FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UB/LBC/2023/0009**
Property	**:**	**20, The Eights Marina, Cambridge CB4 1ZA**
Applicant	**:**	**Eights Management Company Ltd**
Representative	**:**	**Mr Ronan of Counsel**
Respondent	**:**	**(1) Stephen Ingram (2) Ms Xi Lin**
Representative	**:**	**Mr Becker of Counsel**
Date of Application	**:**	**26 September 2023**
Type of application	**:**	**Application for an order that a breach of covenant or condition has occurred pursuant to s.168(4) of CLARA 2002**
The Tribunal	**:**	**Tribunal Judge S Evans** **Mrs Mary Hardman FRICS IRRV (Hons)**
Date/ place of hearing	**:**	**12 August 2024, remote video**
Date of decision	**:**	**24 September 2024**

DECISION

DECISION

1. **The Tribunal determines that the Respondents have not breached the covenants alleged.**

2. **None of the costs incurred by the Applicant in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents, pursuant to section 20C of the Landlord and Tenant Act 1985.**

Introduction

3. The Applicant seeks a determination of breach of lease by the Respondents pursuant to s.168(4) of Commonhold and Leasehold Reform Act 2002, which the Respondents deny, seeking a s.20C Landlord and Tenant Act 1985 order against the Applicant in return.

The Parties

4. Eights Management Company Ltd is the Applicant.

5. The Respondents are Stephen Ingram and Xi Lin, the Leaseholders of the flat called 20 Eights Marina, Cambridge CB4 1ZA ("the Property").

6. The Property consists of a 2 bedroom apartment in a block. The Property sits in a high quality purpose-built gated development of 39 flats.

Background

7. By a long Lease dated 1 September 1997, Berkeley Homes (Essex) Limited as landlord demised the Property to Yeng Huat Paul and Yap Hoi Lin Irene, the Applicant also being a party to the Lease as management company.

8. By clause 3 of the Lease, the Leaseholder covenants with the landlord and the management company to observe the covenants in the 3rd Schedule to the Lease. One of those covenants is to be found at paragraph 3.22:

   "Not to use or permit or suffer to be used the demised premises for any purpose from which a nuisance or annoyance or damage or inconvenience can arise to the residents of other dwellings comprised within the development… or for any illegal or immoral purpose and not to hold any auction or religious political or public meeting on the demised premises but to use the dwelling only as a single private residence."

9. By clause 4.2 the Leaseholder covenants to observe and perform the rules and regulations in the 8th Schedule. Paragraph 8.01 of the 8th Schedule of the Lease in its original form provides:

"Not at any time to use or occupy or permit the Demised Premises to be used and occupied except as a private residential apartment for a reasonable number of persons".

10. Paragraph 8.26 of the 8th Schedule of the Lease provides:

"Not to use or permit the demised premises to be used for any illegal or immoral purpose or for any purpose which shall be or tend to be a nuisance (whether or not amounting to a legal nuisance) damage annoyance or inconvenience to the lessor or the owners or occupiers of the dwellings or which tends to diminish or lessen the value of the development."

11. By clause 4.4, the Leaseholder also covenants:

"Not at any time during the term to assign underlet or part with possession of part only of the demised premises."

12. By clause 4.5, the Leaseholder covenants:

"Not without the lessor's consent in writing at any time during the residue of the term to underlet the demised premises save that nothing herein shall prevent the underletting of the whole of the demised premises (and not merely part thereof) for a term not exceeding 2 years which underletting shall be by the lessee as owner-occupier thereof pursuant to Part 1 Ground 1 of Schedule 2 of the Housing Act 1988 or an assured shorthold tenancy for a minimum period of six (6) months or any statutory modification or reenactment thereof and the lessee shall give proper notice to a prospective subtenant in the form prescribed by the said Act"

13. By clause 4.6, the Leaseholder further covenants:

"Not to assign the whole of the demised premises except to an assignee who enters into a direct covenant with the lessor and the management company in the form of a deed of covenant contained in the 9th Schedule and to indemnify the lessor and the management company against any loss claim or expense incurred by reason of any failure of the assignee to do so and to ensure that an appropriate restriction is entered in the title to the demised premises"

14. On 29 May 2001 the Applicant became the freeholder of 1-39 The Eights Marina, including the Property.

15. On the 30 August 2012 the Respondents became the registered Leaseholders of the Property.

16. Ms Xi Lin has never lived in the Property.

17. On 5 July 2021 an amendment was agreed to paragraph 8.01 of the 8th Schedule by all Leaseholders and the Respondent. The terms of that amendment are not relevant for present purposes.

