



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

Case Reference	: HAV/00HD/LBC/2025/0613
Property	: 83 Emerson Way, Emersons Green, Bristol, BS16 7AP
Applicant	: Tracey Tichbon
Representative	: n/a
Respondent	: Andrea Varano
Representative	: Paul Lambert
Type of Application	: Application for an order that a breach of covenant or a condition in the lease has occurred – Section 168(4) of the Commonhold and Leasehold Reform Act 2002
Tribunal Member(s)	: Judge D Cowan, Mr J Reichel MRICS, and Mr M Jenkinson.
Date and Hearing Venue	: 14 th November 2025, Bristol Civil Justice Centre, 2 Redcliff Street, Bristol, BS1 6GR.
Date of Decision	: 17 th November 2025

DECISION

Background

1. By an application dated 13th May 2025, the Applicant seeks an order that a breach of covenant or a condition in the lease has occurred pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002.
2. The application concerns alleged breaches at 83 Emerson Way, Emersons Green, Bristol, BS16 7AP (“the property”). The property is a two bedroom first floor flat that includes an area of land used as a garden and car parking spaces.
3. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows with sub-section (4) shown in bold:
 - (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 a leasehold valuation 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.*

4. In her application and bundle, the Applicant asserted that she was the freehold owner of the property. The Tribunal requested evidence of that fact and, after the hearing, the Applicant provided that evidence by the HM Land Registry register of title of the freehold under title number GR201761 in her name. She lives, in fact, at 81 Emerson Way, Emersons Green, Bristol, BS16 7AP, which is on the ground floor of the same building as the property.
5. The Tribunal first issued directions on 31st July 2025, indicating that the application was likely to be suitable for determination on the papers alone without an oral hearing (“the original directions”).
6. The directions also set out a timetable for the exchange of cases between the parties leading to the production of a hearing bundle by the Applicant.
7. On 22nd September 2025, the Applicant made an application to debar the Respondent from providing evidence as he had failed to comply with the timetable for his witness statement in the original directions.
8. On 28th September 2025, the Applicant provided the Tribunal with a bundle.
9. On 30th September 2025, Regional Judge Whitney extended time for the Respondent’s compliance with the original directions.
10. On 6th October 2025, further directions were issued by the Tribunal, indicating that the matter would now be listed for an oral hearing. The Respondent was to provide the Tribunal with a full bundle, what was required to be included, and its formatting (“the further directions”). On failure to comply with that requirement, the Respondent was barred from taking further part in the proceedings and the application shall be determined on the bundle that was submitted by the Applicant on 28 September 2025.
11. On 22nd October 2025, the Respondent filed what purported to be a bundle in compliance with the further directions.

Procedural issues

Compliance with the further directions

12. At the hearing, the Tribunal raised the question of whether the Respondent had complied with the further directions in relation to the tribunal bundle.
13. Mr Lambert addressed the Tribunal on this issue, as he had filed the bundle. He understood that the bundle he submitted to the

Tribunal was the correct way to proceed, and complied with the requirements in the further directions.

14. Mr Lambert accepted that the bundle he had filed did not include the documents which the further directions indicated were required.
15. The Tribunal indicated at the hearing that it found that there had been non-compliance by the Respondent with the further directions in relation to the bundle. That was because the bundle filed on behalf of the Respondent did not include the required documents. It included only those documents which the Respondent felt were relevant to his case.
16. Accordingly, the further directions provided the sanction that the Respondent was barred from further participation in the proceedings.

