



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

Case Reference	:	HAV/00HH/LBC/2025/0631
Property	:	Lower Ground Floor Flat, 46 Meadfoot Lane, Torquay TQ1 2BP
Applicant	:	Helen Tivy
Representative	:	None
Respondents	:	(1) Dean Anthony Pitts (2) Ellen Elizabeth Pitts (nee Parkes) (3) Katherine Marie Parkes (4) Ronald Parkes
Representative	:	None
Type of Application	:	Breach of Covenant S168(4) Commonhold & Leasehold Reform Act 2002
Tribunal Members	:	Mr D Cotterell FRICS Mr S Mason FRICS
Date of Hearing	:	1 May 2026
Date of Decision	:	5 July 2026

DECISION

Summary of Decision

1. **The Respondent is in breach on one occasion of Clause 2(x) of the lease which requires the lessee to within one month offer every assignment assent transfer or underlease (other than by way of mortgage) of the Demised Premises to give Notice thereof in writing to the Lessor and to produce such assignment transfer or underlease to the Lessor or his solicitors for registration and pay a registration fee of not less than THIRTY POUNDS (£30 in respect of each registered document.**
2. **No other breach has occurred.**

Background

3. The Applicant seeks an Order under S168 (4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent has breached covenants in their lease outlined in part 4 of the application form. The application was made on 14 October 2025.
4. The Tribunal issued directions on 9 January 2026, 5 February 2026, and 18 February 2026. The 5 February 2026 directions followed a case management hearing at which the Tribunal Judge sought to narrow down the issues where possible and determine on a preliminary basis which allegations of breach could proceed and which allegations either fell outside the jurisdiction of the Tribunal or were not suitable for determination. After striking out certain of the alleged breaches, the following matters were set down for consideration at a hearing:
 - a. Clause 2(iv) – allegations relating to the Respondents failing to repair, cleanse and/or maintain the property.
 - b. Clause 2(vi) – allegations relating to the Respondents failing to provide access to the property in accordance with the terms of this clause.
 - c. Clause 2(viii) – allegations relating to the Respondents making structural alterations and/or additions to the property. Such allegations including the installation of decking, removal of a porch and changing the internal layout of the property all of which it is alleged was done without the landlord's consent.
 - d. Clause 2(x & xi) – allegations relating to the Respondents failing to provide notice of an underlease (namely a tenancy agreement) to the landlord on at least 5 separate occasions.
 - e. Clause 3(viii) – allegations relating to the Respondents failing to notify the landlord of defects at the property that the landlord was responsible for repairing and/or maintaining.
 - f. First Schedule, Clause 1 – allegations relating to the Respondents letting the property as a holiday home.

- g. First Schedule, Clause 7 – allegations that the Respondents have decorated the exterior of the property, namely painted an exterior wall, without the consent of the landlord.
5. The Tribunal's directions also fixed a hearing to take place at Havant Justice Centre, and gave directions as to evidence and preparation of a bundle for the hearing. The directions were substantially complied with and a hearing bundle running to 338 pdf pages was produced. References in [] are to pdf pages within that bundle.

The Property

6. The Property which is the subject of this application is described as comprising a basement flat having a bedroom, bathroom, kitchen, storeroom, and sitting room. The flat was converted out of the original 3-storey house; the freeholder lives in the residual upper accommodation.
7. The lease of the Property is dated the 29 April 2005 and grants a term of 999 years from 29 April 2005. A copy of the lease appears at [1-18] of the bundle. The Respondents' title is registered with title number DN516964, a copy of the entry at 1 January 2017 appears at [19-22] of the bundle.

