



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

**Case Reference** : CHI/00ML/LBC/2022/0009

**Property** : Flat 3, 18 Montpelier Place, Brighton, East  
Sussex, BN1 3BF

**Applicant** : Adenstar Construction Limited

**Representative** : DMH Stallard LLP

**Respondent** : Raymond Jennings

**Representative** :

**Type of Application** : Breach of Covenant S168(4) Commonhold  
and Leasehold Reform Act 2002

**Tribunal Members** : D Banfield FRICS (Chairman)  
B W H Bourne MRICS  
T W Sennett MA FCIEH

**Date of Decision** : 8 August 2022

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**DECISION**

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## **Background**

1. The Applicant seeks an Order under S168 (4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached covenants in their lease outlined in part 5 of the application form. The application was made on 18 March 2022.
2. The Applicant's grounds of application are set out in further detail at part 13 of the application form.
3. A "Photographic schedule of condition" has also been provided.
4. The property is described as a 4 bedroom flat over 2 floors in a block of 3 flats in a converted terraced house.
5. The Tribunal made Directions on 20 June 2022 setting out a timetable for the exchange of documents between the parties leading to a preparation of a hearing bundle by the Applicant ready for the oral hearing which took place on 4 August 2022.
6. The Respondent did not comply with Directions and failed to send to the Applicant the required statement setting out whether he agreed or disagreed with the Applicant's case. The paginated hearing bundle therefore only contains the Applicant's documents.

## **The Lease (Relevant clauses only)**

4(A)(i) Remedy all defects in 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 such 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

4(A)(ii) For the purposes of Clause 4(A)(i)\* above the interior of the Flat consists of (a) the internal partition walls (b) the glass and all the moveable and opening parts and weatherstripping of the windows and of the front door and of the rear door (if there is one) of the Flat (c) the ceilings but not the joists to which they are attached (d) the floors above the Level of the joists or concrete (e) the interior faces of the perimeter walls (f) all cisterns tanks sewers drains sanitary and water apparatus pipes and cables wires and appurtenances thereto belonging used exclusively by the occupants of the Flat and within the boundaries thereof

4(F) Not do or permit or suffer to be done in or upon the Flat or the parts of the Block the use of which is common to the Lessee and the Lessor and the owners or occupiers of any other part or parts of the Block anything which may be or become a nuisance

annoyance or cause damage or inconvenience to the Lessor or the owners or occupiers of any other part or parts of the Block or which may be injurious or detrimental to the reputation of the Block as a block of respectable residential flats

4(J) So far as possible secure that all goods of any kind which shall at any time be brought or delivered to the Flat shall not be left in the common ways

### **The Law**

7. See attached Appendix

### **The Hearing**

8. References to page numbers in the bundle are shown as [x]
9. The hearing took place on Thursday 4 August 2022 at Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL starting at 10:00 am. The parties present are referred to at paragraph 7 above. Mr Banfield attended by video link (CVP) Messrs Bourne and Sennett being present in Court 4.
10. Also attending the hearing were Mr D Chapman a director of the Applicant company, Mr D Lonsdale of counsel and Ms Libby Donaldson of D M H Stallard the instructing solicitors.
11. Some half hour after commencement of the hearing Mr Jennings arrived with a copy of the hearing bundle and some more up to date colour photographs of the property.
12. The Tribunal asked Mr Lonsdale how he wished to proceed and he agreed that the photos could be examined.
13. The Tribunal adjourned to give Mr Lonsdale and the Tribunal members the opportunity of examining the photographs and determining whether they were of assistance.
14. Mr Lonsdale said that whilst the introduction of photos at this stage was unfair they did show that some work had been done. In order that the matter could be “put to bed” he made an application that Mr Hall should visit the property at 3pm that day and the matter could be adjourned to a further hearing, possibly by video.
15. The Chairman clarified that the Tribunal’s jurisdiction was to determine on the evidence available to it whether or not a breach had occurred at some time. Whether the condition of the flat, the subject of the breach allegation, had since changed was immaterial to the task before it although evidence of improvements may be of assistance to a Judge deciding whether to grant relief in any County Court application

for forfeiture. In these circumstances My Lonsdale's application was refused and the hearing continued.

