



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

Case reference : **LON/00AG/LBC/2022/0063
LON/00AG/LSC/2022/0261**

Property : **Flat 4, 27 Willow Road, London,
NW3 1TL**

Applicant : **27 Willow Road Limited**

Representative : **Mattie Green (Counsel) instructed by
Judge & Priestley LLP**

Respondents : **Michael Tims**

Representative : **No appearance**

Type of application : **1. Breach of Covenant
2. Determination of the reasonableness
of and the liability to pay a service
charge**

Tribunal Members : **Judge Robert Latham
Duncan Jagger FRICS**

Date and Venue : **23 and 24 February 2023 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **3 April 2023**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, the following breaches have occurred (particulars of which are provided in our decision):
- (i) Failure to afford access to inspect flat pursuant to Clause 2(10): The Respondent refused access on 16 March 2022.

(ii) Water Egress. On eight occasions since 7 July 2014. Water has leaked from the Respondent's flat into the flat below. The Tribunal is satisfied that the 3rd leak on 3 September 2020 and the 8th Leak on 16 February were attributable to a breach of covenant by the Respondent.

(iii) Obstruction of the communal areas in breach of clause 2(14): The Respondent has stored items on the communal staircase and in the communal basement area/coal shed located in the basement in front of Flat 1. This breach has extended over many years.

(iv) Flooring pursuant to Clause 2(17): The Respondent has failed to keep the floors of his flat covered with suitable and effective sound deadening material. This has caused a noise nuisance to those occupying Flat 3. This has been a long standing problem over many years.

- (2) The Tribunal determines that the following service charges would be payable were a formal demand to be made (of which the Respondent would be liable for 25%): (i) 2019/20: £3,965; (ii) 2020/21: £3,280; and (iii) 2021/2: £21,634.
- (3) 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 Applicant has produced two Bundles of Documents to which reference is made in this decision: (i) A Hearing Bundle of 275 pages ("p.__"); and a Supplementary Bundle of 38 pages ("SB.__").

The Applications

1. On 17 August 2022, 27 Willow Road Limited, the Applicant issued two applications which this Tribunal is required to determine:
 - (i) LON/00AG/LBC/2022/0063: The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent tenant is in breach of his lease in respect of Flat 4, 27 Willow Road, London, NW3 1TL ("the Flat") in that he has: (a) allowed water to leak from his flat into the flat below; (b) refused access; (c) obstructed the communal areas with his belongings; and (d) failed to install sound deadening material on the floor in his flat.
 - (ii) LON/00AG/LSC/2022/0261: The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2019/20, 2020/21 and 2021/22.

2. On 15 September 2022, the Tribunal issued Directions. The Directions stated that the application would be heard at a face-to-face hearing on 23 and 24 February. The Tribunal would inspect the property at 10.00 on 23 February. The Tribunal advised the Respondent to seek independent legal advice as the proceedings may be a preliminary to Court Proceedings to forfeit the lease. On 15 September, the Tribunal posted the Directions and copies of the two applications to the Respondent at the Flat. The Tribunal also attached a leaflet of organisations that offer legal advice, some of which is free.
3. On 26 October 2022, the Tribunal amended the Directions on the application of the Applicant. On 26 October, the Tribunal emailed these to the Respondent. The Amended Directions repeated the advice that the Respondent to seek independent legal advice as the proceedings may be a preliminary to Court Proceedings to forfeit the lease.
4. On 27 October 2022, the Applicant emailed its Bundle of Documents in support of its two applications at mike@mtn-i.com. The Applicant was informed that this email address was no longer operational. On the same day, the Applicant hand delivered a hard copy of the bundle which was left outside the Flat. The Applicant also emailed a copy of the Bundle to the Respondent at "miketims1966@gmail.com".
5. By 24 November 2022, the Respondent was directed to serve his Bundle of Documents in response to the two applications on the Applicant and on the Tribunal. The Respondent failed to comply with this Directions.
6. On 25 November 2022, the Tribunal sent the Respondent, by post and email, a "Non-Compliance" letter reminding him that he had failed to comply with the Directions. The Letter was headed: "Hearing Date: 23 and 24 February 2023".
7. On 2 December 2022, on the application of the Applicant, the Tribunal made an Order and Further Directions:
 - (i) Service Charge application: unless by 14 December 2022 the Respondent either (a) sent his statement of case to the Applicant or (b) sent to the tribunal, with a copy to the Applicant, a full and clear explanation as to why he was unable to submit his statement of case by that date and stated by what date he would be able to send his statement of case, he was debarred from relying upon any evidence at the final hearing in respect of the service charge application.
 - (ii) Breach of Covenant application: the Respondent was directed to send his bundle of documents to the tribunal and to the Applicant by 21 December 2022. If he was unable to do so, he must by that same date send to the tribunal, with a copy to the Applicant, an explanation as to why he was unable to do so and state by what date he would be able to do so.

