FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UD/LBC/2023/0026
Property	**:**	Flat 8 St. Leonards Lodge, Maze Hill, St. Leonards On Sea, East Sussex TN38 0HW
Applicant	**:**	St. Leonards Freehold Limited
Representative	**:**	Mr Matthew Withers of Counsel instructed by Dean Wilson LLP
Respondent		Zahra Hamid Siers
Representative	**:**	------
Type of Application	**:**	Breach of Covenant. Section 168(4) Commonhold and Leasehold Reform Act 2002
Tribunal Member(s)	**:**	Judge J Dobson Mr E Shaylor MCIEH
Date of Hearing	**:**	18th June 2024
Date of Re- convene	**:**	9th July 2024
Date of Decision	**:**	29th July 2024

DECISION

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Summary of the Decision

1. **The Tribunal determines that the Respondent breached the covenants contained in clause 2 of the Lease and paragraphs 10, 11 and 14 of the Sixth Schedule to the Lease.**

2. **The Respondent is ordered to pay contribute to the application and hearing fees incurred by the Applicants in the sum of £150.00 within 28 days.**

The Property

3. Flat 8 St. Leonards Lodge, Maze Hill, St. Leonards On Sea, East Sussex TN38 0HW ("the Property") is a flat situated on the lower ground floor/ basement of a 4- storey converted building known as St. Leonards Lodge ("the Building") containing 10 flats which are either accessed from a principal communal entrance to the rear of the Building or a further entrance to the front.

4. The freehold of the Building is owned by the Applicant. The Applicant is a lessee- owned company, being registered as the proprietor on 30th October 2015. Each lessee or set of lessees of a flat in the Building is a member of the Applicant, including therefore jointly the Respondent.

5. The Respondent has owned the leasehold interest in the Property pursuant to a lease dated 22nd September 1988 ("the Lease") since 2006.

Application and History of Case

6. The Applicant made an application [3-11] dated 10th November 2023 for a determination under S168 (4) of the Commonhold and Leasehold Reform Act 2002 by the Tribunal in which they alleged various breaches of covenants of the Lease by the Respondent. Specifically, those were the following:

    1) The Respondent had visitors to her flat with loud music, the smell of drugs and letters being stolen. In particular, loud parties with the police attending on a number of occasions. It was said that there was negligence and antisocial behaviour. The premises were said to be being used for illegal or immoral purposes.

    2) The Respondent has failed to upgrade a door to be a suitable fire door with the work undertaken by a competent contractor who could certify the work as compliant. That was said, at least in writing, to be the primary reason for the application.

7. Directions were given principally on 19th March 2024 [47- 62] for steps to be taken to prepare the case for hearing. Various subsequent case management applications were made by the Applicant's representatives

seeking additional time [38- 46] and Directions were given including decisions in respect of those applications. It is not necessary to say any more about any of those. The Directions given included directing a bundle to be provided for use at the final hearing. A PDF bundle was provided amounting to 126 pages.

8. Whilst the Tribunal makes it clear that it has read the bundles, the Tribunal does not quite refer to all of the documents in this Decision, it being unnecessary to do so. It should not be mistakenly assumed that the Tribunal has ignored those pages or left them out of account. Where the Tribunal refers to specific pages from the bundle, it does so by numbers in square brackets [ ] and with reference to the PDF numbering. Unhelpfully, the page numbering on the bottom of the pages of the bundle differed from that. Pages 109 to 111 were illegible.

<u>The Law</u>

9. The relevant law in relation to breach of covenant is set out in section 168 Commonhold and Leasehold Reform Act 2002, most particularly section 168(4), which reads as follows:

> "A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for determination that a breach of a covenant or condition in the lease has occurred."

10. The Tribunal must assess whether there has been a breach of the Lease on the balance of probabilities.

11. A determination under Section 168(4) does not require the Tribunal to consider any issue other than the question of whether a breach has occurred. The Tribunal's jurisdiction is limited to the question of whether or not there has been a breach. As explained in *Vine Housing Cooperative Ltd v Smith* (2015) UKUT 0501 (LC), the motivations behind the making of applications are of no concern to the Tribunal, although they may later be for a court.

12. There are many other case authorities in respect of breaches of leases. However, none were referred to by the parties and the Tribunal does not regard there to be any which add significantly to the broad principles and hence which require specific reference here.

13. The Lease is to be construed applying the basic principles of construction of such leases as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on

the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.

15. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in *Chartbrook* [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision.

<u>The Lease</u>

16. The lease of the Respondent's flat ("the Lease") [12- 36] is dated 22nd September 1998 and grants a lease for the 99-year term from a commencement date of 1st January 1979.

17. The Property is described as the "Demised Premises" and is defined in clause 1 and the Third Schedule. The Building is referred to in the Lease as "the property". Helpfully the most relevant provisions for these purposes only make one specific reference to "the property" as the Lease terms it and the Tribunal replaced it with "(the Building)". The Respondent is "the Lessee" as termed in the Lease.

18. The Third Schedule states that the Demised Premises are delineated on a Plan annexed and edged red on that. That line identifies the walls to the edge of the Respondent's flat and shows no distinction between those walls and any windows or doors. However, the main structural parts and external parts (excluding the frames and glass in windows) form parts of the Building reserved to the Applicant by the Second Schedule, together with parts of the Building used in common by the owners or occupiers of any two or more flats.

19. The Applicant relied in its application on the covenants by the Lessee contained in clause 2 and the Sixth Schedule.

20. Clause 2 provides that, "the Lessee will observe and perform the obligations on the part of the Lessee set out in the Sixth Schedule hereof". That is to say, will observe the covenants in the Lease.

21. Paragraph 10. of the Sixth Schedule sets out a relevant covenant by the Respondent as follows:

    "THE Lessee shall not permit or suffer to be done in or upon the Demised premises anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Lessor or owner or occupier of any other Flat or Garage or whereby any insurance for the time being effected on the (Building) or any part thereof (including the Demised Premises) may be rendered void or voidable or whereby the rate of premium may be increased and ...."

22. The Schedule goes on to provide at paragraph 11:

    "THE Lessee shall do all such works as under Any Act of Parliament or Rule of Law are directed or necessary to be done on or in respect of the Demised Premises......."

23. In addition, at paragraph 14, the Respondent covenanted:

    "NEITHER the Demised Premises nor any part thereof shall be used for any illegal or immoral purpose.........".

24. The Tribunal has considered the Lease as a whole but it is not considered necessary to set out any more of the provisions of the Lease in this Decision than those quoted above.

The Inspection

25. The Tribunal inspected the Property and the Building on the morning of the hearing and prior to commencement of the hearing. In addition to the members of the Tribunal, Mr Matthew Withers of Counsel as legal representative of the Applicant, Mr Stephen Neiman and Ms Siers, the Respondent were present at the inspection. It should be emphasised that the Tribunal did not undertake a survey of the Property, either in respect of specific areas or generally.

