FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/38UF/LBC/2025/0005**
Property	**:**	**8 Hooks Close, Langford GL7 3LT**
Applicant	**:**	**GreenSquareAccord Limited**
Representative	**:**	**Shoosmiths Solicitors**
Respondent	**:**	**Duncan Garrad**
Representative	**:**	**Unrepresented**
Type of application	**:**	**Determination of an alleged breach of covenant under section 168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal	**:**	**Judge A. Arul** **Mr M. Ayres FRICS**
Date of hearing	**:**	**22 and 23 September 2025**
Date of decision	**:**	**23 September 2025**

DECISION AND REASONS

Decisions of the Tribunal

The Tribunal permits the withdrawal of the application under rule 22 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 pursuant to an email notification received from the Applicant's solicitors and the written consent of the Respondent.

The proceedings are, accordingly, treated as withdrawn.

REASONS

The Application

1. By an application dated 13 March 2025, the Applicant freeholder sought a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent leaseholder is in breach of his lease of the house at 8 Hooks Close, Langford, Lechlade, Gloucestershire GL7 3LT ("the Property"). It is alleged in the application form that the Respondent is in breach of clauses 3.3(a), 3.5(a), 3.10(b), 3.12, 3.17 and 3.18 of the Lease. The statement of case refers to additional provisions of the Lease.

2. On 3 July 2025, the Tribunal gave Directions, which comprised amongst other things notice to potentially interested third parties and the sequential filing of bundles of documents relied upon. In respect of the latter, the Applicant was to file with the Tribunal and serve on the Respondent a bundle of documents by 25 July 2025 and the Respondent was to prepare their own bundle and file with the Tribunal and serve on the Respondent by 15 August 2025. The Applicant was able to send if it wished a brief reply to the Respondent's bundle by 22 August 2025. On 25 July 2025, the Applicant filed an interim application to extend the deadline for filing the Applicant's Statement of Case (and, presumably, its bundle) and all follow-on directions for a period of 14 days. This application was granted, meaning the dates were altered to 8 August 2025, 29 August 2025 and 5 September 2025 respectively.

3. The Directions also contained customary warnings about compliance, notably: *"If the applicant fails to comply with these directions the tribunal may strike out all or part of its case pursuant to rule 9(3)(a) of the 2013 Rules."* Further: *"If the respondent fails to comply with these directions the tribunal may bar it from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules."* Further: *"Non-compliance could also result in the tribunal making a determination on costs pursuant to rule 13 of the 2013 Rules."*

The Inspection and the Hearing

4. The matter was heard over two days. The Tribunal inspected the Property on the morning of the first hearing day. The Respondent attended and provided access. There was no appearance by the Applicant or its representative. A summary of the Tribunal's inspection is contained below where we explain our reasons.

5. The second hearing day was scheduled to take place via CVP. On the morning of the hearing, the Tribunal received an email from the Applicant's solicitors dated the afternoon before filing a request to withdraw. The Respondent was copied into the email and replied confirming his consent to withdraw. These emails were considered by the Tribunal panel on the morning of the second hearing day. The Tribunal consented to the withdrawal and the parties were not required to attend the hearing.

6. The Tribunal had the benefit of a bundle of documents running to 149 pages from the Applicant. This comprised the application, directions, a statement of case and various exhibits including correspondence and photographs. There was no separate witness statement.

7. The Tribunal did not have a response, witness statement or bundle from the Respondent. On 9 September 2025, the case officer wrote to the Respondent enquiring after his documents. On the same day the Respondent replied stating that he had no further information to add beyond that received from the Applicant and confirmed his attendance at the scheduled site inspection. The case officer replied with directions from a Procedural Judge that, in view of the Respondent's failure to comply with the Directions, the Tribunal may bar the Respondent from further participation and determine matters against him based on the documents in the Applicant's bundle/the site inspection. Given the withdrawal, it was necessary to consider this point further.

Key Facts

8. The Property comprises a 2 bedroomed end of terrace house.

9. The Applicant is the registered proprietor of the freehold interest in the Property, which is registered at the Land Registry under title number ON166539. This title covers numbers 1 to 8 Hook Close. It appears to have acquired this title by a conveyance dated 24 March 1994.

10. The Respondent is the registered proprietor of the leasehold interest in the Property which is registered at the Land Registry under title number ON186414 and pursuant to a lease dated 27 November 1995.

