



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

Case reference : **LON/00BK/LBC/2022/0027**

HMCTS code (paper, video, audio) : **In person hearing**

Property : **Flat A, 24 Lupus Street, London, SW1V 3DZ**

Applicant : **24 Lupus Street, Freehold Company Limited**

Representative : **Mr Thomas Arnull of Counsel**

Respondent : **Nicholas Rodney Hammond Evans**

Representative : **N/A**

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 H. Carr
Mr J Francis**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12th August 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a face-to-face hearing. The documents that the Tribunal was referred to were contained in a bundle comprising 291 pages prepared by the Applicant. The order made is described below.

Decisions of the Tribunal

(1) The Tribunal determines that there has been a breach of the following clauses of the lease pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002.

- (i) Clause 3 (c)
- (ii) Clause 3 (l)
- (iii) Clause 3 (p)
- (iv) Clause 3 (q)
- (v) Clause 4
- (vi) First Schedule Para 2

(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 Section 168(4) of the Commonhold and Leasehold Reform Act 2002. The application concerns alleged breaches at **Flat A, 24 Lupus Street, London, SW1V 3DZ** (“the property”).

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

(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, a freehold company owned by three of the leaseholders is the registered proprietor of the freehold of **24 Lupus Street London SW1V 3DZ**. Ms Devine, one of those leaseholders carries out the management of the property for no remuneration.
4. The Respondent is the registered proprietor of the leasehold property at Flat A, 24 Lupus Street, London, SW1V 3DZ. He acquired his leasehold interest on 20th November 1985 and it runs until 10th December 2101.
5. The property which is the subject of this application is a 2 bedroom basement flat in a terraced house comprising five flats. The flat comprises a living room, small kitchen, bathroom, separate WC, and two bedrooms. There is access from the bedrooms to a small outside area.
6. The tribunal inspected the property on the morning of and prior to the hearing. The tribunal noted Ms Devine on behalf of the Applicant had inspected the property on 22nd March 2022 At that date she had observed:
 - (i) Clothes, sheets, papers, food, books, rubbish discarded throughout the flat
 - (ii) A lack of floor covering, particularly in the bathroom and toilet

- (iii) Lack of any coats of paint over plaster
- (iv) A rotting kitchen with mould, dirt and mouse droppings, undisposed of rubbish and unwashed dirty plates
- (v) Lack of ceiling plasterboard in the kitchen
- (vi) Evidence of use of calor gaz stove
- (vii) Rusty electrical fittings with appliances still plugged in
- (viii) Overgrown gardens with blocked drains and climbers extending up a number of floors
- (ix) Broken taps in the toilet, bathroom and kitchen
- (x) Mouldy plasterboard on the ceiling in the larger bedroom
- (xi) No plaster on mouldy plasterboard sheets in the larger bedroom
- (xii) Mould, dirt and rubbish throughout the flat
- (xiii) Lack of any cleaning throughout flat, including the windows

7. On that date, and after that inspection Ms Devine, on behalf of the Applicant has packed up the Respondent's belongings and place them in a storage area that is owned by the Applicant

8. At the tribunal's inspection it found that the property was in poor condition in general. The living room had been partially replastered as a result of damp proof works. There was evidence of some paint to the walls but there had been no repainting since the replastering. There was no floor covering. The ceiling to the living room showed signs of water damage. The kitchen was basic with broken taps and kitchen units in disrepair. The bathroom and WC were in very poor condition. There was no decoration to the ceiling of the larger bedroom with the bare plaster board still in evidence. The outside area was very overgrown covering the external drain.

9. The tribunal were shown the storage area where the Respondent's belongings were placed after Ms Devine cleaned the flat.

They were also shown the floor covering which comprised some underlay, which had been placed in the outside area.

The hearing

10. Ms Heather Devine and Mr Andrew Shirley, directors of the applicant company attended the hearing. It was represented by Mr Tom Arnall of Counsel. Mr Evans, the Respondent, did not attend. He had been barred from participating in the hearing by an order dated 21st July 2022.

