



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

Case reference : **LON/00AG/LBC/2025/0604**

Property : **12-16 (Even) Fitzroy Street, London W1T
4BL**

Applicant : **Molteni Group UK Limited**

Representative : **Mr Rahul Varma, counsel**

Respondent : **(1) King Regent's Place Management
Company Limited**

Interested Parties : **(1) Old Oak Property Holdings Limited
(2) M Avini**

Representative : **Ms Tamsin Cox, counsel**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**

Tribunal members : **Judge Tagliavini
Mrs Evelyn Flint FRICS**

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

Date of hearing : **11-14 May 2026**
Date of decision : **13 July 2026**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the decisions recorded below.
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The application

1. This is an application made pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002, seeking the tribunal's determination as to whether the respondent is in breach of the terms of its lease in the following ways:
 - (a) State of the Property Breaches - Breaches relating to the condition of the Property and/or nuisance.
 - (b) Airbnb Breaches – Breaches relating to the commercial use of the residential flats for short-term lets.
2. The applicant asserts that under s. 168(4), the tribunal's duty is to determine whether a breach had occurred at all; not only to determine whether a breach subsisted as of the date of the Application and/or the tribunal's determination. Where a breach of covenant has been remedied, the tribunal is entitled to record that fact, but not without an explicit determination that there had been a breach of covenant.

The background

3. Since 4 May 2023, the applicant has been the registered freehold owner of 12 – 16 Fitzroy Street, London, W1T 4BL ('the Property'). The Property is comprised of:
 - (a) In the basement and on the ground floor, commercial premises; and
 - (b) On the seven floors above the ground floor, residential flats.
4. Since 27 November 2001, the respondent has been the registered proprietor of the head leasehold title number NGL742259 and is a tenant-owned management company. This title derives from a 99-year lease dated 1 October 1996 made between (1) West London & Suburban Property Investments Limited and (2) Galliard Homes Limited, which demises the entire Property ('the Lease'). The applicant is also the undertenant of the Commercial Premises pursuant to an underlease dated 1st October 1996 and made between (1) Galliard Homes Limited and (2) West London & Suburban Property Investments Ltd for a term

of 99 years less 3 days from 29th September 1996 ('the Commercial Underlease').

5. The applicant has been since 1st August 2017, the sub-undertenant of the Commercial Premises pursuant to a sub-underlease dated 27th July 2017 and made between (1) West London & Suburban Property Investments Ltd and (2) Ergonom Limited for a term ending on 26th July 2032 ('the Commercial Sub-Underlease'. The respondent understands that the Commercial Underlease and the Commercial Sub-Underlease are both extant and have not merged.
6. The flats in the Residential premises are sub-let to residential tenants pursuant to 41 underleases ("the Residential Underleases"):
 - (a) A long lease from the respondent to the applicant of the basement and ground floor ('the applicant's Sub-Lease'). Pursuant to the applicant's Sub-Lease, the applicant conducts its business of producing and showcasing high-end furniture of international renown;
 - (b) 41 long leaseholds, each relating to the residential flats above the ground floor.

The issues

Airbnb Breaches

7. The applicant's case is that, since at least November 2020, the respondent has caused or permitted one or more of the residential flats to be used for the business of short-term, Airbnb-type lettings (whether through Airbnb itself or other such websites). The applicant alleges that such 'lets' amount to a breach of at least one of cl. 2(7), cl. 2(8), or cl. 2(29).

State of the Property Breaches

8. The applicant also asserts that the respondent has failed in its obligations to maintain and keep the Property in repair. It is agreed that no remedial works are currently required. However, the applicant's position is that the works undertaken by the respondent to the roof (most recently, the recovering works in 2022 – 2023) were demonstrably inadequate as there was an insufficient gradient on the roof to prevent the kind of ponding observed during their joint inspection.
9. The following state of the property breaches were agreed by the parties or were no longer pursued by the applicant*:

*As set out in the applicant's Scott Schedule.

Item 1.1.3 - breach of cl. 2(4), cl. 2(5), and cl. 2(iii);

Item 1.1.5 - breach of cl. 2(10)(a) and cl. 2(29); 13

Item 1.2.2 – breach of cl. 2(4), cl. 2(5) and cl. 2(5)(iii);

Item 1.2.3 – breach of cl. 2(4) and cl. 2(5)(ii);

Item 2.2.3 – breach of cl. 2(9);

Item 2.2.5 – breach of cl. 2(10a);

Item 2.4.5 – breach of cl. 2(4) and 2(9);

Item 3.1.3 – breach of cl. 2(4);

Item 4.1.2 – breach of cl. 2(4);

Item 5.1 – No longer pursued;

Item 5.10 – No longer pursued as a discrete breach but part of 5.2.