26. The Tribunal saw the outside of the Building, front and rear, including the rear garden and a construction site beyond the end of that the other side of the boundary wall. The Tribunal saw an entrance door to the front of the Building, reached by steps. It was agreed that served as the entrance for two of the flats in the Building. The Tribunal did not go inside that door.

27. The Tribunal did enter through the main communal entrance to the lower ground floor to the rear of the Building. That led into what the Tribunal will term the entrance hall. There was a door to one lower ground floor flat and a door, which the Tribunal noted to be an apparently suitable fire door, to what the Tribunal will term the stairway hall.

28. The Tribunal particularly saw the door to the Respondent's flat. That was situated in the stairway hall. There was only otherwise the door from the entrance hall and the staircase itself. The staircase led to the other floors of

the Building. The Tribunal went part way up, seeing entrance doors to other flats.

29. The front door to the Respondent's flat had a mortice lock and was hinged to open outwards. It was glazed in two long panels to approximately 60% down the door, with wood to the sides of and between the glazed panels. The lower part of the door was to the same design save that the panels were wood and not glass. The door was 44mm thick, the Tribunal measured specifically.

30. The door lacked seals of the type normally found in a fire door and did not fit tightly in the frame sealant. There was a gap between the bottom of the door and the floor. It was not fitted with a self-closer device which would normally be required on a flat entrance door opening into common parts of a converted building. The Tribunal identified that the door was very definitely not a compliant fire door and the manner of fitting it had retained or exacerbated rather than limited any inadequacies.

31. The Tribunal also noted- and regarded it as somewhat odd that apparently no query had been raised about this- that there were two small internal windows from the Respondent's flat to the entrance hall. Those were square or thereabouts, in the region of a foot and a half each way (no precise measurement being taken). The top was at seven feet high very roughly and the windows had obscured glass. It seemed to the Tribunal that those could be as much of an issue as the front door to the Respondent's flat- they would not directly affect the stairway hall but would be relevant to egress through the communal entrance hall and door. However, as no issue had been raised in fire risk assessments as far as indicated to the Tribunal and there had been no requirement in respect of which there could be any breach, so there was nothing directly relevant to this determination and to the Tribunal does not dwell on the matter.

The hearing and thereafter

32. The hearing was conducted in person at Hastings Law Courts.

33. Mr Withers of Counsel represented the Applicant. The Respondent represented herself. She was accompanied by Ms Claire Dash, Lead Practitioner/ Community Psychiatric Nurse based at Cavendish House, Hastings. Mr Neiman was again in attendance.

34. The Tribunal heard oral evidence from Mr Neiman on behalf of the Applicant and from the Respondent herself. The Tribunal was content that the evidence of both was honest and cogent.

35. The bundle included a written witness statement of Mr Neiman [63- 82] including exhibits and also one from Ms Natalie Moody of Findley's of Cooden Limited [84- 113]. Ms Moody is a director of that company, which is the managing agent. The bundle also included a written witness statement from Ms Siers, the Respondent [113- 114].

36. The Tribunal also heard briefly from Ms Dash, although very much limited to some comments following closing and in relation to the Respondent's personal situation. It is convenient to set those out now. She said that the Respondent had been quite unwell the previous year, was in a manic state and had been taken advantage of but was now quiet and Ms Dash was in regular weekly contact with her. There had been no statement from her but her comments were not challenged.

37. The Tribunal was grateful to all of the above for their assistance.

38. For the avoidance of doubt, the Tribunal did not hear oral evidence from Ms Moody, who was not in attendance. The contents of the written witness statement could not therefore be clarified, and the Respondent was unable to challenge any of it by cross examination. That said, the statement itself did little more than exhibit records said to have been created by employees at the company. Those were indicated to be contemporaneous business records, but it was also not apparent that Ms Moody had any of the conversations or dealt with any other communications set out in the records which she exhibited or that she had prepared the records. She could only effectively say in relation to those that a record had been created in the terms shown, no more.

39. The Tribunal explained that it could consequently give only limited weight to such matters as were stated by Ms Moody and which were contained in the records, unless supported by the evidence of Mr Neiman or accepted in the evidence of the Respondent. The Tribunal did accept Mr Withers' point that given the above, it arguably made little difference that Ms Moody herself was not present in light of the effect on the weight to be given to her statement of the above factors in any event.

40. It was also established that Mr Neiman is not resident in the Building and so also had no first- hand knowledge of much of the nuisance and annoyance matters on which the Applicant relied, which was also less helpful than it might have been, given there was no other witness. Mr Neiman explained that he had some knowledge and had seen or experienced some of the matters from November 2022. He said that he had primarily been engaged by the Applicant as he would be impartial, which the Tribunal took to mean that the Applicant intended him to be objective, having not been personally affected by all of the matters under consideration as much as the lessees themselves.

41. A particular matter arose with regard to the fact that the Respondent's medical conditions as described by her- essentially that she has bi- polar disorder and that her mood consequently swings from mania/ extreme highs to depression/ extreme lows- and not challenged, appeared to the Tribunal to amount to a long – term condition which it appeared amply clear had an effect on her daily life. It therefore appeared to the Tribunal that the condition may well amount to a disability pursuant to the Equality Act 2010 and that the Respondent's case, not challenged by the Applicant at least to this extent, was that at least the breaches of one of the covenants

arose in consequence of the effects of that condition, perhaps both, and the action taken by the Applicant arose from that.

42. The Tribunal noted that the proceedings related to a property and the Respondent's home. Whilst the Applicant is not a public body and Mr Withers was accepted to be correct to say has no public sector equality duty- and equally the proceedings are between two private parties- the Tribunal is a public body. In those circumstances, the Tribunal considered that it had to raise the point which it appeared to it may be relevant and so that the parties could address it if they wished to.

43. The Tribunal appreciated that, whilst the potential point was perhaps identifiable from the papers, the point had been thrown into rather sharper focus by the evidence given during the hearing and any relevance of the Equality Act had not been raised in advance by the Respondent, or indeed by the Tribunal. It was not realistic to expect the parties, even the Applicant represented by Counsel, to be able to make proper submissions on the hoof. Therefore, the Tribunal gave Directions for written submissions to be made by 28th June 2024 on behalf of the Applicant and replied to by the Respondent, if she chose to, by 5th July 2024.

44. Both the Applicant's Counsel and the Respondent did make submissions. It was necessary for the Tribunal to give consideration to those and the potential impact, hence the Tribunal re- convened as soon as practicable and on 9th July 2024 in order to do so. The Tribunal returns to the Equality Act issue below.

