FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BB/LBC/2020/0053**
HMCTS code (paper, video, audio)	:	**V - Video**
Property	:	**27A Warwick Road, London. E15 4JZ**
Applicants	:	**(1) Mr. Edward Hyde** **(2) Miss Katherine Knowles**
Representative	:	**Unrepresented**
Respondent	:	**Mr. Thomas Chatwin**
Representative	:	**Unrepresented**
Type of Application	:	**For the determination of alleged breaches of covenant**
Tribunal Members	:	**Tribunal Judge Stuart Walker (Chairman)** **Mr. Melvyn Cairns** **Ms. Rachael Kershaw BSc**
Date and venue of Hearing	:	**7 January 2021 – video hearing**
Date of Decision	:	**3 February 2021**

DECISION

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be

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determined in a remote hearing. The documents that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

The Applicant had some difficulties with the process of the hearing initially as she had problems with her audio, though this was resolved. She had hoped to be able to conduct the hearing from work but had not been able to do so and this meant that she did not have access to a hard copy of the documents, which she found more difficult to navigate electronically. The Respondent's views were that the process was really good and preferable to attending a hearing in person.

(1) The Tribunal determines that the following breach of covenant has occurred;

The Respondent has breached paragraph 7 of Schedule 4 of the lease by using the property other than as a private dwelling house in the occupation of one family only. The Respondent has used the property for the accommodation of paying guests in addition to his own family since he acquired the property in 2012.

(2) The Tribunal determines that the Respondent has not breached any of the covenants contained in clauses 2(6), 3(1), 3(4), 3(5), and 7 or paragraphs (1) and (2) of Schedule 4 of the lease.

Reasons

The Application

1. The Applicants seek a number of determinations pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("section 168") that breaches of covenant have occurred.

2. The application was made on 4 November 2020. In this application the Applicants identified eight different covenants in the lease each of which they alleged had been breached by the Respondent. The particulars of each alleged breach are set out in what follows, and they are considered in the order in which they appear in the application.

3. Directions were issued on 26 October 2020. They provided for a remote video hearing. This was not objected to by either party. Under the directions both parties were required to provide a digital indexed and paginated bundle of documents. Bundles from both parties were before the Tribunal. That of the Applicants comprised 102 pages and that of the Respondent 132 pages. Page numbers in what follows are to the Applicants' bundle unless prefixed by the letter "R", in which case they

are to the Respondent's bundle. The Tribunal also had a supplementary reply to the Respondent's case from the Applicants and three videos provided by the Respondent.

4. The relevant legal provisions are set out in the Appendix to this decision. The Tribunal bore in mind throughout its deliberations that the burden was on the Applicants to show that breaches of covenant had occurred on the balance of probabilities.

The Hearing

5. The Second Applicant attended the hearing, as did the Respondent. Neither were represented. The First Applicant did not attend.

6. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Background

7. The property which is the subject of this application is a flat situated on the first and second floors of a converted Victorian terraced house which has been split into two flats. There is a shared common entrance hall and front door.

The Lease

8. Ownership in this case is not straight forward. The freehold of the building in which the property is situated was acquired by the Applicants and the Respondent jointly on 2 October 2015 (page 35).

9. By a lease dated 16 February 1988 made between Shamin Akhtar and Azra Praveen on the one part and Robert Christopher Cameron Gordon and Helen Bridget Gordon Davies of the other part the property was demised for a term of 99 years from 30 August 1986 (pages 38 to 53).

10. Although no evidence of title was provided, there was no dispute that the Respondent acquired the leasehold interest in the property at some time in 2012, prior to obtaining a share in the freehold.

11. It follows that the Respondent is both the tenant and a joint landlord of the property.

12. In this context the Tribunal considered whether the application had been properly brought as only two of the three joint owners of the freehold interest had made it. It concluded that it had. This was because, although not joined as an Applicant, Mr. Chatwin had been joined as a party to the proceedings as a Respondent. The only function of the Tribunal is to determine whether or not the alleged breaches of covenant have occurred. What the legal complexities may be if the Tribunal were to conclude that there had been a breach and the Applicants sought to take further action is not a matter to be considered here.

13. Other than the specific clauses which the Applicants alleged had been breached, there were no issues as to the substance or contents of the lease. The specific clauses in issue are set out in what follows.

