FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference **HMCTS Code**	**:**	**CAM/00MX/LVL/2023/0004** **V: CVP Remote**
Property	**:**	**Flat 2, 308-310 West Wycombe Road, High Wycombe HP12 4AB**
Applicant	**:**	**West Wyc Management Company Ltd**
Representative	**:**	**Ms P Cahannac**
Respondent	**:**	**Caroline Keegan**
Type of application	**:**	**S168 Commonhold and Leasehold Reform Act 2002**
Tribunal member(s)	**:**	**Regional Judge Ruth Wayte**
Date of hearing	**:**	**26 September 2024**
Date of decision	**:**	**1 October 2024**

DECISION

Decision of the tribunal

The respondent has not breached either clause 3(c) or paragraph 5 of the Second schedule of her lease.

The application

1. By an application dated 22 May 2023, the applicant sought a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the respondent was in breach of covenants in her lease in relation to the replacement of a window with French doors and alleged obstruction of the common parts. The relevant covenants are set out below.

2. Directions were given on 10 June 2024. Both parties filed papers in accordance with those directions and the matter was set down for a remote hearing by video conference on 26 September 2024.

3. At the hearing, the applicant was represented by Preety Cahannac, one of the directors and the respondent represented herself. During the course of the hearing Ms Cahannac provided a copy of an email dated 27 April 2023 which Ms Keegan agreed had been sent to her at the time.

The statutory framework

4. The relevant parts of section 168 of the Commonhold and Leasehold Reform Act 2002 state:-

> *1. A landlord under a long lease of a dwelling may not serve a notice under s146 (1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless sub-section (2) is satisfied.*
>
> *2. This sub-section is satisfied if –*
>
> *(a) it has been finally determined on an application under sub-section (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 sub-section (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 covenant or condition in the lease has occurred.

The Lease

5. The lease to the Property was granted on 31 October 1986 and the respondent became the registered proprietor on 15 August 2017. The Property is a ground floor flat in a purpose-built block of four flats. The alleged breaches are in respect of the following obligations on the part of the leaseholder:

Schedule 3: Lessee's Covenants

3(c) Not to make any structural alterations or structural additions to the demised premises or remove any of the Lessor's fixtures without the previous consent in writing of the Lessor.

Second Schedule: Restrictions imposed in respect of the flat

5. Not to obstruct in any way any of the common parts of the building or the common grounds …

Background

6. The four flats each own one share of the freehold company. In early November 2019 the respondent stated that she was given verbal permission for planned refurbishment to her flat from the other three members of the company. That refurbishment included the replacement of a window overlooking her private rear garden with French doors. The doors were installed on 5 February 2020.

7. On 3 January 2020 flat 4, directly above flat 2, was sold to Ms Cahannac. In April 2021, following a dispute with the respondent about works to her own flat, Ms Cahannac added the removal of the doors to the agenda for the company's AGM on 25 April 2021. She did not attend the meeting and those present agreed that the doors did not need to be removed.

8. The second alleged breach relates to the locking of a gate leading from the respondent's front garden to the common driveway to the property. This was done in or about late 2021/early 2022 as the respondent claimed the gate kept "falling away". Ms Cahannac claimed that she had used the respondent's front garden as easy access to her own garden and the common parts. The lock on the gate therefore obstructed that access.

9. Ms Cahannac first started proceedings in the name of the freehold company in December 2022. Those proceedings were struck out on 2 March 2023 as the tribunal was not satisfied that Ms Cahannac could be said to represent the landlord: at that time the sole director was the respondent and no evidence of a vote by a majority of the members was provided to justify the action.

10. As stated above, the current proceedings were sent to the tribunal in May 2023. By that date, Ms Cahannac stated that she and fellow leaseholder Gavin Wells were the directors of the freehold company. In the light of the previous issues, the directions set out two issues for determination:

    (i) that the proceedings have been properly authorised by the Company by decisions taken by the members following meetings called in accordance with the company's Articles of Association and

    (ii) that, if proved, the alleged facts constitute a breach of the provisions of the lease.

The applicant's case

11. Since she purchased her flat in 2020, Ms Cahannac had tried to be appointed as a director of the freehold company, without success. She claimed, with some justification, that the respondent had blocked those attempts. For authority to bring these proceedings, Ms Cahannac relied on an Extraordinary General Meeting held on 14 May 2023. The meeting was attended by herself and Gavin Wells, when they voted to remove Ms Keegan as the sole director and replace her with themselves. A meeting had been requested and denied by Ms Keegan and therefore notice of the date was given to all the members by Ms Cahannac and Mr Wells on 27 April 2023. Neither Ms Keegan nor the other leaseholder attended but Ms Keegan accepted that sufficient notice had been given. Following that meeting, Ms Cahannac had contacted Companies House and explained the dispute and the Company Register now recorded both her and Mr Wells as directors. They had agreed to bring these proceedings on behalf of the company.

