FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/2023/0057**
Property	:	**Flat 6 Oaks Court, 226-228 Cann Hall Road, London E11 3NF**
Applicant	:	**Cann Hall Limited**
Representative	:	**Stephen Clacy - Cann Hall Limited**
Respondent	:	**Fawad Arshad Khan**
Representative	:	**In Person**
Type of application	:	**Determination of an alleged Breach of Covenant (Section 168 (4) Commonhold and Leasehold Reform Act 2002)**
Tribunal member(s)	:	**Judge Bernadette MacQueen** **Stephen Mason, FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**21 June 2024**

DECISION

Decision of the Tribunal

For the reasons set out below, the Tribunal finds that the Respondent breached clause 3 (ii) (a) of the Lease dated 5 January 1988.

The Background

1. The Applicant was the freehold owner of Oaks Court, 226-228 Cann Hall Road, London, E11 3NF ("the Building"). The freehold title was registered under title numbers NGL144653 and NGL57511.

2. The Respondent was the leasehold owner of the property known as Flat 6, Oaks Court, 226-228 Cann Hall Road, London E11 3NF ("the Property"). The Respondent held the lease to Flat 6, which was dated 10 May 2006 (the 2006 Lease) and made between Marcia Grant and Rai Properties Limited for a term of 189 years at a peppercorn rent; the lease is registered under title number EGL506256. The lease was granted following the surrender and regrant of an earlier lease dated 5 January 1988, made between Peter David East and John Kenneth David (the 1988 Lease). The 2006 Lease was granted on the same terms as the 1988 Lease save as to the term and the rent.

3. In the '2006 Lease', the Property was described as being on the second floor of the Building.

4. The Applicant sought a determination pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent was in breach of a covenant in the Lease.

The Hearing

5. On 19 December 2023, Directions were made by the Tribunal requiring the Applicant to produce a witness statement and other documents they wished to rely on by 16 January 2024. The Respondent was directed to produce his witness statement and other documents he wished to rely on by 13 February 2024. The Directions further provided that the Applicant was to prepare a bundle of documents to use at the hearing by 12 March 2024.

6. The Applicant produced a bundle which consisted of 45 pages, however the Respondent did not produce any documents in accordance with the Directions.

7. The Tribunal heard oral submissions from both parties and considered the bundle of documents.

8. The Tribunal did not consider that inspecting the Property was necessary or proportionate to the issues in dispute. Additionally, neither party requested an inspection.

The Issues

9. This was an application for a determination that the Respondent had breached clause 3 (ii) (a) of the 1988 Lease, namely:

   "To permit the Landlord and any tenant of any other part of the Property and any person respectively authorised by any such person to enter the Flat upon reasonable notice (except in emergency) to inspect the state of repair thereof and of adjoining and neighbouring property".

The Applicant's and Respondent's Evidence

10. The Applicant told the Tribunal that by letter dated 31 July 2023, they had requested access to the Property as they required access to all the flats in the Building to carry out an inspection to ensure compliance with the Fire Safety (England) Regulations 2022. A copy of this letter was at page 43 of the Bundle.

11. The Respondent confirmed to the Tribunal that he had emailed the Applicant in reply to the letter of 31 July 2023 to refuse entry because he did not accept the reasons given for requiring entry by the Applicant as being "honest and fair". A copy of this email was at page 45 of the Bundle.

12. At the hearing, the Respondent reiterated his position and stated that it was his view that he was being singled out as the only flat that an inspection had been requested for.

13. Mr Clacy on behalf of the Applicant confirmed that this was not the case and that an inspection had been carried out on the whole Building.

14. The Respondent had not provided the Tribunal with any written documentation, however at the hearing, he sought to introduce two reports that he said showed that the Property was fire safety compliant. In reply, the Applicant confirmed that these reports would not be reports that the Applicant would be able to rely upon as they were required to complete a fire safety inspection themselves. The Tribunal did not allow the Respondent to introduce these reports as they had not been served on the Applicant and because the Tribunal accepted the Applicant's position that the reports did not assist with the landlord's fire safety inspection obligations. The reports were therefore not relevant to the issue that the Tribunal had been asked to determine, namely whether or not there had been a breach of covenant.

The Law

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

(6) For the purposes of subsection (4), "appropriate tribunal" means—
(a) in relation to a dwelling in England, the First-tier Tribunal…

The Tribunal's Determinations

16. The Tribunal accepted the evidence of the Applicant that they had given the Respondent reasonable notice to enter the Property as required under clause 3 (ii) (a) of the 1988 Lease. Further, the Tribunal accepted the evidence of the Applicant that they needed to inspect the state of repair of the Property in that entry was required to inspect the doors of the Property to ensure that they complied with fire safety standards. The Tribunal found that making this inspection fell within the terms of clause 3 (ii) (a) as this inspection was ensuring that the doors met the appropriate standards and therefore the state of repair of the doors was being inspected.

17. The Tribunal therefore found, on a balance of probabilities, that by refusing entry to the Applicant, the Respondent had breached clause 3 (ii) (a) of the 1988 Lease.

Cost Applications

18. The Applicant did not seek costs other than to request that his train fare was refunded by the Respondent.

19. The Tribunal made no determination in respect of the Applicant's request that his train fare be refunded by the Respondent. This is because this Tribunal is generally a no costs jurisdiction. However, the Tribunal does have power to award costs under Rule 13 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, but only if a party has acted unreasonably. It is open for a party to make an application for costs, but the party would need to explain why such an application is appropriate.

Name: Judge B MacQueen **Date**: 21 June 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).