18. On 3 August 2021 Mr Ingram permitted a Ms Lu Huang to occupy a double ensuite room in the Property and to share certain facilities. They signed an agreement as "owner/occupier" and "lodger" respectively, in these terms:

    "Lodging Agreement

    20 The Eights Marina
    Cambridge
    CB4 1ZA

    "Received the sum of £1590 (one thousand five hundred and ninety pounds) from Lu Huang for the use of a room at the above address for the period from the 06 August 2021 to 06 February 2021 {sic}, with one months' notice either side. This includes a security deposit of £795, which is repayable at the end of the lodging period. The lodging period is extendable after six months depending on if the accommodation is available. The amount payable for the room is £795 per month, payable in advance, and includes all utility bills, including council tax, TV licence and internet provider."

19. Ms Huang commenced occupation on 6 August 2021.

20. On 14 September 2021 Mr Ingram and Ms Huang agreed an update to their agreement, recorded in manuscript:

    "Update to be at least six months stay and after six months (from 05.08.2021) one month notice to move or renew and continue the agreement again."

21. Between December 2021 and January 2022 Ms Huang missed her occupation payment(s) due to Mr Ingram.

22. On 22 January 2022 Mr Ingram and Ms Huang agreed another update to the written agreement, again recorded in manuscript, as follows:

    "To extend our rent agreement from Feb 6th 2022 till May 6th 2022 and after that with one month's notice either side."

23. However, by 6 February 2022 Mr Ingram had asked Ms Luang to leave the Property.

24. On 7 February 2022 the Applicant was made aware of Ms Huang's occupation. Mr Ingram contacted the managing agent for the building, saying Ms Huang was a lodger.

25. In the evening, there was an incident which is the subject of some debate. To put it neutrally, Ms Huang's eventual departure from the Property was not a cordial one. She claims that she was the subject of an attempt to evict her. It is not in dispute that the police were contacted, and that Ms Huang went to stay with a neighbouring leaseholder at number 19, for 1 or 2 nights.

26. The Applicant then discovered the Property was advertised on a website called Spare Room, on the same day.

27. The Applicant via their managing agent then sought an undertaking from the Respondents on 22 February 2022 that they would cease letting a room or part of the apartment as this was in breach of the lease. They also required that them not to advertise the Property on such websites.

28. However, Mr Ingram did not and does not agree that there has been any breach of covenant.

29. On 10 November 2022 the Applicant's solicitors wrote to the Respondents, again requesting them to not to sublet the Property, and to remove any and all posts on websites advertising his rooms for occupation. Again, Mr Ingram declined, on the basis that he had not committed a breach.

30. On 12 June 2023 a subcommittee of the Applicant made the decision to proceed to a tribunal application for a determination that there had been breach of Lease by the Respondents.

The Application

31. The application was filed on or about 26 September 2023, and sent to the Respondents on 29 September 2023.

32. The application seeks a determination of a breach of clause 4.4, clause 3/ Schedule 3 paragraph 3.22, and clause 4.2/paragraphs 8.01 and 8.26 of the 8th Schedule to the Lease.

33. On 8 February 2024 the tribunal gave directions, following a telephone case management hearing.

34. The parties then exchanged evidence, with Mary Long of managing agents Encore providing a statement for the Applicant, and Mr Ingram for the Respondents.

35. On 25 July 2024 the Respondents made formal application for an order under s.20C of the Landlord and Tenant Act 1985.

The Hearing

36. At the remote hearing, Mr Ronan of Counsel appeared for the Applicants, accompanied by various directors of the Applicant, and Ms Long.

37. Mr Ingram and Ms Lin appeared, and were represented by Mr Becker of Counsel (direct access).

38. Mr Price, one of the owners, also attended as an observer.

39. Mr Ronan explained that the Applicants no longer advanced any breach of clause 4.4 of the Lease. He further explained that no allegation of nuisance would be pursued, albeit the Applicant was reserving its position on whether there had been an "annoyance". Therefore, the Applicant's main

contention was that clause 3/Schedule 3 para. 3.22 was breached by the Respondents' taking in of a paying 'lodger'.

40. His secondary contention, which he accepted stood or fell with his main contention, was that the Respondents had committed a breach of clause 4.2/paragraph 8.01 of the 8th Schedule (whether in its original or amended format) because both versions require the lessee "not at any time to use or occupy or permit the Demised Premises to be used and occupied except as a private residential apartment for a reasonable number of persons".

