



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

Case Reference	: HAV/23UB/LBC/2025/0608
Property	: 6 Brompton House, East Approach Drive, Cheltenham GL52 3JE
Applicant	: Brompton House Property Limited
Representative	: Caroline Macklin
Respondent	: Gillian Holder
Representative	: Andrew Turner, Hughes-Paddison Solicitors
Type of Application	: Determination of alleged breach of covenant (s168 Commonhold and Leasehold Reform Act 2002)
Tribunal	: Judge R Cooper Ms C Barton MRICS Ms T Wong
Hearing	: 15 July 2025 Havant Justice Centre (CVP)
Date of decision	: 31 July 2025

DECISION

Summary decision

The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, the following breaches have occurred (full particulars of which are set out below):

From 21 May 2024 to 31 July 2024, in breach of Clause 3.14 of her lease, the Respondent allowed or permitted Donna Holder to cause a nuisance and annoyance to the occupiers of neighbouring flats.

Background to the Application

1. Brompton House Property Limited ('the Applicant') is the freehold owner of Brompton House, East Approach Drive, Cheltenham GL52 3JE ('Brompton House'). Brompton House comprises eight self-contained flats all held under long leases. Most are occupied by the leaseholders.
2. Gillian Holder ('the Respondent') is the leasehold owner of 6 Brompton House ('the Property').
3. On 8 April 2025, the Tribunal received an application from the Applicant seeking a determination under s168(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') that the Respondent has breached the terms of his lease.
4. Directions were issued to the parties on 28 April 2025. Both parties complied with the directions.
5. No inspection of the Property took place. Neither party requested it, and it was not considered necessary for a fair decision to be made by the Tribunal.

The issues for the Tribunal

6. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent is in breach of the covenants in her lease.
7. A determination by the Tribunal under section 168(4) of the 2002 Act is one of the requirements before a notice under section 146 of the Law of Property Act 1925 ('a section 146 notice') can be served. A section 146 notice is the first step in the process of forfeiting the Respondent's lease (s168(1)). As such, a finding of the Tribunal that a breach has occurred is a matter of some significance.
8. In summary, the Applicant alleges the Respondent is in breach of the terms of her lease on numerous occasions between April and July 2024 by allowing her daughter to cause a nuisance and annoyance to the other residents in breach of Clause 3.14 of the lease by shouting, screaming, stomping, using obscenities, throwing things, talking conspiratorially about other residents, deliberately damaging a carpet and accusing residents of stealing from her. The Applicant also says the Respondent admitted the breaches. The Applicant in submissions to the Tribunal also relied on Clause 1.34.

9. It is for the Applicant to demonstrate on the balance of probabilities that the Respondent has breached the terms of her lease in this way or had admitted the breach.

The Documents

10. The Tribunal considered the documents in a PDF bundle prepared by the Applicant comprising 179 pages. Where documents are referred to, they are referenced by the page number on the document '[]'.

The hearing

11. Caroline Macklin, one of the three Directors of the Brompton House Property Limited, attended to represent the Applicant. Witnesses for the Applicant, Petra Wise (Flat 2), Shaun Hancock (Flat 1), Chris Bate-Williams (Flat 4), Jane Ann Hayes (Flat 5) and Amy Savidge (Flat 8) also attended to give evidence.
12. The Respondent, Gillian Holder attended with her daughter Donna Holder. The Respondent was represented by Andrew Turner.
13. The parties confirmed that no further documents had been sent to the Tribunal.
14. For the Respondent, Mr Turner, confirmed that he did not wish to cross examine the witnesses called by the Applicant.
15. The Respondent was cross examined by Caroline Macklin, and the Tribunal then heard submissions.
16. The Tribunal acknowledges and is grateful to the parties and their witnesses and representatives for the respect and courtesy shown to each other during the hearing.

