FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AK/LBC/2025/0601**
Property	**:**	**24 Shropshire House, 15 Cavendish Close, Edmonton N18 2HT**
Applicant	**:**	**London Borough of Enfield**
Representative	**:**	**Ms Karolina Zielinska**
Respondent	**:**	**Mr Morris Kagwo**
Representative	**:**	**N/A**
Type of application	**:**	**Determination of an alleged breach of covenant**
Tribunal members	**:**	**Judge J Moate** **Mr A Harris LLM FRICS FCIArb**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**27 May 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that there has been a breach of clauses 4 (2) and 4 (7) of the lease.

(2) The Tribunal is not satisfied that there has been a breach of clause 3 (2) (c), clause 4 (3) (A) or clause 4 (8) of the lease.

(3) The Tribunal makes the determinations as set out under the various headings in this Decision.

The application

1. The Applicant seeks a determination pursuant section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the Act) that the Respondent tenant is in breach of one of more covenants contained in the lease.

The hearing

2. The hearing of this matter was on 23 May 2025.

3. The Applicant was represented by Ms Karolina Zielinska of Counsel and officers of the Applicant Erica Rawal, Maria Jeffrey and Mark Bush were in attendance.

4. The Respondent did not attend the hearing and was not represented. The Tribunal had not received in advance of the hearing any correspondence from the Respondent in respect of his non-attendance or any response to the application.

5. The Tribunal considered whether it should proceed with the hearing in the circumstances. Tribunal Rule 34 provides as follows:

Hearings in party's absence

34.—(1) If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is 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

(b) considers that it is in the interests of justice to proceed with the hearing.

6. The Tribunal noted that the Respondent had sent to the Applicant an email on 27 February at 11:26 confirming receipt of the application and supporting documents, along with the directions for the final hearing.

7. The Tribunal further noted that the directions of Ms F Gair dated 07 February 2025 provided the email address of the Tribunal for correspondence, along with directions for the Respondent's response and a direction about how to give evidence from abroad. The directions also included a barring order at paragraph 19 if the Respondent failed to comply with the directions.

8. Applying Tribunal Rule 34 (a), the Tribunal was satisfied that the Respondent had been notified of the hearing.

9. As to Tribunal Rule 34 (b), the Tribunal considered that it was in the interests of justice to proceed with the hearing particularly given that the Respondent had not complied with the Tribunal's directions and had failed to give any explanation for his non-attendance. Applying the overriding objective under Tribunal Rule 3 to deal with a case fairly and justly, the Tribunal decided that it would not be proportionate to delay resolution of this matter given its importance, the need to avoid delay and the resources of the parties and the Tribunal.

10. After the conclusion of the hearing, the Tribunal was notified of an email that the Respondent had sent at 9:39am that morning, which stated as follows:

    Dear Sirs

    Very sorry that I am unable to attend the hearing today.

    I am abraod and will be back to the UK by the 23rd June 2025.

    I sincerely apology for not being able to response any time earlier.

11. The Tribunal decided that this did not alter the position. It considered that it was *too little too late* and, in any event, the Respondent did not request that the matter be postponed to a later date but simply apologised for his non-attendance.

12. The Tribunal was unable to visit the property because the Applicant did not have a key and access was not possible.

The background

13. The property comprises a flat within a purpose built, high-rise residential block constructed in around the 1960s over 18 storeys with 102 dwellings. The subject property comprises a 1-bedroom flat on the second floor.

14. The Applicant is the local authority and freehold owner of the property.

15. The Respondent holds a long lease of the property dated 13 September 2004. The landlord covenanted to repair the structure and exterior and the tenant covenanted to keep in repair the flat including decorations, fixtures and fittings and internal and external doors in good and substantial repair and condition. The specific provisions of the lease will be referred to below, where appropriate.

