FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AW/LBC/2020/0020**
HMCTS code (paper, video, audio)	**:**	**V: VIDEOREMOTE**
Property	**:**	**FLAT 1 (Garden Flat) 52 BLENHEIM CRESCENT, LONDON W11 1NY**
Applicant	**:**	**Mr. DAVID WALKER**
Representative	**:**	**In Person**
Respondent	**:**	**Ms. RACHAEL TREADGOLD-LOWE**
Representative	**:**	
Type of Application	**:**	**Application for an order that a breach of covenant or condition in the lease has occurred, pursuant to s 168(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**JUDGE SHAW** **Mr C GOWMAN MCIEH** **Mr A FONKA MCIEH CEnvH M.Sc**
Venue	**:**	**VIDEO HEARING**
Date of Decision	**:**	**22nd December 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote determination on the papers, which has been consented to by the parties. The form of remote hearing was V:VIDEOREMOTE. A face-to-face hearing was not held because of the pandemic. All necessary documents were in the bundle submitted to the Tribunal, the contents of which have been noted. The order made is as appears at the conclusion of this decision

INTRODUCTION

1. This case involves an Application, submitted under cover of letter dated 30th June 2020, made by Mr David Walker ('the Applicant") in respect of Flat 1 (Garden Flat) 52 Blenheim Crescent, London W11 1NY ("the Property"). The Application is made pursuant to s 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") and the Applicant seeks a determination from the Tribunal that there has been a breach (or, in this case, multiple breaches) of covenant. The leasehold owner of the Property is Ms Rachael Treadgold-Lowe ('the Respondent"), pursuant to the terms of a lease dated 9th March 1976, for a term of 125 years. The lease was purchased in 2004 for a price of £342,500.

2. The Property is part of a converted house, comprising the subject property, which is partly on the ground floor and partly basement, with 4 further flats on separate floors above, and numbered 2-5. The Applicant is both the director of the company leasehold owner (J Walker & Son Limited) of the 2 top flats (Flats 4 and 5) and the freehold owner of the house of which the Property is part. Flat 5 is a relatively recent addition to the building, having been added to the building by the Applicant or his company.

3. Directions were given in the case by the Tribunal on 29th September 2020, and a video hearing took place on 17th December 2020, attended by the Applicant in person, who also represented himself. The Respondent attended neither the Directions Hearing nor the main hearing of the Application. She was required by the Tribunal Directions to submit her Statement of Case and documents to the Tribunal by 3rd November. She was warned at paragraph 11 of the Directions that the Tribunal may decline to hear evidence from any witness who has not provided a statement in accordance with the Direction. The Respondent supplied no documents of any kind to the Tribunal. The day before the main hearing was due to take place on 17th December, the Respondent telephoned the Tribunal Case Manager, requesting an adjournment of the hearing, because she had "*been away*." She was told that such applications

were required to be in writing. The Tribunal had received no such written application on the date of the main hearing, and proceeded with the case.

THE APPLICANT'S CASE

4. The Applicant's case is as set out in his application at Section 13, and expanded upon in evidence before the Tribunal. In summary, it is that there is a history of poor relations between the parties to these proceedings, originating from the fact that the Respondent has persistently failed, on his case, to pay service charges, and also there are certain service meters situate and water pipes within the demise of the Respondent, in respect of which, again on the Applicant's case, she has always been uncooperative in affording access. There is also some drainage pipework running under the Property, to which again she has been reluctant to afford access. This lack of co-operation has presented problems in the past and has now become acute for 2 main reasons. First, the electrical wiring in the building is old, probably in breach of current regulations, and needs replacement. The meters controlling the electricity for the building are in the Respondent's demise, and she has consistently failed to give access. Quite apart from the breach of regulations, the old wiring may present a health and safety risk to all occupants of the building

5. Secondly, the Applicant (or his company) obtained planning permission to carry out works of refurbishment to Flat 4, and to add a further flat (Flat 5) to the building. These works have been completed, but both flats are vacant and presently unlettable. This is because it has been impossible to gain the necessary access to the Property to enable power and water to be supplied to the 2 new flats. The water pipe serving the building is housed in a storage room within the Respondent's demise, as are the necessary electricity connections - and although repeatedly requested, such access has been denied.