45. The Tribunal briefly also mentions that in the Respondent's submissions, she said that she also suffers from fibromyalgia and was paralysed from the waist down a few years ago, indicating another long- term condition affecting daily life. However, there had been no indication of that in advance of the hearing and the whilst the Respondent had permission to make submissions on the Equality Act, that was not the time to raise something entirely new. In any event, there was no indication of what that added to the situation in the context of the breaches of covenant asserted by the Applicant. Hence, the Tribunal considered that it both could and must leave that specific matter to one side.

46. The Decision seeks to focus solely on the key issues. The omission to therefore refer to or make findings about every matter stated is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Various matters mentioned in the bundle or at the hearing do not require any finding to be made for the purpose of deciding the relevant issues in the cases.

Evidence received and Findings of Fact

Nuisance and Annoyance

47. Given that the Respondent's own evidence was that there had been instances of behaviour in the Property and in the Building from people

attending the Property, the Tribunal had no difficulty in finding that there were. The Respondent accepted that to have occurred from some point in time until August 2023 but was no more precise. She was not asked specifically.

48. The Tribunal unhesitatingly finds there to have been incidents where and insofar as those are set out in evidence received. The Tribunal's finding is limited to those- it cannot make findings where there is not the evidence, unless there are matters sufficiently clear on which an inference can properly be drawn.

49. The Applicant's case included detailed records exhibited by Ms Moody from 21st July 2023. There are no records and there is no written evidence about any other incident (save an arson attack returned to below) prior to 21st July 2023.

50. The Tribunal finds that the several incidents from 21st July 2023 onwards included noise from music and shouting, including and indeed particularly late at night and parties into the night. Specifically, it also included drug use. The Tribunal accepted the specific oral evidence of Mr Neiman about those matters about which he indicated direct knowledge. The Tribunal accepts the nature of the incidents set out in the written records of the agents, which the Respondent did not dispute.

51. Those end on 4th August 2023. The Tribunal treats that as the end point in the absence of any evidence having been received of any instance of nuisance or similar more recently.

52. The Tribunal also finds that the incidents included ones on two nights in November 2022 when Mr Neiman had stayed in the Building, albeit with some concern that they were not indicated in his witness statement and nothing occurring at that time was mentioned in the log of incidents, which was the only other written evidence containing dates of incidents, or any other written record. That oral evidence of Mr Neiman was the only specific evidence of behaviour causing nuisance and annoyance in the months before July 2023. However, Mr Neiman was clear enough that the Tribunal had no reason to doubt him.

53. The Tribunal accepts that there was a fire at the Building and specifically in the Respondent's flat in the early hours of 30th January 2023. The Tribunal notes that the Applicant identified that as an arson attack and not a fire started by the Respondent or with her permission or even acquiescence. The Tribunal noted that Mr Neiman did not know when asked in oral evidence. The Respondent was asked, however, and was clear about arson and that she herself put the fire out and called the police. That incident prompted a full fire audit, and the Building was found by Fire Officer Williams to be "a high risk building and a danger to occupants who reside overnight there". The fire aspects are returned to below.

54. That attack lent some support to issues having arisen before January 2023 and certainly well before the detailed records exhibited by Ms Moody.

55. However, neither the evidence of Mr Neiman nor any other evidence demonstrated incidents prior to those in November 2022, still less what the nature of any such incidents was. The Tribunal makes no specific finding about any specific incident prior to November 2022. The witness statement of Mr Neiman stated that there had been matters for many years. However, it was plain from Mr Neiman's oral evidence that he was unable to properly make that statement- he had no direct knowledge of any earlier incidents. He expressed other related comments in the witness statement, but it equally was understood by the Tribunal that he had no direct knowledge of those either.

56. There was reference by Mr Neiman to a belief about one element but no indication of the source of that belief. No-one from the Applicant company or any other lessee provided any statement giving first- hand evidence or providing a basis for any belief. There was no evidence from any agency, for example the police or local authority, to which any incident may have been reported.

57. There was consequently no witness or other adequate evidence on which to make any such finding about any earlier incident or incidents. The Tribunal infers that the incidents in November 2022 did not co-incidentally happen to be the first ones at the Property but cannot draw any inference as to the number of or nature of any earlier incident or incidents and rather inevitably therefore has insufficient to determine or infer that it or they were of the sort which might cause nuisance and annoyance and did so cause, whilst not discounting the possibility.

58. In addition, where Mr Neiman referred to the fact that needles had to be cleared from the garden of the Building, it could not be said those needles were connected with persons who had attended the Property. Mr Neiman was admirably candid that connection between the needles found and attendees at the Property was an assumption. He also conceded that people used to climb over the wall at the end of the garden before the construction of a new house there and that people who were seen off the premises on an occasion described had not been identified as heading for the Respondent's flat.

59. Whilst it was the Applicant's case that persons using drugs in the entrance hall were visitors to the Respondent's flat, the Tribunal was not prepared to so find on the very limited available evidence, without discounting the possibility. It was apparent that those persons had obtained access to the entrance hall and so the door had apparently been left open enabling that access. However, there was no evidence beyond that and, the Tribunal concluded having considered the point carefully, there was not enough upon which an inference should be drawn. The Tribunal was not clear on reflection whether or not that was the same incident as that referred to in Mr Neiman's witness statement which referred to people in the Building being intoxicated. The Tribunal again appreciated Mr Neiman's candour that it was not clear they knew the Respondent.

60. The Tribunal also makes no finding about any specific incident between February 2023 and July 2023 and can make no finding about the number of any incidents or the nature of those either, still less that they were of the sort which might cause nuisance and annoyance and in the event did so. There was again simply no witness and no other adequate evidence and insufficient on which any inference could be drawn.

61. That is again without discounting the possibility and the Tribunal considering in very broad terms it to be relatively unlikely that there was a lull for a number of months and then a whole series of incidents from July 2023. There was reference in the report to the police by the managing agents [92] to several complaints and it appears more likely that was intended to indicate complaints about several matters rather than several complaints about the same matter. However, that seems more likely to relate to the days 21st July 2023 onward because the agents appear to have commenced their record once there was anything to note down and 21st July 2023 is the start date of those records.

62. Equally, and significantly, the managing agents had kept detailed records about the fire safety requirements [100- 107] from February 2023, so it is reasonable to assume that there would be detailed records about nuisance and annoyance incidents prior to July 2023 if there had been such incidents, not least against the background of no other evidence being provided of incidents during those months. There are some matters which refer to the Respondent in the agent's records but nothing specific was said about them on the part of the Applicant and the tenor of the Applicant's case was concern with parties, visitors, their noise and their behaviour. The Tribunal did not find anything specifically identified as done by the Respondent to cause nuisance and annoyance, having received no evidence from any witness stating that it did and not venturing well beyond that.

