



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

Case Reference : MAN/00CZ/LBC/2024/0008

Property : Apartment 3, The Old Chapel, Bennett Street,
Liversedge, West Yorkshire, WF15 7ES

Applicant : Stephen Mark Watson

Respondents (1) : Alan McGrath & Susan Lyn McGrath

Respondent (2) : Tony Shepherd

Type of Application : An application for an order that a breach of
covenant or condition in the lease has occurred
under section 168(4) of the Commonhold and
Leasehold Reform Act 2002.

Tribunal Members : Judge T N Jackson
Ms J Jacobs MRICS

Date and venue : Paper determination
18 July 2025

Date of decision : 6 August 2025

DECISION

© Crown Copyright 2025

Decision

The Tribunal determines that:

- 1) Respondents 1 are in breach of the covenants in Clauses 11.3 and 12 of Schedule 4 of the Lease; and**
- 2) Respondent 2 is in breach of the covenant in Clause 11.3 of Schedule 4 of the Lease.**

Introduction

1. This is an application under section 168 of the Commonhold and Leasehold Reform Act 2002 for the determination of breach of covenant. The application states that the Respondents have failed to comply with procedural steps required on the transfer or assignment of the Lease in breach of clauses 11.3 and 12 of Schedule 4 of the Lease.

Procedural background

2. The application was made on 27 March 2024.
3. Directions dated 22 January 2025 regarding case management were issued. Following an application by the Applicant, further Directions dated 29 April 2025 were issued which added Respondent 2, the current owner of the flat, as a Respondent and determined that the matter would be dealt with by paper determination. The Applicant provided a bundle. A solicitor for Respondent 2 provided a short response to the application but with no accompanying bundle. No response was received directly from Respondents 1.
4. Despite a letter from the Tribunal dated 1 May 2025 to Respondent 2 copied to all parties querying whether the solicitor was acting for all the Respondents, there was no response. We are therefore unclear as to whether the submission from Respondent 2's solicitor is also on behalf of Respondents 1. The Applicant provided a reply to the solicitor's submission.

Background

5. The Applicant owns the freehold title WYK672348(1-3), The Old Chapel, Bennett Street, Liversedge, West Yorkshire WF15 7ES, which includes Apartment 3 ('the flat').
6. By Lease dated 20 July 2007, made between Your Homes Limited (1), Bennett Street (Millbridge) Management Company Limited (2) and Nigel and Ruth Hughes (3), Title WYK862679, the flat was demised for 99 years beginning on 1 January 2006 upon the payment of a premium, annual ground rent and service and management charges.

7. The Lease has various provisions which require procedural steps to be carried out by a tenant who transfers or assigns the flat.
8. By letter from Redfearns solicitors dated 19 May 2020, the Applicant received a Notice of Transfer and fee of £60 notifying him that the residue of the Lease term was transferred to Respondents 1 by means of a transfer dated 24 April 2019. The Notice of Transfer was sent in duplicate with one copy signed by the solicitors, and the duplicate was to be returned with the Applicant's signature together with a Certificate of Compliance.
9. The Applicant says that considerable correspondence was entered into with Respondents 1's solicitor on how to register the flat, although we did not see such correspondence. Apparently, the registration was not effected. As at 5 May 2025, the Official Copy of Register of Title WYK 862679, states that the proprietor was Ruth Hughes.
10. On 10 August 2023, Respondents 1 transferred the flat to Respondent 2.
11. On 17 November 2023, the Applicant sent a rent demand of £400 to Respondents 1 for the ground rent due on 1 January 2024. A reminder was sent on 2 January 2024 to an email address with which he had previously corresponded with Respondents 1 at their request.
12. By email dated 4 January 2024, Respondents 1 informed the Applicant that they no longer owned the flat and that Respondent 2 was the owner. Respondent 2 owns several of the flats in the block and is the sole director of the Old Chapel RTM Company Ltd, ('the RTM company') which has the responsibility of managing the building.
13. On 5 January 2024, the Applicant asked Respondents 1 when they had assigned the flat, advised that it was still registered in the name of their predecessor and advised them to seek legal advice.
14. On 8 January 2024, the Applicant again emailed Respondents 1 for the date of the assignment and advised that they appeared to be in breach of the Lease.
15. On 14 January 2024, the Applicant sent a letter with an email copy to Respondents 1 alleging two breaches of the Lease covenants and invited them to admit to the breaches. If no admission was received, he reserved the right to make an application to the Tribunal to have Respondents 1 declared to be in breach of the covenants in furtherance of proceedings under section 146 Law of Property Act 1925 (a section 146 notice) to forfeit the Lease.
16. On 7 February 2024, the Applicant emailed Respondents 1 referring to the letter of 14 January 2024 and advised that if he did not receive an admission of a breach or repudiation, then he intended to commence legal proceedings. He sought confirmation of a service address for Tribunal proceedings.