Discussion and conclusions

17. The purpose of bringing proceedings under section 168(4) of the 2002 Act is to enable a landlord of a long lease of a dwelling to serve a section 146 notice to forfeit the lease for breaches of covenant by the tenant. In other words, it is the first step towards the freeholder taking possession of and depriving the Respondent of the Property. The provisions of section 168 are set out in full in the Appendix to this decision.
18. If proceedings are brought under s168 of the 2002 Act, the Tribunal is required to determine whether the tenant has committed an actionable breach of covenant. The Tribunal's jurisdiction under section 168(4) is limited to making a finding of fact on whether or not a breach has occurred. The Tribunal's jurisdiction does not extend to deciding whether any breach found has been remedied. That is a question for the Court in any subsequent action for forfeiture of the lease (*Swanston Grange (Luton) Management Limited v Eileen Langley-Essen* (LRX

12/2007)). However, Judge Hutchinson in that case confirmed that the Tribunal can decide whether the landlord is estopped from asserting the facts on which the breach of covenant is based.

19. The Applicant's case is set out in the Application [2] to [13] and the witness statements of Caroline Macklin, Petra Wise, Chris Bate-Williams, Jane Ann Hayes, Shaun Hancock and Amy Savidge dated between 7 and 28 May 2025 [67] to [93] together with the supporting documentary evidence.
20. In summary, the Applicant says the Respondent breached clause 3.14 of her lease by
 - (a) permitting her adult daughter, Donna Holder, (who had a history of mental ill health) to reside at the Property,
 - (b) between April and July 2024 allowing her daughter to cause a nuisance, annoyance, disturbance or inconvenience to other residents (or failing to take action to prevent her from doing so),
 - (c) allowing her daughter to return to the property in February or March 2025.
21. The Applicant also says the Respondent admitted the breaches on 14 May 2024, 19 May 2024, 31 May 2024, 23 June 2024 and 17 July 2024.
22. The Respondent's response is set out in the witness statements of Gillian Holder and her daughter Donna Holder [143] to [167] and supporting evidence.
23. The Respondent denies any breach of covenant and denies admitting any breach.
24. In summary, she says that her daughter, who had had a breakdown in 2020 and had been sectioned under the Mental Health Act at the time, had been well since discharge that same year. Donna Holder had lived at the Property without any problem since 2021, had been working as a lecturer of psychology at the University of Wales Trinity St David from 2022 to 2024, but in April 2024 suffered a mental health episode. She moved out of the Property on 31 July 2024, and between those times, the Respondent had done all she could reasonably have done to persuade her daughter to leave the flat as her husband was critically ill and died on 6 July 2024 [144].
25. In reaching its decision the Tribunal considered the totality of the evidence in the round, the documents, oral evidence and the submissions made by Mrs Macklin and Mr Turner.
26. The Tribunal is satisfied that the Official Copies of the Register of Title demonstrate that the Applicant is the freehold owner of Brompton House (which is subject to the leases for apartments 1 to 8) under Title

GR279836 [24]. The Official Copies also show that Gillian Holder is the leasehold owner of the Property under Title GR267577 [20]. The Official Copies show that the Respondent's leasehold title is unencumbered by any mortgage or charge.

27. Brompton House is a large detached Victorian house built on four floor that was converted into 8 self-contained properties in or around 2003.
28. The Property comprises a first floor of Brompton House, to the rear of the property, overlooking the garages. The Property comprises two bedrooms (one with an ensuite bathroom), a living room, separate kitchen and shower room. The living room benefits from a small iron balcony.
29. The lease of the Property is dated 20 November 2003 and was made between Norman & Rachel Jones and Roger Lewis & Jennifer Monica Styles. The term is for 999 years from 1 January 2003 [28] and [29]. The lease was assigned to the Respondent and her late husband, Robert Holder, on 2 July 2024. Title of the Property passed to Gillian Holder on her husband's death [21].
30. Clause 3 of the lease contains the Lessees covenants. The Respondent covenants with the Lessor as follows:
 - 3.14 *not to do on the Premises or bring or allow to remain upon the Premises anything that may be or become or cause a nuisance annoyance disturbance or inconvenience injury or damage to the Landlord his tenants or the owners or occupiers of adjacent property or any Neighbouring Property*
31. In addition, the Applicant also relies on clause 1.34 which provides:
 - 1.34 *any covenant by the Tenant not to do an act or thing shall be deemed to include an obligation not to knowingly permit or suffer such act or thing to be done by another person*
32. In relation to the breaches alleged, the Tribunal determines that the Respondent has breached Clauses 3.14 and 1.34 of the lease as more specifically set out below in paragraphs 39 and 61. It makes that determination for the following reasons.
33. The Tribunal is satisfied that Gillian Holder did not reside at the Property but lived in Bournemouth with her now late husband.
34. The evidence of the Applicant's witnesses was not challenged by the Respondent. They variously describe being disturbed by actions of Donna Holder from about mid-April 2024 until she left on 31 July 2024.
35. Whilst there is no medical evidence regarding Donna Holder's mental health, it is not in dispute between the parties that she experienced an episode of mental ill-health from about mid-April 2024, described by Mr

