



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

**Case Reference** : **CAM/22UN/LBC/2022/0006**

**Property** : **Flat 4, Granville House, Granville Road,  
Clacton-on-Sea, Essex, CO15 6BX**

**Applicant** : **Sarum Properties Limited**  
**Represented by Sampson Coward LLP**

**Respondents** : **(1) Emma Jane Fletcher  
(2) Yorkshire Building Society**  
**Unrepresented**

**Date of Application** : **6<sup>th</sup> May 2022**

**Type of Application** : **Section 168(4) Commonhold and Leasehold  
Reform Act 2002 (“the 2002 Act”)**

**Tribunal** : **Judge J. Oxlade**

**Date of paper hearing** : **4<sup>th</sup> October 2022**

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**DECISION**

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**For the following reasons the Tribunal finds that the Respondent lessee is in breach of the covenants of her lease, specifically clauses 2(4), 2(5), 2(6), 3(6), 3(8), 3(15) and 2(8) as particularised herein.**

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**REASONS**

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1. The Applicant is the freehold owner of Granville House, which had been converted into five flats in the 1980's; the freehold title is unregistered and the

root title is a conveyance of property between Leslie Levine and Sarum Properties Limited, entered into on 31<sup>st</sup> July 1990.

2. The First Respondent is the lessee of the property, pursuant to a lease made between Leslie Levine and John Timms, entered into on 15<sup>th</sup> December 1988. On an unknown date the lease was assigned to the First Respondent, but her leasehold interest was registered with the land registry on 23<sup>rd</sup> January 2004. It is subject to a mortgage charged to the Yorkshire Building Society; in view of non-payment of her mortgage, she was evicted by her mortgagor, who is in possession, but remains the registered owner.
3. The material provisions of the lease are set out in Annex 1, hereafter attached.

*Alleged Breaches of covenant*

4. The Applicant's complaints can be summarised as follows:
  - (i) There is a history of service charge arrears
  - (ii) The First Respondent has failed to undertake necessary repairs to her flat, which the Applicant has been forced to undertake, for which the First Respondent has failed to make reparation.
5. In respect of (i) contrary to clause 3(15) the First Respondent has failed to pay her service charges and emergency repairs to abate the nuisance as required under clause 2(4). The evidence relied is service charge accounts starting in 2015 and which show from 2016 onwards repeated default; by 16<sup>th</sup> November 2021 there are arrears of £13,605 (pages 44 and 45 of the Applicant's bundle ("AB")).
6. In respect of (ii) the Appellant has caused nuisance by causing or permitting flooding in her flat, which has occurred repeatedly over at least 6 years, and so contrary to clause 3(6). This has led to damp and damage to flat 2, and which has impacted on the ability of the lessee of flat 2 to let it to tenants.
7. In 2016 a maintenance and inspection dilapidations report was prepared (page 118 of the bundle). In 2017 the Applicant's agent entered into flat 4 to repair leaks emanating from the bathroom within flat 4. This, the lessee of flat 2 complains, has caused damage to the fabric of the building, and which has not been repaired pursuant to the obligation to make good, clause 3(8).
8. There were gaps and holes visible around seals, and exposed rotting timber in the brickwork as led to damage to the render over the exterior. A schedule of condition was served on the First Respondent in 2017, and on 11<sup>th</sup> July 2018 (page 46 AB) a repair notice pursuant to clause 2(8), but the request to complete works within 6 months went unheeded.

9. In January 2022 a report was commissioned by the Applicant, and Wellings Chartered Surveyor provided a report (page 49 to 78 AB) which supports the allegations made above as to condition, disrepair, and damage.
10. The Applicant relies on the witness statement of Paul Alexander Church dated 14<sup>th</sup> July 2022, which details the protracted history of identifying leaks emanating from the First Respondent's flat, the particular sources of it, attempting to communicate/engage the First Respondent, and in default seeking remedial works to be done, absent of which the Applicant has effected them.
11. The First Respondent has failed to respond to the application or any evidence, and so her position is not known. The Second Respondent has filed no response to the application.

### Relevant Law

12. As a precursor to forfeiting the lease, section 168(4) of the 2002 Act provides that the Lessor must apply to the Tribunal for a determination to show that there have been breaches of the covenants in the lease. The consequence of doing so is that the Lessor can seek to forfeit the lease.
13. The burden rests on the Applicant Lessor to show on the evidence adduced on a balance of probabilities that the provisions of the lease have been broken by the actions/failures to act, of the Lessee.