17. No such admission was received and therefore, the Applicant made the Tribunal application.
18. On 28 March 2024, the Applicant emailed Respondent 2 to advise that he was aware that he had acquired the flat, that the relevant procedural paperwork required by the Lease covenants had not been completed and asked him for the position, as Respondents 1 were not responding to correspondence.
19. On 6 May 2024, the Applicant emailed Respondent 2 to advise that he had commenced proceedings in the Tribunal against Respondents 1 as a step towards forfeiture under a section 146 Notice and that if Respondent 2 had an interest in the Property, he would likely be offered the chance to be added to the proceedings. As Respondent 2 had not responded to the previous email regarding the matter, the Applicant did not know whether he had an interest in the Property. He advised him to take legal advice.
20. On 7 May 2024, Respondent 2 emailed the Applicant saying that his solicitor had asked on what basis a section 146 notice was being issued.
21. On 8 May 2024, the Applicant emailed Respondent 2 sending him a copy of the Tribunal application saying that it was a preliminary to issuing a section 146 Notice. He advised that he considered that he should add Respondent 2 to the application and asked if he had any objection to this.
22. On 14 May 2024, the Applicant emailed Respondent 2 to ask again whether he had any objection to being joined in the Tribunal application. In response, on the same date, Respondent 2 emailed the Applicant to say his solicitor had advised that everything was in order at their end but would double check, so at present he did not require to be added to the proceedings.
23. On 16 May 2024, the Applicant emailed Respondent 2 to advise that he had made an application to join Respondent 2 as a party and again asked for the date the assignment document was executed.
24. By letter dated 6 August 2024, Walker Foster solicitors, sent to the Applicant a Notice of Intention dated 28 May 2024 from the RTM company, advising that it intended to issue a certificate to the Land Registry to comply with the restriction at entry on the Proprietorship Register of Title WYK 862679 in relation to the assignment dated 24 April 2019 between Ruth Hughes and Respondents 1. This was signed by Respondent 2 in his capacity as director of the RTM company.
25. The Applicant says that he did not read the above Notice thoroughly assuming it was for Respondent 2's registration of title. He objected to the issue of a certificate on the grounds that the breaches of covenant had occurred and that he was seeking forfeiture. He requested a copy of the application for the certificate, which was not forthcoming. He says that it was not apparent why the RTM company would make such an application given that the director knew that from 10 August 2023, he himself was the current owner not Respondents 1. Further, the solicitor acts for

both Respondent 2 and the RTM company and knew that Respondents 1 had parted with the flat.

The Lease Provisions

26. Under Clause 2.1 of the Lease, the tenant covenants to perform and observe the provisions and stipulations set out in Schedule 4. The covenants alleged to have been breached are set out below.

