FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/LBC/2023/0069**
Property	**:**	**197 Plumstead High Street, London SE18 1HE**
Applicant	**:**	**Lisa Gonzi**
Respondent	**:**	**Sonia Lawrence**
Representative	**:**	**Anthony Lawrence, son**
Type of application	**:**	**Determination of breach of covenant pursuant to section 168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge H. Lumby** **Mr S Mason BSc FRICS** **Mr Alan Ring**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**11 April 2024**
Date of decision	**:**	**16 May 2024**

DECISION

Decisions of the tribunal

The tribunal determines that, on the basis of the evidence provided, no breach of covenant under the Respondent's lease has occurred.

The application

1. The Applicant seeks a determination pursuant to section 168(4) Commonhold and Leasehold Reform Act 2002 (the "2002 Act") as to whether the Respondent is in breach of various covenants contained in her lease of the Property.

2. The Applicant has cited numerous tenant's covenants within the Respondent's lease, all of which the Applicant contends have been breached by the Respondent. In particular, the Applicant asserts that the Respondent has failed to keep the Property in good repair internally (in breach of clauses 4(6)-(8) and (11)) or to provide access to the Applicant or her workmen (clause 4(12)) and, due to neighbour complaints and the windows being boarded up, the insurance policy is at risk of being voided (clause 4(14)).

Background

3. The Property is a lower ground floor one bedroom flat within a house which has been converted into three flats. The Applicant owns the freehold to the building and one of the flats within it but does not live there.

4. The Respondent is a leaseholder, owning the Property pursuant to a lease dated 23 December 1976 for a term of 99 years from 23 December 1976 and made between Vera Gladys Banks (1) and Andrew Stephen Page (2).

5. The Respondent is not resident in the Property. She purchased the Property in 1993 and from late 1993/early 1994 it was occupied by a family friend, Arran Miles, sharing with his partner from 2004/5 until the partner's death in May 2021. Mr Miles gave up occupation shortly after but continued until June 2023 to carry out works to do up the Property. The works have now been taken over by the Respondent's son.

6. A series of incidents occurred at the Property from around April 2023 with rubbish dumped outside the flat and windows broken, following which they were boarded up. The Property was broken into and substantially damaged, with racist graffiti written on the walls. The pipework in the flat was sawn through, causing a flood and the toilet was filled with expanding foam. The front windows and entrance door have now all been secured with boarding and a steel gate whilst restoration works continue, to prevent further break-ins.

7. The Applicant's complaints primarily stem from the condition of the Property.

The hearing

8. This has been a determination following a hearing on 11 April 2024. The documents that the tribunal was referred to are in a bundle of 81 pages; in addition, the tribunal was provided with a copy of the Respondent's lease. The tribunal had sight of the Applicant's application and the Directions of the tribunal dated 12 December 2023 following a case management hearing held on that date. The contents of all these have been noted by the tribunal.

9. The hearing was conducted in person. Both the Applicant and the Respondent (who is 83) attended in person, the Respondent being represented by her son.

10. Having considered all of the documents provided and heard the submissions of the parties, the tribunal has made determinations on the issue as follows.

The Lease

11. The Applicant contends that the Respondent is in breach of the following covenants, 4(1) (pay rent), 4(2) (pay outgoings), 4(4) (alienation), 4(5) (pay charges and expenses), 4(6) (internal decoration), 4(7) (repair), 4(8) (repair conduits), 4(9) (pay common expenses), 4(10) (also common expenses), 4(11) (maintain front garden), 4(12) (permit access), 4(13) (alterations), 4(14) (no nuisance or voiding insurance) and 4(19) (yield up).

12. The tribunal considered each of these clauses in turn, batching them where appropriate and hearing submissions from each of the parties in relation to them. The relevant clauses are set out at the start of each section.

Tribunal's determination

13. The burden of proof rests with the Applicant and it is for her to evidence sufficient facts to show that the covenants in question have been breached. The tribunal considered each of the alleged breaches from this perspective.