Relief from sanctions

17. The Tribunal asked the Respondent if he wished to make an application for relief from sanctions in these circumstances. He indicated that he wished to do so.
18. The Tribunal indicated that the Respondent address it on the following three stages (in accordance with the principles in *Denton v TH White Ltd* [2014] EWCA Civ 906, [24]):
The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [factors (a) and (b)]".
19. The Tribunal heard submissions on each of the stages in turn, giving a short oral judgment on each stage following those submissions. Mr Lambert addressed the Tribunal on behalf of the Respondent.
20. In relation to the first stage, Mr Lambert apologised to the Tribunal. He had tried to read and act on the further directions and believed that he was following them. He believed that the Tribunal could proceed on the basis of the documentation provided.
21. The Tribunal indicated that it regarded the breach as serious and significant. It had put the proceedings in jeopardy. There had been non-compliance with the further directions. Those further directions commenced with the statement that they were a formal order of the Tribunal which must be complied with by the parties.
22. On the question of why the default occurred, the second stage, Mr Lambert told the Tribunal that there was some confusion over a

different application made by the Applicant (which had been withdrawn), and repeated his earlier submissions.

23. The Tribunal appreciates that litigants in person can find directions difficult to decipher in lay language. However, the Tribunal indicated that it found that there was no good reason for the Respondent's non-compliance with the terms of the further directions. The terms of the further directions were clear to the parties, and Mr Lambert was corresponding with the case officer, who could have responded to any queries he might have had.
24. In relation to the third stage, all the circumstances of the case, Mr Lambert repeated his apology for his mistake. He had tried to act in an efficient and quick way.
25. The Tribunal found that the Respondent's bundle would not be admitted as evidence, but that the Respondent should be entitled to participate in the proceedings and make submissions on the substantive question because:
 - a. The sanction applied was serious and deprived the Respondent of his rights to participate, raising considerations under Article 6, Schedule 2, Human Rights Act 1998;
 - b. The Respondent's bundle, in any event, did not address the substantive issue before the Tribunal;
 - c. All the correspondence and details required for the Tribunal's determination were contained in the Applicant's bundle; and,
 - d. The Applicant agreed with the Tribunal's approach, which was put to her for comment.

The Substantive Question

26. The substantive question raised by the Applicant was that the Respondent had breached the covenant or condition contained in clause 3.7 of the lease, dated 28th November 1977.

The lease

27. The parties to the lease were David Wilson Homes Limited, as lessor, and David William Towns, the lessee.
28. The property is described as "The flat at first floor level shown edged red on Plan 1 and the entrance hall at ground floor level shown coloured green on Plan 2 and the garden area and car parking spaces coloured blue on Plan 2 and more particularly described in the First Schedule.
29. The lease defines the "Structural Parts" as the foundations floor slabs roof and the load bearing walls (whether internal or external) forming part of the Property and the Adjacent Flat.
30. Clause 3.7 provides:

To permit the lessor and its agents with or without workmen and others twice a year at reasonable times to enter upon and examine the condition of the Property and thereupon the Lessor may serve upon the Lessee notice in writing specifying any repairs necessary to be done and require the Lessee forthwith to execute the same and if the Lessee shall not within one month after service of such notice proceed diligently with the execution of such repairs then to permit the Lessor to enter upon the Property and then to permit the Lessor to enter upon the Property [sic] and execute such repairs and the cost thereof shall be a debt due to the Lessor from the Lessee and be forthwith recoverable by action.

31. The First Schedule provides further detail as to the extent of the property. It includes the following items:

The walls enclosing the flat and entrance hall save that where any such walls are party walls they shall be severed medially

The floors and the joists on which they rest but excluding the ceiling finishes affixed to the underside of joists

The roof above the flat

The doors and window frames

Any service conduits exclusively serving the Property

But excluding

All parts of the building of which the Property forms part beneath the joists upon which the floors of the flat rest except for the ground floor entrance hall

