



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

Case reference : **LON/00BK/LBC/2022/0062**

Property : **Flat 9, The Salt House, 5 Peter Street, London W1F 0DN**

Applicant : **The Salt House London (Freehold) Limited**

Representative : **Mr Carl Brewin, counsel
(10/01/2023)
Mr John Clargo, counsel
(17/04/2023)**

Respondent : **Siddarth Jawahar Mulchandani**

Representative : **N/A**

Type of application : **Determination of an alleged breach of covenant**

Tribunal member(s) : **Judge Tagliavini
Miss M Krisko FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **10/01/2023 & 17/04/2023**

Date of Decision : **5 June 2023**

DECISION

The tribunal's summary decision

- (1) The tribunal's findings are set out in its decision and reasoning below.
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The application

1. This is an application made by the applicant landlord seeking a determination from the tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'). The applicant alleges the respondent tenant has committed numerous breaches of various covenants that are contained in the lease dated 28 January 2011 of premises situate at Flat 9, The Salt House, 5 Peter Street, London W1F 0DN ('the premises') made between Berwick Street Properties Limited (landlord) and Peter Street Holdings (tenant), of which the respondent has been the registered owner since 13 July 2012.

Background

2. In a direction made by Judge Korn dated 7 December 2022, the respondent was debarred from defending this application/playing a role in the proceedings, having failed to comply with any of the tribunal's directions dated 22 September 2022, including failing to provide any Response to the applicant's claims of the alleged breaches.
3. The allegations made by the applicant numbered in excess of 160 and were categorised by the following categories of breaches that were said to have taken place during the period May 2021 to July 2022.
 - (i) Anti-social behaviour/disturbances by the respondent his visitors and guests;
 - (ii) Interference with post by the respondent, his visitors and guests;
 - (iii) Vandalism of the common parts of the building by the respondent, his guests and visitors;
 - (iv) Noise/work carried on in the premises both outside of permitted hours;
 - (v) Running a business from the premises;
 - (vi) Smoking in the common parts by the respondent, his visitors and guests;
 - (vii) Keeping of dogs by the respondent;

(vii) Alteration of a window and door at the premises;

(viii) Failure to repair the bath/shower in the premises.

4. The applicant relied upon the following clauses of the respondent's lease in respect of the alleged breaches:

The Respondent is bound by a covenant at clause 3 of the Lease '*...to observe and perform the Tenant's Obligations to the Landlord contained in Schedule 4.*

Schedule 4 of the Lease contains the following material covenants:

Paragraph 5: 'The Tenant must repair the Flat and keep it internally in good condition and repair ...';

Paragraph 7.1: 'The Tenant must not ... carry out works to the structure or exterior of the building or which alter the external appearance of the Building';

Paragraph 7.2: The Tenant must not make any internal non-structural alterations to the Flat unless

.....

Paragraph 20: 'The Tenant must not use the Flat for any purpose other than as a single private residence in the occupation of one household only and not to use the Flat for any illegal or immoral purpose';

Paragraph 21: 'The Tenant may work from home in the Flat provided that this does not require any other person to visit the Flat in connection with the Tenant's work and provided that this does not cause the Tenant to be in breach of any of the other provisions of this Lease or to require consent under the Planning Acts';

Paragraph 23.2: 'The Tenant must not carry out or permit works of decoration repair or alteration to be carried out to the Flat which may be audible outside the Flat except between the hours of 8.30 am to 5.30 pm Monday to Saturday (excluding public holidays)';

Paragraph 31.1: 'The Tenant must not cause the Common Parts to be untidy or dirty and must not leave any personal effects bicycles perambulators pushchairs or the like on the Common Parts';

Paragraph 31.2: 'The Tenant must not ... cause any obstruction of the Common Parts';

Paragraph 31.4: 'The Tenant must not permit any vehicles ... belonging to him or to any persons calling at the Flat expressly or by implication with his authority to ... lean against or be attached to the Retained Parts except in the parking spaces (if any) provided for visitors or ... on the

loading bays (if any), any must use his best endeavours to ensure that such persons comply with the requirements of this paragraph’;

Paragraph 31.6: ‘Not to smoke or permit anyone under the Tenant’s control to smoke anywhere in the Common Parts’.

