FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BF/LBC/2022/0061**
Property	**:**	**18 Framfield Court, Queen Anne's Gardens, Enfield EN1 2JJ**
Applicant	**:**	**Framfield Court Bush Hill Management Ltd**
Representative	**:**	**Knights**
Respondent	**:**	**Karl Henry Sunkersing**
Type of Application	**:**	**Breach of covenant**
Tribunal Members	**:**	**Judge Nicol** **Mrs A Flynn MA MRICS**
Date of Decision	**:**	**11th November 2022**

DECISION

The Tribunal has determined that the Respondent has not breached clause 2(17) or (18) of his lease of the subject property in respect of access to the property.

The Tribunal's reasons

1. The Applicant is the Respondent's landlord at the subject property. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent has breached the following clauses of his lease:-

> 2. THE Tenant HEREBY COVENANTS with the Landlord and the Company and with each of them as follows:-

(17) To permit the Landlord and the Company and their respective Surveyors and agents with or without workmen at all reasonable times upon reasonable notice during the said term to enter upon and examine the condition of the Flat and Garage and thereupon the Landlord or the Company may serve upon the Tenant notice in writing specifying any repairs necessary to be done and for which the Tenant is directly responsible under his covenant hereinbefore contained and requiring the Tenant forthwith to execute the same and if the Tenant shall not within twenty-one days after the service of such notice commence and proceed diligently with the execution of such repairs then to permit the Landlord and the Company and their respective agents to enter upon the Flat and Garage and execute such repairs and the cost thereof shall be a debt immediately due from the Tenant to the Landlord or the Company as the case may be and be forthwith recoverable by action

(18) Permit the Landlord and the Company and their respective Surveyors and agents with or without workmen and others at all reasonable times on reasonable notice to enter into and upon the Flat and Garage or any part thereof for the purpose of repairing altering or amending any part of the Building or garages and for the purpose of making repairing maintaining rebuilding cleansing lighting and keeping in order and good condition all sewers drains pipes cables watercourses gutters wires party structures or other conveniences and services common to the flats and garages or belonging to or serving or used for the Building and also for the purposes of laying down maintaining repairing and testing drainage gas and water pipes and electric wires and cables and for similar purposes and also for the purpose of cutting off the supply of water gas or electricity to the Flat and Garage or any other flat or garage in the Building in the case of emergency or in respect of the supply of water only where the Tenant or the occupier of such other flat and garage as the case may be shall have made default in paying his share of the water rate the person or persons exercising such right making good all damage thereby occasioned but without compensation for inconvenience thereby occasioned

2. The application was due to be addressed at a hearing but the Respondent has taken no part in the proceedings at all, having previously failed to respond to any of the Applicant's correspondence. Therefore, the Tribunal acceded to the Applicant's request to determine the application on the papers, consisting of a 273-page bundle from the Applicant's solicitors.

3. It is important to note that the Tribunal's role under the Act is to determine simply whether there has been a breach of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture or whether the landlord has an alternative remedy is irrelevant at this stage.

4. The property is a second-floor flat in a 3-storey block of 18 flats. A neighbour noticed water leaking from an overflow pipe coming out of the property. The excess water appears to have saturated a wall of a lower flat and places water onto the path below so as to produce a hazard to passers-by, particularly when it is cold enough to freeze. Understandably, the Applicant's agents, Carringtons Residential Management Ltd, have been keen to resolve the leak.

5. The Applicant has provided a witness statement from Ms Lauren Cassidy, a Property Manager for Carringtons, in which she describes how she attempted to contact the Respondent about the leak.

6. Ms Cassidy wrote to the Respondent on 29th July 2020 pointing out that it was his responsibility to fix the leak and asking him to respond in 48 hours. There was no response and so, in September 2020, she instructed a contractor, Aztec Maintenance, to supply and fit an extension pipe to the overflow in order to re-direct the flow of water. However, the leak remained.

7. Carringtons followed up with further letters on 2nd October 2020, notifying the Respondent that the cost of Aztec's work, £102, had been added to his service charge, and on 7th January 2021, again pointing out that it was his responsibility to fix the leak.

8. Ms Cassidy also made site inspections on 30th September 2020, 13th April 2021, 2nd March 2022 and 13th June 2022. On each occasion, she took the opportunity to knock on the Respondent's door but there was no answer.

9. Carringtons referred the matter to the Applicant's solicitors, Knights. They wrote to the Respondent on 20th December 2021, 10th January 2022 and 12th August 2022. Each letter alleged that the Respondent was in breach of clauses 2(17) and/or (18) of his lease and invited him to make arrangements with Carringtons for access to the property.

10. On its face, it is understandable that the Applicant would regard the Respondent as having done something wrong. There is a leak which needs to be fixed and the Respondent has not responded to their reasonable requests that he do something about it. However, this does not equate to a breach of clauses 2(17) and/or (18).

11. The fact is that the Applicant has either not asked to have access at any particular time or date or has sought access without giving notice. The letters from Carringtons did not ask for access. When Ms Cassidy knocked on the Respondent's door, she did so on the off-chance that he might be in and able to provide access. There is no evidence that she told him she was coming. In the terms of the relevant clauses, there was no notice, reasonable or otherwise.

12. As for the letters from Knights, they did not ask for access at a specific time on a specific date, let alone attend to try to get access at such time or date. Instead, they asked the Respondent to make arrangements with

Carringtons. There is no duty on the Respondent to make such arrangements and his failure to do so is not a breach of his lease. This was confirmed by the Upper Tribunal in *New Crane Wharf Freehold Ltd v Dovener* [2019] UKUT 98 (LC).

13. On the basis of the material before the Tribunal, the Respondent has not breached clause 2(17) or (18) of his lease in respect of access to the property.

Name: Judge Nicol **Date:** 11th November 2022