6. The Applicant has written numerous letters to the Respondent requesting access for the above and other purposes. The Respondent has almost always ignored or failed to act upon such correspondence. An extra matter for concern is that the Applicant has been told by other owners or occupiers, that the Respondent's flat is in exceedingly poor condition and in particular that, following some water penetration years ago, there was a ceiling collapse in her kitchen. The ceiling has to date not been repaired, and some cardboard has been attached to the joists – presenting an obvious fire risk.

7. The Tribunal was also shown a signed statement from Mrs. Helen van der Merwe, dated 15th October 2020. Mrs. van der Merwe is the owner of Flat 2 immediately above the Property, and she confirms that she has visited the Property and that there is indeed a large area of the kitchen ceiling which has

not been re-plastered, and which has been covered by stapling of cardboard to the ceiling joists. Given that the cardboard is above the kitchen stove, she is unsurprisingly alarmed by the fire hazard presented to all within the building. She has produced photographs which are in the hearing bundle, and which confirm the troubling state of the ceiling.

THE RESPONDENT'S CASE

8. As referred to above, the Respondent has failed to engage with these proceedings at all. The Application was made on or about 30th June 2020. Directions were given on 29th September 2020. No statement and no documents have been supplied, nor has there been any appearance at either the Directions or the case hearings. The Tribunal has thus been left in a position of not knowing the Respondent's case. It has had no evidence from the Respondent at all.

THE FINDINGS OF THE TRIBUNAL

9. The Applicant requests findings from the Tribunal to the effect that there have been breaches of several of the covenants in the Respondent's lease. These covenants are set out both at Section 5 of his Application, and at Section 13 where he makes a full statement. It is proposed to deal with these alleged breaches in turn below, and in respect of each allegation, to give the Tribunal's finding.

10. At Clause 4(5) there is a fairly standard form repairing obligation upon the Respondent *"to repair uphold cleanse maintain ….and keep the interior of the demised premises"* and *"to keep the….decoration of the interior in good order and condition."*

11. The Applicant himself cannot give direct evidence as to the state of the Property, because (and this is the main thrust of his application) he has not been allowed access by the Respondent. However, he relies on several pieces of evidence, which he says demonstrate the breaches upon which he relies:

    (a) at pages 51 and 52 of the hearing bundle are photographs of the Property, which the Respondent herself produced in the context of an earlier Tribunal hearing in June 2019. They illustrate, as well as other disrepair, precisely the gaping hole in the kitchen ceiling referred to above, the exposed joists, a makeshift electric light clamped or fixed at the edge of the wooden joists, and the cardboard precariously affixed to the joists.

(b) the Respondent told the Tribunal (and the Tribunal accepts) that he lived at Flat 4 during 2018 and 2019. He never once saw any contactors attending the Property for what would have had to be fairly extensive repairs, nor did the other flat owners or occupiers ever report such activity to him. The owners of Flat 2, above the Property, had had their own contretemps with the Respondent, and might have been expected to speak of such activity, had it taken place. Neither was any application made to the Applicant for permission to carry out any alterations for which licence would have been required.

(c) Mrs. Helen van der Merwe, a co-owner with her husband of Flat 2, immediately above the Property has written and signed a letter at page 53 of the bundle and produced 2 further photographs taken on an occasion when she was allowed access in June 2018. The damage was caused by water leakage from Flat 2, since resolved. She states in terms (and her photographs illustrate) that there was an area of about 3 feet square where ceiling plaster was missing and a cardboard sheet had been stapled to the ceiling. She was particularly concerned about the lack of fire protection and the fact that the cardboard would be *"very vulnerable to catching fire and potentially spreading to the flats above."* Moreover, it seems to the Tribunal that such a letter would be written in October 2020, and omit to mention that remedial works have taken place, had that been the position.

(d) the Applicant has received several repeated complaints from the basement occupiers or owners in the adjacent property at number 54, to the effect that damp is spreading and penetrating through the basement wall of the Property, which the Applicant, as freeholder, has been unable to inspect, and which is again consistent with general neglect. These complaints are alluded to in copy unanswered correspondence in the bundle, from the Applicant to the Respondent.