10. The applicant relied on the following items of the disputed state of the property breaches:

Clause 2(4) – Ponding to (flat) roof.

Clause 2(9) – Lack of safety tags to railing (BS 7818).

Clause 2(4) Rods holding safety harness in place ‘unstable’.

Clause 2(4) and 2(5ii) – Approx 10 floor tiles are cracked.

Clause 2(4) 2(5) and 2(5iii) – Decorations to woodwork are degraded and ironmongery deteriorated.

Clause 2(4) and 2(5ii) – Two parapet copings are damaged and sealant has deteriorated.

Clause 2(4); 2(5) and 2(5iii) – Frames to windows serving the common parts have deteriorated. Timber rotten and warped.

Clause 2 (5vi) – Windowpanes in hallway and stairwell are dirty.

Clause 2(4) and 2(5v) – Widespread water stains in hallways.

Hatches cut into soffit and not made good.

Clause 2(4) and 2(5v) Cleanliness and painting of hallway walls and ceilings is generally poor.

Clause 2(9) – Doors of riser cupboard are uncertified – breach of Regulatory Reform (fire Safety) Order 2005.

Clause 2(9) – First floor electrical cupboard obstructed - Electricity at work Regulations 1989.

Clause 2(9) - Fire doors are uncertified - Regulatory Reform (fire Safety) Order 2005.

Clause 2(4) and 2(9) – Fire alarm system is defective – breach of Regulatory Reform (Fire Safety) Order 2005.

Clause 2(5)(v) – Mould on bathroom ceiling in Flat 88.

Clause 2(4) – Windows defective in Flat 88 – the cockspurs have been removed.

Clause 2(4) and 2(8) – Foul drainage system is inadequate and multiple leaks have occurred.

Clause 2(4) and 2(8) – Pressure in domestic system increased exposing weak points of system and fails regularly.

Clause 2(4) Bathroom and kitchen extract fans frequently fail.

Clause 2(4) and 2(9) – Fire systems and safety and prevention measures are defective or inadequate.

11. The respondent submitted:

- (a) The burden of proof in the application falls on the applicant;
- (b) The majority of the alleged breaches relate to alleged disrepair at the subject premises, in relation to which both parties have instructed experts;
- (c) Many of the breaches alleged in the proceedings have been remedied;
- (d) ...the experts are in the process of producing a joint statement of outstanding allegations;
- (e) The tribunal should only make a finding of breach if it can do so with sufficient specificity that the finding can provide the foundation for a notice pursuant to s.146 of the Law of Property Act 1925; and
- (f) The applicant's numerous allegations are insufficiently detailed, or insufficiently evidenced, to justify any such finding.

12. Mr Varma submitted:

- (i) The Tribunal does not need to be satisfied that every forensic avenue has been explored in order to find that, on balance, a breach has occurred
- (ii) That it was not necessary for the applicant to prove the cause of each and every leak and that it was not open to the tribunal not to make a finding of whether an allegation had been proved, and if so, whether it was a breach of the lease.
- (iii) Where the respondent knows the truth or falsity of an allegation then it must positively accept or deny the fact.

The Lease

13. The applicant relied on the following clauses of the Lease:

Clause 2(4) which contains a requirement that the Premises be kept

'well and substantially repaired maintained renewed amended cleansed and decorated':

Clause 2(5) which requires the respondent;

*To paint exterior.
To repoint brick work and stone facings
To clean woodwork.
To clean metalwork.
To paint the interior.
To clean windows.*

Clause 2(7) requires the respondent;

*Not to use or permit to be used the demised premises except: -
[...]*

*as to the upper parts as residential flats (hereinafter
called “the flats” and the expression “the flat” shall be
construed accordingly)*

*and without prejudice to the generality of the foregoing not to
use or suffer the upper residential parts of the demised premises
or any part thereof to be used for business purposes within the
meaning assigned to that expression by section 23 of the
Landlord and Tenant Act 1954 or any statutory modification or
re-enactment thereof for the time being in force [...]*

Clause 2(8) provides

*Not to do or suffer to be done in or upon the demised
premises any act or thing which shall or may be or
become a nuisance damage annoyance or inconvenience
to the Lessors or any lessees or occupiers of any premises
in the neighbourhood.*

Clause 2(9) – *To comply with Statutes*

Clause 2(10) – *Not to refuse dump*

Clause 2(21) – *Not to avoid insurance*

Clause 2(23) – *Not to obstruct roads and passages*

Clause 2(29) - *Regulations*

*That the Lessees will make maintain and enforce all
proper regulations among the residents of the flats for the
user of their separate dwellings in accordance with the
terms hereof and in particular will impose the regulations
set forth in the Third Schedule hereto in underleases of the
flats and will give every facility to the Lessors and their
Agents to enter at all reasonable times the premises*

hereby demised and every part thereof to ascertain whether this clause is being complied with.

