



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

Case Reference : **MAN/36UD/LBC/2024/0606**

Properties : **Flat 2, 24 Queens Road, Harrogate HG2 0HB**

Applicants : **Mr Michael Gilmour and Mrs Alison Gilmour**

Respondent : **The Estate of Sabina Ward (deceased)**

Type of Application : **Section 168(4) Commonhold and Leasehold Reform Act 2002 – Determination of breach of covenant**

Tribunal Members : **Mr S Wanderer MRICS
Mrs H Clayton**

Venue : **Paper determination**

Date of Decision : **21 October 2025**

Summary Decision

1. The Tribunal determines that the Respondent is in breach of the following covenants contained in the Lease dated 19 August 1975:
 - Clause 3 of the Fourth Schedule (maintenance and repair)
 - Clause 5 of the Fourth Schedule (exterior painting)
 - Clause 6 of the Fourth Schedule (access for inspection)
 - Clause 8 of the Fourth Schedule (nuisance)
 - Clause 10 of the Fourth Schedule (maintenance of rear garden)
 - Clause 14 of the Fourth Schedule (insurance)
2. The Tribunal does not find that breaches have been established in respect of Clauses 1, 4, and 12 of the Fourth on the evidence available.

The Application

3. This is an application made by Mr Michael Gilmour and Mrs Alison Gilmour pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination that various breaches of covenant have occurred under the Lease dated 19 August 1975 ("the Lease") relating to Flat 2, 24 Queens Road, Harrogate HG2 0HB ("the Property").
4. The Application was dated 17 November 2024 and directions were issued by this Tribunal on 18 September 2025. The matter has been determined on the basis of written submissions without an oral hearing or inspection, as directed.

Background

5. The Applicants are the registered freehold owners of 24 Queens Road, Harrogate, under HM Land Registry title number NYK58196.
6. The Property comprises a Victorian end-of-terrace house converted into two flats. Flat 2 is the first and second floor maisonette held on a long lease. Flat 1 (ground floor and lower ground floor) is occupied by the Applicants' tenants under an assured shorthold tenancy which commenced on 3 November 2023.
7. The Lease is dated 19 August 1975 and was originally granted between Hilda Margaret Wallwork (landlord) and Mary Winifred Pumfrey (tenant) for a term of

999 years from 19 August 1975 at a yearly rent of £10. The leasehold title is registered at HM Land Registry under title number NYK373018.

8. Sabina Ward was the registered proprietor of the leasehold interest until her death on 9 April 2023. The Applicants have been unable to establish definitively who, if anyone, has been appointed as executor or administrator of her estate.
9. On 5 August 2025, the Tribunal attempted to contact Mr Tim Ward (understood to be either the widower or ex-husband of the deceased) inviting him to disclose any interest in the proceedings, but no response was received.
10. Accordingly, by the Tribunal's Directions dated 18 September 2025, the Respondent was designated as "The Estate of Sabina Ward (deceased)" in accordance with rule 19.8 of the Civil Procedure Rules.
11. The Property appears to have been vacant since approximately May 2024, with evidence from neighbouring occupiers that Mr Ward has been seen collecting post but not residing at the Property.

Description of Property

12. The Tribunal did not inspect the Property. From the documents provided, 24 Queens Road is a Victorian end-of-terrace property converted into two self-contained flats. The Property (Flat 2) comprises the first and second floors, the roof, the rear garden, and an outside toilet at the end of the rear projection of the ground floor.
13. The Property is situated in a residential area of Harrogate. The adjoining mid-terrace property at 22 Queens Road is separately owned.

The Lease

14. The Fourth Schedule of the Lease imposes the following obligations upon the Tenant:

Clause 1: *The Tenant shall pay the reserved rent on the day and in the manner above mentioned. [i.e. £10 per annum on 19 August each year]*

Clause 3: *The Tenant shall to the satisfaction in all respects of the Landlord or the Landlord's surveyor keep the demised premises and all parts thereof both internal and external and all fixtures and fittings therein and all additions thereto in a good and tenantable state of repair decoration and condition fair wear and tear excepted throughout the continuance of this demise including the renewal and replacement of all worn or damaged parts and shall maintain and uphold and wherever necessary for whatever reason to reconstruct and replace the same and shall yield up the same at the determination of this demise in such good and tenantable state of repair decoration and condition and in accordance with the terms of this covenant in all respects.*

Clause 4: *The Tenant shall before repairing any Joints or beam in the floor of the first floor of the demised premises and before carrying out any repairs or work which the Tenant is required to carry out hereunder and for the carrying out of which the Tenant requires access to any part of the retained premises give reasonable notice and (except in cases of extreme emergency) at least forty eight hours notice in writing to the Landlord or the owner or occupier of the retained premises to which the Tenant requires access as the case may be and the Tenant shall on giving such Notice be entitled to carry out such repairs or work and in so doing have any required access to the retained premises as is necessary but shall act carefully and reasonably doing as little damage as possible and make good all damage caused thereby at her own expense.*