16. Mark Bush of the Applicant attended the property on 24 January 2024 and found it to be "overwhelmed" with furniture and other items stacked from floor to ceiling. On 26 January 2024, the Applicant's surveyor, Naveed Salam MRICS of Res Property Surveyors, inspected the property and found it to be in poor condition throughout, with high levels of wear and tear and with mound and water ingress.

17. On 15 November 2024 the Applicant wrote to the Respondent setting out their findings. They contended that this amounted to a breach of lease and asked the Respondent to remedy the breach(es) without delay.

18. On 09 September 2025, the Applicant brought an application for an order that a breach of covenant has occurred.

19. The Respondent did not respond to the application.

The issues

20. The only issue for the Tribunal to decide was whether or not a breach of covenant or a condition in the lease had occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002.

21. In particular, the Tribunal was asked to determine whether one or more of the following clauses of the lease had been breached by the Respondent

    (i) Clause 4 (2)

    (ii) Clause 4 (3) (a)

    (iii) Clause 4 (7)

    (iv) Clause 4 (8) (a)

22. **Ms Zielinska did not pursue the Applicant's allegation that the Respondent had breached clause 3 (2) (c) of the lease, admitting that there had been no failure to make contributions.**

23. Having heard the evidence and submissions from the Applicant, having considered all the documents provided and in the absence of any evidence or submissions from the Respondent, the Tribunal has made determinations on the various issues below.

The relevant clauses of the lease

3 (2) (c)

Contributions to Structural Defects

(C) To pay to the Council on demand the whole or such part as may be reasonably attributable to the Flat (as the case may be) of any cost reasonably incurred by the Council in making good or in insuring against:,-

(a) any structural defect in or affecting the Flat notified in writing by the Council to the Lessee before the date hereof

(b) any other disrepair or defect in or affecting the Flat or the block to such extent only as the Council is not precluded by paragraph 18 of Schedule 6 of the Act from recovering the cost from the Lessee

4 (2)

Keep in Repair

(2) To keep the Flat including the decorations thereof and all the fixtures and fittings therein (including all electrical and gas fittings appliances pipes and wiring) and the doors both internal and external (but excluding both the exterior walls and the exterior window frames and glass panes thereof and the structure of the Flat) in good and substantial repair and condition and in such condition to deliver up the same on giving possession of the Flat to the Council damage by fire and other risks insured by the Council pursuant to paragraph 4 of the Fourth Schedule excepted

4 (3) (a)

Permit Entry to Inspect

(3) (A) To permit the Council and their agents servants and workmen and all other persons lawfully authorised by them upon giving at least seven days previous notice (except in the case of emergency) at all reasonable times of the day to enter the Flat to examine the condition of the same and to ascertain that there has been and is no breach or non-compliance by the Lessee of or with the Lessee's several covenants herein contained

4 (7)

Vitiation of Insurance

(7) Not to do or suffer to be done anything which may cause or render the premium or premiums payable for any insurances in relation to the block or the Flat to be increased or which may make void or voidable any policy or policies for such insurance irrespective of whether the premium or premiums relating to the same or any part of them shall be recoverable from the Lessee

4 (8) (A)

Nuisance etc.

(8) (A) That no part of the Flat shall be used for the sale or manufacture of intoxicating liquors nor for any illegal immoral improper or unpleasant purpose and nothing shall be done there which may become a danger nuisance or annoyance or cause damage to the Council or their tenants or the occupiers of adjoining or neighbouring premises

COUNCIL'S COVENANTS: 7 (2) (a) –

Repair structure and Exterior

(2) (a) At all times during the term to repair and keep in a reasonable state of repair the structure and exterior of the block including the windows (both window frames and the glass panes thereof) and all drains gutters external pipes roofs and foundations and to repoint all external brickwork and to make good any defects affecting the structure of the block

The Applicant's evidence and argument – Breach of clause 4 (2)

24. The Applicant provided a bundle of documents in advance of the hearing which included the Applicant's letter before action dated 15 November 2024, the application, the lease, photographs from Mr Bush's visit on 24 January 2024, the valuation report from Res Property Surveyors, the land registry documents in respect of the leasehold and freehold title and the email correspondence between the parties.