Schedule 4

Clause 11.3

'Not at any time during the Term to transfer nor assign the Demised Premises except upon and subject to the condition that the Tenant shall simultaneously with such transfer or assignment covenant directly with the Landlord and the Management Company to observe and perform the conditions hereof and to obtain a like covenant from his transferee assignee (subject to the same proviso) on each occasion the Demised Premises are thereafter disposed of and the Tenant will apply to the Chief Land Registrar for a restriction to be entered in the proprietorship register of his title that no disposition of the registered estate (other than by charge) by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without written consent signed by the proprietor for the time being of the estate registered under Title Numbers WYK672348 or if appropriate signed on such proprietors behalf by its secretary or conveyancer.'

Clause 12

'At all times during the continuance of the Term to deliver or cause to be delivered to the Landlord a notice of every assignment disposition or devolution of or charge on or transfer of title to the Demised Premises or any part thereof whether by way of mortgage or otherwise within one month after the execution of any deed or signature to any document or after the date of any Probate Letters of Administration or other instrument or an order of court by which such assignment disposition evolution charge or transfer may be effected or evidenced such notice to specify the name address and description of the person or persons to whom or in whose favour the assignment disposition devolution charge or transfer shall be made to take effect and also at the time of delivering every such notice to produce the deed document instrument or order by which such assignment disposition devolution charge or transfer shall purport to be effected or evidenced as aforesaid for the purpose of having a memorandum thereof entered into the registers to be kept by the Landlord for that purpose and to pay to the Landlord a reasonable fee (not being less than £50.00 plus value added tax) for each such registration.'

27. Title WYK862679 (the Lease) has a restriction which states:

'RESTRICTION: no disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed by the proprietor

for the time being of the estate registered under title number WYK 672348 (or his Conveyancer) that the provisions of Clause 11.3 and 12 of Schedule Four of the registered Lease have been complied with.'

Submissions

The Applicant

28. The Applicant submits that no documents have been received by the landlord from Respondents 1 or 2 in relation to Clauses 11.3 and 12 of the 4th Schedule and therefore Respondents 1 and 2 have breached the covenants. No Deed of covenant has been presented nor evidence of an application to the Registrar having been made.
29. He asserts that Clause 11.3 requires, inter alia, that the assignor procure that the assignee covenant directly with the landlord to observe the conditions of the Lease. This would have to be by way of a Deed and the Clause requires that the covenant is executed simultaneously with the transfer or assignment. No such Deed has been received by the landlord in relation to Clause 11.3 and therefore there was a breach of the covenant by Respondents 1 on or before 4 January 2024.
30. He asserts that Clause 12 requires, inter alia, that a notice be delivered to the landlord by the assignor within one month of any assignment or transfer of the title and should include a copy of the deed or assignment. He says that no documents have been received by the landlord in relation to Clause 12 and therefore there is a breach.
31. He asserts that Clause 11.3 requires the new tenant to make an application to the Chief Registrar for the restriction set out in the Clause to be entered in the register against the new tenant's proprietorship register. Such an application requires the permission of the landlord under the landlord's residual powers under section 98(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'). No application in favour of Respondent 2 has been received by the landlord and therefore Respondent 2 is in breach of the covenant.
32. Most powers of management, including matters related to assignment are vested in the RTM company of which Respondent 2 is sole director. Clause 11.3 requires the landlord's permission for any assignment and such permission is to be granted by the RTM company subject to the provisions of section 98(4) of the Commonhold and Leasehold reform Act 2002 which requires 30 days' notice to be given to the landlord of any intention to provide permission. He says that no such notification has been provided to the landlord of any intention by the RTM company to provide permission. No such notification has been provided to the landlord evidencing the assignee's obligation to register his title with the Chief Registrar under Clause 11.3.
33. The breaches are grounds for forfeiture or re-entry subject to compliance with section 146 Law of Property Act 1925.

Respondents 1

34. The Tribunal has not received any submission directly from Respondents 1. For the reasons set out at paragraph 4 above, we do not know if the solicitor's submission referred to below is also intended to be on behalf of Respondents 1.

