



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

Case Reference : HAV/40UD/LBC/2024/0604

Property : 20 St Pauls House, Station Road, Wincanton,
Somerset, BA9 9QD

Applicant : Frays Property Management (No 5) Limited

Representative : Andrew Duncan

Respondent : Victor Watts

Representative :

Type of Application : Breach of Covenant S168(4) Commonhold
and Leasehold Reform Act 2002

Tribunal Judge : Regional Surveyor Clist MRICS

Date of Directions : 24 September 2025

DECISION

Background

1. The Applicant seeks an Order under S168 (4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached covenants in their lease outlined in parts 5 and 13 of the application form.
2. The application was received on 12 November 2024.
3. Directions were issued on 25 March 2025. Those Directions indicated a preliminary opinion that the application was likely to be suitable for determination on the papers. There have been no objections to this approach.
4. Directions were issued 23 May 2025 by Judge H Lumby following a review of the bundle, directing that the matter will be determined on the papers.
5. The Tribunal has before it a bundle of documents which includes additional documents supplied by the Respondent said not to have been included within the bundle by the Applicant.

The Law

5. The relevant law to this application may be found in section 168 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”).

The Applicant’s Case

6. It is said by the Applicant that it became the freeholder of St Pauls House on 7 December 2012. The Respondent, Mr Watts, is the leaseholder of Flat 20 since 12 August 2004.
7. The Respondent is said to be in breach of clause 3.8 of the lease date 12 August 2004:

3.8 Registration of Assignments etc

Within four weeks next after any transfer assignment charging or parting with possession (whether mediate or immediate) or devolution of the Premises to give notice in writing of such transfer assignment subletting charging parting with possession or devolution and of the name and address and description of the assignee sublessee chargee or person upon whom the relevant Term or any part thereof may have devolved (as the case may be) and to deliver to the Lessor or his Solicitors within such time as aforesaid a verified copy of every instrument of transfer assignment charging or devolution and every probate letters of administration order of the Court or other instrument effecting or evidencing the same and to pay to the Lessor or his solicitors a reasonable fee plus Value Added Tax (if applicable) for the registration of every such notice

8. The Applicant asserts that its managing agent, Eaves Property Management Services Limited received five different tenancy agreements dated between 28 September 2013 and 16 August 2023 from the Respondent on 4 September 2024. It is said by the Applicant that on each occasion, and potentially more, the Respondent did not provide notice within four weeks or at all, nor did the Respondent provide verified copies of the tenancy agreements given within four weeks or at all.
9. The Applicant provided supporting evidence of copies of the five tenancy agreements, proof of delivery from Royal Mail to Eaves Property Management Services Limited and a photograph of the post marked envelope. The tenancies are dated as follows:
 - Tenancy 1 - 28 September 2013 – 27 September 2014
 - Tenancy 2 – 28 September 2014 – 27 September 2015
 - Tenancy 3 – undated although with a new tenant's name. Page 2 seemingly missing.
 - Tenancy 4 – 1 July 2022 – 30 June 2023
 - Tenancy 5 – 16 August 2023 – 15 August 2024
10. The Applicant further provided a copy of an FTT Property Chamber (Residential Property) decision dated 19 February 2020 in respect of 'The Bath Building, Bath Road, Swindon, SN1 4AT' (case reference CHI/00HX/LBC/2019/004). It is said by the Applicant that they are also the equitable owners of a connected company that own the freehold of the Bath Building. The Applicants state that a similar issue arose in that case and as such

they believed that leaseholders were obliged to notify them once a tenancy is entered into within 4 weeks of that date.

The Respondent's Case

11. The Respondent explains that he purchased Flats 20 & 21 at St Pauls House on 12 August 2004, funded by buy to let mortgages. It is said that no leaseholder was charged for subletting fees within the first 8 years until the Applicant became the Freeholder in 7 December 2012. The Respondent states that since the Applicant has requested subletting charges, the same has been charged to his ground rent account and without any invoices or explanation as to what the charges comprise nor are they actively pursued for payment until a seller wishes to sell. As such, the Respondent states that he paid charges under duress when he sold 21 St Paul's House on 9th April 2018 in order for the freeholder to release the property.
13. It is said that in 2017 the leaseholders formed a Right to Manage (RTM) company to overcome issues with charges and service received from the various in-house companies of the Applicant. It was believed that the Applicant would only be responsible for collecting ground rent after the formation of the RTM.
12. The Respondent refers to clauses 3.7.2, 3.7.3, 3.7.4 and 3.8 in relation to underletting. Clause 3.7.2 of the lease provides:

3.7.2 not to underlet part in any circumstances or the whole of the Premises

except with the Landlord's prior consent save that such consent shall

not be required in respect of an Assured Shorthold Tenancy
13. The Respondent refers to having taken legal advice, including an excerpt from advice received from the firm that originally drafted the lease. Mr Watts states that his understanding of clause 3.7.2 is that consent is not required in respect of an Assured Shorthold Tenancy. The excerpt of legal advice includes the author stating that assignment is not relevant to the matter and they cannot find reference to subletting fees.
14. By letter dated 20 June 2016 to Mr Nigel Burnand, Director of Hazelvine Ltd, Mr Watts quotes legal advice obtained by Bar Pro Bono to which having broken down clause 3.8 interpreting its construction in parts, opines:

"The Leases provides that Mr Watts may sublet the flats on assured shorthold tenancies without the consent of Fray's (clause 3.7.2)"...and ... "it does not require, in my opinion, Mr Watts to send Fray's a copy of the subtenancy agreement, as an AST agreement is not, an 'instrument of transfer assignment charging or devolution' or a probate instrument".
14. Mr Watts seemingly adopts the aforementioned legal advice throughout his letter to Mr Burnand to which he questions the validity of the charging of the

subletting fees in accordance with the lease terms and the justification and reasonableness of the said fees. It is said that the letter remains unanswered by Mr Burnand.

13. The Respondent, Mr Watts, explains that he had requested from Eaves Property Management direction to the relevant Lease provision within the lease that allows for 'subletting fees' but had not received a response.
14. The Respondent's evidence includes copies of correspondence relating to requests for various levels of subletting fees from the Applicant and its advisers.
15. The Respondent refers to a number of other matters not relevant to the subject of this decision. This includes two previous decisions of this Tribunal, the first dated 9 May 2016 (CHI/40UD/LIS/2015/0035), the second dated 7 November 2017 ((CHI/40UD/LSC/2017/0031) relation to service charge determinations. The Respondent claims that the Applicant induced leaseholders to withdraw the latter application.
16. The Respondent has included a response to the Applicant's 'new statement of case' dated 5 April 2025 whereby he disputes the Applicant's evidence that on the 4 September 2024 the Applicant's agent, Eaves Property Management Services received copies of five tenancy agreements dated between September 2014 and August 2023 from Mr Watts. The Respondent claims he had sent two copies of a three-page letter to the business address of Eaves Property Management Services and to the correspondence address of its director. Mr Watts includes copies of the letters and proof of postage on 3rd July 2024 at a cost of £7.95.
24. Furthermore, the Respondent states that the clause contained in the lease subject to the decision relied upon by the Applicant (CHI/00HX/LBC/2019/004) can be distinguished from clause 3.8 of the subject lease as the former refers specifically to tenancy agreements.

The Applicant's Reply

25. It is said by the Applicant that the Respondent has not addressed the question put to the Tribunal, which can be broken into two parts. The first part being whether the Respondent is required under covenant to provide notice to the Applicant that his property has been sublet and produce a copy of such tenancy agreement within a specified period and secondly whether the covenant has been breached.
26. The Applicant denies the allegation made by the Respondent that a former legal advisor encouraged fellow leaseholders to withdraw their application for a service charge determination by this Tribunal in November 2017 (CHI/40UD/LSC/2017/0031) and states the issue is of no relevance to the subject application.

Decision

27. It is clear that a dispute on the matter of subletting and associated charges between the parties has been ongoing for several years. Mr Watts has provided several documents evidencing such including decisions of this Tribunal relating to the determination of service charges and various demands and communications relating to subletting charges, in particular.
28. The scope of the application, however, is limited to the interpretation of Clause 3.8 of the lease and whether Mr Watts has breached such.
29. As such, I decline to make a finding as to whether the Applicant induced Leaseholders to withdraw their application for the determination of service charges in 2017 with respect to case reference CHI/40UD/LSC/2017/0031 as nothing turns on the event with respect to this application.
30. It is noted that Mr Watts refers to clause 3.7.2 in conjunction with clause 3.8. Clause 3.7.2 is plainly explicit in stating that prior consent shall not be required in respect of an Assured Shorthold Tenancy.
31. I do not find that Clause 3.8 is contradictory to clause 3.7.2. Clause 3.8 does not state that the lessee does not have permission to sublet the property.
32. Clause 3.8 rather provides for the circumstances as to when the lessee is to notify the freeholder of any assignment or parting of possession etc. The issue is whether subletting / underletting falls within the meaning and scope of clause 3.8, requiring notification to the landlord. The wording of the first part of the clause provides for a list of various forms of assignment or parting of possession:

“Within four weeks next after any transfer assignment charging or parting with possession (whether mediate or immediate) or devolution of the Premises to give notice in writing of such transfer assignment subletting charging parting of possession or devolution and of the name and address and description of the assignee sublessee charge or person upon whom the relevant Term or any part thereof may have devolved (as the case may be)…”
33. The wording of the clause is somewhat clumsy and repetitive. The first list uses the words ‘transfer, assignment, charging, or parting with possession or devolution’ yet the second list, describing when notice is required, introduces the term ‘subletting’. This is explicit. The next part of the sentence states the ‘...and of the name and address and description of the assignee sublessee charge or person upon whom the relevant Term or any part thereof may have devolved (as the case may be)...’. The inclusion of the word ‘sublessee’ in addition to the aforementioned ‘subletting’ appears to be conclusive that the express mention of subletting and sublessees was intentional and envisaged to be captured in a wide range of scenarios that the Lessee ought to notify the freeholder of.
34. Moving to the interpretation of the second part of Clause 3.8, it continues:

“...and to deliver to the Lessor or his solicitors within such time as aforesaid a verified copy of every instrument of transfer or assignment charging or devolution and every probate letters of administration order of the Court or other instrument effecting or evidencing the same and to pay to the Lessor or his solicitors a reasonable fee plus Value Added Tax (if applicable) for the registration of every such notice.”

35. This latter part of the clause relates to the service of ‘every instrument of transfer or assignment charging or devolution...’. It is noted that this list of events is narrower than those described in the aforementioned lists. The Clause continues to provide further examples of ‘probate letters or administration order of the Court’. Whilst the term sub-letting is not explicit within this part of the clause, I consider such an event to fall within the meaning of ‘devolution’. Furthermore, I deem that a tenancy agreement would constitute an ‘instrument effecting or evidencing the same’. The same should be served to the lessor, in addition to a reasonable fee plus Vat for the registration of such notice within the stipulated four weeks of such an event.
36. Having interpreted Clause 3.8, I now turn to whether the Respondent has breached the Clause.
37. I note that whilst Mr Watts’ witness statement does not admit a breach, it is neither denied. Mr Watts’ dispute relates to the interpretation of the clause, in particular whether he is liable for ‘sub letting’ charges imposed by the Applicant. There is an acceptance that the property was purchased using a buy to let mortgage. Moreover, having reviewed the contents of the correspondence supplied by Mr Watts, it has been accepted within communication between the parties that Mr Watts has let the property. By a letter dated 23 August 2024 to Ms Hancock, Mr Watts provided details of six tenancies, the first commencing prior to the Applicant becoming the freeholder. The details of the remaining 5 tenancies align with those copies of the tenancy agreements provided to the Applicant. It appears that this was the first occasion that the Respondent had provided notification of the tenancies to the Applicant.
38. It therefore appears that there is no dispute as to there having been at least five separate tenancy agreements since the Applicant became freeholder.
39. Furthermore, there appears to be no dispute that copies of the same five tenancy agreements were supplied to the Respondent.
40. Mr Watts does however dispute the date to which he provided the five tenancy agreements. It is said by the Applicant that Eaves Property Management Services received copies of the same on 4 September 2024 [160]. Mr Watts rather states that he had sent Eaves Property Management Services a three-page letter to the CEO at both her company and correspondence address at a cost of £7.95 on 3 July 2024. Mr Watts has supplied evidence of the same.
41. I have reviewed all documents and it appears as though Mr Watts did send a three page letter to the CEO of Eaves Property Management Services at both addresses on 3 July 2024. This has not been disputed by the Applicant. The

Applicant, however, is referring to a later event on 4 September 20024 and has supplied evidence of postage at £8.95, having been sent on 3 September 2024.

42. On 3 September 2024 Ms Hancock had requested from Mr Watts copies of the five tenancy agreements.
43. On 11 September 2024, Mr Watts sent Mr Duncan a letter dated 11 September 2024 at page 19 of Mr Watts' PDF named VW letters to and from Michelle Hancock of Eaves Property Management and Solicitor Andrew Duncan. In that letter, Mr Watts referred to Ms Hancock's request for copies of tenancy agreements to which it was said '*I reluctantly complied with*' following his previous concern as to data protection law. This was followed with a reference to Mr Duncan's email dated 5 September 2024 '*you write in response to receiving them*', i.e. the tenancy agreements. I note the date of such communications which appear to be of no coincidence in relation to the letter said to have been received by Eaves property Management on 4 September 2024 to which the Applicant states was copies of five tenancy agreements.
44. I therefore find that in all likelihood the applicant did receive copies of the five tenancy agreements on or soon after the 4 September 2024 and the same had not previously been provided before. It is however noted that there may have been some practical difficulty in doing so prior to 2016 given the comments of Judge Orme in relation to case reference CHI/40UD/LIS/2015/0035 with regards to the failure of the Applicant to correctly serve notice on the Respondent of the transfer of ownership of the freehold.
46. Having reviewed the dates of the tenancy agreements supplied, and in light of the Respondent's letter dated 23 August 2024 to Ms Hancock notifying her with details of previous tenants, I find that the Respondent did not give notice to the Applicant of each letting (relating to the five tenancies dated between 28 September 2013 – 16 August 2023), supply the corresponding tenancy agreements and pay the reasonable fee for the registration of such notice within four weeks of each tenancy, nor did he provide the names and addresses of those tenants.
47. That failure constitutes a breach of covenant under S168(4) Commonhold and Leasehold Reform Act 2002.