Paragraph 31.7: Not to obstruct or stop up any fire doors within the Flat or Building or the common parts and to keep any Fire Doors closed;

Paragraph 33: ‘The Tenant must not do anything on the Flat or allow anything to remain on them that may be or become or cause a nuisance, or annoyance, disturbance, inconvenience, injury or damage to the Landlord or his Tenants or the owner or occupiers of adjacent or neighbouring premises’.

Paragraph 34: ‘The Tenant must not use the Flat for ... any trade, business, manufacture or occupation or any illegal act or purpose.’

Paragraph 35: ‘The Tenant must not keep any animal ... in the Flat without the Landlord’s prior written permission.’

5. The applicant also sought to rely on further allegations of breaches of lease by the respondent committed during the period August 2022 to October 2022.

The hearing

6. On the morning of 10 January 2023 the tribunal carried out an inspection of the subject premises. As the hearing could not be concluded on 10 January 2023 the hearing was adjourned part-heard and reconvened on 17 April 2023. On 10 January 2023 the applicant was represented by Mr Carl Brewin of counsel and by Mr John Clargo of counsel on 17 April 2023. The respondent did not attend and was not represented on either date nor were any written representations or evidence received from the respondent.
7. The tribunal heard evidence from other lessees in the building, namely Peter Atherton (Flat 8); Nicholas Clemmow (Flat 6); Adam Doree (Flat 13); Wouter Van Heerden Hanekom (Flat 10); Alice Ferguson (Flat 6); Shaun Ince (Flat 2) and Verity McKenzie (Flat 14) who gave both oral and documentary evidence on behalf of the applicant. The tribunal also considered the documents provided in the hearing bundle of 147 (electronic) pages, in addition to viewing the extensive CCTV footage from the premises (with audio), the tribunal makes the findings below.

The tribunal’s decision

8. The tribunal finds the respondent has breached the terms of his lease by:

Anti-social behaviour/disturbances by the respondent his visitors and guests

Paragraph 20: 'The Tenant must not use the Flat for any purpose other than as a single private residence in the occupation of one household only and not to use the Flat for any illegal or immoral purpose'

Paragraph 33: 'The Tenant must not do anything on the Flat or allow anything to remain on them that may be or become or cause a nuisance, or annoyance, disturbance, inconvenience, injury or damage to the Landlord or his Tenants or the owner or occupiers of adjacent or neighbouring premises'

9. On 18 May 2021, 28 June 2021, 6 December 2021, 10 February 2022, 14 February 2022, 16 June 2022 and 22 October 2022, in breach of paragraphs 20 and 33 of Schedule 4 of the lease, the respondent and his guests and visitors caused a disturbance at the premises and in the common parts of the building and include requiring the police to attend on a number of occasions after complaints have made of violence and/or the possession of a knife. The tribunal also finds on 8 February 2022, 13 February 2022 and 14 February 2022, the respondent, his visitors and guests caused excessive noise and disturbance by screaming, arguing and holding loud conversations within the premises and playing loud music.

Storage of goods in the common parts

Paragraph 31.1: 'The Tenant must not cause the Common Parts to be untidy or dirty and must not leave any personal effects bicycles perambulators pushchairs or the like on the Common Parts';

Paragraph 31.2: 'The Tenant must not ... cause any obstruction of the Common Parts';

11. In breach of paragraph 31.1 and 31.2 of Schedule 4, the tribunal finds the respondent has or allowed his visitors and guests to drop litter in the communal parts, urinate on the walkway/balcony area, stored/dumped bicycles, furniture and other items outside the premises and in the common parts causing obstruction and a potential safety hazard including on 9 May 2021, 16 May 2021, 11 June 2021 and 30 March 2022.

