



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

**Case Reference** : **LON/00AY/LBC/2023/0046**

**Property** : **Flat 10 Whiteley House, Tilson  
Gardens, London SW2 4NF**

**Applicant** : **Metropolitan Housing Trust  
Limited**

**Representative** : **Scarlet Taylor-Waller of Counsel  
instructed by Devonshires  
Solicitors**

**Respondent** : **Barinder Sandhu**

**Representative** : **Richard Colbey of Counsel**

**Type of Application** : **Application for determination as to  
breach of covenant in lease under  
section 168(4) Commonhold and  
Leasehold Reform Act 2002**

**Tribunal Members** : **Judge P Korn  
Judge M Jones  
Miss M Krisko FRICS**

**Date of hearing** : **13 October 2023**

**Date of decision** : **28 November 2023**

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**DECISION**

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## **Description of hearing**

The hearing was a face-to-face hearing.

## **Decision of the tribunal**

Breaches of covenants contained in the following clauses of the Lease have occurred:-

- clause 2.16;
- clause 2.19; and
- clause 2.24.

## **The application**

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“**the 2002 Act**”) that one or more breaches of covenant have occurred under the lease of the Property.
2. The Applicant is the freehold owner of the building (“**the Building**”) of which the Property forms part, and the Respondent is the current leasehold owner of the Property. The Respondent’s lease (“**the Lease**”) is dated 7 July 2003 and was made between The Mayor and Burgesses of the London Borough of Lambeth (1) and Patricia Knox (2).
3. The Applicant alleges that the Respondent has been in breach of covenants contained in clause 2.16, clause 2.19 and clause 2.24 of the Lease.
4. The relevant parts of the relevant clauses in the Lease read as follows:-

### Clause 2.16

*Not to use the Flat or any part thereof nor allow the same to be used for any illegal or immoral purpose ...*

### Clause 2.19

*Not to do or permit to be done upon or in connection with the Flat or the Building anything which shall be or tend to be a nuisance annoyance or cause of damage to the Council or its tenants or any of them or to any neighbouring adjoining or adjacent property or the owner or occupiers thereof*

Clause 2.24

*To make good all damage caused through the act or default of the Tenant or of any servant or agent or visitor of the Tenant*

*2.24.1 to any part of the building or to the appurtenances or the fixtures and fittings thereof and*

*2.24.2 to any other occupier or tenant of the said building and their licensees and in each case to keep the Council indemnified from all claims expenses and demands in respect thereof*

**Parties' respective submissions**

General

5. The Applicant has provided a written chronology of what it submits are the relevant facts in this case. This includes allegations of disturbance and nuisance at the Property and of visitors to the Property taking drugs, engaging in sexual intercourse and defecating in the common parts of the Building, as well as allegations of other anti-social behaviour such as shouting, racial abuse, the breaking of the communal front door and other vandalism. The Applicant states that these activities took place between 3 September 2021 and 18 October 2022.
6. In her witness statement, Natasha Chambers – Local Housing Manager for the Applicant – states that the Property is being managed by Omnia Housing on behalf of the Respondent as a house in multiple occupation for ex-offenders. She also states that the Metropolitan Police were aware of the anti-social behaviour referred to above and that upon the application of the Metropolitan Police an interim closure order was made in relation to the Property on 12 October 2022 and then a final closure order was made on 19 October 2022. She adds that she was informed on 24 July 2023 that Omnia Housing had recommenced the letting of the Property since the date of the final closure order.
7. In response, Mr Colbey for the Respondent states that none of the allegations relied upon by the Applicant are disputed, save that the Respondent does not accept that Omnia Housing has recommenced lettings. Mr Colbey also states that he understands from the Respondent that he himself did make some attempt to deal with matters.

The specific covenants

8. Mr Colbey confirmed during the course of the hearing that the Respondent accepted that he had committed breaches of covenants contained in clauses 2.16 and 2.19. The Respondent did not, though,

accept that there had been a breach of the covenants contained in clause 2.24.

#### Clause 2.24

9. The Respondent accepts that occupiers of and/or visitors to the Property caused damage to other parts of the Building and that this damage was not made good by or on behalf of the Respondent. There is some dispute between the parties as to how much damage was caused and whether for example the defecation complained of technically amounts to 'damage' for the purposes of the covenants contained in clause 2.24, but as a minimum it is common ground between the parties that the breaking of the front door constitutes 'damage' for the purposes of clause 2.24.
10. The key dispute between the parties is on the construction of the wording of clause 2.24 itself. Mr Colbey for the Respondent submitted at the hearing that the covenant "*to make good all damage caused through the act or default of the Tenant or any servant or agent or visitor of the Tenant ...*" is only breached if the tenant fails to make good after it knows about the damage or has received notice of the damage. In response, Ms Taylor-Waller for the Applicant said that in her submission the wording of clause 2.24 was clear and that it was not correct to read the covenant as if there was a need for actual knowledge or notice. Neither party brought any legal authority in support of their position.

