FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BJ/LBC/2018/0099**
Property	:	**Second Floor Flat, 273 Wimbledon Park Road, London SW19 6NW**
Applicant	:	**IST Developments Ltd**
Representative	:	**Ms Doliveux of Counsel**
Respondent	:	**Jeanine Sarantos**
Representative	:	**No appearance**
Type of Application	:	**Determination of an alleged breach of covenant**
Tribunal Members	:	**Judge W Hansen (chairman)** **Kevin Ridgeway MRICS**
Date and venue of Hearing	:	**18 February 2019 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**20 February 2019**

DECISION

Decision of the Tribunal

(1) The Tribunal determines that the Respondent has breached of Clause 3(xvii)(b) of a lease dated 8 June 1983 and is in continuing breach of Clause 3(xvii)(b) of the said lease.

(2) The Tribunal determines that the Respondent is also in breach of Clause 3(xiii) having failed to pay on demand the Applicant's costs in the sum of £356+ VAT.

Background

1. By an application dated 8 October 2018 the Applicant seeks a determination pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached Clauses 3(xvii)(b) and 3(xiii) contained in a lease dated 8th June 1983 ("the Lease").

2. The Applicant is the landlord of premises known as 273 Wimbledon Park Road ("the Property"). The Respondent is the leasehold owner of the Second Floor Flat ("the Flat") within the Property. The Property comprises commercial premises at ground floor level, a charity shop called Fara Kids, and two residential flats on the first and second floors. The demise of the Flat includes the flat roof which is decked and accessible both from within the Flat as well as via a larger hatch (with a retractable loft-style ladder) located above the landing outside the front door to the Flat. At all material times the Flat has been let out albeit the Respondent's address in the official copy of the leasehold title is the address of the Flat.

3. Access to the Flat and to the adjacent flats at 271 Wimbledon Park Road and to the children's nursery at the rear of 271 is via a passageway to the north-east of 273. The nursery in question is called Tomberries Nursery ("the Nursery") and occupies ground floor premises at the rear of 271 as well as having the benefit of an amenity space ("the Amenity Space") at the end of the passageway which extends over part of the land behind the charity shop immediately adjacent to the rear elevation of 273. Part of the Amenity Space is covered by a wooden pergola-like structure ("the Pergola") with a tarpaulin roof. The Nursery opens at 7.30am. The children usually go out into the Amenity Space for activities at 9.00am each day.

4. On 14 June 2018 at about 8.40am, whilst the children were still inside the Nursery having their breakfast, a large plastic storage box fell off the flat roof above the Flat and came down into the Amenity Space, hitting the Pergola on the way down. It was very lucky that there were no children or other people using the Amenity Space at the time. Although the plastic box was empty, it was sizeable and robust and had it hit someone, the consequences would have been very serious indeed, even allowing for the fact that the box hit the Pergola on the way down, thus in a sense "breaking the fall" of the box. As it was, the Pergola took the initial impact and was damaged as a result (see photographs at pages 84 and 86). The plastic storage box was also damaged and splinters were found where it had hit the Pergola. The immediate aftermath of the incident can be seen in the photograph at page 84. It can be seen from that photograph that an activity had been set out for the children and the damaged box is clearly visible in the midst of the activity that had been set out. A further photograph, at page 82, shows a view looking down from the roof onto the Amenity Space and from which it is apparent that there was another identical or similar box literally teetering on the edge of the roof, in imminent danger of falling off. Mrs Choudhury, who gave evidence for the Applicant and is the owner of the Nursery as well as being a Director of the Applicant, told us that on the day in question the fire brigade were summoned and it was the fire brigade who obtained access to the flat roof from one of the adjoining apartments at 271, and removed the other box from its precarious position on the edge of the roof. The seriousness of what had happened and what might have happened needs no elucidation. She told that she had tried to contact the occupiers of the Flat by ringing their bell but obtained no response. When later in the day she managed to speak to one of the (sub-)tenants of the Flat, a man by the name of George, she told us that he denied that any of the items stored on the roof belonged to the tenants and said that they belonged to the Respondent.