The Tribunal both posted and emailed this Order to the Respondent. The Directions noted that the Tribunal was not making a debarring order in respect of the breach of covenant application because the application could be a prelude to an application for forfeiture.

8. The Respondent did not comply with this Direction. He made no contact with the Tribunal. On 11 January 2023, the Tribunal emailed the Respondent a copy of the letter that the Tribunal was sending to the Applicant confirming that the inspection would take place at 10.00 on 23 February and that the hearing would follow the inspection. On 17 February, the Tribunal emailed the parties seeking confirmation that arrangements were in place for the inspection.

The Inspection and Hearing

9. The Applicant was represented by Ms Mattie Green (Counsel) who was instructed by Judge & Priestley LLP. Ms Green produced a Skeleton Argument and we are grateful for the assistance that she has provided in this difficult case.
10. We also commend Judge & Priestley for the bundles that they have produced. The Applicant's Statement of Case is at p.23-28. Mr Aiden Spencer has provided three witness statements dated 27 October 2022 (at p.152-252); 14 February 2023 (at SB.2-30) and 17 February 2023 (SB.31.38). Mr Spencer has had primary responsibility for the management of the building. He is also lessee of Flat 3, the first floor flat which has been primarily affected by the water penetration from Flat 4. Ms Rosemary Nalden has provided a statement, dated 25 October 2022 (at p.110-121) and Ms Maise Lawrence, a statement dated 26 October 2022 (at p.122-151).
11. All the lessees gave evidence and we have no hesitation in accepting their evidence. The Tribunal put a number of questions to the lessees, particularly Mr Aiden Spencer. We required the Applicant to strictly prove its case.
12. At 10.00 on 23 February, the Tribunal attended to inspect the building and the flats. Mr Tims was not at home to admit us. The following were present: Ms Green and her pupil, Mr Benet Spencer, Ms Nalden and Ms Lawrence. The building is in Hampstead and in close proximity to both Hampstead Heath and Hampstead Underground station. Albeit that it was apparent that external and internal decorations had recently been executed, the building had a tired feel and was not of the standard that the Tribunal would have expected in this prime location. Mr Tims occupies Flat 4 on the second floor. Flats 2 and 3 have been sublet over a number of years.

13. The Tribunal inspected Flats 2 and 3 to ascertain the layout of the flats. In the kitchen at Flat 3 we saw staining to the ceiling consistent with recent water penetration. We also saw a large quantity of items which had been stacked on the staircase between the first and the second floors and a bicycle in the ground floor hallway. We finally went down to the basement coal hole and we saw a large number of items that had been left in the area where the meters for the building are situated.
14. We noted that Flat 1 is still unoccupied, with evidence of refurbishment works still in progress. There is still plywood in situ where there had once been a wooden fence at the front of the building. It was also apparent that the only access to inspect the roof is through a hatch which is within Flat 4.
15. Whilst we were inspecting the building, we were approached by Mr Beskine, a neighbour who lives in Willow Walk. He stated that he had been asked by the Respondent to protect his interests. However, he had not been provided with a set of keys to admit us to Flat 4. He stated that the Respondent was taking his daughter, Poppy, to school in St Albans where Poppy lives with her mother. He also stated that the Respondent suffered from mental illness for which he had been prescribed medication and counselling.
16. The Tribunal was sufficiently concerned about the Respondent's health and personal circumstances to take three exceptional steps:

(i) Judge Latham telephoned Mr Tims and stressed that the importance of him attending the hearing. He again stressed that his home might be at risk as these proceedings could be a prelude to forfeiture. Mr Tims stated that he was due to see a psychiatrist at the Keats Group Practice at 12.30. Judge Latham told him that the Tribunal was not willing to delay the hearing, but asked him to attend no later than 15.00 to explain his response to the application.

(ii) At 15.00, Mr Tims arrived at the Tribunal. He requested that he be allowed to address the Tribunal in the absence of the other lessees as he would feel intimidated by their presence. Ms Green, having taken instructions from her client, agreed to this course.

(iii) The Tribunal offered to return to inspect Mr Tim's flat at 10.00 on the next day. The Tribunal stressed that this was relevant to two issues, namely his floor coverings and the state of repair of his installations for the supply and use of water. He agreed to admit the tribunal to his flat. Mr Jagger stressed to Mr Tims the importance of him complying with this request. Next day, when the Tribunal attended, Mr Tims had gone out. He was not present to afford access. Ms Naden admitted the Tribunal so that we could inspect the common parts. Mr Tims had taken no steps to remove the items which he had left on the staircase.

17. At 15.15, on the first day of the hearing, Mr Tims addressed the Tribunal for 75 minutes. We stated that what he said would not be treated as evidence as he had not filed any witness statements. Ms Green was not in a position to cross-examine him. We informed the parties that the Applicant would not be prejudiced by the latitude that we had decided to afford to Mr Tims.
18. Mr Tims stated that he was divorced. Poppy, his daughter, is now aged 10. Whilst she lives with her mother in St Albans, he has staying access. Mr Tims stated that he suffered from ADHD, complex PTSD and dysthymic depression. He also suffered from autoimmune psoriasis. He referred to the phenomenon of "hyperfocus", namely the tendency to focus on one particular matter to the exclusion of others. He has produced no medical evidence. He stated that he had been treated privately through medication and counselling. He could no longer afford to fund this and there was an issue as to whether his condition was such as to qualify for treatment under the NHS. His appointment at 12.30 had been arranged to assess this.
19. Mr Tims had established a company, MTN-1 Limited (MTN-1") which provided financial services. He described it as "specialising in digging up data on below radar debt markets". It had employed 15 members of staff. In October 2022, a winding up order was made. He referred to a decision of HHJ Auerbach in the Employment Appeal Tribunal in which the time for appealing against a finding of unfair dismissal was extended because of his personal circumstances. However, it appeared that the final outcome was not in his favour.
20. The Tribunal is satisfied that Mt Tims has faced considerable personal, financial and legal difficulties. His landline has been disconnected. He has been involved in proceedings in the Family and Company Courts and before the Employment Appeal Tribunal. There have been contempt proceedings in the Family Court for non-payment of maintenance. Mr Tims stated that he was unable to afford this.
21. On 29 December, Mr Tims made his last payment of £150 towards his service charges. He stated that he has since withheld his payments "to make a point". He stated that in 2013, he had installed a sound proofing layer beneath his flooring. However, he then refused access to the Tribunal, thereby depriving us of the opportunity to check this.
22. Having denied access to the Tribunal, Mr Tims sent an email to the Case Officer. He stated that overnight, he had had to reflect on everything that had been going on and its effect on his health, finances and future. He stated that it had been "overwhelming and devastating" as was the prospect of eviction. He accused his fellow lessees of "countless acts of intimidation, threats, abuse, false allegations, violence and criminal damage". Against this background, he had felt unable to afford access to

the Tribunal. The stress of considering all of this overnight had led him to leave the house to seek support.

