FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LBC/2018/0088**
Property	**:**	**46a Antrobus Road, Chiswick, London, W4 5HZ**
Applicant	**:**	**John Joseph Mac Lucas and Clara Barrington**
Representative	**:**	**In person**
Respondent	**:**	**Richard Buckley**
Representative	**:**	**In person**
Type of application	**:**	**Breach of Covenant**
Tribunal Members	**:**	**Judge Robert Latham** **Mike Taylor FRICS**
Date and Venue	**:**	**4 June 2019 at** **10 Alfred Place, London WC1E 7LR**
Date of Inspection	**:**	**2 July 2019**
Date of Decision	**:**	**24 July 2019**

DECISION

Decision of the Tribunal

(i) The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, the following breaches have occurred:

(a) Refusal of Access: We find this breach established (see [63] to [65] below.

(b) General Maintenance: We do not find this breach established (see [66] to [70] below.

(c) Subletting to More than one Family: We find this breach established (see [71] to [74] below.

(d) Nuisance: We find this breach established (see [75] to [76] below.

(e) Rubbish in Lavatory and Pipework: We do not find this breach established (see [77] to [78] below.

(f) Failure to Close Front Door: We find this breach established (see [79] to [80] below.

(ii) The Tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application issued on 9 November 2018, the Applicant landlords seek a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent tenant is in breach of his lease in respect of 46a Antrobus Road, Chiswick, London, W4 5HZ ("the flat"). A Statement of Case is attached to the application which specifies the alleged breaches. The Applicants are not only freeholders of 46 Antrobus Road ("the property"), but also lessees of the ground floor flat.

2. On 4 December 2018, the Tribunal gave Directions. At the hearing, the Applicants appeared in person. The Respondent was represented by Miss Julia Petrenko (Counsel) instructed by Lancasters, Solicitors. Pursuant to the Directions, the Applicant has provided the official copy of the register of title. This records that the Respondent acquired his leasehold interest in the flat on 24 September 1998. There is no mortgagee.

3. At the Directions hearing, the Tribunal was given to understand that the Applicant intended to amend its case to include further alleged breaches in respect of damp and timber treatment. Permission was given to amend their Statement of Case. The Tribunal has been provided with an Amended Statement of Case, dated 25 October 2018

(sic). This does not add any further breach, but rather abandons the alleged breach in respect of insurance.

4. The matter was initially set down for a two-day hearing on 14 March. Both parties were represented by Counsel: Mr Julian Gun Cuninghame for the Applicant and Ms Petrenko for the Respondent. Both Counsel provided Skeleton Arguments and a number of authorities. The case was adjourned on the suggestion that the Applicant would purchase the Respondent's flat for £365k. It was contemplated that there was to be a lump sum payment of £300k with the remainder paid by instalments. On 15 March, the Applicant informed the Respondent that they could not raise the required finance. Mr Lucas stated that the Applicants planned to sell a property in Raynes Park, but their tenants declined to vacate. The Applicant rather proposed a lump sum of £100k and £26k pa over a period of 10 years. This offer was not acceptable to the Respondent. On 22 March, Lancasters, the Respondent's then Solicitor, applied for the matter to be reinstated.

The Hearing

5. Both the Applicants appeared at the hearing. At the commencement of the hearing, the Applicants were represented by Mr Julian Gun Cuninghame, Counsel. Shortly after the commencement of the hearing, the Applicants decided to dispense with his services and Mr Lucas represented the Applicants. Mr Joseph Green, a solicitor with Judge & Priestley, was present to assist them.

6. Both Applicants gave evidence. Mr Lucas is a criminal barrister. Ms Barrington is a marketing manager. They also called Mr Tony Grall, from West London Party Wall Surveyors.

7. Mr Buckley appeared in person. He is no longer instructing Lancasters. He gave evidence. He is currently residing at 100 Duke Road, Chiswick. He had been a maintenance manager for the past 35 years. He is now aged 68 and is fully retired. He retired when he was 63 due to hypertension. He has filed witness statements from his wife, Anne Buckley, but she did not give evidence. He also provided a witness statement from Tim Burke who was involved in an incident in March 2019. Mr Burke was not available to give evidence.

8. Mr Buckley also adduced written reports from Mr Matt McRoberts, dated 21 November 2018, and Alan Green, a Structural Engineer, dated 10 December. Mr McRoberts inspected the property on 21 November 2018, at the same time as an inspection by Mr Grall. Unfortunately, there seems to have been little dialogue between the two experts. Mr Green has merely commented on the reports of Mr Grall and Mr McRoberts.

9. The Tribunal has been provided with a mass of materials, one of the unfortunate consequences of adjourning proceedings of this nature. In this decision, we refer to various Bundles of Documents:

(i) The Applicant's Bundle was received by the Tribunal on 8 January 2019 which we will be prefixed by "A1.__".

(ii) The Applicant's Statement in Reply, dated 18 February 2019, to which various documents are annexed and which we will be prefixed by "A2.__".

(iii) The Second Witness Statement of John Lucas, dated 30 May 2019, to which various documents are annexed and which we will be prefixed by "A3.__".

(iv) The Respondent's Bundle was received by the Tribunal on 11 February 2019 and will be prefixed by "R1.__".

(v) The Respondent's Position Statement for the Final Hearing to which various documents are attached and which will be prefixed by "R2.__".

This Tribunal has only had regard to the submissions which the parties made to it at the hearing on 4 June. The Tribunal has not had regard to legal submissions which were prepared for the previous hearing by lawyers who are not currently instructed and upon which we were not addressed.