41. Mr Ronan called Ms Long, after a delay for her to obtain her statement, and she was asked questions by Mr Becker.

42. Mr Ingram was then called by Mr Becker, and asked questions. The same took place with Ms Lin.

The evidence

43. Ms Long gave evidence in accordance with her statement but had no personal knowledge of events. Her evidence was therefore limited.

44. We found Mr Ingram to be the key witness. In cross examination, Mr Ingram said that his main reason for the decision to take in a lodger was not to bring in some income. The main reason was he had struggled during lockdown, and had been attending his GP for a long while with mental health problems; being on his own had not been good for him. Whilst he accepted one of the reasons to take in a lodger was financial, he did not accept it was the main reason. His spare room was not being used, and he wanted someone to be a good lodger.

45. Whilst Ms Huang was a stranger at first, she became a friend. Whilst she shared the whole apartment, she would knock before coming into his bedroom. But he emphasised that privacy was not that important to him; when one suffers from illness, having someone else around was quite a reassurance. He could pick and choose when to have company or not.

46. He also contended that while Ms Huang did not have a right to share bedrooms, she had a right to swap bedrooms. He did agree Ms Huang had a right to use his bedroom (which we understood to mean during the day), but she had no reason to, because she had her own bedroom. Whilst Ms Huang had the ensuite room, his had the better view. He said he did not have exclusive use or occupation of his room because it had no locks on the door and was always wedged open. Ms Huang could come into his bedroom and sit in the chair. Mr Ingram would clean Ms Huang's bedroom and the flat, an activity he found quite therapeutic. He considered the cleaning of her room to be part of the services he provided under the agreement.

47. Mr Ingram explained they would at times cook for each other. He accepted they were not living as a family, nor were they a couple. Nor had they taken the flat together as friends. But their relationship had developed from lodger and owner to friends. He accepted they shopped separately and had different interests. Their agreement was extended twice because Ms Huang wanted that, given she had recently taken a job at John Lewis in Cambridge. They had discussed extensions at the outset as something which might occur, if they got on together. Even though she was in arrears of 'rent', Mr Ingram quite liked her there, and she had reasons for not paying, such that, at the time of the extensions, he considered she was still a friend.

48. Ms Lin confirmed she had posted the original ad on Spare Room, and Mr Ingram had interviewed Ms Huang, and she had spoken to her only briefly at the beginning. She denied she had pretended that Ms Huang was related to her (an accusation made in an email by Ms Huang). She admitted she had called Police on 7 February 2022 when she had found Ms Huang in her bedroom at about 7pm with minimal clothes on. Ms Lin believed Ms Huang was trying to entrap Mr Ingram. Ms Huang then grabbed her duvet and ran out of the bedroom.

The Applicant's closing representations

49. Mr Ronan contended the evidence showed that the Property was not being used "only as a single private residence"/" private residential apartment" (Sch. 3 para 3.22/ Sch 8, para 8.01).

50. The relevant period under consideration was 6 August 2021 to 7 February 2022.

51. He contended that, as a matter of contractual interpretation, the above clauses do not use the word "home" or dwelling" but "residence". The case turns on quality of use and nature of use. As for the use of the word "private", Mr Ronan contended this meant not shared /not open to the public. It was synonymous with 1 household only.

52. In terms of legal precedent, Mr Ronan relied heavily on *Tendler v Sproule* [1947] 1 All ER 193, CA. In that case, the tenant agreed "not to use the premises… for any trade or business but keep the same as a private dwelling house only." After the contractual tenancy expired, the tenant held over as a statutory tenant under the protection of the Rent Restrictions Act. The tenant had been taken in two lodgers or paying guests, so the landlord brought an action for possession. The Court of Appeal (per Morton LJ, with whom the rest of the court agreed) held that the taking in of 2 lodgers or "paying guests" was a breach of the covenant not to use the premises for any business, and also, he thought, of the covenant to keep them "as a private dwellinghouse only."

53. As a matter of fact, Mr Roanan contended, Mr Ingram and Ms Huang had shared everything, but they were not a single household. The fact there was an agreement in writing in the first place showed that this was a legal arrangement which had a character falling outside that of use as a single private residence.

