FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AO/LDC/2024/0653** **LON/00AP/LBC/2024/0618**
Property	**:**	**70A Kikrton Road London N15 5EY**
Applicant	**:**	**Mr Philip Ching**
Representative	**:**	**Mr Derek Kerr (Counsel)**
Respondent	**:**	**Mr Leonardo Mattioli**
Type of application	**:**	**Determination of an alleged breach of covenant** **Determination in respect of service charges**
Tribunal members	**:**	**Tribunal Judge N O'Brien** **Mr John Naylor FRICS FIRPM**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**19 June 2025**
Date of Decision	**:**	**4 July 2025**

DECISION

Decisions of the Tribunal

(1) The Respondent has breached clauses of his lease as detailed in paragraphs 25 and 26 below.

(2) The sums demanded in respect of the cost of buildings insurance in 2023 and 2024 were reasonable and in principle payable under the terms of the Respondent's lease.

(3) The said sums are not payable by the Respondent until such time as the Applicant serves a demand complying with the Service Charges (Summary of Rights and Obligations and Transitional Provisions)(England) Regulations 2007.

(4) The tribunal does not make an order under s20C of the Landlord and Tenant Act 1985 or Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

(5) The Respondent must reimburse the fees paid by the Applicant in respect of these tribunal proceedings.

The Application

1. The Applicant is the freehold owner of the premises known as 70/70A Kirkton Road London N15 5EY, a two storey Victorian semi-detached house which has been converted into two flats on the ground and first floor. The Respondent is the leasehold owner of the ground floor flat 70A Kirkton Road. By an application dated 13 November 2024 the Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached covenants in his lease. By a separate application of the same date the Applicant seeks a determination in respect of service charges pursuant to s27A of the Landlord and Tenant Act 1985. By directions dated 24 December the tribunal consolidated both applications. The tribunal identified the following issues to be determined;

    (i) The liability of the Respondent to pay £309.46 building insurance costs for the 2023/24 service charge year and £368.16 building insurance costs for the 2024/25 service charge year.
    (ii) whether the building insurance is within the landlord's obligations under the lease and whether the building insurance costs are payable by the leaseholder under the lease
    (iii) whether the costs are payable by reason of section 20B of the 1985 Act
    (iv) whether the costs of the insurance premium is reasonable, in particular in relation to the nature of the coverage and term
    (v) In respect of the determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"), whether the Respondent tenant is in breach of various covenants contained in the lease as asserted.

(vi) whether an order for reimbursement of application and/or hearing fees should be made

The Proceedings

2. Further to the Tribunal's directions, the Tribunal inspected 70(a) Kirkton Road on the morning of 19th June and heard the applications at a face-to-face hearing that afternoon. The attendees at both the viewing and the hearing were:

- The Applicant, his wife and counsel Mr Kerr
- The Respondent

3. The Respondent was not willing to permit Mr Ching to enter the premises but consented to permit Mr Kerr to be present during the inspection. We had inspected the front and rear gardens and the interior of the flat accompanied by the Respondent.

The Hearing

4. The Tribunal had the following documents:

- A bundle consisting of 525 pages containing;
  - the applications and statements of case,
  - witness statements prepared by both parties,
  - a completed schedule of disputed charges,
  - correspondence
  - documents relating to title
  - the original lease dated 6th June 1968 and a deed of surrender and regrant dated 26 March 2001 and a series of photos of the exterior of the building
- A number of photos of the front and rear exterior of the property taken in 2024.
- A skeleton argument prepared by Mr Ker on behalf of the Applicant together with a bundle of authorities
- A skeleton argument prepared by the Respondent

The Lease

5. 70(a) Kirkton Road (the premises) was initially leased for a term of 99 years by Findlay Mitchinson Ltd to H Markes in 1968. The premises were then known as 70(a) Braemar Road. The Respondent is the current leasehold owner of the premises to pursuant to a deed of surrender and regrant dated 26 March 2001, incorporating the terms of the original lease, between the Respondent and the Applicant's predecessors in title Mr and Mrs Goddard. The Applicant is the freehold owner of 70/70A Kirkton Road (the building) and has retained the upper flat which is let

out pursuant to an assured shorthold tenancy to Mr Chathika Weerasuriya and Ms Kimberley Peven

6. The premises are described in Clause 1 original lease as:

> *ALL that ground floor flat in the property known as no 70(a) Braemar Road n15 in the London Borough of Haringey shown hatched black on the plan annexed hereto (hereinafter called "the said flat") together with*
>
> *(i) So much of the front and back gardens as are coloured red on the said plan*

The plans show that the entirety of the front garden and one half of the rear garden adjacent to the building have been included in the demise.