Turner as a mental health crisis. Donna Holder says she had a breakdown [165].

36. The Tribunal makes no finding as to the nature of Donna Holder's mental health condition or whether there is any likelihood of a recurrence. There is insufficient evidence to do so.
37. It is not in dispute that Donna Holder left the property on 31/07/2024.
38. The documentary evidence at the time of the events in question clearly indicate that initially the other residents of Brompton House were concerned about Donna Holder's well-being, behaviour and state of health. For example, Mr Bate-Williams at [85], Ms Jane Hayes at [88] and Caroline Macklin at [95].
39. However, taking the evidence as a whole, the Tribunal finds as a fact on the balance of probabilities that on various dates between late April and 31 July 2024 the other residents of Brompton House were variously disturbed or caused an annoyance by Donna Holder doing the following acts:
 - Shouting loudly and screaming,
 - Singing loudly, including songs mentioning Chris Bate-Williams' initials on 23 June 2024 [88],
 - Talking loudly outside other resident's flats either on, or pretending to be, on the telephone,
 - Walking in a heavy manner in the living room and on the balcony to the Property,
 - Crashing, banging and moving furniture late at night or in the early hours of the morning, and
 - Deliberately pouring milk onto the carpet of the communal hallway.
40. The Tribunal makes those findings having given weight to the statements of the Applicant's witnesses which were not challenged. They were consistent with each other, and were supported by emails and messages contemporaneous to the various incidents reported.
41. The Tribunal accepts Mr Turner's submission that there is nothing in the evidence to suggest that Gillian Holder, herself, has done anything in the flat to cause a nuisance or annoyance to the neighbouring residents. Gillian Holder was not residing at the Property between April and July 2024, and there was no evidence of her visiting. Indeed, the evidence shows that she was caring for her husband in Bournemouth who was critically ill and died on 6 July 2024.
42. It also accepts the Respondent's submission that no weight should be given to the assertion that she breached Clause 3.14 by allowing Donna Holder to move into the flat in 2021 knowing that she would become a nuisance or annoyance. No evidence to support such a supposition has been provided by the Applicant.

43. The Tribunal does not accept the assertion that Gillian Holder breached Clause 3.14 of the lease by allowing Donna Holder to move into the Property in 2021 knowing of her mental health issues for the following reasons.
- (i) Although Donna Holder may have been sectioned under the Mental Health Act 1983 in 2019 or 2020, there is no evidence before the Tribunal demonstrating that she remained mentally unwell on discharge in 2020, or that her condition meant there was a propensity for her to relapse. Donna Holder says 2019 was her first episode of mental ill-health following a series of life stressors [164] and that she has now been given a diagnosis of complex post-traumatic stress disorder. She questions her initial diagnosis of psychosis.
 - (ii) The evidence shows Donna Holder has lived at the Property since 2021. She is described by Caroline Macklin as having lived quietly and being a 'model resident' from then until 2024 [101].
 - (iii) Mrs Holder also confirms that as far as she was aware, Donna Holder had recovered [144].
 - (iv) The Tribunal finds that there is no evidence in 2021 to suggest that Gillian Holder was on notice that Donna Holder might have a further relapse.
44. As to the events between April and July 2024, the Tribunal finds there to be ample evidence that Donna Holder disturbed and caused annoyance to other residents of Brompton House by for example shouting, being heavy footed in the flat and on the balcony of the Property, and by singing (as more particularly set out below).
45. However, the Tribunal is satisfied that as Gillian Holder was not resident at the Property she could not have been aware of any of disturbance or incident until she was notified. She could not, therefore, be said to have *'allow[ed] to remain on the Premises anything that may....cause a nuisance annoyance disturbance or inconvenience...'* until she was made aware any such problem existed.
46. The Tribunal finds the first notification of any disturbance by Donna Holder given to Gillian Holder was on 14 May 2024, when the directors of Brompton House Property Limited advised by email the nature of the disturbances and requested action be taken [101]. Although Caroline Macklin says she spoke by telephone with her on 6 May 2024 this appears to be a report of concern about Donna Holder's mental health [69].
47. It is clear from the witness statement and her submissions to the Tribunal that the Applicant believed that Gillian Holder could arrange for Donna