23. The recent conduct of Mr Tims has enabled us to assess whether his failure to engage with these proceedings has been because he has put his head in the sand or has rather reflected a wilful refusal to engage. There has been no suggestion that he lacks the capacity to conduct these proceedings or to manage his affairs. The Tribunal is satisfied that Mr Tims has made a wilful decision not to engage in these proceedings. He could have, but has decided not to, provide medical evidence. He has decided not to comply with the Directions. He made a wilful decision not to admit the Tribunal to inspect his flat.
24. Ms Green asked the Tribunal to confirm the status of what Mr Tims said to the Tribunal. This was not evidence and it was not subject to cross-examination. In so far as it is uncontradicted, it enables the Tribunal to assess the background to this case. However, where his evidence is contradicted, we should prefer the evidence which has been served pursuant to the Directions which the Tribunal has made. However, few significant conflicts were apparent.
25. The Tribunal accepts that Mr Tims has had a number of personal, financial and legal difficulties. This case is an unfortunate saga of how his relationship with his fellow lessees has deteriorated over recent years. The Tribunal was given the impression that this relationship has now broken down irretrievably.

The Lease

26. The lease for the Flat is at p.96-109. It is dated 22 April 1965. This grants a term of 99 years from 29 September 1964. The lease contains a number of covenants which we discuss when we consider the alleged breaches.
27. By Clause 2(21), the Lessee covenants “to pay to the lessor in each year a sum equal to twenty-five per centum of all moneys expended by the Lessor in (a) carrying out all or any of the works and providing the services and the management and administration specified in the Schedule hereto and (b) in the insurance of the said building in accordance with the Lessor’s covenant in that behalf herein contained PROVIDED that the payment to be made by the Lessee during the first year after the date hereof shall not exceed the sum of Fifty-five pounds”

The Background

28. 27 Willow Road, London, NW3 1TL (“the property”) is four-storey Victorian property which has been converted in 1964 to create four flats. In 1995, the Applicant Company was established to enable the lessees to

acquire the freehold in the building. Each lessee owns one share and is a director in the Applicant freehold Company. The current lessees are:

(i) Flat 1 (lower ground floor): In December 2020, Ms Maisie Lawrence acquired the leasehold interest. She is a fiction editor. She has not occupied her flat as she has been conducting building works.

(ii) Flat 2 (upper ground floor): In July 1974, Ms Rosemary Nalden acquired the leasehold interest. She lives in South Africa and lets out her flat at a reduced rent, so she can stay there some 2 to 3 times a year, staying some 6-8 weeks in her flat. She works for a music charity in Soweto.

(iii) Flat 3 (first floor): In 2006, Mr Aiden Spencer and his brother, Mr Benet Spencer, acquired the leasehold interest. Aiden is an osteopath. They have sub-let the flat. Mr Aiden Spencer is the director of the Applicant Company. Benet has taken primary responsibility for managing the lettings.

(iv) Flat 4 (second floor): On 7 June 2013, Mr Michael Tims, the Respondent, acquired the leasehold interest. Mr Tims occupies the flat. He is divorced, but his daughter Poppy (now aged 10) stays with him. Her mother, who lives in St Albans, is the primary carer.

29. On 7 June 2013, Mr Tims acquired the leasehold interest in Flat 4 for £1.075m. There are two bedrooms. Upon acquiring the flat, Mr Tims knocked down an internal wall and changed the layout of the flat. The two bedrooms had been at the rear of the flat. He has created a large living space with a kitchen in this area. The two bedrooms are now at the front of the flat. What was the kitchen is now the second bedroom.
30. On 27 June 2013, Mr Tims attended a meeting of the directors and agreed to install carpeting. The Applicant contends that he has failed to do this and that there is a problem of noise nuisance between his flat and Flat 3. Aiden and Benet Spencer are the lessees of this flat, but they have sub-let it under ASTs. Noise nuisance is a common problem in conversions such as this.
31. A major concern is the number of floods which have emanated from Flat 4. On 6 July 2014, there was a major flood which led to a significant insurance claim. As a result, the directors decided to increase the excess from £250 to £500. The premium was not increased.
32. Again, leaks are a common problem in conversions such as this. It is important that any lessee keeps their installations for the supply and use of water in a proper state of repair and responds promptly when any leak occurs. A number of leaks may suggest a lack of care on behalf of a tenant. However, it may rather suggest that the tenant has been extremely

unlucky. After the flood on 6 July 2004, there was no further flood until 30 August 2020.