The Breaches - Breach No. 1

14. By clause 2(6) of the lease the Respondent covenanted as follows;

> "*Not at any time during the term hereby granted to divide the possession of the demised premises by an assignment or underletting or parting with possession of part only*" (page 41)

However, clause 2(7) also provides as follows;

> "*Not during the last seven years of the term hereby granted without the previous consent in writing of the Lessor (....) assign, underlet, or part with the possession of the demised premises*" (page 41)

15. The lease contains no other restrictions on alienation. As the tenancy has well over 7 years to run, it follows that the Respondent may part with the whole of the property as he chooses, but he may not divide the property or part with possession of part only.

16. The Applicants' case was that the Respondent had been letting out the property to others. Their case was that he was no longer resident there. They relied on evidence of various pieces of correspondence sent to occupiers of the property (pages 65 to 69). When asked by the Tribunal Ms Knowles stated that she had not been inside the property and had no evidence that it had been subdivided in any way.

17. The Respondents' case was that he remained resident at the property. He accepted that he also had lodgers staying with him and that this had been the case since he acquired the lease (page R16). His case was that he had either not parted with possession of the property at all – as he remained resident with his lodgers – or that he had parted with possession of the whole and not part of it. He relied on the terms of the agreements entered into by his lodgers which, he argued, showed that they merely acquired licences to occupy the property (pages R36, 72, 89 and 94). His oral evidence was that lodgers were not allowed to put locks on their bedrooms in the property and that none of his lodgers acquired an exclusive right to occupy any part of the property.

18. The Tribunal had some doubts as to whether the Respondent and his family were in fact still living at the property, though it was not necessary to decide that issue. Even if the Respondent was no longer in occupation, the Tribunal concluded that the Applicants had provided insufficient evidence to show on a balance of probabilities that the Respondent had parted with possession of any part of the property rather than having parted with possession of the whole of it. The evidence was consistent with the Respondent having parted with possession of the whole of the property to a number of different occupiers either singly or jointly with others over time, each of whom at any time had exclusive use of the whole of the property again either

singly or jointly with others. That is permitted by clause 2(7) of the lease.

19. It followed, therefore, that the Tribunal was not satisfied that there had been a breach of clause 2(6) of the lease.

Breach No. 2

20. Clause 3(1) of the lease requires the lessee;

“*To keep the demised premises comprehensively insured for the full current insurable value in some insurance office approved by the Lessor and to ensure that the Lessor’s interest is noted at all times on the policy and whenever required to produce evidence of the due performance of this covenant.*” (page 43).

21. The Applicants’ case in their application was that the Respondent’s subletting of the property to lodgers jeopardised or invalidated the insurance of the building (page 9). When asked by the Tribunal what evidence the Applicants had to show that there was no or inadequate insurance in place, or even as to the terms of the insurance cover, Ms. Knowles’ response was that they had no such evidence. The Applicants had simply assumed that the subletting of the property would invalidate the insurance.

22. The Respondent’s case was that the property was fully insured and he relied on a cover note showing cover for a sum of £267,078 (page R122). He stated in his statement of case that his insurance cover allowed for up to two paying guests at the property (page R18). The terms of the policy were not provided.

23. Whilst there may be some doubt that the insurance cover obtained would be valid if the Respondent were away from the property indefinitely, the Tribunal bore in mind that the burden rests on the Applicants to show that the property is not insured. In its view they have failed to provide sufficient evidence to show this. The Tribunal therefore concluded that there was no breach of clause 3(1) of the lease.

Breach No. 3

24. Clause 3(4) of the lease provides as follows;

“*In common with the Lessee of the other flats or the Lessor (if possession of the adjoining flats be retained by the Lessor) to keep in good and substantial repair and decoration*

(i) the main structure of the Building including the foundations and the roof thereof and the main walls and beams and timbers of the B (including the roof timbers) and the joists or beams under or over (as the case may be) the ceilings and floors dividing the demised premises from the adjoining flats

(ii) the gutters rain water and down pipes of the Building

(iii) all such gas and water pipes drains and electric cables and wires, doors, windows and window frames in and upon the Building as are enjoyed or used by the Lessee in

common with the Lessee or occupiers of the adjoining flats

(iv) ....

(v) *such boundary walls and fences of the property as are not demised to the Lessee or to the Lessee of the adjoining flats"* (page 44)

25. The Tribunal bore in mind that this was a clause which placed joint liability on the Applicants as well as the Respondent to repair those parts of the building which had not been demised under the terms of the lease.