10. At the end of the hearing, the parties agreed that it would assist were the Tribunal to inspect the property at 46 Antrobus Road. We therefore arranged an inspection for 2 July. We explained that the sole purpose of this inspection was to enable us to better understand the evidence that we had heard. It was not an opportunity for the parties to adduce yet further evidence.

11. Given the problems of access, the parties also agreed to hold a joint inspection on 27 June. That inspection occurred. Mr Lucas attended with Mr Grall. The Applicants complain that Mr Buckley would only permit an inspection of the small area of floor at the bottom of the stairs. Mr Buckley responded that this was all that was necessary to establish that there was no problem of rising dampness.

12. The Applicants contend that Mr Buckley has gone out of his way to make their occupation of the ground floor flat intolerable. We were told that after an incident in March 2019, they felt unable to occupy their flat and returned to live with their respective parents. They were back in occupation when we inspected the property. Mr Lucas stated that when he had purchased his flat, he was told by Mr Buckley's agent that Mr Buckley was "a man of unsound mind" and that his wife managed

his affairs. In his second witness statement, Mr Lucas describes a telephone call from Mr Buckley on 4 May 2019 in which Mr Buckley stated that (a) he had been to prison; (b) he suffers from schizophrenia; (c) a threat was made that they "should back off from the case" (which was repeated on several occasions); (d) that Mr Lucas would get into trouble with his chambers; and (e) that he suffered from mental health problems as a result of which his wife had been given a power of attorney. Mr Buckley had also claimed to own 65 properties.

13. Mr Buckley responds that the Applicants have only brought this application because they want to acquire his flat at less than the market value. His lease now has less than 60 years outstanding. Mr Buckley contends that they hoped for a significant premium for a statutory lease extension. Mr Lucas has used his status as a barrister to intimidate him. The expert evidence has shown that his flat is in a good condition. He disputes the alleged telephone conversation of 4 May 2019. He denies that he has claimed to own 65 properties. He states that he has been "psychologically whiplashed" by the allegations that he is of unsound mind. He is not currently able to let his flat.

14. The Tribunal has seen no evidence to satisfy us that Mr Buckley is incapable of managing his affairs. Indeed, both Counsel and his Solicitors have satisfied themselves that he is competent to instruct them. However, there have been aspects of his behaviour which have been irrational. Such behaviour has been unacceptable and has amounted to harassment.

15. It is apparent that the relationship between the parties has broken down irretrievably. There is no trust and little communication between them. The jurisdiction of this Tribunal is restricted to determining whether a breach of covenant has occurred. It is probable that the next step will be for the Applicants to apply to the County Court for forfeiture. It will be for a County Court judge to determine whether, and if so on what terms, to grant relief from forfeiture. The severity of the alleged breaches must be seen in the context of the deteriorating relationship between the parties and the behaviour of Mr Buckley. We must therefore consider the background of this dispute in some detail.

The Inspection

16. On 2 July, the Tribunal inspected the property at 46 Antrobus Road. The Tribunal was shown round the property by Mr Lucas and Mr Buckley. It is a late Victorian terraced property in a quiet residential area. The area has changed significantly in recent years and is now very desirable with many of the properties renovated to a high standard. The property was converted into two two-bedroom flats in the late 1960s to the standards of the time. Each flat has its separate entrance door. The ground floor flat has been extended which makes the drainage arrangements more complex and prone to problems.

17. The main roof has been re-slated in the past 20-30 years. The roof, flashings and parapet walls and chimney stack were in reasonable condition. Some slates have slipped and merit some attention. The gutter to the main roof is PVC is in a poor condition causing water to overflow the gutters. The time has come for it to be replaced. The guttering to the bay window to the ground floor flat was also in a poor condition, but has recently been replaced by Mr Lucas, together with a new down pipe connection.

18. Problems arise from a conversion which was carried out to minimal standards. Sound insulation would not have been installed. At some stage, there were wooden floors in the demised flat which may have aggravated the impact of footfall in the first floor flat on the ground floor flat. It is apparent that Mr Buckley has taken some steps to reduce the impact by laying carpets with a thick underlay. This was substantially thicker than the "2-3 mm" suggested by Mr Grall (at A1.239). However, this is unlikely to have achieved current sound insulation standards.

19. The problem of noise is exacerbated by the layout of the two flats. The current layout of the ground floor flat is to have two bedrooms at the front directly under the living space in the demised first floor flat.

20. The ground floor flat has been furnished to a high standard with kitchen and bathroom in excellent condition. The same cannot be said for the demised flat which is very basic and reflects the layout in the lease plan. The kitchen and bathroom are small and dated. A skylight has been installed to illuminate the roof space. Access is via a ladder in the kitchen. There was no evidence that the roof space has been used as living accommodation.

21. The demised flat is not currently being occupied. Mr Buckley confirmed that decorative works have been ongoing over recent weeks. There are three rooms in the flat which are available for living and/or sleeping accommodation. The manner in which these rooms have been used was not immediately apparent. The works which are being executed are minimal and of a decorative nature. The window in the bathroom was in a poor condition. It is an original timber window; the other windows having been replaced by UPVC units.

22. At the bottom of the stairs to the demised flat by the entrance door, Mr Buckley has cut an opening through the floor boards. It seems that this was done in response to a suggestion that there was a problem of rising dampness. This is the only area which the landlord was permitted to inspect at the joint inspection on 25 June.