The Law

8. The relevant law is set out in Section 168 of the Commonhold and Leasehold Reform Act 2002:

“Section 168 No forfeiture notice before determination of breach

- (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 the appropriate 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.*
- (6) *For the purposes of subsection (4), “appropriate tribunal” means—*
 - (a) *in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and*
 - (b) *in relation to a dwelling in Wales, a leasehold valuation tribunal.”*

The Evidence & Hearing

- 9. The parties attended the hearing by video link. The Applicant Ms Tivy was assisted by Ms Sharon Payne acting as a McKenzie Friend. Of the Respondents, Mr and Mrs Pitts and Ms Parker attended and appeared in person. The Tribunal confirmed it had read the skeleton arguments and the contents of the electronic bundle.
- 10. The Applicant’s Statement of Case [34-116] included appendices of photographs and items of correspondence relating to the alleged breaches, her witness statement [118-210] also appended a report by McCluskey Chartered Surveyors [121-136], a statement from Nicola Woolcock [150-152].
- 11. The Respondents’ reply to the Applicant’s statement of case appears at pages [168-184] together with a witness statement from Mr D A Pitts [186-189], a further reply (dated 01/04/2026) [294-298] with enclosures.
- 12. We set out below a precis of the most pertinent parts of the hearing. The hearing itself was recorded. The Tribunal heard from the parties in relation to each of the alleged breaches in turn:

Clause 2(iv) – (relating to the Respondents failing to repair, cleanse and/or maintain the Property.

- 13. Ms Tivy told the Tribunal that the exterior of the property was never cleaned and rubbish was generally present. She also explained that the interior of the property is damaged due to damp problems exacerbated by problems with ventilation. She said that she had not been

able to arrange access into the property to know if remedial damp treatment works had been completed.

14. For the respondent, Mrs. Parkes said that the damp problem had been remedied, and other works had lately been signed off by environmental health officers in November 2025. She described the tanking works that had been undertaken. She also said that there was no evidence that the interior had not been maintained. She added that the storeroom in the property was still being used as a storeroom although previously the tenant in occupation had used it as a bedroom but had been told not to.

Clause 2(vi) – allegations relating to the Respondents failing to provide access to the property in accordance with the terms of this clause.

15. Ms Tivy described how she had been unable to gain access to the property despite many requests. She said that she had last seen inside the Property in October 2025 but not since – and provided video evidence of attempts to negotiate access. She mentioned that there had been 7 occasions when she had sought to obtain access without success.
16. In response Ms Parkes pointed out that the lease requires 7 days’ notice and that such requests need to be on reasonable grounds. It was also relevant to consider that she said that the lessees lived over 3 hours’ drive away requiring a day of their time to respond as well as the inconvenience of an overnight stay. As to request Ms Tivy’s request for access for a surveyor, she mentioned that the leaseholders had doubted the surveyor’s credentials and accordingly the reasonableness of the request.

Clause 2(viii) – allegations relating to the Respondents making structural alterations and/or additions to the property

17. Ms Tivy clarified that she did not consider that the existing structure of the building had been changed, rather, her concern was the addition of decking externally, which she says is too high above the ground, that there had been wall cladding added internally, covering dampness, alteration of the original bathroom layout, and installation of a shower which was leaking. She said that no request for consent for works had ever been made.
18. Mrs Parkes replied that no consent had been sought because none of the changes had amounted to structural alteration. In addition, she submitted that the lease does not prohibit erection of decking externally and that it was not interfering with damp remedial works nor was it causing damp.

Clause 2(x & xi) – allegations relating to the Respondents failing to provide notice of an underlease

19. Ms Parkes on behalf of the Respondents accepted a breach in relation to a failure to provide notice of an underlease but stated that the Respondents had since made payment of the stipulated fee to the applicant and provided a copy of the tenancy agreement.

Clause 3(viii) – allegations relating to the Respondents failing to notify the landlord of defects at the property for which the landlord had responsibility.

20. Ms Tivy explained that she could not recall any instance when she had received notice of defects falling to the landlord's responsibility. Ms Parkes referred to correspondence included at [237-238] in which the Respondents assert that such reports were given, also making reference to copies of correspondence at [191, 195-197, 199, 200, 228-229].

First Schedule, Clause 1 – allegations relating to the Respondents letting the property as a holiday home.

21. Ms Tivy told the Tribunal that she had spoken to some occupiers of the flat who she believed were holidaymakers and learnt that they were personal friends of the Respondents; she believes nevertheless that advertising of the property for holiday lets proved an element of intent to let the property as a holiday home.
22. In response to a direct question from the Tribunal as to whether the Property had been so let, Ms Parkes replied that the respondents had never let the property as a holiday home.

First Schedule, Clause 7 – allegations that the Respondents have decorated the exterior of the property without the consent of the landlord.