26. In their application the Applicants provided little detail of the alleged failure to repair. Reference was made to a notice sent on 14 May 2020 which referred to repairs (page 8) and it is alleged that the Respondent has allowed areas of the property to fall into disrepair, though these are not specified (page 9). Reliance is placed on invoices for maintenance costs (pages 61 and 62) and evidence of the condition of the building in September 2019 (page 74) and in October/November 2020 (page 75). The Applicants also relied on correspondence in respect of a damaged pipe (pages 101 and 102). There is also reference to a demand in respect of maintenance costs made on 14 May 2020 (page 58).

27. To the extent that any repair work falling within this clause has not been done but which is required, the responsibility rests jointly with the Applicants and the Respondent. The Tribunal was not persuaded that, without more, a failure to carry out such repairs could be regarded as a breach by the Respondent if the freeholders had themselves failed to do the same. Any failure by them to act would, if nothing else, amount to a waiver of the covenant by the Applicants. Similarly, if repair works have in fact been done, then there is little scope for arguing that there is a continuing failure to repair.

28. These arguments are particularly strong when consideration is given to the only items of disrepair that have been identified by the Applicants. Reference is made to the invoice at page 61 and the photographs at page 74. The invoice is for works to the exterior of the front and back bay windows which are on the ground floor of the property. The photographs at page 74 show that the front bay was in poor condition in 2019. However, the ground floor flat, into which these windows open, is owned by and in the possession of the Applicants.

29. The evidence suggests that the front bay window had suffered from neglect for some time. No evidence was provided to show that the Applicants had made any demands of the Respondent in relation to repairing it, nor that he had done any less than the Applicants to carry out repairs, nor was there any evidence that the Respondent had in any way hindered or prevented the Applicants from repairing it. In any event, the works, it appears, were completed in October 2019.

30. The Applicants rely on photographs of damaged plasterwork outside the front door (page 75) but they do not say what steps they have taken to have this repaired. Again, there is no evidence of demands from the Applicants nor that the Respondent has done any less than them or has prevented repairs from taking place.

31. The Applicants also rely on repairs needed to a leaking waste pipe at the rear of the property, which was repaired in August 2020 (page 62). The Respondent accepted that in August 2020 a pipe which ran along the outside of the property fell off, causing a leak into the Applicants' garden. He stated in his statement of case that he immediately contacted the Applicants offering to arrange for someone to fix it or to pay for repairs. This is supported by the e-mail at page 101 which shows that on 7 August the Respondent asked when would be a suitable time to gain access to the Applicants' garden to do the repairs and, in the alternative, inviting them to do have the work done and supply an invoice. On 10 August he chased for a response. The text messages at page 102 show that the repair was done on 12 August by a contractor arranged by the Applicants, hence the invoice at page 62.

32. In the view of the Tribunal this did not amount to a failure by the Respondent to repair. The Tribunal accepted that he needed access to the Applicants' garden to carry out the works and prudently, especially given the obviously strained relations between the parties, sought permission to do so and offered the alternative of having the works done by the Applicants and re-imbursing the cost. The works were done within a few days of becoming necessary.

33. There was also a suggestion that there had been a failure to repair a boundary fence and problems with a blocked drain. These were referred to in the Applicants' letter to the Respondent of 14 May 2020 (pages 58 to 59) in which a demand is made for the cost of these.

34. In his statement of case the Respondent stated that the fence in question was the Applicants' garden fence at the back of their property and that the garden was demised solely to them (page R20).

35. The Applicants provided no further evidence in relation to this fence. The Tribunal therefore concluded that there was insufficient evidence either that it needed repair at all, or that it fell within the terms of clause 3(4) of the lease. Even if it did need repair and was covered by the terms of the lease, there was again no evidence that the Respondent had done any less than the Applicants to repair it or that he had hindered its repair.

36. Similarly, no further information was provided in respect of the blocked drain. Again, there was no evidence that the Respondent had done any less than the Applicants to repair it or that he had hindered its repair.

37. In all the circumstances, therefore, the Tribunal concluded that there had been no breach of clause 3(4) of the lease.

Breach No. 4

38. Clause 3(5) of the lease is in the following terms;

> "*Subject to a like contribution by the Lessor (if possession of the adjoining flats is retained by the Lessor) or by the Lessee of the adjoining flats to pay and contribute one half part of the costs of the repairs and decorations referred to in Clause 3(4)(i) to (v) hereof*" (page 44)

39. The Applicants' case was that the Respondent had failed to pay his contribution towards the repairs referred to above.

