



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

Case Reference	: HAV/00HQ/LBC/2025/0606
Property	: 211 Orchard Plaza, 412 High Street, Poole, BH15 1EG
Applicant	: Orchard Plaza Management Company Limited
Representative	: Duncan Challis BSc MRICS
Respondent	: Clare Blackwood
Representative	: Not represented
Type of Application	: Breach of Covenant S168(4) Commonhold and Leasehold Reform Act 2002
Tribunal Members	: Judge N P Jutton, Ms C Barton MRICS, Ms T Wong
Date	: 26 June 2025 Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL
Date of Decision	: 1 July 2025

DECISION

1 **Introduction**

2 Orchard Plaza is a 12 storey block of 115 residential flats situated in Poole town centre understood to have been built in 2008. The Applicant company is the head lessor and management company. The Respondent Clare Blackwood is the lessee of Apartment 211. She holds Apartment 211 (the Premises) under the terms of a lease dated 27 March 2009 made between Coltham (Orchard) Limited (1) the Applicant (2) and James Blackwood (3) (the Lease).

3 The Applicant makes an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that the Respondent has breached certain covenants and conditions contained in the Lease.

4 The application came before the Tribunal for hearing on 26 June 2025. The Applicant was represented by Duncan Challis of Quay Holidays LLP who act as the Applicant's managing agents. The Respondent did not attend the hearing. The Tribunal was satisfied that she had been notified of the hearing and considered that it was in interests of justice to proceed with the hearing in her absence.

5 **Documents before the Tribunal**

6 The documents before the Tribunal comprised a bundle of 234 pages which included the Application, Directions made by the Tribunal, a statement of case with exhibits made by Mr Duncan Challis of Quay Holidays LLP on behalf of the Applicant, the Lease, correspondence, witness statements, photographs and other documents. There was no statement of case or witness statement(s) or other documents submitted by or on behalf of the Respondent. References to page numbers in this Decision are references to digital page numbers in the bundle of documents, e.g. shown as [10].

7 **The Statutory Provisions**

8 Section 168 of the Commonhold and Leasehold Reform Act 2002 provides:

“(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 (c20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless sub-section (2) is satisfied.*

(2) *This sub-section 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”.*

9 **The Lease**

- 10 By clause 2.1 of the Lease the lessee covenants to pay ground rent by two equal payments in advance on 1 January and 1 July in each year. The ground rent is subject to periodic review but is currently and was at the material time £125 per year.
- 11 Clause 1.1.15 of the Lease provides: ‘ *The Lessee’s Obligations to the Landlord, the Management Company and the lessees of the Other Apartments’ means the covenants on the part of the Lessee contained in Part 2 of Schedule 5’.*
- 12 Clause 3.2 provides: ‘*The Lessee covenants with the Landlord, with the Management Company and with the lessees for the time being of the Other Apartments to observe and perform the Lessee’s Obligations to the Landlord, the Management Company and the lessees of the Other Apartments contained in Part 2 of Schedule 5’.*
- 13 The Lessee’s covenants contained in Part 2 of Schedule 5 of the Lease include:

5.20 **Use for residential purposes**

The Lessee must not use the Apartment for any purpose other than as a single private residence in the occupation of one household only.

5.24 **Repair of the Apartment**

The Lessee must repair the interior of the Apartment and keep it internally in good condition and repair, except for damage caused by one or more of the insured risks save to the extent that the insurance money is irrecoverable due to any act or default of the Lessee or anyone at the Apartment expressly or by implication with his authority.

5.26 **Connection to services**

The Tenant must not make any connection with the conduits that serve the Apartment except through sockets and outlets provided for the purposes of connection.

5.35 Nuisance

The Lessee must not do anything on the Apartment or allow anything to remain on them that may be or become or cause a nuisance, or annoyance, disturbance, inconvenience, injury or damage to the Landlord or his lessees or the owners or occupiers of adjacent or neighbouring premises.

5.36 Auctions, trades and illegal purposes

The Lessee must not use the Apartment for a sale by auction or for any trade, business, manufacture or occupation, or any illegal act or purpose.

Clause 1.2.7 provides that; ‘Any covenant by the Lessee not to do anything includes an obligation not to permit or suffer that thing to be done by another person’.

14 The Submissions

15 The only submissions before the Tribunal were written submissions made on behalf of the Applicant and those made orally by Mr Challis at the hearing. There were no written or oral submissions made by or behalf of the Respondent.

