



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

Case reference : **LON/00AG/LBC/2019/0012**

Property : **Flat 4, Russell Court, Woburn Place,
London WC1H 0LL**

Applicant : **Russell Court (Bloomsbury)
Management Ltd**

Representative : **Ms R Page of counsel**

Respondent : **Mr P Mehrdad**

Representative :

Type of application : **Determination as to whether there has
been a breach of covenant**

**Tribunal
member(s)** : **Judge S Brilliant
Mr P Roberts DipArch RIBA
Mrs L West**

**Date and venue of
hearing** : **22 July 2019, 10 Alfred Place, London
WC1E 7LR**

Date of decision : **26 July 2019**

DECISION

Decision of the tribunal

The tribunal determines that the respondent is in breach of clause 2 of the lease by reason of his failure to observe and perform certain of the covenants, conditions and restrictions specified in the fifth and sixth schedules to the lease. The individual breaches are set out below.

The application

1. The applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 that breaches of covenant in the lease have occurred.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. Russell Court, Woburn Place, London WC1H 0LL (“the block”) comprises a 1937 block of 501 flats with five commercial units at ground and basement level. One of the commercial units is a storage business.
4. The respondent is the long lessee of flat 4 (“the flat”) under a lease dated 25 April 2008 (“the 2008 lease”). The lessor is the applicant. The 2008 lease arose as a result of the surrender of a lease of the flat dated 17 December 1980 (“the 1980 lease”) and a regrant of a term of 999 years from 1 September 2006.
5. The respondent in clause 3 of the 2008 lease covenanted to observe the terms of the covenants contained in clause 2 and the fifth and sixth schedules of the 1980 lease. The specific provisions of the lease will be referred to below, where appropriate.
6. The flat is situated on the ground floor of the block. The flat is immediately above the storage business. Flat 3 is one of the adjoining flats.
7. The respondent is in occupation of the flat.
8. The instant application arises from the poor, unhygienic and unsanitary state of the flat. The complaints fall into the following categories:
 - (1) unpleasant and noxious smells emanating from the flat;
 - (2) a failure to keep the flat clean and in good repair;
 - (3) a failure to inform the applicant of the service of enforcement notices or to comply with the same;

- (4) the potential to affect the applicant's insurance of the block.

The hearing

9. The tribunal conducted an inspection of the flat on the morning of the hearing.

10. The applicant was represented by Ms Page of counsel. We are grateful to her for her written and oral advocacy.

11. Prior to the inspection, the tribunal was concerned about the respondent's capacity to conduct these proceedings. No litigation friend has been appointed. A number of people dealing with the respondent have been concerned about his mental health, including a member of the Bar who is a lessee in the block.

12. However, at the inspection it was clear that the respondent was both focused and articulate, and we no longer have any concerns about his capacity.

13. At the inspection the respondent asked for the hearing to be adjourned to the afternoon, because he was going to see his solicitor later in the morning. There was no merit in this application, as the respondent had been given good notice of the hearing date and the time the hearing began. Accordingly, the application was refused. The respondent chose not to attend the hearing.

14. The applicant relied upon witness statements from the following:

(1) Ms Harrison, who has been the building manager at the block since March 2018.

(2) Mr Mullins-Knight, who has been the maintenance manager at the block since March 2018.

(3) Ms Dunne-Smith, who was on the board of directors of the applicant in 2012/2013 and has again been on the board since January 2017.

15. The witness statements had attached to them a number of emails and letters from concerned lessees, in particular Mrs Gray, the owner of flat 3.

16. We have no hesitation in accepting all of the written evidence served by the applicant. The respondent did not rely upon any written evidence, and did not attend to cross examine any of the applicant's witnesses.

The lease

Clause 2

17. The respondent covenanted to observe and perform the covenants conditions and restrictions specified in the fifth and sixth schedules to the lease.

The fifth schedule

18. By paragraph 1, the respondent covenanted not to use the flat, nor permit the same to be used, for any purpose liable or which may grow to cause a nuisance, disturbance, damage, annoyance or misery to the applicant or the occupiers of any other part of the block or any adjoining or neighbouring premises.