14. The tribunal was also referred to the following definitions in the Residential Underleases:

Common Parts: *the main structure including roofs external walls and foundations and window frames and those other parts of the Building not included or intended to be included by the Landlord in any lease or tenancy granted by the Landlord and those parts of the Building which have not been or will not be specifically demised by the Landlord and/or the Freeholder to others;...*

Premises: *all the demised premises specified in the Particulars [by flat number] and shown edged red on the Plan together with the ceilings floors (but excluding all parts of the Building above the ceilings and below the floors) and the internal surfaces of all walls within the Premises and together with the Service Media used solely for the purposes of the Premises including the glass of the windows of the Premises and the walls dividing the Premises from any adjoining premises shall be deemed to be maintained as party walls;...*

Service Media: *all or any of the mechanical electrical plumbing (including sewers and drains) telephone gas television reception and entry phone installations and all easements relating thereto which are necessary for the Tenant's use and enjoyment of the Premises as herein defined and which may be used in common with the Landlord or other occupiers of the Building;*

15. The applicant submitted the leases also contained the following tenants' covenants:

Clause 6.3: To keep the demised premises in good repair and condition.

(Clause 6.5: To repair and replace (when necessary) all the Service Media exclusively serving the demised premises.

Clause 6.16: To keep communal areas clear.

Clause 6.18:

16. The applicant told the tribunal that individual Residential Subtenants are responsible for wants of repair within their respective flats, including wants of repair relating to any Service Media exclusively serving those flats. That includes pipework connecting each flat to a communal system.

17. Similarly, the Commercial Underlease demises the whole of the ground floor and basement of the Building, including (at Schedule 1)

- (g) The glass in the windows...
- (h) All sanitary and hot and cold-water apparatus and radiators (if any) within the demised premises or exclusively serving the demised premises
- (i) All conduits pipes sewers cables and wires therein and exclusively serving the demised premises
- (j) All the Lessor's fixtures fittings plant machinery apparatus and equipment now or hereafter in or upon the same and exclusively serving the demised premises

18. The leases contain among others, the following tenant's covenants:

Clause 2(4): To keep the demised premises, including landlord's fixtures, in repair.

Clause 2(15): Not to alter without consent.

The hearing

19. At the hearing, the applicant was represented by Mr Rahul Varma of counsel and the respondent by Ms Tamin Cox of counsel. The tribunal were provided with a digital bundle of 4069 pages; a Supplemental Bundle of 323 digital pages and a core bundle of 238 digital pages. The parties also provided written Skeleton Arguments and copies of legal authorities.

20. The parties had agreed a number of alleged breaches of the lease between them or the applicant no longer wished to pursue it. Nevertheless, the tribunal was invited to make a determination of breach even if it had been remedied at the date of the application.

21. At the hearing, the applicant relied upon the remaining alleged breaches set out in the Agreed Statement of Issues, for which it sought the tribunal's determination:

Item 1.11 Clause 2(4) – Ponding to (flat) roof.

Item 1.2.1 Clause 2(4) and 2(5ii) – Approx 10 floor tiles are cracked to balcony of Flat 41

Item 1.2.2 Clause 2(4) 2(5) and 2(5iii) – Decorations to woodwork are degraded and ironmongery deteriorated.

Item 1.2.3	Clause 2(4) and 2(5ii) – Two parapet copings are damaged and sealant.
Item 1.3.1	Clause 2(4); 2(5) and 2(5iii) – Frames to windows serving the common parts have deteriorated. Timber rotten and warped.
Item 1.3.2	Clause 2 (5vi) – Windowpanes in hallway and stairwell are dirty.
Item 2.2.1	Clause 2(4) 2(5ii)band 2(5v) Frames to windows serving the common part have deteriorated. Timber is rotten and warped.
Item 2.2.2	Clause 2(5vi) Windowpanes in stairwell are dirty.
Item 2.2.4	Clause 2(4) and 2(5v) Cleanliness and painting of hallway walls and ceilings is generally poor.
Item 2.3.1	Clause 2(4) and 2(5v) – Widespread water stains in hallways. Hatches cut into soffit and not made good.
Item 3.1	Clause 2(5)(v) – Mould on bathroom ceiling in Flat 88.
Item 3.1.3	Clause 2(4) – Windows defective in Flat 88 – the cockspurs have been removed.
Item 5.2	Clause 2(4) 2(5) 2(8) 2(9) 2(21) and 2(29) and 2(8) – Foul drainage system is inadequate and multiple leaks have occurred.
Item 5.3	Clause 2(4) and 2(8) – Pressure in domestic system increased exposing weak points of system and fails regularly.
Item 5.4	Clause 2(4) Bathroom and kitchen extract fans frequently fail.
Item 5.5	Clause 2(4) and 2(9) – Fire systems and safety and prevention measures are defective or inadequate.
Item 5.8	Clause 2(4) Redundant MEP systems within building which should be removed.
Item 5.9	Clause 2(4) No preventative maintenance plan.