16 It is the Applicant’s case that the Respondent has breached a number of covenants and conditions contained in the Lease. In particular: the covenant to pay ground rent and the following covenants (as set out in paragraph 14 above) contained in Part 2 of schedule 5 of the Lease, 5.20 (use for residential purposes), 5.24 (repair), 5.26 (connections to services), 5.35 (nuisance) and 5.36 (auctions, trades and illegal purposes). The Tribunal addresses each in turn.

17 Gound Rent.

18 Mr Challis told the Tribunal that the Respondent currently had arrears of ground rent payments totalling £125. That comprised two half yearly payments falling due in advance on 1 July 2024 and 1 January 2025. He referred to a form of statement at page 180 and two ground rent demands sent to the Respondent [185 and 189].

19 The Tribunal is satisfied on the basis of the evidence before it that the Respondent is in breach of the provision in the Lease that requires her to pay ground rent to the Applicant by two equal payments in advance on 1 January and 1 July each year. The Tribunal determines that the Respondent has failed to pay the ground rent due from her on 1 July 2024 and 1 January 2025 in the total sum of £125.

20 5.20 Use for Residential Purposes

21 Mr Challis told the Tribunal that there was a constant succession of what he described as ‘waifs and strays’ sleeping on the Premises which he said was being used as a ‘doss house’. The Tribunal asked Mr Challis if by way of illustration 6 of the Respondent’s friends were to stay in the Premises with her for a weekend would he regard that as a breach of this covenant.

Mr Challis said that he would not but that he would take a different view if the friends were staying on a permanent basis. He accepted that the identity of the people who appeared to stay in the Premises changed regularly, as he put it they 'come and go'. In answer to a question from the Tribunal he said he would describe the situation as a 'revolving door situation'.

- 22 The Tribunal is not satisfied upon the basis of the evidence before it that the Respondent is acting or has acted in breach of this covenant. The covenant is not to use the Premises for any purpose other than as a single private residence in occupation of one household only. It may well be the case that large numbers of persons regularly stay with the Respondent in the Premises. However, there is no evidence to suggest that they occupy the Premises as a permanent residence. It is open to the Respondent to have third parties to stay with her (or even in her absence) provided that they do not occupy the Premises otherwise than as a single private residence or as one household. In the view of the Tribunal for the covenant to be broken the occupation by third parties would need to involve a greater degree of permanence in order for such occupation to be construed as using the Premises as more than one private residence or more than one household.

23 **5.24 Repair of the Apartment**

- 24 In breach of this covenant the Applicant says that the Respondent has failed to keep the interior of the Premises in good condition and repair. The Applicant refers to the front door to the Premises, which is a fire door, being damaged beyond repair, to the gas central heating boiler being inoperable and to a failure to properly maintain and repair an electric shower unit.
- 25 Upon being questioned by the Tribunal Mr Challis was unable to adduce any evidence in support of the contention that the gas central heating boiler was inoperable.
- 26 There was clear evidence of the front door being damaged in the bundle including a fire door survey dated 2 April 2024 [211–215], various photographs [216–218], an engineer's work report dated 30 December 2024 [231–232] and a photograph which Mr Challis told the Tribunal showed the door in its current state [234].
- 27 The Applicant says that the Respondent is in continuing breach of the covenant at paragraph 5.24 of the 5th schedule to the Lease by directly or indirectly causing damage to the front door and thereafter failing to repair.
- 28 The covenant at paragraph 5.24 is a covenant on the part of the lessee to repair the '*interior*' of the Premises and to keep the premises '*internally*' in good condition and repair.
- 29 The Respondent is named in the lease as '*the Management Company*'. At clause 4.2.1 of the Lease the Management Company covenants with the landlord and with the lessee to observe on behalf of the landlord the obligations of the landlord set out in Schedule 6 paragraph 6.2.

