



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

Case reference : **LON/00AH/LBC/2025/0641**

Property : **12B Cotford Road, Thornton Heath,
London, CR7 8RB**

Applicant : **Rukshmee Ramrachia**

Representative : **In person**

Respondent : **Chantelle Gardner**

Representative : **In person**

Type of application : **Determination of an alleged breach of
covenant under s.168(4) Commonhold
and Leasehold Reform Act 2002**

Tribunal members : **Judge McKeown
Ms. M. Bygrave MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21 April 2026**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that it does not have jurisdiction pursuant to s.168 Commonhold and Leasehold Reform Act 2002 to determine breach of the cl. 2(1) and/or cl. 1(2) of the Lease on the basis of allegations of failure to pay Ground Rent;**
- (2) The Tribunal determines that it does not have jurisdiction pursuant to s.168 Commonhold and Leasehold Reform Act 2002 to determine breach of the cl. 2(2) of the Lease on the basis of allegations of failure to pay electricity or cleaning charges;**
- (3) The Tribunal determines that it does not have jurisdiction pursuant to s.168 Commonhold and Leasehold Reform Act 2002 to determine breach of the cl. 3(2) and/or cl. 4(5)(a) and/or cl. 4(6) of the Lease on the basis of allegations of failure to pay cost relating to repairs to the front door (£50) or cost relating to alleged leaks (£475) or insurance costs for 2021/2022 (257.74);**
- (4) The Respondent has not committed a breach of cl. 2(6) and/or para. 7 of the Fourth Schedule of the Lease (in respect of allegations of assignment, sub-letting or use other than as a private dwellinghouse in the occupation of one family only);**
- (5) The Respondent has not committed a breach of cl. 2(3) of the Lease (in respect of allegations of failing to repair a leak to the bathroom and/or failure to paint the walls and maintain in a good condition);**
- (6) The Respondent has not committed a breach of para. 5 of the Fourth Schedule of the Lease (in respect of allegations of discarding cigarette stubs and/or leaving a trampoline/children's toys in the garden);**
- (7) The Respondent has not committed a breach of para. 1 of the Fourth Schedule of the Lease (in respect of allegations of nuisance, e.g. loud noise, visitors, smoking of cannabis);**
- (8) The Tribunal does not order reimbursement of Tribunal fees.**

1. 12B Cotford Road, Thornton Heath, CR7 8RB (“the Property”) is a flat in a converted house. The Applicant is the landlord and resides in the ground floor flat (12A), which has one bedroom. The Respondent occupies the first-floor flat (12B), which has two bedrooms. The Respondent acquired the tenancy in October 2019. The Applicant acquired the landlord’s interest on 29 December 2012.
2. The application alleges that there are breaches of the Lease as follows:
 - (a) There is outstanding ground rent in contravention of cl. 2(1) and cl. 1(2) of the Lease – it has not been paid 2021-2024 and the arrears are £320;
 - (b) There are outstanding electricity charges in contravention of cl. 2(2) of the Lease – it has not been paid since July 2020 and the arrears are £285;
 - (c) There are outstanding cleaning charges in contravention of cl. 2(2) of the Lease – they have not been paid since July 2020 and the arrears are £285;
 - (d) There are outstanding repair costs in contravention of cl. 3(2), 4(5)(a) and 4(6) of the Lease – front door repair on 13 May 2024 (£50), repairs from leaking (£475), insurance costs for 2021/2022 (£257.74);
 - (e) Unlawful subletting in breach of cl. 2(6) and para. 7 of the Fourth Schedule of the Lease – subletting to her son and an additional lodger;
 - (f) Poor property condition in breach of cl. 2(3) of the Lease – failed to repair a leak to the bathroom which occurred on 31 October 2023, 30 April 2024 causing £950 in damage to the Applicant and failure to paint the walls and maintain in a good condition;
 - (g) Discarding of cigarette stubs and leaving an unused or broken trampoline and other children’s toys in the garden in breach of para. 5 of the Fourth Schedule;
 - (h) Nuisance (loud noise and visitors in the early hours, occupants smoking cannabis) in breach of para. 1 of the Fourth Schedule of the Lease.
3. On 24 July 2025 the Tribunal gave directions (p.463). It was noted that the Tribunal would need to be satisfied that the lease includes the covenants relied on by the Applicant and that, if proved, the alleged facts constitute a breach of those covenants. The directions state that the Applicant had to prepare a hearing bundle which must contain all documents relied upon by the parties and referred to in directions 5-9. The directions also provided that only “those documents sent in bundles

are likely to be before the tribunal at the full hearing and parties should not send documents ‘piecemeal’ to the case officer”. They were amended on 30 August 2025 (p.487) in terms of dates for compliance.

Documentation

4. The Applicant has provided a bundle of documents (references to which are “p.”) which runs to 500 pages. References herein are to that bundle.
5. There is a witness statement from the Applicant dated 1 December 2025, which is not contained in the bundle (entitled “tribunal evidence”). This was emailed to the Respondent on 2 December 2025. There was a further witness statement from the Applicant dated 3 November 2025. The Tribunal has not had regard to this (and informed the parties of this at the hearing) as it had not been sent to the Respondent (and, indeed, stated that the Applicant wanted documents attached to it to be kept confidential and were not to be shared with the Respondent) and it exhibited some “without prejudice” correspondence.
6. The Respondent has provided Statement of Case dated 26 November 2025 and a witness statement dated 26 November 2025 (which is also not contained in the bundle).

The Hearing

7. Both parties attended the hearing in person.
8. The Tribunal stated that it had, at that time, seen the Applicant’s bundle and the Respondent’s witness statement and Statement of Case. The parties confirmed that there were no other documents which the Tribunal should have. The Tribunal also stated that it was to determine whether there had been a breach (or breaches) of the Lease by the Respondent. It noted that the Respondent had made a number of allegations as against the Applicant, but the Tribunal was not here to determine those allegations. The Tribunal also made clear that it would not (and could not) make an award of compensation.
9. It was agreed that the Applicant was the Respondent’s landlord and that the Applicant held her interest in the Property on the terms set out in the Lease at p.23.
10. It was established that the Applicant did not have a copy of her own bundle, nor of the Respondent’s documents. There was a pause whilst a copy of the bundle and the Respondent’s witness statement was printed off for her.