Clauses 4(1), 4(2), 4(5), 4(9) and 4(10) – payment obligations

14. The tribunal began with the various clauses requiring payments to the landlord, being clauses 4(1), 4(2), 4(5), 4(9) and 4(10).

15. Clause 4(1) is a covenant by the tenant:

> "to pay the reserved rent on the days and in the manner aforesaid subject only to the provisions hereinafter contained"

The reserved rents are a ground rent of £25 payable in advance in half yearly instalments and "the sum the Lessor shall expend on insuring the flat within seven days of request for the same"

16. Clause 4(2) is a covenant by the tenant:

"to pay all existing and future rates taxes assessments and outgoings whether parliamentary local or otherwise now or hereafter imposed or charged upon the said flat or any part thereof or on the Lessor or the Lessee respectively PROVIDED ALWAYS that where any such outgoings are charged upon the flat and the other flats without apportionment the Lessee shall be liable to pay one third of such outgoings and the Lessor shall keep the tenant indemnified against the payment of the remaining two-thirds"

17. Clause 4(5) is a covenant by the tenant:

"to pay all costs charges and expenses (including Solicitors costs and Surveyors fees) incurred by the Lessor for the purpose of and incidental to the preparation and service of any Notice under the Law of Property Act 1925 arising out of any breach of [sic] non-performance of any of the covenants on the part of the tenant herein contained notwithstanding that forfeiture for such breach shall be avoidable otherwise than by relief granted by the Court"

18. Clause 4(9) is a covenant by the tenant:

"to pay one third of the Lessors expenses (such expense to include all survey fees relevant thereto) of keeping the roof and walls and drains and the front fence adjoining the street and all exterior chimney stacks in good repair and condition the fairness and reasonableness of such cost to be decided in the event of the dispute by the Lessor or her surveyor whose decision will be final and binding"

19. Clause 4(10) is a covenant by the tenant:

"to pay one third the cost [sic] (such cost to include all survey fees relevant thereto) of all repairs and decorating of the exterior of the premises such repairs and decorating to be carried out by the Lessor the fairness and reasonableness of such cost to be decided in the event of the dispute by the Lessor or her Surveyors whose decision will be final"

20. The Applicant argued that the Respondent had breached clause 4(1) and 4(2) by having arrears of ground rent and insurance. The Respondent argued that the Applicant has regularly used the wrong address for the Respondent, pointing to various examples of this in the bundle. The correct address was 13 Halsbrook Road, London SE3 8QU; the examples show invoices addressed to Horse Brook Road and Horse Brook Lane. The Respondent also argued that the Applicant had sent demands by email when

the Respondent did not use email. This had meant that some payments were late. The Applicant accepted that there were no current arrears.

21. The tribunal considered whether there was evidence of a breach of clauses 4(1) and/or 4(2). Ground rent and insurance were both payable pursuant to clause 4(1) and it was acknowledged that there had been historic late payments. However, the Applicant was unable to show that the late payments had been properly demanded because of the frequent use of the wrong address. There were no current arrears. On the basis that there was no evidence of proper demands being made, the tribunal determined that no breach of clause 4(1) had been demonstrated.

22. Clause 4(2) related to the payment of outgoings. No evidence was produced showing any arrears of outgoings, on which basis the tribunal determined that no breach of clause 4(2) had been demonstrated.

23. Clause 4(5) relates to costs relating to section 146 proceedings and the Applicant confirmed that no such costs had been demanded. The Applicant argued that the Respondent was in breach of clause 4(5) by failing to pay the costs of this application and in particular the tribunal fees. The Respondent contended that these costs had not been demanded.

24. The tribunal considered whether there was any evidence of a breach of clause 4(5). As the only amounts claimed related to future costs that had not been demanded and were at least in part dependant on the outcome of the case, the Respondent could not be in breach of this covenant. Accordingly, it determined that no breach of clause 4(5) had been demonstrated.

25. Clauses 4(9) and (10) were then considered. The Applicant accepted that there were no current arrears pursuant to either of these two clauses and she could not demonstrate service of demands in relation to any historic arrears. Accordingly, as there was no evidence to support any claim that these covenants had been breached, the tribunal determined that no breach of them had been demonstrated.