33. It is apparent that the relationship between Mr Tims and his fellow lessees has broken down. Mr Spencer described how Mr Tims has sought to dominate meetings. He has also changed his mind on issues, when he has not achieved his desired outcome. He has made an informed decision not to attend meetings of the Applicant Company.
34. Water has penetrated into the Respondent's Flat. In August 2018, Mr Tims agreed that a survey of the roof was required. On 27 October 2019, there was an AGM. Ms Nalden and Mr Spencer wanted access to Mr Tims' flat to inspect the roof. They went up to his flat, but he then asked them to leave. He again refused access on 16 March 2022.
35. The directors have wanted to appoint managing agents to manage the property. The lease makes no provision for this. On 4 October 2021, the Applicant held an EGM to discuss a lease variation. Mr Tims opposed the proposal.
36. On 29 December 2021, Mr Tims made his last payment of £150 towards his service charges. He stated that he had withheld further payments "to make a point". In January 2023, his arrears were £4,965.

LON/00AG/LBC/2022/0063: Breach of Covenant

1. The Law

37. Section 168 of the Commonhold and Leasehold Reform Act 2002 provided that:

"(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.

38. The major concern of the Applicant is the number of floods which have emanated from the Respondent's flat. Relying on *British Telecommunications PLC v Sun Life Assurance Society PLC* [1996] Ch 69, the well-known case on "notice of disrepair", Ms Green argued that the Respondent breached Clause 2(5) of his lease as soon as any leak occurred. He would be at risk of forfeiture, regardless of any fault on his behalf.
39. Ms Green relies on this statement of law from the judgment of Nourse LJ (at p.78H):

"The general rule is that a covenant to keep premises in repair obliges the covenantor to keep them in repair at all times, so that there is a breach of the obligation immediately a defect occurs. There is an exception where the obligation is the landlord's and the defect occurs in the demised premises themselves, in which case he is in breach of his obligation only when he has information about the existence of the defect such as would put a reasonable landlord on inquiry as to whether works of repair are needed and he has failed to carry out the necessary works with reasonable expedition thereafter"

However, Nourse LJ went on to suggest that there might be an exception to this rule where the defect is caused by an occurrence wholly out of control, for example a roof damaged by a tree falling from a neighbouring property.

40. The Tribunal is satisfied that if a tenant fails to keep the installations for the supply and use of water in a proper state of repair, and as a consequence a leak arises, the tenant will be in breach of covenant. However, a leak may arise through no fault of the tenant. In such circumstance, the tenant would be expected to take immediate action to abate the problem. He would only put himself at risk of forfeiture if he failed to do so.
41. The Applicant suggested that a tenant should arrange for a regular inspection of all installations for the supply and use of water and that the Respondent is liable for his failure to do so. It has required him to carry out such an inspection. We are satisfied that this is not a practical solution. Many pipes are concealed. Whilst a tenant might reasonably be expected to have his central heating system serviced annually, this would

not extend to an obligation to inspect all installations for the supply or use of water.

42. In approaching this application, we have regard to guidance provided by *Martin Rodger QC, the Deputy President, in Marchitelli v 15 Westgate Terrace Ltd* [2020] UKUT 192 (LC); [2021] 1 P&CR 9 (at [49]):

"The purpose of proceedings under s.168(4) of the 2002 Act, is to establish the facts on which steps to forfeit an extremely valuable lease will then be founded. Before forfeiture proceedings may be commenced the landlord is required by s.146(1) of the 1925 Act, to serve a notice "specifying the particular breach complained of" and if that breach is remedied and compensation is paid no forfeiture will occur. Before a s.146 notice may be served the FTT must determine that "the breach" has occurred (s.186(2)(a) of the 2002 Act). It follows, therefore, that the determination required of the FTT must be sufficiently specific to provide the basis of a s.146 notice."