23. We were shown the cracking to the ceiling and wall of the ground floor front room. This is the original ceiling which is now over 100 years old. There is now wood chip lining paper. We are satisfied that the cracking

and distortion is typical of a ceiling of this age. Whilst there was some evidence of historic damp problems, there is no evidence of a current problem. This ceiling should be compared with that in the rear bedroom which was replaced some ten years ago because of a leak. This is in an excellent condition.

24. The floor boards had been lifted by the window in the front bedroom in the demised flat. There was no evidence of dampness affecting the ceiling of the ground floor flat. There was some staining to the brick work at the front of the property caused by the defective guttering. This would not have caused any water damage to the ceiling of the first floor flat.

25. Mr Lucas suggested that was a smell of damp in the meter cupboard under the stairs. Stop cocks are situated in the cupboard. A number of items are stored there. There is little air movement. There did not seem to be any significant problems of dampness. The state of the timbers reflects their age.

26. Neither was there any evidence of high moisture levels in the party wall of Nos. 46 and 48. We cannot exclude the possibility that condensation may have been an issue if the demised flat had been occupied by more than a single family.

The Lease

27. The Respondent's lease, dated 8 July 1981, is at A37-58. It grants a term of 99 years from 24 June 1979. Mr Lucas initially suggested that there were a number of shared responsibilities and that Mr Buckley was wrongly using the roof space. Neither contention was correct. The demise of the flat includes the roof and roof space and the external walls to the flat. A critical factor is the horizontal division between the two flats. This is a horizontal plane following the line of the lower edge of the floor joists. Anything above this falls within the demise (and the repairing obligation) of the first floor tenant. The lease clearly delineates the respective obligations of landlord and tenant under the lease.

28. The lessee has no access to the rear garden. The lessee has only rights in respect of the area of the front of the property, namely (i) a right of access from the front gate to the front door of the flat and (ii) a right to place and maintain a dustbin in a defined area

29. The lease includes the following tenant covenants:

> (i) Clause 2(4): "To permit the Landlord or her agents or surveyors either alone or with workmen at all reasonable times to enter into and upon the Flat or any part thereof and to view and examine the

state and condition thereof and of the reparation of the same and also at any time or times during the last seven years of the said term to take a schedule or inventory of the fixtures fixed or fastened to the Flat or any part thereof"

(ii) Clause 3 (1) : "Put and keep and maintain the Flat and every part thereof in good and substantial repair order and condition generally and in particular as respects the structure decorative condition cleanliness and tidiness thereof and keep and maintain in good condition and state of cultivation the back and front garden land comprised in the Flat and all the paths of and on the said property and in particular the paths of and on the said property and in particular the path leading from the front gate or entrance of the said property to the front entrance of the property and without prejudice to the generality of the foregoing to keep and maintain in such state of repair order and condition all floors floor joists walls and party walls (both exterior and interior) pipes and drains sewers conduits wires and cables the tanks and cisterns in the roof space serving solely the Flat) and all foundations land boundaries fences and gates roofs and roof rafters and timbers as for part of the Flat Provided that before carrying out repairs to any other flat forming part of the said property the Lessee will (except in the case of emergency) give not less than 7 days' notice in writing to the said occupier or occupiers of the Lessee intention so to do and in carrying out any of the said repairs the Lessee will take all such reasonable steps and precautions so as to cause as little damage disturbance and inconvenience as possible to such occupier or occupiers of such other flat and will make good all damage done thereto."

(iii) Fourth Schedule, paragraph 1: "Not to use or occupy the Flat nor permit the same to be used or occupied for any purpose whatsoever other than as a private self-contained residential flat in the occupation of <u>one family only</u>"

(iv) Fourth Schedule, paragraph 2: "Not (save in the course of executing repairs pursuant to other provisions contained in this Lease) to do or permit or suffer to be done on the Flat or any part thereof anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Landlord or the lessees or occupier or occupiers for the time being of the said Ground Floor Flat".

(v) Fourth Schedule, paragraph 7: "Not to throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks baths lavatories cisterns tanks or waste or soil pipes or out of the windows of the Flat".

(vi) Fourth Schedule, paragraph 13: "To ensure that the Lessee and all persons coming to or leaving the Flat close the front door of the

Property (and ensure that the lock of such front door is not left on the latch) after entering and after leaving the Property)".

30. By Clause 5, the landlord covenants to give the tenant quiet enjoyment of his flat.

The Law

31. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides:

> (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.

32. A particular feature in this case is the alleged problem of noise nuisance from the upstairs flat affecting ground floor flat. We have heard no evidence from an acoustic expert as to whether the sound insulation between the two flats is ineffective against the noise generated by the normal and ordinary user of the first floor flat. It is possible that the property complied with the property regulations at the time of the conversion, but would not comply with current regulations.

The Background

33. On 24 September 1996, Mr Buckley acquired the leasehold interest in the first floor flat (A1.68). His lease is dated 8 July 1981. At some stage, he installed Velux windows to the rear of the roof space in his flat.

34. On 8 July 2016, Mr Lucas and Ms Barrington acquired both the freehold interest in the property (A1.60) and the leasehold interest in the ground floor flat (AA64) for £750,000. Their lease is dated 14 January 1980. The front page of the Particulars of Sale is at T1.75. Mr Lucas describes how the state of the property was tired and in need of attention, both internally and externally.

35. Mr Lucas described how problems started soon after they moved into the property in August 2016. The upstairs flat was occupied by three young men. They were not related to each other and came and went from the flat independently. They regularly held parties and played loud music at unsociable hours. They jumped up and down causing their ceiling to shake. They left the front door open. There was a strong smell of cannabis emanating from the flat. These allegations are corroborated by a number of complaints which were made to the London Borough of Ealing ("Ealing") between 2 October 2016 and 20 January 2017 (at A1.143-147). This includes complaints of noisy events, laughter and music between 03.00 and 05.00 on 1 November 2016 and 20 January 2017.