26. The tribunal therefore determines that on the evidence before it no breach of any of clauses 4(1), 4(2), 4(5), 4(9) or 4(10) has been demonstrated.

Clause 4(4) – subletting without consent

27. Clause 4(4) is a covenant by the tenant:

> "Not during the last seven years of the said term to assign underlet or part with possession of the flat or any part thereof or the said fixtures (if any) without the previous consent in writing of the Lessor which consent shall not be unreasonably withheld"

28. The Applicant accepted that this covenant only applied in the last seven years of the term of the lease and so currently did not apply.

29. The tribunal accordingly determined that no breach of clause 4(4) had been demonstrated.

Clauses 4(6), 4(7), 4(8), 4(11) – repair and condition

30. Clause 4(6) is a covenant by the tenant:

> "to paint in a proper and workmanlike manner all the inside wood iron and other parts heretofore or usually painted of the flat with three coats at least of good oil paint and after internal painting to repaper with paper of a quality equal at least to that hung at the date hereof such parts of the flat as are now papered and to stain varnish distemper stop whiten and colour such parts of the flats [sic] as have been previously so treated at least once in every seven years calculated from the twenty fifth day of March 1976"

31. Clause 4(7) is a covenant by the tenant:

> "to keep the interior of the premises in good and substantial repair"

32. Clause 4(8) is a covenant by the tenant:

> "to keep in repair and replace when necessary all cisterns pipes wires ducts and any other thing installed for the purpose of supplying water (cold or hot) gas or electricity or for the purpose of draining away water and soil or for allowing the escape of steam or other deleterious matter from the flat in so far as such pipes wires ducts or other things are solely installed or used only for the purpose of the flat and for the purpose of such repair the Lessee and his workmen shall have access to such pipes wires ducts or other things where they are in upon under or over the other flats or the parts of the building used in common by the Lessee and the Lessees of the other flats upon proper notice to the other Lessee being given"

33. Clause 4(11) is a covenant by the tenant:

> "to keep tidy and maintain in good order the front garden to the property"

34. The Applicant argued that the condition of the Property following the break-ins and vandalism suffered was evidence of breach of the repair obligations. She cited the lack of a kitchen, the toilet being disconnected, the use of the garden to the rear as a toilet by squatters and the tenant in the flat above feeling unsafe. The Environmental Health Department had visited the Property on 22 June 2023 and identified a number of deficiencies which are set out on pages [6] and [7] of the bundle. The letter from them in the bundle

identified that, although there were deficiencies that needed attending to, they no longer posed a health and safety risk to neighbours.

35. The deficiencies identified by the Environmental Health Department were considered in turn by the tribunal. The first item was a broken entrance door, the letter from the Department confirmed that both this and the rear back door had been secured. The tribunal determined that the doors had been broken by people breaking in and so was not the fault of the Respondent as tenant. It therefore determined that the damage had been repaired so there was no breach of covenant.

36. The second deficiency identified was the broken living room front window which was damaged as part of the vandalism experienced. The Respondent explained that the window had been repaired but remained covered by boarding to prevent any repeat break-ins. The Applicant accepted that the boarded up windows were a choice by the Respondent but felt it might attract vandalism or break-ins by giving the appearance of being unoccupied. The tribunal determined that the window had been broken by people breaking in and so was not the fault of the Respondent as tenant. It therefore determined that the damage had been repaired so there was no breach of covenant.

37. The third deficiency was the overgrown rear garden although they acknowledged that this had been cut down. The tribunal noted that the lease covenants did not in any event require the Respondent to tend the rear garden and so its condition could not be the subject of a claim for breach of contract.

38. The fourth deficiency was rubbish in front of the Property, although the Applicant acknowledged that this had been cleared. The Respondent argued that this rubbish had been dumped there at the time of the vandalism/break-ins. However, it had all been cleared by the Respondent. The tribunal noted the requirement of the covenant at clause 4(11) of the lease to keep this area tidy and maintained in good order. However, the rubbish had been dumped by third parties and cleared by the Respondent in compliance with this clause. Actions of third parties could not be a breach of this covenant by the tenant, although a failure to clear it away could be. The tribunal determined that there was insufficient evidence that this clause had been breached.

