



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

Case reference	: HAV/OOMW/LBC/2024/0608
Property	: 85 Monkton Street, Ryde, Isle of Wight, PO33 2BY
Applicant	: Ashlynn Brett
Representative	: None
Respondent	: Beverly Towner
Representative	: None
Type of application	: An allegation of breach of covenant: Section 168(4) Commonhold and Leasehold Reform Act 2002
Tribunal members	: Mr R Waterhouse MA LLM FRICS
Date and Venue of hearing	: 4 September 2025- Determination on Papers- First-tier Tribunal (South)

Full DECISION

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Decisions of the Tribunal

1. For the reasons set out below, the Tribunal finds that the Applicant Landlord's allegation that the Respondent leaseholder has breached of the Lease under two provisions; that of paragraph 9 of the lease and Second Schedule paragraph 5 of the lease.

The Background

2. The Applicant provided a bundle of 44 pages from which the tribunal made its determination.
3. The Applicant made an application dated 1 December 2024, received on the 5 December 2024, requesting that the tribunal make "an order that a breach of covenant or condition in the lease has occurred."
4. The property the subject of the application is a 2-bedroom ground floor flat, in a converted semi-detached house that itself comprises two flats in total.
5. The application notes the tenant does not admit to the alleged breach of covenant.
6. The application is made by the freeholder which extends to the "upstairs" flat number 85A.
7. The alleged breach concerns the "an undesirable design and colour scheme that affects the front of the property."
8. Specifically; that section 9 of the Lease states "Not to make any alterations or additions to the exterior or interior of the property without the prior approval in writing of the lessor such approval not to be unreasonably withheld."
9. Further that the Second Schedule (5) states "not at any time to interfere with the external decoration or painting of the building except as may be unavoidable". The applicant states; "alterations to the external decoration have been made without written permission and approval, specifically by replacing a window with a completely different color (sic) and design (from white to green frames). "

DIRECTIONS

10. Directions were issued dated 2 April 2025. The Directions provided that the Applicant shall by the 11 April 2025 provide the tribunal with copies of entries on the registers of the Applicants title and the Respondent's leasehold title. Additionally, the name and address of any mortgagee of the leasehold title.
11. Further the Directions provide that the Applicant by 23 April 2025 shall send the Respondent; a signed and dated statement of truth copies of all relevant documents, and any witness statements.
12. By the 14 May 2025 the Respondent to send the applicant; a signed and dated statement of truth, copies of relevant documents to be relied upon and any witness statements."
13. The Applicant is permitted a Reply by 28 May 2025, the Applicant may send a concise reply to the Respondent's case to be included in the determination bundle.

The Lease

14. The tribunal was furnished with a copy of the lease dated 26 November 1999.
15. The following provisions of the lease are relevant to this application.

"(2) The Lessor has agreed with the Lessee to demise to the Lessee the Property hereinafter described...

 - (1) The Lessor hereby demises unto the Lessee ALL THAT Ground Floor Flat known as 85 Monkton Street Ryde aforesaid and shown edged red on the plan annexed hereto being the ground Floor Flat and the external and internal walls relating to the Flat but not including the foundations and roof but including the floors and joists upon which the said floors are laid and the ceiling of the flat but not the joists to which they are attached and all windows and doors of the flat and the garden/patioat [sic] the rear shown edged in red...."
 - (2) The Lessee hereby covenants with the Lessor and the Owners of the other Flat in the Building that the Lessee and his successors in title will at all times observe the restrictions and stipulations on his part herein contained.
 - (3) The Lessee hereby covenants with the Lessor 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 property and any part thereof or on the Lessor or the

occupier thereof respectively PROVIDED ALWAYS that where any such outgoings are charged upon the Building and without apportionment the Lessee shall be liable to pay one half only of such outgoings.

(3) (a) To repair and keep the exterior and the interior of the Property including drains soil and other pipes and sanitary and water gas electrical and central heating apparatus ... in good tenantable repair.”

(9) Not to make any alterations or additions to the exterior or interior of the Property without the prior approval in writing of the Lessor such approval not to be unreasonably withheld”.

The Second Schedule before referred to

(5) “Not at any time to interfere with the external decoratio [sic] or painting of the Building except as may be unavoidable.”

The Legislation

16. Section 168 of the 2002 Act provides that:

(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.

(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...

Applicant’s Submission

17. The Applicant submission comprises the Application form, and a statement dated 23 April 2025. The statement details the background to the works that have led to the allegation of breach of covenant and extracts of emails exchanged between the Applicant and the Respondent.

Respondent Submission

18. There is no statement from the Respondent. There are however copies of e mails between the Respondent and the Applicant. Within the bundle there is a letter from the Respondent to the Applicant which states “we asked your sister who confirmed it was ok to replace the window as the previous one was leaking water, but I understand now she did not have authority to action this.”
19. The statement also contained an offer to enter into dialogue to resolve the issue in particular with reference to the colour of the windows.
20. The tribunal has a copy of a reply by the Applicant proposing the painting of the windows white by a professional as a way of resolving the issue.
21. The tribunal is also in possession of a string of e mails between the Applicant and the Respondents son, the string shows dialogue towards the painting of the windows white by the Respondent but concludes without any indication as at the date of the last e mail 29 July 2025 that the painting has been done.

The Determination

22. The Tribunal reached its decision after considering all the material in the bundle. Examination of the lease provides the extent of the “Building” which is the structure that contains the two flats. The lease also provides the extent of the demised premises described in the lease as “Property”. Of importance to the tribunal is the extent of the property demised and by implication that which is not. The extent of the demise is provided for by clause 2(1) shown above.
23. The demise of the “Property” is not without reservation. The “Property” demise is not detailed, the demise talks of the interior and exterior walls. It does not mention windows.

24. In the absence of specifically demising the windows, the tribunal interprets the lease. It is clear from the extent of the demise with reference to ceiling and joists, under straight forward interpretation, the tribunal determines, the aim was to demise a section of the building with all that it encompasses. Under this interpretation the windows form part of the demised “Property”.

25. Whilst the tribunal finds, demise of the windows is included in the demise, this demise is not without limitation on how the Respondent may treat them. The lease reserves under;

“(9) Not to make any alterations or additions to the exterior or interior of the Property without the prior approval in writing of the Lessor such approval not to be unreasonably withheld”.

The Second Schedule before referred to

(5) “Not at any time to interfere with the external decoratio [sic] or painting of the Building except as may be unavoidable.”

26. The Applicant submits that alterations; that is changing the windows from white to green has occurred and there is no evidence of consent being sought nor given in advance.

27. Whilst the provision says that consent would not be unreasonably withheld, none the less an alteration has occurred and consent, it is acknowledged by the Respondent, had not been sought in advance of that alteration. The tribunal therefore finds a breach of the following provisions have occurred. Specifically (9) with the alteration of the windows and in respect of 5 the change of colour constitutes “interference” with the external decoration.

(9) Not to make any alterations or additions to the exterior or interior of the Property without the prior approval in writing of the Lessor such approval not to be unreasonably withheld”.

The Second Schedule before referred to

(5) “Not at any time to interfere with the external decoratio [sic] or painting of the Building except as may be unavoidable.”

25. The tribunal considering the Second Schedule paragraph 5 determines that changing the windows colour, constitutes works that “interfere with the external decoratio [sic]”. So the alterations are in breach of this covenant also.

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).