



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

**Case Reference** : **LON/00BK/LBC/2024/0021**

**Property** : **Flat 48 Westbourne Court, Orsett  
Terrace, London W2 6JT**

**Applicant** : **Brickfield Properties Ltd**

**Representative** : **Memery Crystal LLP**

**Respondent** : **Razak Mousa Amran Al-Hamami**

**Type of  
Application** : **Breach of covenant**

**Tribunal Members** : **Judge Nicol  
Mr SF Mason BSc FRICS**

**Date and venue of  
Hearing** : **20<sup>th</sup> September 2024  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **23<sup>rd</sup> September 2024**

---

**DECISION**

---

**The Tribunal has determined that the Respondent has breached clauses 3.5.1, 3.7.1, 3.7.3 and 3.9.3 of his lease as detailed below.**

**Reasons**

1. The Applicant is the Respondent's landlord at Flat 48 Westbourne Court, Orsett Terrace, London W2 6JT, a two-bedroom flat on the third floor of a block of 95 flats. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached his lease.

2. Further to the Tribunal's directions issued on 4<sup>th</sup> June 2024, the Tribunal heard the application at a face-to-face hearing on 20<sup>th</sup> September 2024. The attendees were:
  - Mr Kavish Shah, counsel for the Applicant, attended by Mr Joel Crisp, a paralegal from the Applicant's solicitors;
  - The Applicant's witnesses:
    - Mr Moishe Royde;
    - Ms Caroline Young;
  - The Respondent.
3. The Tribunal had the following documents from the Applicant:
  - a) A 137-page bundle of relevant documents; and
  - b) A skeleton argument and bundle of authorities from Mr Shah.
4. The Tribunal had the following documents from the Respondent:
  - a) A one-page letter dated 29<sup>th</sup> August 2024, purporting to "confirm the facts of this case as seen by me"; and
  - b) A Notice of Hearing from the county court at Central London for an Interim Possession Order Hearing on 27<sup>th</sup> September 2024.
5. The Respondent alleges that, about 5 years ago, there was a "heavy leak" into the subject property, Flat 48, from a flat above. He says that, despite complaints, the then managing agents failed to take any remedial action and, as a result, the shower room was not usable. His tenant told the Respondent that he would install a new shower room to obviate the problem. The Respondent did not try to stop him – he asserted to the Tribunal that he had no power to do so. According to Ms Young, the Respondent told her in a phone call on 14<sup>th</sup> June 2024 that he had installed the new shower room himself.
6. In any event, the new shower room was installed in the flat. More recently, water began leaking from the new shower room into the flat on the floor below, Flat 36. The Applicant's agents alerted the Respondent but he has taken no effective action. He claims that his sub-tenant has unlawfully sub-let to a woman who refuses to provide access or otherwise co-operate.
7. The Respondent now says his tenant, Mr Ayob, is in Turkey and he wants to evict the sub-tenant. To that end, yesterday he obtained a hearing date for next Friday, 27<sup>th</sup> September 2024, to apply for an Interim Possession Order. He says he did this after advice from a lawyer but that is difficult to believe. IPOs are exclusively for the purpose of evicting trespassers but the current occupier is not a trespasser. She was allowed in by the tenant. The Respondent provided no evidence that the sub-tenancy was unlawful but, even if it was, that does not make the sub-tenant a trespasser. If the court is apprised of the facts, the Respondent's application is doomed to fail.

8. With the co-operation of the current occupier, Mr Royde was able to inspect the subject property on 11<sup>th</sup> September 2023 and observed the additional shower room for himself. He took photographs which were included in the bundle before the Tribunal.
9. The Tribunal went to inspect the property on the morning before the hearing. The inspection was attended by the same people who attended the hearing (other than Ms Young). Unfortunately, there was no answer to a knock on the door for the subject property, Flat 48, so the Tribunal could not see it. The Tribunal was given access to the flat immediately below, Flat 36 on the second floor, where it was possible to see a patch to the ceiling in one bedroom which was indicative of water ingress. It is not in dispute that this area of the ceiling was directly below the shower room installed in Flat 48.
10. The Applicant alleged that the Respondent is in breach of the following clauses of his lease by reason of the installation of the new shower room:

3. LESSEE'S COVENANTS

- 1.10 Any covenant by the Lessee not to do any act or thing shall be deemed to include an obligation not to permit such act or thing to be done.
- 3.5.1 to keep the interior of the Flat including (under the supervision of the Lessor and in accordance with all health and safety regulations) the glass in the windows and doors of the Flat in good repair (except damage caused by any of the Insured Risks to the extent that the Lessor recovers the cost of making good such damage from its insurers) and to make good any damage caused to neighbouring flats caused by the exercise of the Lessee's right of access afforded by Clause 1(ii) of Part II of the First Schedule
- 3.7 Not to cut or damage the Structure of the Block and except with the prior written consent of the Lessor (such consent not to be unreasonably withheld):
  - 3.7.1 not to alter or add to the Flat or its internal layout
  - 3.7.3 if hot water or heating is supplied to the Flat by the Lessor not to install any additional radiators or other heating or water appliances and not to make any alterations to the existing installations
  - 3.9.3 to comply with the Regulations in the Second Schedule and with any amendments thereto notified to the Lessee

**THE SECOND SCHEDULE**

**REGULATIONS**

15. To take reasonable precautions to prevent the escape of water from the Flat
11. The Respondent sought to assert that he was not responsible for the installation of the shower room but the Tribunal is satisfied that he

permitted it by failing to take action either to stop it or to restore the flat as it was. In accordance with clause 1.10 of the lease, the fact that he permitted it means that it is appropriate to refer to his having done it himself.

12. The Applicant asserted that the installation of the new shower room failed to comply with the Building Regulations 2010 which were one of the sets of regulations encompassed within clause 3.5.1. In particular, Parts F (Ventilation), G (Sanitation, Hot Water Safety and Water Efficiency), H (Drainage and Waste Disposal) and P (Electrical Safety) had been engaged but there was no building notice, application for building control approval or evidence that a person with the requisite qualifications carried out the work. Further, the Applicant was not given the opportunity to supervise the works.
13. The Applicant was concerned that the Respondent may have cut the structure, perhaps to install ventilation, but they had no evidence of this and conceded that they could not establish such a breach of clause 3.7.
14. However, it is clear that the Respondent added to the Flat and altered its internal layout without seeking the Applicant's consent, in breach of clause 3.7.1. It is equally clear that he breached clause 3.7.3 by installing a water appliance despite the existence of a communal hot water system and his failing to seek consent.
15. Further, the Respondent has failed to take any or any effective action to address the water leak from his flat, despite having at least a year to do so. This constitutes a failure to take reasonable precautions to prevent the escape of water from the Flat, contrary to regulation 15 of the Second Schedule to the lease.
16. It is important to note that the Tribunal's role under the Act is to determine simply whether there have been breaches of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture or whether the landlord has an alternative remedy is irrelevant at this stage. The Respondent says he is taking appropriate steps to obtain vacant possession preliminary to carrying out remedial works and he wants to reach a settlement with the Applicant but, whether he has sufficient grounds for relief from forfeiture is not for the Tribunal to decide.
17. During the hearing, the Tribunal sought to provide some guidance to the Respondent. He said he had not used a lawyer because this case was so simple, he didn't need one. However, the Respondent gives every impression of not understanding the law or legal proceedings. As already mentioned, he has commenced county court possession proceedings which seem doomed to failure because he has used the wrong procedure. His attempted compliance with the Tribunal's directions consisted of providing a one-page letter. He says it did not "cross his mind" that an electrical certification of the shower room installation would be a relevant document, let alone that he should have disclosed it in advance

of the hearing. He did not provide a witness statement. The Tribunal strongly advised him to seek legal advice.

18. In the circumstances, the Tribunal is satisfied that the Respondent has breached clauses 3.5.1, 3.7.1, 3.7.3 and 3.9.3 of his lease.

**Name:** Judge Nicol

**Date:** 23<sup>rd</sup> 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).