Holder's enforced admission to hospital and/or immediate eviction from the property in order that the disturbances ceased.

48. Mr Turner, in submissions, says Gillian Holder did all she reasonably could including by taking legal advice, seeking the assistance of Jess, Donna Holder's daughter, contacting the police and mental health services.
49. As to the Respondent's ability to simply arrange for Donna Holder to be hospitalised, the Tribunal rejects that submission. Whilst it is the case that a family member can request a mental health assessment, so also can the police and members of the public. A person can be detained for the purposes of a mental health assessment, if the necessary threshold criteria are met (for example that there is an immediate and significant risk of mental or physical harm to the patient or other people). The Tribunal is satisfied that the police were contacted on 6 May 2024 and again on or around 22 July 2024. Officers visited Donna Holder on 24 July 2024. She was not detained by the police, nor were doctors and an approved mental health practitioner called, from which the Tribunal inferred the police were not satisfied the threshold criteria for detention under the Mental Health Act had been met.
50. In relation to the Respondent evicting Donna Holder, there is no documentary evidence before the Tribunal regarding the nature of Donna Holder's occupation of the Property. Based on its understanding of residential landlord and tenant law, the Tribunal was satisfied on balance that she would either be an assured shorthold tenant or a licensee, depending on the nature of her agreement with Gillian Holder.
51. However, whatever the nature of Donna Holder's legal right of occupation, the Tribunal accepts Mr Turner's submission that Gillian Holder could not simply change the locks and evict her without due process. That would have been a breach of civil law (either under the Protection from Eviction Act 1977 or the Housing Act 1988) and, potentially, also a criminal offence. As Donna Holder had exclusive possession of the Property, the Tribunal was satisfied that it was more likely than not that Gillian Holder would have needed to take proceedings in the County Court following the service and expiry of the correct legal notice. It is satisfied that to gain possession of the Property by this means would potentially take several months.
52. The Tribunal accepts that Gillian Holder was in a difficult position and was understandably pre-occupied with caring for her husband. However, the Tribunal concluded having considered the totality of the evidence that she did not do all she reasonably could do *'not to....allow to remain upon the Premises anything that may....cause a nuisance annoyance disturbance or inconvenience....'*
53. The Tribunal finds that once Gillian Holder was made aware of the disturbances to neighbouring residents, in order to avoid a breach of the lease term 3.14 it was incumbent on her to take immediate action with e

view to removing Donna Holder from the Property to prevent the nuisance or annoyance from continuing.

