



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

Case Reference : **HAV/00ML/LBC/2026/0010**

Property : **Flat 3, 29 Fourth Avenue, Hove, BN3 2PN**

Applicant : **Streethome Limited**

Representative : **Dean Wilson LLP**

Respondents : **(1) Levi Capistrano Fajardo Lyon
(2) Ian Kerr
(3) Timothy Thornton Jones**

Representative : **Gunnercooke. LLP (For R3)**

Type of Application : **Breach of Covenant S168(4) Commonhold & Leasehold Reform Act 2002**

Tribunal Members : **Mr D Cotterell FRICS
Mr E Shaylor MCIEH**

Date of Hearing : **23 June 2026**

Date of Decision : **6 August 2026**

DECISION

Summary of Decision

1. **The Respondents are in breach of their lease in respect of the following matters**
 - a. **Of clause 1(vi)(b) (reservation of a right to for the purpose of cleansing and repairing etc).**
 - b. **Of clause 2(iii), (covenant to keep the interior of the Property repaired, cleansed, maintained etc).**
 - c. **Of clause 2(vi), (covenant not to do or permit a nuisance, annoyance, or inconvenience etc).**
 - d. **Of clause 2(viii), (covenant to comply with the regulations in the schedule to the Lease etc).**
2. **The Tribunal's reasons are as follows:**

Background

3. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent leaseholders (the Respondents) of Flat 3, 29 Fourth Avenue, Hove, BN3 2PN (the Property) are in breach of their lease in relation to covenants requiring them to:
 - a. Allow access for inspections, maintenance and safety checks.
 - b. Keep the flat clean, maintained and in good repair.
 - c. Avoid causing nuisance, inconvenience or risks to others.
 - d. Prevent water leaks and immediately to remedy any resulting damage.
4. The Applicant alleges that ongoing hoarding of items within the flat has created significant fire safety risks, may affect building insurance, and has prevented proper access for annual fire alarm testing and fire door inspections. The Tribunal was told that the front door cannot open fully because of the volume of stored items, making safety inspections difficult or impossible.
5. A fire safety consultant reportedly inspected the property in January 2024, identified serious concerns, and considered the risk significant enough to report to East Sussex Fire and Rescue Service. Despite subsequent correspondence requesting remedial action, the freeholder says the Respondents had failed to respond or comply.
6. A particular incident of water leaking from the flat on 12 February 2026 caused damage to the flat below. Fire & rescue services attended, shutting off the water supply in the Property after no response was received from the Respondent. During a later incident, the freeholder entered using a key in an emergency and states that the occupier was present but appeared unwilling to engage.

7. The Applicant freeholder seeks a determination that the leaseholders are in breach of the lease.
8. The Tribunal issued directions on 27 April 2026 setting out a timetable for exchanges of documents between the parties, setting the matter down for a hearing on 23 July 2026, and giving directions as to evidence and preparation of a bundle for the hearing. The directions were substantially complied with and a hearing bundle running to 165 pdf pages was produced. References in [] are to pdf pages within that bundle.

The Property & Lease

9. The Property which is the subject of this application is described as comprising a first floor flat, having 2 bedrooms, sitting room, kitchen and bathroom.
10. The original lease of the Property is dated the 7 June 1979 and grants a term of 99 years from that date. A copy of the lease appears at [26-35] of the bundle. The Applicants title is registered with title number ESX37960, a copy of the entry at 18 July 2005 appears at [41-42] of the bundle. The Respondents' title is registered with title number ESX255592, a copy of the entry at 9 December 2014 appears at [44-45] of the bundle.
11. A deed of variation dated the 13 November 2001 extended the term to 999 years at a peppercorn rent.