19. By paragraph 13, the respondent covenanted to minimise the noise transmitting propensities of pianofortes, radios, gramophones, television, sewing machines, washing machines, spin dryers and like articles in the flat by covering the floors of the flat with cork or rubber tiles, carpets or other sound deadening materials.

The sixth schedule

20. By paragraph 1(d), the respondent covenanted to keep the flat and the respondent's fixtures and fittings, sanitary apparatus and appurtenances installed therein well and substantially repaired, cleansed, maintained and renewed, and to replace from time to time all the respondent's fixtures, fittings and appurtenances.

21. By paragraph 1(e), the respondent covenanted to paint the flat with two coats of good quality paint and to redecorate the flat every five years.

22. By paragraph 1(g), the respondent covenanted to maintain the appearance of the flat in such a manner as would not detract from the remainder of the block as a "high class block of residential flats".

23. By paragraph 1(j), the respondent covenanted to keep all baths, lavatories, cisterns, waste, soil and other pipes and media connected to the flat, to the extent only that they pass through the flat, clean and open and not to suffer dirt, rubbish, ranks or other refuse to be thrown or dropped therein.

24. By paragraph 1(k), the respondent covenanted to permit the respondent and its servants, and others with its authority, at all reasonable times by appointment (except in an emergency when no such appointment shall be necessary) to enter the flat for a number of purposes, including to examine the state of repair, condition and decoration thereof.

25. By paragraph 1(n), the respondent covenanted to execute, amongst other things, all such works as may be directed or required to be executed or carried out by any public, local or other competent authority.

26. By paragraph 1(q), the respondent covenanted to serve any notice received from such an authority forthwith upon the applicant.

27. By paragraph 1(w), the respondent covenanted not to do anything or permit anything to be done which may make void or voidable any policy for the insurance of the block against fire or other damage or which may cause an increased premium to be payable for such insurance. There is a similar covenant contained in paragraph 2(C) of the sixth schedule.

The applicant's case

Unpleasant and noxious smells emanating from the flat

28. There is overwhelming evidence that a truly disgusting smell has emanated from the flat.

29. The smell has been described by the numerous witnesses as following:

- *an obvious bad smell in the corridor outside the flat;*
- *stench;*
- *horrendous;*
- *very noxious, sewage-like noxious stink, foul smells;*
- *an unbearable stench;*
- *unpleasant smell;*
- *the smell/unhygienic conditions nuisance in the corridor is now very serious indeed...a very serious problem;*
- *'the smell is strong and sickening...toxic smelling.... If I wanted to live next to a pigsty I would not have purchased a flat at the block;*
- *pungent smell.*

30. Even the Royal Mail has had to complain because the postman was *left feeling nauseous after yesterday's visit.*

31. At the time of inspection, the tribunal was told that the smell was not nearly so overpowering as the witnesses attest. We were told that it was almost certain that someone had come in to clean and tidy the flat last week, as a set of keys was handed into a member of staff. This is most unusual as the respondent appeared to have the only set of keys.

32. It is likely that the smell arises from the respondent's failure to keep the flat clean, including allowing excrement to accumulate in the bathroom/wc and

by not throwing out old food.

33. We are satisfied from the evidence we have heard that the smell has been wholly unacceptable. Causing or permitting such a smell to emanate from the flat is no doubt a common law nuisance.

33. The word “nuisance” has been interpreted to mean *an inconvenience materially interfering with the ordinary comfort physically of human existence, not merely according to dainty modes and habits of living but according to plain and sober and simple notions among English people*¹.

34. The applicant relies upon paragraph 1 of the fifth schedule and paragraphs 1(d) and 1(j) of the sixth schedule (see paragraphs 18, 20 and 23 above).

35. Paragraph 1 of the fifth schedule is in slightly unusual terms. It does not prohibit the creation of smells which are a nuisance. It prohibits the use of the flat for any purpose which might cause a nuisance. For example, a tenant would be in breach of this provision if he played music very loud at night, cooked food which gave out highly spicy or pungent smells which seeped into the corridor (there is no suggestion that this is what has happened in the instant case), or used the flat to practice his tennis shots with the ball constantly thumping against the wall to a neighbouring flat.