11. The Applicant told the Tribunal that she had new evidence, which was a photograph of a cigarette butt on the bottom of the stairs leading down from the Property and one photograph of what was said to be the remains of a cannabis cigarette on the patio. She said that they had been taken the week before. They had not been sent to the Tribunal or the Respondent and, when asked why, she said that she had been told to send anything to the Tribunal or the Respondent 10 days before the hearing. The photographs, which were on the Applicant's mobile telephone, were shown to the Respondent. The Respondent objected to the having regard to them, stating that the allegations about cigarettes was already included and they were not relevant. The Tribunal viewed the photographs and said that it would consider whether to have regard to them. The Applicant said that she had a noise recording. The Tribunal informed her that if she wished to rely on it, she would need to play it.
12. The Tribunal said that it would deal with the allegations in turn and hear from both parties on each issue.
13. In relation to the Ground Rent, the Tribunal identified the applicable clause. The Respondent referred to a letter from Judge Carr dated 11 November 2025 which stated, among other things, that failure to pay Ground Rent was a matter over which the Tribunal did not have jurisdiction. It also stated that questions of service charge were not matters for a breach of covenant application. The Applicant said that there had been confusion over what the allegations were and it needed clarification. The Tribunal said that it would hear both parties on all alleged breaches, but it would have to decide whether or not it had jurisdiction and it may decide that it did not.
14. The Respondent said that there was no question over the Ground Rent and she had made an offer to clear the Ground Rent. She said that an email was sent to Applicant, who had refused to accept the Ground Rent payment or any payment plan. The Respondent said that this left her in a difficult position.
15. The Applicant said that the Respondent had only paid for the first year, then she (the Respondent) kept on demanding it every year. She said that a statement had been sent, which the Respondent had ignored and she did not reply. After this application had been submitted, she had replied, stating she would pay £150. The Tribunal asked her why she had not accepted the offer of payment. She said that it was because she had already submitted this application and the Ground Rent was only part of it (there was also the damage to 12A from the leak).
16. The Tribunal asked the Applicant what she said about any jurisdiction point. She said that her solicitor had advised her to make this application, for failure to pay the Ground Rent and other breaches.

17. The Tribunal asked the Applicant about the effect, if any, of the Respondent's attempt to remedy any breach in terms of Ground Rent. The Applicant said that she had already submitted this application for determination and so had to wait to hear what the Tribunal said. She had not stood in the Respondent's way completely, but she wanted to wait for the Tribunal's decision. Before the application had been made, a letter had been sent from the Applicant's previous solicitor, she did not know if that had been provided. The Respondent had not replied to that.
18. The Tribunal established that the Ground Rent was £80 per year and the following years were said not to have been paid: 2021; 2022; 2023; 2024; 2025. The Respondent accepted that they had not been paid.
19. The Respondent said that the non-payment of Ground Rent was against a backdrop of a number of difficult situations she had to deal with due to the Applicant. The Respondent had to cut contact and block the Applicant from contacting her due to her persistent allegations, hostility towards the Respondent, which had impacted on the Respondent's ability to focus on things that needed to be done. She had submitted evidence of some of those incidents. She accepted that she owed the Ground Rent, but there were mitigating circumstances related to the Applicant's hostility and treatment of the Respondent since she had bought the Property. In terms of the offer to pay, the Respondent said that she was at the Tribunal to get a resolution and she needed to be able to move on with her life. She had made an offer. The Applicant was quite resistant towards the Respondent, was hostile and difficult to manage. The Respondent had to block the Applicant as advised by the police to be able to focus and protect herself from hostility. She said that the allegations were not made in good faith and were due to personal dislike.
20. The Applicant said that she denied this. She asserted that the Respondent did not live in the Property. The allegation of harassment was fake. The Applicant emailed once a year to demand the service charge and rent. The Applicant and the Respondent did not see each other and did not talk. It was a completely fake allegation. When the Applicant contacted the Respondent about property damage or a leak, she would not respond, would not take action, would not contact the Applicant. The Applicant contacted the Respondent when she was desperate.
21. The Tribunal asked the Respondent, concerning her statement that she had blocked the Applicant, whether she was saying that she had not received any demands for Ground Rent. She said that, in terms of blocking the Applicant, she meant that she was filtering her emails. The Applicant would contact her about unsubstantiated claims. She said that she had given some examples of this. She said that she had never received formal demands. She said that she knew the Ground Rent needed to be paid. She said that most emails and text messages from the

Applicant were hostile, so she had to shut them down and put a stop to it. This was on the advice of the police.

22. The Tribunal asked the Applicant if she had sent statements for every year. She said that she had and all emails had been sent to the Tribunal. It was pointed out that the Respondent had said that she had not received any statements for Ground Rent or service charges and the Tribunal asked the Applicant to take it to any such documents in the bundle. The Applicant said that they were sent by her solicitor.
23. The Applicant said that the application was before the Tribunal and that she was not in a position to accept payments. She said that the application must proceed in accordance with the directions and the application concerned issue relating to the Ground Rent, service charges, damage to property, repairs, sub-letting and nuisance.
24. It was then established that there were two further witness statements from the Applicant (as set out above) which were not contained in the bundle. It was established that the witness statement dated 2 December 2025 was sent to the Respondent (she confirmed that the email addresses it had been sent to were hers, although she said that she had not looked at it), but the other witness statement had not been sent to the Respondent.
25. The Tribunal asked the Applicant about any formal demands for Ground Rent as it appeared that it had only been raised by way of email. The Applicant said that she was sure that her solicitor had sent some. The Tribunal asked if they were in the bundle. The Applicant said that she was not sure.
26. The Tribunal referred the Respondent to her Statement of Case and noted that, in respect of all of the allegations, it was said that they were not matters for s.168(4) and the Respondent was asked on what basis this was said. The Respondent said that she had made an offer in terms of the Ground Rent. In terms of the matters being considered in the hearing, she said that this based on the legal information from Judge Carr. The Tribunal asked if there was any law or anything else why she said that the allegations should not be dealt with under s.168(4). The Respondent referred to her offer to pay the Ground Rent and said that the proper way of demanding it had not been followed.
27. In terms of the breaches alleged in terms of the cleaning and electricity charges, the Tribunal noted that these did not appear to be a breach of cl. 1(2) and the Applicant accepted this. The Tribunal did have to consider whether it was as a breach of cl. 2(1). The Tribunal asked the Applicant what it was said was owing as at the date of the hearing. The Applicant said that when the application was submitted, the charges for 2021-2024 were owing. She would now add the charges for 2025, which were £5 each for cleaning and electricity, per month (i.e. £120 in total).

The Applicant said that the Respondent agreed to the charges when she first bought the Property. She said that the Lease said that any costs like cleaning and electricity needed to be shared. The Tribunal asked where in the Lease it said this. The Tribunal noted that there did not appear to be any invoices for electricity or cleaning. The Applicant said that the electricity came from her property and she paid the charges on her bill. The Applicant confirmed that she estimated the charge to be £5 per month. The Respondent confirmed that she had agreed to the charges when she bought the Property.