54. Mr. Ronan also relied on *Triplerose v Beattie* [202] UKUT 180 (LC). In that case the UT held that the authorities:

> "....demonstrate that the use of residential property for short term occupation by a succession of paying guests has always been treated as a breach of covenant requiring use only as a private residence or dwelling house. Occupation by subtenant who uses the property as his or her own private residence is permitted, as may occupation by a group of individuals living collectively, or non paying guests, family members or servants occupying with the tenant. But short term occupation by paying strangers is the antithesis of occupation as a private dwelling house. It is not private, being available to all comers, nor use as a dwelling house, since it lacks the degree of permanence implicit in that designation." (para 20).

55. The UT therefore held that, on the facts found by the FTT, the individuals who occupied the flats for weekends or other short periods after responding to Internet advertisements were not using the flat as a private dwelling house for occupation by one family at any one time (which was the wording of that particular lease): see para 33 of the decision.

56. Mr Ronan further relied on *C&G Homes Ltd v Sec of State* [1991] Ch 365 at 389F-G:

> "It is therefore necessary to see whether there is anything else which distinguishes the purpose for which these houses are being used from the purposes for which private dwelling houses are normally used.
>
> Private dwelling houses are used for the accommodation of the owner or a tenant and his family. They are also used to accommodate small groups, such as students, who club together and take a joint tenancy of the house. There are other permutations, but a common feature is that at least one of the occupants has an interest in the house either as owner or as tenant or that the occupiers have a family relationship with the owner, e.g. a case in which parents make a house available for occupation by children or grandchildren. That is not this case, for none of the occupants of these houses owns or has a tenancy, and, of course, they cannot be properly described as members of the Secretary of State's family."

57. Mr Ronan also relied on the passages at p.382G-383A. Having considered *Tendler v Sproule*, the CA therein discussed a further decision, as follows:

"In *Segal Securities Ltd. v. Thoseby* [1963] 1 Q.B. 887 a lease of a maisonette contained a covenant by the tenant "to use the demised premises for the purpose of a private residence in the occupation of one household only." Residing with the tenant was a woman friend of hers, who shared the accommodation, meals and expenses on terms that yielded no profit to the tenant, and another woman who had come in answer to an advertisement and who lived an independent life, there being no real sharing of meals and social life in the sense that she lived as part of a family. Having referred to Thorn v. Madden [1925] Ch. 847 and Tendler v. Sproule [1947] 1 All E.R. 193, Sachs J. said [1963] 1 H Q.B. 887, 894:

> "To my mind, in the way of life of 1962, the mere taking in of a single paying guest who shares the family life so far as practicable would not, save in exceptional circumstances, be regarded by a reasonable man as a breach of a covenant to use the house as a private residence only; nor would I myself willingly hold that to be such a breach; nor do the authorities on analysis bind a court so to hold. It is in each case a question of fact and of degree whether the taking in of paying guests is of an order that, having regard to all the circumstances, constitutes a breach of the covenant in question."

58. Mr Ronan emphasised this was a high-quality development, and the flat was modest in terms of size, which was occupied to the extent of 50% of the residential sleeping accommodation by Ms Huang. But the use of the whole of the demised premises was relevant to the question whether or not it was used as a single private residence or not. In the instant case, he said, it was simply not that use: Ms Huang was a lodger for profit, not using as some form of communal use. Mr Ingram had introduced a change of use effectively to generate money; the use by Mr Ingram and Ms Huang was as 2 separate unconnected persons, not using as a single private residence. Such shared occupation did not have the attribute of privacy. Mr Ronan went even as far as to say that if Ms Lin had been in occupation as the joint leaseholder there would have been a breach of the user covenant.

The Respondent's closing representations

59. Mr Becker's main points were as follows:

60. The Applicant bears the burden of proving the breach of covenant and the evidence of Ms Long was unsatisfactory in that regard; she knew nothing about what went on.

61. As to the written agreement, it was a long-term commitment not the case of a quick in and out, transient occupation as in some of the reported cases.

62. Mr Becker considered *Tendler* turned on its facts. He relied on *Nemcova v Fairfield Rents* [2016] 1 P&CR4, a decision of the UT. He took us to paragraph 32, citing *C& G* at 383G-384A:

> "We were not referred to any judicial definition of a private dwelling house. It seems that judges, no doubt wisely, have been content to say whether, in any given set of circumstances, the description is or is not satisfied. The definition of a private house given in the Shorter Oxford English Dictionary, 3rd ed. (1944), is: "The dwelling house of a private person, or of a person in his private capacity." Where the owner himself is in occupation it can usually be said that he is using it as his private dwelling house. But he can still use it as a private dwelling house without occupying it himself, for example where he lets it to another individual for use as his private dwelling house. Use as or for the purposes of a private dwelling house seems to assume that there is at least one private individual who, whenever he chooses, can occupy the house as his own, even though he may not be in actual occupation, for example where he allows his children and some friends to live there."