5. In these circumstances, one might have expected urgent action to be taken by or on behalf of the Respondent and an apology. But nothing at all happened for 4 days and there has been no apology. In the first instance at about 1pm on 14 June the Nursery contacted Derek Philip-Xu in the belief that he was the tenant of the Flat. However, he explained that he had moved out in April and knew nothing about the items on the roof. He explained that his landlord had been a Mr Jeff Brown who he believed was the partner of the Respondent and he provided a contact email address: jbrown129@live.com. He also provided information about the landlord's agents who were believed to be Townends. Mr Choudhury contacted Townends and provided his

contact details for onward transmission to the Respondent and/or Mr Brown. On 14 June at about 4.30pm Townends emailed Mr Choudhury as follows: "*Further to our conversation earlier today, I just wanted to let you know that I have tried to contact the owners over the phone, but did not get through. I have also sent them an email and have forwarded your contact details*". On 15 June 2018 the Nursery attempted to contact the Respondent and Mr Brown via the email address that had been provided by Mr Philip-Xu. The incident was explained to them in a detailed letter dated 14 June 2018 and they were asked to remove any remaining items from the roof because of the risk they posed. The letter was attached to an email sent at 8.41am on 15 June which said this: "*Please see attached letter. Please respond within 5 days with the relevant actions as detailed in the letter as these items still pose a risk. This requires your urgent attention*".

6. The Tribunal is satisfied that the Respondent has received correspondence sent by email to jbrown129@live.com. This was the email address provided by the former sub-tenant Mr Philip-Xu. In addition, following despatch of the above-mentioned email and accompanying letter on 15 June 2018, on 18 June a man called Tim turned up at the Property and described himself as the Respondent's handyman. It is clear to us from the evidence of Mrs Choudhury that Tim was acting on the Respondent's instructions. We shall return to the visit by Tim in due course, but we are satisfied that the Respondent has been on notice of precisely what happened since 15 June at the latest.

7. Notice of what happened is one thing. Notice of the application and this hearing is another. There has been no response to these proceedings from the Respondent. However, the Tribunal is satisfied that the application was properly issued in accordance with Rule 26 of the 2013 Tribunal Procedure Rules and properly served in accordance with Rule 29 at the only address which the Respondent has seen fit to provide. Further the Tribunal is satisfied that the Respondent was on notice of the hearing date, the details of which were sent both to the Flat address but also to the above-mentioned email address. Accordingly, the Tribunal indicated at the outset of the hearing that it was going to proceed in the absence of the Respondent and did so.

Determination

8. Section 168(4) of the Commonhold and Leasehold Reform Act 2002 provides a follows:

> *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.*

9. The Applicant seeks a determination that the Respondent has breached Clauses 3(xvii)(b) and 3(xiii). The clause at the forefront of the claim is Clause 3(xvii)(b) which is a tenant's covenant in the following terms:

> *"Not to … use the demised premises or any part thereof or suffer the same to be used for any dangerous pursuit or purpose or to do anything whatsoever on the demised premises or any part thereof which in the opinion of the Lessors may be or become a nuisance annoyance or damage to or which may prejudice the Lessors or any owner or occupier of any other part of the Lessors' property or the adjoining property…"*

10. The Tribunal is entirely satisfied that by reason of the events which occurred on the morning of 14 June 2018 the Respondent has breached this covenant. We are satisfied on the evidence that the storage boxes on the flat roof belonged to the Respondent. Mr Philip-Xu, the previous tenant, said he knew nothing about the items on the roof and the current tenant said they belonged to the Respondent. We further find that the boxes were not adequately secured with the result that one fell off the roof and one was left teetering on the edge at imminent risk of falling off. The one that fell off damaged the Pergola before hitting the ground and could have caused very serious injury if not death to any person who happened to be using the Amenity Space at the time. Fortunately, no one was outside but it was a close call and the whole situation was incredibly dangerous. In those circumstances the Applicant says that the Respondent has used the demised premises for a dangerous purpose, namely the storage of large unsecured boxes on the flat roof which were liable to fall or blow off the flat roof. We agree. Further or alternatively, it is said that the Respondent has done something, namely left unsecured boxes on the flat roof which have subsequently fallen or blown off, which in the opinion of the Lessors has become a nuisance and/or annoyance and/or has caused damage to adjoining property and/or has prejudiced the Lessors by exposing them to this incident and/or the risk of further such incidents. Again we agree. We determine that on the basis of the facts found above a breach of Clause 3(xvii)(b) occurred on 14 June 2018.