7. Clause 1 further provides that the tenant will pay by way of further rent of

> *a yearly sum equal to half the expenditure by the landlord of keeping on foot the insurance of the whole of the premises aforementioned against loss or damage by fire lighting storm tempest explosion impact and aircraft in accordance with their covenant in that behalf hereinafter contained the payment of such further rent to be made on the first day on which the payment of rent is hereby made payable after such expenditure shall have been made*

8. By clause 3 of the original lease the tenant covenants with the landlord as follows:

> *"(2) To pay all existing and future rates taxes assessments and outgoings whether parliamentary local or otherwise now or hereafter imposed or charged upon the said flat or any part thereof or on the Landlords or the tenant respectively PROVIDED ALWAYS that where any such outgoings are charged upon the upper flat and the said flat without apportionment the tenant shall be liable to pay one half only of such outgoings and the Landlord shall keep the tenant indemnified against the payment of the remaining half.*
>
> *(3) To keep the interior and exterior of the said flat and every part thereof in tenantable repair throughout the term hereby granted and it is hereby declared and agreed that there is included in this covenant as repairable by the tenant including replacement whenever such shall be necessary the ceilings (up to but*

excluding the rafters or other support for the floor of the upper flat) and floors of and in the said flat and the joists or beams on which the said floors are laid. There is also included in this covenant the windows of the said flat.
…

(5) To permit the Landlords and their duly authorised agents with or without workmen and others twice a year upon giving previous notice in writing at reasonable times to enter upon the examine the condition of the said flat and thereupon the Landlords may serve upon the tenant notice in writing specifying any repairs necessary to be done and require the tenant forthwith to execute the same….."

9. Clause 4 of the original lease further provides:

"The Tenant hereby covenants with the Landlords and with and for the benefit of the owners and tenants from time to time during the currency of the term hereby granted of the upper flat as follows:-

(1) Not to do or permit or suffer to be done in or upon the said flat anything which may be or become a nuisance annoyance or cause damage or inconvenience to the Landlords or the occupier of the upper flat or neighbouring owners and occupiers or whereby any insurance for the time being effected on the upper flat and the said Flat or either of them or any contents thereof may be rendered void or voidable or whereby the rate of premium may be increased"

10. By clause 5 of the original lease the landlord covenants with the tenant:

"(2) To insure and keep insured the whole of the building No.70 Braemar Road aforesaid comprised of the upper flat and the said flat and any building erected in connection with them during the term hereby granted against loss and damage by fire lightning storm tempest explosion impact and aircraft in an insurance office of repute to the full value thereof and to make all payments necessary for the above purpose within seven days after the same shall respectively become payable and to

produce to the tenant on demand the policy or policies of such insurance and the receipt for every such payment"

11. Clause 6 contains a proviso for re-entry if rent is unpaid for 21 days or if any of the tenant covenants are not observed and performed.

