FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MC/LBC/2024/0006**
Property	**:**	**Flat 2, 11 Carnarvon Road, Reading, Berks RG1 5SB**
Applicant	**:**	**Sykes Capital Ltd**
Representative	**:**	**Mr Andrew Strong, Director**
Respondent	**:**	**Mr Mutebi Blessious Kalemeera**
Representative	**:**	**In person**
Date of Application	**:**	**1 April 2024**
Type of application	**:**	**Application for an order that a breach of covenant or condition has occurred pursuant to s.168(4) of CLARA 2002**
The Tribunal	**:**	**Tribunal Judge S Evans** **Mrs S Redmond BSc ECON MRICS**
Date/ place of hearing	**:**	**19 June 2025,** **By remote video**
Date of decision	**:**	**27 June 2025**

DECISION

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DECISION

1. **The Tribunal finds that the Applicant is a landlord for the purposes of s.168(4) of the Commonhold and Leasehold Reform Act 2002.**

2. **The Tribunal determines that the Respondent has been in breach of Schedule 4 paragraphs 16 and 20 of the Lease from 2017/2018 to 19 June 2025, for the reasons and to the extent set out in paragraph 50 below.**

3. **The Tribunal determines that the Respondent has been in breach of clause 4.1 of the Lease from 7 March 2023 to 19 June 2025, for the reasons and to the extent set out in paragraphs 59 to 63 below.**

4. **The Tribunal makes an order under s.20C of the Landlord and Tenant Act 1985 in favour of the Respondent.**

5. **The Tribunal does not make an order for the Respondent under para 5A to Sch 11 to the Commonhold and Leasehold Reform Act 2002.**

Introduction

1. By its application the Applicant seeks a determination of breach of covenant or condition pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 ("CLARA 2002").

Relevant Law

2. The relevant statute law is in Appendix 1.

Background

3. On 30 June 1989 a lease was granted for a term of 125 years ("the Lease") of Flat 2, 11 Carnarvon Rd, Reading RG1 5SB ("the Property").

4. The Lease contains the following express terms on the part of the Tenant:

   3.4 In accordance with the Tenants covenants in that behalf hereinafter contained to repair decorate and make good all defects in the repair decoration and condition of the Demised Premises of which notice in writing shall be given by the Lessor to the Tenant within two calendar months next after the giving of such notice.

   3.5 Not at any time during the said term to make any alterations in or additions to the demised premises or any part thereof or to cut maim alter or injure any of the walls or timbers thereof or to alter the landlord's fixtures therein without first having made a written application (accompanied by all

relevant plans and specifications) in respect thereof to the lessor and secondly having received the written consent of the lessor thereto."

3.11 Not at any time to do or permit or suffer to be done any act matter or thing on or in respect of the Demised Premises which contravenes the provisions of the Town and Country Planning Acts 1947 to 1972 or any enactment amending or replacing the same and to keep the Lessor indemnified against all claims demands and liabilities in respect thereof

3.12 To comply in all respects at the Tenants own cost with the provisions of any statute statutory instrument rule order or regulation and of any order direction or requirement made or given by any authority or the appropriate Minister or Court so far as the same affect the Demised Premises (whether the same are to be complied with by the Lessor the Tenant or the occupier) and forthwith to give notice in writing to the Lessor of the giving of such order direction or requirement as aforesaid and to keep the Lessor indemnified against all claims demands and liabilities in respect to thereof

...

4. The Tenant hereby covenants with the Lessor and as a separate covenant with and for the benefit of the flat owners that throughout the term the Tenant will:

4.1 Repair maintain renew uphold and keep the Demised Premises and all parts thereof including so far as the same form part of or are within the Demised Premises all windows glass and doors (including the entrance door to the Demised Premises) locks fastenings and hinges sanitary water gas and electrical apparatus and walls and ceilings drains pipe wires and cables and all fixtures and additions in good and substantial repair and condition save as to damage in respect of which the Lessor is entitled to claim under any policy of insurance maintained in accordance with the covenant in that behalf hereinafter contained except insofar as such policy may have been vitiated by the act or default of the Tenant or any person claiming through the Tenant or his or their servants agents licensees or visitors

....