Clause 5: *The Tenant shall in the year One thousand nine hundred and eighty and in every succeeding fifth year of this demise and in the last three months hereof (howsoever determined) paint with two coats of good oil paint and in a good and workmanlike manner all the wood iron and other parts of the exterior of the demised premises usually or which ought to be painted and shall in addition grain varnish distemper wash whiten or colour all such parts as are usually or ought to be so treated the colour and manner of such painting to be agreed with the Landlord or failing such agreement in the colour and manner in which the same is now or was last previously painted.*

Clause 6: *The Tenant shall permit the Landlord whether with or without workmen or other at all reasonable times to enter upon and examine the condition of the demised premises and thereupon serve notice in writing specifying any repairs or work necessary to be done to which the tenant*

is liable hereunder and the Tenant shall forthwith execute the same and if the Tenant does not within two months after the service of such Notice proceed diligently with the execution of such proposed work then the Landlord may enter upon the demised premises and execute the same and the costs thereof shall be due to the Landlord from the Tenant and shall be recoverable forthwith by action.

Clause 8: *The Tenant shall not do or permit or suffer to be done in or upon the demised premises anything which might be or could become a nuisance or annoyance or cause damage or inconvenience to the Landlord or the owner or occupier of any of the adjoining or neighbouring premises or of the retained premises or whereby any insurance for the time being effected on the retained premises or any part thereof (including the demised premises) may be rendered void or voidable or whereby the rate of premium may be increased and shall pay all costs charges and expenses incurred by the Landlord in abating a nuisance on the part of the Tenant in obedience to a Notice served by a competent authority.*

Clause 10: *The Tenant shall keep the grounds of the demised premises in a good state of order and cultivation and the boundary walls and fences in a good state of repair.*

Clause 12: *The Tenant shall upon receipt of any Notice order or direction from the Local Authority or any competent authority affecting or likely to affect the demised premises forthwith comply with the requirements of the said Notice order or direction at her own expense and will forthwith deliver to the Landlord a copy of such Notice order or direction.*

Clause 14: *The Tenant shall insure and keep insured the demised premises against all risks normally covered by a Household Comprehensive policy in the full reinstatement value thereof in the joint names of the Tenant and the Landlord with an insurance company of repute or such other insurance office as the Landlord shall determine and whenever required shall produce to the Landlord the policy or policies of such insurance and the receipt of the last premium for the same and in the event of the demised premises being damaged or destroyed by fire shall as soon as reasonably practicable lay out the insurance money in the repair rebuilding or reinstatement of the demised premises.*

The Law

15. Section 168 of the Act 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 (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.

(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."

Evidence

20. The Tribunal had before it a hearing bundle of 79 pages containing:

- The application and Tribunal directions
- The Applicants' statement of case
- Witness statements from Emily and Mason Asgha (tenants of Flat 1), Elizabeth and Ken Yeadon (neighbours at 22 Queens Road), and Gerrard Cunningham (roofing contractor)
- Title documents for the freehold and leasehold interests
- The Lease
- Death certificate and probate search results for Sabina Ward
- Email from Alan Boswell Group confirming cancellation of insurance
- Correspondence between the Applicants and the Respondent's estate
- Photographs showing the condition of the Property

21. No response or evidence has been received from the Respondent despite the extensive correspondence sent to the Property and the Tribunal's attempts to contact potential representatives of the estate.

Statement of Emily and Mason Asgha

22. Mr and Mrs Asgha are tenants of Flat 1 under an assured shorthold tenancy which commenced on 3 November 2023. They state that during their occupation they have seen a person believed to be Tim Ward on only a handful of occasions, visiting briefly to collect post. They have heard no noise from Flat 2 and believe it to be unoccupied.
23. They report concerns about lack of maintenance affecting their safety, including:
- an aerial falling from the roof during the weekend of 24-25 May 2025, landing near their clothes dryer in the rear yard;
 - a cast iron downpipe at gutter level hanging unsecured for several months until Mr Gilmour arranged a temporary repair; and
 - the rear garden being untended throughout their occupation

Statement of Elizabeth and Ken Yeadon

24. Mr and Mrs Yeadon own the adjoining mid-terrace property at 22 Queens Road and have lived there since April 2018. They state:
- they believe Flat 2 has been empty since around May 2024, possibly earlier;
 - there is no fire wall between 22 and 24 Queens Road, creating security concerns and increased risk of fire or vermin spread;
 - they understand there is no insurance in place for Flat 2, which poses risks for any sale of their property;
 - they are experiencing damp on the chimney wall in their second floor bedroom adjoining 24 Queens Road;
 - the boundary wall in the rear garden between the properties is falling down and damaging their shed;
 - the rear garden of Flat 2 has not been tended since before Sabina Ward's death in April 2023 and is overgrown, with vegetation encroaching into their garden; and
 - the shed in 24 Queens Road is collapsing and they believe has foxes living in it.