Interference with post/damage (vandalism) to common parts

Paragraph 20: 'The Tenant must not use the Flat for any purpose other than as a single private residence in the occupation of one household only and not to use the Flat for any illegal or immoral purpose';

Paragraph 33: 'The Tenant must not do anything on the Flat or allow anything to remain on them that may be or become or cause a nuisance, or annoyance, disturbance, inconvenience, injury or

damage to the Landlord or his Tenants or the owner or occupiers of adjacent or neighbouring premises’.

Paragraph 34: ‘The Tenant must not use the Flat for ... any trade, business, manufacture or occupation or any illegal act or purpose.’

12. In breach of paragraphs 20, 33 and 34 of Schedule 4 of the lease, the tribunal finds on 25 May 2021, 8 December 2021 and 28 December 2021, 21 May 2022 the respondent and his visitors and guests were seen and/or recorded on CCTV breaking into the individual mailboxes located in a central ‘bank’ by the communal lobby/front door area and proceeded to open letters belonging to other lessees, discarded a number of the letters found without ensuring they were replaced in the appropriate mailbox and took away a number of other letters without permission or authority.
13. The tribunal finds in breach of paragraphs 20, 33 and 34 of Schedule 4 of the lease, the respondent did on 4 August 2021 allow his visitors and guests to forcibly break in the ground floor riser/communications cupboard and damage the CCTV unit.
14. The tribunal finds on 11 December 2021, in breach of paragraphs 20, 33 and 34 of Schedule 4 of the lease the respondent allowed his guest or visitors to force open the communal front entrance door.

Noise/work carried on in the premises both inside and outside of permitted hours

Paragraph 23.2: ‘The Tenant must not carry out or permit works of decoration repair or alteration to be carried out to the Flat which may be audible outside the Flat except between the hours of 8.30 am to 5.30 pm Monday to Saturday (excluding public holidays)’;

Paragraph 33: ‘The Tenant must not do anything on the Flat or allow anything to remain on them that may be or become or cause a nuisance, or annoyance, disturbance, inconvenience, injury or damage to the Landlord or his Tenants or the owner or occupiers of adjacent or neighbouring premises’.

Paragraph 34: ‘The Tenant must not use the Flat for ... any trade, business, manufacture or occupation or any illegal act or purpose.’

13. In breach of paragraphs 23.2, 33 and 34 of Schedule 4 the tribunal finds the respondent his visitors and guests on, 26 July 2021, 25 December 2021, 26 December 2021 and 27 December 2021, and 9 January 2021 caused excessive noise by the use of power tools within the premises including for the purpose of carrying out a business and carrying out works to the flat. The tribunal also finds on 8 February 2022, 13 February 2022 caused excessive noise and disturbance by screaming, arguing and holding loud conversations within the premises and in the communal areas.

Running a business from the premises

Paragraph 20: 'The Tenant must not use the Flat for any purpose other than as a single private residence in the occupation of one household only and not to use the Flat for any illegal or immoral purpose';

Paragraph 21: 'The Tenant may work from home in the Flat provided that this does not require any other person to visit the Flat in connection with the Tenant's work and provided that this does not cause the Tenant to be in breach of any of the other provisions of this Lease or to require consent under the Planning Acts';

Paragraph 34: 'The Tenant must not use the Flat for ... any trade, business, manufacture or occupation or any illegal act or purpose.'

14. In breach of paragraphs 20, 21 and 34 of Schedule 4, the respondent on 21 May 2021 allowed a person to enter the premises with the intention of carrying out work in the form of providing 'massage services.' The tribunal also finds the respondent has registered the premises as the address of his company and carries out a business known as Hustlers Heart Limited of which the respondent's business card records him as the creative director. The tribunal finds the respondent, his guests and visitors use the premises as a 'studio' and use power tools at all times of the day and night in connection with the business including on 25, 26 and 27 December 2021.

Drugs

Paragraph 20: 'The Tenant must not use the Flat for any purpose other than as a single private residence in the occupation of one household only and not to use the Flat for any illegal or immoral purpose';

Paragraph 33: 'The Tenant must not do anything on the Flat or allow anything to remain on them that may be or become or cause a nuisance, or annoyance, disturbance, inconvenience, injury or damage to the Landlord or his Tenants or the owner or occupiers of adjacent or neighbouring premises'.