- 30 Paragraph 6.2 of the 6th Schedule provides as follows:
‘If the Lessee pays the service charge and observes his obligations under this Lease, the Landlord must use his best endeavours to provide the Services (as listed at the date of this Lease in Schedule 7 paragraph 7.3 and subject to the provisions of paragraph 6.2.3 below).’
- 31 The expression *‘The Services’* is defined at clause 1.1.24 of the Lease to mean:
‘The Services’ means the facilities and amenities specified in Schedule 7 paragraph 7.3 as added to, withheld or varied from time to time in accordance with the provisions of this Lease.’
- 32 Paragraph 7.3 of the 7th Schedule includes:
‘Repairing and, whenever the Landlord, acting reasonably, regards it as necessary in order to repair, replacing or renewing
7.3.1.1 the Retained Parts,
7.3.1.2 the outside of the external windows and window frames doors and door and door frames.....’
- 33 In the view of the Tribunal the front door to the Premises does not form part of the interior of the Premises for the purposes of paragraph 5.24 of the 5th Schedule. The front door and the front door frame form part of the exterior of the Premises. The responsibility for the repair replacing or renewing of the front door rests with the Management Company by reason of its covenant to observe and perform the landlord’s obligations set out at paragraph 7.3 of the 7th Schedule.
- 34 Consistent with that Mr Challis told the Tribunal that the Applicant had recently spent some £20,000 on an annual inspection including an inspection of the front door of each Apartment in the building.
- 35 The front door of the Premises is clearly in need of repair. The damage to the front door may well have been caused directly or indirectly by the Respondent. However, the responsibility for the repair of the front door rests with the Applicant. The damage caused to the front door may give rise to a cause of action against the Respondent under another provision or provisions of the Lease. That is not something which the Tribunal addresses. The Applicant’s application is for a determination as to whether the Respondent has acted in breach of paragraph 5.24 of the 5th Schedule. For the reasons stated the Tribunal determines that the damage to the front door and the failure to repair does not constitute a breach on the Respondents part of that provision.
- 36 Mr Challis took the Tribunal to a photograph he had taken of the electric shower unit in the Premises in 2022 [208]. He explained that the photograph was taken at a time when the Premises was subject to a Closure Order made by the Magistrates Court on 15 July 2022 [142]. The Closure Order allowed access by contractors for the purpose of carrying out the essential building works and to staff of the managing agents who require access to oversee such works.

37 Mr Challis explained that the photograph showed that the electric shower unit cover was missing, exposing electrical wiring. That presented he said a clear danger to users of the shower. The failure to repair the electric shower unit by installing a replacement cover is a breach the Applicant says of the Respondent's repairing obligations under paragraph 5.24 of the 5th Schedule of the Lease. Mr Challis was not able to say as to whether or not the electric shower unit had been repaired since the date of the photograph.

38 The Tribunal agrees with the Applicant. The electric shower unit shown in the photograph is clearly in disrepair. The electric shower unit is part of the interior of the Premises.

39 Accordingly, the Tribunal determines that the Respondent acted in breach of the covenant to repair at paragraph 5.24 of the 5th Schedule to the Lease during the three month period when the Premises was subject to the Closure Order dated 15 July 2022 (being three months from that date during which the Respondent was not able to access the Premises) by failing to keep the electric shower unit in the Premises in repair.

40 **5.26 Connection to Services**

41 The Applicant says that on 24 September 2024 neighbours reported that the occupant of the Premises was extracting electricity from the common parts of the building by running an extension lead through the front door of the Premises to a communal socket. Mr Challis took the Tribunal to a photograph of the front door to the Premises taken from the communal hallway [234]. The photograph shows what appears to be an electrical cable running from inside the Premises to an electrical socket in the communal hallway. Mr Challis told the Tribunal that it had since been removed but that the Respondent did make use of the electrical socket in the communal hallway from time to time not least, he understood, when the electrical supply to the Premises was cut off.

42 On the basis of the evidence before it, the Tribunal is satisfied that as at 24 September 2024 the Respondent sought to extract electricity from an electrical socket outside of the Premises. As such on that date the Tribunal determines that the Respondent acted in breach of the covenant at paragraph 5.26 of the 5th Schedule to the Lease by making a connection with a conduit that was not an electrical socket provided for the purposes of the supply of electricity to the Premises.

43 **5.35 Nuisance**

44 The Applicant presented to the Tribunal a large amount of documentary evidence in support of its contention that the Respondent had acted in breach of this covenant on a continuous basis from 2018 to the present day. Mr Challis told the Tribunal that the breach (as described in the documents) was continuing.