Statement of Gerrard Cunningham (Anti Aqua Roofing Solutions Ltd)

25. Mr Cunningham is a director of Anti Aqua Roofing Solutions Ltd. He investigated the roof condition using a photographic drone, and gave evidence that the main roof is original from approximately 1890. His findings on the basis of the drone photographs (which were included within the Applicants' bundle) are as follows:
- Many slipped, damaged or missing slates
 - Decay and damage to the flat roofs of both dormer windows
 - Serious decay and rotting to the wooden fascia of the gable end
 - Damaged aerial
 - Severe nail fatigue in multiple areas
26. Mr Cunningham advises that the deterioration has reached a point where isolated fixes are no longer viable or cost-effective. In his view there are significant structural and safety risks, especially given seasonal storms. He concludes by recommending a complete new roof and renewal of the flat roof dormers.

Insurance Cancellation

27. An email dated 2 August 2024 from Joshua Evans of Alan Boswell Insurance Brokers confirms that insurance policy WATA02HQ06 was cancelled from 3 May 2024 and states: "There currently is no cover on Flat 2, 24 Queens Road."

Correspondence

27. The Applicants sent numerous letters to the Property between October 2023 and August 2025, requesting:
- Confirmation of ownership of the lease following Sabina Ward's death
 - Payment of outstanding ground rent
 - Provision of insurance details with the Applicants as joint policyholders
 - Access to inspect the Property
 - Repairs to the roof, downpipe, gatepost and garden
 - Copies of council tax notices

28. None of these letters received any response. The final letter dated 28 August 2025 (sent to meet the deadline for the bundle) informed the addressee that an application had been made to the Tribunal and that costs might be recoverable.

Photographic Evidence

29. The bundle includes photographs showing:
- Slipped and damaged roof slates
 - Deteriorated bargeboards and fascia
 - Damaged dormer windows
 - An unsecured downpipe
 - A damaged TV aerial
 - Overgrown rear garden with collapsing boundary wall and vegetation
 - A rotted gatepost at ground level

Consideration and Determination of Alleged Breaches

The Tribunal considers each alleged breach in turn.

Clause 1 – Non-payment of ground rent

30. The Applicants allege that ground rent has not been paid since 2016.
31. While the Tribunal accepts that the Applicants have not received ground rent payments, the evidence provided to the tribunal does not establish whether valid demands were properly served on the tenant during the relevant period in accordance with section 166 of Act, without which rent is not payable.
32. On the evidence before it, the Tribunal is not satisfied that a breach of Clause 1 has been established to the requisite standard for the purposes of section 168(4).

Clause 3 – Maintenance and repair

33. Clause 3 requires the tenant to "keep the demised premises...in a good and tenable state of repair."
34. The Tribunal has considered the following evidence:

- Professional evidence from a roofing contractor (Mr Cunningham) that the roof is in very poor condition with severe nail fatigue, many slipped/damaged/missing slates, decayed dormer windows, and rotted wooden fascia.
 - Witness evidence from neighbouring occupiers describing a falling aerial, unsecured downpipe, and general deterioration.
 - Photographic evidence corroborating these descriptions.
 - Evidence that the Property has been vacant since approximately May 2024.
 - No evidence of any maintenance having been carried out for several years.
35. Having regard to the age, character and locality of the Property, the Tribunal finds that the Property is not in good and tenantable repair and condition.
36. The roof is a critical structural element for which the tenant has express responsibility under the Lease. Its poor condition represents not merely cosmetic deterioration but fundamental disrepair affecting the weatherproofing and structural integrity of the demised premises. Loose slates and an unsecured downpipe present safety hazards to occupiers of Flat 1 and passers-by.
37. The electrical installation also gives cause for concern, with a broken external socket cover allowing water ingress and an unconnected cable dangling above the front door.
38. On the balance of probabilities, the Tribunal finds that there has been a breach of Clause 3 of the Fourth Schedule.

Clause 4 – Scaffolding installation without consent

39. The Applicants allege that scaffolding was erected at the front of the Property in February 2023 without the Landlord's consent, which they characterise as a breach of the requirement to give notice under Clause 4.
40. The Tribunal notes that Clause 4 is intended to address access over parts of the building not demised to the tenant. Insufficient detail is provided for the Tribunal to understand the nature and placement of the scaffolding, so the Tribunal cannot determine whether Clause 4 was engaged.