63. The Tribunal also accepted the oral evidence of Mr Neiman that there had been no incidents in 2024 or indeed since August 2023.

64. The Applicant was aware of the vulnerability of the Respondent and was aware that she was being taken advantage of by others. The Applicant's report to the police specifically identified that. Mr Neiman in his statement identified that the Respondent had been sectioned under the Mental Health Act in the past and her behaviour had fluctuated. He accepted without reservation in oral evidence that Ms Siers was bi-polar and had been taken advantage of. Ms Dash's comments offered support about the Respondent's conditions. The Respondent in closing addressed in some detail how she had, she said, been taken advantage of (it was well arguable some of that was new evidence not closing submissions, but it was not challenged and was consistent with the other evidence).

65. The Tribunal noted that the Applicant's position, as asserted in the witness statement of Mr Neiman, was that it had tried to work with the Respondent, but that assertion was not expanded upon in that statement to provide any positive steps taken by the Applicant to do so.

66. Mr Neiman had never spoken to the Respondent. He said in terms of the statement "the Claimants have worked with the Defendant" (presumably intended to say 'the Respondent') that he understood that the managing agents had done so and had been asked to about the arrears of service charge asserted, the fire door and anti- social behaviour. Mr Neiman's limited knowledge identified and the firm written assertion in the witness statement were not consistent with each other.

67. Mr Neiman was unable to offer any positive step taken by the Applicant to "work with" the Respondent until re- examination, when in a very leading question Mr Withers suggested that Ms Hannah Namvar at the agents had passed (something) onto a social worker. The very leading nature of the question was amply demonstrated by the fact that Mr Neiman's only answer was "yes". The Tribunal was not prepared to place weight on Mr Neiman's answer to such a leading question by the Applicant's Counsel and where the extent of Mr Neiman's actual knowledge was so unclear.

68. The Tribunal accepted that there had been two contacts with external agencies on 25th July 2023 by the managing agents and gave full regard to those. The Tribunal notes mention of the agents having found social workers' details [86] and an email to Health and Social Care at East Sussex Council on 25th July 2023 [87]. That refers to a safeguarding concern. That identifies the Respondent's condition as complex and nuanced. There appears to have an automated response sent.

69. The only other evidence from the managing agents was the content of part of the records of the managing agents that the police were also contacted on 25th July 2023- the report mentioned above- and which identified "There is a history of cuckooing in this property and a recent arson attack on the property and we are concerned for the Leaseholders (sic) wellbeing.". Mr Neiman made specific reference to that in his statement, but the maker of the record was not present and no enquiry of her could be made as to anything beyond the record itself.

70. The Tribunal accepted that on that date and in those two ways, the agents had made contact in the terms set out and the record were accurate about that. There was no reason to doubt that. It was unclear as to what happened afterwards. There is no indication of an attempt to follow anything up with Health and Social Care brought to the Tribunal's attention. Nevertheless, the Tribunal surmises that there was a helpful outcome because the incidents, at least as recorded, cease a few days later. There was also the attendance of Ms Dash at the hearing. The Respondent referred to the support of Ms Dash and carers. However, if the Applicant sought to contend that it made other efforts to work with the Respondent about nuisance and annoyance behaviour, the Tribunal did not find that to be made out. There was no other evidence.

71. On the whole, somewhat regrettably and accepting the efforts of the agents on 25th July 2023, the Tribunal considers that the approach set out in the statement of Mr Neiman as correct when he describes the Applicant's efforts as "robust". The statement requests, although it is beyond the

powers of the Tribunal "that the said lease be forfeited". That robustness is a better description of the approach of the Applicant than "working with" the Respondent overall the Tribunal finds.

72. Mr Neiman said that the Applicant was not confident the current position of no nuisance and annoyance would continue. However, the Tribunal is required to determine whether breaches have occurred. It is no part of its role to speculate about the future.

73. The Tribunal finds that the Respondent does suffer from the conditions she asserted, namely bi- polar disorder and that her mood consequently swings from mania/ extreme highs to depression/ extreme lows. The Tribunal finds on the balance of probabilities that the Respondent is a disabled person pursuant to section 6 of the Equality Act 2010 (as indeed Mr Withers accepted in written submissions- see further below).

74. The Tribunal accepts that the Respondent was vulnerable with a complex condition and effects of that, and she was taken advantage of by others who attended at the Property. Specifically, that includes that the Property was used for parties without her permission and that items belonging to her were stolen.

75. The Tribunal finds that given her mental health conditions, and its manifestation, that the anti-social behaviours alleged were "something arising" from her disability pursuant to s15 of the Equality Act 2010. The Applicant accepted in Mr Wither's written submissions that is at least arguable, but the Tribunal considers that matters go beyond that and that there is ample from which to find or infer that the behaviours did so arise because the Respondent's vulnerability and the advantage taken of her arising from that.

76. The Tribunal fully accepts the unpleasant situation for the other residents, who ought not to have needed to experience the incidents they endured. That said it does not find a predominantly "robust" approach entirely appropriate and considers that too little consideration was given to the Respondent's known conditions and to her being taken advantage of. The Tribunal considers that fault in relation to that which the other residents endured primarily lay with those who took advantage of the Respondent.

77. As mentioned, social services have plainly become involved and support has been in place- as the attendance of Ms Dash demonstrated. There is no ongoing problem with such nuisance and annoyance. The last incident was on or about 4th of August 2023. To that extent, the Respondent was plainly wrong to calculate a period without incidents of approaching two years, but the period was moving towards one year.

Fire door

78. The Tribunal finds that the front door to the Respondent's flat was not a compliant fire door. It necessarily follows that the Respondent had not fitted a compliant fire door.

79. The Tribunal noted that in oral evidence Mr Neiman retreated from the contention in his written witness that the fire door was the primary reason for the application to it not being, but he maintained that it was a factor.

80. The Tribunal accepts the fire officer stated in the Enforcement Notice dated 27th February 2023 that, amongst a number of matters requiring attention, the door to the Respondent's flat and to another flat were not compliant, although Mr Neiman said that the Applicant now had permission to attend to the other door which would be dealt with the following week. (The Tribunal did not establish whether any action had been taken against the lessee of that flat but noted that the lessee had apparently not attended to the door, which remained non- compliant as the date of the hearing of the application against the Respondent.) The Tribunal had no reason to doubt the oral evidence and so was troubled that it conflicted with the content of the witness statement (paragraph 9.), which said that save for the upgrading of the door to the Property, the works had been satisfactorily completed).

81. Mr Neiman said that the door was not resistant for thirty minutes, was too flimsy and was not appropriately sealed. The Tribunal accepted the door not to be properly sealed, which it had identified at the inspection. The glass was not suitable. However, the Tribunal found it wrong to describe the door as flimsy, based on its inspection of the door.