(e) finally, the Applicant has had contractors at the building for large parts of 2019/20, building the new flat and completely renovating and refurbishing Flat 4. On not a single occasion has there been any report to the Applicant of other contractors attending the site to carry out work of the scale necessary to rectify the condition of the Property illustrated in the photographs before the Tribunal.

12. It is correct to say that some of the above evidence is indirect and inferential, but none of it has been challenged by the Respondent, and the Tribunal is satisfied that on the balance of probabilities the Applicant has sufficiently demonstrated clear breaches of Clause 4(5) of the lease, and the evidence before it, the Tribunal so finds.

13. Clauses 4(10) – (13) of the lease contain 4 separate provisions requiring the Respondent to give access for particular reasons and particular persons (clause 4(10) on notice for the landlord or agents to view condition, clause 4(11)

permitting the landlord to enter to carry out repairs the result of tenant's breach of covenant, clause 4(12) for the purposes of carrying out repairs, clause 4(13) carrying out works to, amongst other things, water pipes and electric wires serving other flats in the building. The full terms of these provisions are set out in the lease contained within the bundle and in part at paragraph 6 of the Applicant's statement. There is voluminous copy correspondence in the bundle from page 36 to page 76, demonstrating repeated requests for access to which the Applicant is contractually entitled under the above covenants. Most of the correspondence is unanswered by the Respondent, including a letter dated 27th February 2020 from solicitors then acting for the Applicant, and which specifically warns of the possibility of a forfeiture application (see page 46). Once again, this letter receives no reply.

14. A good example of one of the many requests for access can be found at page 39, in the form of the letter dated 26th August 2020. In that letter, the Applicant requests access in respect of the upgrade of electrical works to the building, the works required to the water supply referred to above, an inspection of the Property for the purpose of ensuring that there is Health and Safety and Fire Protection compliance within the Property, and the water ingress to the adjacent basement flat at number 54. As with most of the other correspondence, the letter is ignored, and no access for any of these purposes or at all has been granted to the Applicant or his agents, save for one occasion when workmen were given a period of about 20 minutes according the Applicant, to commence the adjustments necessary for the water supply – but were not given subsequent access to finish the job.

15. The Tribunal is satisfied that breaches of the above-mentioned clauses relating to access, have been well made out on the evidence before it, and the Tribunal so finds.

16. Clause 4(18) of the lease precludes the Respondent from causing or permitting any *"waste spoil or destruction"* at the demised premises, or any act which may be or become *"a nuisance damage annoyance or inconvenience to the landlord…..or the owners or occupiers of the adjoining or adjacent flats."* The Tribunal is satisfied on the unchallenged evidence before it, referred to above, in respect of the long unrepaired damage and disrepair within the Property, and the complaints of percolating damp made by the occupiers of the adjacent property – that the Respondent is in breach of this clause too, and so finds.

17. At clause 4(16) of the lease the Respondent covenants to pay all expenses "*of and incidental to the preparation and service of*" a section 146 notice. Although the Applicant was able to show the Tribunal some largely legal costs which have been incurred in the preparation of these and subsequent forfeiture proceedings, there were was no clear evidence that the Respondent had been

asked to pay these sums by way of proper demand; the Applicant abandoned reliance on this ground at the hearing, and no finding of breach is made by the Tribunal under this head.

18. Finally, by clause 4(23) of the lease, the Respondent covenants not *"permit or suffer to be done …anything whereby any insurance….on the building or individual flats thereon may be rendered void or voidable, or whereby the rate of premium may be increased…."* The Tribunal is satisfied on the evidence before it, that the state of the kitchen as described above, and the repeated failure on the part of the Respondent, either to effect repairs herself, or to afford the Applicant the facility to carry out such repairs, constitutes a breach of this covenant. The fire and health and safety risk of the gaping hole in the kitchen ceiling and the stapling of a cardboard cover above a stove in the kitchen, at the very least put the insurance cover at risk of being voided or the premium increased.

CONCLUSION

19. For the reasons indicated above, the Tribunal finds that the Respondent is in breach of clauses 4(5), 4(10) -4(13) inclusive, 4(18) and 4(23) of the lease. No finding is made of any breach of clause 4(16) of the lease.

JUDGE SHAW **22nd December 2020**

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).