2. The Alleged Breaches

2.1 Failure to afford access to inspect flat pursuant to Clause 2(10)

43. By Clause 2(10) of the lease, the tenant covenants to: "permit the Lessor or the Superior Lessor and their respective agents or workmen at any time or times during the same term at reasonable hours in the daylight to enter upon the demised premises for the purpose of carrying out any works to any other party of the said building..."
44. On 1 March 2022 (at p.126), the Applicant sent an email to Mr Tims requesting access on 16 March at 10.00 so that Paul Madden, a surveyor, could inspect the roof. The Applicant was planning a programme of external repairs and decorations. Mr Tims was asked to contact Mr Aiden Spencer, if this was not convenient. On 3 March, Ms Lawrence hand delivered a letter confirming the contents of the email. At 10.00 on 16 March, Ms Lawrence attended with Mr Madden. Mr Tims refused them access stating that he had not been given notice of the inspection.
45. The Tribunal is satisfied that the Respondent had given notice of the proposed inspection and that Mr Tims refused access. This was a clear breach of covenant.

2.2 Water Egress

46. The following provisions of the lease are relevant:

(i) By Clause 2(5), the tenant covenants "from time to time and at all times during the said term well and substantially to repair uphold support cleanse maintain amend and keep the interior of the demised premises and all landlords fixtures and fittings sanitary and water apparatus and gas and electrical installations and appliances therein with all necessary reparations cleansings and amendments whatsoever.."

(ii) By Clause 2(13), the tenant covenants "not to do or permit any act or thing which shall or may be or become a nuisance damage annoyance or inconvenience to the Lessor or the lessees tenants or occupiers of the other flats in the said building or of the adjoining or neighbouring premises..."

(iii) By Clause 2(15), the tenant covenants "not to do or suffer to be done on the said premises anything whereby the insurance of the demised premises or the said building may be rendered void or voidable or the premiums increased."

2.2.1 The 1st Leak: 6 July 2014

47. There was a serious flood. The Tribunal has heard no evidence as to the cause of the flood. There was no further flood for a period of six years. The Tribunal is not satisfied that this was a breach of covenant by the Respondent.

2.2.2 The 2nd Leak: 30 August 2020

48. This leak occurred on a Bank Holiday Sunday. The cause was a leak from the wc inlet. It caused staining to the ceiling of Flat 3. There is a photograph at p.163. Access to Flat 4 was provided by the Respondent's cleaner. Mr Aidon Spencer sent the following email to the all the lessees in these terms (at p.166): "Zeina [his sub-tenant] has just messaged me to say this morning a water stain has appeared above the kitchen door in Flat 3 (see photo). I trust I have your agreement to contact a trusted plumber (Mark Jones) to look at this in the coming days. He will likely need access to Flat 4. Zeina is about and happy to liaise". The Tribunal is not satisfied that this was a breach of covenant by the Respondent.

2.2.3 The 3rd Leak: 3 September 2020

49. On the Thursday, there was a further leak causing water penetration into Flat 3. It seems that Mr Tims had turned the water supply back on, before he had cured the cause of the leak. The Tribunal is satisfied that this was a breach of covenant by the Respondent.

2.2.4 The 4th Leak: 28 November 2020

50. There was a further leak which caused water to penetrate Flat 3. There is a photograph at p.168. The cause was a leak from the bathroom radiator

(see p.171). This leak was not serious. The cause of this leak was quite different from the 3rd leak. The Tribunal is not satisfied that this was a breach of covenant by the Respondent.