36. Mr Lucas stated that he had difficulty in communicating with Mr Buckley as he only had an e-mail address. Mr Buckley declined to provide either a correspondence address or a phone number. On 23 October 2016, Ms Barrington left a message for Mr Buckley to make him aware of the noise caused by his tenants. Mr Buckley's response was "in my experience you would be in a position to buy my flat and be £300k up" (A1.209). This was not an acceptable response to the complaints. Mr Lucas also contacted Mrs Buckley. In her statement, she asserts that Mr Lucas "was rude to me". She was not willing to assist in resolving the problems on the ground that she had no legal interest in the property.

37. On 9 January 2017 (at T1.77), Ms Barrington e-mailed Mr Buckley complaining that the noise was becoming intolerable. She complained about "banging base music" and "comings and goings in the middle of the night with a number of people turning up at all hours". She noted that they had had to complain to Ealing. An alternative solution would be for them to buy his flat for £250k. On 22 January (at T1.37), Ms Barrington followed up the suggestion that they might purchase his flat and noted that they would be duty bound to extend his lease, were he to seek a lease extension.

38. On 1 February 2017 (At A1.102), Mr Lucas e-mailed Mr Buckley seeking details of his home address. He raised a number of issues that they needed to discuss. On 2 February (at A1.103), Mr Buckley responded

merely stating "Ok Richard". On 1 March (at T1.51), Mr Buckley wrote more constructively stating that the tenants' contract would not be renewed. When the flat was vacant, the old floor boards would be removed, sheets of ply would be installed and rock wool would be inserted between the rafters. It seems that some works were done when the flat became vacant and there is a receipt from Carpetright, dated 9 April 2017 (T1.8).

39. On 3 April 2017 (at A1.163), Mr Lucas e-mailed a "letter before action". The alleged breaches included the following: (i) noise nuisance from the demised flat. This included very loud music, partying and loud voices. The noise often extended to the early hours of the morning. (ii) Keys being left on display outside the front door. (iii) The door to the flat being left wide open. (iv) Rubbish being left outside the property. (v) The number of people who "frequent" and/or "stay" at the flat. (vi) Cigarette buts thrown out of the windows representing a potential fire risk; and (viii) The absence of effective noise insulation. On 4 April (at T1.51), Ms Barrington e-mailed complaining that the tenants had not moved out. She had understood that they would move in March. On the previous night, people had arrived at 00.00, 01.00 and 06.30. The tenants left a set of keys outside.

40. On 14 May 2017 (at A1.104), Mr Lucas sent a further e-mail. He again requested a correspondence address. He complained that sound insulation works had not yet been completed. Mr Buckley would need to ensure that any new tenants would not cause a nuisance. He complained that a metal skeleton of a mattress had been dumped in the front garden. The chimney required repointing. Ms Barrington responded on the same day (at A1.105): "I will reply to your concerns in due course despite being in negotiations".

41. On 17 May 2017 (at A1.114), Mr Lucas e-mailed stating that he had met two very young men who he understood might be their new neighbours. He inquired about their hours of work. He noted that one of the men was wearing a vest displaying "Its good to smoke weed". He noted that some work was being done to improve the sound insulation. Later that day (at T1.40), Mr Lucas sent a further e-mail complaining of his "many sleepless nights". Later that evening, Ms Barrington responded (at T1.55) stating that a builder had inspected the chimney and that work was required to the front gutter to prevent water ingress into the small bedroom. On 7 August 2018 (at A1.94), Mr Buckley wrote that the chimney had been repointed at a cost of £400. He sought to set-off 50% of the cost against the ground rent.

42. On 1 June 2017, new tenants moved into the demised flat. It seems that they were two Polish brothers called Dawid and Damian Bakowski. Later in the year, Dawid's wife stayed at the flat with a young child for a significant period of time. On 10 January 2018, neighbours had to call the police because the noise and the behaviour of the tenants was so

extreme. In September 2018, Dawid moved to a flat in Hounslow, but Damian stayed on with a friend (see A1.116).

43. On 16 October 2017 (at A1.106), Mr Lucas offered to install sound insulation at his own expense. On 21 October, Mr Buckley responded in these terms: "You can buy me a few pints and we will discuss your forthcoming planning application and the floorboards. Hopefully jargon free". On 23 October (at A1.107), Mr Buckley sent a further e-mail: "Please note that I am using the yahoo again as it was hacked from someone in Russia". This matter did not seem to progress. On 9 February 2018 (at A1.109), Mr Lucas sent a further e-mail about sound insulation, this time offering to split the cost. He stated that as there is now a family upstairs, the noise is unbearable. Mr Buckley's response was "£450k". On 21 February (see A1.110). Mr Buckley telephoned Mr Lucas' Head of Chambers. Mr Lucas took this as a form of harassment. Mr Buckley's behaviour was not acceptable.

44. On 14 April 2018, there was a flood of excrement into the garden. Mr Buckley paid £310 to clear the drain (see A1.169). There are photographs of the drains at A1171-172. On 19 April (at A1.169), Mr Buckley responded stating that the problem was to do with the complex drainage arrangements at the property. There are two manholes. The drainage was made more complex when the rear extension was added to the ground floor flat. Mr Buckley states that two such incidents have arisen in the previous 12 years. We inspected the drainage arrangements. We are satisfied that this was an isolated incident and cannot be attributed to untenant-like behaviour by the tenants in the demised flat.