The issues

11. 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. At the CMH the primary allegations of breaches by the Respondent were identified as follows:
- (i) that he failed to paint all the interior of the demised premises in accordance with Clause 3 (c)
 - (ii) that he permitted the demised premises to fall into disrepair rendering an increased insurance premium to be payable or which may make void or voidable any policy for such insurance contrary to Clause 3 (l) and First Schedule Paragraph 2.
 - (iii) That he failed to cover all floors and maintain in good condition to the satisfaction of the Lessors and renew when required contrary to Clause 3 (p)
 - (iv) That he failed to clean all the windows of the premises at least once a month contrary to Clause 3(q)
 - (v) That he failed to maintain walls, cables, wires, appurtenances and fittings contrary to Clause 4

The relevant clauses of the lease are as follows:

Clause 2. THE Lessee HEREBY CONVENANTS with the Lessors and with the owners and lessees of the other flats comprised in the Building that the Lessee and the persons deriving title under him will at all times hereafter observe and perform the restrictions set forth in the First Schedule hereto

Clause 3 THE Lessee HEREBY CONVENANTS with the Lessors as follows:- ...

- (c) Once in every seventh year of the term granted by the Superior Lease and also during the last year of the term granted by this

Underlease (howsoever determined) to paint all the interior of the Demised Premises and all additions thereto usual or proper to be painted with two coats at least of good quality paint in a proper and workmanlike manner and also at such times as last aforesaid to grain varnish whitewash colour and paper such parts of the interior of the Demised Premises as are usually or ought to be so treated

(l) Not to do or permit or suffer any act matter or thing in or upon the Demised Premises which may render any increased [unclear] premium to be payable for the insurance of the Building or would render void or voidable any policy for such insurance... ..

(p) To cover all floors and maintain in good condition to the satisfaction of the Lessors and renew when required so to do the close fitted underlay and carpets throughout the whole of the said Demised Premises. ...

(q) To clean all the windows of the Demised Premises at least once in every month of the said term and to keep such windows suitably curtained

Clause 4 - THE Lessee HEREBY COVENANTS with the Lessors and with the owners and lessees of the other flats comprised in the Building that the Lessee will at all times hereafter: - (i) Keep the Demised Premises (other than the parts thereof comprised and referred to in paragraphs (d) and (f) of Clause 5 hereof) and all walls party walls sewers drains pipes cables wires and appurtenance thereto belonging and all the fittings therein in good and tenable repair and condition (damage by the insured risks excepted) and in particular (but without prejudice to the generality of the foregoing) 4 so as to support shelter and protect parts of the Building other than the Demised Premise

THE FIRST SCHEDULE above referred to ...

2. Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on the Building or any flat or maisonette in any part of the Building or may cause an increased premium to be payable in respect thereof”.

12. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows:

Chronology

13. The following list of events is taken from the Witness Statement of Ms Devine.

From 1985 - 2012

14. Mr Evans became owner of Flat A on 20th November 1985.
15. A tenant owned Right to Manage company, 24 Lupus Street Management Company Limited, was formed sometime before 1997.
16. The Respondent became Director and secretary of the RTM on 20th June 1997.
17. The RTM company was struck off on 8th August 2006.

2013

18. The RTM was restored to the register on 27th February 2013.
19. Ms Devine purchased Flat E in April 2013. She takes over responsibility for the management of the block.
20. The Respondent retired as a director and secretary of the RTM company in May 2013.
21. Mr Andrew Shirley became the owner of Flat D in 2013.

2014

22. At an AGM of the RTM held 19th February 2014 electrical safety testing, the consequences of the electrical problems in Flat A and the overgrown garden to Flat A were raised. It was also agreed at that meeting that a Damp Consultant would be hired to investigate potential damp caused by the condition of Flat A. The Respondent was in attendance
23. The damp report of October 2014 set out the Damp Consultant's concerns about the poor conditions in Flat A.
24. It indicated that
 - (i) The flat was in poor condition
 - (ii) There was poor internal lighting
 - (iii) Part of the ceiling has been re-plasterboarded, but not skim plastered over, so lacks fire resistance

- (iv) There is a large area of exposed brickwork
- (v) There is surface mould and low level penetrating dampness at the right side of the doors.
- (vi) Damp damaged plasterwork
- (vii) The air conditions were very humid ... will promote mould growth
- (viii) Extractor fans were not operational in kitchen, bathroom or WC
- (ix) Bathroom dilapidated
- (x) No meaningful floor covering
- (xi) All taps continuously drip
- (xii) Tiles lacked seals to the bath
- (xiii) There had not been any proper cleaning recently

2015

- 25. Ms Devine becomes the owner of Flat C December 2015
- 26. Ms Devine organised the damp proofing required. Because of a lack of co-operation from the Respondent the Applicant served him with formal notice on 16th October 2015 to enter the property with the damp proofing specialists for the purpose of carrying out works.
- 27. The Applicant accessed the property on 19th October 2015 and took photographs. The applicant found and took photographs of,
 - (i) A lack of floor coverings
 - (ii) damp walls
 - (iii) broken taps
 - (iv) rotting kitchen worktops
 - (v) a lack of plaster to walls

2016

28. In 2016 the Applicant considers that Flat A is no longer occupied. Ms Devine raised the issue with the insurance broker and the Respondent. The Applicant also raised issues about the lack of security of Flat A. Ms Devine sent an email to the Respondent about the condition of the flat and informing him of a number of potential breaches of his lease.
29. Further concerns about insurance were raised by the insurers in December 2016 ahead of the insurance renewal. The Applicant was sent wording of specific conditions that were applied to unoccupied flats.