The Law

12. 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

- 13. The application was heard in person at the Havant Justice Centre, Elmleigh Road, Havant on 23 June 2026 at 14:00. The Applicant company was represented by Mr Sami Allan of counsel, the Third Respondent attended and was represented by Ms Juliet Petchey of Gunnercooke, solicitors. The First and Second Respondents did not appear. the First being the occupier of the property who had not responded and the Second having resigned as a freeholder. One of the Applicant’s witnesses had previously informed the Tribunal he was aware of the proceedings but was unable to attend and was content for his statement to stand as evidence. The Tribunal was satisfied that reasonable actions had been taken to make the Respondent parties aware of the proceedings and decided it was in the interests of justice for the hearing to proceed, with the Third Respondent able to present the Respondents’ case. The Tribunal confirmed it had read the parties’ skeleton arguments and the contents of the electronic bundle.
- 14. The Applicant’s Statement of Case [17-19] included as appendices items of correspondence relating to the alleged breaches. The application is further supported by witness statements from Ryan Carter (a director of the freeholder company) and Simon Davey (a property manager acting for the freeholder).
- 15. In his statement Mr Carter (who is also leaseholder of Flat 4 in the building), sets out the alleged breaches as: a failure to allow access for inspections and works, including annual fire and smoke alarm testing and quarterly fire-door inspections; and a failure to keep Flat 3 in a satisfactory state of repair, cleanliness and maintenance.
- 16. He mentioned that a fire risk assessment conducted on 3 January 2024 identified safety concerns in Flat 3, including an ineffective flat entrance fire-door closer, excessive fire loading caused by stored belongings, and significant clutter. Mr Carter wrote to the First

Respondent on 23 February 2024, highlighting the urgency of addressing risks identified in the FRA.

17. He described how in October 2024, contractors were unable to complete a scheduled fire alarm test in Flat 3 because stored belongings prevented access to detectors, despite advance notice being given. He also described three water leaks from Flat 3 into Flat 2. After a leak in September 2025, a plumber could not identify the source because of the volume of possessions in the flat. Following a further leak in February 2026, Mr Carter entered Flat 3 in what he considered an emergency and found such an accumulation of belongings that prevented him accessing the stopcock; East Sussex Fire and Rescue Service later attended to shut off the water and boiler. A third leak later that month again required intervention.
18. Mr Carter states that the First Respondent has had multiple opportunities to remedy the situation but has failed to do so. He said the condition of Flat 3 and lack of cooperation have hindered the freeholder's ability to meet building safety and maintenance obligations, leading to these proceedings.
19. In his statement, Mr Davey, who is managing agent for 29 Fourth Avenue, Hove stated that, following his appointment, contractors from D.R. Smart Homes attempted to carry out the annual fire alarm inspection on 18 July 2025. Notice of the visit had been provided by email, by a note placed under Flat 3's door, and in the communal areas. Despite this, no access was obtained to Flat 3. He went on to detail concerns about the condition of Flat 3 and the occupier's lack of cooperation. After the September 2025 leak, he subsequently wrote to the occupier (Third Respondent) raising concerns about excessive belongings, fire safety compliance, and overdue inspections, suggesting the use of external storage facilities. He mentioned that attempts to communicate have been largely unsuccessful because emails bounce back and telephone calls go unanswered.
20. He mentioned that repeated attempts to gain access for inspections, maintenance and fire safety compliance have failed, preventing the landlord from fulfilling its obligations – and that alleged breaches remain ongoing.
21. The Tribunal noted that neither the First Respondent, the occupier of the subject Property, nor the Second Respondent, were in attendance and that the other Respondents' involvement in the subject application, as explained by the Third Respondent, arose only because they were trustees under the DHG Lyon Will Trust.
22. In his statement as Third Respondent, Mr Thornton Jones, a solicitor, largely accepts the freeholder's concerns and explains his position as a trustee who does not occupy or control the Property. He explained that the First Respondent, Levi Lyon, is both a trustee and the life tenant under the will trust, with the right to occupy Flat 3 for his lifetime. The other trustees have no beneficial interest in or day-to-day control over the property. Mr Kerr, the Second Respondent, retired as a trustee in 2016 but was left on the title according to HMLR's record, mistakenly.
23. Mr Thornton Jones said that he first learned of the proceedings in April 2026 and, after unsuccessfully attempting to contact Levi Lyon, visited the property with assistance from social services. He found the flat in a severely cluttered, squalid and largely inaccessible condition, consistent with the freeholder's evidence of hoarding, fire risk and water leaks affecting neighbouring flats. He gave his opinion that the freeholder was in his view, justified in bringing the application and shared concerns regarding safety.