39. The fifth deficiency was that the Property was reported to have an offensive smell, although the Property had been cleansed before the EHO's inspection and the issue resolved. The Respondent therefore argued that this had been addressed. The tribunal noted that the prevention of smell was not covered by any of the covenants in question and therefore determined that in any event this could not have amounted to a breach of the relevant covenants.

40. The sixth, seventh and eighth deficiencies were that the bathtub and the toilet were both disconnected at the time of the inspection and there was

dampness on the walls. The Respondent argued that the bath and toilet had been vandalised at the time of the break-ins with the water pipe being severed. It was contended that the basin and toilet were both reconnected and it was intended to create a wet room; however, this was being prevented by a leak from the flat above which was also causing the dampness to the wall. The tribunal considered that the damage to the sanitary ware had been caused by the vandalism and determined that steps were being taken to remedy the damage and put the flat back in repair. No evidence was offered by the Applicant in relation to the damp that was preventing work. Overall, the tribunal determined that there was insufficient evidence to conclude that these deficiencies amounted to a breach of any of these covenants.

41. The ninth deficiency was the presence of small holes and dents on the bathroom wall. The Respondent explained that, as above, this room was being repaired following the vandalism. The tiles had been removed and were to be replaced. The tribunal accepted that this was in the course of being repaired. A failure to complete the work could mean that the repair covenant in clause 4(6) had been breached. However, the tribunal determined that the work was still going on and that insufficient evidence had been provided to conclude that a breach had yet arisen. Accordingly, it determined that these holes and dents did not amount to a breach of covenant.

42. The tenth and eleventh deficiencies related to a broken wall and ceiling in the kitchen. The Respondent explained that this was caused during the break-ins as well as the extensive graffiti. Evidence was provided that a fitted kitchen is now in situ with the damage repaired. The tribunal considered that this could have amounted to a breach of clause 4(6) if not repaired but concluded that as it had been repaired, there was no evidence of a breach.

43. The final three deficiencies were small holes and dents on the living room wall, a lack of a skirting board at the base of a wall and a missing skirting board in the hallway. The Respondent argued that skirtings had been largely removed to make the rooms look bigger and the other deficiencies had been repaired. The tribunal considered that these did not amount to a breach of the repair covenant.

44. The Applicant also provided a witness statement from Mr Vijayaratnam Purushowththaman, who lives in the adjoining basement flat at 199A Plumstead High Street. He states that “crackets and druggy occupy the Property and run prostitution all day and night”. He claimed that the lack of occupation in the Property and other leaking was causing damp on his wall and other damage, that Thames Water had cut the water off in 2023 and that the basement garden was full of rubbish. The witness statement is unsigned and not dated and the witness did not appear at the hearing and so the tribunal could not ask him questions. As a result, little weight was given to this witness statement. The Respondent explained that Thames Water did cut the water off at one point and caused a flood as a result.

45. Having considered the specific allegations and the submissions of breach, the tribunal considered each of the relevant covenants to determine whether there was either individually or in aggregate sufficient evidence to demonstrate a breach of any of them.

46. No evidence was provided relating to a breach of clause 4(6), the requirement to redecorate at least once every seven years. The Respondent confirmed to the tribunal that it had been redecorated throughout. As a result, the tribunal determined that a breach of clause 4(6) had not been demonstrated.