2017

30. In January 2017 Ms Devine on behalf of the Applicant replied to the insurers expressing her concern that the Applicant could not comply with the conditions and requesting advice as to the actions that needed to be taken to ensure the insurance would be valid. The Respondent was copied into the email.
31. The insurers told the Applicant that the flat needed to be checked on a weekly basis and be fully secured. These conditions were explained to the Respondent by email. The Applicant was given to 23rd January to reply to the email. As no reply was received the Applicant contacted the Respondent informing him that it had to take action in order to avoid invalidating the buildings insurance. The Respondent was emailed with the estimated costs of the steps that the Applicant intended to take to ensure the security of the flat.
32. On 31st January 2017 Ms Devine saw the Respondent at the bus stop.
33. On 2nd February 2017 the security firm attended the property and fitted a metal security door to Flat A and supplied a net curtain to conceal the condition of the property from the street. At one of the subsequent security visits on 28th March 2017 it was found that the Respondent had moved back into the property.
34. The Respondent told Ms Devine that he had booked contractors to renovate Flat A and he replaced the security door with the original insecure door.
35. At the AGM of the RTM on 3rd August 2017 (not attended by the Respondent) there was reference to the uninhabitable state of Flat A and potential fire risk posed by the condition of the flat.

36. Police made a forced entry to Flat A on 14th December 2017 because Westminster City Council had reported the Respondent (who at that time was a Westminster Councillor) as a missing person. There was no one in the property so the police secured the door with a padlock.

2018 to date

37. The leaseholders of Flats B,C, D and E (but not Flat A, the subject property) collectively purchased the freehold on 23rd March 2018. The management of the property was transferred from the RTM which was subsequently dissolved.

38. Leases of Flats B, C, D and E (but not of Flat A,) each extended to 999 years from 25th March 2018

39. Ms Lara Carter became the owner of Flat B in 2021/22.

40. On 11 August 2021 Ms Devine on behalf of the Applicant took photographs of the front door of Flat A and also photographs the internal state of the property through the gap in the door. She also took photographs of the overgrown garden. 22nd March 2022 Ms Devine on behalf of the Applicant entered the flat, noted its condition and packed the Respondent's belongings.

41. The tribunal notes from this chronology that the Applicant has been communicating its concerns about the state of the property for a number of years, and that at various times the Respondent has made commitments to carry out improvements. Unfortunately, nothing has materialised from these commitments.

The alleged breaches of the lease

Has the Respondent failed for at least seven years to paint the interior of the Demised Premises and all additions thereto usual or proper, and to whitewash colour or paper such parts of the interior of the Demised Premises as are usually or ought to be painted.

42. The Applicant argues that the property has not been painted as required by clause 3(c) of the lease.

43. She says that she first became aware of the failure to paint the property when she accessed the property as part of the damp proof works in October 2015.

44. She refers the tribunal to photographs taken at that time.

The Tribunal's decision

45. The Tribunal determines that there is a breach of Clause 3 (c)

Reasons for the Tribunal's decision

46. The Tribunal accepts the evidence of the Applicant.
47. It also draws on its inspection when it was clear that there had been no painting since the date of the replastering works in 2016. There were large areas of the property where there was no paint but only bare plaster

Has the Respondent permitted or suffered an act matter or thing in or upon the demised premises which may render any increased premium to be payable for the insurance of the Building or would render void or voidable any policy for such insurance?

48. The Applicant says that the Respondent left the premises unoccupied on a long-term basis and allowed it to become full of detritus and combustible materials, thus creating a number of risks in respect of the Premises, including a fire risk. This caused increase in the premium payable for insurance on the Building of £425.61 and led to the insurer making the insurance provision contingent on a number of conditions.

The Tribunal's decision

49. The Tribunal determines that there is a breach of Clause 3(1) and the First Schedule Para 2.

Reasons for the Tribunal's decision

50. The Tribunal accepts the evidence of the Applicant provided in the witness statement and in the photographs provided
51. It is also clear from the correspondence with the insurers that the condition of the property led to an increase in premium and increased expense for the Applicant as it was required to comply with conditions in order to obtain the insurance.