63. Mr Becker emphasised that Mr Ingram had used the property as his private dwelling house at all times.

64. Per *Nemcova* at paragraph 47, Mr Becker contrasted home with residence; the user covenant does not require use as home, which as a concept may carry with it imputations of permanence, personal attachment, emotional ties or exclusivity; none of those are necessarily inferred by the words actually employed. The question to be asked is not whether the premises are being used as the occupier's home but whether they are being used as a private residence.

65. Per *Nemcova* at paragraph 47, the use of the definite article in "a private residence" is significant. In short, for the covenant to be observed, the occupier for the time being must be using it as his or her private residence.

66. Per paragraph 49 of *Nemcova*, Mr Becker relied on the findings of the Upper Tribunal that it is difficult to think of circumstances in which an individual's residence would not be that person's private residence. Hence the word "private" takes matters little further, but in the instant case there was a degree of privacy.

67. Mr Becker relied on *Triplerose* at para 32, to the effect that the lease here, as in that case, properly understood, permits such short-term letting as is consistent with use as a private dwelling house.

68. Lastly, Mr Becker took us to *O'Connor v Proprietors, Strata Plan 51* [2018] 4 WLR 22. In that case a particular byelaw prohibited the use of strata lots save as private residences that permitted their letting out for any period in excess of one month. The defendant owners of one strata lot began letting it out for short term holidays of less than a month, and the claimant sought an order prohibiting such use. It was held by the Privy Council that the byelaw was properly to be construed as allowing for the renting out of

strata lots subject only to the maintenance of residential use; that the use of property for a few weeks holiday lacked the necessary character of residential use, namely a degree of permanence and intent to use the property as a home; that the limitation to one month's let was designed to draw a dividing line between lettings which did and those which did not have the character of residential use.

69. Mr Becker concluded by saying it was a case of knowing user as single private residence when one sees it. The flat here was not divided up, and there was no physical separation.

Discussion and determination

70. We determine there has been no breach of clause 3/Schedule 3, para 3.22 or 8th Schedule para 8.01, in the relevant period, for the following reasons:

71. It is clear enough from *Segal Securities* (as applied in *C& G Homes*) that it is a question of fact and degree for a reasonable person whether the taking in of paying guests is of the order that, having regard to all the circumstances, it constitutes a breach of the covenant in question.

72. None of the cases cited to us, whether *Tendler* or any other, has covenants identical to the instant case.

73. We consider the following to be of importance on the facts of this case:

    (1) The relevant covenants here require use as a private residence, but there is no additional covenant against use as a business (as in *Tendler* and other cases); nor does the covenant require use as a home, which carries imputations of permanence, personal attachment and emotional ties (*Nemcova*);

    (2) The Lease permits underletting of the whole for a term not exceeding 2 years: clause 4.5. It seems to us that this provides some yardstick against which it might be determined whether any use as a private residence has been exceeded, as was the case in *O'Connor*. The Lease to the Respondents therefore permits such short-term letting as is consistent with use as a private residence;

    (3) The use of the word "private" in the covenants adds little, if anything, we determine. We disagree with the Applicant that the word means "not shared" or "not open to the public" or limited to only 1 household. As was said in *Nemcova* at para 49, it is difficult to think of circumstances in which an individual's residence would not be that person's private residence;

    (4) As to the use of the word "single", we note that this appears in paragraph 3.22 but not within paragraph 8.01. The 2 paragraphs are

not consistent, but in any event, and in so far as relevant, we prefer the Respondents' submissions that the word "single" is intended to guard against physical separation into 2 residences.

74. The key issue is therefore whether Ms Huang and Mr Ingram used the Property as their residence. In this regard:

(1) It is common ground that Mr Ingram occupied the Property at all material times as his private residence;

(2) As for Ms Huang, this was not a grant of a short term right to use; it was for an initial period of 6 months, and lasted longer than that, given the extensions agreed. That contrasts with transient user as found in *Nemcova* and other cases. The use by Ms Huang in the relevant period did not lack the necessary character of residential use, we find, but had a degree of permanence and intent to use the Property as a residence (*O'Connor* applied);

(3) While there was an element of commerciality to the arrangement, there is no evidence that Mr Ingram did make a profit from the transaction with Ms Huang (unlike *Tendler* and *Segal*). The money she paid included utilities, internet use and council tax, we note;

(4) Moreover, a circumstance in the instant case which is absent from all the other authorities cited to us is Mr Ingram's intention to have someone in the Property as company, on account of his mental health issues. This element of intention to find companionship provides a different perspective through which his arrangement with Ms Huang needs to seen. It seems to us that this factor adds to our conclusions that a reasonable person would consider the use by Ms Huang of the Property to be use as a residence.