40. The Tribunal was satisfied that the sums in question were service charges as defined in section 18 of the Landlord and tenant Act 1985 ("the 1985 Act"), namely, amounts payable by a tenant as part of or in addition to rent which are payable for services, repairs, maintenance or, improvement and which vary according to the relevant costs.

41. Section 27A of the 1985 Act gives the Tribunal a distinct jurisdiction to determine whether or not service charges are payable. No application has been made by the Applicants under this provision. Section 168 provides a necessary statutory precursor to the service of a notice under section 146 of the Law of Property Act 1925 and subsequent forfeiture of a lease in cases of breaches of covenant. However, section 81 of the Housing Act 1996 provides that a landlord may not forfeit a lease for non payment of service charges unless there has been a determination by the Tribunal that the service charges are payable. Such a determination requires an application under section 27A of the 1985 Act.

42. It is a matter for the Applicants whether they wish to make an application to the Tribunal under section 27A of the 1985 Act – and if they do so they will need to bear in mind the statutory consultation requirements set out in section 20 of the 1985 Act. However, in the absence of any section 27A application before the Tribunal it took no further steps in relation to this alleged breach. It was, therefore, not satisfied that there had been any breach of this clause, but made no finding as to the payability or otherwise of the service charges demanded.

Breach No.5

43. Clause 7 of the lease contains a covenant as follows;

> "*The Lessor hereby covenants with the Lessee that the Lessor will immediately upon agreeing the same advise the Lessee of any changes to this form of Lease as may be agreed with the Lessee of any other flat in the building and will enter into with the Lessee any Deed of Variation as the Lessee may require in consequence thereof*" (page 47).

44. It was not clear to the Tribunal how the Respondent could be in breach of this covenant. It is a covenant by the Applicants to notify the

Respondent if they were to let the other flat in the building on different terms to those contained in his own lease. As the Respondent could not be in breach of this clause as it does not bind him in any way the Tribunal concluded that there had been no breach.

Breach No. 6

45. By paragraph 1 of Schedule 4 of the lease the Respondent covenanted as follows;

> "*Not to do or permit or suffer to be done in or upon the demised premises anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Lessor or the Lessee or occupier of the adjoining flats or neighbouring owners or occupiers*" (page 50)

46. As part of its consideration of the Applicants' case in respect of the alleged breaches of this clause the Tribunal bore in mind three things. Firstly, the Respondent would only be in breach if he had himself done something or if he had permitted or suffered something to be done. In order to be found to have permitted or suffered something to be done the Applicants would need to show that the Respondent knew that what was being complained of was happening.

47. Secondly, the clause is limited in its scope to actions "in or upon the demised premises" only. It is not broad enough to encompass actions of the Respondent outside the premises.

48. Thirdly, the Tribunal considered what is meant by a nuisance or annoyance. It accepted the well-established approach that for something to be a nuisance it must amount to a material interference with the ordinary physical comforts of human existence judged according to plain and simple notions. It accepted that annoyance is a wider concept than nuisance but nevertheless it still requires there to be something likely to trouble an ordinary sensible person. Both concepts require a consideration of what is reasonable, and something will not amount to an annoyance unless it can reasonably be described as something which disturbs a person's reasonable peace of mind. Regard must be had to the day-to-day realities of living in a building which has been converted into flats which necessarily involves the occupants of one flat having some awareness of the presence of the occupiers of the other.

49. In the application the Applicants relied on many allegations which clearly fell outside the scope of the clause as they related to actions which had taken place outside the demised premises, such as altercations between the parties and the slamming of the communal front door.

50. At the hearing the Tribunal invited Ms. Knowles to identify those allegations which concerned actions in the Respondent's flat. She raised the following. Firstly, there was noise being caused by the water pipes in the flat. Secondly, there were complaints that the Respondent

and some of his sub-tenants slammed the front door to the flat. Thirdly, there had been a noisy party at the premises, and finally there was inadequate sound insulation between the property and her own flat which resulted in noise nuisance and that the Respondent's sub tenants were noisy.

51. With regard to the first of these complaints the Applicants' case was that between January 2018 and August 2018 there was a problem with the water pipes in the property and that they made an unpleasant loud screeching noise every time the toilet was flushed. This, it was said, had woken the Applicants many times in the middle of the night. However, they also stated in a report to the local authority in August 2018 "*in isolation this may seem a small problem*" (page 88).

52. The documents show that in July 2018 the Applicants' solicitors raised this as an issue (page R39) and that in the same month the Respondent agreed to fix the plumbing (page R43). On the Applicants' oral submissions it was resolved in August 2018.