82. The Tribunal finds, on the basis of the fire safety evidence, that the Building was in a high- risk dangerous state at that time from a fire safety perspective and there had been a failure to comply with longstanding obligations on the part of the Applicant. Ms Siers said in cross-examination she had been trying to raise fire safety issues with the Applicant for 5 years. That was not challenged but nothing turns on it. The Enforcement Notice made that failure clear. Mr Neiman said that he had not seen a fire risk assessment, did not know when one was last done and said that fire risk assessment prior to February 2023 had been "under the radar", which the Tribunal accepts to be a correct statement and about which it comments further below.

83. The Tribunal found that whilst the Respondent could leave the Building in the event of a fire via the other door from her kitchen to the outside, the occupiers of the flats to the upper floors would have to use the staircase and pass right by the entrance door to the Respondent's flat. The need for compliance by the Respondent as well as generally was therefore plain, in order for there to be a protected means of escape for occupiers of upper floors as there was no other exit route, and the risk to the other occupiers equally plain.

84. It is not necessary for the Tribunal to make any finding as to why the Applicant still did not have a compliant fire door to her flat by the date of the hearing, but the Tribunal chooses to do so to an extent.

85. The Tribunal accepted the Respondent's evidence that she had sought to have a new front door to her flat fitted which was a compliant fire door and contacted a builder to have one fitted. The Tribunal also accepted that a door had been fitted in late Autumn 2023, which Ms Siers accepted to be late, citing having been unwell (which of itself appeared quite likely on the other evidence). The Respondent had paid a sum of money for that to be done by the builder- which she said in oral evidence to be about £650. Mr Neiman said in oral evidence that he had seen that a builder had been employed and expressed the opinion that the Respondent had been "taken for a ride".

86. The Tribunal noted that the Respondent appears to have provided to the agents a receipt for work undertaken- that is mentioned in the records [105]. It is unfortunate that was not contained in the bundle (not least because it would have demonstrated the exact amount paid) but the Tribunal notes that the receipt is said by the agents not to mention the door being compliant with fire safety requirements.

87. The Tribunal further accepted that the Respondent did not take steps to have a compliant fire door fitted or pay a sum of money to a builder to fit such a door intending to be left with a door which was not compliant. The sum paid out was not an obviously low sum for the work. Rather, she intended there to be a compliant door.

88. The Tribunal inferred that on the Respondents' limited income as identified by the Applicant of welfare benefits, the cost of a fire door was a relatively high expense- the figure suggested by Mr Neiman of just shy of £1000 seemed to the Tribunal to potentially be thereabouts from its experience. The sum wasted on a replacement door which was not a fire door will have affected any time required to save for that, although that cannot be a complete answer.

89. Mr Neiman also added that the Applicant was prepared to attend to the Respondent's door if given permission. He also said there had been a refusal of access by the Respondent, or at least that the managing agents had said that a contractor had twice been refused access. That was third or fourth hand and there was no evidence from the contractor. Mr Withers in asking Mr Neiman about that referred to the bundle [105 or 106 (Mr Withers said 105 but whether that was bundle numbering or PDF numbering was unclear and both pages make some reference to the fire door but not attendance of a contractor)]. The Tribunal found on the basis of the records that the agents had twice offered to have the door replaced and the Respondent had refused but there was no mention of actual attendance. Mr Withers asked a number of questions of the Respondent about refusal to engage on her part but considers the most important matter is the door continued to be non- compliant and that the other points advanced are less notable than the matter below.

90. Pertinently, the mention in the records of refusal "again" was in a communication on the day on which the agent acknowledged the receipt for expenditure by the Respondent by email to the Fire and Rescue Service.

It is apparent that the Respondent had said that she would have the door attended to herself and that she did do, but in doing so was "taken for a ride". The Tribunal considers that it was perfectly appropriate for the Respondent to deal with the matter herself- she was not compelled to take up the agent's offer and but for being "taken for a ride", she would have done so.

91. The Tribunal is unclear to what extent the Applicant later made constructive proposals in respect of the fire door, which was not explained, and no document demonstrated contact about that. The records show [106] that by only two days after the receipt from the Respondent for a replacement, although not compliant, door, the agent wrote to the Fire and Rescue Service stating that "I have received the below from the Freehold Management Company, unfortunately we are no longer able to engage with the Leaseholder of Flat 8" and then referring to separate Court proceedings. There is no noted change from two days earlier when the agent received the receipt. "The below" is not shown but the indication, and the Tribunal's finding on the evidence, is that the response of the Applicant to the Respondent having demonstrably attempted to attend to the fire door, albeit not successfully, was that it was not going to engage further with her about the matter.

92. Even assuming there were any later proposals of which there are no evidence, the Tribunal can understand why the general tenor of the Applicant's approach- and the fact of proceedings- may not have encouraged the Respondent to be confident that the parties could work together. The Respondent was able to prefer to attend to the door herself rather than have the Applicant do so. However, she cannot avoid the basic fact that caused delay.

93. In a similar vein, as a matter of simple fact, at the date of the hearing, 18th June 2024, the fire door was not compliant.

94. The Tribunal accepted the evidence of Mr Neiman that he had been contacted by the Fire and Rescue Service the day before the hearing with regard to undertaking a further inspection of the Building in the next several days and that further action may be taken against the Applicant. The Tribunal accepted Mr Neiman's entirely understandable concern and the likely concern of the other lessees.

95. Within the email sent by the Respondent in relation to the Equality Act, she said that a suitable fire door was to be fitted on 3rd July 2024. That was not evidence received at the hearing and the Tribunal makes no finding as to whether the statement was correct. In any event, the Tribunal does not know what then transpired and so can make no positive finding as to whether the breach has ended or not in any event. The Tribunal observes that the parties will be aware of the position because the Respondent will either have received confirmation from the contractor that the door is compliant and will either have provided that to the Applicant or not. If the Respondent has indeed had a compliant fire door fitted, the position will have changed from that as at the hearing.

Consideration- were there breaches of the Lease by the Respondents?

96. The Tribunal takes each limb of breach alleged in turn.

Nuisance and Annoyance

97. The Tribunal determines that the Respondent has not been demonstrated on the evidence to have performed any identified act of nuisance or annoyance herself.

98. The Tribunal considered whether it could properly be said that she had permitted acts. It was apparent that the Respondent had not prevented the acts. However, the Tribunal considered that permitting the acts indicated either conscious choice to allow them or at the very least an ability to prevent them and a failure to do so.

99. In the usual course, the Tribunal may well have found that a person who did not take identifiable steps to prevent behaviour thereby permitted it. However, the Tribunal noted that the contracting parties had chosen to specifically distinguish between permitting acts and suffering acts and must therefore have intended the two words to relate to different things, otherwise one of the words would have been otiose.