4.5 Observe and perform the regulations in Schedule 4 hereto provided that the right is reserved to the Lessor to supplement modify or waive such regulations or any of them in their absolute discretion

...

6. Subject to and conditional upon payment being made by the Tenant of the interim charge and the service charge at the times and in the manner hereinbefore provided the Lessor hereby covenants with the Tenant that he will perform the following obligations save that none of the Lessors obligations as set out in this clause 6 shall come into effect unless and until the Lessor named in the Particulars hereof transfers it[s] freehold interest in the Building namely:

   (a) To maintain and keep in good and substantial repair and condition:

(i) the main structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rainwater pipes (other than those included in this demise or in the demise of any other flat in the Building

(ii) all such gas and water mains and pipes drains wastewater and sewage ducts and electric cables and wires as may by virtue of the terms of this Lease be enjoyed or used by the Tenant in common with the owner or tenants of the other flats in the Building

(iii) the common parts

(iv) the entry phone system (if any)

(v) the boundary walls and fences of the Building

(vi) all other parts of the Building not included in the foregoing subparagraphs (i) to (iv) and not included in this demise or the demise of any other flat or part of the Building

(b)...

(c) To insure and keep insured the Building... against loss or damage by fire... in some Insurance office of repute in the full value thereof...

...

(h) Without prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessor may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Building

...

(j) To act fairly and reasonably in carrying out his obligations under clause 6 hereof and at all times to manage and maintain the Building economically and efficiently

...

13. Except where the context otherwise so admits every reference in this Lease to an Act of Parliament shall include every statutory amendment or re-enactment thereof and every regulation and order made thereunder or under any Act replaced thereby.

...

10. (1)(a) Any notice in writing certificate or other document required or authorised to be given or served hereunder shall be sufficient although only addressed to the tenant without his name or generally to the person interested without any name and notwithstanding that any

person to be affected thereby is absent under disability or unascertained and shall be sufficiently given or served if it is left at the last known place of abode or business of the tenant or other person to or upon whom it is to be given or served or is affixed or left on the demised premises

(b) any such notice in writing certificate or other document as aforesaid shall also be sufficiently given or served if it complies with the provisions of section 196 of the law of property act 1925 as amended by the recorded delivery service act 1962.

...

Schedule 1

The Demised Premises

The flat and garage specified in paragraph 3 of the Particulars as the same is shown for the purpose of identification only edged red on plan 1 and 2 annexed hereto including

(a) the internal plastered coverings and plaster work of the walls bounding the flat and the doors and door frames and window frames fitted in such walls (other than the external surfaces of such doors and door frames and window frames) and the glass fitted in such window frames...

....

Schedule 3

The Excepted Rights

1...

2...

3...

4.Full right and liberty for the Lessor in his absolute discretion to do as he may think fit with any part of the Building.... and to make any alterations and carry out any demolition rebuilding or other works which they may think fit or desire to do whether such buildings alterations or works shall or shall not affect or diminish the light or air which may now or at any time during the term hereby granted be enjoyed by the Tenant and provided that any such works of construction demolition or alteration are carried out with due regard to modern standards and method of Building and workmanship the Tenant shall permit such works to continue without interference or objection...

Schedule 4
Regulations
....

16. Not at anytime to do or permit the doing of any damage whatsoever to the Building the fixtures fittings chattels therein the curtilage or the paths adjoining thereto and forthwith on demand by the lessor to pay to the lessor the cost of making good any damage resulting from a breach of this regulation.
...
20. Not at any time to interfere with the external decorations or painting of the Demise Premises or of any other part of the Building."