23. Ms Tivy explained that she understood Mr Pitts had painted 3 areas of wall in exterior grade paint and that over time, this paint has cracked and the underlying brickwork and pointing is in disrepair. She referred to photographs of the paint and adjacent parts of the Property.
24. In response, Ms Parkes confirmed that the painting had been undertaken by Mr Pitts and that the respondent had, in the context of other proceedings, agreed to remove the paint. Mr. Pitts explained to the Tribunal that the painting had been undertaken 10 years ago and he had obtained verbal consent to carry out the work but confirmed that this had not been further put into writing.

Decision

25. The Tribunal thanks the parties for their helpful presentation of the evidence and their submissions. While it is evident that relations between the parties are strained, all concerned have assisted the Tribunal objectively, which is appreciated. We will address each of the breaches alleged, in turn, concentrating on those matters of concern to the Tribunal within the exercise of its jurisdiction.
26. In relation to the individual allegations of breach the Tribunal finds as follows:

Clause 2(iv) – allegations relating to the Respondents failing to repair, cleanse and/or maintain the property.

27. That clause says: "At all times during the term, hereby created well and substantially to repair cleanse maintain amend and keep in good repair the Demised Premises (other than

the parts thereof as are comprised and referred to in sub-clause (iii) (a) of Clause 4 hereof and also without prejudice to the generality of the foregoing so often as occasion requires:

(a) to clean all windows and

(b) to redecorate the Demised Premises In a good and workmanlike manner with materials of good quality...”

28. A particular point of concern to the Applicant is the alleged failure to address dampness remedial works. It appears to the Tribunal however, from the Respondents' evidence, that dampness remedial works have been carried out, and successfully.
29. Assertions as to other failures of repair have not, in the Tribunal's view been sufficiently particularised or evidenced to enable any finding of breach. In the Tribunal's opinion, the alleged disrepair to the pump chamber is a matter of repair obligation falling to the applicant landlord within the meaning of the lease (clause 4 (iii) (b))
30. Accordingly, the Tribunal does not find that any breach of this lease term has occurred, as alleged.

Clause 2(vi) – allegations relating to the Respondents failing to provide access to the property in accordance with the terms of this clause.

31. That clause says: *“to permit the Lessor personally or by duly authorised agents and with or without workmen and others) upon giving seven days’ previous notice at all reasonable times to enter upon the Demised Premises or any part thereof for the purpose of examining the state and condition thereof”*
32. The Tribunal has considered the Applicant's allegations, and the evidence she supplies in both her written evidence, testimony, and the video evidence supplied to the Tribunal. The Tribunal is also mindful of the personal circumstances of the Respondents and the fact that they live at a considerable distance from the property and the bearing this has on an understanding of what is reasonable within the meaning of this clause.
33. On the evidence before the Tribunal, the various requests by the Applicant for access for herself and her appointed agents do not in the Tribunal's opinion demonstrate that the requests have always had regard, at least, to reasonableness as contemplated by the clause. In addition, it is evident that access has repeatedly been granted by the Respondents, and this has been on numerous occasions. In the Tribunal's view this supports its conclusion that the Respondents have reasonably considered the Applicant's requests for access.
34. The Tribunal is mindful of the evidence set out by the Applicant regarding proposed appointments in April 2024, November 2024, January 2025, April 2025, May 2025 (4th & 16th), June 2025 (2nd & 27th), September 2025, November 2025, January 2026 (14th 23rd & 25th).
35. In the Tribunal's opinion and on the evidence provided, while attempts to agree timing and details of proposed access have not in all cases led to agreed appointments, on the Tribunal's reading of clause 2 (vi) and its terms as to reasonableness and purpose, no breach of this lease term has occurred as alleged.

Clause 2(viii) – allegations relating to the Respondents making structural alterations and/or additions to the property. Such allegations including the installation of decking, removal of a porch and changing the internal layout of the property all of which it is alleged was done without the landlord’s consent.