22. In support of their respective cases applicant relied upon the following:

- (i) Witness Statement and exhibits of Robert Askew dated 12 September 2025.
- (ii) Second Witness Statement and exhibit of Robert Askew for the applicant dated 17 April 2026
- (iii) Witness Statement and exhibits of Max Vizzini dated 12 September 2025.
- (iv) Expert Report of Andrew Schofield dated 20 October 2025.
- (v) Expert Report of Marcin Silinski dated 20 October 2025

23. The respondent relied upon:

- (i) The Witness Statement of Lisa Taylor for the Respondent and appendices dated 11 September 2025.
- (ii) The Witness Statement of Richard Lee dated 7 May 2026
- (iii) The Expert Report of Andrew Maude and Peter Downing dated 27 October 2025.

The tribunal's decision and reasons

State of the Property Breaches

24. The parties having agreed a number of items on the joint Statement of Issues, the tribunal records the parties' agreement on the following items:

- Item 1.1.3 - breach of cl. 2(4), cl. 2(5), and cl. 2(iii);
- Item 1.1.5 - breach of cl. 2(10)(a) and cl. 2(29); 13
- Item 1.2.2 – breach of cl. 2(4), cl. 2(5) and cl. 2(5)(iii);
- Item 1.2.3 – breach of cl. 2(4) and cl. 2(5)(ii);
- Item 2.2.3 – breach of cl. 2(9);
- Item 2.2.5 – breach of cl. 2(10a);
- Item 2.4.5 – breach of cl. 2(4) and 2(9);
- Item 3.1.3 – breach of cl. 2(4);
- Item 4.1.2 – breach of cl. 2(4);

Item 5.1 – No longer pursued;

Item 5.10 – No longer pursued as a discrete breach but part of 5.2.

*Allegations in respect of statutory reliance were also not pursued in final submissions to the tribunal.

25. In written evidence to the tribunal, Mr Askew, Chief Executive Officer of the applicant company stated:

Molteni has suffered significantly because of the breaches of the King Regent's Lease. The matters complained of below have been an issue since Molteni took the lease and have not improved since Molteni became King Regent's landlord in 2023. There have been 52 instances of water ingress to the ground floor and basement premises since March 2018. The last instances prior to me making this statement were on the weekends of 30/31 August 2025 and 1/2 September 2025 and remain unresolved so the issues are very much ongoing.

26. The tribunal finds the applicant is entitled only to rely on the water leaks that have occurred since the acquisition of its interest although much of the evidence by Mr Askew addressed leaks that occurred before that date. The tribunal accepts the respondent's submissions that majority of the applicant's allegations are based on the general repairing covenant at Clause 2(4) of the Lease, which contains a requirement in standard language that the Premises be kept, '*well and substantially repaired maintained renewed amended cleansed and decorated*'.
27. The tribunal finds that several of the covenants in the Lease on which the applicant relies are obligations requiring the respondent, '*not to do or suffer to be done...*' a prohibited thing or, similarly, "not to use or permit to be used...", or, '*not to do or knowingly permit...*' The tribunal finds that it is for the applicant to prove that:
- (a) That the act or omission alleged was that of the respondent; or
 - (b) That the respondent permitted the act or omission, within the meaning of the relevant covenant.
28. The tribunal finds the applicant has failed to sufficiently establish how the respondent is in breach of the lease either substantively or at all.
29. The tribunal finds in respect of the disputed breaches of repair in respect of clause 2(4) of the lease, requires the applicant to prove on the balance of probabilities that the respondent has failed to keep the Property '*well*

and substantially repaired maintained renewed amended cleansed and decorated’.