75. Lastly, and for sake of completeness, breach of para. 8.26 of the 8th Schedule was not pressed in closing submissions by the Applicant. We consider the Applicant was right no to do so. There is insufficient evidence that the Respondents had used the Property for any purpose which was a nuisance, or even tended to be a nuisance, or that they permitted a nuisance. Any such nuisance would have been caused by Ms Huang. It is trite law that even a landlord is not responsible for a tenant's nuisance unless he has adopted it or authorised it (*Lawrence and another v Fen Tigers Ltd and others (No 2)* [2014] UKSC 46, [2015] AC 106) and to permit a breach of covenant requires either giving leave for an act which without that leave could not be legally done, or to abstain from taking reasonable steps to prevent the act where it is within the person's power to prevent it: *Earl of Sefton v Tophams Ltd* (No.2) [1967] 1 AC 50, HL.

76. No such adoption or authorisation or permission occurred here on the facts.

Section 20C application

77. Mr Becker clarified that the s.20C application was being made on behalf of the Respondents only, and the suggestion in the Leasehold 7 form that it was being made on behalf of any other leaseholders was not being pursued.

78. The s.20C application on Leasehold 7 form contends a number of things, including that the main application is vexatious, unreasonable and without merit. It is also contended that other leaseholders have breached their leases in similar terms, and the Applicant has not taken action against them. It is contended that ADR has been offered and rejected/ignored. No forfeiture would be likely to be ordered even if breach is proven, especially given waiver by acceptance of rent.

79. Mr Becker added that it was not until the hearing that reliance on clause 4.4 of the Lease was dropped by the Applicant.

80. Mr Ronan contended that the application under s.20C should stand or fall with the substantive application; if breach of user is proven, there should be no s.20C order. The issue of exclusive possession under clause 4.4 was very similar to the issue on the user covenant. It did not cause extra work. The Applicant had tried quite hard to avoid proceedings, but its hand was forced. Moreover, it was the Respondents' conduct which was the prime cause of litigation in the first place, because they did not engage with the arguments advanced concerning breach of the user clauses, concentrating instead on defending clause 4.4 (alienation).

81. We determine that there should be a s.20C order, for the following reasons:

82. The discretion given to the Tribunal under s.20C is to make such order as it considers just and equitable. In *Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000, which concerned an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 and in which the Applicant tenants had been successful, the Lands Tribunal (Judge Rich QC) made the following remark:

> "28. In my judgement the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise."

83. In the instant case, the Respondents have been successful. It does not always follow that a successful party should always have costs protection, but the Applicant chose to pursue an historic breach which was not likely to provide a case for forfeiture. Whilst the Applicant may have wished to have some form of precedent to wave at other persons in the building who act similarly to Mr Ingram, as this very case shows (based on the authorities cited to us) each case is a question of fact and degree, and must turn on its individual circumstances.

84. We do not consider the application to have been vexatious or unreasonable, and many applications are pursued which ultimately fail. That alone is not decisive, as we have already held.

85. We do treat more significantly the late withdrawal of the claim of subletting under clause 4.4. It seems to us that this allegation had created a lot of paperwork in a case already overburdened with reams of material.

86. In our consideration, in all the circumstances, it would not be just and equitable for the Applicant to be able to recover the costs of these proceedings through the service charges against the Respondents.

87. We therefore determine that none of the costs incurred by the Applicant in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents, pursuant to s.20C of the Landlord and Tenant Act 1985.

Name: Tribunal Judge S Evans **Date**: 24 September 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).

Appendix 1

Commonhold and Leasehold Reform Act 2002

168 No forfeiture notice before determination of breach

(1) 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.

(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 **t**he appropriate Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred.

(5)But a landlord may not make an application under subsection (4) in respect of a matter which—

(a)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(b)has been the subject of determination by a court, or

(c)has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(6)For the purposes of subsection (4), “appropriate Tribunal” means—

(a)in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b)in relation to a dwelling in Wales, a Leasehold valuation Tribunal.