36. This clause says: *“Not to make any structural alterations or additions to the Demised Premises or any part thereof without first obtaining the consent in writing of the Lessor”*
37. On the Tribunal’s reading of this clause, a breach will occur where structural alterations or additions have been made and no written consent for them has been obtained from the Landlord. It appears common ground to both parties that works have been carried out and that no written consent was sought or obtained, however the Respondents’ assertion is that the works undertaken are not in their execution structural alterations or additions and therefore do not engage the clause’s prohibitions. In particular, the Respondents point out that the reconfiguration works within the property have comprised non-structural stud partitioning.
38. In the Tribunal’s opinion, the point in issue is whether any alterations or additions in all cases need to be structural in nature to be of concern, or whether the term “structural” relates solely to alterations and thereby any other (non-structural) additions would be a concern of the covenant in this clause.
39. In the Tribunal’s view, both alterations and additions would need in all cases to be structural in order to fall within the ambit of the clause. The Tribunal considers that the intention of the clause is to protect the structural integrity of the wider premises and that any additions not amounting to structural work are not intended to be caught by the scope of the clause. Accordingly, in the Tribunal’s view, the works pleaded do not breach the terms of the lease as alleged.

Clause 2(x & xi) – allegations relating to the Respondents failing to provide notice of an underlease (namely a tenancy agreement) to the landlord on at least 5 separate occasions.

40. This clause says *“(x) within one month offer every assignment assent transfer or underlease (other than by way of mortgage) of the Demised Premises to give Notice thereof In writing to the Lessor and to produce such assignment transfer or underlease to the Lessor or his solicitors for registration and pay a registration fee of not less than THIRTY POUNDS (£30 in respect of each registered document...”*
41. By reason of the Respondents’ admission in relation to a current letting, the Tribunal finds that this clause (2(x)) has been breached. There is in the Tribunal’s view no evidence or admission of any breach of clause 2(xi).
42. With regard to any other alleged occasions of underletting, the Tribunal finds that there is insufficient evidence to support a conclusion that a breach has occurred.

Clause 3(viii) – allegations relating to the Respondents failing to notify the landlord of defects at the property that the landlord was responsible for repairing and/or maintaining.

43. This clause says: *“Without prejudice to the covenants on the part of the Tenant herein contained forthwith to notify the Lessor in writing of any defect which may appear in the Demised Premises”*
44. The Tribunal has given careful consideration of the parties’ assertions in relation to the matters of disrepair as pleaded and also the communications between them dealing with disrepair. It appears to the Tribunal that the Respondents have repeatedly advised the Applicant as to items of disrepair in accordance with the requirements of the clause. The Tribunal found no convincing evidence of any other item of disrepair that had not been referenced in that correspondence.
45. Having regard therefore to the evidence and the parties’ submissions, the Tribunal finds that the Respondents have not breached the terms of the lease as alleged in relation to this clause.

First Schedule, Clause 1 – allegations relating to the Respondents letting the property as a holiday home.

46. This clause says: *“Not to use or permit the flat to be used for holiday lettings or for any purpose other than as a private dwelling house in the occupation of one family...”*
47. The Tribunal carefully considered the Applicant’s evidence that she had spoken with people she had met in occupation of the Property, and who she had suspected of being holiday lessees – although she admitted that the occupiers had claimed to be family friends of the Respondents. Notwithstanding the further evidence the Applicant submitted in relation to advertising, the Tribunal has not heard sufficient evidence to demonstrate that a breach of this clause has occurred and finds accordingly that there has been no breach.

First Schedule, Clause 7 – allegations that the Respondents have decorated the exterior of the property, namely painted an exterior wall, without the consent of the landlord.

48. This clause says: *“Not to decorate the exterior of the flat”*
49. It is common ground between the parties that the exterior of the Property has been decorated in part and that Mr Pitts had carried out the work some years ago.
50. In the Tribunal’s view, the prohibition set out in this clause does not apply where consent has been obtained. Mr. Pitts told the Tribunal that he had obtained verbal consent prior to carrying out the work although he readily admitted that he had no documentary evidence to support that. The point was also not made in the respondents written evidence – although various exchanges between the parties in relation to the paint and its possible removal is set out in some detail.

51. The Tribunal has carefully considered the evidence and the circumstances in which that consent is claimed to have been obtained, and also Mr Pitts's credibility as a witness. In the Tribunal's view and on the evidence, the painting alleged to comprise the breach was carried out with consent and therefore no breach of this clause has occurred.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
5. Either party seeking to appeal a decision are referred to form RPPTA.