28. The Applicant confirmed that her meter controlled the communal lights (and the Respondent agreed). The Applicant said that the Respondent's tenant was using the three bulbs in the hallway, which were on a sensor. They did not have a separate meter. The Tribunal referred to a letter from UK Power in the bundle. The Applicant said that this was when she turned the electricity off.
29. In terms of the cleaning costs, the Applicant said that the cleaning was for the communal area, which she did herself. The Respondent was asked if she had agreed to it. She referred to the Lease and said that she was always aware it was within the terms of the Lease to pay for things such as cleaning, gardening and electricity. The Respondent said that she had acted in good faith, this was her home. In terms of the electricity and cleaning, she was willing to have a verbal, informal, agreement. She agreed, initially, to the electricity, not to the cleaning. She was told, over time and over email, that she would be expected to pay different amounts for different things. She refused to respond to emails and threats and different amount were being requested from her. She had asked for a breakdown, but this was always refused. She said that she felt that if she did not respond to what the Applicant requested without questions, there would be a problem. The communal hallway was a space by the external door. It was about 2 x 1m and was a very small space. The light in that space was connected to the downstairs property. The Applicant had access to this and could switch it off. The majority of time, the light was off. The Respondent said that they tended to leave the corridor light in the Property on as its internal door had a glass panel.
30. The Applicant had denied switching off the electricity. She said that it was on a sensor. If she had switched it off, all of the house would be in darkness. She said that the Respondent was lying.
31. The Applicant accepted that no "formal" service charge demands had been sent. She said that the demands had been made by email, which was, in her view "formal". She said that, in terms of the cleaning, she just charged for her time. She would charge for the year in one email.
32. In terms of the charges for the door, the Tribunal raised an issue as to whether this did fall within cl. 4(5)(a). The Applicant said that she had replaced the part shown at p.337-8. She said it was attached to the door.

The Tribunal asked the Respondent if she said that it fell within the clause. She said that she had no idea what the part shown was. She referred again to the style and tone of communication from the Applicant. She said that she respected that, as part of the Lease, she had to contribute 50% but she said that the Applicant had to share information about repairs, costings and invoices. The Respondent said that she had asked for these but they had never been provided. The Respondent said that she was constantly asked for money without substantiating evidence behind the demands. This left her in a position questioning where the amounts had come from. The Respondent said that she remembered requesting an invoice and, on anything like this, a question or pushback to provide evidence was always met with hostility. As far as she was concerned, until a demand was correctly made, she was not liable. This was not coming from a place of difficulty but because there had been confusion, goal posts had been changed, including requests for payment to use the garden.

33. The Tribunal asked for any evidence that the work to the door had been done or of its cost. The Applicant said that the work cost £100 and the documentation had been sent to her solicitor.
34. In terms of the leak, the Tribunal asked if there were any invoices evidencing the works. It was confirmed that there were no such invoices in the bundle. The Applicant confirmed that demands for payment were only sent by email.
35. The Respondent said that she would like to see evidence of the repair (said to be about £2,000). She said that she acknowledged that a leak was not nice to go through. She said that incidents happened and it was not done deliberately and she was not at fault. She admitted that, from the photographs, it appeared that there was a leak. She said that there had been times when she had responded and that she did respond to those type of emails as they were important. When it shifted to demands for money, things became difficult. She said that she expected that the Applicant had building insurance and any escape of water would be covered. She (the Respondent) may be liable for the excess or maybe half. She would like to have evidence of the £2,000 referred to in emails. The Applicant said that she owed half of £2,000 and if there was evidence of it, she would send the payment.
36. The Applicant said that there was a continuous leak. When the Applicant contacted the Respondent, she would not reply. She said that when she contacted her insurance, her insurance would go up. She had asked the Applicant to claim on her insurance and the Respondent refused to give the Respondent her insurance details.
37. Turning to the allegations concerning insurance payments, the Applicant said that she suggested the Respondent get her own insurance and they

had agreed that they would both get their own insurance. She said that the insurance policy (p.342) was taken out before the agreement.

38. The Respondent said that, at around the time she bought the Property, during buying process, it was a condition that the freeholder showed evidence the building was insured. Her understanding was that it was the responsibility of the freeholder. Her mortgage provider wanted to have confirmation. When asked why she had not paid the £515.48 she said that she had not been given access to the insurance policy when a leak happened in about July 2020. She said that she had not paid for 2020-2021 as she had put her own policy in place and this had been agreed with the Applicant. The Applicant said that the agreement was after this, in about July 2021. The Respondent said that the agreement was around July 2020 and referred to Exhibit H to her witness statement. She said that Exhibit I showed that she had her own policy.
39. The Tribunal asked the Applicant about the exhibits. She said that she thought the agreement about insurance was after this. She said that they were already having arguments and the Respondent said that she would take her own insurance and the Applicant said that she would do the same. After 2021, the Respondent did not have a policy and so if there was a leak, she had no insurance on which to claim.
40. The Tribunal asked the parties what they said a “fair proportion” was. The Applicant said half. The Respondent said half if she had access to the policy to use it.
41. The Applicant confirmed that the demands for payment were made solely by email. The Tribunal looked at the policy, which confirmed that it was for a three-bedroom property.
42. Turning to the sub-letting and alleged breach of cl. 2(6). The Applicant said that there was a photograph of the tenant at p.348. The Tribunal asked what evidence there was that he was the tenant. The Applicant said that she had many photographs of him opening the door. She said that she had had conversations with him about making noise. She said that she had overheard conversations between him and the Respondent about him being the tenant – the Respondent was wishing him good luck with the property. When the Applicant had spoken to him, he said that he would inform his landlord about it. The Respondent said that she did not know who the person at p.348 was. The Applicant referred to the photograph at attached to the Applicant’s further witness statement (showing a man with headphones close to what appears to be the Respondent’s door). The Respondent said that that was a family friend. She said that the Property was a family home. The allegations about her parting with possession were untrue. She did have periods away from the Property due to stress. She had an adult son who did shift work and he lived with her. There may be family members (including her mother) who stay. It was diff to prevent family members wanting to spend time

with them and that was part of her owning her own property. She said that the man in the photograph did not have a key to the Property. She said she had an extended family, including step-children, who at times have had keys. Her son had a key. Her mother had a key.