47. Most evidence appertained to clause 4(6), the repair covenant. The tribunal accepted that the Property had been broken into by third parties and suffered substantial damage and vandalism. This had rendered it in a state of disrepair. The Respondent was therefore obliged pursuant to clause 4(6) to put the interior of the Property back into repair. This was initially undertaken by Mr Miles and it appears to the tribunal on the evidence presented to it, that there were issues with the pace of work being undertaken, as shown by the contents of the 2023 Environmental Health Department report. The renovation was then taken over by Mr Lawrence who on the evidence presented was making reasonable progress. The tribunal noted that the bathroom was still disconnected, suggesting that the Property is still not fully in repair but accepts that this is caused by leak issues higher up in the building. Otherwise there was no evidence that it is currently in disrepair. Mr Lawrence argued that the work was largely finished and should be completed by September 2024, in time for his son to take occupation if he attends university in London. Accordingly, the combination of the evidence that the disrepair is being remedied and the lack of evidence to suggest that it is in disrepair leads the tribunal to conclude that the Respondent is not in breach of clause 4(7) at present. If the renovation works stop before the Property is in full repair, then at that point a breach may occur. In the meantime, the tribunal determines that no breach of clause 4(7) has been demonstrated.

48. The tribunal then considered clause 4(8) which relates to an obligation to maintain the conduits solely serving the Property. The tribunal considered that the vandalism suffered by the Property might well have triggered an obligation to put such conduits back in repair and, as with clause 4(7), there is evidence that the repair work is ongoing and that the failure to connect the bathroom relates to leaks elsewhere outside the Respondent's control. There is insufficient evidence to demonstrate a breach of this covenant. Accordingly, the tribunal determines that no breach of clause 4(8) has been demonstrated.

49. Finally, the tribunal considered clause 4(11), the covenant to keep the front garden tidy and maintained. The tribunal finds on the evidence presented that the rubbish there was dumped by third parties. This would have obliged the Respondent to remove the rubbish which the tribunal is satisfied did occur. The Applicant confirmed that she had seen it a month before the

hearing and it was in a tidy condition then. The tribunal determined that there was insufficient evidence to determine that there was a breach of the covenant. The rear garden and its state were irrelevant as no covenants related to it. Accordingly, the tribunal determines that no breach of clause 4(11) has been demonstrated.

50. The tribunal therefore determines that on the evidence before it no breach of clauses 4(6), 4(7), 4(8) and 4(11) has been demonstrated.

Clause 4(12) – permit entry

51. Clause 4(12) is a covenant by the tenant:

> "To permit the Lessor and their agents with or without workmen and others twice a year by appointment at reasonable times to enter upon and examine the condition of the said flat and thereupon the Lessor may serve upon the Lessee notice in writing specifying any repairs necessary to be done and require the Lessee forthwith to execute the same and if the Lessee shall not within one month after the service of such notice proceed diligently with the execution of such repairs then to permit the Lessor to enter upon the flat and execute such repairs and the cost thereof shall be a debt due to the Lessor from the Lessee and be forthwith recoverable by action"

52. The Applicant argued that it was important that she be able to gain access to the Property, for example to inspect the rear of the building. She has responsibilities but contends that communication with the Respondent is very difficult as the Respondent does not use email as a general rule, she has no phone number for Mr Lawrence. She is therefore left with communication by letter, which is not suitable in an emergency.

53. The Respondent denied that the Applicant had been refused access and asserted that access to view the rear of the building had been agreed. After discussion between the parties, Mr Lawrence agreed to provide a mobile number for him on the condition it was only used where appropriate, with letters being sent where there was time. The Applicant agreed to this.

54. The tribunal considered that there was insufficient evidence to demonstrate that the Respondent had prevented access to the Property by the Applicant in breach of clause 4(12). There were communications issues between the parties but that did not amount to a breach of this clause.

55. The tribunal therefore determines that on the evidence before it no breach of clause 4(12) has been demonstrated.

Clause 4(13) – alterations

56. Clause 4(13) is a covenant by the tenant:

"Not to make any alterations in the said flat without the approval in writing of the Lessor to the plans and specifications thereof and to make all such alterations in accordance with such plans and specifications the Lessee shall at his own expense in all respects obtain all licences approval of plans permissions and other things necessary for the carrying out of such alterations and comply with the bye-laws and regulations and other matters prescribed by any competent authority either generally or in respect of the specific works involved in such alterations"

57. The Applicant argued that this clause required the Respondent to have an EPC (Energy Performance Certificate) in place in relation to the Property and the fact that she did not amounted to a breach of this covenant. She contended that this was on the basis that an EPC was a licence required for alterations.