25. Ms Zielinska submitted that the Respondent had breached clause 4 (2) of the lease based on the following evidence:

    a) Mark Bush's statement setting out what he found during his visit on 24 January 2024;

b) Photographs of the condition of the property showing mould growth and signs of water ingress in the reception room and damage to the ceiling in the bedroom;
c) Photographs showing a lot of clutter and stored items;
d) The surveyor's report describing the property as being in poor condition with poor specification throughout and high levels of wear and tear;
e) The fact that the electricity was switched off and that the property did not appear to be occupied.

26. The Tribunal noted that the Applicant had provided video evidence but decided not to view this because it covered the same visit which was already well-documented by photographs.

27. The Tribunal queried the source/cause of the water ingress and, after taking instructions, Ms Zielinska submitted that this was due, at least in part, to a leak from the soil stack which was a problem across the block. This leak is ongoing. She explained that although the soil stack was within the structure of the building which fell within the Applicant's repairing covenants, this only affected the reception room; it did not impact the bedroom which was located away from the leaking pipe. She contended that the tenant was responsible for keeping the interior of the property in good repair which included reporting any leaks and providing access so that they could be repaired. She argued that the Respondent had failed in that duty and that the general decorative condition of the property throughout was poor.

28. The Tribunal queried whether, as a result of the soil stack leak, the property might have become uninhabitable. Maria Jeffrey told the Tribunal that other residents had raised repair issues which had been remedied. The problem with the Respondent's property was that the Respondent had not given access so the repair issues could not be addressed.

29. In response the Tribunal's query about what the Applicant intended to do with the block, Maria Jeffrey explained that the Applicant was in the process of emptying the block, that only 10 leaseholders remained and that although there was no Compulsory Purchase Order in place, this might be necessary. No decision had yet been made about demolition.

The decision of the Tribunal

30. The Tribunal determines that there has been a breach of clause 4 (2) of the lease.

Reasons for the Tribunal's decision

31. The Tribunal considered that it would have been helpful to have more information about the alleged repair defects and their cause.

32. Notwithstanding, based on the photographic evidence, the statement of Mark Bush and the report of Naveed Salam MRICS following their visits on 24th and 26th of January 2024 and in the absence of any evidence to the contrary from the Respondent, the Tribunal found that on the balance of probabilities the property interior was not in good and substantial repair and condition. The Tribunal noted that the bedroom ceiling and walls appeared to be in extremely poor condition, with sections of paintwork and plaster coming loose.

33. The Tribunal decided that even if the stack pipe leak caused the water ingress and mould in the reception room, the tenant was responsible for the poor condition of the other parts of the property including the bedroom.

The Applicant's evidence and argument – Breach of clause 4 (3) (a)

34. Ms Zielinska submitted that the Respondent had breached clause 4 (3) (a) of the lease based on the evidence in part 5 of the application which states that:

> "*The landlord leasehold management officers have faced several difficulties in gaining access to the flat as the Respondent does not answer emails promptly and failed to provide his residential address to enable communicate with him*."

35. Ms Zielinska acknowledged that there were no documents in support of this assertion, but that it was signed by a statement of truth.

The decision of the Tribunal

36. The Tribunal determines that there is insufficient evidence to prove a breach of clause 4 (3) (a) of the lease.

Reasons for the Tribunal's decision

37. The Tribunal considered that to make out a breach of clause 4 (3) (a) of the lease, the Applicant would have needed at the very least to document the dates and times when access was refused or not given. It was not enough to state generally that the Applicant's officers faced difficulties in gaining access to the flat, without more.

