



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

**Case reference** : **LON/00AY/LBC/2024/0007**

**Property** : **Flat C, 65 Brailsford Road, London,  
SW2 2TB**

**Applicant** : **Brailsford Road Limited (freeholder)**

**Representative** : **Ms J Patel, BlocNet Limited**

**Respondent** : **Ms Priyadarsini Tampi (leaseholder)**

**Representative** : **In person**

**Type of application** : **Determination of an alleged breach of  
covenant**

**Tribunal members** : **Judge N Hawkes  
Mr A Lewicki FRICS**

**Venue and date of  
hearing and  
reconvene** : **12 June 2024 and 17 October 2024 10  
Alfred Place, London WC1E 7LR**

**Date of decision** : **22 October 2024**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal dismisses the Applicant's application for a determination that the Respondent is in breach of covenant.

## **The application**

1. The Respondent is the long lessee of Flat C, 65 Brailsford Road, London, SW2 2TB ("the Property") and the Applicant is her landlord. The Property is the top floor flat in a three-storey house which has been converted into three self-contained flats.
2. The Applicant seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), that the Respondent is in breach of a covenant contained in her lease to keep the window frames of her top floor flat in good and substantial repair and condition.
3. It is common ground that the window frames are not currently in good and substantial repair and condition. Accordingly, this application turns upon the question of who is responsible for the repair of the window frames.
4. The Respondent denies that she is in breach of covenant. Her primary case is that the maintenance of the window frames has been the landlord's responsibility since the grant of the lease and that this issue has already been determined in her favour in 1998 County Court proceedings.

## **The hearing**

5. The final hearing in the matter took place at 10 Alfred Place, London WC1E 7LR on 27 June 2024.
6. The Applicant was represented at the final hearing by Ms J Patel of BlocNet Limited, the Applicant's managing agents, accompanied by Ms Bate, Director of the Applicant freehold company. The Respondent appeared in person.
7. Mr Wytner, the solicitor who represented the Respondent in proceedings against her landlord in the Lambeth County Court in 1998, gave oral evidence and the Applicant's representative had the opportunity to question him.

8. No party requested an inspection of the Property, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

### **The issues**

9. At the commencement of the hearing, the Tribunal identified that the issues to be determined include:
  - (i) whether or not a default judgment given in 1998 in proceeding reference LB822521 in the Lambeth County Court gives rise to an issue estoppel, on the issue of which party is responsible for repairing the windows of the Property;
  - (ii) whether the Respondent can potentially be found to be in breach of covenant given that, at the time of issue of this application, no notice had been served on her requiring her to carry out the relevant work;
  - (iii) whether, if the proceedings continue, Mr McWir who very recently became the long leaseholder of another flat in the building in which the Property is situated should be joined as a party to these proceedings so he has the opportunity to participate and so that he will be bound by the Tribunal's decision; and
  - (iv) whether the windows of the Property require repair because the Applicant is in breach of its covenant to paint them (the Applicant's representatives accept that painting the exterior of the windows is the Applicant's responsibility) and, if so, whether the Respondent can be said to be in breach of covenant.
10. The first of these issues is potentially determinative of these proceedings and of whether any future application can be made to the Tribunal against the Respondent alleging breach of covenant on the same basis. Further, Mr Wynter, the solicitor who represented the Respondent in the 1998 proceedings, had taken the time to attend the hearing in order to give oral evidence. Accordingly, having consulted the parties, the Tribunal determined that the implications of the default judgment given in 1998 proceedings in the Lambeth County Court and whether or not it gives rise to an issue estoppel would be determined as a preliminary issue ("the Preliminary Issue").
11. At the final hearing, after hearing Mr Wynter's oral evidence, the Applicant's representatives accepted that it is likely on the balance of probabilities that a default judgment exhibited to his witness statement is authentic and is based on Particulars of Claim identical to the

unsigned copy which had been disclosed. They also accepted Mr Wynter's evidence that it is likely that a schedule of work which has been disclosed and a copy of the Respondent's lease were both sent to the Court in 1998, annexed to the Particulars of Claim. Further, the Tribunal in any event accepted Mr Wynter's evidence. We found Mr Wynter to be a credible and reliable witness who gave carefully considered evidence.

12. After Mr Wynter had given evidence, the Applicant's representatives asked for time to obtain legal advice concerning the implications of the 1998 default judgment.
13. The Tribunal informed the parties that we had read an extract from Phipson on Evidence 20th Ed. and *Huffer v Allen* 1866 WL 8325, copies of which were provided to the parties together with the Tribunal's Further Directions for the determination of the preliminary issue ("the Further Directions"). It was emphasised that the Tribunal cannot give legal advice and that both parties may wish to take independent legal advice. A list of organisations which may be able to provide independent legal advice, some of which may be able to do so free of charge, was also provided to the parties together with the Further Directions.
14. The Further Directions made provision for the parties to file and serve any written legal submissions on the Tribunal and on the other party by 4pm on 16 August 2024. It was expressly stated that the legal submissions must be contained in one single document, with copies of any legal authorities relied upon attached.
15. The Applicant applied for an extension of time for compliance and, on 13 August 2024, the Tribunal extended time for the parties to file and serve written legal submissions to 13 September 2024. The Tribunal was then booked to reconvene, in the absence of the parties, to consider the written submissions on 17 October 2024.
16. The Respondent has continued to send written representations to the Tribunal after the deadline of 13 September 2024 has passed despite the fact that (i) the Tribunal had stressed at the hearing that this should not occur; and (ii) the Further Directions expressly provide that the parties' legal submission "must" be contained in one single document. The Further Directions make no provision for any other type of communication with the Tribunal.
17. Accordingly, the Tribunal accepts Ms Patel's submission that the further correspondence sent to the Tribunal by the Respondent in breach of the Further Directions should be ignored by the Tribunal in making this determination. We note that, in any event, the

correspondence refers to matters which are not relevant to the Preliminary Issue.

## **The Tribunal's determinations**

18. Mr Wytner gave oral evidence that, in County Court proceedings in 1998 in which he acted for the Respondent as her solicitor, it was determined that the Respondent's landlord is responsible for maintaining and repairing the window frames of the Respondent's top floor flat.
19. Mr Wytner stated that a default judgement on liability dated 24 September 1998 against the then freehold owner of the Property in Case Number LB822521 in the Lambeth County Court, which states "application as prayed", was based on Particulars of Claim in which it was asserted that it is the landlord's responsibility to maintain and repair the window frames of the Property.
20. Mr Wytner referred the Tribunal to copies of the County Court judgment, the Particulars of Claim, a Schedule of Works (which Mr Wytner confirmed was sent to the Court together with the Particulars of Claim) and contemporaneous correspondence which Mr Wytner had sent to the Respondent. These documents had been retained by the Respondent.
21. Mr Wytner also stated that, notwithstanding the significant passage of time, he could recall having the Respondent as his client and what had occurred in the County Court proceedings. Although the Particulars of Claim to which the Tribunal was referred are unsigned, Mr Wytner confirmed that the signed version would have been in the same terms (which accords with the Schedule of Work).
22. As stated above, the Tribunal found Mr Wytner to be a credible witness and we accept, on the balance of probabilities, his evidence that the Court determined, by the default judgment, that the Respondent's landlord is responsible for maintaining and repairing the window frames of the Respondent's top floor flat. We note that this evidence was not disputed by the Applicant at the hearing.
23. Neither party has provided the Tribunal with any legal authorities pursuant to the Further Directions. By letter dated 30 August 2024, Bloc Net state that they endeavoured to obtain legal advice concerning the implications of the default judgement given in the 1998 proceedings in Lambeth County Court but that the Applicant found the cost of obtaining legal advice prohibitively expensive.
24. They also state that the Respondent has not been able to provide a copy of "the consent order" so they are unable to see what the terms of the judgment were. It was made clear at the hearing that the judgment relied upon by the Respondent is the default judgment dated 24

September 1998 concerning liability to repair the timber window frames and not any subsequent consent order concerning quantum of damages and/or any timetable for work to be carried out to the Property. There is no evidence that the default judgment was set aside and it is the Respondent's case that the default judgment stands.

25. Bloc Net also state:

*"We do not accept the Judgement in question was based on a determination, rather it was made in default due to lack of landlord attendance and therefore limited to the application made by Ms Tampi at that time. We would also like to take this opportunity to stress to the Tribunal that no variation of the lease was made nor disclosed by Ms Tampi during her time as freeholder, had such a term in the lease been changed, this should have been disclosed during the sale of the freehold title by Ms Tampi to our client, Brailsford Road Limited."*

26. The Respondent does not allege that there is any deed of variation in existence.

27. The Respondent's legal submissions were served after the Applicant's legal submissions and the Respondent responds to the Applicant's submissions stating: *"what a load of demented drivel: (a) I can't afford a lawyer either to deal with the estoppel issue ..."*

28. Accordingly, this determination is based on the extracts from Phipson on Evidence 20th Ed. and *Huffer v Allen* 1866 WL 8325 which were provided to the parties. Having given the parties a significant amount of time in which to serve legal submissions, it would not be procedurally fair for the Tribunal to rely upon any other material.

29. In our judgment, the propositions set out in Phipson on Evidence at 43-23 to 43-65 (which are based on the case law cited in the footnotes) carry greater weight than the submissions made by the Applicant which are not supported by legal authority.

30. Accordingly, we find that:

(i) A final adjudication of a legal dispute is conclusive as between the parties to the litigation and their privies as to the matters necessarily determined.

(ii) Privies may be privy to the parties by identity of interest (in the present case, the freehold interest).

- (iii) A cautious approach is applied to default judgments. However, if an issue was necessarily determined by a previous decision, it does not matter that the question was in fact not the subject of any dispute or argument.
31. We are not satisfied that on the balance of probabilities that any application was made to set aside the 1998 default judgment or that there are any other special circumstances which apply.
32. Accordingly, we find that the Respondent is not in breach of covenant for failing to repair and maintain the window frames which form the subject matter of this dispute because it was determined by the 1998 default judgment (as between the Respondent and the freeholder) that the responsibility for repairing and maintaining these window frames is that of the freeholder. The Applicant's application is therefore dismissed.

**Name:** Judge N Hawkes

**Date:** 22 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).