100. The Tribunal considered that the ordinary meaning of suffering acts, that is to say to undergo them or be subjected to them, applies. That distinguishes to suffer from to permit. That is what the Tribunal determines a reasonable person would understand and there is no other matter which the Tribunal identifies as relevant to construction (applying *Arnold v Britton*) which ought to lead to a different interpretation of the words used.

101. Given the accepted mental health position of the Respondent and her consequent vulnerability and the acceptance by the Applicant of cuckooing, the Tribunal determines that the breach was not that the Respondent permitted the behaviour.

102. Rather the Respondent suffered to be done those matters, which she was practically unable herself to prevent at the relevant times due to her medical conditions.

103. That said, she did suffer those activities to take place and the terms of the Lease renders that a breach.

104. It is not for the Tribunal to make any determination as to the relevance of a breach by suffering the activities of others to occur as compared to pro-actively acting in a way which breaches a lease, although plainly at a very simple level the two are not the same.

105. The Tribunal further determined that the drug use at the Property did amount to illegal activity. The Tribunal does not determine that there was supply of drugs by one person to another. It came close to drawing that inference from the nature of the activity described but determined that there was insufficient to specifically do so.

106. Nevertheless, on the facts found there was possession of controlled drugs and hence illegal activity.

107. The Tribunal did not find that there was a breach because of use of the Property for immoral purposes. The usual understanding of that is different to illegal and the use of both words in the Lease is considered by the Tribunal to indicate that is what the contracting parties intended.

108. The Tribunal considers that drug use may fall within the scope of both words. However, the Tribunal considers "immoral" not to be an obvious description for it. In those circumstances, the Tribunal prefers not to make any determination about breach by immoral activity, not least because the Tribunal considers that would add nothing where a breach of the covenant on the basis of illegal activity has been made in any event.

109. The findings of fact did not identify the arson attack as being of the nature of nuisance and annoyance. In any event, whilst it appears to have been directed at the Applicant, not only was it not permitted by her but also the Tribunal considers that neither was it suffered by her in the manner provided for in paragraph 10. It has no doubt caused considerable understandable concern to all lessees but it did not constitute a breach by the Respondent.

110. To the extent of any incidents that there may have been prior to November 2022 and between the start of February 2023 and July 2023, the lack of evidence rendered it impossible to determine that any amounted to a breach of the Lease.

111. The period of breach is two dates in November 2022 and 21st July 2023 to 4th August 2023 and to the extent of the incidents found, being breaches of paragraphs 11 and 14 of the Sixth Schedule.

Fire Door

112. The Tribunal noted the wording of the Lease in respect of the extent of the Respondent's flat.

113. The Tribunal notes the exclusion the frames and glass in windows from the "external parts" which are the responsibility of the Applicant and so implicitly those "external parts" include doors in the external walls as not excluded. The Tribunal noted no reference to doors within the Building (or windows within the Building). However, the doors which are for use by two or more occupiers of flats fall within the definition of common parts and so that includes the entrance door from the outside into hallways and other

doors within communal areas, for example the door between the entrance hall and the stairway hall from which the Respondent's flat leads off.

114. The Tribunal considers that the natural interpretation of the elements of the Respondent's flat would include the front door to it where that leads off internal communal areas- in contrast what is referred to as the rear door out from the kitchen falls specifically within "external parts" as defined in the particular Lease (although other leases may provide differently). The delineation of the Respondent's flat on the plan on balance supports that and that there is nothing in the Lease to support the contrary.

115. It perhaps merits explaining the use of the phrase "on balance" in the above paragraph. The plan shows the entrance door to the Respondent's flat and shows the walls. A thickness is given to the walls on the drawing, although the Tribunal perceives not to scale. The line on the plan passes through the approximate mid- point of the thickness of the walls as shown. Unusually, the door of the Respondent's flat opens outwards into the stairway hall and not inwards into the flat.

116. The direction of opening is shown on the plan, together with the position of the door when fully open and its position between that and fully closed. At any point beyond being fully closed, the door is within the communal area. It is not as clear as it could ideally be that the door when fully closed is along the line marked on the plan. However, considering the available information, the Tribunal considers that it is and that it is the position of the door when closed which would be relevant and not the position when opened outwards.

117. Given the above and that the Respondent had not sought to argue to the contrary, still less demonstrate the above to be incorrect, the Tribunal was content that the correct determination was that the entrance door to the Respondent's flat formed part of that flat and was the responsibility of the Respondent rather than the Applicant.

118. The provision in the Lease "do such works as under Any Act of Parliament or Rule of Law are directed or necessary to be done on or in respect of the Demised Premises" is also not as clear as it might have been. Exactly what "Rule of Law" means in the Lease is particularly not clear and certainly cannot be the same as the term would ordinarily be understood in a broader context. The original contracting parties might preferably have found better phrasing.

119. However, the Tribunal accepts that fire safety requirements in statutes and regulations made under statutes fall within the term "under Any Act of Parliament". Hence, the Respondent was responsible for ensuring that the front door to her flat was a suitable fire door.

120. Given that as a matter of fact the door was not a suitable fire door, it necessarily followed that the Respondent was in breach of the requirements of the Lease in that regard.

121. It may not be strictly necessary to determine the period of the breach about the fire door, but the Tribunal considers it useful to do so.

122. It follows from the Enforcement Notice and the Tribunal's findings, that the Applicant appeared to have significantly failed to fulfil its responsibilities for fire safety until the fire in the Respondent's flat prompted it to seek to do so. The notion that fire risk assessment prior to February 2023 had been "under the radar", was wholly inappropriate and surprising given the Grenfell Tower tragedy in 2017 and the emphasis on and publicity about fire safety. There may well have been non- compliance with fire door requirements by the Respondent prior to February 2023 but the Tribunal concluded that on the limited information available to it, it was not possible to make such a determination.

123. The Tribunal also determines that it would be inappropriate to find the Respondent in breach immediately when the non- compliant door was first identified, amongst other breaches in the Building, by the fire officer. The fire officer gave a period from 27th February 2023 until 29th August 2023 for the fire risk to be remedied and the requirements set out be complied with. It was not clear exactly when the Applicant informed the Respondent and the Tribunal has made not any finding, merely inferring it to have been after receipt of the compliance notice and likely to have been with a few days of that. That was in any event amply before 29th August 2023.

124. Therefore, the Tribunal determined the breach to commence as at 30th August 2023. That was the date by which compliance with the Enforcement Notice required the work, the Applicant is considered by the Tribunal to have adopted that and the Tribunal determines that the Respondent would not therefore been in breach if she had ensured a compliant fire door by that date.