45. By this stage, the Applicants had instructed Mr Joseph Green of Judge and Priestley, Solicitors. In June 2018, Mr Green arranged for Mr Flowers, a Surveyor, to inspect the property. He provided a report, dated 5 June, but this has not been disclosed by the Applicants. In a letter dated, 21 September 2018 (at A1.87), he describes this as a preliminary inspection of the first floor flat which did not involve any exposure of the structure. He inspected the separating floor between the two flats. However, there were fitted carpets in the demised flat which he did not lift.

46. On 30 July 2018 (at A1.24), Mr Green wrote to Mr Buckley seeking access to inspect the state and condition of the flooring and joists in the demised flat on 22 August. The letter refers to Mr Buckley having been asked to identify five suitable dates on numerous occasions. On 31 July (at A1.26), this request was confirmed by e-mail. On 12 August (at T1.62), Mr Buckley declined to provide access on health and safety grounds. He provided a letter, apparently signed by Mr Bakowski stating that the fine dust would adversely affect his child's health. On 16 August (at A1.89-90), Mr Green described the steps that would be taken to limit the amount of fine dust. The contractor would make good any

damage that was caused. On 21 August, the Applicants installed a CCTV camera which Mr Buckley took as an invasion of his privacy.

47. In a report at A1.91, Mr Redston describes how he attended on 22 August, but was refused access to the demised flat. However, he did inspect the ground floor front bedroom and drilled a small hole in the ceiling. He saw evidence of possible dry rot in the timber. He was also concerned about the state of the ceiling plaster and walls in this room. Mr Redston (at A1.92) complained that Mr Buckley had attended his office to complain about his inspection. The Tribunal is satisfied that Mr Buckley's refusal of access was unreasonable. Further, the conduct of Mr Buckley in attending Mr Redston's office was not acceptable.

48. At about this time, Dawid Bakowski gave notice to leave the demised flat (at T1.66). He asked Mr Buckley to return his deposit of £1,000. He complained that the Applicants had called the police. He objected to the CCTV camera which had been installed. He referred to his wife and child as being on a visit from Poland.

49. On 9 September (at A1.116), Mr Buckley notified the Applicants that Mr Dawid had moved to Hounslow, but his brother would remain in occupation with a friend. Mr Lucas states that thereafter, three men lived at the flat, occasionally with their wives. On 24 September, Mr Buckley reported his tenants to the police for smoking cannabis (A1.166). On 1 October (at A1.151), police attended in response to a complaint that the tenants were smoking cannabis. Mr Lucas has produced a number of photographs (at A1.121-138) taken between 15 September and 9 December 2018, showing three families with their own keys, accessing the demised flat. In a letter, dated 12 December 2018, sent by Lancasters to the Tribunal pursuant to the Directions given at the CMH, the occupants were identified as Damien Bakowski, Michael Kecik and Val Marcen.

50. At this stage, Mr Buckley instructed Lancasters, Solicitors. On 6 September 2018 (at A1.93) Lancasters wrote to Mr Green inquiring why access was required. They blamed the actions of the Applicants for the loss of Mr Buckley's tenant. An inspection which had been arranged for 13 September was cancelled.

51. On 18 September 2018 (at T1.1), Judge and Priestley sent a letter before action. The alleged breaches included the following: (i) Refusal of Access; (ii) Sub-letting the Property to two families; (iii) Nuisance; (iv) Rubbish in Lavatory and Pipework; and (v) Failure to Close Front Door. Complaint was also made of the large number of e-mails which Mr Buckley had sent to the Applicants and to Mr Green. Complaint was made that Mr Buckley had told Mr Green that when he returned from Ireland, he would attend his offices to "get his measure". The Respondent was asked to confirm that he would provide access.

52. The following incidents illustrate the tone adopted by Mr Buckley:

(i) 27 September (at A1.95) an e-mail read: "The idea of family has changed considerably. If you insist on a conventional family then I will let out There are refugees that through the council are begging"..... "It appears that an inspection is imminent for the reasons given this will open A can worms. I can say you are the author of your own doom".

(ii) 2 October (at A1.96) an e-mail stated: "Your surveyors have not clocked it".

(iii) On 9 November (at A1.188), the e-mail enclosed a £1,000 bill from Lancasters with a message: "would you be so kind to sort this out asap". Next day. Mr Buckley attended the Applicants' flat and banged on their door with his fists. He shouted: "come out" and "I won't leave until you pay my solicitor's bill". The Applicants felt trapped in their flat and called the police.

(iv) On 12 November (at A1.201), he stood outside the property with a small placard which read: "Old Drunk Irish Man".

53. On 2 October 2018 (at T1.4), Judge and Priestley agreed to park the issues between the parties in order to facilitate an immediate inspection of the flooring and joists in the demised flat. On 13 October, access was refused. On 15 October, access was permitted, but an intrusive inspection was refused.

54. On 21 November 2018, the property was inspected by (i) Mr Tony Grall, from West London Party Wall Surveyors for the Applicants (at A1.230); and (ii) Mr Matt McRoberts, from Brittain Hadley, for the Respondent (at T1.21). Unfortunately, this was not a joint inspection. There are significant differences in the findings of the two experts. There has been no attempt to arrange a meeting for the experts to discuss their findings. Further, whilst the Respondent gave access to Mr Grall to inspect the first floor flat, the Applicants did not afford Mr McRoberts access to the ground floor flat. He was thus unable to inspect either the ceiling or wall of the front bedroom. We consider their reports under Issue 2.