### Findings

14. I have carefully considered the evidence adduced, the Applicant's submissions and the terms of the lease.
15. The Applicant has filed evidence to show on a balance of probabilities that over a protracted period there have been breaches of the lease by the First Respondent, as follows:
  - (i) In breach of *clause 3(15)* failing to pay service charges (pages 44 and 45) from 2016 onwards, to a significant degree (£13,605 at 16.11.21),
  - (ii) In breach of *clause 3(6)* causing nuisance, in breach of *clause 2(8)* failing to comply with a wants of repair notice, and in breach of *2(6)* failing to keep the interior/exterior in repair cause by repeated water leaks from multiple sources since 2016, which have been drawn to the attention of the First Respondent but ignored, and which has caused the Applicant to intervene, by undertaking inspections and then work,
  - (iii) In breach of *clauses 2(4) and (5)* the First Respondent has failed to pay the costs of abating the nuisance referred to in (ii) above.

16. The Applicant has adduced ample historic evidence of damage, disrepair, and attempts to encourage the First Respondent to remedy the problems, without success. The current condition of the flat is proven by the expert report provided by Wellings Chartered Surveyors, having undertaken an inspection, and which report contains ample photographic evidence to show that the flat is still out of repair.

17. In light of the above, I find that there are multiple breaches of covenant set out in 15(i)-(iii) above, some of which are continuing.

18. I therefore find that the Applicant has proved the case made under section 168(4) that the First Respondent is in breach of the lease, as aforesaid.

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Judge J. Oxlade

4<sup>th</sup> October 2022

## ANNEX 1

### **Material terms of the lease**

#### *To pay the costs of abating a nuisance*

Clause 2(4) “from time to time during the said term to pay all costs charges and expenses incurred by the Lessor in abating any nuisance in the flat”

#### *To pay section 146 and dilapidations notice costs*

Clause 2(5) (a) “ to pay to the lessor all costs and charges and expenses (including legal costs and fees payable to a Surveyor) which may be insured by the Lessor incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 whether by the Lessor or incurred in or in contemplation of proceedings under section 146 or 147 of the Act notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court”

Clause 2(5)(b) “to pay expenses (including Solicitors’ costs and Surveyors’ fee incurred by the Lessor of and incidental to the service of all notices and Schedules relating to wants of repair to the flat whether the same way will be served during or after the expiration or sooner of determination of the term hereby granted (but not relating in all cases to such wants of repair but incurred not later than the expiration or sooner determination or the said term aforesaid)”.

#### *Keep interior/exterior in repair*

Clause 2(6) “To maintain uphold and keep the whole of the flat including the interior and the exterior thereof and every part thereof in substantial repair throughout the term hereby granted (and so yield up to the Lessor on the determination of this lease) as if necessary to rebuild any parts that require to be built and to carry out all this work in a proper and workmanlike manner if the Tenant fails to comply with this covenant the Lessor may (but is not bound to) enter the flat and repair at the expense of the Tenant who shall repay such reasonable expenses on demand upon production of receipts”.

#### *Wants of repair notice*

Clause 2(8) “To permit the Lessor and his duly authorised surveyors and agents with or without workmen and others upon giving three days previous notice in writing at all reasonable times to enter upon the flat and take particulars of additions improvements... and to view and examine the state and condition of the flat... and the reparation of the same and of all defects decays wants and reparation found in breach of the covenants ... and to give notice in writing of any such defects ... to the Tenant who will with all proper dispatch and in any case within three months then next following will sufficiently repaid... it shall be lawful for the Lessor.. to enter

upon the flat and repair or put in order the same.. and the reasonable costs and expenses thereby incurred by the Lessor or his agents shall be repaid to the Lessor by the Tenant on demand upon production of receipts”

*Not to cause a nuisance*

Clause 3(6) “not to do or permit or suffer to be done anything upon the upper flat anything which may be or become a nuisance annoyance or cause damage to inconvenience to the Lessor or the occupier of the other flat or neighbouring owners and occupiers of whereby any insurance for the time being effected on the other flats of the building or either of them or any contents thereof may be rendered void or voidable or whereby the rate of the premium maybe increased”

*Make good damage to the building*

Clause 3(8) “ to make good all damage caused through the act of default of the Tenant or of any servant or agent or visitor of the Tenant (a) to any part of the building or the appointments or the fixtures and the fittings thereof and (b) to the premises of any other occupier or tenant of the Building and their Licensees and in each case to keep the Lessor indemnified from all claims expenses and demands in respect thereof”

*Pay service charge*

Clause 3(15) “in common with the tenants of the other flats in the building or the Lessor ...to pay one fifth of the costs of repairing the structures and other areas referred to in clause 5(6) hereof upon production of the appropriate receipts and the tenant shall with every payment of rent reserved hereunder pay to the Lessor the sum of £50 every half year in advance on account of the expenses incurred by the Lessor in carrying out his obligations under the terms of the clause 5(6 hereof...”