



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

**Case reference** : **LON/00AN/LBC/2023/0072**

**Property** : **Flat 147, Watermans Quay, William  
Morris Way London SW6 2UW**

**Applicant** : **Regent on the River Limited**

**Representative** : **Hughes Paddison Solicitors**

**Respondents** : **Michael Steele  
Jennifer Bonham**

**Representative** : **Charles Russell Speechlys LLP**

**Type of application** : **Breach of Covenant**

**Tribunal Member** : **Judge Robert Latham**

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

**Date of decision** : **30 April 2024**

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**DECISION**

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**Decisions of the Tribunal**

- (1) The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, the Respondents have breached the terms of their lease in that the flooring of Flat 147 is not carpeted and comprises a timber flooring finish laid directly onto concrete screed which fails to restrict the penetration of sound from the Flat to other parts of the Building.

- (2) The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

### **The Application**

1. By an application dated 16 November 2023, the Applicant seeks an order that the Respondents have breached a term of their lease pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the "2002 Act"). On 11 December, the Tribunal sent a copy of the application to the Respondents' solicitor.
2. The Applicant holds the freehold interest in the flat known as 147 Watermans Quay, William Morris Way, London, SW6 2UW ("Flat 147"). Flat 147 is let to the Respondents by a lease dated 5 August 1993 and made between (1) Partkestrel Limited (2) Canford International Limited (3) Senmax Limited and (4) Martin Po Kui Hong and Anne Ching Yee Choi ("the Lease").
3. The Lease contains a covenant at Clause 25 of the Fifth Schedule ("the Covenant") requiring the Respondents to:

"Fully to carpet or cover with other suitable floor covering adequate to restrict the penetration of sound from the Flat to other parts of the Building all floors of the Flat with the exception of those of any kitchen bathroom water closet or cupboard except while the same shall be removed for cleaning repairing or decorating the Flat or for such other temporary purpose and in any case not exceeding seven days in any consecutive period of three months."
4. In breach of the Covenant, the Applicant contends flooring in Flat 147 is not carpeted and comprises a timber flooring finish laid directly onto concrete screed which fails to restrict the penetration of sound from the Flat to other parts of the Building. There have been formal complaints made by the occupier of the flat directly beneath Flat 147. This culminated in the service of a letter of claim.
5. Flat 147 is not occupied by the Respondents. The Respondents are Trustees and Mr Toby Bonham, the occupier of Flat 147, is understood to be a beneficiary under the terms of the Trust. The Respondents have agreed to modify the flooring to improve the acoustic protection. The occupier has however refused to allow those modification works to proceed.
6. On 10 January 2024, the Tribunal issued Directions. The Applicant stated that it was content for the application to be determined on the papers and the tribunal allocated it to the paper track. By 31 January,

the Applicant was directed to email to the Respondent the evidence and documents upon which it sought to rely. By 28 February, the Respondents were directed to email their evidence and documents in response to the application.

7. On 28 February 2024, the Respondents' solicitor notified the tribunal that the Respondents will not be opposing the application.

### **The Law**

8. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides that:

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

9. In approaching this application, we have regard to guidance provided by Martin Rodger QC, the Deputy President, in *Marchitelli v 15 Westgate Terrace Ltd* [2020] UKUT 192 (LC); [2021] 1 P&CR 9 (at ++[49]):

"The purpose of proceedings under s.168(4) of the 2002 Act, is to establish the facts on which steps to forfeit an extremely valuable lease will then be founded. Before forfeiture proceedings may be commenced the landlord is required by s.146(1) of the 1925 Act, to serve a notice "specifying the particular breach complained of" and if that breach is remedied and compensation is paid no forfeiture will occur. Before a s.146

notice may be served the FTT must determine that “the breach” has occurred (s.186(2)(a) of the 2002 Act). It follows, therefore, that the determination required of the FTT must be sufficiently specific to provide the basis of a s.146 notice.”

### **The Tribunal’s Determination**

10. The Tribunal is satisfied that the Respondents have breached the terms of their lease in that the flooring of Flat 147 is not carpeted and comprises a timber flooring finish laid directly onto concrete screed which fails to restrict the penetration of sound from the Flat to other parts of the Building.
11. The Tribunal has had regard the following statements which have been filed by the Applicant:
  - (i) Sharon Lands, dated 10 November 2023 (at p.105-156 of the Bundle). Ms Lands is a Director and Chair of the Board of Directors of the Applicant company. Her evidence outlines the discussions that she has had with the Respondents and also with Mr Toby Bonham, concerning the breach of covenant.
  - (ii) Edward Hensman, dated 10 November 2023 (at p.157-174). Mr Hensman is a senior building surveyor who inspected Flat 147 on 25 October 2023. He confirms that there was no acoustic matting or insulation laid between the floor screed and the wooden timber floor finishes. He concludes that there was inadequate acoustic protection in the flooring of the flat.
  - (iii) James Cavendish, dated 25 January 2024 (at p.173-190). He is a London Property 471 Limited which acquired Flat 143a in November 2022. This flat is directly underneath Flat 147. He occupies the flat with his mother. He provides details of the noise nuisance that they have experienced.
12. It seems that Flat 147 was refurbished in 2006, a number of years before the Respondents acquired the Flat. The Tribunal is satisfied that a wooden floor was installed. There has been no carpeting and this has caused a noise nuisance. James and Anita Cavendish have made numerous complaints about this since they moved into their flat in November 2022. The Applicant has made strenuous efforts to resolve the problem. The Respondents have accepted that there is a problem that needs to be resolved. However, it seems that there have been practical difficulties in persuading Mr Toby Bonham to facilitate the necessary works.
13. In their application, the Applicant state that it is seeking to enforce the breach of the Covenant and intends to issue forfeiture proceedings

subject to the Tribunal's determination. It is hoped that in the light of the Respondents' decision not to oppose the application, they will now remedy the breach and that further court proceedings will not be necessary.

### **Refund of Fees**

14. The Applicant has paid tribunal fees of £100. In the light of our findings, the Tribunal orders the Respondents to refund the tribunal fees of £100 within 28 days of the date of this decision pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules").

**Judge Robert Latham**  
**30 April 2024**

### **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).