2.2.5 The 5th Leak: 20 May 2021

51. This was initially said to be a leak from the washing machine. However, Mr Tims reported that when a plumber had attended, the cause was found to be from a braid pipe feeding the basin. Again, the cause of this leak was quite different from the previous leaks. The Tribunal is not satisfied that this was a breach of covenant by the Respondent.

2.2.6 The 6th Leak: 17 November 2021

52. There was a further leak into Flat 3. There is a text message at p.178. The Tribunal has heard no evidence of the cause of this leak. The Tribunal is not satisfied that this was a breach of covenant by the Respondent.

2.2.7 The 7th Leak: 4 August 2022

53. Water penetrated into Flat 3. Mr Tims was not present in the Flat at the time. His daughter Poppy (aged 10) left a tap on whilst there was a plug in the wash hand basin. Mr Tims later suggested that this was caused by the builders in the basement. This was clearly not true.
54. On occasions, floods do arise in these circumstances. This only occurred once. Had there been further such floods, this would have demonstrated a lack of care. The Tribunal is not satisfied that this was a breach of covenant by the Respondent.

2.2.8 The 8th Leak: 16 February 2023

55. On 16 February, Mr Aidan Spencer's sub-tenants reported new ingress of dirty water into the flat from Flat 4. The tenants provided three photographs and two videos showing the extent of the leak. The first photograph shows a bucket placed on the floor by the tenants to stop the water ingress from spreading on the floor. The second photograph shows the water leaking on the wall. The third photograph shows water on the kitchen top which suggests the water ingress was at multiple areas across the kitchen. The subtenant spoke to Mr Tims who stated that this was a leak from his washing machine. When the Tribunal inspected Flat 3 on 23 February, there was some evidence of dampness in the kitchen.
56. Mr Tims agreed to admit the Tribunal to inspect his Flat on 24 February. He then changed his mind. He was not present when the Tribunal attended to inspect. He thereby denied the Tribunal to opportunity to inspect the state of the water appliances in his Flat. In these circumstances, the Tribunal is satisfied that this flood was a breach of covenant by the Respondent.

2.3 Obstruction of the communal areas in breach of clause 2(14)

57. By Clause 2(14) of the lease, the tenant covenants "not to obstruct or suffer or permit to be obstructed any of the parts of the said building used in common by the lessees tenants or occupiers for the time being of the flats comprised therein and not to leave or deposit anything in the entrance hall stairway or passages of the said building..."
58. The Applicant complains the Mr Tims has been storing possessions in the communal areas since June 2013. On 25 May 2014 (p.204), Ms De Ayala, the then lessee of Flat 1, emailed Mr Tims complaining about storage of items in the communal basement area/coal shed located outside Flat 1. On 29 May 2014 (at p.205-6), Mr Tims responded stated that he had moved some of the items and would remove the rest within the next two weeks. He did not do so.
59. On numerous occasions thereafter, the Applicant has asked Mr Tims to remove these items. Mr Aidan Spencer has taken a number of photographs on 24 December 2021 (p.221-229); 16 March 2022 (p.230-234); 28 July (p.235-240); 5 October 2022 (p.241-243) and 19 October 2022 (at p.244-245). Two bicycles have been stored in the hallway.
60. On 23 February, when the Tribunal inspected the property, we saw a large quantity of items which had been stacked on the staircase between the first and the second floors and a bicycle in the ground floor hallway. These are consistent with the photos provided by the Applicant. We finally went down to the basement coal hole and we saw a large number of items that had been left in the area where the meters for the building are situated. This restricts access to the gas and electricity meters. Mr Tims had made no attempt to remove any of these items when we returned to inspect on 24 February.
61. The Tribunal is satisfied that the Respondent has been in breach of the covenant in Clause 2(14) over a number of years. He has shown no respect for his neighbours. These obstructions have caused a health and safety risk in that they restrict access in the event of a fire.