30. In seeking to establish that the respondent had breached this obligation, the applicant relied upon the expert report of Andrew Schofield FRICS who stated ‘*...I have been invited to give an opinion on whether there are breaches of the tenant covenants in the lease of 12-16 Fitzroy Street, London W1T 4BL...*’
31. The applicant also relied on the expert report of Marcin Silinski who stated ‘*...I have been instructed to review the disputed issues...*’ between the parties. In his report, Mr Silinski asserted that the respondent was in breach of clause 2(4) of the lease in respect of the drainage; the domestic water supply; hygienic ventilation and in breach of clause 2(9) in respect of statutory compliance. Mr Silinski concluded in his report that ‘*the sanitation drainage and domestic water systems, due to their condition, cause ongoing problems and damage to the property.*’ Mr Silinski attributed these issues to the respondent’s failure to maintain properly the MEP system with the Property.
32. The respondent relied on the expert report of Andrew Maude BSc (Hons) MRICS and Peter Downing Beng (Hons) CEng, Director of Waterman Building Services Ltd. In this (joint) report, Mr Schofield stated:

‘...I am instructed in relation allegations of disrepair at a mixed-use development in Fitzrovia, namely 12-16 Fitzroy Street, London W1T 4BL.’

33. Mr Maude and Mr Downing stated in their report that

...issues with the fire doors were minimal; neither expert has been able to determine the cause of the alleged leaks reportedly from the foul waste and supply services into the applicant’s demise; a number of items relate to management issues such as the propping open of fire doors; there is evidence of a back log of routine maintenance work demonstrated more particularly in the condition of the external decorative finishes to the timber windows.

34. Mr Maude and Mr Downing concluded:

In my opinion, the condition of the premises evidenced during my inspections, in the Respondent’s witness statement and the enclosures demonstrate that the property is being maintained generally in accordance with the terms of the lease but with evident back log maintenance to decorations and localised issues in relating to leaks from the failed drainage.

Subject to further clarification of the alleged defects and remedial work to the MEP services, I do not consider the

premises to have been neglected by the Respondent or have been poorly maintained, despite the evidence of a back log of maintenance.

Upon completion of the proposed works of maintenance and repair, I consider the premises will adequately demonstrate compliance with the tenant's obligations under the lease. 9.19 For the reasons set out in this report and in the Scott schedule in Appendix C, I consider it necessary for further investigations to be undertaken, particularly in relation to causation of alleged defective failed drainage, inclusive of opening up of the boxing in around the pipework at ceiling level within the ground floor commercial premises and within the Respondent's demise. 9.20 I consider that the Applicants have not proven their case with regard relation to the alleged defects to the mechanical, electrical and plumbing services and further evidence is required.

35. In contrast Mr Schofield FRICS for the applicant concluded,

It is my view that the respondent, who is responsible for the maintenance and upkeep of the Property, save for those covered by the applicant's lease, has failed to comply with their obligations under the Lease. The Property has been neglected...The ownership structure of the Property is complex and perhaps contributes to the poor management and long-standing failure to repair and maintain...

36. The respondent also relied on the evidence of Ms Lisa Taylor, Property Manager of Warmans 1859 Ltd. Ms Taylor provided a Schedule of Communal maintenance setting out all the works undertaken by the respondent from date of handover as well as the cyclical maintenance that had been carried out. These included:

- a. S20 works carried out in relation to internal decorations to common parts, including works to the lower basement and stairwell areas;
- b. New entry phone system installed;
- c. Work relating to Building Safety Act requirements;
- d. Electricity supply re brokered to save energy costs of circa £8,000.00 per annum;
- e. Instructed replacement bin cleaning and replacement with new supplier;
- f. New parcel box ordered for the reception area;

- g. New digital notice board ordered for the reception area; h. Fire door survey conducted for communal doors (appendix 1 and appendix 2); i. Health and Safety signage audit conducted...with new signage ordered...;
 - j. Lift wrapping survey and quotation obtained...
 - k. Appointment of specialist to undertake a drain survey and review of plumbing/pipework...;
 - l. Review of H&S services and undertaking of remedial works...;
 - m. Review of communal carpets and arrangement of professional cleaning once redecorations completed;
 - n. External cleaning quotations obtained for hard landscaped areas to be arranged;
 - o. Review of electricity meters and fuseboards to determine usage and apportionment;
 - p. Installation of a new CCTV system to the front entrance, lobby and basement areas...;
 - q. Review of security systems and installation of new access control fob system to basement....
37. The tribunal finds the applicant has failed to prove in respect of the remaining allegations of breaches of repair relied upon are (i) the act or omission was that of the respondent; or (ii) that the Respondent permitted the act or omission, within the meaning of the relevant covenant.
38. Having had regard to the oral and documentary evidence relied on by the parties the tribunal finds the applicant has failed to establish the alleged breaches of repair are (i) the act or omission was that of the respondent; or (ii) that the Respondent permitted the act or omission, within the meaning of the relevant covenant.
39. In reaching this conclusion, the tribunal weighed up the evidence of the experts relied upon by the parties and noted the applicant had specifically instructed its expert to determine matters of law having ‘... *been invited to give an opinion on whether there are breaches of the tenant covenants in the lease of 12-16 Fitzroy Street, London W1T 4BL...*’ which appear to be matters outside of his expertise. Mr Maude similarly appeared to step outside his field of expertise when he stated ‘...*I consider that the applicants have not proven their case with regard relation to the alleged defects to the mechanical, electrical and plumbing services...*’