5. Since 27 October 2000 the Respondent has been the registered titleholder of the leasehold interest in the Property, under title no. BK278550.

6. On 15 November 2011 the previous freeholder, 11 Carnarvon Rd Management Ltd was dissolved.

7. On 16 November 2015 the Crown disclaimed ownership of the building.

8. On 31 March 2021 the Applicant acquired the Leasehold interest in Flat 4, 11 Carnarvon Rd, Reading, before purchasing the freehold title of the Building in which both Flat 1 and the Property are situated, from the Crown Estate, on 20 September 2021. This freehold interest was registered at the Land Registry under title no. BK518074 on 11 November 2021.

9. On 10 October 2022 a company called 4Site undertook a health and safety assessment and fire risk assessment of the building. This included a survey of the door to the flat of the property, in order to determine whether it met a ½ hour fire resistance. In a written report on page 32, the author writes:

"Hazard Description
Unable to determine if the entry door to the tenants demise meets the minimum half hour standard of fire resistance.
Potential for fire, heat and smoke to spread into the communal area and compromise the escape route.
...
Action required and further control measure
Write to the responsible person or duty holder to inform them of their responsibility to ensure that the entry door to the tenants demise meets the minimum half hour standard of fire resistance, in order that they can manage and reduce the risk of fire.
Where this cannot be determined the doors must be replaced to ensure that the compartmentation of the tenant's demise leading into the escape route is maintained. In the case of an impasse, the matter should be referred to the local fire authority."

10. Similarly at section 3.8 the author writes:

"FD16	Front flat doors	Unable to determine if the entry door to the tenant's demise meets the minimum half hour standard of fire resistance. Potential for fire, heat and smoke to spread into the communal area and compromise the escape route."

11. On 7 March 2023 the Applicant wrote to the Respondent regarding the door to the Property. The letter cited clause 4.1 of the Lease (set out above) and requested replacement of the flat door by the Respondent within 28 days (or evidence that it was appropriately fire rated).

12. At the same time the Applicant invited a request for retrospective consent for some external wall insulation which the Applicant alleged the Respondent had fitted to the Property.

13. On 5 May 2023 the Applicant sent a chaser letter.

14. The Applicant also wrote to the Respondent's mortgagee, Bank of Scotland, on 5 May 2023, enclosing its correspondence with the Respondent.

15. On 25 May 2023 the Applicant received a letter from the lender in terms that "We have requested Mr Kalemeera take the appropriate steps to rectify the breach…"

16. On 15 June 2023 the Applicant wrote to the Respondent requesting an update.

17. On 20 June 2023 the Applicant again wrote to the Respondent's lender, and to the Respondent personally.

18. On 7 November 2023 the lender wrote to the Applicant to ask whether the breach had been rectified.

19. On 15 November 2023 the Applicant replied to say that it had not been rectified.

20. On 17 January 2024 the Applicant emailed Lloyds Bank in respect of a voicemail which had been left. This e-mail indicated that it was the Applicant's intention to issue an application for breach of covenant in relation to the Property, so that it could then issue a section 146 notice, to force compliance with the Lease.

21. On 1 April 2024 the instant Application was issued, for determination of a breach of covenant or condition.

22. On 24 April 2024 the Applicant wrote again to the Bank of Scotland, receiving a reply on 24 September 2024.

23. On 1 November 2024 this Application was copied to the Respondent.

24. On 16 December 2024 the Tribunal gave procedural directions.

25. On 6 January 2025 the Applicant sent this Application to the Respondent, and has provided proof of posting both to the Property and to the Bank of Scotland.

26. On 17 January 2025 the Applicant prepared its Statement of Case. This includes photographs of the flat door.

27. On 13 February 2025 the Tribunal made an unless order against the Respondent, neither it nor the Applicant having received any response from the Respondent. The order provided that the Respondent would be debarred from taking part in the proceedings if he did not produce his case by 28 February 2025.