12. In terms of the first alleged breach, Ms Cahannac accepted that verbal permission had been given by at least three of the other leaseholders, although she submitted that the evidence of consent by Steven Miners was thin – there was nothing from him spelling out his understanding of the works. She also pointed to the Property Information Form provided by him on her purchase of flat number 4 which said that no consents had been given for works affecting the property. Her argument was that the lease required prior written consent. She was also aggrieved by the alleged use of the doors as the main entry and exit point of the ground floor flat, which caused her nuisance as her bedroom was directly above that area.

13. The argument in relation to the second alleged breach was less clear, as Ms Cahannac accepted that it was the access route to the common parts across Ms Keegan's front garden that had been blocked, not the common parts themselves. The only plans provided were in the respondent's bundle which showed the extent of the respondent's demise marked in red and the common parts in purple. Access to the common parts was either directly from the street or from the rear of the premises via a footpath.

The Respondent's case

14. Ms Keegan did not believe that the correct process had been used to remove her as a director of the company. She accepted that she refused to hold the EGM requested by Ms Cahannac and Mr Wells as she felt their behaviour was vexatious. Mr Wells, in particular, had sent her several abusive emails and she felt it would be better to wait for a few more months before holding a meeting to allow tempers to calm down. She was aware that the meeting was going ahead on 14 May 2023 but decided not to attend or send a proxy. She was unsure how the directors' details were changed on the Company Register and was removed as a director without her consent.

15. In terms of consent to the works, Ms Keegan had provided statements from two of the other leaseholders and company members at the time who both confirmed that they were aware of the full extent of the works, including the replacement of the windows with French doors and gave their consent in November 2019. The fourth leaseholder, Mr Miners, had sent an email to Ms Keegan on 3 January 2020 wishing her luck with the works and one of the other leaseholders had confirmed in his statement that Mr Miners had not raised any objection during the meeting held to discuss them. At the time the company was represented by Ms Keegan as a director, together with Mr Miners and Mr Wilcox who have since both moved on. It was Mr Miners who sold his flat to Ms Cahannac in January 2020. The respondent's case was that the verbal consent was sufficient. She also queried whether the clause applied as she considered that the work was not structural. Building approval had not been required by the council. She denied that any nuisance was caused by the use of the doors as the property was surrounded by a busy road to the front and a railway line to the rear, meaning there was constant noise in any event.

16. She denied that she had blocked access to the common parts as the front garden was her private property and she had not given permission to the other leaseholders to walk across it. The complaint from Ms Cahannac was in relation to access to her own garden, which was either from the pavement at the front of the property or by a footpath at the rear. Ms Keegan produced the title plans in her bundle which supported her argument in respect of this issue.

The tribunal's decision

17. The extent of the dispute between the parties is unfortunate and it has clearly taken a personal toll on both Ms Cahannac and Ms Keegan. There are apparently proceedings in the County Court as well as this action and Ms Keegan has been unable to sell her flat, which would be one way of moving matters on.

18. That said, I am satisfied that these proceedings were properly authorised. It was inappropriate of Ms Keegan to refuse to hold the meeting which appointed the new directors and she accepted that sufficient notice had been provided. Both Ms Cahannac and Mr Wells are listed as directors by Companies House which is sufficient authorisation for this tribunal. Assuming that flat 2 can now be sold, I would recommend that in future each leaseholder be appointed as director to enable decisions to be taken with all four flats in mind.

19. I consider that the work to replace the windows with French doors is structural as it involved the removal of part of the external wall beneath the window. In any event, windows are generally considered to be part of the building's structure and exterior (*Sheffield City Council v Oliver* [2008] LRX/146/2007). That engages clause 3(c) but I accept the respondent's evidence of prior verbal consent by the members of the company and consider that, in the circumstances, the requirement for written consent was waived by them. That means that there has been no breach of clause 3(c) of the respondent's lease. The Property Information Form relied on by Ms Cahannac was in relation to her flat, number 4. In those circumstances the fact that Mr Miners stated that no consent was given to alterations to that property does not contradict the respondent's evidence of his consent to the works affecting flat 2.

20. There is clearly no breach of the restrictions in the second schedule as Ms Cahannac conceded in the hearing. Ms Keegan's front garden is not part of the common parts and therefore she is entitled to restrict access to it.

21. That brings these proceedings to a conclusion. I hope that Ms Keegan will now be in a position to sell her flat and the new leaseholders will be able to live together without further recourse to legal proceedings.

Name: Judge Wayte **Date:** 1 October 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).