

There were two matters for the Tribunal to determine:-

1. Adjournment.

Firstly, as a preliminary issue there was an Application by the Respondent Trevor Wallis for an adjournment of the hearing.

The Tribunal found that an adjournment was not appropriate or helpful in the circumstances of the case.

2. Application for Determination.

Secondly, the Application for an Order under Section 168(4) as above for a determination as to breaches of the covenants and/or conditions of the lease.

The Tribunal found that there had been breaches of the covenants contained in the following Clauses: -

**Clause 3(7) - re: failure to allow access and to repay cost of repairs,
Clause 4(A)(1) – re: failure to keep the property in good condition and repair,**

Clause 4(A)(2) – re: failure to wash down and redecorate the interior every 7 years,

Clause 4(4) – obligation to pay service charges,

Clause 16 of the 4th schedule – Not to do anything which would cause damage to the building,

Clause 20 of the 4th schedule – Failure to pay for the cleaning etc of the communal areas after damage, and

Clause 24 of the 4th schedule – Failure to clean the interior of the windows.

BACKGROUND.

3. The property is a ground-floor flat in a purpose-built block of 4 on a housing estate at Knaphill. The original lease was for 99 years from 24th June 1982, and Mr Trevor Wallis (The Respondent) is registered as the leaseholder from 24th July 2001.

4. The freeholder (Applicant) is Lorientwood Limited, and the property is managed by Snellers Property management of Teddington, Middlesex.

5. After a number of neighbours expressed concerns - from 2021 onwards - about the condition of the flat at 131 Inkerman Road, and about damage, soiling and damp to walls and communal areas of the property, the management company eventually commissioned a report by surveyor Michael Aldous in late 2022.

6. As a result of the findings in Mr. Aldous's report the Applicants seek a determination that a number of breaches of the terms and conditions of the lease have occurred, as set out in the application form and in the Skeleton Argument dated 20th March 2023.

6. Following Directions issued on the 24th January 2023 and the 10th of February 2023, the Tribunal was provided with a full electronic bundle of documents, including copies of the Lease, the report of Michael Aldous dated 08/02/23, photos in evidence of the breaches, and relevant correspondence.

7. The Tribunal did not visit or inspect the property but relied upon the electronic papers, photos and oral evidence submitted by the parties.

8. The hearing was conducted via CVP on 23rd March 2023.

RELEVANT LAW – COMMONHOLD AND LEASEHOLD REFORM ACT 2002.

Section 168 - No forfeiture notice before determination of breach

- 2.1 A landlord under a long lease of a dwelling may not serve a notice under section 146(l) or 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.
- 2.2 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.
- 2.3 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.
- 2.4 **A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.**
- 2.5 But a landlord may not make an application under subsection (4) in respect of a matter which –
 - a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - b) has been the subject of determination by a court, or
 - c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

APPLICANT'S CASE.

9. Ms. Thomas submitted on behalf of the Applicant that there had been breaches of the various Clauses of the Lease as listed in point 2. above. The evidence of the poor condition of the subject flat, and of damage and disrepair to the communal areas, was contained in the report of Mr. Aldous and in photographs and correspondence from other tenants and neighbours.

10. The evidence of failure to allow access was contained in the statement of Jeanette Kelly of Snellers and in correspondence between various interested parties.

11. The Service charge records showed that there was £5,870.77 owing in unpaid service charges.

12. It was conceded that, because a structural survey or proper assessment of the water leak was impossible at the current time due to health and safety concerns, it could not be said for certain that Mr. Wallis's actions had invalidated the insurance on the property (which would have been a breach of Clause 7 of the Lease).

13. Ms. Thomas stressed that it was not necessarily the Applicant's intention to seek forfeiture of the flat immediately, and that they took the view that it was not possible for Mr. Wallis either to continue residing in the flat in its present state or to remedy the problems on his own. In the particular circumstances of the case it was submitted that Mr. Wallis was effectively – functionally - 'homeless', and it was the hope of all concerned that he could be assisted by adult social services in finding alternative accommodation.

RESPONDENT'S CASE.

14. The oral submissions of Ms. Mimms from the Citizens Advice Bureau, and of Mr. Wallis, were to the effect that Mr. Wallis had gradually become overwhelmed by debt and by the responsibility of maintaining the flat following the death of his parents.

15. It was suggested that the Nationwide Building Society and Woking Borough Council might assist Mr. Wallis in dealing with cleaning and refurbishing the property and with paying for all outstanding matters.

16. Ms. Mimms indicated that accommodation may become available for Mr. Wallis in Cobham once suitable works have been undertaken.

17. When each of the alleged breaches of covenant were put to Mr. Wallis during the hearing (save for the invalidation of the insurance under Clause 7) he admitted and accepted that in each instance he had failed to comply with the lease conditions as set out in the Applicant's case. He explained that he had had difficulty in managing the property maintenance and the bills, and he had been reluctant to allow access because of the state of the interior.

DETERMINATION.

18. In the light of the clear evidence about the condition of the property and the admissions made by the Respondent, the Tribunal found that there had been breaches of Clauses 3(7), 4(A)(1), 4(A)(2), 4(4) of the Lease, and Clauses 16, 20 and 24 of the 4th Schedule to the Lease.

19. The Tribunal considered that there was insufficient evidence to make any finding as to breach of Clause 7 (as to invalidation of the insurance.)

20. Any question of an order under Section 20(c) of the Landlord and Tenant Act 1985 (Limitation of service charges: costs of proceedings) was adjourned pending an application and submissions from the parties.

Tribunal Judge Tessa Hingston.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.