58. The tribunal did not agree that an EPC was a licence required for alterations. EPCs are certificates required in order to let or dispose of a Property. Alterations can affect the validity of an EPC, necessitating the obtaining of a new EPC, however they were not licences required for alterations. The relevant part of the covenant related to matters such as building regulations approval or planning permission. As a result, the tribunal concluded that there was no evidence provided to demonstrate a breach of this covenant.

59. The tribunal therefore determines that on the evidence before it no breach of clause 4(13) has been demonstrated.

Clause 4(14) – nuisance and insurance

60. Clause 4(14) is a covenant by the tenant:

"Not to do or permit or suffer to be done in or upon the flat anything which may be or become a nuisance or cause damage or inconvenience to the Lessor or the Lessees of the Lessor or neighbouring owners or occupiers or whereby any insurance for the time being effected on the flat may be rendered void or voidable or whereby the rate of premium may be increased"

61. The Applicant argued that the use and condition of the Property was causing a nuisance, damage or inconvenience to neighbours, relying on the witness statement of Mr. Purushowththaman as evidence. In addition, she contended that the insurers of the building had threatened to withdraw cover unless the windows were repaired and the Property not left unoccupied. On questioning by the tribunal, she confirmed that she had not spoken to Mr Purushowththaman recently and assumed that the issues complained about had ceased. She said her insurers had expressed unhappiness with the windows being boarded up and the Property being unoccupied but had not withdrawn cover or increased the premium. She accepted that the leak from above may be an issue that might result in a claim on the insurance and would provide a copy to Mr Lawrence.

62. The tribunal considered whether there was any evidence to support the claim that the Property was causing a nuisance, damage or inconvenience to neighbours. The witness statement from Mr Purushowththaman was unsigned and undated and he did not attend the hearing. As a result little weight was given by the tribunal to this evidence. The Applicant had also argued that her tenant on the floor above was complaining about the Property but no evidence for this was provided. Accordingly, the tribunal concluded that insufficient evidence had been provided to demonstrate that the covenant not to cause damage, nuisance or inconvenience to neighbours had been breached.

63. The tribunal next considered the claim that there was a breach of the covenant not to render the Property's insurance void or voidable or to increase the premium payable. The Applicant had contended that the insurers were not happy with the condition of the windows and the fact that the Property was unoccupied. However, she had provided no evidence of this. The windows were in any event fully repaired, the boarding covering them just being there for security purposes. In addition, no increase in the premium had been demanded. The tribunal considered it possible that in the future the lack of occupation of the Property and its condition might affect the insurance policy and the premium payable. However, it also considered that there was insufficient evidence that this had already occurred, so causing a breach of covenant. As a result, the tribunal determined that there was insufficient evidence to demonstrate that the Respondent was in breach of the insurance covenants within clause 4(14).

64. The tribunal therefore determines that on the evidence before it no breach of clause 4(14) has been demonstrated.

Clauses 4(19) – yield up

65. Clause 4(19) is a covenant by the tenant:

> "At the determination of the tenancy to yield up the flat and all fittings therein in good and substantial repair in accordance with the Lessees covenants herein contained"

66. The Applicant accepted that this clause only applied at the end of the tenancy and so was not relevant yet.

67. The tribunal therefore determines that on the evidence before it no breach of clause 4(19) has been demonstrated.

Conclusion

68. As the tribunal has been unable to determine that any of the identified covenants have been breached, it must determine that, on the basis of the

evidence provided, no breach of covenant under the Respondent's lease has occurred.

Costs

69. The Applicant applied for the costs of the application to the tribunal and the hearing fee (amounting to £300 in total) to be reimbursed to her by the Respondent.

70. The Respondent resisted this application, arguing that she had already incurred £2,500 in irrecoverable solicitors' fees in relation to the dispute.

71. The tribunal considered the application. On the basis that no breaches of covenant had been demonstrated by the Applicant, the tribunal determined that it was not just and reasonable for the Respondent to meet the costs of the application and the hearing. The application is therefore refused.

Name: Judge H Lumby **Date:** 16 May 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).