55. On 25 November (at A1.98), Mr Buckley sent the Applicants an extract from a surveyor's report which suggested that there was an area of high moisture in the party wall with No.48. He wrote on it: "I am much relieved that I am not affected per the Survey. The bottom flat is full of it". Next day (at A1.99), Mr Lucas asked Mr Panter, the Solicitor at Lancasters, to clarify the nature of the report. Mr Panter agreed to contact his client and revert back. Later that day (at A1.100), Mr Lucas sought access to inspect as a matter of urgency. On 9 November, the Applicants issued their application to this Tribunal. On 26 November,

Mr Panter responded that no inspection would be permitted before the CMH which was fixed for 4 December.

56. The Respondent did not clarify the origin of this report. However, it is now apparent that this extract came from a survey which was carried out in 1996 (see T1.72). It has no current relevance. It was rather raised by Mr Buckley to sow unnecessary concerns in the minds of the Applicants. Such behaviour is not acceptable.

57. This case was listed for hearing on 14 and 15 March 2019. Mr Buckley states that the last tenant left on 31 January. Mr Buckley complains that his locks were glued on 8 March. There is no evidence that the Applicants had any involvement in this.

58. On 14 March, the case was adjourned on the suggestion that the Applicants would purchase the demised flat for £365k. By 15 March, it became apparent that the Applicants could not raise the necessary finance.

59. On 18 March, the Applicants were in the Isle of Wight. They accessed their CCTV (see A3.1-4) and noted that a man was attempting to gain access to their flat. They called the police. It is apparent that that man was Mr Tim Burke. The Applicants returned to their flat next day. At about 23.00, they were woken by loud music and banging from the upstairs flat. They knocked on the door and Mr Burke came down with a scraper. He stated that he was the new tenant, He was confrontational. They called the police who required Mr Burke to leave. On 27 March, the Applicants heard shouting outside their flat. Mr Buckley was outside with Mr Burke (see A3.5-7). Mr Burke was shouting: "come out and we'll see". Mr Burke returned a few days later and moved into the flat. He played loud music between 23.00 and 00.00. The Applicants decided that they could no longer stay at their flat and have stayed with their respective families. On 19 May, they returned to their flat and noted that paint had been dropped onto the pathway (at A3.8-10). This seems to have been deliberate.

60. Mr Burke has provided a statement (at R2.9) in which he states that he never stayed a night at the flat and was not a tenant. He states that on 18 March, he had been confused and had tried the wrong lock. He was not called to give evidence. We do not accept this account. We rather conclude that Mr Buckley was upset that the Applicants had reneged on their agreement to purchase his flat. He intended to make their life intolerable.

61. In his second witness statement of 30 May, Mr Lucas described the unacceptable behaviour of Mr Buckley since the hearing on 14 March. This has included:

(i) Numerous e-mails (at A3.16-98). For most of this time, Mr Buckley was in Ireland. Mr Buckley attached photos of various properties in Ireland, including the house where he was born. On 22 March, Mr Buckley wrote: "you are now fighting for your reputation and I am fighting for my pension. You are checked mated civilly and criminally" (A3.28). When questioned about this before the tribunal, Mr Buckley stated: "I put suspects on my list. I am preparing a statement for my criminal case".

(ii) Mr Buckley contacted Mr Lucas' Chambers. On 1 May, he contacted the clerk at Church Court Chambers, his former Chambers (A3.43-47). On 13 May, he contacted his current Chambers at Farringdon Chambers. He threatened to visit Mr Lucas' Head of Chambers. He stated "I will not leave. Hopefully you will call the police and I will make sure I will be charged" (A3.84).

(iii) Mr Buckley made a number of telephone calls to Mr Grall. Mr Buckley sought to persuade him from attending the tribunal. He has also sent Mr Grall a number of e-mails. Mr Grall has become "nervous" because of Mr Buckley's conduct.

(iv) Ms Barrington described how on 2 June; Mr Buckley had e-mailed a photo of her standing outside Carpetright in Brentford. She did not consider his presence outside Carpetright to be coincidental. On 4 May, he had e-mailed her stating "I am sorry to hear that John and you have broken up. I would like to have a coffee with you" (at A3.63). This was not true.

62. We are satisfied that these incidents occurred. Mr Buckley's presence in Brentford was not coincidental. All this conduct by Mr Buckley is unacceptable.

Our Determination on the Alleged Breaches

Issue 1: Refusal of Access

63. By clause 2(4) of the lease, the landlord reserves the right to enter the flat to view and examine its state and condition at all reasonable times. We are satisfied that Mr Buckley is in breach of this covenant:

(i) 22 August 2018: We are satisfied that Mr Buckley unreasonably refused access to Mr Redston. Mr Buckley subsequently attended Mr Redston's office. There was no justification for the visit and we find that it was intended to harass Mr Redston (see [47] above).

(ii) 15 October 2018: Whilst Mr Buckley permitted access, he declined to permit an intrusive inspection. Again, this was unreasonable. We

note that access had also been arranged for 13 October, but this had been refused at the last moment (see [53] above).

(iii) On 26 November 2018: Access was sought as a matter of urgency. This was refused. Access was only sought because of the extract from the surveyor's report which Mr Buckley had sent the previous day. This had been sent maliciously, as the extract came from a survey in 1996 (see [55] to [56] above).

