



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

Case reference : **LON/00BK/LBC/2024/0022**

Property : **40b Warlock Road, London, W9 3LP**

Applicant : **Mr Fredrik Edenius
Ms Kimberly Hurd**

Representative : **Ms Nina Roberts – Counsel, instructed
by Healys LLP, Solicitors**

Respondent : **The Lord Mayor and Citizens of the City
of Westminster**

Representative : **Mr Andrew Pye, Leasehold Litigation
Team Manager**

Type of application : **Determination of alleged breaches of
covenant: s. 168(4) Commonhold and
Leasehold Reform Act 2002**

Tribunal members : **Judge Mark Jones
Mr John Naylor FRICS FIRPM**

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

Date of hearing : **06 March 2025**

Date of decision : **15 April 2025**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, the following breaches have occurred:
 - (i) The Respondent has failed to keep Flat 40B in good and substantial repair and condition, in breach of clause 4(a) of the Sixth Schedule.
 - (ii) The Respondent is in breach of clause 15 of the Sixth Schedule, by committing or by permitting third parties, including occupiers of Flat 40B, their visitors or licensees, to do or suffer to be done in Flat 40B or the Building any act or thing which may be or become a nuisance or inconvenience to the Applicants, as lessors and as owners and occupiers of Flat 40A.
 - (iii) The Respondent is in breach of clause 20 of the Sixth Schedule, by permitting water or other liquid to soak through the floors of Flat 40B.
- (2) The Tribunal is not satisfied on a balance of probabilities that the Respondent has committed the further breaches of the Lease alleged, so that:
 - (i) The Tribunal does not find that the Respondent is in breach of clause 17(b) of the Sixth Schedule.
 - (ii) The Tribunal does not find that the Respondent is in breach of Clause 22 of the Sixth Schedule.

Definitions

In this Decision, the following words bear the corresponding meanings:

- (i) ***“the Building”*** means the property at 40 Warlock Road, London W9 3LP.
- (ii) ***“Flat 40B”*** means the first floor flat within the Building known as 40B Warlock Road.
- (iii) ***“Flat 40A”*** means the ground floor flat within the Building known as 40A Warlock Road.
- (iv) ***“the Lease”*** means the lease of Flat 40B dated 30 October 1998, made between Gregory and Kim Sarah Dix and the Respondent.
- (v) ***“the Sixth Schedule”*** means the Sixth Schedule to the Lease.

- (vi) “***the 2002 Act***” means the Commonhold and Leasehold Reform Act 2002.

Introduction

1. The Applicant landlords seek determinations pursuant to section 168(4) of the 2002 Act, that one or more breaches of covenants contained in the Lease have been committed by the Respondent.
2. The Building is a three storey, mid-terraced converted house fronting Warlock Road. It is converted so that it now contains two self-contained flats with separate entrances, Flat 40A on the lower and upper ground floors, and Flat 40B above.
3. The Applicants are the freehold proprietors of the Building, having acquired freehold title in 2013, registered under title no. NGL769538. They are, also, the leasehold proprietors of Flat 40A, which they also acquired in 2013, registered under title no. NGL549632.
4. The Respondent holds the long Lease of Flat 40B dated 30 October 1998, for a term of 999 years from that date. The Respondent’s leasehold title was registered in 2001, under title no. NGL802897. The Respondent as a local authority is a provider of social housing, and (save for the periods within which Flat 40B was unoccupied, discussed below) lets Flat 40B to residential tenants.
5. Flat 40B comprises a mezzanine at first floor level, within which the kitchen and bathroom are situated, rising by staircase to the second floor which contains a sitting room and bedroom. Flat 40B also comprises the staircase rising from the entrance to the first floor. It has masonry walls with timber suspended floors and plasterboard ceilings.
6. The Applicants’ complaints of breaches, in short, relate to a series of ingresses of water into their home at Flat 40A, attributable on their case to prolonged disrepair in Flat 40B.

Inspection

7. The Tribunal inspected the Building, Flat 40B and Flat 40A on the bright, clear morning of 6 March 2025.
8. We first observed the exterior, which appeared to us to be a mid-terraced house constructed around the late 19th to early 20th centuries, with a large bay window at the front serving the lower and upper ground floors. Steps down from street level led to the entrance to Flat 40A, while a flight of steps rose to the front door of Flat 40B.

9. We next inspected Flat 40A, in the company of the First Applicant Mr Fredrik Edenius and, a short time later, the Applicants' solicitor and his assistant. We observed in the upper ground floor front room within Flat 40A a crack to the ceiling by the front bay window, obvious signs of damp in the bay and around the pendant light fitting, and discolouration to the floor. In the lower ground floor front room, we again observed obvious signs of damp around the bay window, down to floor level, and a crack in the ceiling above the bay, spanning its full width.
10. We then inspected Flat 40B, being admitted by the Respondent's tenant and a companion. We were, shortly afterwards, joined by Mr Pye, the Respondent's representative. It had clearly been substantially refurbished, as against photographs taken in 2023 contained within the hearing bundle.
11. We noted from the front reception room that it was possible to observe the bay window roof covering, which appeared to be comprised of slates, and to have had 7 new slates recently inserted. From the bedroom window we were able to observe the flat roof above the kitchen and bathroom, which appeared to have a relatively recent roof covering, albeit that we noted pooling water and accumulated moss in places. The tenant told us that the kitchen ceiling had collapsed in the summer of 2024, and pointed out to us a crack in the landing ceiling, approximately 6 inches from the door frame. She also told us that she had experienced a leak in the bathroom on 5/6 February 2025, characterised by dripping water from the light fitting.
12. We returned to Flat 40A to ascertain whether there had been any ingresses of water to the rear of the flat, under the flat roof area, and Mr Edenius told us that there had not been.
13. We are grateful to the respective occupiers of Flat 40B and of Flat 40A for facilitating our inspection.

The Hearing

14. The Applicants were represented by Ms Nina Roberts of counsel at the hearing. We are grateful for her helpful skeleton argument and oral submissions. Both Applicants attended, and Ms Kimberly Hurd, who had prepared a witness statement dated 02 January 2025, gave oral evidence and was cross-examined on behalf of the Respondent.
15. The Respondent was represented by Mr Andrew Pye, Leasehold Litigation Team Manager, accompanied by Ms Beverley Frimpomaah, a leasehold litigation officer. The Respondent adduced no witness evidence, so that its case was based on documentary evidence, and submissions.

16. The documents before the Tribunal were comprised in a bundle prepared by the Applicants' solicitors, running to some 335 pages. During the hearing we gave permission to Ms Roberts to rely upon an additional series of email exchanges in September-October 2023, where Mr Pye did not object and was provided with copies of those additional documents, and she also provided us with an authorities bundle to augment her skeleton argument.

Relevant Provisions in the Lease

17. The Lease defines the demise of Flat 40B in the Third Schedule thus:

“ALL THAT Flat including the surface of the floor above the joists and ...the ceiling of the Flat up to but excluding the joists and beams to which the ceiling is attached and all walls save the exterior walls and the walls dividing it from any other Flat or from the common halls staircases landings steps and passages in the Property ... as the same is situate on the first floor of the Property and known as Flat No 40b Warlock Road Waltherton Estate London W9 ... PROVIDED that all internal walls and structures separating the Demised Premises from any other Flat shall be party walls and structures AND PROVIDED FURTHER that the Demised Premises shall not include such other parts of the Property forming or intended to form part of the Reserved Property and the premises included or intended to be included in the Leases of the adjoining or neighbouring Flats”

18. The Reserved Property is defined in the Second Schedule, and includes all external main structural parts of the Building, including the roofs.
19. The Sixth Schedule contains the lessee's covenants, and includes the following that the Applicants allege to have been breached by the Respondent, emphasis added:
20. Clause 4(a)

*“To the satisfaction of the Lessor to **keep in good and substantial repair and condition and properly cleansed [sic.] throughout the term hereby granted the Demised Premises** and all fixtures and fittings therein and all additions thereto and whenever necessary (save in the case of damage by fire or other risk against which the Lessor shall have insured pursuant to the provisions of paragraph 2 of the Eighth Schedule hereto unless the insurance policy shall have been vitiated or payment of the policy monies or part thereof refused in consequence of some act neglect or default on the part of or suffered by the Lessee or its sub-tenants invitees or any other person in the Demised Premises with the Lessees express or implied authority) to rebuild and reinstate and replace the Demised Premises and every part thereof including all doors and door frames floors and ceilings and all cisterns tanks sewers drains gutters pipes wires cables ducts and any other*

things installed for the purpose of supplying hot water (if any) central heating (if any) gas electricity or other illuminant or source of power or for the purpose of draining away water and soil and for allowing the escape of steam or deleterious matter from the Demised Premises in so far as pipes wires ducts or other things are solely installed or used only for the purposes of the Demised Premises and including all walls windows boards and skirtings SAVE THAT in the case of all exterior walls and all walls dividing the Demised Premises from other Flats and the common halls staircases passages and landings in the Property the obligations of the Lessee under this paragraph shall be limited to keeping the interior plaster work and decoration of such walls windows boards...and skirtings in such repair and condition as aforesaid”

21. Clause 15

“Not to commit or permit others (including for the avoidance of doubt other occupiers of the Demised Premises his or their visitors or licensees or minors) to do or suffer to be done on the Demised Premises or the Property any act or thing which may be or become a nuisance or inconvenience to the Lessor or to any other owner or occupier of any of the Flats or to any other person...”

22. Clause 17(b)

“Not to damage or otherwise deface or permit the damage or defacement of any part of the Reserved Property and in the event of any breach of this sub-paragraph to pay to the Lessor forthwith on demand any costs of making good such damage or other defacement”

23. Clause 20

“Not to permit any water or liquid to soak through the floors of the Demised Premises or suffer dirt rubbish rags or refuse or any corrosive harmful substance to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in or serving the Demised Premises and in the event of such happening without prejudice to the Lessor’s other rights under this Lease immediately at the expense of the Lessee to rectify and make good all damage and injury thereby caused”

24. Clause 22

“Not to do or permit or suffer to be done any act of thing whereby the Lessor’s policy or policies of insurance in respect of the property or any part thereof may be or become void or voidable or whereby the rate of premium may be increased and any expenses incurred by the Lessor in or about any renewal of such policy

or policies rendered necessary by a breach by the Lessee of this covenant shall be repaid by the Lessee to the Lessor and be recoverable by the Lessor as if they were rent in arrear”

Factual Background

25. As stated above, the Respondent habitually lets Flat 40B to residential tenants.
26. It was common ground that the former occupier of Flat 40B vacated in 2022 – the Applicants suggest that this was in or around February, and the Respondent suggests that it was in fact in June 2022, albeit that it has produced no documentary evidence (or indeed any witness evidence) in support of this contention. We make no finding either way, deeming it to be unnecessary to do so, where it is clearly common ground that Flat 40B remained vacant for a considerable period prior to the matters complained of by the Applicants.
27. In early 2023 the Applicants noticed workmen coming and going to and from Flat 40B.

The Evidence

28. The Applicants contend, and we accept, that on 20 June 2023 significant quantities of water began to pour into Flat 40A from Flat 40B above. This was centred towards the upper front room of Flat 40A, then used by the Applicants as a second bedroom.
29. Nobody was in occupation of Flat 40B, so Ms Hurd telephoned the Respondent to report the matter and seek immediate attention to it, but were told that nobody could attend for at least six hours. The person to whom she spoke suggested seeking the assistance of the fire brigade.
30. Heedful of that advice, and against the obvious risks of serious damage to Flat 40A, the Applicants then contacted the emergency services. Officers of the fire brigade attended and, deeming that the quantities of water presented a serious risk, forced entry into Flat 40B. While neither of the Applicants entered Flat 40B at that stage (indeed, Ms Hurd was not home by the time the fire officers attended), the officers advised Mr Edenius that they had discovered a hole in the ceiling in the front room of Flat 40B that had obviously been there some time, through which water had entered from above.
31. That this situation had been observed, and had been extant for some time may be inferred from the fact that someone had placed a large plastic rubbish bin under the site of the leak. This was itself leaking water, and was overflowing in consequence of recent rain. The fire officers reported

that other receptacles including flower pots and other containers appeared to have been placed in an attempt to catch leaking water.

32. This evidence, given in summary form in the Applicants' statement of case and explained in more detail in Ms Hurd's witness statement bearing a statement of truth, was uncontested and we accept it in its entirety.
33. We find that one or more of the workmen employed by the Respondent, or by the Respondent's appointed contractor(s) to effect works in Flat 40B whilst it was vacant, observed water leaking into it from above, and placed the bin and other containers in an effort to catch the water.
34. The Respondent has adduced no evidence of the nature and extent of the works at that time, and none of any records of the condition of Flat 40B. The Respondent has, however, exhibited to its statement of case a photograph apparently taken on 05 May 2023 showing a smaller hole in a ceiling, said to be within Flat 40B, with cracks emanating from it which appear broadly to correspond with larger cracks observable in the later photographs of the hole in the front room addressed below.
35. While we consequently cannot make a determination as to whether the Respondent itself was or was not advised of the condition of Flat 40B and, in particular, the ingresses of water prior to 20 June 2023, it is clear – and we do find - that the Respondent's agent was aware of the problem, took (as we find, wholly inadequate) steps to ameliorate it, but took no steps whatsoever to advise the Applicants.
36. We accordingly find that the Applicants whether in their capacities as freeholders or as downstairs lessees and occupiers were unaware of any water penetration coming through the roof of Flat 40B prior to June 2023, at the earliest.
37. Ms Hurd states, and we accept, that she repeatedly called the Respondent between 21 and 22/23 June, seeking to be advised as to when the leak from Flat 40B would be fixed. She was assured that the matter had been logged in the Respondent's system and would be attended to quickly. As she stated, from the positioning of the dustbin and the fact that works had been undertaken, she and Mr Edenius were aware that workmen were coming and going, and presumed that these assurances could be relied upon.
38. Thereafter, the Applicants went away on a pre-booked holiday with Ms Hurd's elderly mother and various members of the extended family. Ms Hurd states that this was with a considerable degree of reluctance due to the problems with the leak, but they took the decision to travel where the holiday had been booked for a year, and was non-cancellable and non-refundable.

39. The Respondent criticises this decision, as unwise against the 20 June leak and the potential for further ingresses of water. The Tribunal finds the criticism unjustified, where the Applicants had clearly notified the Respondent that a leak had occurred, and had been assured by the Respondent's staff that it would be resolved swiftly. Albeit that the Respondent has elected to adduce no evidence whatsoever by way of records of these matters, we accept the Applicants' evidence, and further find, insofar as may be necessary, that the Applicants were entitled to rely upon the assurances given and to presume that, having been notified of the problem, the Respondent would take all necessary steps to ensure that further leaks did not occur.
40. On 9 July 2023 the Applicants returned home, to find Flat 40A flooded with water. This had caused damage to the ceiling, the water had come down the bay window surround on the upper floor, penetrating to the lower floor and as far back as the light fitting in the upper front room, causing the electrical supply to fail. Some of their clothes were ruined with mould and water damage, and damage was caused to the wooden floor. We have seen photographs of the damage, at pp. 321-326 of the bundle.
41. Ms Hurd informed the Respondent and, having been told that she needed to raise a complaint, did so. She and Mr Edenius then started to dry out and clean up their home. Ms Hurd states that they both fell ill due to the condition of Flat 40A.
42. On 12 July 2023 Mr Mark Brereton, formerly employed by the Respondent in a surveying capacity, attend to inspect Flat 40B, and the damage. He allowed Ms Hurd upstairs to see the state of Flat 40B, and we have seen a series of photographs taken at that time, by him as exhibited in a report of that date (pp. 101-3), and by Ms Hurd (pp. 329-331). They show a large hole in the ceiling of the upper front room of Flat 40B, with a dustbin placed beneath. This appears to be the hole in the 05 May photograph referred to in §34 above, substantially expanded, in consequence – we find – of further water damage.
43. Ms Hurd had acquired tarpaulins, from which Mr Brereton fashioned a form of funnel, duct-taped to the ceiling, to try to direct the flow of any further water into the bin. This was of limited effectiveness where, first, we can see that the funnel arrangement rapidly became detached from the ceiling and second, where Ms Hurd explains that the bin itself leaked, due to the presence of a hole. Ms Hurd and Mr Brereton placed another tarpaulin over the floor beneath the hole. We do observe the presence of a planter containing apparently living vegetation, that had seemingly survived the absence of occupiers for at least 12 months.
44. Mr Brereton provided the Applicants with the access code to an external key box, so that they could gain access to Flat 40B to empty buckets placed to catch leaks, and thereafter the Applicants would do so

whenever it rained, and at weekends, mopping dirty water, adjusting the tarpaulins and emptying buckets, for a period.

45. By then, it was apparent that there must be a fault in the external roof, permitting water to enter Flat 40B. Ms Hurd began to seek quotes from roofers, while at the same time receiving an email response to her complaint dated 14 July, advising her that the matter had been de-escalated where Mr Brereton had advised he would work closely with the Applicants to resolve matters.
46. Mr Brereton recommended TFG Refurbishment Ltd as contractors to investigate and effect any necessary external roof repairs, and after an inspection by Henry Hall of that company, who started work immediately to seek to rectify the problem of a central roof valley holding large amounts of water, the Applicants obtained an estimate from that company dated 7 August 2023. Photographs of Mr Hall's inspection appear at pp.105-114 in the bundle.
47. At this time Mr Pye became involved in relation to the consultation process necessary under s.20 Landlord and Tenant Act 1985
48. Acting on the advice of TFG, the proposed works were agreed, and scaffolding was erected outside Flat 40B in August. Works were then undertaken to the roof in late August into September. Ms Hurd states that Mr Brereton agreed the scope of the works with the contractor.
49. Albeit that the copy we have is incomplete, it is apparent that on 29 September 2023 Mr Hall wrote by email following a visit to the Building on 25 September to the effect that the issues that had caused the roof leak had been rectified. Ms Hurd states that he liaised with Mr Brereton. For the Respondent throughout, and the latter expressed himself satisfied that the works had been carried out to an acceptable standard.
50. Ms Hurd also states that the contractor explained to her that it appeared leaks had been going on for some time, and that there may well be a significant amount of trapped water within the fabric of the Building, that would work its way downwards over time. Ms Hurd stated that she noticed numerous smaller leaks, over time, where in late September and early October 2023 there was a leak to the rear of Flat 40A under bathroom construction going on in Flat 40B, and water dripping through the front of the lower flat, around the site of the earlier leaks.
51. These were again reported to the Respondent, whose officer Harminder attended on 4 October 2023, and stated that no sign of any leak could be observed, contradicted by video evidence filmed by Ms Hurd.
52. The Applicants brought their contractor Mr Hall of TFG back, who wrote to them and Mr Brereton to the effect that the ongoing issues with water ingress were not attributable to any defects in the roof, and were in all

probability related to the ongoing works in Flat 40B. Ms Hurd states that Mr Brereton agreed with that analysis, and confirmed that the external roof repairs were adequate.

53. Correspondence through October 2023 (including the additional emails we permitted the Applicants to adduce in evidence) demonstrates that Ms Hurd was complaining of ongoing leaks, that Mr Brereton was unable to confirm the source of them, and that he referred her to the Voids Team, which is the department of the Respondent responsible for dealing with unoccupied properties.
54. The Applicants paid the total sum of £2,528.48 plus VAT for the works undertaken.
55. The Respondent has produced no witness evidence to contradict those assertions, whether from Mr Brereton (whom, we are told, no longer works for the Respondent) or any other person. We do however have an email from Vanessa McGarvey, Voids Senior Property Surveyor (Interim) dated 21 October 2023, accompanied by a series of photographs, in which she asserted that the roof was still leaking, that a minor leak to the bath had been repaired (suggesting that the plumbing to the bath had been leaking), and that a heating upgrade had been completed and there was no leak from the heating pipes.
56. Apparently as a response to his correspondence, Mr Hall of TFG wrote to Ms Hull, cc'd to Mr Brereton on 31 October 2013, in which he stated that everything his company had been asked to do had been done, referring to liaison with the latter gentleman.
57. On 9 November 2023 the Applicants' solicitors, Heallys, sent a letter of claim to the Respondent, summarising the above matters, asserting breaches of the Lease, and seeking confirmation of how the Respondent proposed to remedy them. No response was forthcoming: in his submissions, Mr Pye suggested that the letter might not have been received, about which we make no finding, simply observing that the record keeping and production of evidence by the Respondent has been somewhat less than exemplary in this case.
58. There is contained in the bundle a series of internal emails between employees of the Respondent concerning a leak into the kitchen of Flat 40B observed in February 2024, whilst showing it to a prospective new tenant. This suggests that some conversations had taken place with Ms Hurd, but there is no disclosed email correspondence with her.
59. No response having been received to the 9 November letter of claim, the Applicants' application was made on 3 May 2024.
60. Thereafter, on 23 May 2024 Mr Pye wrote to the Applicants' solicitor regarding the matter, and stating that he was unaware of whether to

external roof had been repaired, and that there was still water entering Flat 40B.

61. The Respondent's case is that shortly thereafter the kitchen ceiling collapsed. Their tenant had to be accommodated elsewhere, which transpired to be in the Mercure Hyde Park Hotel, in remarkable sums exceeding £19,000 while remedial works were undertaken.
62. Unfortunately, while Mr Pye's email of 28 May 2024 refers to a survey conducted by the Respondent's surveyor on 24 May 2024, no copy of any report of that survey was before us.
63. The Applicants state that they swiftly retained a new contractor, who conducted extensive repairs to remedy matters within a short period of time, between 26 June and 1 July. Ms Hurd states that she repeatedly sought approval of the new works from the Respondent, but promised attendance for inspection on at least 3 separate occasions did not in fact occur, whilst scaffolding remained up at the Applicants' expense, until the contractors finally took it down in mid-July.
64. Amidst subsequent discussions through correspondence about those issues, the Respondent's tenant moved into Flat 40B in late July or early August 2024. The Applicants immediately experienced significant noise from above, where the carpets and noise cancelling flooring in Flat 40B appeared to have been removed, whilst the tenant upstairs similarly complained about noise emanating from Flat 40A, below.
65. On 5 February 2025 Mr Pye for the Respondent advised Healys solicitors of a third leak affecting Flat 40B. This prompted a drone survey report of the roof by Faithron Farrell Timms on 10 February 2025, identifying a series of defects at that time.

The Applicants' Case

66. The successive leaks emanating from Flat 40B into Flat 40A, the Applicants contend, amount to breaches of the Lease terms identified above. Ms Roberts sensibly confined her submissions to focus on 3 episodes or periods of alleged breaches, being (i) the water ingress on 20/6/23, (ii) between 23/6 and 9/7/23, when the Applicants returned from holiday to find their flat flooded, and (iii) the smaller leaks between September -October 2023, characterised by Mr Hall of TFG as the slow leaking out of residual water accumulated in the fabric of the Building.
67. Ms Roberts contends that even had the Applicants not employed a roofer to effect remedial works, the simple fact of water emanating from Flat 40B into their demise amounted to a breach of the Lease's terms. The question, she submits, is not whether the Applicants acted reasonably or not as freeholders, but simply, was there a breach (or series of breaches) by the Respondent?

68. The Applicants rely upon the High Court decision of **Gibson Investments Ltd v Chesterton plc [2003] 1 EGLR 142** as authority for the principle that the Respondent is liable for the leaks, irrespective of causation. In the judgment of Mr Justice Neuberger (as he then was) at **146** he said:

*“The covenant in this case specifically provides that the tenant is liable, even though any want of repairs may be due to inherent or latent defect in the demised premises, or normal wear and tear, or deterioration or otherwise. This makes it clear that the origin or reason for the relevant defect is not relevant, **but it should be said that that is normally the case even without a provision to that effect.**”* (emphasis added)

69. In determining whether the Respondent has breached its covenants, Ms Roberts submits that its own case, that the Applicant freeholders have neglected the roof, is irrelevant.
70. Ultimately, the Applicants’ case is that the Respondent’s duty was to prevent water from entering Flat 40A, downstairs. Instead of doing so, it or its agent left a leaky bin under a hole, which probably made the problem far worse.
71. Referring to the decision of the Upper Tribunal (Lands Chamber) in **Kyriacou v Linden [2022] L&TR 19**, at **§36**, Ms Roberts reminds us that the question for this Tribunal is simply, whether a breach has occurred.
72. As to the alleged breach of clause 22 of Schedule 6, regarding causing prejudice to the insurance, upon cross examination of Ms Hurd this proved to be based upon the potential jeopardy caused to insurance premiums or the availability of cover from the leaks themselves, and from the Respondent’s failure to advise the Applicants of whether any tenants were in occupation of Flat 40B from time to time and, if so, how many, frustrating the Applicants’ ability to provide that information to prospective insurance providers.

The Respondent’s Case

73. The Respondent’s statement of case accepts that water ingresses into Flat 40A from Flat 40B have occurred, but asserts that this is consequent upon water entering Flat 40B due to defects in the external roof, which are the responsibility of the freeholder.
74. The Respondent asserts that it has no power or ability to undertake necessary works of repair or replacement of the roof to prevent water ingress.

75. The Respondent however accepts that “...it could have notified the Applicant’s (sic) earlier, of the water leak, if the flat had been occupied...”
76. The statement of case asserts that the works to Flat 40B in 2023 were not connected to any water ingress, being confined to repainting and repairs, and rewiring. This is not corroborated by contemporaneous evidence and is, we find, contradicted to a degree by the email from Ms McGarvey dated 31 October 2023 referred to above.
77. In essence, the Respondent’s case is that whatever may have emanated from Flat 40B to Flat 40A was entirely contingent on the Applicants’ want of repair to the external roof. Much is made of the 2024 and 2025 leaks into Flat 40B, and of the defects identified in the February 2025 drone survey.
78. As to perceived lack of communication and engagement by the Respondent, on occasions, Ms Frimpomaah sought to explain that insofar as the Respondent’s Voids Team is concerned, the freehold of the Building is not on the Respondent’s system, so that contact with the freeholder proves difficult, where contractors are not familiar with situations where, unusually, the Respondent is the leaseholder, not the freeholder.
79. In oral submissions, Mr Pye pointed out that once the cost of the scaffolding and repairs to the bay window roof were stripped out, the roof repairs in 2023 cost (just) £778. This, he suggested, was wholly inadequate as against the subsequent findings of the drone survey.
80. As to the insurance issue, Mr Pye explained that there was no obligation on the part of the Respondent to provide information as to tenants from time to time, but more fundamentally, it had never been asked. The Respondent had never been provided with copy insurance policies or details of cover, so far as he was aware.
81. In response to the **Gibson v Chesterton** point summarised above, Mr Pye submitted that the authority could be distinguished, where in the present case the Respondent’s repairing obligation is, in the present case, limited to the demised premises, and it is not expressly stated that the liability subsists for damage to the Building, or Flat 40A.
82. Ultimately, Mr Pye submits that the Respondent is in an invidious position. With what are said to be ongoing defects with the external roof, there is no guarantee that there will not be further leaks, passing through Flat 40B and into Flat 40A, leading to further complaints of breach, while the Respondent is unable to effect necessary external roof works of repair or overhaul.

The statutory provisions

83. The relevant parts of section 168 of the 2002 Act 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 a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.”

84. This Tribunal, now, has the jurisdiction originally conferred on the Leasehold Valuation Tribunal.

Analysis

85. The leaks in June and July 2023 clearly emanated from Flat 40B, caused or exacerbated by the woefully inadequate placement of a dustbin under an obvious site of water penetration. We find that it was known to the Respondent’s agent(s), if not to the Respondent itself, that water was entering Flat 40B, and no steps were taken to alert the Applicant freeholders, and indeed leaseholders. When the bin leaked or overflowed, it was inevitable that Flat 40A would suffer water penetration.

86. The Applicants’ case is that they had no knowledge of the alleged defects in the external roof until late June/early July 2023 at the earliest, and that they thereafter took all reasonable steps to effect repairs.

83. Whether or not the egress of water from Flat 40B is contingent on the Applicants’ alleged breach of their own covenant, and/or whether the Applicants’ state of knowledge is contingent on the requirement of notice is outside the scope of this decision which, we find, is simply, whether a breach has occurred.

84. Clearly, water emanated from Flat 40B and into Flat 40A in June 2023, and at some point or points during the period 23 June to 9 July 2023.
85. Given the works to the external roof in September 2023, we are less clear about the source of the leaks in that month, and thereafter.
86. We therefore find:
- 86.1 Breach of clause 4(a) of Schedule 6, on 20 June 2023, and on a date or dates unknown between 23 June and 9 July 2023. Flat 40B was, clearly, not in good and substantial repair on the occasions of the fire service attendance on 20/6/23, of Ms Hurd's admission on 12/7/23, and during the period she and Mr Edenius were habitually emptying various containers.
- 86.2 Breach of clause 15 of Schedule 6 on the same dates. The cascading water and attendant damage was, clearly, a nuisance and an inconvenience.
- 86.3 Breach of clause 20(3), again, on the same dates. This is axiomatic, from the egresses of water.
87. We do not make the same findings in relation to later, lesser leaks, the source of which is most unclear.
88. We find that the evidence falls short of establishing the alleged breach of clause 17(b), where the water penetration appears to have damaged Flat 40A, not the reserved parts of the Building. There is no evidence of damage to the various parts of the Building defined in the Second Schedule to the Lease.
89. We also find that the evidence does not support the alleged breach of clause 22. Evidence of any prejudice to the Applicants' ability to insure the building, or to the attendant premium, was exiguous.

Conclusion

90. In conclusion, therefore, we are satisfied that the Respondent has been in breach of clauses 4(a), 15, and 20(3) of Schedule 6, (but not in breach of clauses 17(b) and 22 of Schedule 6) and therefore that one or more breaches of covenant have occurred.

Cost applications

91. At the conclusion of her skeleton argument, Ms Roberts indicated that if successful, the Applicants would make an oral application for costs on the grounds that the Respondent has behaved unreasonably in defending and conducting the proceedings, pursuant to the jurisdiction conferred

by Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

92. Rule 13(6) provides that the tribunal may not make an order for costs against a person (“the paying person”) without first giving that person an opportunity to make representations.
93. Additional directions in relation to such application as the Applicants may wish to make in this regard will accompany this decision.

Name: Judge Mark Jones

Date: 15 April 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).