



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

**Tribunal Case reference** : **LON/00AN/LBC/2023/0063**

**Property** : **Top Floor Flat, 47 Agate Road,  
London, W6 0AL**

**Applicant** : **David Alfred Graham Gibbins**

**Representative** : **Steven Newman, Solicitor**

**Respondent** : **Barry Colin William Gibbins**

**Representative** : **No appearance**

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

**Tribunal Judge** : **Judge Adrian Jack, Tribunal  
Member Alison Flynn MA MRICS**

**Date of decision** : **7<sup>th</sup> February 2024**

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**DECISION**

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1. The applicant is the freeholder of 47 Agate Rd, London W6. The respondent is the holder of a long lease of the Top Floor Flat. The applicant complains that the respondent is in breach of the terms of his lease in a number of ways, all arising out of a problem of water leaks from the top (second floor) flat into the first floor flat.
2. The Tribunal inspected 47 Agate Rd on the morning of 7<sup>th</sup> February 2024. It is a terraced house, typical of this area of West London, divided into three flats. The Tribunal's directions had been sent to the parties concerning the proposed inspection. Notwithstanding this, the tenant did not appear to be in his flat and did not give access to his flat. Instead we inspected the first floor flat into which leaks were said to have come. We saw a substantial area where the ceiling had collapsed in the front living room. There was also some water staining to the wall.

### **The landlord's case**

3. The applicant pleads (correcting some minor grammatical and spelling infelicities):

“5. The Respondent's obligations as they pertain to this application are set out in clauses 2, 3 and 4 and the Second and Fourth Schedule of the Respondents Lease, which reads as follows:

‘2. THE Tenant HEREBY COVENANTS with the Lessor and with and for the benefit of the owners and Lessees from time to time during the currency of the term hereby granted of the other flats comprised in the Building that the Tenant and the persons deriving title under him will at all times observe the restrictions set forth in the Second Schedule hereto.

3(1) THE Tenant HEREBY COVENANTS with the Lessor that the Tenant and all persons deriving title under him will throughout the term hereby granted:-

(c)(i) Maintain uphold and keep the demised premises and all walls sewers drains pipes cables wires and the appurtenances thereto belonging well and substantially repaired cleaned maintained and renewed

(d)(i) Permit the Lessor and its authorised surveyors or agents with or without workmen and others with tools and materials upon giving previous notice at all reasonable times but forthwith in the case of emergency to enter into and upon the demised premises or any part thereof for the purpose of viewing and examining the state and condition thereof and make good defects decays and wants of repair if which notice in writing shall be given by the Lessor to the Tenant and for which the Tenant

may be liable hereunder within three months after giving such notice.

(d)(ii) If the Tenant shall not have complied with the Lessor's notice in writing within three months after the notice having been given it shall be lawful for the Lessor (but without prejudice to any other right or remedy) to enter upon the demised premises to repair and put in order the same or carry out any such works at the expense of the Tenant as may then be necessary to render the demised premises in accordance with the covenants and provisions of this Lease and the costs and expenses thereby incurred by the Lessor shall be repaid to it by the Tenant upon demand

(i) Permit the Lessor and (as respects works in connection with any neighbouring or adjoining premises) its lessees with workmen and others with tools and materials upon giving previous notice (or in the case of emergency forthwith without notice) to enter into and upon the demised premises or any part thereof at all reasonable times during the said term for the purpose of repairing any part of the Building or any other adjoining or contiguous premises and for the purpose of making repairing maintaining supporting rebuilding cleansing lighting and keeping in order and good condition all roofs foundations damp courses sewers drains pipes cables water courses gutters wires party or other structures or other conveniences belonging to or serving or used for the Building or any other part thereof and also for the purpose of laying down maintaining repairing testing drainage gas and water pipes and electric cables and for similar purposes and also for the purpose of cutting of water to the demises premises or any other premises in the Building in respect whereof the lessee or occupier shall be in default in paying his share of water rate the Lessor or its lessees (as the case may be) making good all damage occasioned thereby to the demises premises

(l) To indemnify and keep indemnified the Lessor from and against all legal liability in respect of all loss damage actions proceedings suits claims demands damages liability and expenses in respect of any injury or the death or any person or damage to or destruction of any property moveable or immoveable by reason of or arising out of the repair state of repair condition existence or any alterations to or to the user of the demised premises and from all proceedings costs claims and demands of whatsoever nature in respect of such liability or alleged liability

