



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

Case reference : **LON/00AX/LBC/2026/0002**

Property : **Flat 12, Norbiton Hall, London Road,
Kingston Upon Thames KT2 6RS**

Applicant : **Northridge Estate Limited**

Representative : **Dale & Dale Solicitors**

Respondent : **Dar Family Investment Limited**

Representative : **BM Company Solicitors**

Type of application : **Determination of a breach of Covenant
under Section 168(4) of the
Commonhold and Leasehold Reform
Act 2002**

Tribunal : **Judge Daley
Mr Bailey MRICS**

Venue : **Heard at 10 Alfred Place, London WC1.
On 26 June 2026**

Date of decision : **30 July 2026**

DECISION

DECISION

The Decision

- I. The Tribunal determines that the Respondent has breached clause 2, paragraph 2 of the Sixth Schedule, of the lease.**
- II. The Tribunal makes no order under Section 20 C of the Landlord and Tenant Act 1985 limiting the landlord's costs.**
- III. The Tribunal makes no order under Schedule of the Commonhold and Leasehold Reform Act 2002 restricting the landlord from recovering their costs.**
- IV. The Tribunal makes an order that the Respondent reimburse the application and hearing fee.**

The Application

1. On 28 January 2026, the Applicant applied for a determination of whether the Respondent had committed a breach of clauses in the lease. The relevant clauses were clause 2 paragraph 16 of the fourth Schedule. This clause required the respondent to obtain a deed of covenant from the sub-tenants confirming they would comply with the Lease and it was alleged that the Respondent failed to do this. By the terms of Clause 2, of paragraph 2 of the Sixth Schedule of the lease. By which the Respondent covenanted not to permit to be done or allow to be done anything which would cause “...disturbance damage annoyance or misery to any other occupiers of the flat in the building.”
2. The premises which are subject to the application is a first floor flat, in a block of 190 flats.
3. The Applicant is the freeholder of the block of flats in which the premises is situated. The respondent is the leaseholder pursuant to a lease, of the premises known as flat 12 Norbiton Hall, London Road Kingston Upon Thames KT2 6RS (“the Premises”), pursuant to a lease dated 30 March 2021.
4. Directions were given on 26 February 2026. The directions stated as follows:- “(4) *The tribunal will reach its decision on the basis of the evidence produced to it. The burden of proof rests with the applicant. The tribunal will need to be satisfied: (a) that the lease includes the covenants relied on by the Applicant; and (b) that, if proved, the alleged facts constitute a breach of those covenants. (5) The respondent and any mortgagee or occupier of the property should seek independent legal advice, as these proceedings may be a preliminary to court proceedings to forfeit the lease.*”
5. This matter was listed for an in person hearing on 26 June 2026 at 10 am.

The Hearing

Attendance

6. The hearing was attended by Mr Martin Comport Solicitor for the Applicant, also in attendance on the Applicant's behalf were Mr Nissan Moradoff- property manager Parkgate Aspen and Mr Dale Smith Caretaker and resident of No 10 Norbiton Hall.
7. The Respondent was represented by Mr B Macgregor also in attendance were Mr Amin Dar and Ms Naddiah Dar representatives of Dar Family Investments Limited.

Preliminary Matters

8. At the hearing Mr Comport told the Tribunal that the respondent's had complied with clause 2 paragraph 16 of the fourth Schedule and given this the Applicant was no longer seeking a determination in respect of this breach. Accordingly, the sole matter before the Tribunal was whether a breach had occurred in respect of Clause 2, of paragraph 2 of the Sixth Schedule of the lease, ("the nuisance clause")

The Evidence

9. Prior to the hearing the Tribunal had been provided with a hearing bundle which consisted of 150 pages. The Tribunal heard oral evidence from Mr Nissan Moradoff and Mr Smith on behalf of the Applicant. The Tribunal also heard from Mr Amin Dar and Ms Naddiah Dar.
10. Within the bundle the Tribunal had the witness statements of Mr Sabastian Popescu, Mr Oska Arne Thomas Hilton Meadows and Mr Finn Goodwin all dated 23 April 2026.

The witness evidence

11. Mr Moradoff gave brief evidence that complaints concerning the Respondent's sub-tenants' behaviour had been made to him from Mr Smith and three other tenants who were not willing to put their complaints in writing or give evidence. He accepted in cross examination that he was not a witness to the alleged nuisance and annoyance caused by the tenants. Given this the Tribunal gave limited weight to his evidence.
12. The Tribunal heard from Mr Smith, the Tribunal considered that he gave first hand evidence that on occasions he was disturbed by noise nuisance coming from the property and that this comprised of loud music, loud talking and banging of doors. The Tribunal consider that he gave clear evidence, however it had regard to the submissions made by Mr Macgregor in closing that there was a lack of specificity regarding dates and times in his evidence. The Tribunal noted that he had attached