#### **The statutory provisions**

11. The relevant parts of section 168 of the 2002 Act provide as follows:-

*"(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 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.*

*(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."*

## **Tribunal's determination**

12. We note that both clause 2.19 and clause 2.24 make reference to “the Council”. It is clear from the context that this is because the original landlord was Lambeth Council, and it is clear from the first page of the Lease that the reference to “Council” throughout the Lease means the landlord in each case.
13. The Respondent does not dispute the accuracy of the material facts relied on by the Applicant in submitting that breaches of covenants contained in clauses 2.16 and 2.19 have occurred. The Respondent also accepts that on the basis of those undisputed facts it is the case that breaches of covenants contained in those clauses have occurred.
14. First of all, on a jurisdictional point, we note that in some cases a statutory provision precludes a court or tribunal from making a determination where the factual and legal position is agreed between the parties, this being on the basis that there is then no outstanding dispute on which a determination can be made. However, section 168 of the 2002 Act does not expressly preclude the tribunal from making a determination in circumstances where a breach is admitted. Having considered the wording of clauses 2.16 and 2.19 and on the basis of the agreed facts we determine that breaches of covenants contained in clauses 2.16 and 2.19 have occurred.
15. In relation to clause 2.24, the facts are agreed, including that occupiers of and/or visitors to the Property have caused damage to other parts of the Building. The only point in issue is the construction of the wording of the covenants contained in clause 2.24.
16. The Respondent submits that the covenant “*to make good all damage caused through the act or default of the Tenant or any servant or agent or visitor of the Tenant ...*” is only breached if the tenant fails to make good if it knows about the damage or has received notice of the damage. The Applicant disagrees. Neither party has brought any legal authority in support of their position.
17. Whilst we understand why it might at first sight seem unfair for a tenant to be adjudged to be in breach of a covenant in circumstances where that tenant has no knowledge of the breach, the covenant contained in clause 2.24 is not expressed to be conditional on the tenant having actual knowledge of the position, and therefore to make the breach dependent on the tenant having actual knowledge one would need to imply wording into the covenant. We do not accept that it would be correct to do this. It was for the Respondent to control his own occupiers and visitors and to take responsibility for their actions. If the position were otherwise, a tenant could let out their property and then close their eyes to any problems that later arose at the property,

and the landlord would thereby lose the protection that such a covenant was designed to provide.

18. Therefore, on the basis of the agreed facts we consider that one or more breaches of the covenants contained in clause 2.24 have occurred.

### Conclusion

19. In conclusion, therefore, we are satisfied that the Respondent has been in breach of clauses 2.16, 2.19 and 2.24 of the Lease and therefore that one or more breaches of covenant have occurred.
20. Although this is not necessary for the purposes of the tribunal's determination, at the request of the parties the determination is also set out in the form of an Order at the end of this document.

### Cost applications

21. There were no cost applications.

**Name:** Judge P Korn

**Date:** 28 November 2023

### RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.

**IN THE FIRST-TIER TRIBUNAL  
LON/00AY/LBC/2023/0046  
PROPERTY CHAMBER**

**Case No:**

**B E T W E E N:**

**METROPOLITAN HOUSING TRUST LIMITED**

Applicant

and

**BARINDER SANDHU**

Respondent

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**ORDER**

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**BEFORE** Mr Korn, Ms Krisko and Mr Jones sitting at the First Tier Tribunal (Property Chamber)

**UPON** hearing counsel for the Applicant, Ms Taylor-Waller, and counsel for the Respondent, Mr Colbey

**AND UPON** the Applicant's application dated 03 May 2023 pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 ("**the Act**") for a determination of breach of covenant of the lease dated 07 July 2003 ("**the Lease**") in respect of Flat 10, Whiteley House, Tilson Gardens, London, SW2 4NF ("**the Property**")

**AND UPON** the Respondent admitting that a breach of covenant 2.16 and 2.19 of the Lease has occurred but denying that there has been a breach of covenant 2.24

**AND UPON** the Parties agreeing that the Applicants costs of the application are recoverable pursuant to clause 2.7.1 of the Lease

**THE TRIBUNAL DETERMINES IN ACCORDANCE WITH S.168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM 2002 THAT:**

1. A breach of covenants 2.16, 2.19 and 2.24 of the Lease dated 07 July 2003 has occurred.

**Dated: 28 November 2023**