11. The application incorrectly states the title numbers however we were provided with official copies of both titles and this is corrected in the Applicant's statement of case.

12. Greensquare Group Limited obtained an injunction order against the Respondent on 13 July 2020 ("the Injunction Order"). This required the Respondent to, by 4pm on 24 August 2020: *"Bring the gardens of [the Property] to a clean and good condition in tenantable manners removing all gas bottles, all bulky items, one large and one small shed, and removing all fire damaged windows and doors and thereafter maintain the same in accordance with the [Lease]"*. The Injunction Order was expressed to remain in force for so long as the Applicant (notably Greensquare Group Limited) and the Respondent remain respectively landlord and tenant of the Property, unless before such time it is revoked by and order of the Court. The Respondent was also ordered to pay the costs of that application. Both parties appear to have been present at the hearing of the application, via remote means.

13. The Applicant alleged that the Respondent has failed to comply with the Injunction Order.

14. The Applicant's solicitors wrote to the Respondent on 16 July 2024, to put him on notice of the alleged continuing breach. The Applicant alleged that this notice did not elicit a response nor was the required remediation work undertaken. It stated that, at the date of its statement of case, no communication has been received from the Respondent

The Lease

15. The lease to the Property was granted on 27 November 1995 for a term of 99 years from 1 June 1995 under a lease made between Oxford Citizens Housing Association Limited and Mr and Mrs J.H. Jones ("the Lease"). The Respondent acquired the Lease under a conveyance dated 17 December 2004; registered 14 January 2005. The Lease is a social housing lease; initially, a premium was paid for a percentage interest, with rent paid in respect of the balance retained by the freeholder.

16. The relevant parts of the Lease (insofar as pertinent to alleged breaches) are as follows:

"3.3(a) To keep the Premises in good and substantial repair decorative order and condition and whenever necessary to renew or rebuild the Premises and further as often as may be necessary to renew any of the Landlord's fixtures and fittings in the Premises or substitute new ones of equivalent quality and value to the Landlord's reasonable satisfaction (damage by fire and other risks insured under Clause 4.2 excepted unless such insurance shall be vitiated by any act or default of the Leaseholder)".

"3.3(b) Without prejudice to any other obligation upon the Leaseholder within two months after any notice from the Landlord of defects in the state of repair and condition of the Premises for which the Leaseholder is responsible (or immediately in case of emergency) to make good all such defects at the Leaseholder's cost PROVIDED ALWAYS that if the Leaseholder fails to comply with the requirement of any such notice it shall be lawful for the Landlord (but without prejudice to the right of re-entry under this Lease) or its agents employees or licensees to enter the Premises at any time after the expiration of such two months (or immediately in case of emergency) to execute such works and the cost of which including any surveyors fees and an Administration Fee towards the Landlord's expenses of 10% of the cost of the works) shall be repaid by the Leaseholder to the Landlord on demand and in default shall be immediately recoverable by action or by distress in arrear and shall carry interest calculated at the daily rate specified in sub clause 3.1".

"3.5(a) Not to make any alterations or additions to the exterior of the Premises or any alterations or additions to the interior of the Premises nor to erect any new buildings thereon nor in any way interfere with the outside of the Premises nor to remove any of the Landlord's fixtures from the Premises without the previous written consent of the Landlord such consent not to be unreasonably withheld PROVIDED ALWAYS that the Landlord may as a condition of giving any such consent or of agreeing to such require the Tenant to enter into such covenants with the Landlord as the Landlord may require in regard to the execution of any such works and the reinstatement of the Premises at the end or sooner determination of the Term".

"3.5(b) In the event of the Landlord becoming aware of a breach of Clause 3.5(a) (and in addition to any other rights and powers available to it) the Landlord may at the Leaseholder's expense reinstate the Premises or the buildings or structures within which they are situated (as appropriate) and such costs shall be immediately repaid by the Leaseholder as rent in arrear on the same basis as in Clause 3.1".

"3.8 To pay all costs charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Landlord for the purpose of or incidental to the preparation and service of Notice under Section 146 or Section 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief by the Court or otherwise incurred by the Landlord in respect of any breach of covenant by the Leaseholder hereunder".

"3.10(a) To permit the Landlord and its surveyor or agent and the Superior Landlord and its surveyor or agent at all reasonable times on notice to enter the Premises to view the condition thereof and to make good all defects and wants of repair of which notice in writing is

given by the Landlord to the Leaseholder and for which the Leaseholder is liable under this Lease within three months after the giving of such notice".

