



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

Case Reference : **MAN/00BL/LBC/2024/0016**

Property : **19 Mottram Street, Horwich, Bolton BL6 7TU**

Applicant : **Andrew Milne**

Representative : **Andrew Milne & Co Solicitors**

Respondent : **Margaret Kelly**

Representative : **Fieldings Porter Solicitors**

Type of Application : **Commonhold and Leasehold Reform Act 2002, Section 168(4)**

Tribunal Members : **Judge L. F. McLean**
Mr J. Gallagher MRICS

Date of Hearing : **2nd December 2025**

Date of Determination : **9th December 2025**

DETERMINATION

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Decisions of the Tribunal

- 1. The Applicant's application (for a determination that a breach of a covenant or condition in the Lease of the Property has occurred) is refused.**
- 2. Without prejudice to any application which the Respondent may or may not wish to make under Section 20C of the Landlord and Tenant Act 1985, the parties may make representations regarding the Respondent's application for the Applicant to pay her costs in relation to these proceedings, pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, such representations to be received by the Tribunal (and copies sent to the opposing party) within 14 days of the date that this decision is sent to the parties.**

Reasons

Background

1. The Tribunal received an application for a determination that a breach of lease of residential premises had occurred. The application is made in respect of the long lease of the Property of which the Respondent is the current sole tenant.
2. The Property is a 2-bedroomed terraced brick-built house with front and rear paved gardens, pitched roof, and a small ground floor extension to the rear elevation.
3. The Property is subject to a long lease made between (1) Bolton Borough Council, (2) P.J. Morris and Sons (England) Limited, and (3) Martin Shaw and Pamela Shaw, for a term of 999 years commencing on 3rd July 1981 ("the Lease").
4. The Applicant is the current registered proprietor of the freehold reversion immediately expectant upon determination or expiry of the Lease, which he acquired in June 2021.
5. The Respondent is the current registered proprietor of the unexpired residue of the term of years under the Lease, which she initially acquired jointly with her late husband John Kelly in around September 1996. John Kelly died some time ago, whereupon the Respondent became the sole tenant by survivorship. Although the application was made against both John Kelly and the Respondent, by a direction of Judge Goodall dated 23rd October 2025, John Kelly was removed from proceedings as a respondent.

Case Management

6. The application was dated 24th September 2024. Due to significant administrative delays, the Tribunal did not issue preliminary directions until a year later. The preliminary directions made provision for the Applicant to provide a bundle enclosing full and particularised grounds of the application and certain other evidence and documents in support.
7. The Tribunal received a letter from the Respondent's representatives, requesting that these proceedings be struck out as an abuse of process. They referred to the Applicant having begun a parallel claim against the Respondent in the County Court under claim no. M1QZ3H95. Under that claim, the Applicant was claiming £20,400 in damages, plus interest and costs, in respect of alleged breaches of the Lease. The alleged breaches relied upon in the County Court claim were essentially the same as those which are the subject of the current application in the Tribunal.
8. On 23rd October 2025, Judge Goodall gave a direction that the Applicant should respond to the Respondent's request by 5th November 2025.
9. The Tribunal subsequently received a letter from the Applicant's representatives (a firm of which the Applicant happens to be the principal solicitor) also dated 23rd October 2025. The Applicant's position was that he had only just become aware that an inspection of the Property and a final hearing had both been scheduled, for 1st and 2nd December 2025 respectively. He was seeking a stay of proceedings for three months to "*look into the present circumstances of the Respondents*". He also said that he did not have a copy of the Respondent's solicitors' letter, so he requested an amended direction and 21 days to respond. By a further direction dated 7th November 2025, Judge Goodall allowed the Applicant until 17th November to provide his response.
10. The Tribunal received representations from the Applicant on 17th November 2025. He resisted the application to strike out on the grounds that "*The Tribunal is performing a statutory role and applying a statutory test which is different to that of the Court and so there are no grounds to stay or dismiss the Tribunal proceedings.*" He also explained his decision to commence proceedings in the County Court by reference to the Tribunal's delay in processing the current application. He went on to suggest that the Tribunal should stay the current proceedings for 12 months.
11. The Tribunal decided to proceed with the inspection of the Property and to deal with the Respondent's application as a preliminary matter at the start of the hearing.
12. On 27th November 2025, the Applicant's representatives sent a further letter to the Tribunal. The letter stated that the Applicant had no objections to the inspection proceeding. As regards the hearing, the Applicant's position was that he had no objection to the hearing being

adjourned or proceeding, at the Tribunal's discretion, but that there would be no appearance or representation for the Applicant at the hearing due to another commitment.

