



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

Case Reference : **LON/00BK/LBC/2023/0022**

Property : **Flat 19, Cumberland Court, Great
Cumberland Place, London W1H 7DP**

Applicant : **Cumberland Court Investments Ltd**

Respondent : **Eric Young**

**Type of
Application** : **Breach of covenant**

Tribunal Members : **Judge Nicol
Mr S Johnson MRICS**

**Date and venue of
Hearing** : **15th August 2023
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15th August 2023**

DECISION

The Tribunal has determined that the Respondent has breached clauses 3.04.1, 3.05, 3.11, 3.12 and paragraphs 21, 22 and 30 of the Fourth Schedule of his lease as detailed below.

The Tribunal's reasons

1. The Applicant is the Respondent's landlord at Flat 19, Cumberland Court, Great Cumberland Place, London W1H 7DP, a 5th-floor flat in a purpose-built block of 65 flats. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached his lease.
2. Further to the Tribunal's directions issued on 16th May 2023, the Tribunal heard the application at a face-to-face hearing on 15th August 2023. The attendees were:

- Mr Paul Simon of Taylor Rose, solicitor for the Applicant;
 - The Applicant's witness, Mr Laurence Freilich of Moreland Estate Management, the Applicant's agents (he arrived late and did not give oral evidence); and
 - Mr Simon Strelitz, counsel for the Respondent.
3. The Tribunal had the following documents:
- a) A 168-page bundle of relevant documents, prepared by the Applicant;
 - b) A 2-page Statement of Case on behalf of the Respondent; and
 - c) A 6-page Reply from the Applicant.
4. The Applicant alleged that the Respondent has breached the following clauses of their lease:-

3. THE TENANT COVENANTS with the Landlords:-

- 3.04.1 In 1984 and in every seventh year thereafter and in the last year of the Term to prepare and paint in a proper and workmanlike manner all inside surfaces of the Premises usually painted with at least two coats of paint and to strip and repaper all such surfaces usually papered and to restore all other inside surfaces to their proper condition and appearance
- 3.05 To repair and keep in repair the inside of the Premises including the plaster on and the windows in the walls enclosing the Premises and the floors and ceilings of the Premises and the entrance door leading to Premises
- 3.11 At all times during the Term to comply with the Regulations in the Fourth Schedule
- 3.12 Not to cut injure or remove or permit or suffer to be cut injured or removed any part of the Building or the Premises

THE FOURTH SCHEDULE

REGULATIONS AS TO USER

5. Not to do in the Premises or the Building any act or thing which shall be a nuisance or annoyance to the Landlords or to any tenant or occupier of the Building or any premises in the neighbourhood
21. To procure that the windows of the Premises are cleaned at least once a month and are provided at all times with suitable curtains or blinds
22. To cover all the floors of the Premises with carpet and under-felt or other approved material
29. To notify the Landlords forthwith:-
- (A) whenever any installation in the Premises for the supply of water gas or electricity and for sanitation (including every basin sink and sanitary

convenience) and for space heating or heating water is out of repair or not in working order

30 Not to instal in the Premises any installation such as is mentioned in the preceding regulation or interfere or alter any such installation

5. 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.
6. The Tribunal inspected the property on the morning before the hearing. The inspection was attended by Mr Simon on behalf of the Applicant and Mr Malcolm Duke, a friend of the Respondent who acts as a keyholder. The Respondent himself lives abroad, in the USA. The property is unoccupied and clearly has been for some time – the last tenant apparently moved out over 2 years ago.
7. The property is on the 5th floor, accessible by lift and stairs. The front door opens into a kitchenette which the Respondent appears to have moved from where the second bedroom is now located. There is no wall between the kitchen and the living room, the Respondent having removed it at some time when compared to the original floor plan attached to the Applicant's Reply. A new boiler has been installed in the bathroom. The property's floor surface is laminate. The property is in a poor decorative state. Decorations are holed and peeling in various places. The bedrooms have large patches of mould – one in the main bedroom has tracks of past running water through it. The external windows are so dirty, it is barely possible to see through them. There were no curtains or blinds to the living room window.
8. The Respondent has taken little part in the proceedings or even since October 2022 when the Applicant first sought to raise the alleged breaches with him. His Statement of Case presents no positive case and simply puts the Applicant to proof. Mr Strelitz went no further than criticising the state of the Applicant's pleading and the sufficiency of the supporting evidence. However, the Tribunal only needs to be satisfied that the Applicant has established its case on the balance of probabilities. Material which is only just sufficient to discharge the evidential burden of proof will normally be sufficient to establish the Applicant's case in the absence of any positive case from the other party. For example, the inability of the Applicant to show conclusively that the floor covering was not of approved material is irrelevant when the Respondent had a full and clear opportunity to provide a copy of any approval granted to him.
9. The Applicant alleges, based on an inspection by Mr Freilich on 12th September 2022, and the Tribunal is satisfied, that the Respondent breached:

- (a) Clauses 3.04.1 and 3.05 of the lease. The property has obviously been neglected for many years. The evidence of the Tribunal members' own eyes shows that the property not only has not been decorated within the last 7 years, but also that the walls, particularly the plaster, are out of repair. Mr Strelitz submitted that the allegations were not sufficiently particularised in that the precise location of any disrepair was not specified. However, the Tribunal had no problem identifying what the Applicant's pleading referred to. The particulars were more than sufficient to identify the breach. Mr Strelitz also argued that there could be no breach of clause 3.04.1 unless and until the Applicant provided details of what colour or finish would be approved under clause 3.04.2. However, this puts the responsibility on the wrong party. It is the lessee's obligation to carry out the requisite decoration work and so it is their obligation to seek the information they require. There is no suggestion that the Applicant was approached for the information, let alone that it failed to respond.
- (b) Clause 3.12 of the lease by removing an internal wall and relocating waste and water pipes through the walls into the new kitchen.
- (c) Clause 3.11 and paragraph 21 of the Fourth Schedule of the lease because the windows have clearly not been cleaned for a very long time and those in the living room are uncovered.
- (d) Clause 3.11 and paragraph 22 of the Fourth Schedule of the lease because there are no carpets on the floors and no evidence that the laminate was duly approved.
- (e) Clause 3.11 and paragraph 30 of the Fourth Schedule of the lease because a new boiler was installed. Mr Strelitz tried to bring up in the hearing for the first time an allegation that paragraph 30 breached the Unfair Terms in Consumer Contracts Regulations by rendering it impossible to replace the boiler. This was much too late to make such a significant allegation and it would have been grossly unfair for the application to have been rejected on this point on this basis. Nevertheless, Mr Simon was able to throw considerable doubt on Mr Strelitz's submission by pointing to clause 5.04(A) which obliges the Applicant to maintain a communal boiler.
10. The Applicant also alleged that the Respondent had caused a nuisance or annoyance in breach of clause 3.11 and paragraph 5 of the Fourth Schedule of the lease but there was no evidence of this. Mr Simon pointed to the inconvenience of having to deal with the above breaches but that does not constitute an annoyance as covered by paragraph 5 which is clearly aimed at problems similar to a nuisance. Moreover, Mr Simon's interpretation is otiose – it is not necessary to establish that any breach of covenant is a breach twice over when the original breach is sufficient.

Name: Judge Nicol

Date: 15th August 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).