Paragraph 34: 'The Tenant must not use the Flat for ... any trade, business, manufacture or occupation or any illegal act or purpose.'

15. In breach of the above paragraphs, the tribunal finds the respondent uses and allows his guests and visitors to use the premises and the common parts for the sale and consumption of illegal drugs including on 1 January 2022 and 7

October 2022. The tribunal finds the respondent's visitors and guests have made a loud noise at unsociable hours entering and exiting the building which has including shouting, arguing and fighting thereby causing alarm and distress among other lessees and has resulted in the police being called.

Smoking in the common parts by the respondent, his visitors and guests

Paragraph 31.6: 'Not to smoke or permit anyone under the Tenant's control to smoke anywhere in the Common Parts.'

16. The tribunal finds on 27 May 2022 in breach of paragraph 31.6 of Schedule 4 a lit cigarette was left on the floor by the respondent, his guests or visitors. The tribunal finds the respondent and his guests and visitors have been seen on CCTV smoking in the communal areas.

Keeping of a dog by the respondent

Paragraph 35: 'The Tenant must not keep any animal ... in the Flat without the Landlord's prior written permission.'

17. The tribunal finds from October 2022 and in breach of paragraph 35 of Schedule 4, the respondent has kept a dog (Beagle or Beagle like) at the premises and allowed his visitors and guests to bring their own dogs to the premises, who have failed to keep them under control and allowed them to defecate in the common parts on 23 December 2021, 24 January 2022 and on around 9 June 2022. The tribunal finds on 9 February 2022 and on 11 May 2022 a dog kept in the respondent's premises howled all night causing excessive noise and disturbance.

Other breaches

Paragraph 5: 'The Tenant must repair the Flat and keep it internally in good condition and repair ...';

Paragraph 7.1: 'The Tenant must not ... carry out works to the structure or exterior of the building or which alter the external appearance of the Building';

Paragraph 7.2: The Tenant must not make any internal non-structural alterations to the Flat unless

.....

Paragraph 33: 'The Tenant must not do anything on the Flat or allow anything to remain on them that may be or become or cause a nuisance, or annoyance, disturbance, inconvenience, injury or damage to the Landlord or his Tenants or the owner or occupiers of adjacent or neighbouring premises.'

18. The tribunal finds the applicant has failed to establish there was a breach of the lease in respect of the alleged alteration of a window and door at the premises. The tribunal finds the opening of a window outwards (as designed) did not constitute a breach of the lease although the limiter was either broken or had been removed. Similarly, the tribunal finds the applicant failed to prove there had been a failure to repair the bath/shower in the premises that constituted a breach of the lease or that there had been an alteration to the door that was in breach of the terms of the lease.

The tribunal's reasons

19. The tribunal is of the opinion it would have been more useful if the applicant had focused on a smaller number of the most serious alleged breaches and the clause(s) of the lease it relied upon, rather than resorting to the 'tsunami' approach it adopted. As a result, the tribunal found the evidence presented by the applicant, which included a running commentary on video/CCTV footage by a witness during the hearing, to be disjointed and difficult to follow in respect of many of the alleged breaches as well as interlaced with comments rather than a factual presentation of events on the screen.
20. However, in view of the overwhelming evidence provided by the applicant in the form of numerous witness statements from other lessees in The Salt House and their oral evidence, the CCTV footage from communal areas of The Salt House and the absence of any evidence from the respondent or challenge to the applicant's evidence, the tribunal has no hesitation in accepting the evidence of the applicant and finding the respondent has caused, permitted and continued a pattern of behaviour that comprise multiple breaches of clause 3 and Schedule 4 of the lease and which when considered in their totality, amount to a deliberate and unmitigated campaign of harassment and intimidation to the other lessees and repeated damage to the common parts of the building causing economic loss and inconvenience.
21. In conclusion, the tribunal finds the respondent has breached section 3 and Schedule 4 of his lease as set out above pursuant to s. 168 Commonhold and Leasehold Reform Act 2002.

Name: Judge Tagliavini

Date: 5 June 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).