40. The tribunal also finds the applicant has relied on a large number of minor items alleged to be a breach of the lease by the respondent which serve only to 'fill out' its application. The include allegations of dirty windows; a small number of cracked tiles and a small area of loose paint. The tribunal also finds the applicant has in its evidence frequently sought to rely on events that occurred before the applicant's interest, which is particularly evident in Ms Askew's account of the continuing leaks to the commercial units.
41. However, having been requested to determine each and every item relied upon that has not been agreed between the parties, the tribunal finds the applicant has failed to prove that the respondent is in breach of the terms of the lease in respect of the items referred to below:
- | | |
|------------|---|
| Item 1.11 | Clause 2(4) – Ponding to (flat) roof. |
| Item 1.2.1 | Clause 2(4) and 2(5ii) – Approx 10 floor tiles are cracked to balcony of Flat 41 |
| Item 1.2.2 | Clause 2(4) 2(5) and 2(5iii) – Decorations to woodwork are degraded and ironmongery deteriorated. |
| Item 1.2.3 | Clause 2(4) and 2(5ii) – Two parapet copings are damaged and sealant . |
| Item 1.3.1 | Clause 2(4); 2(5) and 2(5iii) – Frames to windows serving the common parts have deteriorated. Timber rotten and warped. |
| Item 1.3.2 | Clause 2 (5vi) – Windowpanes in hallway and stairwell are dirty. |
| Item 2.2.1 | Clause 2(4) 2(5ii)band 2(5v) Frames to windows serving the common part have deteriorated. Timber is rotten and warped. |
| Item 2.2.2 | Clause 2(5vi) Windowpanes in stairwell are dirty. |
| Item 2.2.4 | Clause 2(4) and 2(5v) Cleanliness and painting of hallway walls and ceilings is generally poor. |
| Item 2.3.1 | Clause 2(4) and 2(5v) – Widespread water stains in hallways. Hatches cut into soffit and not made good. |
| Item 3.1 | Clause 2(5)(v) – Mould on bathroom ceiling in Flat 88. |

- Item 3.1.3 Clause 2(4) – Windows defective in Flat 88 – the cockspurs have been removed.
- Item 5.2 Clause 2(4) 2(5) 2(8) 2(9) 2(21) and 2(29) and 2(8) – Foul drainage system is inadequate and multiple leaks have occurred.
- Item 5.3 Clause 2(4) and 2(8) – Pressure in domestic system increased exposing weak points of system and fails regularly.
- Item 5.4 Clause 2(4) Bathroom and kitchen extract fans frequently fail.
- Item 5.5 Clause 2(4) and 2(9) – Fire systems and safety and prevention measures are defective or inadequate.
- Item 5.8 Clause 2(4) Redundant MEP systems within building which should be removed.
- Item 5.9 Clause 2(4) No preventative maintenance plan.

- 42. In making this determination, the tribunal accepted Ms Taylor's evidence in respect of the works and cyclical maintenance that had been carried out. The tribunal finds that major areas of concern were (i) works or lack of to the flat roof and (ii) the leaks from the foul water system into the commercial premises. The tribunal accepted the evidence of Mr Maude that ___ and finds that 'ponding' to the flat roof was not indicative of a breach by the respondent, to maintain or keep in repair.
- 43. The parties' experts having failed to identify the cause of the leak of foul water to the commercial premises, the tribunal finds the applicant has failed to prove this has been caused, continued or permitted by the respondent or is a failure to maintain the premises under the terms of the lease, although the tribunal acknowledges the devastating effects the numerous water leaks have had to the commercial premises.
- 44. The tribunal preferred the witness evidence of Mr Maude whose report addressed the various issues in a methodical, clear and concise manner. For instance, he explained the structure of the flat roof, noting that ponding of itself is not evidence of disrepair, indeed the new roof covering had been laid to the falls existing and some ponding was not unusual. Whilst he accepted that there were limited areas of disrepair in some window frames; he noted that very few had been inspected. He explained that having inspected the premises, considered the paperwork relating to historic and current maintenance he was satisfied that the building has not been poorly maintained.

