



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

Case reference : **LON/00AH/LBC/2023/0029**

**HMCTS code
(paper, video,
audio)** : **In person hearing**

Property : **Flat 2, 43 Chatsworth Road Croydon
London**

Applicant : **43 Chatsworth Road Ltd**

Representative : **Ms Lacey Congram**

Respondent : **Ms Joan M Gartshore**

Representative : **N/A**

Type of application : **Application for an order that a breach of
covenant or a condition in the lease has
occurred pursuant to S. 168(4) of the
Commonhold and Leasehold Reform
Act 2002**

Tribunal members : **Judge H. Carr
Mr K Ridgeway**

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

Date of decision : **19th October 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a face-to-face hearing. The documents that the Tribunal was referred to were contained in a bundle comprising 152 pages prepared by the Applicant.

The order made is described below.

Decisions of the Tribunal

- (1) The Tribunal determines that there has been a breach of the following clauses of the lease pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002
 - a. Clause 3 of the Sixth Schedule to the lease
 - b. Clause 6 of the Sixth Schedule to the lease
 - c. Clause 9 of the Sixth Schedule to the lease
 - d. Clause 15 of the Sixth Schedule to the lease
- (2) The reasons for the decision are set out below.

The background to the application

1. The Applicant seeks an order that a breach of covenant or a condition in the lease has occurred pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002. The application concerns alleged breaches at **Flat 2, 43 Chatsworth Road Croydon London** (“the property”).
2. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows with sub-section (4) shown in bold:

(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 a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(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.

3. The Applicant, a freehold company owned by the leaseholders of flats 1, 3 and 4. is the registered proprietor of the freehold of 43 Chatsworth Road. .
4. The Respondent is the registered proprietor of the leasehold property at Flat 2, 43 Chatsworth Road. She acquired her leasehold interest on 8th December 1989. The lease is for a term of 99 years from 24th June 1989.
5. The matter was originally listed for determination on 25th August 2023. The Respondent did not attend. The Applicant who was unrepresented agreed to the adjournment of the hearing as the Tribunal considered it required a surveyor's report.

The hearing

6. The Applicant was represented by Miss Lacey Congram Director of the Applicant. Miss Congram gave evidence and referred the tribunal to an expert professional report she had commissioned on behalf of the Applicant.
7. The Respondent did not attend.
8. The tribunal was satisfied that the Applicant had made all reasonable attempts to contact the Respondent and had served the case documentation by delivering it to the property.

The issue

9. The only issue for the Tribunal to decide is whether a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. At the CMH the primary allegations of breach by the Respondent were identified as follows:
 - (i) that the Respondent has breached her lease by
 - (a) not having paid ground rent for over 10 years
 - (b) Not having paid maintenance or service charges for over 10 years
 - (c) Not keeping the premises in a good tenable state of repair, decoration or condition.
10. At the hearing on 25th August 2023 the Tribunal made it clear that it had no jurisdiction in relation to ground rent and service charges. It required that the Applicant produce a surveyor's report. It agreed that following that report the Applicant could apply to the Tribunal to extend its application for a determination of breach of the lease to other clauses of the lease if it considered it had sufficient evidence to do so.
11. On 25th August 2023 the Tribunal agreed that the relevant clauses of the lease for it to consider were clause 3 – good and tenable repair, clause 6 - painting and decorating and clause 15 – window cleaning. Each of these clauses is set out in full below.
12. At the reconvened hearing on 19th October 2023 the Applicant asked for a further alleged breach of the lease to be considered. That breach is clause 9 of the Sixth Schedule to the lease, the nuisance clause as set out below.
13. The Tribunal agreed that the Application could be extended to further alleged breaches on the grounds that the extended grounds for the application had been served on the Respondent.
14. The relevant clauses of the lease provide as follows:

Sixth Schedule – Covenants by the Lessee with the Lessor

Clause 3 - The Lessee shall to the satisfaction in all respects of the Lessors surveyor keep the Premises and all parts thereof and all fixtures and fittings therein and all additions thereto in a good and tenantable state of repair decoration through the continuance of this demise including the renewal and replacement of all worn or damaged parts and shall yield up to the same at the determination of the demise in such good and tenantable state of repair decoration and condition and in accordance with the terms of this covenant in all respects.

Clause 6 – The Lessee shall once in every seventh year of the demise and in the last three months thereon whether determined by effusion of time or otherwise paint with two coats of good quality paint in a workmanlike manner all the wood iron and other parts of the Premises usually or which ought to be painted and shall in addition wash and colour all such parts as are usually or as ought to be so treated and repaper the parts if any that are now papered with suitable paper of as good quality as that now in use

Clause 9 – The lessee shall not do or permit or suffer to be done in or upon the Demised Premises anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Lessor or to the Lessee of any other Flat or whereby any insurance for the tiem being effect on the property or any part thereof including the Premises may be rendered void or voidable to whereby the rate of premium may be increased and shall pay all costs charges and expenses incurred by the Lessor in abating a nuisance in obedience to a notice service by a competent Authority.

Clause 15 – The Lessee shall clean the insides and outsides of all the windows of the premises at least once in every month.