28. No response was forthcoming. On 6 March 2025 the Tribunal wrote to the Respondent to say that he was debarred from defending, but the proceedings would go ahead.

29. On 25 April 2025 the Respondent wrote to the Tribunal requesting the adjournment of the hearing the following week, on the basis that he had not been provided with sufficient notice, as he had only received the notice of hearing from the occupier of the Property that day. The Respondent emailed in response: "we confirm we are in agreement for the hearing to be adjourned on the basis the respondent actively deals with any new directions with {sic} the tribunal considers are appropriate. Any failure to adhere to any new directions should result in the respondent being barred from any further involvement in the case."

30. Given the above, the Tribunal listed the first hearing as a directions hearing.

The first hearing

31. The first hearing of this matter took place on 25 April 2025 before Judge Evans. Mr Strong represented the Applicant. The Respondent Mr Kalemeera appeared in person.

32. Judge Evans made further directions, lifting the bar on the Respondent, and permitting him to file a statement of case by 13 May 2025. He directed a brief reply by the Applicant by 9 June 2025. The hearing was re-listed by agreement of the parties to take place on 19 June 2025 at 10am.

The Respondent's Statement of Case

33. The Respondent has provided a statement of case dated 30 May 2025. In short he:

(1) denies the Applicant's authority to demand service charges or enforce lease covenants relating to the Property; in particular, he alleges that when he bought the property in 2002, he became a part owner of the freehold via the original management company, which was later dissolved in 2011, but he has not entered into any agreement since with the Applicant;

(2) Avers that the Applicant had acquired their claimed management role in the Respondent's absence, and had failed to notify him or seek his consent;

(3) Writes, as regards the external wall insulation:

"-the work was done in 2017/18 while there was no active management company.

-it was carried out in good faith for energy efficiency and health reasons";

(4) Writes, as regards the door to the Property:

"-There is no expert evidence showing non compliance with fire regulations or lease terms";

(5) Makes an application pursuant to s.20C of the 1985 Act, and Schedule 11, para 5A of CLARA 2002.

34. This Statement of Case is accompanied by a lease extract and a copy email to Mr Strong dated 30 May 2025, requesting certain information as to the Applicant's legal standing to bring this application.

The Applicant's Reply

35. The Applicant replies as follows, in summary:

(1) evidence was submitted with the Applicant's original Statement of Case clearly demonstrating the Applicant's ownership of the freehold;

(2) notification in accordance with Section 3 of the Landlord And Tenant Act 1985 has been given (a letter dated 26 September 2022 with several rent demand notices and a service charge demand attached);

(3) efforts were made to consult with leaseholders regarding the acquisition of the freehold following the dissolution of the former freeholder (exhibited letter dated 30 June 2021) but the Respondent had failed to either notify the Applicant of his contact details or to arrange to collect post sent to the Property from his tenants;

(4) the Applicant had needed to demonstrate to the Treasury Solicitor for the Crown that it had attempted to consult all leaseholders prior to agreeing to the sale of the building;

(5) the lease at clause 1(1) defines the lessor as including successors in title;

(6) the instant application does not relate to service charges;

(7) the Respondent admits carrying out external wall insulation works without obtaining prior written consent of the lessor; this determination is being pursued, so the Applicant can seek to resolve the breach with the Respondent;

(8) a health, safety and fire risk assessment dated 10 October 2022 did state that the assessor could not confirm the property door met minimum fire safety standards;

(9) however, the Applicant has carried out a further site inspection with a qualified building surveyor on 9 May 2025, and upon inspection it was confirmed that the entrance door to the Property is not a FD 30 fire rated door;

(10) the Applicant does not object to an order under section 20C of the Landlord And Tenant Act 1985 in favour of the Respondent, but does resist a para 5A Schedule 11 CLARA order. The Applicant's costs ought to be recoverable as an administration charge under the terms of the lease, specifically clause 3(9).