The Inspection

13. The members of the Tribunal were able to inspect the interior and exterior of the Property at 10am on 1st December 2025. The Respondent was not in attendance. The members of the Tribunal were allowed into the Property by a relative of the Respondent. The members of the Tribunal informed the relative that they were in attendance simply to view the premises, and that the Tribunal would not be taking evidence or submissions.

The Hearing

Application to Strike Out

14. On Monday 1st December 2025, the Tribunal received further written submissions from the Respondent's representatives, which were in the nature of a skeleton argument.
15. On the morning of the hearing, the Tribunal received a further letter from the Applicant's representatives in response to the latest submissions for the Respondent. The position of the Applicant had shifted towards being firmly in favour of the Tribunal reaching a reasoned final decision that day. In particular, the Applicant was concerned about the potential duplication of costs, given that the County Court proceedings were still at an early case management stage.
16. The hearing was attended by Ms Christine Appiah, the Respondent's solicitor, who appeared in order to represent her client even though the Respondent was herself unable to attend. There was no appearance or representation for the Applicant. The Applicant had arranged for someone to attend in an observational capacity for him, as he was entitled to do regarding proceedings being conducted in public.
17. The Tribunal decided to proceed in the absence of the Applicant, pursuant to Rule 34. The Applicant had acknowledged notice of the hearing and had stated in advance that he was content for the matter to proceed in his absence.
18. The Tribunal heard from Ms Appiah regarding the application to strike out the proceedings. She gave an update on the case management in the County Court, in that they had just received directions for standard disclosure by 7th December 2025 (despite having requested an unless order due to the Applicant's failure to submit a Directions Questionnaire).
19. On the substantive basis for seeking a strike out, Ms Appiah referred to Rule 9(3)(e). She alluded to the current proceedings being intended

under statute as a prelude to forfeiture. However, the Applicant was not seeking forfeiture, but damages. She referred to the Applicant having lost patience with the Tribunal such that he began a separate County Court claim. She said that the Applicant is aware that Mrs Kelly is an elderly widow, and asserted that under the Equality Act 2010 she should not be prejudiced by her age and vulnerability. She submitted that the case precedent of *Stemp v 6 Ladbroke Gardens Management Limited* [2018] UKUT 375 (LC) showed that the Tribunal was designed to be a specialist forum. She argued that where there were parallel or premature proceedings in the County Court (before the Tribunal had had an opportunity to reach a determination) meant that those proceedings should be stayed. She also relied on the case precedent of *Brighton and Hove City Council v Audus* [2009] EWHC 340 (Ch) to suggest that the Tribunal proceedings should have taken precedence. She pointed out that the two sets of pleadings are almost identical. She said that this was wasting the Tribunal's resources, and that the Respondent was having to pay for two sets of cases when the Applicant should choose just one route. With the County Court case already encompassing the same matters, this may result in inconsistent findings.

20. The members of the Tribunal retired to deliberate as to the appropriate course of action.
21. The Tribunal decided that the application to strike out would be refused. The Tribunal agreed that the Applicant was conducting the proceedings in a manner which was an abuse of process. The cases relied upon by the Respondent tend to show that where there are parallel proceedings in both the Tribunal and the County Court relating to the same subject matter (even if the basis for the respective proceedings arise from different statutory or common law provisions) then the County Court claim should normally be stayed, either for the proceedings to be transferred to the Tribunal or to allow the Tribunal to make a determination first. However, the Applicant had not done this and had instead initially requested that the Tribunal proceedings be stayed, before reversing his position and insisting that the Tribunal reach a determination forthwith.
22. The Tribunal disagrees with the Respondent's view that since the Tribunal's function is statutory then this is not inconsistent with the role of the County Court in determining a contractual dispute – it is instructive that the contents of the Applicant's statement of case in this matter, and the annexures thereto, were more or less word-for-word identical to the material elements of the Particulars of Claim. Section 168(5)(b) of the 2002 Act makes it abundantly clear that the Tribunal and the County Court must not be allowed to reach coextensive decisions regarding the same alleged breach(es) of lease.
23. The Tribunal were also puzzled by the Applicant's assertion that the Tribunal had no statutory jurisdiction to strike out the application – a patently absurd submission, given that the Tribunal's power to strike out the application is a procedural one which is conferred by Rules 8 and 9

of the 2013 Rules and Section 22 of the Tribunals, Courts and Enforcement Act 2007.