Has the Respondent failed to provide floor covers for the demised premises as required by the lease?

52. The Applicant says that the Respondent left the floor uncovered or inadequately covered throughout the premises.

53. The damp report of October 2014 indicates a lack of 'meaningful' floor coverings. The Applicant noted the lack of floor coverings when she accessed Flat A in 2015 when she took photographs

The Tribunal's decision

54. The Tribunal determines that there is a breach of 3(p) of the lease

Reasons for the Tribunal's decision

55. The tribunal accepts the evidence of the Applicant
56. The tribunal also draws on its own inspection when the only floor covering to be seen was a partial underlay which was in the rear outside area

Has the Respondent failed to clean and cover the windows as required by the lease?

57. The applicant says that the windows have not been cleaned as required by the lease. Ms Devine has no knowledge of the windows having been cleaned. The only window covering provided is that provided by the Applicant to fulfil one of the insurance conditions.

The Tribunal's decision

58. The Tribunal determines that there is a breach of 3(q) of the lease

Reasons for the Tribunal's decision

59. The tribunal accepts the arguments of the applicant
60. The tribunal saw no window coverings at its inspection other than the window covering provided by the Applicant.

Has the Respondent failed to keep the demised premises in good and tenanted repair and condition as required by clause 4 (i) of the lease?

61. The Applicant says that the Respondent refused to repair various faults identified in the circuitry of the flat which were causing the Residual Current Device Fuse box to trip and which prevented the issuance of an electrical safety certificate for the communal hallway.

62. Ms Devine says that she first explained the problems that the condition of the electrics in Flat A were causing in an email dated 16th November 2013. Ms Devine sent further emails and a hard copy letter and raised the problem at the AGM of the RTM company in February 2014.
63. Ms Devine says that the Respondent finally allowed the electrical safety tests to take place and the electrician sent an e mail to Mr Evans on 13 March 2014 explaining the existence of neutral earth faults within Flat A and lack of Residual Current Device fuse-box protection and the electrician recommended running new electrical cables within Flat A. Ms Devine says that she recalls clearly that Mr Evans refused to undertake the necessary remedial action to repair his faulty electrical circuits, in clear breach of clause 4(i) of his lease, which obliges him to “Keep the Demised Premises...and all... cables wires and appurtenances thereto belonging and all fittings therein in good and tenable repair and condition”.
64. Owing to Mr Evans’s refusal, it was necessary to instruct the electrician instead simply to isolate the two faulty circuits so that Mr Evans could not use them anymore. The electrician did so. Mr Evans never repaired those two faulty circuits.
65. Ms Devine also says that Mr Evans refused to replace the windows to his property, when all the other leaseholders did so in 2014. He maintained the windows were fine, but they were not fine and are evidence of a further breach of clause 4(i) of the lease.
66. The Applicant says that the Respondent allowed the plasterboard on the ceilings of the flat to deteriorate without repair, causing a fire risk
67. The Applicant says that the Respondent allowed the taps in the bathroom to be damaged without repair, such that the flow of water could not be turned off and would run constantly unless turned off at the main stopcock.
68. Ms Devine first noticed this when she accessed the premises on 19th October 2015
69. The Applicant says that the Respondent allowed the garden to become overgrown leading to the blockage of the drains of the flat and damage to brickwork and neither unblocked the drains nor repaired the brickwork nor remedied the overgrown nature of the garden.

70. This was also a breach of clause 4(i) of the Respondent's lease, which required that he keep all "sewers drain pipes... in good and tenable repair and condition".

71. The Respondent agreed to unblock the drain in the garden to reduce the pooling of water around the base of the building. However, it appears that despite this promise, this was never undertaken. As at 22 March 2022, the garden remains fully overgrown.

72. The overgrown ivy in the garden has also caused damage to the brickwork of the property.

73. The Applicant says that the Respondent allowed his kitchen worktops to become rotten without repairing or replacing them

74. Ms Devine first noticed the problem with the worktops when she accessed the premises on 19th October 2015 in connection with facilitating the damp proof works.

75. The Applicant says that the Respondent failed to plaster the ceilings and allowed the plaster board to become mouldy.

The Tribunal's decision

76. The Tribunal determines that there is a breach of clause 4 of the lease.

Reasons for the Tribunal's decision

77. The Tribunal accepts the evidence and arguments of the Applicant.

78. It also relies on its own inspection of Flat A.

Costs

79. The tribunal reserves questions of costs to the County Court.

Name: Judge H Carr

Date: 12th August 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).