43. The Applicant said that the Respondent was lying and the man in the photograph could be seen opening the door. She said that he had a key and he was a tenant. One day, a council officer came and asked her who was living upstairs. She said that there was post (photographs exhibited to the Applicant's further witness statement – one letter was post marked 28/11/25 and the Applicant showed the Tribunal the photograph on her telephone of the five letters together, confirming that it was taken on 27 October 2025).
44. The Respondent said that Khamar Muhammad needed to use her address to receive post for a short period of time. The man in the photograph was Mr. Muhammad. She cannot remember when she had agreed to him using the address for post. She said that Keysharn is her son.
45. The Applicant played a recording of a conversation between her and a man. The Applicant said that it demonstrated how difficult it was to live there and to be confronted when leaving her property. She said that there was an internal door and steep stairs up to the first floor. There is a partition with the stairs adjacent to 12A.
46. The Applicant said that man was Mr. Muhammad. The Respondent said that it was her son. The Applicant said that it was the tenant who made noise, the Respondent's son did not.
47. After the break, the Tribunal asked the Respondent were everyone slept. She said that she was an occupier, she paid the mortgage and Council Tax. Her eldest son lived at the Property. She had a younger son. He lived at the Property and also with his father. Her adult son also spent time with his father outside London. She said that, based on the challenges and over-monitoring from the Applicant, there had been periods over the years when she had not felt safe to stay in her own home. She had stayed with her mother, particularly around the events dealt with by the police. She said it was difficult to live with the Applicant, who was confrontational. She was the occupier but there had been periods she had not stayed at the Property. She said that she had a bedroom. Her younger son co-sleeps. There was a second room on first floor and there was a pull-out bed in living room.
48. The Applicant said that the Respondent was lying and she had moved out to live with her partner in 2021. She was rarely at the Property. She lived with her younger son and partner, but she did not know where. She said that the Respondent's son had asked her in to the Property one day.

49. The Respondent was asked if she had “taken back” her agreement to pay for the electricity charges. She said that there was a conversation also concerning the charges to the garden (she was paying for gardening, but she was doing it). When she realised that she was being charged and things had not been carried out, she did tell the Applicant that she was not going to carry on paying. She said it was a very long time ago and she could remember when.
50. The Applicant said that the Respondent was lying, that she was cleaning and that the Respondent had not lived there since 2021. The Respondent had never replied to say she would not pay.
51. In relation to the condition of the Property, the Applicant said that the Respondent failed to repair a leak to the bathroom which occurred on 31 October 2023 and 30 April 2024 causing £950 in damage to the Applicant. It had damaged the kitchen and flooring of 12B (there are no pictures of it). The pipe connected to kitchen and went to the bathroom. The insurance company said that there would have to be a panel in the bathroom – when the shower in the Property was used, all the water would come out of the bath which affected the flooring and the water went inside the flooring. She believed the leak was in the pipe as the ceiling was constantly wet. The Applicant referred to p.352-5 and said that water was coming from the shower.
52. The Respondent referred to cl. 2(3) and said that the interior and decoration of the Property has been upheld. In terms of the leak, there was no way she would ignore or not want to be involved in a conversation about a leak. The Applicant had been given information about the sealant about the bath. Whenever contractors attended, she had let them in (contractors the Applicant had employed). A survey had been done in the kitchen (under the sink) and under the bath. The Respondent said that she was more than happy to look for a resolution. She said that professionals could not find the leak. In terms of multiple leaks, she was only aware of one. The sealant had been renewed. The carpet had been removed on the stairs simply so she could decorate. She had complied with the contact from the contractors but she would not engage with threats or be spoken to in a derogatory manner or with hostility.
53. The Applicant said that every time she contacted the Respondent, she would accuse her of being threatening. She said that they lived in the same property and they had to co-operate. It was not the contractor but the insurance company who said that they needed to go under the floorboards in the kitchen and the Respondent was never there when the contractor came. It was confirmed that there was no evidence from the contractor.
54. In terms of the failure to paint the wall, it was confirmed that it was the wall in the communal area. The Tribunal referred to the terms of the

Lease. The Applicant said that she thought that the communal area was included in the terms of the clause.

55. Turning to the allegations of rubbish, the Respondent said that it was the Respondent's son and the tenant who did not use an ashtray and who smoked cannabis. She referred to the photograph of what was said to be cannabis shown to the Tribunal that morning. She said the cigarette stubs were thrown at the back of the garden and on the stairs. She said that they also throw their hair in the garden when they combed their hair.
56. The Respondent referred to Exhibit J to her witness statement. She said that, quite soon after moving in to the Property (in one of her first conversations with the Applicant), the Applicant knocked on the door and asked if the Respondent was dropping cigarettes into the back garden. The Applicant was not hostile. The Respondent said she would never do it. The Respondent did investigate and looked out of the top floor bathroom window. She showed the Respondent and sent her evidence of where next-door neighbours were dropping cigarettes. She said this was an ongoing problem. The Applicant was grateful to her for showing her this information. She showed the Applicant the cigarettes which were blowing into the garden. The Respondent believed the neighbour were spoken to and cleaning was arranged to get rid of the cigarettes. The Respondent said that it did continue. She said that she had no business throwing cigarettes or cannabis into her own garden. The communal space was hers to use as well. Even after this effort, she had still been accused. Referring to p.35, it was confirmed that the Respondent has the left-hand side of the garden and the Applicant has the right-hand side. She said that there had been an issue with cigarettes in back garden, she had found the cause and it had been a problem before she had moved in. It was now being used to support this case.
57. The Applicant said that it was not the Respondent personally throwing cigarettes, but it was her tenant doing it. She referred to the photograph of the cigarette butt on the bottom of the stairs.
58. The Tribunal asked the Respondent about Exhibit J. The Respondent said that the gutter was attached to their building. She had looked through the toilet window. Ahead of her was next door. There was no way she could throw cigarette butts from her property and get it in the gutter so far away. Above it were windows that belonged to the neighbour (dormer windows). The second photograph was before the extension of the ground floor property. This was a photograph of the alleyway and there was a back door to the Applicant's property. This was the walkway through to access the back garden. The small building connected to neighbour's property, and it was below where cigarettes would come down.
59. The Applicant said that the gutter was separate. The Applicant agreed that the property above where the cigarette butts can be seen on Exhibit

J (on the lower roof) was not the Respondent's property. She agreed that they had not come from the Respondent's property. She agreed that the cigarette butts shown on Exhibit J could have blown into the garden.

60. In terms of the trampoline, the Applicant said that it was old and a hazard and the Respondent did not live at the Property. The trampoline took up all of the garden. The Applicant said that she preferred to relax in her garden and the rubbish was quite disturbing. She said that she never put big things in the garden. She confirmed that the trampoline was over the Respondent's side of the garden. There was reference to p.358.
61. The Respondent said that the trampoline was initially on her side to allow her son to have a safe space to play after the Applicant divided the garden with dangerous items (she referred to Exhibit D) and the Applicant had dug a trench. There were toys placed there for her son to play with and they were moved. She said that she did not pile up the toys as shown in the photographs. The trampoline was damaged by workmen carrying out the work to the extension downstairs. The Applicant said the handyman took the trampoline and put it separately so it would not get damaged. Now, the Respondent did not live there and had not got it mended. It was just a nuisance in the garden.
62. Finally, we moved to the nuisance. The Applicant said that the tenant and the Applicant's son were smoking cannabis and that it would be delivered at 12 or 1am. The door was banging – there was a difference between shutting and slamming the door. The Applicant said that she could not sleep. There was music until 4am. The Applicant did shift work. The Applicant said that she had a video, but as it had not been sent to the Respondent (or the Tribunal), the Tribunal said that it would not look at it. The Applicant said that there was constantly noise. She wanted to enjoy a peaceful life, she could not enjoy her property. She said that there were problems with the rubbish, she had to manage the overflowing bins. She was vegetarian and had to deal with non-vegetarian rubbish. The Respondent confirmed that she had seen the photograph of the bin that had been provided to the Tribunal.
63. The Respondent said that she respected that everyone needs peace and everyone has a working pattern, but due to the structure of the house, it is almost impossible not to be heard. As stated in her witness statement, the house was meant to be a single dwelling. It had not been upgraded to modern day standards. As the Applicant walks through, the Respondent can hear it. She could hear door slams. The Respondent knows when the Applicant leaves, when she is coughing or cooking dinner. It was part of living in a divided property. It is almost impossible not to be considered a nuisance by living and enjoying the Property. It was not deliberate. They both have a right to enjoy the property and heavy monitoring of her home was unacceptable.