Respondent 2

35. Walker Foster solicitors on behalf of Respondent 2, submit that the purchase from Respondents 1 to Respondent 2 was completed on 10 August 2023 but they have not yet been able to complete the registration process due to a restriction on the Title requiring a certificate from the freeholder. Respondents 1 completed their purchase on the 24th of April 2019. They have also not been able to register their purchase due to the same restriction requiring a certificate from the freeholder.
36. The solicitor says that Respondents 1 were represented by Redfearns solicitors when they purchased the Property. They served a notice of assignment on the freeholder and paid a fee but the certificate to comply with the restriction was not forthcoming.
37. When Respondent 2 purchased the Property, it was agreed that Walker Foster solicitors would deal with both Land Registry applications. With a view to achieving this, on the 6th of August 2024, Notice of Intention dated 28 May 2024 was served on the freeholder advising that the RTM company was to provide a certificate to comply with the terms of a restriction of Title WYK862679 in relation to both transactions. A letter of objection was received from the freeholder on the 20th of August 2024 citing the current ongoing proceedings. A cheque in the sum of £400 in respect to ground rent had been forwarded to the freeholder. It was submitted that there was no ongoing breach of covenant and the application was opposed.

Applicant's reply

38. The Applicant says that the solicitor's response does not provide any evidence refuting the breaches of covenants. The solicitor's Notice to the Applicant dated 6 August 2024 appears to have been a request to register Respondents 1 as the proprietors when the solicitor knew that as that date the flat had transferred to Respondent 2. This would have caused the Applicant to object to the Notice of Intention to apply to the Land Registry for registration of Respondents 1.
39. The Applicant has not received any Notice of Intention for approval of the registration of title of Respondent 2. Due to the conflicting information as to ownership he would have raised a query and objected.
40. As the Lease is considered forfeited, he has returned the £400 ground rent. The covenants required satisfying by 10 September 2023 and they were not.

Decision

41. We considered that existence of the RTM company and the fact that Respondent 2 was both an assignee /current tenant of the flat and director of the RTM company complicates matters as to **who** should be doing what.
42. However, in our view, Clauses 11.3 and 12 of the 4th Schedule set out quite clearly **what** needs to be done and in relation to Clause 12, when it needs to be done, namely within 1 month after the execution of the deed of transfer.
43. Whilst from the evidence it appears that solicitors in both transactions have sent a Notice of Transfer/Assignment to the Applicant, on a normal construction of the Lease, the relevant clauses require more than that. Clause 11.3 requires evidence of the transferor tenant's covenant simultaneously with the transfer, to observe and perform the conditions in the Lease and to obtain a like covenant from the transferee. In our view, it requires the transferee tenant to apply to the Land Registry for a restriction in the proprietorship register in the words set out in the Clause.
44. On our interpretation, Clause 12 requires the transferor tenant to provide the landlord, within one month of the date of transfer, a Notice of Transfer/Assignment setting out specific information together with a copy of the transfer document itself, to allow the landlord to keep a memorandum in registers he keeps. The Clause requires the payment of a reasonable fee not being less than £50 plus VAT for such registration.
45. Regarding the transfer of the Property from Respondents 1 to Respondent 2 on 10 August 2023, in relation to Respondents 1, we have been provided with no evidence of a deed of covenant or similar to reflect the requirements of Clause 11.3 nor of any documentation sent to the Applicant within a month as required by Clause 12. We therefore find Respondents 1 to have breached Clauses 11.3 and 12 of the Lease.
46. In relation to Respondent 2 in his capacity as the new tenant, (as distinct from his capacity as director of the RTM company), we have been provided with no evidence that following the transfer on 10 August 2023 that he applied to the Land Registry for a restriction to be applied on WYK862679 (leasehold title) to prevent the registration of a disposition of the flat without written consent signed by the proprietor of WYK672348 as required by Clause 11.3 of the Lease.
47. We noted the letter dated 6 August 2024 from the solicitor on behalf of Respondent 2 in the latter's capacity as a Director of the RTM company to the Applicant enclosing a Notice of Intention dated 28 May 2024, seeking approval from the Applicant for the registration of the Title following the transfer that took place on 24 April 2019 as required by Clause 11.3. However, in our view, this does not assist Respondent 2. Firstly, it relates to the earlier transfer in 2019 which had not been registered at the Land Registry at the time. Whilst it is clear that there needed to be a series of steps taken to regularise that error on the Land Registry title of which the Notice of Intention may have been the first step, in the absence of any other evidence, in our view that does not amount to an application by Respondent 2 to