24. However, the Tribunal bore in mind the Overriding Objective and the relevant provisions of Rules 8 and 9:-

Overriding objective and parties' obligation to co-operate with the Tribunal

3.—

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;*
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings;*
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;*
- (d) using any special expertise of the Tribunal effectively; and*
- (e) avoiding delay, so far as compatible with proper consideration of the issues.*

(3) The Tribunal must seek to give effect to the overriding objective when it—

- (a) exercises any power under these Rules; or*
- (b) interprets any rule or practice direction.*

(4) Parties must—

- (a) help the Tribunal to further the overriding objective; and*
- (b) co-operate with the Tribunal generally.*

25. Rule 8 provides, *inter alia*:-

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;*
- (b) requiring the failure to be remedied;*
- (c) exercising its power under rule 9 (striking out a party's case);*
- (d) exercising its power under paragraph (5); or*
- (e) barring or restricting a party's participation in the proceedings.*

26. Rule 9 provides, *inter alia*:-

(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding.

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph (3)(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.

27. Accordingly, the Tribunal concluded that the mere fact that proceedings were being conducted in an unreasonable manner did not mean that the solution was to strike them out. The Tribunal retains a discretion whether or not to do so. The Tribunal decided that the appropriate outcome was to determine the case based on the submissions and evidence before it, as the Applicant himself had insisted the Tribunal should do.

The Applicant's Case

28. The Applicant's case consists of his application form, his statement of case and three annexures (comprising a copy of the Lease and extracts from title information available from HM Land Registry).

29. The Applicant relied on the following provisions of the Lease at clause 3(ix)(b):-

Not at any time during the said term to make any alterations in the premises or erect any new buildings thereon without obtaining the prior written approval of the Council to the plans and specifications thereof and obtaining planning approval and all other requisite permissions from local and other authorities and to make all such alterations in conformity with such plans and specifications and planning approval and permissions

30. The Applicant asserted that the foregoing provision had been breached in that the Respondent had “*erected a rear extension and placed two unauthorised fittings above it and unauthorised wiring on the rear elevation and/or altered the same and made unauthorised alterations to the front elevation which include a burglar alarm box and external wiring and unauthorised security cameras and unauthorised lights and have changed the front door to a unauthorised front door without the landlord’s licence or consent*”.
31. The Applicant had failed to submit any written or oral evidence aside from the contents of his statement of case and the annexures thereto. The Applicant provided no photographic evidence of the state of the Property before or after the alleged alterations to it were said to have occurred. Although the Applicant referred to evidence available via “Google Earth”, no such evidence was adduced or relied upon. Crucially, the Applicant also provided no evidence relating to when the Respondent may have been expected to seek consent to any alterations or whether any person may have attempted to do so.
32. The Tribunal also noted that the Applicant has no personal knowledge of the state of the Property before or after the alleged alterations to it were said to have occurred, or of any actions of the Respondent or her late husband relating to seeking consent to any alterations, since those facts all pre-dated the Applicant’s ownership of the freehold.
33. For the Tribunal’s part, the purpose of the inspection was to view the Property so as to have a better understanding of its layout and features. The purpose of the inspection was not to accept any evidence from the parties. As a matter of the Tribunal’s procedure, the onus remains on a party to lead evidence regarding any aspect or feature of the Property upon which that party wishes to rely. As such, the Applicant was unable to rely upon the Tribunal’s own inspection of the Property to support his case.

The Respondent’s Case

34. The Respondent had not submitted a formal statement of case, since the Applicant had failed to prepare a bundle for use by the Tribunal and the Applicant as directed on 24th September 2025.
35. The Respondent’s case as set out in the hearing was, in effect, a combination of the Defence which she had submitted in the County Court together with further submissions made by her solicitor (albeit that the Tribunal reminded Ms Appiah that she was not permitted to give evidence on her client’s behalf). The Respondent denied the alleged breaches. She had asserted that any alleged breach of the Lease would now be time-barred under the Limitation Act 1980, since the rear conservatory was erected in early 2009 and the outdoor fittings had been in place since at least April 2009. Aside from that, the Respondent’s position was that she had no knowledge of whether her late husband had sought permission for any alterations, and he was of course no longer

alive to give evidence himself. Ms Appiah asserted that the Applicant had failed to prove his case.