64. The Tribunal encouraged the parties to arrange a joint inspection on 27 June. It was anticipated that Mr Buckley would arrange for his expert to attend. Unfortunately, he did not do so. Mr Buckley only permitted Mr Grall to inspect the bottom of the stairs. Mr Buckley states that it was his understanding that the inspection was to be restricted to the issue of rising dampness. The Tribunal had anticipated that the inspection would extend to all areas of concern.

65. Mr Buckley must recognise that it is in the interests of all parties to agree what works, if any, are required to the property and whether the liability for those works lies with (a) the lessee of the first floor flat; (b) the lessee of the ground floor flat; or (c) the landlord. It is also in the interests of all parties to investigate what works, if any, are required to improve the sound insulation between the flats. If Mr Buckley's intransigence continues, both parties are likely to find that the value of their respective leases are substantially reduced.

Issue 2: General Maintenance

66. The Tribunal is not satisfied that Respondent is in breach of his covenant to repair and maintain his flat. We have had regard to the reports of both Mr McRoberts and Mr Grall. Having inspected the property, we find Mr McRobert's report to be the more compelling.

67. A number of issues have been raised:

(i) The state of the ceiling in the ground floor front room. The Tribunal could not see any evidence of current dampness. We summarise our conclusions from our inspection at [23] above. We note that Mr McRoberts was not invited to inspect the ceiling when he attended on 21 November 2018. The photograph produced by Mr Buckley (at T1.13) confirms our view that the current state of the ceiling largely reflects its age. This assessment is shared by Mr Alan Green (see T1.5). We saw no evidence of subsidence. The cracks are no more than settlement.

(ii) Rising Dampness: The Tribunal could see no evidence of rising damp. Mr Buckley has lifted the floor boards at the bottom of the stairs and no evidence of dampness was apparent.

(iii) The Tribunal did not see any evidence of dampness in the meter cupboard under the stairs (see [25] above).

(iv) Mr Buckley has caused unnecessary concern about there being an area of high moisture in the party wall (see [55] above). Mr Buckley should have disclosed the full report which seems to date back to 1996. The manner in which Mr Buckley has raised this was not acceptable.

68. There may well be a problem of inadequate sound insulation between the two flats. However, we have not heard evidence from acoustic experts as to whether the sound insulation between the two flats is ineffective against the noise generated by the normal and ordinary user of the first floor flat. The Applicants complain of unreasonable conduct by the upstairs tenants. If the sound insulation is inadequate, this would aggravate any problem.

69. We have set out our findings from our inspection at [18] above. We reject Mr Grall's conclusion that the underlay is only 2-3 mm. We prefer Mr McRobert's finding that the underlay is closer to 10mm. The e-mail from Carpetright (at T1.17) refers to Mr Buckley purchasing underlay of 11mm thick. Inadequate sound insulation between flats raises complex issues of law. The parties are aware that the House of Lords addressed these difficulties in *Southwark LBC v Mills* [2001] 1 AC 1. If the sound insulation is inadequate, the solution could either be to improve the sound insulation in the upstairs flat (underlay, carpeting etc) or in the ground floor flat (an artificial ceiling). The issue would then arise as to whether the cost should be borne by (a) the lessee of the first floor flat; (b) the lessee of the ground floor flat; or (c) the landlord. In the absence of agreement between the parties, this may be a matter for the local housing authority.

70. We have noted that some works are required to the slates and the guttering. Mr Grall noted that there was no gutter to the front bay roof window roof, which allowed rainwater to drip down the brick work below, possibly causing water ingress to the bay in the ground floor front room. This was the responsibility of the Applicants and they have now addressed this. We agree that Mr Buckley should replace the guttering at the front and rear of the property. Mr Grall estimates the cost at some £1,000 to £1,500. Now that the Applicants have discharged their responsibilities, we would hope that Mr Buckley would discharge his.

Issue 3: Subletting to More than One Family

71. By paragraph 1 of the Fourth Schedule of the lease, Mr Buckley covenants not to use or occupy the flat nor permit the same to be used or occupied for any purpose whatsoever other than as a private self-contained residential flat in the occupation of one family only. We are satisfied that Mr Buckley has been in breach of this covenant:

(i) When the Applicants moved into their flat in August 2016, the upstairs flat was occupied by three young men. They caused a nuisance (see [35] above).

(ii) In June 2017, the flat was occupied by two Polish brothers, Dawid and Damian Bakowski (see [42] above). They permitted their wives and children to stay. It is probable that other people were allowed to stay.

(iii) Between September and December 2018, Mr Lucas recorded three families with their own keys using the flat (see [49] above). By this stage, Dawid Bakowski had left the flat, but his brother retained an interest in the flat.

72. At the time of our inspection, the upstairs flat was empty. Mr Buckley is carrying out some works with a view to re-letting the flat. We have seen no evidence that Mr Buckley has used the roof space room for living accommodation. However, we find that the three living rooms have been used as sleeping accommodation.

73. It is apparent that Mr Buckley resents the fact that the Applicants, as his landlord, are able to restrict his use of his flat. Nuisance problems have arisen. These may have been aggravated by inadequate sound insulation between the flats. We are satisfied that Mr Buckley has taken inadequate steps to abate the nuisance.

74. On a number of occasions, the Applicants have requested a copy of the tenancy agreements issued to any tenant. The lease does not give the Applicants the right to this information. However, the most straight forward manner for the Respondent to satisfy the Applicants that he is complying with the terms of his lease is to provide them with a copy of any tenancy agreement. Any letting should require the payment of a deposit, as a safeguard against untenant-like behaviour. Mr Buckley has a common interest with the Applicants in ensuring that there are good relations and effective communication between his tenant and the occupants of the ground floor flat.