12. The Applicant seeks a determination as to the reasonableness and payability of two demands for payment of the leaseholder's portion of the cost of insuring the building. The first is dated 2nd May 2023 for £309.46 and the second is simply dated March 2024 for £383.16

13. The Applicant also seeks a determination that the Respondent has committed multiple breaches of the original lease as follows;

    a. In breach of clause 3(3) of his lease the Respondent has failed to keep the interior and the exterior of the property, and in particular the front and rear gardens in tenantable repair. The front garden wall has collapsed and the front and rear gardens are overgrown and the front garden contains an accumulation of litter.

    b. In breach of clause 4(1) of his lease the Respondent is storing a large number of belongings in the flat to the point that it could be described as 'hoarding'. This constitutes a fire hazard and thus the Respondent has committed a breach of the covenant not to engage in conduct which is or may be or become '*a nuisance annoyance or cause damage or inconvenience to the Landlords or the occupier of the upper flat*'.

    c. In breach of clause 3(5) of his lease the Respondent has refused 4 written requests to grant access to the Applicant and/or his contractors, the requests being dated 26 May 2023, 13 June 2023, 1 June 2024 and 3 July 2024

14. The Respondent resists both applications. He accepts that he did not pay the sums demanded toward buildings insurance. His reason is that he believes that the insurance policy does not insure the building against fire caused by dogs. He is concerned that a dog belonging to the tenants of the upstairs flat might accidently cause a fire which would not have been covered by the building insurance policies purchased by the Applicant for 2023 and 2024. Shortly before the hearing he sent a cheque to the Applicant in respect of the outstanding insurance payments but told us in the course of the hearing that this was paid 'under protest'.

15. In his statement of case he does not deny that the front rear gardens were in the condition shown in the photos in the bundle but asserts that the issues have been addressed. In addition he sought to bring a counterclaim against the Applicant for alleged breaches of his repairing obligations as freeholder.

16. It is important to note that the Tribunal's role under the Act is to determine simply whether there has been a breach of covenant on the evidence before it. Whether there are extenuating circumstances which would allow relief from forfeiture or whether the landlord has an alternative remedy is irrelevant at this stage.

17. The Tribunal inspected the property on the morning before the hearing. The front garden wall had been repaired and the large tree shown on the photographs in the bundle had been cut down and removed. There remained a large amount of sawdust/ wood chips covering the ground. On entry into the flat we observed that property was extremely full of personal belongings and furniture. The front reception room was full of what looked like boxed-up flat-pack furniture and a significant number of books. The rear bedroom room was entirely full of furniture, CDs, more books and the Respondent's collection of posters. There was very little room to move about in these rooms, though the contents were stored in an orderly fashion. The remainder of the rooms in the flat, a bathroom, kitchen and utility room were similarly full of personal belongings albeit less carefully ordered. We noted at least three electrical extension leads in the utility room connecting a number of electrical devices to single sockets.

18. The rear garden, which consists of a patio and shingled area is accessed through a shared side passageway. It was clear that the Respondent had cleared away much of the growth shown in the photos of the rear garden in the bundle. The pathways and patio remained somewhat dilapidated and overgrown with weeds.

19. At the hearing Mr Chin gave evidence first. He confirmed the contents of his witness statement were true. In answer to questions we put to him he confirmed that he had no direct evidence regarding the condition of the downstairs flat and the information that it constituted a fire hazard came from his tenants who informed him that an electrician who had been in the property in 2024 told them that this was the case. He exhibited a number of photos to his statement showing the garden wall in front of the property in a state of partial collapse. The front garden is shown to be entirely taken up by a large lime tree which is considerably taller than the building itself, and there are photos of accumulations of rubbish in the front garden. Mr Ching also relied on contains photos of the rear garden taken last year which is shown to be completely overgrown to the point of appearing impenetrable.

20. In answer to questions put to him by the Respondent he denied that the buildings insurance policy was deficient in any way.

21. We then heard from the Respondent who also confirmed his witness statement was true. He told is that he did not object to the cost of the buildings insurance but remained concerned that it would not cover damage or destruction of the building by fire caused by his neighbour's dog. He referred us to an email exchange with the applicant's broker dated 5 November 2023. In this email the broker gave an example of a

pet gnawing on a bit of furniture as pet damage that would not be covered by the accidental damage cover included in the building insurance policy. The Respondent understood this to mean that any accidental damage caused by a pet would not be covered.