45. Mr Schofield considered in some detail a number of issues, including outstanding snagging items following redecoration of the common parts. However, some items he referred to were management issues e.g. outstanding snagging items. He had referred to a British Standard but was not familiar with the detail of it.
46. Taken overall, the tribunal finds the evidence of Mr Maude was the more convincing.

Airbnb breaches

47. The applicant asserted that since at least November 2020, the respondent has caused or permitted one or more of the residential flats to be used for the business of short-term, Airbnb-type lettings (whether through Airbnb itself or other such websites) and alleged that such lets amount to a breach of at least one of cl. 2(7), cl. 2(8), or cl. 2(29). However, the applicant only acquired its interest in the Property on 4 May 2023 and therefore can only rely on alleged breaches since that date.
48. Cl. 2(7) requires the respondent:

*Not to use or permit to be used the demised premises except: -
[...]*

as to the upper parts as residential flats (hereinafter called “the flats” and the expression “the flat” shall be construed accordingly)

and without prejudice to the generality of the foregoing not to use or suffer the upper residential parts of the demised premises or any part thereof to be used for business purposes within the meaning assigned to that expression by section 23 of the Landlord and Tenant Act 1954 or any statutory modification or re-enactment thereof for the time being in force [...]

49. Clause 2(8) deals with the issue of nuisance and states:

Not to do or suffer to be done in or upon the demised premises any act or thing which shall or may be or become a nuisance damage annoyance or inconvenience to the Lessors or any lessees or occupiers of any premises in the neighbourhood.

- 50.. Clause 2(9) deals with compliance with statutes and clause 2(29) provides:

That the Lessees will make maintain and enforce all proper regulations among the residents of the flats for the user of their separate dwellings in accordance with the terms hereof and in

particular will impose the regulations set forth in the Third Schedule hereto in underleases of the flats and will give every facility to the Lessors and their Agents to enter at all reasonable times the premises hereby demised and every part thereof to ascertain whether this clause is being complied with.

51. The applicant relied upon the service of an enforcement notice by the local authority dated 11/11/2020 as a failure by the respondent to a failure by the Respondent to ‘Maintain and enforce all proper regulations among the residents for the users of their separate dwellings’. In addition, the applicant relied upon the evidence of Mr Askew, the Chief Executive Officer of the applicant company in respect of the nuisance, damage, annoyance or inconvenience caused by reason of other persons arriving at the Property. This evidence was said by the applicant to be corroborated by Mr Vizzini, Finance Director of the applicant company who stated in his written evidence:

On 29 January 2024 I went to the upper floors of the Building because there was a leak and we were trying to establish where it was coming from. I attended flat 2 and a guest let me into the flat. It was a gentleman who was staying there with two ladies. He said they were staying for five days. As such this was clearly a short-term letting.

52. Mr Askew stated in his written evidence that:

As part of the purchase of the freehold I became aware that an enforcement notice had been served by London Borough of Camden dated 11 November 2020 in relation to flat 2. The registered proprietor of this flat is Liz... It was our hope, that as owners, we may be able to bring an end to the practice of Airbnb through discussions. I believe this use is adding to the issue of the leaks due to inadequate maintenance and repair due to short-term occupants not looking after the premises

and,

...copies of screen shots obtained by my assistant Helen Terry from the Internet which shows flats in the Building being advertised for short term lettings. These were taken from May 2024 and the latest were from the week of September 2025. The majority of these are attached to the Applicant's Statement of Case but these have been updated to cover the most recent period. ...The flats identified include flats 2 and 41. It seems clear to me King Regent's continue not to enforce the applicable covenants in the flat leases and seek to turn a blind eye to commercial use. In order to provide evidence that this use of the upper parts is continuing, I asked a colleague to book one of the flats being advertised...the booking confirmation for this reservation made for 15-17 September 2025 which clearly shows the address as 12-16 Fitzroy Street.