2.4 Flooring pursuant to Clause 2(17)

62. By Clause 2(17) of the lease, the tenant covenants "at all times to keep the floors of the demised premises covered with suitable and effective sound deadening material".
63. Mr Aidan Spencer gave evidence that when Mr Tims first moved into 27 Willow Road in 2013, he was made aware that the floorboards needed to be covered with suitable sound deadening material. Mr Spencer has visited the flat on a number of occasions and has seen the wooden

flooring. At the first Directors' meeting which Mr Tims attended on 27 June 2013, he agreed to carpet the Flat . He has failed to do so.

64. Mr Spencer describes how the lack of floor covering has caused annoyance and nuisance to his subtenants in Flat 3. On 11 September 2013 (p.246), James Clarke emailed complaining of the problems that he faced. Mr Spencer raised this with Mr Tims, who responded on 30 September (p.248) stating that he had started to put down some carpeting. On 11 October 2013 (p.247), Mr Spencer sent a further email describing how bare floorboards transmit sound down to the flat below. Mr Tims did not put down a carpet.
65. Subsequent subtenants have also complained about the noise, namely Mr Calvert (December 2017 to August 2019) and Ms Ghandour (September 2019 to August 2021). There is a copy of a text message at p.250. Mr Spencer stated that most of the complaints had been oral.
66. Mr Tims told the Tribunal that in 2013, he had installed a wooden floor with a sound proofing layer. Mr Tims denied the Tribunal the opportunity to inspect the Flat. His statement is not consistent with the evidence given by Mr Spencer. We accept the evidence of Mr Spencer.
67. The Tribunal is satisfied that Mr Tims has failed to keep the floors of the Flat covered with suitable and effective sound deadening material and that he is thereby in breach of Clause 2(17) of his lease. This has been a long standing problem over many years.

LON/00AG/LSC/2022/0261: Service Charge Demands

The Law

68. Section 18 of the Landlord and Tenant Act 1985 defines “service charge”:
 - (1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.”
69. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

“(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.”

The Service Charge Claim

70. In his second witness statement (at SB.1-30), Mr Aidan Spencer describes how the Applicant has managed the property and operated the service charge account. The Board has agreed that lessees should pay £150 per month. On 29 December 2021, Mr Tims made his last payment of £150 towards his service charges. He stated that he had withheld further payments "to make a point". In January 2023, his arrears were £4,965 (SB.9).

71. Mr Spencer has provided the service charge accounts for 1019/20,2020/21 and 2021/22. The Applicant concedes that a formal demand has not been made accompanied by the requisite Summary of Rights and Obligations. It rather seeks a finding that the following sums would be payable were a formal demand to be made.

72. The following service charge items are claims for 2019/20, in respect of which the Respondent will be liable for 25%:

Company Registration:	£13
Repairs	80
Cleaning	270
Electricity	113
Insurance	2,077
Refurbishment costs	-
Bank Charges	12
Professional Fees 1	200
Auditors Fee	200
Total:	£3,965

73. The following service charge items are claims for 2020/21, in respect of which the Respondent will be liable for 25%:

Company Registration:	£13
Repairs	755

Cleaning	120
Electricity	52
Insurance	2,028
Refurbishment costs	-
Bank Charges	12
Professional Fees (Legal Fees)	100
Auditors Fee	200
Total	£3,280

74. The following service charge items are claims for 2021/22, in respect of which the Respondent will be liable for 25%:

Company Registration	-
Repairs	15,928
Cleaning	609
Electricity	128
Insurance	2,534
Refurbishment costs	-
Bank Charges	55
Professional Fees	2361
Auditors Fee	-
Bookkeeping fee	200
Parking Permits	19
Total:	£21,634

75. The Respondent has not challenged any of these items. The tribunal is satisfied that these service charges are reasonable and will be payable, subject to a formal demand being issued.

Refund of Fees

76. At the end of the hearing, the Applicant made an application for a refund of the fees that it has paid in respect of the application hearing pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”). The Applicant has paid a total of £300. Having regard to our findings, the Tribunal orders the Respondent to refund the tribunal fees of £300, which have been paid by the Applicant, within 28 days of the date of this decision.

Judge Robert Latham
3 April 2023

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).