apply to the Land Registry for a restriction to be placed on his proprietorship title arising from the transfer on 10 August 2023. We have not been made aware, for example, of whether there was a discussion or agreement between the parties as to the process to be adopted to **legally** allow the transfer of 10 August 2023 to be registered to the correct name due to the previous error, irrespective of the Lease provisions.

48. Even if we are wrong on that point, the Notice of Intention dated 28 May 2024 was issued in Respondent 2's capacity as the Director of the RTM company acting as the landlord's agent under the provisions of sections 98 (2), (4), and (7) of the 2002 Act when considering approvals required under the Lease.
49. Under the provisions of section 98 (2) Commonhold and Leasehold Reform Act 2002, functions in relation to approvals to a tenant under the Lease are functions of the RTM company rather than the landlord.
50. Section 98(7) of the 2002 Act provides that approval required to be obtained by virtue of a restriction entered on the register of title kept by the Chief Land registrar, is, so far as relating to a long lease of the whole or any part of the premises, to be treated as an approval under the Lease.
51. Section 98(4) of the 2002 Act provides that the RTM company must not grant approval under section 98(2) without having given to the landlord, in the case of an approval relating to assignment, 30 days' notice.
52. We have no evidence of Respondent 2, in his capacity as the assignee tenant, complying with the requirements of Clause 11.3 in relation to the transfer of 10 August 2023 and we therefore find that he is in breach.
53. The Applicant asserts that he did not give approval for the two transfers to be registered at the Land Registry as there had been a breach of the covenants. That is not relevant to the very specific matter we must determine, namely whether there was a breach of covenant, although it may be relevant to any future enforcement proceedings. The question of enforcement of a breach of covenant by forfeiture or any other means is a matter for the County Court and not the Tribunal.

Obiter

54. It appears to us that there has been a misunderstanding from at least 2019 as to the requirements of Clauses 11.3 and 12. This is exacerbated by the apparent confusion as to the capacity in which Respondent 2 is acting at any time i.e. tenant or director of the RTM, as different obligations can arise in each capacity from the same set of circumstances e.g. the transfer of the flat.
55. Whilst the Applicant refers to protracted correspondence with solicitors regarding the transfer of 24 April 2019, we have not seen it. In our view, it is a solicitor's professional responsibility when carrying out property transfers to ensure that any provisions in a lease regarding transfers are complied with and, if in doubt as to the interpretation of the relevant clauses, (or even where there is no doubt but to

ensure compliance) to seek clarification from the landlord. If the matter of interpretation cannot be resolved between the parties, then there are legal avenues available for the matter to be determined. It is not appropriate to leave the matter unresolved such that there is a lack of clarity as to who is the official and registered tenant of the Lease. The current Proprietorship Register of WYK 862679 refers to a person who transferred the flat in 2019 and since then there has been a further transfer to another person in 2023. This is unacceptable.

56. This matter should have been resolved by the relevant legal representatives at a much earlier stage which would have avoided the need for a Tribunal application. The Respondents have been found to be in breach of covenants due to the actions of their legal representatives whom they entrusted with the conveyancing process rather than by any action/inaction on their parts.

Costs

57. Neither party made an application for costs, and we make no such order.

Appeal

58. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

.....
Judge T N Jackson