45 That evidence included the following:

- i. Warning letters sent to the Respondent by the Safer Communities Team at Bournemouth, Christchurch & Poole Council [79-80, 83-84]. The letters referred to allegations made by members of the community and by Dorset Police of the Respondent causing a nuisance to other residents. Specifically by the Respondent allowing a large number of visitors to attend the Premises for short periods of time which it was contended involved the misuse of drugs at the Premises. Reference was made to visitors urinating outside the front entrance to the building, of causing damage to the communal areas of the building, of shouting and swearing in communal hallways at all times of day and night, to loitering outside of the building and 'tailgating' other residents in order to gain access to the building.
- ii. 3 Closure Orders made by the Magistrates Court pursuant to Section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 in each case closing the Premises for a period of 3 months on the ground that '*a person has engaged in anti-social behaviour on the premises and the use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public*'. The orders were made in 2019, 2020 and 2022. Two of the orders were in the bundle one dated 3 October 2019 [120] and one dated 15 July 2022 [142].
- iii. 3 lengthy witness statements by Helen Challis, described as a business owner of the managing agents Quay Holidays LLP, dated 27 September 2019 [85-119], 12 June 2020 [121-133] and 4 July 2022 [144-158] made in support of a prosecution of the Respondent. The statements set out in detail allegations of antisocial behaviour on the part the Respondent and by visitors to the Premises, of the smell of drugs emanating from the Premises, of drug dealing from the Premises, of large numbers of third parties visiting or waiting outside of the Premises day and night, of visits by the police (including 'raids' in the early hours), of damage to communal hallways and fixtures, of complaints from other residents of noise and disruption, of aggressive behaviour by visitors to the Premises towards other residents, of drunken and raucous behaviour, of 'tailgating' to obtain entry to the building and thus to the Premises, of forced entry to the building, of constant noise and disturbance by the Respondent and her visitors, and generally behaviour said to be so bad as to cause certain residents to vacate the building.
- iv. A witness statement of Susan Cable a Victims officer at the Anti-social Behaviour Team at Bournemouth Christchurch and Poole Council dated 12 June 2020 [134-138], which is stated to be made on behalf of the residents (described as a 'victims') who it is said had repeatedly been subjected to anti-social behaviour and nuisance perpetrated by the Respondent. The anti-social behaviour is stated to include adults continually coming and going from the Premises, shouting, swearing, the smell of drugs in the communal areas, perceived drug use and damage to the building. The statement describes the 'victims' as being verbally abused, of feeling anxious and fearful in the communal areas and of suffering regular disturbed and sleepless nights due to noise and 'comings and goings'. The impact of the antisocial behaviour which the statement says was committed by the Respondent and her 'associates' is

described as 'huge' to the effect that many residents were suffering from a lack of sleep and/or depression and were unable to enjoy their homes.

- v. A number of photographs said to be the evidence of urinating and debris left in the lift and in the communal areas, of a visitor passed out on a staircase, of bicycles left in the stairwell by visitors and of, visits by the police. The Applicant also provided a number of videos which the Tribunal was unable to access.
- 46 On the basis of the evidence before it the Tribunal is satisfied that since September 2018 to the present date the Respondent has directly, and indirectly through her visitors to the Premises, acted in a way which has caused a nuisance, annoyance, disturbance and inconvenience to the owners or occupiers of the apartments adjacent to or neighbouring the Premises.
- 47 The Tribunal determines that the Respondent has from September 2018 to date acted in breach of paragraph 5.35 of the 5th Schedule to the Lease.

48 **5.36 Auctions, trades and illegal purposes**

- 49 The Tribunal has carefully considered the evidence presented to it, which is more particularly summarised at paragraph 46 above. The evidence is detailed. It paints a picture of a large numbers of visitors to the Premises day and night, of the consumption of drugs and of money changing hands. The Tribunal is satisfied on the balance of probabilities that the Respondent has been undertaking a trade from the Premises and has been using the Premises for illegal purposes in the form of drug dealing. The Tribunal is satisfied that such behaviour has continued since September 2018 (save for the period during which the Premises subject to Closure Orders) to date.
- 50 The Tribunal determines that the Respondent has continually since September 2018 to date acted in breach of the covenant at paragraph 5.36 of the 5th Schedule to the Lease.

51 **Summary of Decision**

- 52 The Tribunal determines:
- i. That the Respondent is in breach of clause 2.1 of the Lease by failing to pay Ground rent falling due on 1 July 2024 in the sum of £62.50 and 1 January 2025 in the sum of £62.50.
 - ii. That the Respondent acted in breach of the covenant at paragraph 5.24 of the 5th Schedule to the lease (Repair of the Apartment) during the period of 3 months from 15 July 2022 by failing to keep the electric shower unit at the premises in repair.
 - iii. That as at 24 September 2024 the Respondent acted in breach of the covenant at paragraph 5.26 of the 5th Schedule to the Lease (Connection

to services) by making a connection to an electrical socket outside of the Premises.

- iv. That the Respondent has acted in breach of the covenant at paragraph 5.35 of the 5th Schedule to the Lease (Nuisance) from September 2018 to date.
- v. That the Respondent has acted in breach of the covenant at paragraph 5.36 of the 5th Schedule to the Lease (Auctions, trades and illegal purposes) from September 2018 to date.

Dated this 1st day of July 2025

Judge N P Jutton

Appeals

- 1. 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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 2. 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.
- 3. 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.
- 4. 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.

