



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

Tribunal case reference	:	CAM/22UG/LBC/2024/0600
Property	:	10 St Edmunds Court, Harwich Road, Colchester CO4 3BT
Applicant	:	Link Holdings (Gibraltar) Limited
Representative	:	Altermans Solicitors Limited
Respondents	:	1. Temitayo Bolanle Ariyo 2. Olushola Abodunrin Ogunyemi
Type of application	:	Determination of breach of covenant (section 168(4) of the Commonhold and Leasehold Reform Act 2002)
Tribunal members	:	Judge M. Hunt Dr J. Wilcox FRICS
Date of inspection	:	10 February 2026
Date of hearing	:	11 February 2026 (remote hearing)
Appearances at hearing	:	Mr S. Madge-Wyld (for the Applicant) Mr M. Brittain (for the Respondents)
Date of decision	:	12 February 2026

DECISION

1. The application for an adjournment is refused.
2. Breaches of the covenants contained in the following clauses have occurred:
 - a. 3(7); and
 - b. 4(9), to the extent the Property has been occupied by people not forming a single family.

REASONS

Introduction

1. 10 St Edmunds Court, Harwich Road, Colchester CO4 3BT (the “Property”) is a maisonette occupying the first and second floors of part of a larger building comprising several other flats and maisonettes (the “Building”). The Applicant is the freeholder of the Building and has been since 2007. The Respondents are the leaseholders of the Property and have been since 2021.
2. The lease that details the parties’ agreement and obligations was executed on 21 April 1972 (the “Lease”). It contains several covenants. The Applicant contends that several of these covenants have been breached and seeks a determination to that effect in accordance with s.168(4) Commonhold and Leasehold Reform Act 2002. The nature of the alleged breaches was recorded in an application notice dated 29 May 2024.
3. The Respondents did not respond to the application but instructed a representative to attend the hearing. At the hearing, they contested the breaches. The previous day, the Tribunal attended the Property for an inspection. It took place alongside a representative of the Applicant, with the Respondents not attending.
4. In determining the application, the Tribunal considered a 65-page file presented by the Applicant, an email chain referred to in a witness statement in the file that was presented on the day of the hearing and a copy of a tenancy agreement provided by the Respondents on the day of the hearing. It also took account of its own observations from the inspection of the Property and heard submissions from the parties. It is grateful to all for their attendance and assistance. When findings of fact

had to be made, they were made on the balance of probabilities in light of all of the available evidence.

Adjournment application

5. At the outset of the hearing, the Respondents requested an adjournment. This was because they allege to have only received notice of the hearing the day prior and to have had insufficient time to prepare for the hearing. The Tribunal clarified that, in light of what it discovered during its inspection (which will be explained below), the only issue on which the Respondents would have to provide evidence or make submissions was whether a room in the Property had been let separately in or around March 2024 to someone who did not form part of the same family as any other occupants. This was a very straightforward question of fact. The Respondents' representative appreciated this. He was provided with the Applicant's file. He was fully familiar with the Lease, having appeared before this Tribunal the previous day in relation to proceedings involving a neighbouring flat, in respect of which the same covenants were in issue. The evidence presented by the Applicant amounted to a 5-page witness statement, a couple of short letters and a tenancy agreement, of which only the first page was really relevant.
6. Before determining the application, the Tribunal allowed the Respondents' representative 15 minutes to discuss the matter with his client(s). He did so. Twice upon attempting to reconvene the hearing, it was clear that he was still in discussions with his client(s) so the hearing was further adjourned. On his return to the hearing, the Respondents' position was unclear, save that they wished to have some time to locate a relevant tenancy agreement. They had found a copy of the current occupier's tenancy agreement, which was stated to have commenced on 20 May 2024. Presumably they were seeking a copy of a prior tenancy agreement.
7. Due to the Respondents' representative being scheduled to make a short separate Court appearance, the matter was further adjourned until 2pm with an instruction that the Respondents should attend to provide evidence about the tenancy or, at the least, why they required an adjournment. Once again, the very straightforward nature of their task was made clear.
8. At 2pm, the hearing was reconvened without the Respondents in attendance. Their representative indicated that he had managed to communicate with them again and had been informed they had delayed their departure to France for a conference, which had been due to commence today, because of the hearing. They had originally been due to fly there but were now making alternative arrangements to travel by train.