64. The Applicant said that there was a difference between domestic noise and loud music, swearing, getting drunk. There were people upstairs, constantly making noise. The Applicant could not sleep. The Applicant said that the Respondent did not live there, she did not have a clue. If the Applicant sent her a text, the Respondent would say she was being harassed. The Applicant had dealt with the Applicant's son and the voice on the recording was the tenant, not the Applicant's son. The Applicant said that she constantly had migraines as she could not sleep. She understood some noise before midnight, but after midnight, she had to sleep.
65. The Respondent said that there was nothing outside what a normal person would be doing to enjoy their home. If there was a bigger issue, the police would be involved. She said that there was no music played after midnight. She believed this had been exaggerated to support the case. The Applicant said that she had a video but confirmed she had not sent it to the Respondent or the Tribunal.
66. The Applicant asked for refund of fees if the application was successful. The Respondent said that she had nothing to say on this, if the application was successful.
67. The Applicant asked if it was now too late to send in evidence and was told that it was.

The Leases

68. There is a Lease dated 17 December 2010 (p.23 and p.429) between Maureen Anne Marron (landlord) and Sarah Emily Gibson (tenant) in respect of the First and Second Floor Flat, 12B Cotford Road, i.e. the Property. The Property is let for a term of 125 years.
69. There is a Lease dated 19 March 1982 (p.392) between Robert Anthony Heeve (Lessor) and Zentone Properties Limited (the Lessee) which lets 12A Cotford Road for a term of 99 years. The Applicant now has the leasehold interest.
70. The Applicant also holds the freehold interest in respect of 12 Cotford Road.

The Law

71. A determination by a Tribunal under s.168 of the Commonhold and Leasehold Reform Act 2002 is a pre-requisite for service of a notice by a landlord under s.146 Law of Property Act 1925 in respect of a breach by a tenant of a covenant or a condition in its lease.
72. Section 168 states:
- (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.
73. The Applicant is seeking a “final” determination from the Tribunal that a breach of the Lease has occurred.
74. In *Marchitelli v 15 Westgate Terrace* [2021] 1 P&CR 9, the tenant was a long lessee of a flat. The landlord applied for a determination under s.168(4). On appeal to the Upper Tribunal, among other things, it was held that the Tribunal was not required to deal with every point put to it but it did have to address the substantial elements of each party’s case. It was also said: “The purpose of proceedings under s.168(4) of the 2002 Act, is to establish the facts on which steps to forfeit an extremely valuable lease will then be founded. Before forfeiture proceedings may be commenced the landlord is required by s.146(1) of the 1925 Act, to serve a notice ‘specifying the particular breach complained of’ and if that breach is remedied and compensation is paid no forfeiture will occur. Before a s.146(3) notice may be served the FTT must determine that ‘the

breach' has occurred (s.186(2)(a) of the 2002 Act). It follows, therefore, that the determination required of the FTT must be sufficiently specific to provide the basis of a s.146 notice”.

Decision of the Tribunal and Reasons

75. The Applicant must satisfy the Tribunal on the balance of probabilities that the Respondent is in breach of one of the covenants or conditions of the Lease as set out above. The burden of proof rests with the Applicant.
76. The Tribunal has confined itself to the allegations made by the Applicant in the application.

Ground rent

77. It is alleged that there is outstanding ground rent in contravention of cl. 1(2) and cl. 2(1) of the Lease – it has not been paid 2021-2024 and the arrears are £320 (updated at the hearing to £400).
78. The specified clauses of the Lease dated 17 December 2010 (p.23) provides as follows:

Clause 1(2) – That the Lessee will pay, by yearly payments in advance on 1 January in each year, for the period from 1 November 2014 down to and including 31 October 2047 the yearly rent of £80.

Clause 2(1) – That the Lessee will pay all existing and future rates, taxes, assessments and other outgoings, whether parliamentary local or otherwise now or hereafter imposed or charged upon the demised premises or any part thereof or on the Lessor or the Lessee respectively other than those on the rent reserved and the consideration hereby charged, provided always that where any such outgoings are charged upon the building without apportionment, the Lessee shall be liable to pay one half of such outgoings and the Lessor shall keep the Lessee indemnified against the payment of the remaining on half.

79. The Respondent's Statement of Case states that this is not a matter for s.168(4). It accepts payments have not been made, but it is denied that there has been a breach of the Lease. She states that she will make payment on receipt of an updated statement and the Respondent's bank details.

80. The Tribunal finds that it does not have jurisdiction under s.168 to determine breach of the Lease on the basis of non-payment of ground rent (as stated in the letter of 11 November 2025 from Judge Carr). Section 168 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) does not apply to such breaches: section 146 of the Law of Property Act 1925 is not applicable to non-payment of ground rent.
81. If the Tribunal is wrong about this, it would not find that the Respondent was in breach of the Lease on the basis of failure to pay the Ground Rent in any event, for the following reasons.
82. No “formal” demand for the Ground Rent was issued (only emails, e.g. p.335, p.364). Section 166 Commonhold and Leasehold Reform Act 2002 states as follows:
- (1) A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.
- (2) The notice must specify—
- (a) the amount of the payment,
- (b) the date on which the tenant is liable to make it, and
- (c) if different from that date, the date on which he would have been liable to make it in accordance with the lease,
- and shall contain any such further information as may be prescribed.
- (3) The date on which the tenant is liable to make the payment must not be—
- (a) either less than 30 days or more than 60 days after the day on which the notice is given, or
- (b) before that on which he would have been liable to make it in accordance with the lease.
- (4) If the date on which the tenant is liable to make the payment is after that on which he would have been liable to make it in accordance with the lease, any provisions of the lease relating to non-payment or late payment of rent have effect accordingly.
- (5) The notice—

(a) must be in the prescribed form, and

(b) may be sent by post.

