



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

Case reference : **LON/00AW/LBC/2024/0606**

Property : **Flat 8, 85 Holland Road, London, W14
8HP**

Applicant : **Holland Park Investments Ltd**

Representative : **Neil Winter, Stuart & Co Solicitors,**

Respondent : **Emma Robinson**

Representative : **Did not appear and was not
represented.**

Type of application : **Determination of an alleged Breach of
Covenant (Section 168 (4) Commonhold
and Leasehold Reform Act 2002)**

**Tribunal
member(s)** : **Judge Bernadette MacQueen
Alison Flynn, MA, MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **10 March 2025**

Date of Decision : **17 March 2025**

DECISION

Decision of the Tribunal

For the reasons set out below, the Tribunal finds that the Respondent has breached clauses 3(6), 4(4), 4(5) of the Lease for the Property and paragraphs 3 and 4 of the Fourth Schedule of the Lease.

The Background

1. The Applicant was the freehold owner of 85 Holland Road, London, W14 8HP (“the Building”). The freehold title was registered under title number NGL18197, a copy of which was at pages 30 to 32 of the bundle. The Building was comprised of 8 flats.
2. The Respondent was the leasehold owner of Flat 8, 85 Holland Road, London, W14 8HP (“the Property”) pursuant to a lease dated 27 July 1992 entered into between Rowen Properties (London) Limited (1) and Mark-Bruno-Pierre Saade (2) (the Lease) for a term of 125 years from 1 April 1992. This was registered at the Land Registry under title number BGL2169. A copy of the Lease was at pages 35 to 70 of the bundle and a copy of the official copy of the registered title was at pages 33-34 of the bundle.
3. The Applicant sought a determination pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that the Respondent was in breach of covenants in the Lease.

The Hearing

4. On 1 November 2024 directions were given by the Tribunal which required the Applicant to send the documents that it wished to rely upon to the Respondent by 13 December 2024. The Respondent was then required to send their response to the Applicant by 17 January 2024. The Applicant was required to produce an agreed bundle and provide this to the Tribunal by 14 February 2025.

5. The Respondent failed to comply with the directions and did not provide any documentation.
6. In accordance with the directions, the Applicant produced a bundle of documents for use at the hearing, and this consisted of 73 pages.
7. The hearing was scheduled to start at 10am; however, the Respondent did not attend. The Applicant confirmed that it had had no contact from the Respondent. Further, the Tribunal had not received any communication from the Respondent nor had it been provided with any explanation as to why the Respondent would not attend the hearing.
8. At the start of the hearing, the Tribunal heard representations from the Applicant as to service of the documents that had taken place. Neil Winter, on behalf of the Applicant, told the Tribunal that, prior to proceedings being issued, attempts had been made to contact the Respondent and that this had included sending letters by email to the address that the Respondent had provided to the Applicant's managing agent, Red Carpet Estates. Additionally, letters had been left at the Property and the property manager and other staff had called at the Property on a regular basis to try to speak to the occupants of the Property. However, these attempts had not resulted in a response from the Respondent.
9. Neil Winter further confirmed that the property agent had also tried to contact the Respondent at an additional address that the agent had found from its own investigation. Whilst not an address provided by the Respondent, the Applicant had nevertheless served copies of documents as well as a letter before action dated 20 February 2024 (a copy of which was at pages 1 and 2 of the bundle); however, no reply had been received.
10. As the Applicant had been unable to gain a reply from the Respondent, the Applicant had issued proceedings at this Tribunal. Neil Winter confirmed that he had sent the application as well as the Applicant's documents and hearing bundle to the Respondent using the email

address provided by the Respondent. The Applicant confirmed that these documents had not been returned as undelivered. Additionally, documents had been sent to the Property by post. The Applicant confirmed that this was effective service as the email address used was the address provided by the Respondent and the Property address was the address for the Respondent shown on the office copies for the Property.

11. Further, the Tribunal noted that the Tribunal's case officer had sent the application and directions to the Respondent using the email address provided by the Applicant and that no message had been received to say that these documents had not been delivered.
12. The Tribunal was therefore satisfied that the application had been properly served on the Respondent and that she was aware of the hearing.
13. The Tribunal, being satisfied that the Respondent was aware of the hearing, determined that it was in the interest of justice to proceed in the Respondent's absence. In reaching this decision, the Tribunal considered rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules) which provides that the Tribunal may proceed with the hearing in a party's absence if satisfied that the party has been notified of the hearing, or that reasonable steps have been taken to notify the party of the hearing, and it is in the interest of justice to proceed.
14. The Tribunal found that it was in the interest of justice to proceed. The Tribunal accepted the evidence of the Applicant that it had been attempting to contact the Respondent since August 2022. The application had been brought because of concern about the deteriorating condition of the Property and therefore further delay would not be in the interest of justice. Further, the Tribunal considered rule 3(2)(a) and 3(2)(e) of the Rules which provides that the Tribunal

must deal with cases proportionately and avoid delay. The Respondent had not provided any evidence to the Tribunal; however, the Applicant had attended the hearing and the Tribunal was ready to hear the case.

15. The Tribunal therefore proceeded to hear the application in the absence of the Respondent.
16. The Tribunal did not consider that inspecting the Property was necessary or proportionate to the issues in dispute. Additionally, neither party requested an inspection.
17. The Tribunal heard oral submissions from Neil Winter on behalf of the Applicant. The Tribunal also considered the bundle of documents submitted by the Applicant, which included the witness statement dated 9 December 2024 made by Edelle Carr, Managing Agent of Red Carpet Estates, who are the managing agents of the Applicant for the Property.

The issues

18. This was an application for a determination that the Respondent has breached the following provisions of the Lease:

Clause 3(6)

The tenant covenants with the lessor as follows:

“If at any time during the said term the Tenant shall make default in the performance of any of the covenants herein contained for or relating to the repair decoration or maintenance of the Demised Premises then to permit the Lessor at all reasonable timeswith or without workmen and others to enter upon the Demised Premises and repair decorate maintain or reinstate the same at the expense of the Tenant”.

Clause 4(4)

The Tenant covenants as follows:

“To repair renew uphold and keep the surface of the roof terrace and balcony (if any) over which rights are granted by paragraph 8 of the Second Schedule and to keep the rainwater gullies within that roof terrace clear and free from obstruction.”

Clause 4(5)

The Tenant covenants as follows:

“Permit the Lessor... with or without workmen ... at all reasonable times in the daytime by seven days’ prior appointment in writing (but at any time in case of emergency) during the said term to enter into and upon the Demised Premises... for the purpose of repairing or altering any part of the Building or executing repairs “

Para 3 of the Fourth Schedule

“not to do...any act or thing which may be or become a nuisance or annoyance or cause damage to the Lessor...or the occupiers of any part of the Building...”

Paragraph 4 of the Fourth Schedule - Regulations

“Not to do or permit to be done any act ...which may render void or voidable any policy of insurance maintained in respect of the Building or may cause an increased premium to be payable in respect thereof.”

The Law

19. The relevant parts of Section 168 of the Commonhold and Leasehold Reform Act 2002 provide as follows:

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(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 a covenant or condition in the lease has occurred.

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

(a) in relation to a dwelling in England, the First-tier Tribunal...

The Applicant’s Case

20. The written statement of Edelle Carr, dated 9 December 2024 (pages 71 to 73 of the bundle) stated that, in 2022, the owner of Flat 6 of the Building had notified the managing agents that water was coming into their flat whenever it rained. On 26 August 2022, the managing agents

had requested to access the Property on 1 September 2022 at 2pm, to investigate the issue, as the Property was directly above Flat 6. Edelle Carr's statement confirmed that the Respondent had stated that she would be unavailable on 1 September 2022, but suggested 7 or 9 September 2022 as alternative dates for a visit to the Property. The date of 7 September 2022 was confirmed; however, on 7 September the Respondent had emailed the managing agent stating that she was not available, and instead suggested meeting on 14 September 2022. Edelle Carr's evidence to the Tribunal was that that meeting did not take place.

21. Edelle Carr confirmed that, as the leak continued, the managing agent had arranged for maintenance staff to call at the Property to try to speak to the occupiers. Further, Edelle Carr confirmed that she had also called at the Property. Additionally, notes were left at the Property that requested access. Emails and telephone calls were also made to request access but no further communication was received from the Respondent.
22. Edelle Carr told the Tribunal in her written statement that, on 6 September 2024, the owners of Flat 6 had notified the managing agent that a second leak had developed and that this was also emanating from the Property. This leak was also affecting the common parts of the Building.
23. Further attempts had been made to contact the Respondent by attending the Property, leaving notes at the Property to ask for access and emailing the Respondent. However, no response had been received.
24. The Applicant's evidence to the Tribunal was that one of the managing agent's maintenance staff had been able to view the roof terrace of the Property from another flat within the Building and had reported that the roof terrace for the Property was in a poor state of repair.

25. The Applicant's evidence was that the Respondent's failure to adequately maintain the roof terrace of the Property has causing the ongoing damage to Flat 6 and the common area.

The Respondent's Case

26. The Respondent did not provide the Tribunal with any evidence and did not attend the hearing.

The Tribunal's determinations

27. The Tribunal accepts the Applicant's evidence and, in particular, the written statement of Edelle Carr. The Tribunal finds, on a balance of probabilities, that clause 3(6) of the Lease has been breached. The Tribunal accepts the evidence of the Applicant that it has on numerous occasions attempted to enter the Property because of the leak from the Property into Flat 6 and the common parts, however the Applicant had not been granted access by the Respondent. By clause 3(6) of the Lease the Respondent was required to permit the Applicant to enter at all reasonable times to complete a repair in the event of the Tenant not performing the covenants for repair of the Demised Premises.

28. The Tribunal also finds, on a balance of probabilities, that clause 4(5) of the Lease has been breached, as the Tribunal accepts the evidence of Edelle Carr that the managing agent had requested an appointment in writing giving seven days' notice for the purpose of executing repairs, but that access had not been granted by the Respondent.

29. Further, the Tribunal finds, on a balance of probabilities, that the Respondent has breached clause 4(4). The Tribunal accepts the evidence of the Applicant that the roof terrace and balcony to the Property were in a poor state of repair and were not being kept clear and free from obstruction.

30. The Tribunal finds, on a balance of probabilities, that Paragraph 3 of the Fourth Schedule of the Lease has been breached. The Tribunal accepts the witness statement of Edelle Carr which confirmed both Flat 6 and a part of the common area were affected by the leak which was causing a nuisance, annoyance and causing damage to the Lessor and occupiers of the Building. This was aggravated by the fact that the issue of water coming into Flat 6 had been ongoing for a considerable time, being first raised in 2022.

31. Finally, the Tribunal accepts that, on a balance of probabilities, Paragraph 4 of the Fourth Schedule of the Lease has been breached, as the failure of the Respondent to adequately maintain the roof terrace of the Property was an act which may render void or voidable any policy of insurance for the Building, or cause an increased premium.

Application Fee

32. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows the Tribunal to order the refund of Tribunal fees. Rule 13(2) states that:

“The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.”

33. In light of the findings made by this Tribunal and the lack of engagement from the Respondent, the Tribunal determines that the Respondent must pay the Applicant’s Tribunal fees in full, that is the application and hearing fee. This amount shall be paid by the Respondent to the Applicant within 28 days of the date of this Decision.

Name: Judge B MacQueen

Date: 17 March 2025

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).