It was unclear whether they were on the train at 2pm or where they were and their representative said he had not asked.

9. The Tribunal heard submissions on the adjournment application. It dismissed it after taking account of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (including the overriding objective in Rule 3, the broad case management powers in Rule 6, the service provisions in Rule 16 and Rule 34 (despite, strictly-speaking, the Respondents being in attendance via their representative)). In brief, the Tribunal was satisfied valid service of documents had been effected (both at the Property and the address recorded for the Respondents in the tenancy agreement included within the Applicant's file). In light of the simplicity of the proceedings and evidence, with a mind to the efficient use of Tribunal resources and to limiting the costs to be incurred by the parties as well as to avoiding delay, the Tribunal concluded it was plainly in the interests of justice to proceed with the hearing. The Tribunal could not fathom how, after having almost two days to consider the matter, including specifically cancelling a trip to France due to the hearing (and therefore clearly having no other pressing engagements on the day), the Respondents would have been both unable to attend and unable or unwilling to provide an answer to the very simple question of whether a room had been separately let in the Property in or around March 2024. They managed to locate the current tenancy agreement that commenced barely two months later. They had had time to instruct counsel. They were given a clear instruction as to the only relevant question in issue and time to discuss the matter (at least twice) with their representative. They were instructed to attend at 2pm and no good reason was given as to why they could not. The Tribunal decided to afford them a final opportunity to attend, at 15:30, via any means possible, including phone. They did not. The Tribunal also appreciated that its task was merely to determine whether a breach of covenant had taken place. Should any additional steps be taken, for instance in relation to forfeiture, the Respondents would be entitled to refer the matter to the County Court for further consideration. Any breach would in any event seem evidently capable of remedy, if that had not already occurred. Ultimately, the Tribunal was considering whether a breach of covenant had taken place in or around March 2024. It had sufficient evidence on which to make the determination. As the Respondents were not able to provide a simple answer to the simple question before them about whether and to whom the Property had been let at the time, their evidence would be unlikely to affect the outcome.

Relevant law

10. Section 168(4) of the Commonhold and Leasehold Reform Act 2002 provides as follows.

“168. No forfeiture notice before determination of breach

...

(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.”

11. Where a breach of covenant is not admitted, obtaining such a determination is a necessary prerequisite to pursuing steps towards a potential forfeiture of the lease.
12. General contractual law principles apply to the interpretation of a lease when considering whether a breach of covenant has occurred.

The Lease

13. So far as relevant to the application as originally brought, the Lease contains the following covenants.

14. At clause 3(7):

“Not at any time to assign underlet or part with the possession of part only of the demised premises”.

15. At clause 4(9):

“Not to carry on or suffer to be carried on in or upon the demises any trade manufacture or business of any description but to keep and use the demised premises as to the maisonette/the flat as a single private dwelling for the occupation of one family only and for no other purpose whatsoever ...”.

16. At clause 4(10):

“Not to do or permit any act or thing on the demised premises ... which shall or may be or become a nuisance damage annoyance or inconvenience to the Landlord or any of its tenants or any tenant or occupier of any of the Block ...”.

17. At clause 4(15):

“To observe and perform the restrictions and stipulations in the Fourth Schedule hereto [which include the following:]

1. *Not to use the demised premises or any part thereof for the purposes of any business (including and business as defined by the Landlord and Tenant Act 1954 Part II) and not to erect or allow to be erected on or affixed to the Building or any other part of the Estate any advertisement or hoarding of any kind”.*

18. In the Applicant's skeleton argument provided in advance of the hearing, and as the Applicant confirmed at the hearing, determinations were only being sought in respect of alleged breaches of the covenants contained in clauses 3(7) and 4(9).

