



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

Case Reference : **BIR/00CN/LBC/2025/0010**

Subject Property : **Flat 14 and Garage J100
Royston Court
Wake Green Park
Moseley
B13 9YN**

Applicant : **Wake Green Park Management Limited**

Representative : **Realty Law Ltd
(Zainab Khatoon)**

Respondent : **The Estate of Margaret Ellen Clarke**

Type of Application : **Application under section 168(4) of the
Commonhold and Leasehold Reform Act
2002 for a determination that a breach of
covenant or condition in the lease of the
subject property has occurred.**

Tribunal Member : **Deputy Regional Judge Gravells**

Date of Decision : **28 April 2026**

DECISION

Introduction

- 1 By application dated 23 September 2025, the Applicant, the freeholder of the subject property, sought a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent, the leaseholder of the property, was in breach of covenants contained in the lease.
- 2 In brief, the Applicant asserted that the Respondent had (i) failed to repair the subject property and (ii) failed to allow access to inspect the property.

Factual background

- 3 On 12 February 2026 the register of title shows Margaret Ellen Clarke as the registered proprietor of a 125-year lease of the subject property. However, a death certificate shows that Margaret Ellen Clarke died on 27 January 2018. A probate search shows no grant of probate.
- 4 The Applicant's legal representative has carried out searches to locate a next of kin or a legal representative but those searches have been unsuccessful. According to the Applicant, the subject property is believed to be occupied by a Mr Clarke; but it is not known whether or how Mr Clarke is related/connected to Margaret Ellen Clarke or to the Respondent.
- 5 All communications have been addressed to the Estate of Margaret Ellen Clarke at the subject property.
- 6 On 12 March 2024 Matthew Barwick, the Applicant's contractor, visited the subject property at the request of the occupant, a Mr Clarke. Mr Barwick noted various matters of disrepair, particularly in the bathroom, and he took a number of photographs. Following failed attempts to make contact with the Respondent, on 4 February 2025 the Applicant issued a notice of repair to the Respondent. The notice required the Respondent to carry out extensive repairs to the bathroom, including the replacement of leaking pipework, the replacement of the bath, the replacement of cracked and rotting tiles, the remedying of mould and rot and redecoration.
- 7 It appeared that as a result of the leaking pipework and other disrepairs water was penetrating from the subject property into 11 Royston Court, the flat below the subject property.
- 8 The Applicant made various attempts to contact the Respondent in order to arrange an inspection of the subject property but received no response. Following the expiry of the three-month period for compliance with the notice to repair, the Respondent was notified that the Applicant's agent would attend the property to inspect the bathroom; but no access was granted.
- 9 By letter dated 23 April 2025 the Applicant informed the Respondent (i) that the Applicant was entitled to commence legal proceedings in relation to alleged breaches of covenant and (ii) that the Respondent might be liable for the Applicant's professional costs.
- 10 On 26 June 2025 the Applicant sent a letter before action, providing the Respondent with the opportunity to remedy the alleged breaches and/or to offer an undertaking to do so and/or to raise any concerns. No response was received from the Respondent.

Lease provisions

11 By clause 5 of Schedule 2 to the lease the Respondent covenants –

To keep the Demised Premises and all additions thereto in good and substantial repair and condition

12 By clause 6(a) of Schedule 2 to the lease the Respondent covenants –

At all times during the term to keep the interior of the Demised Premises in good decorative order and condition and in every third year of the term and in the last year of the term (howsoever the same is determined) to paint with two coats of good quality paint and re-decorate in a good and workmanlike manner all parts of the interior of the Demised Premises which ought to be or which are usually so painted and decorated

13 By clause 7 of Schedule 2 to the lease the Respondent covenants –

To permit the Lessor with or without solicitors agents surveyors workmen and others subject to reasonable notice being given and at convenient times of the day (except in the case of emergency) –

(i) to enter and view the condition of the Demised Premises and to give the Lessee or leave at the Demised Premises notice of any defects or wants of repair in the Demised Premises or other outstanding works or acts found at the Demised Premises for which the Lessee shall be liable hereunder and if the Lessee shall not within twenty-one days after such notice (or immediately in cases of emergency) commence and proceed diligently with the execution of such repairs and works and the performance of such acts as aforesaid and complete the same within three calendar months after such notice it shall be lawful for the Lessor and its contractors agents and workmen (but without prejudice to the right of re-entry hereinafter contained) to enter the Demised Premises to execute all such repairs and works and do such acts as may be necessary to comply with the said notice and the cost thereof shall be a debt due from the Lessee to the Lessor and shall be forthwith recoverable as rent

14 By clause 16 of Schedule 2 to the lease the Respondent covenants –

To keep all sinks baths lavatories cisterns waste and soil pipes clean and open and not to suffer dirt rubbish or other refuse to be placed or thrown therein and to keep all water and heating apparatus fully protected from frost and to keep all windows inside and outside clean to the satisfaction of the Lessor

15 By clause 18 of Schedule 2 to the lease the Respondent covenants –

Not to use or permit to be used the Demised Premises and/or any other part or parts of the Development in any manner which may cause damage or be a nuisance annoyance or inconvenience to the Lessor or to the lessees or occupiers of any other part or parts of the Development

Submissions of the parties

16 The Applicant submits that, by allowing the bathroom to fall into disrepair, by allowing water to penetrate from the subject property into the flat below and by refusing to allow access to the Applicant, the Respondent has breached the lessee's covenants in clauses 5, 6(a), 7, 16 and 18 of Schedule 2 to the Respondent's lease of the property. The Applicant relies on the written report of Matthew Barwick, the photographs of the interior of the property and of 11 Royston Court and the correspondence sent to the Respondent.

- 17 The Applicant also claims legal costs in the sum of £2,666.40 under clause 12(a) of Schedule 2 to the lease (solicitor's costs incidental to the preparation and service of any notice under section 146 of the Law of Property Act 1925) and/or under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (acting unreasonably in the conduct of proceedings).
- 18 The Respondent has made no submissions.

Determination

- 19 The Tribunal determines that the Respondent has breached the lessee's covenants in clauses 5, 6(a), 7, 16 and 18 of Schedule 2 to the Respondent's lease of the subject property.
- 20 The Tribunal determines that the Respondent is liable under clause 12(a) of Schedule 2 to the Respondent's lease to pay the Applicant's legal costs in the sum of £2,666.40 (including VAT).

Appeal

- 21 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 22 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 23 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 24 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

28 April 2026

Professor Nigel Gravells
Deputy Regional Judge