36. The documents exhibited to the Reply include a letter dated 5 June 2025 from the Keen Partnership, the author of which is Chris Keen MRICS MCABE. It reads in full:

"Following our recent site inspection, we write to confirm our findings regarding the flat entrance door.

Upon the inspection, it was determined that the entrance door does not meet the required standards of a fire resisting door under current fire safety regulations. Key observations include:

- absence of intumescent strips or smoke seals in the frame or door. There is however a noise dampener on the frame, however this provides no Fire Protection in my opinion.
- The door contains no certification or stamp.
- The door hinges have no certification and do not appear to be fire rated on visual inspection as there are only two hinges and not three.

Photographs taken during inspection are enclosed.

We recommend that the entrance door be replaced with a fully certified FD30S fire resisting door set, installed by a competent contractor in accordance with relevant building and fire safety standards.

Should you require further information, please do not hesitate to contact us."

37. It is notable that this letter bears the property address as "Flat 3, 11 Carnarvon Rd" (not flat 2).

The second hearing

38. On the day before the hearing, the Respondent had emailed the Tribunal seeking an adjournment of the hearing. Following discourse with the Tribunal at the commencement of the hearing, Mr Kalemeera withdrew this application, and no more need be said about it. The hearing therefore proceeded.

39. The issues to be determined were clarified as:

    (1) Whether the Applicant is a "landlord" for the purposes of section 168(4) CLARA 2002;

    (2) Whether the Respondent is in breach of covenant or condition in the Lease;

    (3) Whether an order should be made under para 5A Schedule 11 CLARA 2002.

40. During the course of submissions, Mr Strong applied on behalf of the Applicant for permission to amend the Application, to allege the Defendant's acts or omissions also constituted a breach of Schedule 4, paragraphs 16 and 20. Mr Strong did not seek to rely on any additional evidence in this regard. He pointed to the fact that his Statement of Case already alleges a breach of those paragraphs of Schedule 4. Mr Kalemeera objected, principally on the lateness of the application. However, he was unable to demonstrate any real prejudice by the fact the point was being raised so late, instead indicating that he did not believe any damage had been done, nor that there was any interference with external decorations. Applying the overriding objective under rule 3 of the Procedure Rules 2013, we allowed the application so as to enable the Applicant to argue the point, and the Respondent to respond.

Discussion and determination

(1) Whether the Applicant is a "landlord" for the purposes of section 168(4) CLARA 2002

41. The 2002 Act does not define "landlord" for the purposes of s.168(4), save for section 169 saying it has the same meaning as in Chapter 1 of Part 2: see s.169(5). Looking at the definitions clause in Chapter 1 (s.112), there is little further assistance for us in this regard.

42. We must therefore go back to first principles, and ask who has the reversion of the Lease to the Property, in law and/or equity. It seems to us this must be the

Applicant, who was conveyed the freehold to the building in which the Property is situated by the Crown.

43. Mr Kalemeera does not rely on any statutory right to acquire the building or Property. He says he was not consulted before the sale to the Applicant, but he does not say what right he had to be consulted. In any event, we accept the Applicant's contentions set out in paragraphs 35(1) to (5) above.

44. Accordingly, we find that the Applicant is a landlord for the purposes of s.168(4).

(2) Whether the Respondent is in breach of covenant or condition in the Lease

(a) External Wall Insulation

45. The Respondent admits executing works in 2017/2018, at a time when the lessor was a dissolved company, and avers he had no one from whom to seek permission. He confirmed in oral evidence that this work was done without authority, yet out of necessity, there being serious damp and mould problems in the Property. He said that he did not believe that any damage had been caused. He said he did not understand what external wall insulation meant. He said he was able to explain more about the works which were undertaken, but indicated he could not give technical information. He believed there had been some digging at the foundations, and some repairs to the wall, and that there had been an injection of a damp proof course into the wall, as well as re-plastering of the same.