The issues

19. The sole issue for the Tribunal to determine was whether the alleged breaches of covenant had occurred.

The facts

20. The Property is accessed from a ground-floor entrance that leads to a staircase ascending immediately to a small landing on the first floor. The landing serves a bathroom, the kitchen and a lounge. On 25 March 2024, the Tribunal was informed by the Applicant that it had been in use as a bedroom. At its inspection, the Tribunal saw no evidence of that, but it had a door lockable from the outside (as did the upstairs bedrooms). The kitchen and bathrooms showed signs of use by multiple people, but it was impossible to gauge whether that was by one family or more.
21. A further flight of steps led from the first-floor landing to a small second-floor landing. Three bedrooms are situated off the landing. The door to one room was wide open and appeared in use as a normal bedroom. The occupant of one of the other rooms was present, but this was not known prior to knocking on the door. She said she did not want us to inspect the Property further and contacted her mother who also lived at the Property but was not at home. She asked us to leave so we did. Her surname was the same as that on the tenancy agreement provided by the Respondents. The Tribunal did not inspect either of the remaining two bedrooms on the second floor.
22. The Applicant was only asking the Tribunal to determine whether a breach of covenant had taken place in or around March 2024, not thereafter. Accordingly, the Tribunal did not need to make any findings about what had happened since then. It simply observed that it was possible that the Property was now occupied by a single family, whatever may have been the case previously.
23. In relation to the situation in or around March 2024, the only evidence before the Tribunal was from the Applicant. A solicitor representing it had provided a statement about what he knew of the Property's use at that time. The Tribunal had no good reason not to accept this evidence so did so.

24. In autumn 2023, the Applicant been contacted by the occupier of 6 St Edmunds Court to indicate that the Property was being used as a house in multiple occupation (“HMO”). After a failed attempt to conduct an inspection in December 2023, a further inspection was scheduled for 25 March 2024. Prior to that inspection, in response to the letter about it, on 13 March 2024 the Applicant’s representative was contacted by the brother of a recent occupant of the Property. He indicated the Property was being used as a house share. Upon the Applicant’s representative asking for a copy of the tenancy agreement, he was provided with one, together with an indication that two tenants had recently vacated the Property.
25. The tenancy agreement was stated to be for a term of 12 months commencing on 16 October 2023 and was stated to relate to “room 2”, with permission to use the kitchen/diner and bathroom.
26. On 25 March 2024, the inspection took place. The Applicant’s representative was of the view that the Property was being used as an HMO. As indicated above, he said that the lounge was in use as a bedroom. He was informed by an occupant that he was currently the only tenant, with the others having recently vacated. He said that he was not related to the former tenants.
27. In light of this evidence, the Tribunal found that, as at 25 March 2024, there was only one tenant in occupation. However, on the balance of probabilities, the Tribunal found that part-only of the Property had been let with effect from 16 October 2023 until a point in early 2024. The Tribunal also found that in early 2024 the Property had been let to people forming more than one family. It was not in a good position to, and did not need to, make any clearer findings than that.

Conclusions

28. In light of these findings, the Tribunal concluded that breaches of the covenants contained in clauses 3(7) and 4(9) had taken place.
29. In respect of the former, the tenancy agreement showed that part-only of the Property (i.e. room 2) had been let with effect from 16 October 2023 until that tenant vacated the Property in early 2024. As at 25 March 2024, the Tribunal had no good evidence about whether the Property was let entirely or only in part to the sole occupant at the time. Accordingly, the Applicant had failed to prove any breach at that particular time.
30. In relation to the latter clause, the Property had been occupied by at least two unrelated tenants for at least a period in early 2024, prior to 25 March 2024.

Although there was some indication that this use had lasted for some time in 2023 also, the Applicant had failed to prove that. This was of real relevance to the Tribunal's determination, however. It was amply satisfied of the breach of covenant.

31. In summary, the Tribunal was satisfied that both alleged breaches of covenant had occurred.

Judge M. Hunt

12 February 2026