53. Mr Varma submitted that short-term Airbnb (or Airbnb-type) lettings to strangers are capable of breaching user covenants prohibiting use other than as a 'residence.' The duration of occupation is key. In order for 'residence' to be established, there must be a degree of permanence going beyond a few nights or a weekend (c.f. months or years); such a short period of occupation would be transient and does not establish 'residence.'
54. Mr Varma submitted that clause 2(7) A makes clear that this part of the covenant is directed towards ensuring that the Residential Premises remain as flats, rather than being converted to an alternative use, in contrast to the other parts of the Premises where different use is prescribed. He submitted that the limitation to use, 'as residential flats' is not sufficiently narrow to prohibit use for short-term lettings.
55. Mr Varma also submitted that the second part of clause 2(7) and reference to use for short-term lettings is not 'business use' of residential premises and is not business use within the meaning of s.23 of the Landlord and Tenant Act 1954, to which the covenant would apply.
56. In the witness statement of Dr Richard Men Ho Lee, a director of the respondent company stated:

Leaseholders have received a written notice that short-term letting may not be permitted under the terms of the underleases and as such those using their properties in this manner have been requested to cease doing so with immediate effect.

57. Mr Varma also submitted that as one of the flats used for Airbnb lets is Flat 2 is registered to a Ms Elizabeth Da'Costa. From 1999 until February 2026, Ms Da'Costa was one of the Respondent's directors . however, the respondent has not overtly denied the use of flats in the Property for short-term lets and nor has Ms Da'Costa provided any witness statement for the respondent.
58. The relevant parts of section 23 of the Landlord and Tenant Act 1954 provides:
 - (1) Subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes.
 - (1A) Occupation or the carrying on of a business—
 - (a) by a company in which the tenant has a controlling interest; or

(b)where the tenant is a company, by a person with a controlling interest in the company, shall be treated for the purposes of this section as equivalent to occupation or, as the case may be, the carrying on of a business by the tenant.

(1B)Accordingly references (however expressed) in this Part of this Act to the business of, or to use, occupation or enjoyment by, the tenant shall be construed as including references to the business of, or to use, occupation or enjoyment by, a company falling within subsection (1A)(a) above or a person falling within subsection (1A)(b) above.

(2)In this Part of this Act the expression “business” includes a trade, profession or employment and includes any activity carried on by a body of persons, whether corporate or unincorporate.

59. Ms Cox submitted that this provision requires that the relevant tenant should itself be in occupation for the purposes of its business. Here, the nature of the alleged user is that the tenant is not in occupation, but has given up occupation to third parties, so that any such user cannot fall within the definition in s.23.
60. Ms Cox submitted that the applicant had not provided evidence to prove the respondent has used any part of the Premises for a prohibited purpose, or that it has permitted others to do so. Therefore, there is no proper basis for a finding of any specific breach of the user provision.

The tribunal’s decision and reasons

61. The tribunal finds that flats in the Property have been advertised for short-term, Airbnb style lettings in 2024 and 2025 and reservations for accommodation have been listed to that effect. In particular the tribunal finds that on 29 January 2024, Flat 2 was being ‘let’ to a short-term guest. The tribunal finds that the respondent knew or permitted the use of Flat 2 for the purpose of short-term lettings by reason one of its Directors was responsible for this. The tribunal finds that Flat 2 was permitted to be booked for a short-term let for the period 15-17 September 2025. The tribunal finds these short-term lets are in breach of clause 2(7) of the lease.
62. The tribunal finds many of the allegations of short-term lets are outside of the period of the applicant’s acquisition of its interest in the property are not, in any event sufficiently specific as to when these alleged breaches were incurred. The tribunal also finds the applicant has failed to establish the two breaches found by the tribunal have caused nuisance to the other occupiers.
63. The tribunal accepts the applicant’s submission that Clause 2(7) comprises of two discrete but overlapping elements:

- (i) a general prohibition on use or permitting use other than as residential flats'; and, without prejudice to that general prohibition
- (ii) a requirement not to use or suffer the use of the residential flats (or any part thereof) for business purposes within the meaning of s. 23, Landlord and Tenant Act 1954.

A breach of either element or both is a breach of cl. 2(7).

- 64. The tribunal finds that Flat 2, a former director of the respondent company, not only knew about the lettings but actively participated in them. The tribunal also finds a tenant who allows short term occupiers to occupy the flats as visitors, does constitute the running of a business from the flat.
- 65. The tribunal also finds the presence of frequent short-term visitors to the Property caused a nuisance only as far as their presence was an inconvenience to the leaseholders of the commercial premises when having to repeatedly give directions and answer questions. However, the tribunal finds the applicant has not proved the short-term visitors were the cause of leaks to the commercial premises.

Conclusion

- 66. Save where the breaches of the terms of the lease have been admitted, the tribunal dismisses the allegations of Breaches of Repair as not proved by the applicant
- 67. The tribunal finds the respondent has breached clause 2(7) of the lease by permitting Flat 2 to be used for short-term Airbnb on 29 January 2024 and 15-17 September 2025.

Name: Judge Tagliavini

Date: 13 July 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).