125. The Tribunal determines that the Respondent remained in breach as at the date of the inspection and the hearing. The breach will continue up to and until the date on which a compliant fire door is fitted, if not yet done.

126. The breach therefore occurred from 30th August 2023 until 18th June 2024 and ongoing at that time.

127. It was argued in the hearing that the Respondent was in breach of the part of paragraph 10 which related to any insurance on the Building being rendered void or voidable.

128. If it had been relevant, the Tribunal would have needed to seek specific submissions as to whether the requirement for the Respondent not to do anything which might increase the insurance premium would include omitting to comply with the requirement for a compliant fire door and whether the act of having a new but not compliant door fitted amounted to a positive act or to an omission for those purposes. (And also in relation to any elements of the nuisance annoyance incidents relevant).

129. However, that potential breach was not cited on the application form and so the Tribunal declined to address that issue. The Tribunal was influenced to an extent, although it was not determinative by the fact that the Tribunal considered it doubtful that there was sufficient on which to determine that particular issue in any event and by the fact that it had already determined the Respondent to be in breach of the provisions of the paragraph as a whole.

Service charges

130. The Tribunal noted that the application form had additionally made reference to arrears of service charges but that those were the subject of other action. Such arrears as may be asserted were not addressed further in these proceedings and nothing was said about them at the hearing. Ms Siers said in her written submissions about the Equality Act that she has paid them but the Tribunal neither needs to make or does make any finding one way or the other.

131. The Tribunal determines that any such arrears that there may have been or may still be to do not comprise a relevant breach for these purposes and so the Tribunal makes no findings or determinations.

Other observations

132. It may be gleaned that the Tribunal has some sympathy for the Respondent. It should be. That is intended.

133. It may also be gleaned that the Tribunal considers that the Applicant did not look far enough and identify that more positive steps to assist the Respondent may be appropriate. That is also intended.

134. That does not for a moment detract from the effects on the lessees or occupiers of the other flats over the periods for which nuisance and other breaches have been proved. The Tribunal had found that they were caused nuisance and annoyance and indeed probably fear because of the activities at the Respondent's flat and the persons who attended. The Tribunal accepts that was extremely unpleasant for them and patently they ought not to have endured it.

135. The Tribunal nevertheless repeats its view that it is those who took advantage of the Respondent who were primarily at fault. The Tribunal also notes that the Respondent has apologised for the distress caused to the other lessees and for the time and stress involved. The Tribunal had no reason to doubt that the Respondent does not want to return to the former situation.

136. The Tribunal was pleased to note that the Applicant had written to the lessee who the Respondent said had been abusive to her- which the Applicant appeared to accept.

137. The Tribunal also accepted that the Respondent was unhappy at the allegation of excess alcohol being consumed by her and that her evidence was that the medication taken for her conditions can cause some slurring and wobbliness. The Tribunal perceives than none of the other lessees may have sufficient knowledge to say that to be incorrect and there was no statement by anyone doing so. Care is needed when referring to persons with medical conditions and on medication where anyone lacks full understanding of those.

138. The Tribunal takes the opportunity to record that it is not impressed with the approach of the police as described by Mr Neiman. His oral evidence was that the police said that as the Respondent owns a property, there was little that they could do. The Tribunal does not accept that. It seems to the Tribunal that steps could have been taken by the police to protect the Respondent, which would have indirectly assisted the other lessees and the Applicant. In addition, other action could, the Tribunal considers have been taken against anyone identified as engaging in anti-social behaviour. Given the Respondent's vulnerabilities, the Tribunal finds it difficult to understand why no discernible steps were taken.

139. It is no doubt a considerable relief to the other lessees that the activities have now ceased and that they can live in their homes as they ought to have been able to do throughout. The Tribunal sincerely trusts that no further issues will arise. However, if they do, the Tribunal trusts that the agencies supporting the Respondent and all other interested parties will be able to work together more effectively- and swiftly. The Tribunal is pleased that the Respondent has support in place and is engaged with that.

140. Subject to a situation in which the Applicant pursues forfeiture and is successful with that, which is not a matter for the Tribunal and so it is better for the Tribunal to express no view about it, the parties and indeed the lessees as a whole will have interests within the Building on an ongoing basis. The Tribunal hears many cases where following the conclusion of proceedings of various types and with various outcomes the parties have to find a way to occupy the same building in a practical and constructive manner. This is one of those.

Impact of the Equality Act

141. The Tribunal noted with care the written submissions in respect of the Equality Act and gave them full consideration. The Tribunal was mindful of there being no known case authorities in relation to the Equality Act and determinations of breach of covenant.

142. The Tribunal decided after some consideration that the Equality Act did not prevent the determinations which have been made by the Tribunal, which therefore can be made in this instance.

143. The Tribunal accepted that an argument that the Equality Act prevented such a determination would be a defence, in effect, on the part of the Respondent.

144. As Mr Withers submitted, any such defence has to be raised before the County Court. The Tribunal accepts that section 113 of the Equality Act sets out that contraventions of the Act must be brought pursuant to Part 9 (enforcement). Section 114 gives the County Court (in England and Wales) sole jurisdiction to consider contraventions of the Act in relation to Part 4 (Premises). He is also entirely correct that the Tribunal is a creature of statute and possesses the many and varied jurisdictions which have been given to it but does not have jurisdiction in any other matters.

145. Hence, the Tribunal cannot consider the point and so the issue ends there for these purposes.

146. Nevertheless, given that submissions were received on other aspect related to the Equality Act, the Tribunal expresses its opinion on those, accepting that what it says is not more than the expression of an opinion in the event.

147. The Tribunal considers that seeking a determination of a breach of covenant to facilitate the ability to seek to forfeit the Property or to further consider doing so falls within Section 35(1)(b) of the Equality Act. That section sets out that a person who manages a premises- which the Tribunal considers Mr Withers rightly conceded encompasses the Applicant- must not discriminate against an occupier (the Respondent) "by evicting [them] (or taking steps for the purpose of securing B's eviction)".

148. The Tribunal rejects Mr Withers' submission that the determination sought from the Tribunal does not amount to a step taken to secure eviction. The Tribunal considers that the taking of a necessary required step before the service of any notice seeking forfeiture pursuant to s146 of the Law of Property Act 1925 is, unless patently not aimed at facilitating service of a notice (and hence being of undiscernible purpose in the normal course), is a step taken to secure eviction, albeit some way short of the final one.

149. The Tribunal considered Mr Withers' argument that the effect of a s146 notice is to demand that a tenant remedy a breach/pay a sum for the breach within a reasonable time, failing which the lease will be treated as forfeit, save for the doctrine and discretionary consideration of relief from forfeiture is not an answer to the above. That is even assuming and without necessarily wholly accepting Mr Withers' assertion of the nature of a notice to be correct and complete. Equally, the fact that the Applicant could not, even following an unremedied determined breach and s146 notice, evict the Respondent without a court order granting possession- applying the Protection from Eviction Act 1977- is not an answer. The same could be said of short- term tenancies and the Tribunal considers that notices in respect of those tenancies are plainly within the scope of the Equality Act.