53. Whilst the Tribunal accepted that there had been a problem with the plumbing it was not satisfied that the Respondent was in breach of the clause in question. The problem was caused by a defect in the plumbing, not by acts done by the Respondent. The Tribunal was satisfied that once the problem was drawn to the Respondent's attention action was taken to rectify it, so it cannot be said that the Respondent has permitted or suffered an annoyance to continue. In any event, this was described by the Applicants themselves as a small problem.

54. Taking the evidence as a whole the Tribunal was not satisfied on the balance of probabilities that this amounted to a breach of this clause either because it arose from an omission rather than a positive act or, in any event, because the extent of the problem was not sufficiently great to amount to an annoyance in the sense described above.

55. The Applicants next complained that the door to the property was regularly slammed. In answer to questions from the Tribunal Ms. Knowles explained that it was the slamming of the communal front door which was a more serious problem, but that the door to the Respondent's flat was also slammed. She said that this happened every time he left the flat and returned. She estimated that this was a minimum of 4 times a day. She also said that the problem with the door being slammed had continued with some of his sub-tenants after he had left the property, though the more recent occupiers closed the door more carefully and did not disturb her. Ms. Knowles accepted that she had not informed the Respondent that his tenants were slamming the door.

56. The Respondent told the Tribunal that the lock on the front door of the property was a Yale lock. He accepted that he did not put his key in the lock when he closed it when leaving, he just pulled it shut. He denied

slamming the door in a deliberate way so as to make a noise. He accepted that on average he would go through the door four times a day as he would go to work and then would go to the gym.

57. Weighing the evidence, the Tribunal was again not satisfied that a breach of this clause had been made out. It was not satisfied that the Respondent was deliberately slamming the front door to the property but accepted that he closed the door by pulling or pushing it shut rather than turning the key. Whilst it may have been possible for the Respondent to enter or leave the premises more quietly, the Tribunal was not satisfied that any noise caused by doing this was sufficiently great to amount to an annoyance in the sense explained above. A short loud bang on average 4 times a day was not enough in the Tribunal's judgment to amount to a nuisance or annoyance. It was also not satisfied that any door slamming by the Respondent's sub-tenants had been permitted or suffered by the Respondent as there was insufficient evidence that he was aware of it.

58. The third item of complaint was a party held by the Respondent's sub-tenants in September 2019. Ms. Knowles said that she had asked the sub-tenants not to hold it. It had begun at 9.00pm and went on until 2 or 3 in the morning. She complained that guests kept ringing the doorbell and also that the door to the street was left open. Her evidence was that the Respondent was at the party. There was no suggestion that this was one of a series of late night parties.

59. The Tribunal concluded that even if the Respondent had been at the party, and so had been aware that it was going on, a single party, even if it went on until the early hours, was not sufficient to amount to a nuisance or annoyance. It is reasonable for occupants of a flat to have an occasional party and the Tribunal was not satisfied that this party was in any way exceptional. The Tribunal also noted that even on the Applicants' case, notice was given to them by the occupiers – see the note at page 70 which shows that notice was given the day before and that the Applicants were invited.

60. The remaining complaint concerned noise coming from the occupiers of the property and disturbing the Applicants in their flat below. The substance of the Applicants' case concerned the actions of the Respondent's sub-tenants. Thus, in their application they complained that the property had become akin to a shared student bedsit whose occupants had a different lifestyle to that of a single household (page 9). They complained of persistent anti-social behaviour from the Respondent's tenants. The reports of nuisance to the local authority largely relate to actions by the Respondent's tenants (pages 86 to 88). The evidence in relation to noise emanating from within the property related exclusively to the Respondent's tenants. There was no suggestion that the Respondent himself, when in occupation, had been creating noise within the property which amounted to a nuisance or annoyance.

61. In her oral submissions Ms. Knowles explained that the noise was worst when the tenants were on the first floor rather than the second, and she complained of loud mobile phone conversations throughout the day from the tenants. She also said that sometimes they played incredibly loud music and sometimes the noise went on until late at night. Also, there were often guests present and loud conversations could be heard. She also accepted, however, that to a certain extent the noise that she heard was the result of normal living and that at least part of the problem was the poor insulation between the property and her flat.

62. Ms. Knowles also explained that she had only discussed the problems of the noise with the tenants themselves. She had not raised the issue with the Respondent. She told the Tribunal that she had assumed that they would have told him.

