that breaches have occurred and as such this Tribunal grants the application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002

Name: Judge Professor Robert Abbey **Date:** 26 July 2021

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.