Background to the application and chronology

15. The Respondent acquired the lease on 8th December 1989.
16. The Applicant acquired the freehold on 21st November 2008.
17. The leaseholders of Flats 1, 3 and 4 extended their leases to 999 years on 12th January 2009.
18. The Applicant says that the respondent has not been seen at the property since November 2012. She was last seen by the leaseholder of Flat 3, Miss Margaret Percival. There is a statement from Ms Percival in the Applicant's bundle.
19. In February 2013 the police were called to do a welfare check at the request of the Respondent's brother. There was no response from inside

of the property, so the police gained forced entry. With police supervision Ms Congram accessed the property on behalf of the Applicant.

20. It was clear to her that the property had been vacant for some time. There was a large amount of rubbish piling up to the ceiling in the kitchen and lounge areas. The flat was extremely dirty, dusty, and unkempt.
21. The property was then secured with a padlock and a note left to contact the police if entry was required.
22. In November 2015 emergency access was gained to the property to investigate a water leak. The source of the lead was not found to be from the property, but the Applicant made an insurance claim to pay for the damage to flat 1. The door to the property was once again secured with a padlock.
23. Maintenance works to the building have been carried out during the years 2014 – 2023 and the leaseholders have split the share of the Respondent's costs to allow the work to go ahead.
24. Most recently a large weed has been growing from the window of the property. This is now penetrating the brick work and causing structural damage to the building.
25. The Applicant has collected the post to the property and kept it in a communal space on the landing of the property. It is now becoming overwhelming and a potential fire hazard.
26. The bundle contains a surveyor's report together with photographs which is dated 29th September 2023. The report was prepared by Mr Matthew S Martin Chartered Surveyor FRICS FCI Arb.

The determination

27. Having heard evidence and submissions from the Applicant and considered all the documents provided, the Tribunal summarises the arguments and makes determinations on the various issues as follows:

Clause 3 – Has the Respondent failed to keep the premises in good tenable state of repair, decoration, or condition?

The evidence of the Applicant

28. Mr Martin visited the property on 20th September 2023. The report he provided to the Applicant stated that the property was not in a tenable state, and indeed concluded that the property was not habitable. He also

concluded that the Respondent had not kept all the fixtures and fittings in good order.

29. The report included photographs showing dangerous and damaged light fittings, broken and working bathroom suite, damaged kitchen units and appliances. There was evidence of worn and damaged wallpaper throughout with signs of mould and water damage.

The decision of the tribunal

30. The tribunal determines that the Respondent has breached clause 3 of the 6th Schedule to the lease.

The reasons for the determination of the Tribunal

31. The tribunal relies on the expertise and professionalism of Mr Martin and the extensive photographic evidence of the condition of the property.

Clause 6 – Has the Respondent failed to repaint and repaper the property every seven years as required by the lease?

The evidence of the Applicant

32. Mr Martin provided evidence in his report that in his professional opinion the tenant has not repainted the inside of the flat within the last 7 years. There is photographic evidence to that effect.
33. The Applicant also points out that the Lessee has been absent from the property for more than seven years, that she cannot access the property without contacting the police and that the Applicant knows that there has been no attempt to arrange for redecoration of the property during her absence.

The decision of the tribunal

34. The tribunal determines that the Respondent has breached clause 6 of the 6th Schedule to the lease.

The reasons for the determination of the tribunal

35. The Tribunal relies on the expertise and professionalism of Mr Martin and the extensive photographic evidence of the condition of the property.
36. It also considers the evidence of the Applicant that the Respondent has not entered the property nor made arrangements for the redecoration of the property over the past seven years or more.

Clause 9 – Has the Lessee caused nuisance, annoyance damage and/or inconvenience to the Lessor?

The evidence of the Applicant

37. The Applicant gave evidence which is corroborated by the professional report of Mr Martin and photographic evidence that there are weeds that have grown from the inside of the property which protrude onto the windowsill and up the outside of the window. This is unsightly and causes damage to the property and is an annoyance to the occupier of Flat 1 as the weed is visible from the rear garden. The growth is also causing damage to the brickwork of the building due to the depth of the roots. This is likely to impact upon insurance premium when the insurance is renewed.

The decision of the tribunal

38. The tribunal determines that the Respondent has breached clause 9 of the 6th Schedule to the lease.

The reasons for the determination of the tribunal

39. The tribunal relies on the expertise and professionalism of Mr Martin and the extensive photographic evidence of the condition of the property.
40. The tribunal agrees with the Applicant that the weed is a nuisance and annoyance.

Clause 15 – has the Respondent cleaned the insides and outsides of all of the windows of the premises at least once in every month?

The evidence of the Applicant

41. The professional report of Mr Martin states that in his professional opinion the Respondent has not cleaned the inside and outside of the windows every month. This is confirmed by the photographic evidence.
42. The Applicant notes that the Respondent's continued absence from the property and her failure to make alternative arrangements means that this clause has been breached.

The decision of the tribunal

43. The tribunal determines that the Respondent has breached clause 15 of the 6th Schedule to the lease.

The reasons for the determination of the tribunal

44. The Tribunal relies on the expertise and professionalism of Mr Martin and the extensive photographic evidence of the condition of the property.
45. It also notes that as the Respondent has not been at the property for some considerable period of time and has made no alternative arrangements, it is clear that the clause has been breached.

Name: Judge H Carr

Date: 19th October 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).