The Applicant's evidence and argument – Breach of clause 4 (7)

38. Ms Zielinska submitted that the Respondent had breached clause 4 (7) of the lease based on the evidence in part 13 of the application which sets out a series of observations from the landlord's insurance broker, including the following:

"Unoccupancy
The fact that the flat is unoccupied triggers several aspects within the wording; by way of reminder, unoccupied means any Buildings that remain unoccupied or disused for more than 30 consecutive days. The coverage implications are:

Perils [. . .], Excesses [. . .] Conditions [. . .] and Use as storage [. . .].

39. The Tribunal asked to see the Insurance document and Ms Zielinska acknowledged that it had not been included in the Bundle. After taking instructions, she submitted that it was a publicly available document, available here.

40. The Tribunal viewed the document, named "Protector Insurance" and noted that it contained at page 19 the provisions set out in part 13 of the application along with provisions at page 7 which stated that loss or damage was not covered in several respects *after the home has been unoccupied for more than 30 days*.

41. Ms Zielinska submitted that the property had not been occupied since 2019 and that this vitiated the insurance in breach of clause 4 (7). When the Tribunal asked what evidence there was in support of the Applicant's assertion in part 13 of the application that the property had been unoccupied since 2019, Maria Jeffrey stated that was what the Respondent had told her.

The decision of the Tribunal

42. The Tribunal determines that there has been a breach of clause 4 (7) of the lease.

Reasons for the Tribunal's decision

43. The Tribunal considered that it would have been helpful for the Insurance Policy to have been included in the Bundle and for the Applicant to have provided supporting evidence about the Respondent's non-occupation.

44. Notwithstanding, the Tribunal considered that there was just enough evidence to make out this alleged breach of lease for the following reasons:

    a) Relevant extracts from the Insurance Policy were set out in part 13 of the application and the Insurance Policy itself was publicly available, which showed that numerous losses and damage were not covered in circumstances where the property was not occupied for more than 30 days.

b) Based on the photographic evidence it appeared to the Tribunal that, on the balance of probabilities, the property had not been occupied for at least 30 days. The property was full of stored belongings blocking access to the bath, the bedroom and the reception room such that they were unusable.

c) Without any evidence to the contrary from the Respondent, the Applicant's insurance in respect of the property (and possibly the building) may have been made void or voidable by reason of the Respondent's absence for over 30 days and/or use of the property as a storage facility.

The Applicant's evidence and argument – Breach of clause 4 (8) (A)

45. Ms Zielinska submitted that the Respondent had breached clause 4 (8) (A) of the lease based on the evidence of Mark Bush and Naveed Salam MRICS about the amount of belongings and items stored in the Property. She submitted that although there was no documentary evidence in respect of the fire policies for the building or the potential fire risk, the Tribunal could assess this based on the photographs. She argued that there could be gas canisters or other inflammable items stored within the property but that given the sheer number of items stacked up it was not possible to see them.

46. Ms Zielinska further contended that the term "their tenants" included the Applicant and that the stored items were causing a danger, nuisance or annoyance to him.

The decision of the Tribunal

47. The Tribunal determines that there is insufficient evidence to prove a breach of clause 4 (8) (A) of the lease.

Reasons for the Tribunal's decision

48. The Tribunal considered that to make out a breach of clause 4 (8) (A) of the lease, the Applicant would have needed to provide the fire safety policies for the block and/or a fire risk assessment or other evidence of risk or danger. The Res Property Surveyors report did not identify a fire safety risk or other danger but simply noted that "*there was a lot of clutter and stored items*".

49. It was not possible to ascertain from the photographs that there was any illegal, immoral, improper or unpleasant purpose. The items stored appeared to be normal household items and on the balance of probabilities it did not appear that those items were likely to cause a danger, nuisance or annoyance or cause damage to the Council or their tenants (including the Respondent) or the occupiers of adjoining or neighbour premises.

50. The Tribunal noted the Applicant's evidence that the electricity, gas and water were all switched off, which reduced any risk.

Costs

51. The Applicant did not raise the question of costs and no order is made in respect of costs.

Name: Judge J Moate **Date:** 27 May 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).