- written complaints made by his wife Mrs Smith in which she set out dates of when incidents occurred.
13. The Tribunal noted that although Mr Smith did not give detailed evidence of the dates and times his evidence was that there were multiple occasions when noise and other nuisance was caused by the sub-tenants.
 14. In considering this evidence, the Tribunal has attached more weight to occasions where the noise was said to emanate from the flat above Mr and Mrs Smith's premises, and on occasions when the sub-tenants were directly observed, than incidents which occurred outside of the premises.
 15. On behalf of the Respondent's the Tribunal heard from Mr Dar, Mr Dar dealt with his response to the complaints which he had received from the solicitor on behalf of the Applicant. He was not a witness to the incidents and relied upon the accounts given to him from his sub-tenants. He did not reply to the Applicant's solicitor by denying the accounts of nuisance.
 16. Further at the hearing he told the Tribunal about a medical condition which affected his detailed recall of events. The Tribunal took account of this when considering his evidence.
 17. The Tribunal heard from Ms Dar, she had spoken with the sub-tenants on her father's behalf and had noted that they denied the allegations and that they considered that Mr Smith was at times unreasonable and overbearing in his approach to the tenants. She accepted that there were no written complaints concerning this within the bundle, and that she was neither a witness to the alleged behaviours of the sub-tenants or Mr Smith.
 18. The Tribunal considered the witness statement of the three sub-tenants, Mr Sabastian Popescu, Mr Oska Arne Thomas Hilton Meadows and Mr Finn Goodwin however it attached limited weight to their witness statements as they had not attended the hearing and as such their evidence of denials and allegations concerning Mr Smith could not be tested by oral evidence.
 19. The Tribunal considered the brief oral submissions of the applicant and respondent's representative.

The Law

Section 168 (4) of the Commonhold and Leasehold Reform Act 2002

- 20.1) 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.
21. The Tribunal considered each of the breaches in turn and the evidence it had before it in coming to its decision.
22. The evidence and the reason for the decision is set out below on each of the alleged breaches.

The Decision of the Tribunal and reasons for the decision

23. Clause 2 of the Lease states as follows:- The Lessee Covenants with the Lessor to observe and perform the obligations on the part of the Lessee set out in the Fourth and Sixth Schedule hereto.

The sixth Schedule clause 2 states:- Not to do or permit to be done whether by servants agents or visitors any act to be done whether by servants agents or visitors any act to the disturbance damage annoyance or misery of the Lessor or the Lessees of the Lessor or the occupiers of any part of the said blocks of flats or any part of the adjoining or neighbouring premises or the neighbourhood...”

24. The Tribunal noted that within the sixth schedule, clause 4 provided that the clause provided that the lessee should not play any instrument or musical sound or make any audible noise which could be heard outside of the premises between the hours of 11pm and 8 am. However, the Applicant had not specifically set this out as a breach accordingly the Tribunal made no findings in respect of this and confined itself to whether the actions of the tenants amounted to a breach of clause 2 Schedule 6 of the lease.
25. The Tribunal heard from Mr Smith that immediately above his premises was a flat roof which was part of his kitchen. This was underneath a bedroom window occupied by Fin Goodwin; he told the Tribunal that tenants would climb out of the window and use the area as a makeshift balcony. This area was not supported by a handrail neither was it intended to be used in this way. This caused a noise nuisance to Mr Smith and his wife as this area was a felt addition which caused damage to their ceiling and a disturbance when the sub-tenants were walking on that area as it was not made to be walked upon and was not sound proofed. Within the bundle was a photograph of a tenant who was sitting in this area.
26. The Tribunal took account of the written emails by Mrs Smith which stated that there was loud music coming from the property on 20.09 2025, until the early hours of the morning, on 24.09 2025 and on 5.10. 2025 between the hours of 2.41-4.30 am. There was also loud talking stomping and door banging on 7.10. 2025. On 11-12 December 2025, Mrs Smith wrote to the property manager at 00.46 to report that a nuisance was being caused at the time of her writing by tenants jumping in the flat above, on the flat roof and loud noises and music coming from the premises.
27. The Tribunal considered the evidence of the respondent that they had carried out investigations concerning these complaints. They also set out that the complaints were denied, however they did not respond to several letters that were written by Mr Comport the solicitor for the applicant in response to the allegations of nuisance.
28. Although the Tribunal was careful not to consider clause 4 of the sixth schedule which was not before it, the Tribunal noted that in her emails Mrs Martha Smith reported that she was “really exhausted by the noise and had no peace after a hard day’s work.”

29. The Tribunal asked itself whether this could be said to have caused “...disturbance damage annoyance or misery of the Lessor or the Lessees of the Lessor or the occupiers of any part of the said blocks...”
30. The Tribunal, the Tribunal firstly considered whether it was satisfied on a balance of probabilities that the actions of the sub-tenants were a nuisance within the meaning of the clause. The Tribunal accepted that Mrs Smith was disturbed and caused to be annoyed and made miserable by the actions of the sub-tenants of the respondent.
31. In relation to the respondent, the Tribunal was satisfied on a balance of probabilities that the respondent was responsible for ensuring that the actions of the sub-tenants within the premises owned by the respondent did not breach the terms of clause 2 of the sixth Schedule.
32. The Tribunal in all the circumstances was satisfied on a balance of probabilities that the actions of the sub-tenants were a nuisance within the meaning of the clause. And that in failing to take action to abate the nuisance the respondent permitted to be done acts which breached clause 2 of the sixth schedule.
- 33. Having considered all the evidence. the Tribunal finds that the Respondent breached clause 2 of the sixth Schedule of the lease.**
34. The Tribunal heard and accepted submissions from Mr Comport that the lease makes provision for the recovery of the costs of enforcing covenants within the lease both as an administration charge and as a service charge.
35. Mr MacGregor was content for costs to be determined based upon the findings of the Tribunal

Application under s.20C and refund of fees

- 36.** The Tribunal having considered its determination in respect of the lease, and the findings, then went on to consider whether to make an order under Section 20 C or for an order under Section 5 of Schedule 11 of CLARA 2002 which would limit the amount of legal costs payable by way of service charges. Given the findings it has made the Tribunal considers that as t it is not just and equitable to make an order under Section 20C.

Signed: Judge Daley

Date: 30 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 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).