150. The Tribunal determines- and whilst it is unclear whether Mr Withers sought to address the specifics of this case or wider principles- it is abundantly clear that in this case that the application to the Tribunal for

the determination was a step taken to secure eviction. The witness statement of Mr Neimans specifically concludes his witness statement by stating "...the Claimant's (sic) are requesting that as the Defendant has clearly breached the terms of he lease, that the said lease be forfeited." The purpose of the step, the application, could scarcely be clearer.

151. The Applicant would discriminate because of something arising from disability if the Respondent was treated unfavourably because of that "something arising". The Tribunal is aware that there are various Court authorities about whether a person is treated unfavourably- and there may be others in other for a which would provide useful guidance. Whilst Ms Siers argued in her submissions that the Applicant' action did constitute unfavourable treatment, the Tribunal does not seek to make a determination either way about that particular element in light of the matters set out below.

152. There are similarly several case authorities about what a proportionate way is to achieve the legitimate aim of preventing anti-social behaviour, assuming that were determined to be the Applicant's purpose where the nuisance and annoyance incidents had ceased some months earlier. Both Mr Withers and Ms Siers addressed that, and of course advancing different outcomes, which would probably be of greater relevance if subsequent steps were taken.

153. All of that would have required very careful consideration if the Tribunal had possesses jurisdiction but in the event it is not practical or necessary to discuss those.

154. The Tribunal considers than in the event that the Applicant were to decide to seek to forfeit the Lease in consequence of- and to an extent in spite of- the Tribunal's determinations and the Court was to need to decide whether forfeiture should be permitted, the Equality Act may then be highly relevant, and it appears likely from the nature of her submissions that Ms Siers would obtain assistance and argue relevant matters. The Tribunal leaves any matters about the application having been made and the effect of the Tribunal's determination to the Court in the event that this case comes before it.

155. The Tribunal concluded that none of the above prevented it making the specific determinations that on the facts and applying the previsions of the Lease there were breaches of covenant, as it has. It is right to say that the Tribunal did so with an element of caution, given that the inability to determine any impact of the Equality Act meant that the Tribunal arguably considered an incomplete picture. The Tribunal is less than certain that it got that approach correct. The Tribunal acknowledges that there is some merit in Ms Siers submission that the Tribunal must ensure that its processes and decisions comply with the broader legal framework, including anti-discrimination laws.

156. To the Tribunal's mind on the current information, the only way in which the impact of the Equality Act in respect of whether there has been a

breach of covenant would be able to be considered by the Tribunal at the same hearing as the question of breaches themselves, would be for proceedings to be commenced in the County Court and transferred to the Tribunal for administration with the Equality Act elements to be determined by a Tribunal Judge sitting as a Judge of the County Court. That would not appear problematic in principle, although the Tribunal may be astute to list the case before a Tribunal Judge with prior experience of the Act given that the issue is not something that the Tribunal ordinarily encounters. The alternative approach would be for the Tribunal to transfer an appropriate case to the County Court, which could then determine the breaches alleged and could take any account of the Equality Act pursuant to its jurisdiction. It may be that is considered the better course, subject to the capacity of the Court to deal with such matters in a realistic timescale amongst its considerable other business.

157. As to whether either approach may be adopted by a party would no doubt, amongst other matters, depend upon whether it is identifiable that the Equality Act may be likely to be particularly relevant and, even then, may or may not find favour with a Court. However, it should be expected that at least a represented party would identify the issue- legal advisors practicing in the housing and property field ought to be aware of the Equality Act and its impact and be capable of noting its potential application where a party is identified as suffering from a mental health or other potentially long- term medical condition.

158. Given the apparently rare instances in which the Equality Act does arise in breach of covenant cases, it is perhaps of limited help to dwell further on this issue in this specific case.

Decision

159. The Tribunal determined that there was a breach of the covenants in the Lease as follows.

160. Firstly, in respect of suffering there to be matters causing nuisance and annoyance in breach of clause 2 of the Lease and paragraphs 10 and 14 of the Sixth Schedule in November 2022 until from 21st July 2023 to 4th August 2023.

161. Secondly, in respect of the front door to the Respondent's flat in breach of clause 2 of the Lease and paragraph 11 of the Sixth Schedule to it from 30th August 2023 until the date of the hearing and thereafter unless and until a compliant fire door was fitted.

Fees

162. The Applicant has incurred the usual fees in order to bring this application to the Tribunal, namely £100 to make the application and £200 for the hearing.

163. The Applicant has plainly been successful in obtaining a determination that there have been breaches of covenant by the Respondent.

164. The Tribunal accepted that the Applicant was entitled to apply for a determination when it did so. The Tribunal was rather less convinced about the reasonableness of that and other aspects of its approach. Whilst those did not alter the appropriateness of making the determinations as to breach, they were very relevant when it came to fees.

165. It was plain that the lessees of the other flats had suffered nuisance and annoyance and further that the fire safety risk remained. However, at the time that the application was made, there had been no nuisance and annoyance for some weeks. The Tribunal accepted that there may have been a concern that situation could return but was doubtful about the appropriateness of applying at the time the Applicant did. The Tribunal accepted the fire risk to be an understandable concern to the Applicant and the lessees and a concern to the Fire and Rescue Service, which may have imposed a further sanction if the risk was not removed, although by another lessee as well as the Respondent.

166. However, more generally, it will be identified that the Tribunal is not convinced that as much was done by the Applicant to assist the Respondent as might reasonably have been done in the knowledge of her condition. The Tribunal is not convinced that it was reasonable to proceed with the application once the nuisance and annoyance had ceased against that background, despite the determinations it has made. That is therefore notwithstanding that the fire door issue remained and a reflection of the wider situation. It is not apparent that proper consideration was given to the nature and potential effect of the Respondent's medical condition, not just in the context of the Equality Act but also more generally, and to work constructively.

167. The Applicant's written case was also not in all instances supported by the evidence. The assertion in the witness statement of Mr Neiman of anti-social behaviour for "many years" whereas he only had knowledge from November 2022 and there was no witness or other evidence for any earlier period, or indeed much generally until July 2023 is perhaps the most obvious example. It may be that evidence could have been called which would have demonstrated the assertion to be correct but it is not for the Tribunal to speculate about the evidence that there might have been and of course the Tribunal worked from the evidence actually presented.

168. Taking matters in the round, the Tribunal accordingly determines that the Respondent should pay half of the Tribunal fees paid in the sum of £150.00.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking