FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**HAV/00HN/LBC/2024/0507**
Property	**:**	**88a Richmond Wood Road, Queens Park, Bournemouth BH8 9DJ**
Applicant	**:**	**(1) PAUL JAMES NEWMAN** **(2) AGNESA SIMONOVA**
Respondent	**:**	**SANDRA MARIA JARDIM GONCALVES**
Type of Application	**:**	**Breach of Covenant: s.168 '02 Act**
Tribunal Members	**:**	**Judge Dovar** **Mr Bourne MRICS** **Miss Wong**
Date and venue of Hearing	**:**	**27th March 2025, Havant**
Date of Decision	**:**	**27th May 2025**

DECISION

Introduction

1. The Applicants, as landlords, seek determinations that the Respondent is in breach of the terms of her lease.

2. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides an additional layer of protection for residential leaseholders against having their leasehold interest forfeited by their landlord for breach of covenant. Most leases provide that if the leaseholder breaches a covenant, the lease can be forfeited. Section 146 of the Law of Property Act 1925 inserted the first layer of protection, being that (except in cases of non payment of rent) before forfeiting a lease the landlord must serve a notice on the leaseholder setting out the breach and provide for the breach to be remedied within a reasonable time. If the leaseholder does not comply then the landlord can bring proceedings for possession and ultimately forfeit the lease, subject to the leaseholder obtaining relief from forfeiture.

3. Section 168 provides that even before serving a notice under s.146, in respect of long residential leases, if the breach is not admitted by the tenant, nor has been the subject of determination, the landlord must make an application to this Tribunal for such a determination of breach.

4. The Applicants are familiar with this process, having already unsuccessfully brought similar proceedings against the Respondent in November 2021.

Background

5. The subject property is a detached house converted around 1976 into two flats, one on the ground floor and the other on the first floor. The ground floor flat is accessed at the front of the property, whilst the entrance to the first floor flat is at the side. Both flats enjoy their own private gardens at the rear.

6. The Applicants are the owners of both the ground floor flat and of the freehold title to the property; hence their status as landlords. The Respondent is the leasehold owner of the first floor flat ('the Flat'). The Respondent's lease is dated 20 September 2019 and is for a term of 189 years from 17 December 2004 ('the Lease'). The material terms of the Lease are set out below.

7. The alleged breaches in the earlier case, reference CHI/00HN/LBC/2021/0030 ('the 2021 Application'), dated 28th April 2022, were:

    a. Failure to pay a proportion of the Applicants' expenditure on the Property in respect of insurance for 2021 and 2022 and maintenance;

    b. A refusal to allow access following a request on 27th January 2022;

    c. Alterations to the windows of her flat without consent and use of the loft as living accommodation

d. Creating a nuisance or annoyance by: throwing a substance near their car; installing three security cameras without consent; and causing noise.

8. The alleged breaches that the Applicants now ask us to determine in their application dated 26th August 2024, are:

    a. Non payment of service charge and building insurance

    b. Alterations without consent;

    c. Antisocial noise;

    d. Use of the subject flat as an Airbnb

9. The Statement of Case provided by the Applicants on 26th January 2025, included the following alleged breaches:

    a. Non payment of service charge and building insurance, which it was alleged that the court [Tribunal] had ordered in the 2021 Application;

    b. Use of the loft as living accommodation – what is said is that there has been a 'full loft conversion', with work carried out from 'May until November' without consent;

    c. A refusal to permit access to inspect;

    d. Use of the Property as an Airbnb, which causes nuisance and is in breach of the user clause;

    e. Installing 4 security cameras

    f. Threatening to burn down the house; throwing waste over the garden, water damage, criminal damage, common assault; strangulation, threats with a knife and death threats, lying to the police and removing gate posts.

10. The Applicants' Statement of Case and evidence in support was on the thin side. The Tribunal went through their case with them at the hearing, dealing with each allegation of breach in turn.

Non Payment of Insurance and Maintenance Contribution

11. The Applicants asserted that the Respondent had failed to pay the following demands which were made for insurance and maintenance:

    a. 21st September 2023, £581.64 (£180 for repair and replace fence panels; £120 cleaning and repairing gutters; £75 garden rubbish removal; and £206.64 for building insurance for the year 23/24)

    b. 4th August 2024, £429.95 (£245 for repair to the 'curtilage fencing'; and £184.95 for building insurance for the year 24/25)

12. Clause 2(a) of the Lease requires the Respondent '*To pay all the said rents during the said term hereby granted*'. The Rents are defined in the reddendum as including

    '*by way of additional or further rent sums of money equal to one moiety of the amounts which the lessor shall expend (1) in effecting or*

maintaining insurance of the building as mentioned in Clause 3 (c) of the lease and (2) in complying with the covenant by the lessor contained in Clause 3(b)'.

Insurance

13. In terms of the demands for the insurance, the Respondent's lease provided at clause 3 (c) for the Landlord to insure the building '*in the joint names of the Lessor and the Lessee..'.* A contribution to the cost of such insurance was recoverable from the Respondent under Clause 2(a). The Respondent challenged this cost on the basis that the insurance had not been taken out in joint names.

14. This issue had arisen in respect of a previous insurance in the 2021 Application. In their determination the Tribunal noted that the Respondent was challenging payment of her contribution on this basis. The Tribunal was led to believe that this had been remedied and that insurance had been placed in joint names. That appears to have been an error by the Applicants.

15. The insurance for both the years 2024 and 2025 were only in the names of the Applicants. A page from the insurance cover document said

> "*Are there any additional interests to be noted No*
>
> *...*
>
> *If you would like to add a disclose to your policy, please enter their full name Miss Sandra Concalves*"

16. The Applicants contended that was sufficient to satisfy the requirement of the lease to take out insurance in joint names, notwithstanding that they accepted it was not actually in joint names, they considered that the addition of the Respondent as a disclosee was all but equivalent.

17. We do not consider those sums are payable as the insurance was not in joint names. We do not consider that it is sufficient to have the Respondent as a disclosee, it is her interest that needs to be insured in her name. Indeed, the Applicants seemed to realise this was the case, and they confirmed that when they came to renew, they will put it in joint names, but they had not done as they did not want to lose the current premium, which they considered preferential.

Maintenance Costs

18. Clause 3 (b) requires the landlord to

> '*maintain repair and renew ... (iii) The entrance gates boundary walls and fences belonging to the building ...(v) any other parts of the building and premises whatsoever used in common by the Lessee and the Lessor or any occupiers of the Ground Floor Flat ...*'

19. The Applicant sought the cost of repairing fencing. Little detail was otherwise provided. No invoices, nor any description as to what this involved.

20. In her Statement of Case, the Respondent said that the old fence had been removed by the Applicants and a new one had been erected. She did not say so expressly, but she clarified at the hearing that she had erected the new fence. However, these comments were made in respect of her response to the allegation that she had made alterations without consent. They were not in response to the allegation that she had failed to pay service charges. Her response to this allegation was to refer to a letter her solicitors had written in November 2022. However, that was in response to an earlier demand for £120 for fence repairs. The solicitors response was '*It is not accepted that the fence repair for which you claim a contribution of £120 falls within the scope of 3(b) of the Original Lease and our client has no liability in this respect.*' That was devoid of any real detail as to why it was said that it did not fall within clause 3 (b).

21. As for the first invoice, the Respondent said she had put a new fence in in May 2023 and so there was no need to put in new panels. There was a letter from the Respondent's solicitors dated 18th May 2023 saying that '*She* [the Respondent] *will today be having installed, on her side of the boundary, a 1.8m high fence.*' The Applicants said that the old fence needed replacing and that they put up a new fence. It appears that there are now two fences running closely parallel to each other. An image provided of the two fences shows that the Respondent's fence, erected first in time, was a smart sturdy fence. In light of that there was no need for the Applicants to put another new fence in situ, with the rather absurd result that there are now two fences running closely parallel to each other. As a result we do not consider that the costs in the first invoice for fencing are recoverable. It was not reasonable for the Applicants to incur such costs.

22. At the hearing, the Respondent contended that the second invoice related to repairs to the fence between the Applicant's garden and the neighbour to the east. The parties' properties each have a garden, separated by a fence. The Applicants' flat's garden is on the eastern side and abuts the neighbouring property, number 90 where there is another fence which divides those two properties. The Applicants said that it did not matter where the fence was, as long as it was within the curtilage of the freehold title.

23. Whilst the second demand relates to fencing to the eastern boundary which is not directly adjacent to the Respondent's garden, it is a fence of the building, the building being the built part of the land housing both flats. It therefore falls within the obligation under clause 3 (b) (iii) and as a result part of the costs of complying with that obligation are recoverable under clause 2 (a).

24. The Tribunal is satisfied that the garden rubbish removal and guttering were all matters that fell within the landlord's obligations under clause 3 (b) and the costs of the same were recoverable.

Conclusion

25. Save for the cost of insurance and for the fence panels in the first demand, the sums demanded should have been paid by the Respondent. She has not paid. It follows that she is in breach of the terms of her lease in not paying.

Major Building Works

26. The Applicants asserted a breach of clause 2 (e) of the Respondent's lease which provides that the leaseholder is:

> "*Not to make any structural alterations or structural additions to the demised premises or erect any additional buildings without the previous consent in writing of the Lessor which shall not be unreasonably withheld…"*

27. The Applicants said this had been breached because without the Lessor's consent the Respondent had carried out a full loft conversion, removing walls between the bathroom and the toilet and the kitchen and the dining room. She had also formed a new door from the dining room to the kitchen and installed a dormer window. They relied on a CAD drawing and planning permission which had been given in July 2020 as well as what they could determine from external views. There was no evidence, expert or otherwise, as to the structure of the flat and the walls that had said to have been altered.

28. The Respondent denied that any of the works were structural. She had not renovated the kitchen as she had run out of funds. She had also received consent from the previous lessor to instal the dormer window, and a copy of that written consent was provided to the Tribunal. The Applicant denied that was consent as it was written by the then Lessor's son.

29. This breach is not made out. The dormer window was permitted by written consent. The fact that the Lessor's son signed it was reflective of the relatively informal nature of the consent that was given. We have no doubt that this was done with the knowledge and permission of the Lessor, who had put her son in a position of being able to act on her behalf. In relation to the other complaints, we believe the Respondent when she says she has not yet done any works to the kitchen. Her responses to the Tribunal in the course of the hearing appeared candid and honest. We also did not have sufficient evidence before us of any structural alteration given the lack of evidence as to what had actually occurred and whether it was of a structural nature. In our view given that the prohibition was not simply of any alteration, but a structural one, it needed to move beyond being solely any alteration to the Flat.

Failing to Permit Access

30. By clause 2(d) of the Lease the Respondent was obliged to

> '*Permit the Lessor and her Surveyor or Agents with or without workmen and others at all reasonable times on not less than forty eight hours notice to enter into and upon the Flat or any part thereof for the purpose of viewing and examining the state and condition thereof and …'*

31. The Respondent accepted that access had been sought in about September 2023 but had been refused in that she had refused the Applicants access. She said she had refused as she felt this was harassment. She had instead only permitted access to a surveyor, not to the Applicants. The Applicants had wanted to gain access to see what works had been carried out.

32. The refusal to permit the Applicants access was a breach of clause 2(d). The Applicants were entitled to access to see the extent of any works that had been carried out as that fell within the purpose of the clause. The fact that the Respondent was concerned that she was being harassed was not a legitimate reason for refusing access. This breach may be academic given that since the refusal the Applicants may have waived the right to forfeit by service of a demand for insurance and maintenance charges.

Use as Airbnb

33. By clause 2(i) the Lessee covenanted to abide the restrictions set out in the Schedule. The Schedule provides for

    a. At paragraph 1, not to use the Flat '*for any purpose whatsoever other than as a private dwelling house in the occupation of one household only …'*

    b. At paragraph 7 not to '*do or permit or suffer to be done in or upon the demised premises anything which shall be or become a nuisance annoyance damage disturbance or inconvenience to the Lessor or the occupants for the time being of the Ground Floor Flat …'*

34. The Respondent lets out one room in her house. The Applicants say this breached both of these paragraphs. Paragraph 1, because it is using the Flat for the occupation of more than one household and for a business. Paragraph 2, because the lodgers frequently cause a nuisance, by the increased frequency of entry and exit, smoking by the window, accidently walking into their flat, asking to be let into the Flat, and talking loudly into their phones.

35. The Respondent accepted she let out a room in the Flat. Her daughter had left home and she used it for extra income. She denied there was any nuisance, in particular as she lived there as well and would not have tolerated that.

36. The taking in of lodgers, particularly on a temporary basis, is a clear breach of paragraph 1. It cannot be said that the Flat is being used by one household, when total strangers use one of the rooms on a regular basis. Therefore that breach is made out.

37. Most of the conduct described by the Applicants was more akin to an anti social neighbour, rather than as a result of letting out a room. We were not satisfied that a breach of paragraph 7 was made out in that we were not satisfied that it could be said that she had suffered that conduct. That is in someway academic as in order to remedy the breach of paragraph 1, the Respondent will have to cease her lettings.

Installing an additional camera

38. The Applicants relied on paragraph 7 of the Schedule in order to establish a further breach due to the Respondent installing a security camera outside her Flat. They said this was a nuisance as it took away their privacy and was intrusive.

39. By the time of the 2021 Application three cameras had been installed and a similar complaint was made about those. The Tribunal then rejected the

allegation of breach then on the basis that the Applicants had not made out their case that they were intrusive. The Tribunal was then satisfied that the cameras were focused on the Respondent's property.

40. The Respondent said the new camera was over her front door and aimed at the bin area. On reviewing the evidence and photographs, we consider that that is the case. For the same reasons as the previous Tribunal, this allegation of breach is not made out as we do not consider that the positioning of this new camera amounts to an invasion of the Applicants' privacy or otherwise cause them a nuisance or annoyance.

Harassment

41. Paragraph 7 is again relied on to establish based on assertions that the Respondent has harassed the Applicants. There were a number of incidents that the Applicants relied on.

42. The first was in September 2023, when it was said water damage was caused by the Respondent unscrewing her waste pipe in her bathroom. We were shown photographs of water leaking into their ceiling. The second was a time in September 2024, when the Respondent sprayed red paint into their property. The third was in September 2024 when the Respondent attacked a carpenter and threw a post into their garden. The fourth was when in 2024, the Respondent threatened to tie a hosepipe around Mrs Simonova's neck and strangle her. The fifth was when a bin was thrown at their front door. The sixth was when Mrs Simonova was threatened with secateurs in April 2024. The final complaint was the constant throwing of waste over the garden fence.

43. The Respondent painted a very different story. Whilst she admitted some of the conduct complained of, she said it was all provoked by the Applicants, in particular Mrs Simonova. She had sprayed red paint, but only after Mrs Simonova had hit her in the chest by opening a window she was standing next to. She had threatened to put the hose pipe round her neck, but only after Mrs Simonova had taken the Respondent's hosepipe and broken it. It was Mrs Simonova who threw rubbish over into her garden not the other way around. Indeed that was why she had put up a high fence; in order to get some peace.

44. The water leak had not been deliberate, but was an accident and had already been the subject of county court proceedings.

45. We do not find these breaches are made out.

46. Firstly the water leak appears to have been an accident and in any event, not only have there been other proceedings in relation to that incident, but in any event, since the occurrence a demand for service charges and insurance rent has been made, which means that the right to forfeit for this alleged breach has been waived.

47. Secondly, the various incidents of aggression between neighbours is not what we consider the purpose or meaning of paragraph 7 is aimed at. The nuisance or annoyance complained of cannot be part of a series of encounters in which both sides appear to have some blame for their conduct. Certainly we were not able to tell on the evidence before us whether one party or the other was more or less responsible for the poor

relations. In those circumstances we cannot say that the Respondent has been guilty of any nuisance or annoyance shorn of any provocation by the Applicants. Further, in that context, it is not accurate to describe the actions as a nuisance or annoyance but rather the continuation of acts of aggression between neighbours. The fact that the Respondent felt the necessity to erect a high fence to maintain some privacy from the Applicants indicates to some extent that she is not the sole aggressor in this relationship, but that she also suffers from the conduct of the Applicants. It would also be wrong to permit the Applicants to use their status as landlords to sanction their tenant for conduct which they themselves may well have provoked.

Conclusion

48. Accordingly, we determine that the following breaches of lease have occurred:

    a. The failure to pay sums demanded in September 2023 and August 2024, in breach of clause 2(a);

    b. Letting out a spare room on numerous occasions in breach of clause 2 (i); and

    c. Failing to permit access in breach of clause 2 (d)

JUDGE DOVAR

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

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.

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.

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.