22. As regards the allegations of breach he did not admit that the condition of the exterior of the property was such as to amount to a breach of his repairing obligations at any stage, but submitted that if that had been the case it no longer was. He did not admit the existence of any fire hazard in his flat. He wished to counterclaim for alleged breaches by the Applicant of his obligations as freeholder, in particular relating to disrepair to the exterior of the building, in particular the rainwater pipes and damage to the interior of his flat caused by an escape of water from the upstairs flat. We explained that we had no jurisdiction under s168(4) of the 2002 Act to determine a counterclaim claim for damages for disrepair, and that such a claim would have to be brought in the County Court either as a standalone claim or as a counterclaim in any future County Court proceedings arising from this determination.

23. The Respondent accepted that the Applicant has requested access in writing as alleged in the Applicant's statement of case. He accepted that he had not acceded to these requests and explained that he refused access because he feared the Applicant.

24. The Tribunal is satisfied that the Respondent has committed multiple breaches of the lease. Our findings and our reasons for them are set out in the following paragraphs.

Determinations of Breach

25. In breach of clause 3(3) of the Lease, the Respondent failed to keep the front and rear gardens in 'tenantable repair'. However in our view the Respondent has now remedied these breaches by clearing his rear garden in January 2025 and repairing the front garden wall and removing the lime tree from the front garden in June 2025. While neither the front nor rear gardens are in perfect condition they are in an acceptable condition such that we consider that they are in a tenantable state of repair.

26. In breach of Clause 3(5) of the lease the Respondent failed to permit the Applicant and/or his authorised agents to enter the flat to inspect following written notice on 26th May 2023, 13 June 2023, 1 June 2024 and 3 July 2024. The obligation in clause 3(5) to grant access is unqualified, and in any event we can see no good reason for refusing access to the Applicant's contractors even if he were unwilling to permit the Applicant himself to enter the property.

27. There is insufficient evidence to support the contention that the condition of the Respondent's flat amounts to a breach of clause 4(1) of the lease due to a risk of fire damage. Save in the most obvious of cases in our view some expert evidence from a building safety expert as to the presence of such a hazard would be required to prove this, or at least

some confirmation as to the existence of a fire hazard from the London Fire Brigade or the relevant local authority.

Further Determinations

28. The Tribunal is satisfied that the sums demanded by the Applicant in respect of buildings insurance are reasonable and in principle payable pursuant to Clause 1 of the original lease. However the demands do not comply with the requirements of the Service Charges (Summary of Rights and Obligations and Transitional Provisions)(England) Regulations 2007, although they would amount written notification that the costs have been incurred and that the tenant will be required to pay them within the meaning of s20B(2) of the 1985 Act. Consequently the Respondent is entitled to withhold payment, or pay under protest, until such time as demands are sent out containing the requisite information are sent to him. The Respondent does not argue that the charges are not payable by virtue of s20B of the 1985 Act.

29. We do not accept that the Respondent was entitled to withhold payment due to his concerns regarding the coverage offered by the policies. The applicant has included copies of the Property Owner's Insurance Policy Schedule in the bundle for 2024. It covers all the usual perils including damage or loss caused by fire, without qualification, up to the sum of £2,000,000. There are no unusual endorsements. In our view email relied on by the Respondent was intended to refer to accidental damage directly and solely attributable to the action of a pet.

30. The schedule of insurance from 2024 indicates that the Applicant insured against all the perils he was obliged to insure against pursuant to Clause 5(2) of the original lease. There were consequently no grounds on which the Respondent could refuse payment subject to a proper demand being sent. While we do not have a policy schedule for 2023, we note that it was placed through the same broker with the same insurer, and we consider that it is likely that it was as unremarkable as the 2024 policy which superseded it.

Final Matters

31. At the end of the hearing we asked the Respondent if he wanted us to consider exercising our powers to make an order under s.20C of the 1985 Act and/or paragraph 5A of Schedule 11 to the 2002 Act restricting any right the Applicant may have under the lease to recover the costs of these proceedings from the Respondent as an administration charge or service charge. He confirmed that he did seek such an order. However as the Applicant has largely succeeded in both applications, we do not consider it just to make either order. We do make an order for the reimbursement of tribunal fees paid by the Applicant in respect of both sets of proceedings.

Name : Judge N O'Brien Date 4 July 2023

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).