Issue 4: Nuisance

75. By paragraph 2 of the Fourth Schedule, Mr Buckley covenants not to do or permit anything to be done in his flat which causes a nuisance, annoyance or inconvenience to the Applicants. We are satisfied that Mr Buckley has breached this covenant. The Applicants have provided a schedule cataloguing a number of incidents of nuisance at A1.28-28B. We find that the following breaches are proved:

(i) There have been a number of noisy parties, some of which have been reported to Ealing and to the police;

(ii) Cigarette butts have been thrown out of the window into the rear garden. There are photos at A1.149-150.

(iii) Cannabis has been smoked in the flat. Neighbours have reported this to the police.

(iv) The tenants in the upstairs flat have slammed the front door without any adequate consideration to the impact on the Applicants.

(v) A bicycle has been regularly left in the front garden partially obstructing the pathway. The lessee of the first floor flat has no right to use this area for this purpose. There are photos at A1.157-161.

76. Mr Buckley has shown no proper understanding of the impact of this conduct on the Applicants and has taken no adequate steps to abate the nuisance.

Issue 5: Rubbish in Lavatory and Pipework

77. By paragraph 7 of the Fourth Schedule, Mr Buckley covenants not to throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks, baths, lavatories, cisterns, tanks or waste or soil pipes. We are not satisfied that Mr Buckley has breached this covenant.

78. The complaint relates to the incident on 18 April 2018 when there was a flood of excrement into the garden (see [44] above). We are satisfied that the flood was an isolated incident which cannot be attributed to untenant-like behaviour by the tenants in the upstairs flat.

Issue 6: Failure to Close Front Door

79. By paragraph 13 of the Fourth Schedule, Mr Buckley covenants to ensure that the lessee and all persons coming to or leaving the flat close the front door of the property and ensure that the lock of such front door is not left on the latch after entering and leaving the Property. We are satisfied that Mr Buckley has breached this covenant. There have a number of occasions when the tenants have left the door open between November 2016 and November 2018. There are photographs of a number of occasions on which the door was left open at A1.174-185. There is a schedule of 13 dates on which the door was left open at A1.101.

80. Mr Buckley dismissed the concerns of the Applicants on the basis that there are separate front doors to the two flats. We do not accept this. If the door is left open, trespassers can gain access to the first floor flat. This can compromise the security of the ground floor flat. Any trespasser could cause a nuisance in the flat adversely affecting the

ground floor flat. Trespassers could also damage both the flat and the property.

Refund of Fees

81. The Applicants have made an application for a refund of the fees that they have paid in respect of the application pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). We understand that fees have been paid in the sum of £300. In the light of our determinations above, we are satisfied that it is appropriate to make such an order.

Rule 13 Costs Application

82. Mr Lucas indicated that the Applicant were also seeking a penal costs order under Rule 13(1)(b) of the Tribunal Rules in the sum of some £23,000. If they are minded to make such an application, they must issue a formal application to the Tribunal and we will make directions. The Applicants should understand that this is normally a "no costs" jurisdiction and an award of penal costs is only made in exceptional circumstances. An applicant must establish that the other party acted unreasonably in defending or conducting the proceedings; the conduct must relate to the proceedings, rather than the underlying dispute. It is to be noted that substantial costs were occasions when the proceedings were adjourned on 14 March 2019. This adjournment did not arise from any unreasonable conduct on the part of the Respondent, but rather enable the Applicants to purchase his flat. In the event, they were unable to arrange finance for the proposed purchase. Before making such an application, the Applicants should have regard (i) to the decision of the Upper Tribunal in *Willow Court Management Company* [2016] UKUT 290 (LC); (ii) any entitlement to contractual costs under Clause 2(9) of the lease.

Next Steps

83. The Tribunal has found that the Respondent has breached a number of covenants in his lease. Tensions have arisen between the Respondent and the Applicants since shortly after July 2016, when the Applicants acquired both the freehold interest in the property and the leasehold interest in the ground floor flat. We are concerned that that relationship has now broken down irretrievably. The breaches which we have found are serious. The gravity of these must be seen in the context of how Mr Buckley has reacted when the Applicant have sought to raise them. We have recorded a number of occasions when we have found his conduct to be unacceptable.

84. The next step will be for the Applicant to apply to the County Court to forfeit his lease. We advise the Respondent to seek further legal advice

at the earliest opportunity. He must give urgent consideration as to what he can do to ensure that no further breaches occur if he is to persuade a Court that he should be granted relief from forfeiture.

Judge Robert Latham
24 July 2019

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).

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AJ/LBC/2018/0088**
Property	**:**	**46a Antrobus Road, Chiswick, London, W4 5HZ**
Applicant	**:**	**John Joseph Mac Lucas and Clara Barrington**
Representative	**:**	**In person**
Respondent	**:**	**Richard Buckley**
Representative	**:**	**In person**
Type of Application	**:**	**Correction certificate**
Tribunal Members	**:**	**Judge Robert Latham** **Mike Taylor FRICS**
Date and venue of Hearing	**:**	**4 June 2019 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**24 July 2019**

CORRCTION CERTIFICATE

As Chairman of the Tribunal, which decided the above-mentioned case, I hereby correct two drafting errors in this decision pursuant to Regulation 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 as follows:

1. Paragraph 40 of the Decision, line 6: Substitute “Mr Buckley” for “Ms Barrington”.

2. Paragraph 44 of the Decision, lines 1 and 2: Substitute “Ms Barrington” for “Mr Buckley”.

Judge Robert Latham
18 September 2019