36. The Tribunal concluded the hearing and informed the Respondent's solicitor that a written decision would be provided on an expedited basis due to the overlap with directions made in the County Court. The Tribunal retired to deliberate in private.

The Tribunal's Considerations

The Law

37. Section 168(4) of the Commonhold and Leasehold Reform Act 2002 provides that "*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.*"

The Lease Terms

38. The Tribunal notes the relevant provisions of the Lease, referred to above.

The Facts

39. The Tribunal notes that the burden of proof lies upon the Applicant to prove all relevant elements of his case on the balance of probabilities. In outline, these were as follows:-
- (a) That there was a covenant of the Lease; and
 - (b) That the covenant prohibited the making of alterations to the Property without the landlord's licence or consent; and
 - (c) That alterations were made which were of a nature requiring the landlord's licence or consent; and
 - (d) That the landlord did not give their licence or consent to those alterations.
40. Elements (a) and (b) above were admitted by the Respondent. Elements (c) and (d) were not. Accordingly, the Tribunal had to make a determination on elements (c) and (d) in respect of each alleged alteration.
41. The Tribunal considers that the erection of the rear extension is a substantial alteration of the structure of the Property which would have required consent from the erstwhile landlord. However, there is no evidence that such consent was not sought and/or was not given (whether prospectively or retrospectively). The Applicant has simply made a bare assertion which was not supported by any direct or indirect evidence and which was disputed by the Respondent. The Tribunal decided that the Applicant had failed to discharge the burden of proof in regard to element (d) and his application accordingly fails on that aspect.

42. The Tribunal considered the other external features of the Property (burglar alarm box, external wiring, security cameras, unauthorised lights, front door). The Tribunal was not provided with any evidence as to whether those features were alterations from the original condition of the Property, or – if so and to such extent as is relevant – whether those alterations took place after the Respondent became the registered proprietor of the Lease. As such, the Applicant failed to discharge the evidential burden that those features amounted to alterations from the Property's original condition. In any event, the Tribunal considered that if they were alterations, then they were of such a trivial and non-structural nature that they would not have fallen within the scope of clause 3(ix)(b) of the Lease, such that there was no requirement for the landlord's licence or consent to be sought in any event. For either or both of those reasons, the Tribunal decided that the Applicant had failed to discharge the burden of proof in regard to element (c) and his application accordingly fails on that aspect. Alternatively, if the Tribunal is wrong about that, then the same observations would still apply regarding element (d) as was the case with the rear extension (i.e. that there is no evidence that such consent was not sought and/or was not given, whether prospectively or retrospectively). Accordingly, the Applicant has also failed to discharge the burden of proof in regard to element (d) and his application accordingly fails on that aspect too.

Conclusion

43. The Applicant has – through his own comprehensive failure to adduce any evidence – failed to prove his case. His application is dismissed in its entirety.

Costs

44. The Tribunal does not appear to have received any application from the Respondent under Section 20C of the Landlord and Tenant Act 1985 as matters presently stand.
45. As part of the Respondent's application for the proceedings to be struck out, she also requested that the Tribunal make an order pursuant to Rule 13 that the Applicant pay her legal costs. The Tribunal indicated during the hearing that it would not be in a position to consider such a request until after it had reached its decision. Now that the Tribunal has reached a decision, the Tribunal is in a position to receive submissions on this point.
46. The parties should note that the Tribunal has already concluded, for reasons set out earlier in this decision, that the Applicant has acted unreasonably and conducted proceedings in a manner which amounted to an abuse of process by seeking to maintain parallel proceedings in both the Tribunal and the County Court in relation to the same subject-matter of the dispute. The Tribunal extends the opportunity to the parties to make further submissions or observations before it reaches a decision on this issue.

Names:
Judge L. F. McLean
Mr J. Gallagher MRICS

Date:
9th December 2025

Rights of appeal

1. 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.
2. 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.
3. 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.
4. 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.
5. 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).