(6) If the notice is sent by post, it must be addressed to a tenant at the dwelling unless he has notified the landlord in writing of a different address in England and Wales at which he wishes to be given notices under this section (in which case it must be addressed to him there).

(7) In this section “rent” does not include—

(a) a service charge (within the meaning of section 18(1) of the 1985 Act),
or

(b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).

(8) In this section “long lease of a dwelling” does not include—

...”

83. The form is prescribed by The Landlord and Tenant (Notice of Rent) (England) Regulations 2004. As no notice in the prescribed form and meeting the statutory requirements has been served, the Respondent is not liable to pay the Ground Rent. Despite the fact that it was not and has not been paid, there is, therefore, no breach of the Lease.
84. There is, therefore, no breach of cl. 1(2) or 2(1) on the basis of failure to pay the Ground Rent.

Outstanding charges

85. It is alleged that there are outstanding electricity charges in contravention of cl. 2(2) of the Lease – it has not been paid since July 2020 and the arrears are £285.
86. There are outstanding cleaning charges in contravention of cl. 2(2) of the Lease – they have not been paid since July 2020 and the arrears are £285.
87. The specified clause of the Lease dated 17 December 2010 (p.23) are set out above.

88. The Respondent's Statement of Case states that this is not a matter for s.168(4). It is denied that she has to pay charges for electricity and cleaning and it is said that there is no binding agreement to this effect and asserts that those services have not been provided.
89. It is not disputed that the charges have not been paid.
90. The Tribunal finds that it does not have jurisdiction in this regard (as stated by Judge Carr in her letter of 11 November 2025 and in the directions).
91. Section 168 of the Commonhold and Leasehold Reform Act 2002 ("the Act") does not apply to such breaches: subsection 169(7) specifically excludes failure to pay service and administration charges. Section 81 of the Housing Act 1996 appears to have the effect that a landlord may not proceed to forfeit a residential lease for non-payment of a service or administration charge unless it has obtained a determination under either section 27A of the Landlord and Tenant Act 1985 or schedule 11 to the Act. No application pursuant to s.27A Landlord and Tenant Act 1985 has been brought and the no such application is before the Tribunal.
92. If the Tribunal is wrong about this, it would, in any event, find that there is no breach of the Lease for the following reasons:
93. Although the demands for the electricity and/or cleaning charges were in writing (p.335, p.336, p.339, p.364):
- (a) no address was given for the Applicant which is required by s.47 Landlord and Tenant Act 1987;
 - (b) contrary to s.21B Landlord and Tenant Act 1985, no summary of tenant's rights and obligations accompanied the demands.
94. The result of this is that the charges are not payable and so, there is no breach of lease for failure to pay in respect of the charges.

Outstanding contributions

95. It is alleged that there are outstanding repair costs in contravention of cl. 3(2), 4(5)(a) and 4(6) of the Lease – front door repair on 13 May 2024 (£50), repairs from leaking (£475), insurance costs for 2021/2022 (£257.74).
96. The specified clauses of the Lease dated 17 December 2010 (p.23) provides as follows:

Clause 3(2) – The Lessee covenants with the Lessor and with and for the benefit of the Lessee from time to time during the currency of the term granted of the other flat to pay and contribute one half of the cost of the repairs and decorations referred to in clause 4(5) hereof and a fair proportion of the cost of insurance referred to in clause 4(6) hereof

Clause 4(5)(a) – the Lessor covenants with the Lessee as follows with the subject to the contribution by the Lessee as hereinbefore provided at all times during the term hereby granted, to keep in good and substantial repair and condition, the main structure of the building including the foundation and the roof thereof and the main walls and the beams and timbers of the building (including the roof timbers) and the joists or beams under or over (as the case may be) the ceilings and floors (including that under the floor of the other flat).

Clause 4(6) – to keep the Building comprehensively insured with an insurance company for the full current insurable value (including professional fees and landlord’s public liability) and to produce if required to do so evidence of the due performance of this covenant

97. The Respondent’s Statement of Case states that this is not a matter for s.168(4). It is said that the repairs in respect of the bathroom leak do not fall within cl. 4(5) and cl. 3(2). It is said that there is no evidence repairs were needed and no evidence of the cost of the repairs. In respect of the insurance, it is said that the costs asserted to be owed exceed those set out in the insurance quotation and it is said that the Respondent obtained separate building insurance. It is submitted that a fair proportion should be less than half.
98. The Tribunal finds that it does not have jurisdiction in this regard (as stated by Judge Carr in her letter of 11 November 2025 and in the directions).
99. Section 168 of the Commonhold and Leasehold Reform Act 2002 (“the Act”) does not apply to such breaches: subsection 169(7) specifically excludes failure to pay service and administration charges. Section 81 of the Housing Act 1996 appears to have the effect that a landlord may not proceed to forfeit a residential lease for non-payment of a service or administration charge unless it has obtained a determination under either section 27A of the Landlord and Tenant Act 1985 or schedule 11 to the Act. No application pursuant to s.27A Landlord and Tenant Act 1985 has been brought and the no such application is before the Tribunal.
100. Even if the Tribunal is wrong about the above, there is the same issue as set out above in that although the demands were in writing (p.338-p.341, p.364):

(a) no address was given for the Applicant which is required by s.47 Landlord and Tenant Act 1987;

(b) contrary to s.21B Landlord and Tenant Act 1985, no summary of tenant's rights and obligations accompanied the demands.

101. There is, therefore, no breach of cl. 3(2) or cl. 4(5)(a) or cl. 4(6) on the basis of failure to pay in respect of the front door repair, matters arising from the leak or the insurance costs.

Sub-letting

102. It is alleged that there has been unlawful subletting in breach of cl. 2(6) and para. 7 of the Fourth Schedule of the Lease as the Property has been sublet to the Respondent's son and an additional lodger.

103. The specified clauses of the Lease dated 17 December 2010 (p.23) provides as follows:

Clause 2(6) – The Lessee covenants with the Lessor not at any time during the term hereby granted to divide the possession of the demised premises by an assignment or under-letting or parting with possession of part only

Para. 7 of the Fourth Schedule (which was agreed to by the Lessee by cl. 3(1)) – Not to use the demised premises or permit the same to be used for any purpose whatsoever other than as a private dwellinghouse in the occupation of one family only and not for any illegal or immoral purpose

104. The Respondent (12.1.1.) states that her son lives at the Property and splits time with her and father, and that there have been other occasions when family members have stayed at the Property. It is denied that there has been a breach of Lease.
105. There is no evidence of an assignment. The Tribunal then goes on to consider sub-letting, parting with possession or whether the Property has been used other than as a private dwellinghouse in the occupation of one family only.
106. In terms of Mr. Gardner-Kiffin, the Tribunal does not find any sub-letting of the Property or any parting with possession. He is the Respondent's son. On her own admission, he stays at the Property. The Tribunal has no evidence of a formal arrangement by which the Respondent has parted with part of the possession to him or any evidence of any sub-let to him.