54. The Tribunal finds that Gillian Holder did make some attempts to persuade her daughter to seek help and to leave the Property. It is satisfied that she also tried to get help from Donna Holder's daughter.
55. Although no supporting documentary evidence has been provided, the Tribunal has no reason to doubt that Gillian Holder did contact a solicitor. There is evidence that she also was in contact with the mental health services and the police. The Tribunal also finds that Gillian Holder sent messages to Donna Holder asking her daughter to move out (for example on 19 May 2024 [150]). However, it was not until the 19 June 2024 that she appears to have indicated that she might have to evict her [154].
56. When considering whether those actions were sufficient as Mr Turner says, the Tribunal finds the one thing that Gillian Holder did not do was serve the appropriate legal notice on Donna Holder as the first step to terminate her right to occupy the Property. That notice should have been served within a reasonable time of her becoming aware of the degree of disturbance and annoyance being caused to neighbouring occupiers.
57. Such notice would be the necessary first step to bringing legal proceedings to remove Donna Holder from the Property. It would then be a matter for the Court (once proceedings were issued) to decide whether the necessary grounds were established to make a possession order, or whether to do so would breach Donna Holder's rights in the light of her mental health issues.
58. The Tribunal is satisfied that it would be reasonable for Gillian Holder to seek legal advice about the required action that was necessary. It finds in the circumstance a period of 7 days from the date on which she received the Director's email of 14 May 2024 would be a reasonable period within which to assess for herself Donna Holder's state, seek legal advice and instruct a solicitor to serve notice if she was unable to do so herself.
59. The Tribunal, therefore, concluded that from 21 May 2024 until the date on which Donna Holder left on 31 July 2014, Gillian Holder did breach clause 3.14 by allowing her daughter to remain on the premises whilst she was creating a nuisance or annoyance to other residents without taking adequate steps to prevent the disturbance continuing.
60. The Tribunal finds the following acts complained of amounted to a breach of clause 3.14 of the lease as the Tribunal is satisfied that they caused a nuisance, disturbance or annoyance to the occupiers of neighbouring properties in Brompton House:
 - 30 May 2024 – Donna Holder shouting from the balcony of Flat 6 at 4pm and talking loudly at 10pm
 - 16 June 2024 – Donna Holder talking loudly about funerals outside the flat of Amy Savidge (the floor above) in a disturbing manner

- 23 June 2024 – Donna Holder singing loudly using the initials CBW (those of her downstairs neighbour Chris Bate-Williams), and shouting at neighbours when asked to keep quiet
 - 30 June 2024 – music being played at 3.22am
 - 14 to 16 July 2024 – loud stomping late at night and early hours of the morning
 - 16 and 17 July 2024 – Donna Holder talking loudly outside the doors to Flats 4 and 8 either on, or pretending to be on, the phone
 - 20 July 2024 – Donna Holder talking loudly on the telephone on the balcony at 6.30am and at 7.30am, having been asked to be quiet, pouring milk from a carton onto the communal hallway carpet
 - 21 July 2024 – Donna Holder sending accusatory email messages to Caroline Macklin, Amy Savidge and Jane Ann Hayes variously accusing them of theft, changing locks, damage to property or having multiple representations of themselves.
61. The Tribunal does not find texts or emails sent by the Respondent on 14 May 2024, 19 May 2024, 31 May 2024, 23 June 2024 or 17 July 2024 amount to admissions of a breach. As set out above, the Tribunal finds 14 May 2024 to be the first occasion on which the Respondent had been given notification of the disturbances that had been occurring since late April. The Tribunal finds the remainder of the texts to amount to apologies for Donna Holder's behaviour which was due to her ill health.
62. As to whether Gillian Holder has breached either Clause 3.14 or 1.34 of the Lease by allowing Donna Holder to return to live at the property in or around February 2025, the Tribunal finds there to be no breach. Save for expressing apprehension that Donna Holder might have a further mental health crisis, there is no evidence that the occupiers of neighbouring properties have been disturbed or that Donna Holder has caused any fresh nuisance or annoyance to any of the neighbours.

Conclusions

63. Having made the findings of fact set out above, the Tribunal determines that the Respondent breached the covenants in her lease dated 20 November 2013 as follows:
64. In breach of clause 3.14 of the lease, between 21 May 2024 and 31 July 2024 the Respondent *'allow[ed] to remain upon the Premises anything that may be or become or cause a nuisance annoyance disturbance or inconvenience injury or damage to the Landlord his tenants or the owners or occupiers of adjacent property or any Neighbouring Property.'*
65. Having made that determination, the Tribunal is minded to order the Respondent to pay the Applicant the tribunal fees paid by the Applicant in the sum of £330. The Tribunal considers it reasonable for the Respondent to reimburse those fees as the Applicant has succeeded in their

application. Any objection to that order must be made in writing within 14 days of the date this notice is sent to the parties. If no objection is received, the Order will stand, and payment must be made within 28 days.

Signed: Judge R Cooper

31 July 2025

Note: 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 to the First-tier Tribunal at the Regional office that 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, and should be sent by email to rpsouthern@justice.gov.uk.
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.

Appendix

The Law

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

"(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.