24. He suggested that any breaches of the lease arose solely from Mr Levi Lyon's conduct as the occupier of the flat. While accepting that joint lessees may be legally liable under the lease, he submits that it would be unjust to treat the trustees who did not occupy the flat in the same way as Mr Lyon. He added that, aside from matters detailed in the application, Mr Lyon has likely breached his duties as a trustee by allowing the property to deteriorate, creating risks to neighbours, exposing the trust's sole asset to possible forfeiture, and causing potential financial liability to the trust. He mentioned that he intended to pursue that matter, seeking Mr Lyon's removal as trustee, forfeiture of his life interest, injunctions requiring remediation, and indemnity for any losses suffered by the trust or the other trustees.
25. In a second statement, the Third Respondent updated his efforts in relation to that proposed action.

Submissions

26. For the Applicants, Mr Allan summarised the matters arising within the scope of the alleged breaches of the lease (as varied) and his submissions on those matters as follows:

Per clause 1(vi)(b) Reservation of a right for the freeholder to enter upon the Property at reasonable times for the purpose of cleansing and repairing.

27. He submitted that the Applicant had sought to access the Property on numerous occasions, but has been denied access and accordingly, the Applicant has not been able to exercise its reserved right of access.

Per clause 2(iii), A covenant by the lessee to keep the interior of the Property repaired, cleansed, maintained and mended,

28. Mr Allan submitted that the evidence of the Applicants witnesses, as supported by the photographs exhibited, "spoke for itself".

Per clause 2(vi), a covenant not to do or permit or suffer to be done on the Property any act or thing which may become a nuisance, annoyance, or inconvenience to the Applicant or surrounding tenants in the building,

29. He submitted that, again, the evidence of the Applicants' witnesses, as supported by the photographs exhibited was also manifest. As to what might amount to a nuisance or annoyance, he referred to a decision Tod-Heatly v Benham (1888) 40 Ch D 80 (CA) setting out a broad definition.

Per clause 2(viii), a covenant to comply with the regulations in the schedule to the Lease At paragraph 6 of the schedule to the Lease,

30. Mr Allan submitted that the regulation that "no Tenant shall use the demised premises or permit the same to be used for any purpose of an illegal immoral improper unpleasant noisy or noxious nature", again, was plainly breached by the Respondents' actions and

acquiescence. Also, the regulation “not to allow water to leak from the flat into another flat, or to remedy a leak immediately if it occurred”, was also breached.

31. For the Third Respondent Ms Petchey outlined in detail the proposed action in relation to removal of Mr Lyon as trustee and the related remedies being sought by his co-trustees, and sought an adjournment of the hearing of the subject application) which was not granted. Ms Petchey pointed out that the Third Respondent had no contact with the First Respondent for several years and only became aware there might be a problem when a nephew and niece made contact with him to ask about the welfare of the First Respondent. The Third Respondent was of the view that the nephew and niece are potential beneficiaries of the DHG Lyon Will Trust, of which the property is the sole remaining asset which he should take steps to protect.
32. In addition, Ms Petchey admitted the 4 breaches on behalf of the Third Respondent, but asked the Tribunal to record in its determination that: these breaches were attributable to the First Respondent’s personal conduct as occupier and life tenant; that the Third Respondent is not in occupation and had no right of supervision or any control over the First Respondent and that nothing in the determination should be taken as a finding that the Third Respondent personally caused, or contributed to, the breaches.

Decision of the Tribunal

33. The Tribunal has carefully considered the parties’ evidence and submissions. The Tribunal finds that the Respondents are in breach of the lease, as varied, as follows:
 - a. Of clause 1(vi)(b) being a reservation of a right for the freeholder to enter upon the Property at reasonable times for the purpose of cleansing and repairing.
 - b. Of clause 2(iii), being a covenant by the lessee to keep the interior of the Property repaired, cleansed, maintained and mended.
 - c. Of clause 2(vi), being a covenant not to do or permit or suffer to be done on the Property any act or thing which may become a nuisance, annoyance, or inconvenience to the Applicant or surrounding tenants in the building.
 - d. Of clause 2(viii), being a covenant to comply with the regulations in the schedule to the Lease. , specifically the regulation relating to water leaks. The Tribunal was not minded to find it proved that there was a breach of the regulation relating to use of the property for any purpose of an illegal, immoral, improper, unpleasant, noisy or noxious nature.
34. The Tribunal makes no finding in respect of the Third Respondent’s requests.

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.