Chronology

32. The chronology was largely agreed between the parties, and contained in email exchanges between them:

- a. On 14th October 2021, in a previous application to the Tribunal for a determination as to breach, Tribunal Member Banfield had found that there had been no breach of clause 3.7 because the Applicant had not made a request to inspect the property.
- b. On 2nd April 2025, the Applicant had requested a convenient date to conduct a maintenance inspection of the property.
- c. On 3rd April 2025, Mr Lambert responded with certain dates, and it was agreed subsequently that an inspection would take place on 16th April 2025.
- d. On 16th April 2025, the Applicant inspected the exterior of the property but was refused entry to the interior of the property by the Respondent's tenant.
- e. On 17th April 2025, there was correspondence between the Applicant and Mr Lambert as to whether the Applicant was entitled to obtain access to the interior of the property. Mr Lambert asserted that was not possible "unless there is a direct issue" and requested the relevant term of the lease. The Applicant provided Mr Lambert with clause 3.7.
- f. On or about 1st May 2025, in subsequent email correspondence, the parties' respective positions were clarified. Mr Lambert

argued that the Applicant was entitled to enter upon the property, but that did not mean enter in the property; an internal inspection was not being refused but “we need clarification from your lawyer who has already read the lease”.

- g. Subsequent correspondence repeated that position (for example, on 12th May 2025

- 33. There were other supplementary issues, including about clearing the garden, but these matters were not relevant to the question before the Tribunal.

The parties' submissions

- 34. The Applicant told the Tribunal

- a. As the freehold owner, she had responsibility to ensure that the whole building was maintained, particularly for insurance purposes.
- b. There had been previous issues with leaks which had not been properly dealt with.
- c. She had a right to enter into the property in order to ensure that it was not going to cause her, living below, any problems.

- 35. The Respondent's submissions were that

- a. They had not taken legal advice as to the meaning of the phrase “enter upon”, but had received the view of a friend who happened to be a lawyer that it did not mean entry into the property.
- b. Mr Lambert was clear that this was *not* an issue – Mr Varano merely required clarification and that, upon that clarification, access would be granted.
- c. Any claim to damage had been dealt with promptly.
- d. It was in the interests of the parties to keep the building as best as they can. Indeed, the Respondent, who does not live at the property, and is not there all the time, understood that it would be beneficial to have a third party inspection.
- e. Mr Lambert said that he had genuinely believed that the Applicant's inspection request related solely to the external of the property. Accordingly, the Respondent's tenant, who suffered from anxiety, was not aware of the inspection.
- f. Mr Lambert said that the Applicant was not refused entry, but that there had been a misunderstanding. There had been a genuine reason for not allowing the Applicant entry into the property.
- g. In the absence of clarification, Mr Lambert told the Tribunal that they would have given the Applicant access to the property.

- 36. The Applicant told the Tribunal that she had in fact asked for alternative dates to access the inside of the property on two occasions. The Respondent had not provided her with alternative dates.

Determination

37. There are two issues for the Tribunal:
- a. Does the phrase “enter upon ... the property” in clause 3.7 of the lease include entering into the property?
 - b. If so, has there been a breach by the Respondent?

Issue 1

38. The Tribunal finds that the phrase “enter upon ... the property” must include entry into the interior of the property to inspect it.
39. An ordinary reasonable bystander appraised of the lease and the surrounding circumstances would find that to be the case because otherwise the Lessor would be unable to comply with their obligations. The definition of the property in the lease and the First Schedule to the lease can only be inspected by entering into the property. For example, doors, floors, and window frames cannot properly be inspected without entering into the interior of the property.
40. In the Tribunal’s experience, such a phrase is commonplace in leases and interpreted to mean entering into the interior of property.

Issue 2

41. The Tribunal reminds itself that it is for the Applicant to satisfy the Tribunal on the evidence that breaches have occurred.
42. The Tribunal finds that, on the basis of its interpretation of clause 3.7 of the lease, the Respondent is in breach of that clause.
43. The Respondent has misinterpreted the clause and did not inform the sub-tenant of the inspection. As a result, the Applicant was refused entry to the interior of the property and her subsequent requests for an internal inspection were also not allowed.
44. Accordingly, there has been a breach of the covenant or condition in clause 3.7.
45. The County Court judge, in due course and subject to any further claim made by the Applicant, may have to consider all the circumstances of the case and the Respondent will be able to bring to the attention of that Court the evidence as to their misunderstanding and their reasons for not allowing the Applicant entry upon the property.

Judge D Cowan

17th November 2025

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 by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which 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.
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.