"3.10(b) If the Leaseholder shall at any time make default in the performance of any of the covenants herein contained relating to repair it shall be lawful for the Landlord (but without prejudice to the right of re-entry under Clause 5(1) of this Lease) to enter upon the Premises and repair the same in accordance with those covenants and the expense of such repairs including surveyors' fees shall be repaid by the Leaseholder to the Landlord on demand".

"*3.12 Not to carry out any works or install equipment of any kind upon the Premises the use of which the Landlord considers may cause undue noise or which may detract from the general amenity of the Premises*".

"3.17 Not to use the Premises nor permit the same to be used for any purpose whatever other than as a private residence in single occupation only nor for any purpose from which a nuisance can arise to the owners lessees or occupiers of the premises in the neighbourhood".

"3.18 Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on the Premises".

"3.21 To observe and perform at all times during the Term the covenants conditions exceptions reservations declarations agreements and stipulations and all other matters contained or referred to in the Property and Charges Registers of the Freehold Title so far as the same relate to the Premises".

17. Clause 4 provides usual covenants for the Landlord of peaceable enjoyment and to insure the Property.

18. Clause 5 contains a forfeiture clause.

19. The application specifically relies upon alleged breaches of each of these sub parts of clause 3 of the Lease.

<u>The Issues</u>

20. The issue to be determined in this case is whether there has been a breach of covenant of clause/s contained within the Lease. That requires consideration of:

(1) Are the clauses relied upon by the Applicant within the Lease?

(2) What are the facts giving rise to the claimed breach or breaches?

(3) If proven, do those facts constitute a breach of the lease?

21. The Tribunal is not concerned on this application with the seriousness of any breach, whether it has been remedied or whether any right to forfeiture for any breach has arisen and/or has waived by the Applicants. These would all be matters for the County Court if the Applicant makes a separate application for forfeiture of the Lease following service of a notice under section 146 of the Law of Property Act 1925 in reliance on any breaches found by the Tribunal.

22. The burden of proof is on the Applicant to establish the facts and that these constituted a breach of the leaseholder covenants under the Lease. The alleged breaches are in respect of the obligations on the part of the Respondent, as leaseholder of the Property.

The Law

23. The material provisions of section 168 of the 2002 Act state:

168 No forfeiture notice before determination of breach

(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 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(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 the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

24. As made plain by the Court of Appeal in *Eastpoint Block A RTM Company Limited v Otubaga* [2023] EWCA Civ 879, an application to

the Tribunal under section 168(4) is not itself an application for forfeiture of a lease. A determination under section 168(4) of the 2002 Act is no more than a declaration of whether a breach has taken place. If a declaration of breach is made, any proceedings for forfeiture or any other remedy must be pursued, if at all, in the County Court. Furthermore, whilst section 168(4) may be a step towards forfeiture, that is not its sole function. The Applicant is doing no more than seeking to obtain a determination by a specialist tribunal that may be used for a number of purposes, including (but not limited to) the service of a notice by the landlord under section 146.

The Applicant's case

25. In summary, the Applicant in its statement of case asserted that the Respondent had failed to maintain the garden and to remove unauthorised structures or items from it. This included a caravan, fire damaged windows and doors, other bulky items and gas bottles which, it says, constituted a health and safety hazard as well as a nuisance to neighbours and passersby. It says that this had continued since around 2017 and referred us to correspondence sent to the Respondent since then. We were shown a letter dated 20 January 2017 giving until 19 February 2017 to rectify. Mention was made of offsite storage facilities which might be available. It further says that, since around 2019, a large shed and a small shed have been in the garden. It says it did not consent to these structures and that they are unsafe and not compliant with the Building Regulations.

26. The Applicant further asserted in its statement of case that there is a risk of invalidating the Applicant's insurance policies and other obligations it is bound by in its capacity as landlord. We had a copy of a policy held with Penn Underwriting Ltd.

27. It is said in the statement of case that there was a fire at the Property in 2019 due to the presence of the gas bottles and this caused damage to the windows.