41. The Tribunal finds that the alleged of breach of Clause 4 has not been established.

Clause 5 – Exterior painting

42. Clause 5 requires the tenant to undertake exterior painting every five years.
43. The evidence before the Tribunal, particularly the statement of Mr Cunningham and the photographs, establishes serious decay and rotting to the bargeboards, fascia boards and soffits. The Applicants state that the exterior has not been painted for over five years, and this is consistent with the other evidence provided.
44. Given the observable deterioration to painted woodwork and the absence of any evidence of exterior painting in the requisite period, the Tribunal finds on the balance of probabilities that there has been a breach of Clause 5 of the Fourth Schedule.

Clause 6 – Access for inspection

45. The Applicants have made numerous written requests to enter and inspect the condition of the demised premises as provided for in Clause 6, copies of which are provided to the Tribunal. Access has not been provided.
46. On the evidence provided, the Tribunal finds that there has been a breach of Clause 6 of the Fourth Schedule.

Clause 8 – Nuisance

49. Clause 8 prohibits the tenant from doing or suffering "anything which might be or could become a nuisance or annoyance or cause damage or inconvenience to the Landlord or the owner or occupier of any of the adjoining or neighbouring premises or of the retained premises."
50. The evidence establishes the following matters affecting neighbouring properties and occupiers:
- The falling TV aerial which landed 1 near the Flat 1 tenants' clothes dryer

- The unsecured cast iron downpipe presenting a hazard
 - The untended rear garden causing vegetation to encroach into the neighbouring property at 22 Queens Road
 - The collapsing boundary wall damaging the neighbours' shed
 - The absence of a firewall combined with the vacant and deteriorating state of the Property creating security concerns for the neighbours
51. These matters clearly amount to nuisance, damage, annoyance or inconvenience to both the Applicants (as landlords and owners of Flat 1), the tenants of Flat 1 and to the owners and occupiers of 22 Queens Road.
52. The Tribunal finds that there has been a breach of Clause 8 of the Fourth Schedule.

Clause 10 – Maintenance of rear garden

54. Clause 10 requires the tenant "to keep the grounds...and the boundary walls and fences in a good state of repair."
55. The evidence from multiple witnesses establishes that:
- The rear garden has been untended since before Sabina Ward's death in April 2023
 - It is overgrown with vegetation, some of which encroaches into the neighbouring property
 - The boundary wall between 22 and 24 Queens Road is falling down, forced over by tree growth and damaged by invasive ivy, and is damaging the neighbours' shed
 - One of the gateposts at the rear entrance has rotted away at ground level, leaving the post and gate unsecured
56. The photographic evidence corroborates these witness accounts.
57. Having regard to the observable state of the garden, the collapsing boundary wall, and the deteriorated gatepost, the Tribunal finds that the rear garden and its walls and fences are not being kept in good order.
58. The Tribunal finds that there has been a breach of Clause 10 of the Fourth Schedule.

Clause 12 – Provision of local authority notices

59. The Applicants allege that the tenant has failed to provide copies of notices from the local authority, particularly in relation to council tax.
60. Clause 12 requires the tenant to deliver forthwith copies of "any Notice order or direction from the Local Authority or any competent authority affecting or likely to affect the demised premises".
61. The Tribunal notes that the Applicants have requested "copies of notices from the local authority showing that the council tax liabilities for the property are being met." This appears to be a request for confirmation of payment rather than for copies of actual notices, orders or directions served by the authority.
62. There is no evidence before the Tribunal that any specific notice, order or direction has been served by a local authority which should have been delivered to the Landlord under Clause 12.
63. The Tribunal finds that a breach of Clause 12 has not been established.

Clause 14 – Insurance

64. Clause 14 requires the tenant to insure the Property and to produce the policy to the landlord upon request.
65. The email from Alan Boswell Insurance Brokers dated 2 August 2024 states unequivocally: "I can confirm WATA02HQ06 has been cancelled from the 3rd May 2024. There currently is no cover on Flat 2, 24 Queens Road."
66. The Applicants made repeated requests for provision of insurance details with themselves noted as joint policyholders, as required by the Lease. No insurance policy or evidence of current insurance has been produced.
67. The Tribunal finds that there has been a breach of Clause 14 of the Fourth Schedule in that the demised premises appear on the balance of probabilities not to be insured and, in any event, the insurance documents have not been produced to the landlord as required by the covenant.

Conclusion

69. For the reasons set out above, the Tribunal determines that breaches of covenant have occurred in respect of:

- Clause 3 of the Fourth Schedule (maintenance and repair)
- Clause 5 of the Fourth Schedule (exterior painting)
- Clause 6 of the Fourth Schedule (access for inspection)
- Clause 8 of the Fourth Schedule (nuisance)
- Clause 10 of the Fourth Schedule (maintenance of rear garden)
- Clause 14 of the Fourth Schedule (insurance)

70. The Tribunal does not find that breaches have been established in respect of Clauses 1, 4, and 12 of the Fourth Schedule.

S Wanderer (Chairman)

21 October 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).