36. We are not persuaded that any of the complaints relied upon fall within this paragraph. There was no use for a purpose which causes a nuisance. Ms Page cited a decision of the then London Rent Assessment panel (Reference LON/00AG/LDC/2013/0024) concerning flat 2, Thurlow Road, London NW3 5PJ. Clause 2(18) of the lease relied upon in that case was in very different terms to paragraph 1 of the fifth schedule in the 1980 lease. In any event, we are not bound by this decision and it is not necessary for us to express a view as to whether it was rightly or wrongly decided.

37. However, we are satisfied that in allowing the smell to emanate from the flat the respondent is in breach of paragraphs 1(d) and 1(j) of the sixth schedule. The failure to keep the sanitary apparatus, including the toilet and bath, cleaned and repaired has undoubtedly contributed towards the smell.

Failure to keep the flat clean and in good repair

38. There is overwhelming evidence that the flat has not been kept clean or in good repair.

39. The evidence is as follows:

(1) On 16 May 2017, there was a leak from the toilet in the flat which was

¹ Walter v Selfe (1851) 4 De G & Sm 315.

reported by the tenants below the flat.

(2) On 14 June 2018, there was a leak from the waste pipe for the bath in the flat which was reported by the tenants below the flat.

(3) On 3 and 12 October 2018, there was a leak from the hot water pipe in the kitchen of the flat which was reported by the tenants below the flat.

(4) On 15 January 2019, there was a leak from the bath taps of the flat which was reported by the tenants below the flat. As a result of these leaks, the applicant has had to cap certain of the water pipes in the flat. The respondent now has no water in the kitchen and only hot water in the bathroom.

(5) As at 16 January 2019, the toilet in the flat had no overflow pipe and was therefore overflowing. The bath and basin were both filthy. There were faeces all around the toilet bowl and seat, and on some of the walls. There were no floor coverings in the flat, just concrete floor with layers of newspaper. The flat had not been decorated in a long time. There were mouse droppings on the floor, a cockroach infestation, a flea infestation, and at least one rat.

40. The applicant relies upon paragraph 1 of the fifth schedule, paragraph 13 of the fifth schedule, and paragraphs 1(d), (e), (g) and (j) of the sixth schedule (see paragraphs 18, 19, and 20-23 above).

41. We find there was no breach of paragraph 1 of the fifth schedule, for the reason given in paragraph 35 and 36 above.

42. The submission that there has been a breach of paragraph 13 of the fifth schedule is, with respect, hopeless. That paragraph concerns putting down floor covering in the flat in order to minimise the sound of certain articles being used in the flat, such as a piano or sewing machine. The respondent uses no such articles. In some leases there is a general covenant to keep the floor of the flat carpeted. There is no such provision in the 1980 lease.

43. We are, however, satisfied that the respondent is in breach of paragraphs 1(d), (e), (g) and (j) of the sixth schedule.

Failure to comply with enforcement notices

44. At least five enforcement notices have been served on the respondent by the London Borough of Camden relating to the unsanitary state of the flat in the past year.

45. The respondent has failed to allow the applicant to enter the flat to inspect on reasonable notice, to execute the works required by the enforcement notices, and to serve copies of the enforcement notices on the applicant.

46. The applicant relies upon paragraphs 1(k), (n) and (q) of the lease (paragraphs 24, 25 and 26 above).

47. We find that the respondent has been in breach of these paragraphs.

The potential to affect the applicant's insurance of the block

48. The applicant relies upon the fact that the water leaks have potentially affected the applicant's insurance in the block. This would be in breach of paragraph 1(w) the sixth schedule (paragraph 27 above). Although we were told that no claim has actually been made on the policy, we are satisfied that there has been a breach of this paragraph.

Name: Simon Brilliant

Date: 26 July 2019

Appendix of relevant legislation

Section 168(4) of the Commonhold and Leasehold Reform Act 2002:

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.

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).