46. Mr Strong contended that the Crown Estates was the owner at the time (2017/2018) and that an application could have been made to them for consent for alterations.

47. Mr Strong took us to the photographs externally of the building which had been taken by Charlie Sykes of the Applicant and emailed to Mr Strong. He pointed to aspects of the photos which tended to evidence that the external wall was wider at ground floor level than at first floor level, from which we should infer that external wall insulation had been added to the outside of the wall. He further contended that this was the only reason the brown weather feature (beading as he called it) had been added halfway up the wall on the elevations which had been so treated. He contended that this beading had been mechanically fixed to the building.

48. He clarified that he was seeking a determination of breach of covenant from 2017/2018.

49. The Respondent further repeated his contentions that he did not believe any damage had been done, nor that there was any interference with external decorations.

50. In our determination, the Respondent has been in breach of covenant since 2017/2018 for the following reasons:

    (1) In breach of Schedule 4, paragraph 16 of the Lease, the Respondent has damaged the building by injecting into its walls (inferentially a chemically injected DPC), however well-intentioned he may have believed it to be at the time;

    (2) In breach of Schedule 4, paragraph 20 of the Lease, the Respondent has interfered with the external decorations and painting of a part of the building. We are satisfied that external wall insulation, if not render, has been added to the external wall on the outside of the building at ground floor level by the Respondent's contractors. This would have covered up whatever external painting or decoration previously existed. Further, the injection of the DPC would have disturbed the existing decorations/ painting at the points of injection.

51. We cannot be satisfied the "beading" was so fixed to the wall as to cause any damage to it. Nor can we be satisfied the external wall insulation has been so affixed to the wall as to cause it to be damaged. E.g., we have no evidence it was mechanically affixed as opposed to having been glued on.

52. As for clause 3.5 of the Lease, it is clear that the Respondent's works were done without a written application, whether accompanied by plans and specifications or otherwise, and without the written consent of the lessor at the time. However, on a construction of the Lease as a whole, we determine that the external walls are not part of the Demised Premises; and so the allegation that there has been an alteration or addition to a wall thereof cannot succeed, the Tribunal concludes.

(b) Flat entrance door

53. Mr Strong next contended that the Respondent was in breach of Lease for not installing a fire door compliant to FD 30 standard. The clause on which he relied in the Lease was 4.1.

54. Mr Strong confirmed the period for which a determination of breach was sought was between 7 March 2023 and the hearing date.

55. Mr Strong relied on the word "renew" in clause 4.1. He said that the fire risk assessment which the Applicant had obtained recommended that fire doors should be installed in all flats, because the Building needs to be fire safety compliant. The Tribunal was provided with a copy of the fire risk assessment from October 2022, but on a careful reading, the author's opinion is that he is unable to determine if the entry door to the Property meets the minimum half hour standard of fire resistance.

56. For this reason, the Applicant does not rely alone on the report of 4Site Consulting. Mr Strong relied on the report from Mr Keen MRICS dated 5 June 2025. Despite this report referring to Flat 3, a comparison on photographs from this report to those in the October 2022 report satisfies us that Mr Keen did inspect the Property, not Flat 3.

57. Mr Keen's findings are set out at paragraph 36 above.

58. Mr Strong also contended that a fire door which was not fire safety compliant was also not in "good condition" for the purposes of clause 4.1.

59. The determination the Tribunal needs to make is whether the Respondent has been in breach of clause 4.1. In the Tribunal's determination, he has. The Tribunal agrees that the door is part of the Demised Premises. The Tribunal is persuaded that it needs to be renewed, because it is not a FD30 rated fire door.

60. The Tribunal also takes into account the photographs of the flat door in the bundle from both expert reports, which presents as a standard 4 panelled door, containing what appears to be a regular mortice lock only.