11. However, matters do not rest there. On 28 June 2018 the Applicant's solicitors wrote to the Respondent (at the Flat and the above-mentioned email address) asking her to

remedy the breach and pay costs of £356+ VAT pursuant to Clause 3(xiii) of the Lease which contains a tenant's covenant as follows:

> "*That the Lessee will from time to time pay on demand all costs charges and expenses (including legal costs and surveyors fees) incurred by the Lessors for the purposes of or incidental to the preparation and service of a Schedule of Dilapidations and Notice to repair or any Notice under the provisions of Section 146 or Section 147 of the Law of Property Act 1925 (as amended from time to time) notwithstanding that forfeiture may be avoided…"*

12. The Applicant's solicitors' letter of 28 June 2018 threatened forfeiture if no remedial action was taken and invited the Respondent to supply proof that "*any and all items that you have stored and/or have allowed to be stored on the roof of 273 Wimbledon Park Road have been adequately secured against all risk that they will fall off the roof*". There was no response to that letter and the costs demanded have not been paid. We are satisfied those costs were incurred for the purposes of and/or incidental to the preparation and service of a Notice under s.146 of the Law of Property Act 1925 and we thus determine that the Respondent has breached Clause 3(xiii) of the Lease. The only "response" of any kind that there has been to the events which occurred on 14 June was that on 18 June the Respondent appears to have sent round a handyman called Tim. Mrs Choudhury's evidence about this visit warrants repetition. She said this at paragraphs 18-19 of her statement:

> *"On the morning of 18 June 2018 at around 11.00am someone called Tim attended at the Nursery. He identified himself as the Respondent's handyman. He told me that he had been engaged by the Respondent to secure the items of furniture on the roof of 273 as well as to remove the garden storage box from the Nursery's garden, repair the pergola and generally sort things out. I asked him what he meant by secure but he would not be more specific. I asked whether he would remove the furniture from the roof but he said no. He told me that he was specifically instructed not to. […]. Tim told me that the Respondent was fully aware of what had happened and that she would contact me at a later date. […]. I am told by my husband that either later in the day on 18 June 2018 – when Tim attended at the Nursery – or at a later date – when he bumped into him in the street – Tim mentioned to him that he would weigh/had weighed the items of furniture on the roof of 273 Wimbledon Park Road down with sandbags. Neither my husband nor I (nor anyone else for that matter that I am aware of) saw Tim take any sandbags into 273 Wimbledon Park Road."*
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> *At page 45 is a copy of a photograph taken by me on 31 January 2019. It shows that whilst the Respondent has tidied up certain items of furniture on the roof of 273 Wimbledon Park Road, two large, and one very large, garden storage boxes remain on the roof of the building. The extent to which these storage boxes have been secured, if at all, is entirely unclear".*

13. The Tribunal has not been able to inspect the Property or the roof because of the non-participation of the Respondent in these proceedings. However, we have the photo to which Mrs Choudhury has referred which shows three large boxes being stored on the roof alongside what appears to be a parapet wall separating 273 from 275. We cannot see from this photograph whether the boxes are secured in any way but the evidence, such as it is, leads us to conclude, on the balance of probabilities, that they are not adequately secured and that a real risk remains. We so conclude for the following reasons. Firstly, Tim spoke about securing them with sandbags but there is no evidence that he ever did. Secondly, had they been properly secured, it would have been relatively simple for the Respondent to say so and provide satisfactory proof of this as requested in the Applicant's letter before action dated 28 June 2018 but there has been no response. Thirdly, the Respondent's response to what happened on 14 June 2018 and her lack of any meaningful engagement with the Applicant or these proceedings suggests that she is indifferent to the seriousness of the situation and has not taken proper steps to secure the items in question and remove any risk of a repeat of what happened on 14 June. We therefore find, in addition, that the Respondent is in continuing breach of Clause 3(xvii)(b) because she is continuing to keep storage boxes on the roof which are inadequately secured and which continue to be dangerous and which may in the opinion of the Lessors become a nuisance and/or annoyance and/or cause damage to the Lessors and/or the adjoining property and/or prejudices the Lessors in being exposed to this ongoing risk.

14. For the reasons set out above, the Tribunal determines that the Respondent has breached Clause 3(xvii)(b) of the Lease and continues to do so, and has also breached Clause 3(xiii) of the Lease.

Name: Judge W Hansen **Date:** 20 February 2019