28. Further communication started in 2019. We had a copy of a letter dated 29 April 2019 said to have followed an inspection on 29 March 2019. Possession proceedings were threatened and a deadline of 1 July 2019 given to respond. A notice seeking possession under section 8 of the Housing Act 1988 was served with that letter, citing grounds 12, 13 and 14 of Schedule 2 of that Act. We had a copy of a further letter dated 24 June 2019 in which it seems that the Respondent had tried to telephone the Respondent but not been successful. The letter identified the need for consent to extensions and the continuing issue of the condition of the garden areas. It gave notice of a site visit scheduled for 17 July 2019. On 27 September 2019 an email was sent to the Respondent listing out various dates for individual remedial actions. This seems to follow a telephone conversation with him in which he was

willing to undertake some actions but had cited work and social/charitable commitments as being an impediment to doing everything in one go. This sentiment of being busy, and also not wanting to be told how he lives his life, was repeated in an email from the Respondent to the Applicant on the same day, 27 September 2019. This email states he knows what needs to be done and it will be. There was a further email on 30 September 2019 regarding timescales.

29. Absent remedial steps, the Injunction Order was obtained on 13 July 2020.

30. We had copies of various photographs in the bundle and a letter dated 16 July 2024 in which the Applicant's representatives wrote to the Respondent regarding the Respondent him to remedy alleged breaches of the Injunction Order. They reminded him that he may be in contempt and imposed a deadline of 30 July 2024 for remedial action. They reserved the right to bring committal proceedings.

The Respondent's case

31. There was no formal response from the Respondent. In an email to the Applicant dated 27 September 2019 he appeared to accept a breach of the Lease in principle and had agreed to remove certain items. There was a series of correspondence around that time in which dates were broached. At the site visit, whilst we reminded him that he should not give evidence to us during the inspection, he did indicate that he was not disputing that certain items needed to be removed. This was broad and did not specify what needed to be removed nor constitute a formal admission of a breach of the Lease; or, at least, we were not minded to take it as such given that the Applicant was not present and that it was a broad statement and not referenced to specific allegations or Lease provisions.

The Tribunal's determination

32. The Tribunal was required to determine the question of whether there has been a breach of covenant to the civil standard of proof, i.e., on the balance of probabilities.

33. We had sight of historical photographs showing amongst other things a caravan in the front garden, some gas canisters in the back garden, and some sheds or other similar structures.

34. We had the benefit of inspecting the site, in particular the front garden, side walkway and back garden. We observed that substantial clearance had taken place. The Respondent told us that this had been undertaken in the preceding few months with a view to a future sale of the Property. We observed that the caravan had been removed from the site; in its

place on the front gravel was a digger which we were told was under temporary hire. The rear garden had been cleared, with all vegetation having been taken down to an earth bed, the sheds having been removed and other items from the photographs such as chairs having been removed. The gas canisters were no longer lying loose in the garden, but we were told that two LPG canisters were stored within a small wooden storage container for domestic use given the absence of mains gas to the Property. The only items remaining in the back garden were a larger shed to the rear, which we were told had been in place for some 18 years, and some building materials stacked nearby awaiting works. We observed the rear wooden frame windows, which we were told were pending replacement.

35. It was clear from the site inspection that the site had materially changed from the time that the application was made, and the statement of case and supporting photographs were submitted to the Tribunal. We had no submissions on the current condition of the Property to understand what, if any, continuing breaches might be alleged.

36. We are grateful to the parties for having given consideration to whether continuation of the hearing into the second day was a necessary use of their time and that of the Tribunal. In view of the withdrawal of the application, it is not necessary for us to make findings on each allegation of breach of the Lease. Our observations from the site inspection make clear that, at least in some respects, historical breaches had been rectified. We had insufficient information without further submissions or evidence by which to determine the impact on third parties, such as neighbours or insurers. Our decision could only have determined matters at the time of the hearing; by which time there had been a material change to the condition of the Property. Given these points, we considered it to be just to consent to withdrawal of the application under Rule 22 of the Procedural Rules.

37. For the avoidance of doubt, this decision makes no determination that any conduct by the Respondent amounted to a breach of covenant within the Lease. It is not an order for forfeiture of the Lease or payment of any sum of money.

38. No application for a refund of fees was made and the Tribunal makes no order in respect of the same. The Respondent has said that it will rely on clause 3.8 of the Lease in respect of its costs of these proceedings. No counter application was made, for example under section 20C of the Landlord and Tenant Act 1985, to limit such recovery therefore no order is made in respect of the same.

Name: Judge A. Arul Date: 23 September 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).