16. Copies of the photos were retained by the Tribunal although it was stated that the Decision as to whether breaches had occurred would be on the evidence contained in the bundle and given in evidence at the hearing.
17. The Chairman said that each alleged breach would be examined in turn to determine the requirements of the lease and the supporting evidence submitted.
18. **REPAIR "Clause 4(A) (i)**

Remedy all defects in 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 such 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"

19. The Applicant states that the Respondent is in breach of the above covenant as a result of his persistent and continuing failure for several years to repair the Property and thereby allowing it to fall into a state of extreme disrepair.
20. Mr Lonsdale referred to a witness statement of P H Hall [76] who had carried out an inspection on 3 August 2020 paragraph 9 of which stated "Mr Jennings' windows were in a bad state of repair which were likely to be contributing to the dampness problems being experienced within the First Floor Flat immediately below"
21. Mr A Fouques, the Lessee of Flat 2 referred in his witness statement [296] to issues with persistent leaks which considered was due to the poor maintenance of Flat 3.
22. In answer to a question from the Tribunal Mr Chapman said that since carrying out work to repair the cracks and windows, the problem of damp had now been cured.
23. The photographs taken by Mr Hall on 10 September 2021 [39-52] were examined with Mr Jennings who accepted that they were accurate and provided additional explanations.
  - Photo 1 What appeared to be decayed plaster under the window was a piece of insulation board propped against the wall
  - Photo 5 The area to the far left of the picture was a hollow wall of lathe and plaster covered with lining paper
  - Photo 7 Showed an area of missing plaster which was described as "friable"

- Photo 8 This showed damp in the chimney breast and ceiling adjoining considered to be from decayed flashings
  - Photo 10 as above
  - Photo 15 The bare brickwork revealed was due to the removal of the lathe and plaster due to the decay of the battens due to woodworm
  - Photo 22 The poor plaster and peeling ceiling paper was due to water penetration from the external cracks
  - Photo 25 As above, same location as 22.
24. In summary Mr Jennings said that the defects illustrated were due to the age of the materials and the damp penetration from the exterior. He considered that until the exterior works had been carried out by the freeholder there was little point in repairing the interior.
25. Mr Lonsdale said that photo 25 clearly showed disrepair as confirmed by Mr Hall, an independent Chartered Surveyor, at his inspection on 10 September 2021.
26. Mr Jennings said that whilst he did not challenge Mr Hall's qualifications he did not agree that the front windows were the source of the damp.
27. Mr Lonsdale said that Nuisance and Commonways covered largely the same issues and were more conveniently considered together.
28. **NUISANCE "Clause 4 (F)**  
 Not do or permit to be done in or upon the Flat or the parts of the Block the use of which is common to the Lessee and the Lessor and the owners or occupiers of any other part or parts of the Block anything which may be or become a nuisance.
29. The failure to repair and the Respondent's storage of material in common ways is and has been a nuisance to other leaseholders at the block where the Property is located.
30. **COMMONWAYS " Clause 4(J)**  
 So far as is possible secure that all goods of any kind which shall at any time be brought or delivered to the flat shall not be left in the common ways.
31. The Respondent has left sacks of books in the commonways
32. Mr Lonsdale referred to photo 26 [52] which he said illustrated blocked commonways.
33. Mr Jennings pointed out that photos 26 and 27 were internal to his flat and could not be commonways, which assertion My Lonsdale accepted.

34. Mr Jennings agreed that he had left books on the first floor landing for a few weeks whilst they awaited collection by a charity before returning them to his flat. He also agreed that whilst he was joint freeholder he had left bicycle parts on the roof above his flat considering that his joint freehold provided him with some flexibility.

### **Discussion and Decision**

35. The Tribunal reminded itself that its sole task in considering Repair was to determine whether sufficient evidence that disrepair contrary to the obligations contained in Clause 4A(i) had been provided.
36. It noted that Mr Jennings accepted that the photographic evidence was accurate and which the Tribunal considers illustrates that disrepair to plaster finishes was evident due to the lack of external repair, the age of the internal finishes and potentially the lack of air circulation due to the extensive storage of goods.
37. The Tribunal notes that following external repairs Mr Chapman says that the damp problem in the flat below the subject flat has now been cured and accepts that not all of the causes of damp are within the lessee's control.
38. However, whatever the cause and however reasonable it may have been for Mr Jennings to delay repairs until the external works had been completed it remains that his failure to execute repairs was in breach of his repairing obligations contained in Clause 4A(i).
39. The Tribunal is not however satisfied that the evidence provided is sufficient to determine that any lack of repair by Mr Jennings as lessee has affected either of the other flats.
40. Mr Jennings has accepted that he left books on the first floor landing and given that acceptance the Tribunal finds that this constitutes a nuisance contrary to Clause 4(F).
41. In considering the meaning of Clause 4(J) the Tribunal determines that this restriction is in respect of goods being delivered to the Flat such as an Amazon delivery as suggested by Mr Lonsdale. No evidence of deliveries to the flat has been provided and as such the Tribunal does not find that Clause 4(J) has been breached.
42. In summary, **the Tribunal determines that the Respondent has breached the terms of Clauses 4(A)(i) and 4(F) of the lease dated 6 June 1985 of Flat 3, 18 Montpelier Place Brighton BN1 3BF**

D Banfield FRICS (Chairman)

8 August 2022

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.

### **Appendix of relevant legislation**

#### **Commonhold and Leasehold Reform Act 2002**

##### **S.168 No forfeiture notice before determination of breach**

(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

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