107. In terms of Mr. Muhammad, the Tribunal has carefully considered the evidence put forward:

- (a) The assertion in the “Details of Covenant or Condition in Lease Alleged to Have Been Breached” (p.21) that the Respondent had sublet to her son and an additional lodger. This is repeated in the Skeleton Argument (p.42) with the addition of the names of the Respondent’s son (Mr. Keysharn Gardner Kiffin) and the lodger (Mr. Khamar Sydney Euzander Muhammad);
- (b) The assertion in the Applicant’s further witness statement that Mr. Muhammad had referred to the Respondent as his landlady and that she heard him talking to the Respondent when he came to view the Property;
- (c) A photograph (p.348) of a man walking outside the house;
- (d) Photographs, attached to the further witness statement:
 - (i) of a man who is walking away from the front door of the house, who the Applicant alleges is Mr. Muhammad;
 - (ii) of a man who is walking away from the front door of the house on a different date – this man appears to be the same as the man in the other photograph;
 - (iii) of a man who appears to be at the front door of the Property and who appears to be the same man as on the other photographs;
 - (iv) of the same man walking on the pavement by the house;
- (e) The post addressed to Mr. Muhammad at the house in October and November 2025 (as noted above).

108. In addition to this, there are references made, in emails from the Applicant, to the Respondent’s tenant or lodger:

- (a) p.359 – dated 14 July 2025 – naming the tenant as Kamar;
- (b) p.362 – dated 6 August 2025;
- (c) p.363 – dated 20 May 2024;
- (d) p.444 – dated 16 October 2025.

109. The Encyclopaedia of Housing Law states at 1-0324.1:

“There is no statutory definition of ‘lodger’, although the term is well-known in popular usage and not unknown in law: see, e.g. *Douglas v Smith* [1907] 2 KB 568, CA, see also *Woodfall, Landlord and Tenant*, Vol. 1, para. 1-0028 wherein it is suggested that the test of whether or not a person is a lodger or sub-tenant is determined by the degree of control retained by the household over the rooms which the lodger occupies (see also *Appah v Parncliffe Investments* [1964] 1 WLR 1064. In *Monmouth BC v Marlog* (1994) 27 HLR 30, the Court of Appeal held that the natural inference to be drawn from a house-sharing agreement between a secure tenant and another person is of a licence rather than a sub-tenancy. The inference may be strengthened where there is a written agreement between the secure tenant and his landlord, but none between the secure tenant and the other occupier.

‘Lodging’ is one of the exceptions to the normal rule in *Street v Mountford* [1985] AC 809; (1985) 17 HLR 402, that an arrangement whereby one person takes exclusive possession of residential occupation at a rent will invariably be a tenancy. For this purpose, lodging was defined to mean where the landlord provides attendance and service which require the landlord or his employees to exercise unrestricted access to and use of the premises.

...

Where the lodger is a relative... it is likely that there will still be no problem arising from the distinction: see e.g. *Booker v Palmer* [1942] 2 All ER 674, CA, *Marcroft Waggon Ltd v Smith* [1951] 2 KB 496 CA, *Abbeyfield (Harpenden) Society Ltd v Woods* [1968] 1 WLR 374 CA, *Barnes v Barratt* [1970] 2 QB 657 CA...”.

110. It goes on:

“... In *Hussey v Camden LBC* (1994) 27 HLR 5, CA Camden were unable to prove that there had been a subletting of a flat. Although there was clear evidence that the tenant had lived elsewhere for periods of time and had allowed a third party into occupation, there was no evidence that he had parted with possession of the premises”.

111. The Tribunal does not find any sub-letting or parting with possession in terms of Mr. Muhammad.

112. The photographs relied on are inconclusive. It is true that the photograph of a man who appears to be at the front door of the Property does mean that he had accessed the house through the main door, to be standing at the door of the Property, but the Tribunal cannot find, on the

basis of that photograph, that he was opening the front door of the Property with a key.

113. In terms of the photographs of the post, this was over a limited period (October and November 2025) and the Respondent had offered an explanation for this.
114. There are the emails from the Applicant to the Respondent, referring to her tenant or lodger, but the Tribunal does not have any replies to this, showing that the Applicant accepted or refuted the suggestion that she had a lodger or a tenant.
115. This leaves the conversations referred to by the Applicant. The allegations are relatively unspecific and this evidence was only contained in the Applicant's reply document (i.e. not in the original evidence supplied in support of the application). The Tribunal notes that there are a number of allegations (which were not originally raised in the application and which therefore the Tribunal does not determine) made in this document: including the Respondent's partner throwing away some of the Applicant's items and damaging the front door, theft of valuable personal items by the alleged lodger/sub-tenant, false accusations. The Tribunal also notes that it has not borne out the allegation of the Applicant that the photograph referred to above showed Mr. Muhammad using a key to open the door of the Property. The Tribunal also takes account of the contents of a message from the Applicant at Exhibit E to the Respondent's witness statement. All of this casts doubt on the credibility of the Applicant in terms of this evidence (and the Tribunal would have to be satisfied that Mr. Muhammad did refer to the Respondent as his "landlady" and/or that the contents of the conversation when he is said to have viewed the Property was such that it showed that he was a prospective tenant – it is not so satisfied).
116. The burden of proof is on the Applicant. Taking all of the above into account, the Tribunal does not find any breach of cl. 2(6), i.e. it does not find that there has been an assignment of the Property, nor does it find that the Respondent has sub-let or parted with possession of part of the Property.
117. The Tribunal does not find any breach of para. 7 of the Fourth Schedule for the same reasons.

Poor condition

118. It is alleged that there has been a breach of cl. 2(3) of the Lease due the poor condition of the Property. The particulars relied on are a failure to repair a leak to the bathroom which occurred on 31 October 2023, 30

April 2024 causing £950 in damage to the Applicant and a failure to paint the walls and to maintain the Property in a good condition.

119. The specified clause of the Lease dated 17 December 2010 (p.23) provides as follows:

Clause 2(3) – The Lessee covenants with the Lessor to keep the interior of the demised premises and every part thereof in good and substantial repair and condition and properly decorated throughout the term hereby granted and it is agreed and declared that there is included in this covenant:

- (a) The ceilings of the demised premises;
- (b) The walls wholly within the demised premises (other than such as form part of the structure of the building and one half part of all walls separating the demised premises from the other flat;
- (c) All windows and window frames belonging to the demised premises;
- (d) The inner front door of the demised premises.

120. The Respondent states (para. 12.1.3-4) that this allegation is denied, that she has carried out investigations and there was no active leak.

121. The allegation concerning failure to paint the wall relates to a wall in the communal area (i.e. not a wall in the Property). As this is not in the demised premises, it cannot be a breach of cl. 2(3).