61. Even if the Tribunal is wrong to find the Respondent is not in breach of covenant to "renew" the Property front door, the Tribunal determines that the door is not in "good… condition" for the purposes of clause 4.1. The addition of the words "and condition" in clause 4.1 potentially extends the covenant beyond mere bringing of the state of the Premises from deterioration to non-deterioration, but widens the scope of what the lessee must do. For example, in *Welsh v Greenwich* (2000) 33 HLR 40, CA, the use of the words "and condition" required the landlord as covenantor to remedy damp, even though it was not caused by a physical deterioration to the parts it was required to repair.

62. The Tribunal can see no reason why in this case this covenant to keep in good condition should be construed in a narrow sense, being equated only with repair. The words "in good condition" must be given some effect. The Tribunal determines in this case those words are apt to include the requirement to replace a non-compliant front entrance door with a compliant one. In other circumstances it may be different, but the flat door in this case, which will not protect the common parts from rapid spread of fire because it is not FD30 standard, may truly be said not to be in good condition.

63. On balance of probability, in all these circumstances, the Tribunal determines that the Respondent has been in breach of clause 4.1 of the Lease between 7 March 2023 and the date of the second hearing, by not keeping the front entrance door in good condition (it not being a FD30 standard fire rated door), and by not renewing it with a door to that standard.

Application under s.20C/ para 5A

64. The Applicant does not resist the s.20C application made by the Respondent. We therefore make an order in Mr Kalemeera's favour.

65. As to paragraph 5A of Schedule 11 to CLARA 2002, the Tribunal declines to make an order in favour of the Respondent. It would not be just and equitable to do so. The Applicant is the substantive winner in this case, and has had to overcome the difficulties of the Respondent's lack of communication initially to the correspondence in 2023, and thereafter; letters were sent to the only address it had for the Respondent (the Property), and which (by virtue of the terms of the Lease at clause 10) it was entitled to use in order to give notice to Mr Kalemeera. Whilst the allegation of breach of clause 3.5 did not succeed, we see force in a contention that works to the exterior to the building arguably constituted a trespass, even if not a breach of lease actionable in this Tribunal.

66. For the same reasons as under paragraph 65, we make an order that the Respondent reimburse the Applicant the application and hearing fees of £330 total, within 28 days.

Name: Tribunal Judge S Evans **Date**: 27 June 2005.

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).

Appendix 1

Commonhold and Leasehold Reform Act 2002

Part 2, Chapter 1, section 112

Definitions

…

(2)In this Chapter "lease" and "tenancy" have the same meaning and both expressions include (where the context permits)—

(a)a sub-lease or sub-tenancy, and

(b)an agreement for a lease or tenancy (or for a sub-lease or sub-tenancy),

but do not include a tenancy at will or at sufferance.

(3)The expressions "landlord" and "tenant", and references to letting, to the grant of a lease or to covenants or the terms of a lease, shall be construed accordingly.

…

(5)Where two or more persons jointly constitute either the landlord or the tenant or qualifying tenant in relation to a lease of a flat, any reference in this Chapter to the landlord or to the tenant or qualifying tenant is (unless the context otherwise requires) a reference to both or all of the persons who jointly constitute the landlord or the tenant or qualifying tenant, as the case may require.

Part 2, Chapter 5, section 168

No forfeiture notice before determination of breach

(1) 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.

(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.

(3)But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4)A landlord under a long Lease of a dwelling may make an application to **t**he appropriate Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred.

(5)But a landlord may not make an application under subsection (4) in respect of a matter which—

(a)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(b)has been the subject of determination by a court, or

(c)has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

(6)For the purposes of subsection (4), "appropriate Tribunal" means—

(a)in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b)in relation to a dwelling in Wales, a Leasehold valuation Tribunal.

Part 2, Chapter 5, section 169

Section 168: supplementary

…

"(5) in section 168 and this section-

…

"landlord" and "tenant" have the same meaning as in Chapter 1 of this Part."