4. The Tenant HEREBY COVENANTS with the Lessor and with and for the benefit of the owners and the lessees from time to time during the currency of the term hereby granted of the other flats comprised in the Building that the Tenant will at all times

hereafter during the said term:- (1) Repair maintain uphold and keep the demised premises as to afford all necessary support shelter and protection to the parts of the Building other than the demises premises and to afford the adjoining and neighbouring flats access for the purposes and subject to the conditions set out herein

The Second Schedule  
Restrictions imposed in respect of the demised premises

2 Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance of any flat in the Building or may cause an increased premium to be payable in respect thereof.

The Fourth Schedule  
Exceptions and Reservations

2 Power for the Lessor and its duly authorised surveyors or agents with or without workmen and others with tools and materials upon giving previous notice (or in the case of emergency to without notice) at all reasonable times enter into the demised premises for the purpose carrying out its obligations under this Lease

Alleged Breaches of Covenant

6. The Applicant has been advised by the leaseholder of the First Floor Flat... that water ingress has been experienced

13th July 2020 Leak into hallway and living room

17th November 2020 Major leak into kitchen necessitating a kitchen refit

11th February 2021 Leak into kitchen

15th July 2022 Leak into hallway

22nd August 2022 Leak into living room

26th September 2022 Significant leak in living room

20th December 2022 Leak above kitchen near gas meter

2nd February 2023 leak into hallway

3rd February 2023 leak into hallway leak

28th February 2023 Leak into hallway

4th April 2023 leak into hallway

5th April 2023 leak into hallway

17th June 2023 leak into hallway

7. On each occasion the water ingress has been experienced the leaseholder of the First Floor Flat has reported to the issue to the Respondent appointed agent.

8. In [the] light of the frequency of the leaks at the request of the Applicant, the Applicant's appointed managing agents instructed Messrs Bishops and Associates to undertake an inspection of both flats in order to ascertain the source of the water ingress and to specify any required remedial action...

10. As no response was received to any of the requests for access, Messrs Bishop & Associates were instructed to attend the property and to Flat door in the hope that the requested access would be provided. For the avoidance of doubt access was not provided as detailed in the Report of Messrs Bishop & Associates...

11. The Applicant's appointed agent has also requested access to the Respondent's Flat in order for the Respondent's Flat door which opens onto the common parts to be assessed in order to confirm whether or not it complies with current fire safety standards...

12. Regrettably, no reply was received to the request for access, and when the door assessor attended the Building on 11th September 2023 access was not provided to the Respondent's flat...

13. In light of the above the Applicant is contemplating forfeiture of the Respondent's Lease and seeks a determination from the Tribunal that the Respondent has breached the covenants contained in the lease and referred to above."

#### **The tenant's case**

4. The tenant has not engaged with the Tribunal proceedings. He has not served any statement of case, nor filed any evidence. He did not attend the hearing of this matter held at noon on 7<sup>th</sup> February 2024.

#### **The hearing and our determination**

5. The landlord has served witness statements from Mr Kemp, the tenant of the first floor flat, and Mr Newman, the landlord's solicitor. These statements had extensive exhibits which amply bore out the allegations made the landlord as set out above. As we have noted, the respondent

did not attend and did not cross-examine or otherwise challenge the evidence of Mr Kemp and Mr Newman.

6. In these circumstances, we accept the evidence of Mr Kemp and Mr Newman. We find that the landlord has proved the breaches of covenant alleged against the respondent.

### **Costs**

7. The landlord is entitled to recover the legal costs associated with proceedings for forfeiture of the lease but this is not a matter over which we have jurisdiction. Likewise we are not asked to make any determination of these costs. The recoverability and amount of any legal costs which the landlord can recover in respect of the proceedings before us will be for a different jurisdiction to determine. We are, however, asked to make an order in respect of the fees payable to the Tribunal. These comprise the issue fee of £100 and the hearing fee of £200. Since the landlord has won, in our judgment he should have these costs.

### **DECISION**

- (a) The respondent tenant is in breach of the covenants of his lease as alleged by the applicant landlord.
- (b) The respondent do pay the landlord £300 in respect of the fees payable to the Tribunal.

**Judge Adrian Jack    7<sup>th</sup> February 2024**