122. In terms of the leak, as stated above, it does appear that there has been water damage to 12A (p.349-50, p.352-5). The difficulty is that the Tribunal has no evidence as to its cause and there is, therefore, no basis on which it can find that the interior of the Property was not kept in good and substantial repair or condition. From p.340, it appears that the cause may have been failure to have or properly use a shower screen (p.351). If this is correct, even though the floor of the bathroom in the Property may have been wet, this would not be a breach of covenant. If (as suggested during the hearing) the cause (or a cause) was an issue with the sealant around the bath/shower in the Property, the Tribunal would be of the view that this would not constitute a breach of covenant (as it would not mean that the interior of the Property was not in good and substantial repair or condition. There is, however, no evidence on which the Tribunal can make a factual finding as to the cause of the leak.

123. There is, therefore, no breach of cl. 2(3) on the basis of the communal wall not being painted or the leak into 12A.

Rubbish

124. It is alleged that there has been the discarding of cigarette stubs and leaving an unused or broken trampoline and other children's toys in the garden in breach of para. 5 of the Fourth Schedule.
125. The specified clauses of the Lease dated 17 December 2010 (p.23) provides as follows:
- Para. 5 of the Fourth Schedule (which was agreed to by the Lessee by cl. 3(1)) – Not to place or deposit any refuse, rubbish or junk on any part of the building or the premises used in common with the Lessee or occupier of the other flat.
126. The Respondent states (para. 12.1.6-9) that this allegation is denied. She has not thrown cigarette butts and her son's items are not rubbish.
127. The cigarette butts (or the cannabis, or even the hair) have not been placed or deposited in the garden – it appears they have blown there and have ended up on the Applicant's patio and/or in or around the garden (p.356-7, p.444-4447). The difficulty is that the Tribunal cannot find it proven (on the evidence that it has) that it was the Respondent (or someone from the Property) that is responsible. Exhibit J to the Respondent's witness statement shows that those who live in the property next door were disposing of cigarette butts into the gutter and that they were then blowing down into the garden. The photograph on the following page shows that the butts were falling down onto the lower roof. From there, they would and could be blown about. Further, from the messages dated 8 April 2021 from the Applicant (Exhibit E to the Respondent's witness statement), she had had a conversation with the recipient about the cigarette butts and she states that s/he was still throwing cigarette butts in the back garden (i.e. it was not the Respondent).
128. The trampoline and the children's toys are not "refuse, rubbish". Given their condition (p.306) they do appear to be junk (defined as old or discarded articles that are considered useless or of little value). From the photograph, they have clearly not been used in some time. They are, however, on the Respondent's side of the garden (p.306, p.68 and Exhibits F1 and M to the Respondent's witness statement – the area edged red is the left-hand side of the garden, leaving the right-hand side of the garden and the access passage excluded – but this is edged on the Applicant's Lease – p.417). They were placed on that side by the Respondent (there is a photograph of the trampoline at the end of that side of the garden attached to the Respondent's witness statement) and when they were moved, it was not by her. As stated, they are now back on her side of the garden. The clause prohibits junk being placed or deposited on any part of the premises "used in common with the Lessee or occupier of" Flat 12A. The Respondent's side of the garden is not used

in common with the Lessee or the occupier of Flat 12A. There is, therefore, no breach of para. 5 of the Fourth Schedule.

129. There is, therefore, no breach of para. 5 of the Fourth Schedule on the basis of failure of the trampoline/children's toys or the cigarette/cannabis cigarette butts.

Nuisance

130. It is alleged that there has been nuisance (loud noise and visitors in the early hours, occupants smoking cannabis) in breach of para. 1 of the Fourth Schedule of the Lease.

131. The specified clauses of the Lease dated 17 December 2010 (p.23) provides as follows:

Para. 1 of the Fourth Schedule (which was agreed to by the Lessee by cl. 3(1)) – Not to do or permit or suffer to be done in or upon the demised premises anything which may be or become a nuisance, annoyance or cause damage to inconvenience to the Lessor or the Lessee or occupier of the other flat or neighbouring owners or occupiers.

132. The Respondent states (para. 12.1.11-12) that this allegation is denied and she relies on a lack of sound-proofing in the conversion.

133. The Encyclopaedia of Housing Law states, at I-002 that “Nuisance’ includes behaviour which would amount to the tort of nuisance, e.g. excessive noise....”. It goes on to state that it:

“... is not to be confined to nuisance in this technical, legal sense: *Harlow DC v Sewell* [2000] EHLR 122 but construed in a natural way, and ‘annoyance’ is in any event a term with a wider meaning, although it must be such as would annoy an ordinary occupier, not an ultra-sensitive one: *Tod-Heatly v Benham* (1888) 30 Ch D 80; see also *National Schizophrenic Fellowship v Ribble Estate SA* (1993) 25 HLR 476, Ch D.”

134. The only evidence that the Tribunal has in terms of this allegation is as follows:

- (a) A general assertion in the Applicant’s witness statement (p.50) of excessive noise, including slamming doors, stomping and hosting visitors late at night;
- (b) An email dated 20 May 2024 (p.363) complaining of “noise” during the late hours;

- (c) An email dated 19 February 2024 (p.364) complaining of noise at 3am and the front door slamming at 3:00;
 - (d) Diary sheets (p.365) which relate to 1997 (which cannot be correct) and which also allege, in relation to noise, that there was an incident on 10 July 2020 with noise all night;
 - (e) A general assertion in the further witness statement of persistent noise and disturbance as well as shouting, screaming, swearing, door slamming, cannabis.
135. A Senior Anti-Social Behaviour Enforcement Officer emailed the Applicant on 29 July 2021 stating that if there were loud parties at the Property, the Applicant may contact the officer or send an email to an email address provided. The Tribunal does not have any evidence that any complaints were raised.
136. The Tribunal therefore does not have any detailed assertions of when the nuisance occurred, what it consisted of, how long it went on etc. save in relation to one date (10 July 2020) and one recording which was played (which was a man coming down the stairs from the Property).
137. The Tribunal notes the Applicant's demeanour in the hearing, that she was, at time, quite emotional – it does not doubt that she has been distressed. On the evidence before it, however, the Tribunal does not find that there has been a breach of para. 1 of the Fourth Schedule.

General

138. The Tribunal notes that this situation has been upsetting and distressing for both parties. It hopes that, going forward, they find a way to co-exist. The Tribunal repeats the words of the Senior Anti-Social Behaviour Enforcement Officer in her email of 29 July 2021, that they are both home owners and it would be to their advantage to both live peacefully with each other.

Costs

139. The Applicant asked the Tribunal to award the fees paid in respect of the application, namely reimbursement of the issue fee and the hearing fee. As the application is dismissed, the Tribunal does not order reimbursement of the fees.

Name: Judge McKeown

Date: 21 April 2026

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).