63. The Tribunal concluded that normal daily use of the property was not sufficient to amount to actions causing nuisance or annoyance. If the only cause of the problem was the poor insulation, that was not something which fell within the scope of this clause.

64. The Tribunal accepted that noisy use of the premises which went beyond normal daily use could amount to nuisance or annoyance. However, it was clear that what was being complained about was not actions by the Respondent but by his tenants. There was insufficient evidence to show that the Respondent was aware of noise nuisance being caused by his tenants from within the property. Ms. Knowles accepted that she had not brought the behaviour of his tenants to the Respondent's attention. The Tribunal accepted that the Respondent had received a letter from the Applicants in May 2020 which did refer to anti-social behaviour by his tenants (page 59). However, this gave no particulars of what it was alleged the anti-social behaviour consisted of. The Tribunal considered that this was insufficient to put the Respondent on notice that his tenants were causing excessive noise within the property. The Tribunal therefore concluded that it could not be said that the Respondent had permitted or suffered the creation of excessive noise from within the property.

65. The Tribunal therefore concluded that there had been no breach of this clause of the lease.

Breach No. 7

66. Paragraph 2 of Schedule 4 of the lease requires the Respondent;

> "*Not to do or permit to be done any act or thing whereby any insurance for the time being effected on the demised premises (or for the adjoining flats) or any contents thereof may be rendered void or voidable whereby the rate of premium may be increased*" (page 50).

67. The position in respect of this alleged breach was the same as regards breach No. 2. Ms. Knowles accepted that the Applicants had assumed that the Respondent's subletting either invalidated or jeopardised the

insurance policy he had in place. However, no evidence was provided of the terms of that policy.

68. As with breach No. 2 the Tribunal concluded that the Applicants had failed to provide sufficient evidence to show that the insurance cover was at risk. The Tribunal therefore concluded that there was no breach of this term of the lease.

Breach No. 8

69. The final term of the lease which the Tribunal considered was paragraph 7 of Schedule 4. Under this term the Respondent covenanted;

> "*Not to use the demised premises nor permit the same to be used for any purpose whatsoever other than as a private dwelling in the occupation of one family only nor for any illegal or immoral purpose*" (page 51)

70. The Applicants' case in respect of this alleged breach was simple and straight-forward. The undoubted sub-letting of the property amounted, they argued, to occupation which went beyond that of one family.

71. The Tribunal bore in mind that this clause contains two relevant elements. The first is that the property must be used as a private dwelling and the second is that it must be occupied by one family **only**.

72. In the Tribunal's view use of the property for the accommodation of paying guests on a regular basis would be a use which went beyond that of a private dwelling, whereas a letting to one group of students who lived communally would not do so. However, the latter may well still fall foul of the requirement that the property should be occupied by one family only.

73. The Respondent's case was as follows. The other occupiers of the property were, he claimed, lodgers, and that he had had up to two paying guests living with him since he bought the property in 2012 (page R16). He contended that having one lodger living with him did not constitute occupation by more than one family because the lodger shared the communal spaces with him and his family. He accepted that his lodgers were not members of his own family but argued that the lodger(s) did not constitute a second family (page R28). In his oral evidence the Respondent accepted that he sometimes had two lodgers staying with him who would be strangers to each other. His own family, he said, comprised himself, his wife and two children.

74. In the Tribunal's judgment the Respondent had been in breach of this term of the lease since 2012. There was absolutely no doubt that he had provided accommodation for a number of occupiers since 2012 as paying guests. This is shown not only by his own account but by the witness statements of his sub-tenants and the examples of advertisements (see for example page 76).

75. This, in the view of the Tribunal, went beyond use of the property as a private dwelling.

76. In any event, it was also clear to the Tribunal, and indeed accepted by the Respondent, that his lodgers were not members of his own family. That, in the view of the Tribunal, was sufficient to place the Respondent in breach. It was clear that his case was based on a misinterpretation of the lease. His case was that there were not two families present. The Tribunal accepted that. However, a proper interpretation of the lease shows that what is required is occupation as a private dwelling by one family and nothing more. The prohibition is not limited to more than one family unit but prohibits occupation by anything which goes beyond just one family unit. That is what is meant by "*one family only*". Occupation by a family and a lodger is occupation by more than just one family and so goes beyond what is permitted by the lease.

77. Therefore, on the Respondent's own account, he has been in breach of this term of the lease since he first acquired the property in 2012.

Name: Tribunal Judge S. J. Walker **Date:** 3 February 2021

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

- 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.

- 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.

- 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.

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 168

(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.