FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/LBC/ 2019/0085**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**37A Parchmore Road Thornton Heath CR7 8LY**
Applicant	**:**	**Wolali Segbedzi**
Representative	**:**	**N/A**
Respondent	**:**	**Miss Kirsten Kilby**
Representative	**:**	**N/A**
Type of application	**:**	**Application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge H. Carr** **Mr M Taylor MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**22nd March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE . A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to were sent piecemeal by the Applicant and consisted of , The Respondent prepared a bundle comprising 138 pages. The Tribunal has noted the contents. The order made is described at the end of these reasons.

Decisions of the Tribunal

(1) The Tribunal determines that there has been a breach of Clause 3.8 (b) pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002.

(2) The reasons for our decision are set out below.

The background to the application

1. The Applicant seeks an order that a breach of covenant or a condition in the lease has occurred pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002. The application concerns alleged breaches carried out at **37A Parchmore Road Thornton Heath CR7 8LY** ("the property.").

2. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows with sub-section (4) shown in bold:

> *(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 a leasehold valuation 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.

3. The Applicant is the registered proprietor of **37 Parchmore Road Thornton Heath CR7 8LY** .

4. The Respondent is the registered proprietor of the leasehold property at **37A Parchmore Road Thornton Heath CR7 8L** . The original lease was granted for a term of 99 years from 29th June 1982. By a lease dated 24th February 2017 granted under the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 the term of the lease was extended to 189 years from 29th June 1982.

5. The property which is the subject of this application is a 2-bedroom first floor split level flat in a building comprising two flats. The building dates from 1900 and originally comprised commercial premises with a maisonette above. The commercial premises were converted into residential premises prior to the ownership of the parties. The flats have separate entrances.

6. The Respondent became the owner of property in 2009. She lived there until 2017 and then let it out from that date. It was initially rented to a family on a three-year lease. That lease was terminated prematurely. The Respondent then let the property to a couple. They left the property in October 2020 following the loss of their employment due to Covid. The property is now empty and on the market.

7. The ground floor flat is occupied by the Applicant. He has lived there since he purchased the property in 2008.

8. The tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

The hearing

9. Both parties attended and represented themselves at the hearing

The issues

10. The only issue for the Tribunal to decide is whether or not a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. At the CMH the primary issues were identified as follows:

    (i) Has the respondent failed to insure the building in the joint names of the landlord and tenant in a comprehensive policy?

    (ii) Has the Respondent caused noise nuisance through the banging of doors in the property which occurred as a result of an alleged lack of maintenance by the respondent?

11. The Applicant raised some further issues relating to disrepair but did not identify a clause of the lease which he alleged was breached in connection with those issues.

12. The Applicant made clear at the hearing that the relevant clauses of the lease, ie the clauses he alleges were breached, are as follows:

    (i) Clause 3.8 (b) - To insure and at all times during the term to keep insured the demised premises and each and every part thereof in the name of the Tenant and the Landlord from and against loss or damage by fire explosion aircraft and things dropped therefrom flood tempest and other risks and special perils normally insured under a comprehensive policy on property of the same nature as the demised premises to the satisfaction of the Landlord in some insurance office or with underwriters of repute in a sum equal to the full reinstatement value thereof together with architects surveyors and other professional fees and a sum to cover demolition shoring and removal of debris and other expenses and to pay all premiums necessary for all such insurance within seven days aft the same shall have become due and to produce to the Landlord on demand the policy or policies of such insurance and the receipt for every such premium Provided that if the Tenant shall fail to insure and keep the demised premises insured as aforesaid the Landlord may do all things necessary to effect and maintain such insurance and any sums expended by the Landlord for that purpose shall be repayable by the Tenant on demand and recoverable forthwith by action

(ii) Clause 3.10 – Not to do or permit or suffer to be done upon the demised premises any act or thing which may endanger the safety or stability of any neighbouring property or which may be or become or grow to be a public or private nuisance or a danger annoyance or disturbance to the Landlord or its tenants or to neighbouring property or persons nor to create any noise nuisance so as to interfere with the Landlords use of the remainder of the said building and in particular (but without prejudice to the generality of the foregoing) not between the hours of 8 am and 7 pm

13. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows:

Has the Respondent failed to insure the property as required by the lease?

14. The Applicant argues that the property is not insured as per the requirements of the lease.

15. He notes that the Respondent has produced documents which purport to show that the insurance policy names him as an interested party. He argues that this is insufficient and does not comply with the lease.

16. Even with regard to the endorsement of his interest on the policy, the Applicant does not think that the documentation provided by the Respondent is adequate. He notes for instance that his name is misspelt on the letter from Churchill insurers and he notes that the Respondent has failed to provide in full the documentation required by the judge at the CMH.

17. The Respondent told the Tribunal that she has always made appropriate arrangements for the insurance of the property and has always ensured that the Applicant is named as an interested party on the insurance documentation.

18. She has not been able to insure the property in the joint names of herself and the Applicant. She told the Tribunal that she had not been able to find an insurer that would do this. She also suggested the Applicant had a county court judgement against him and that this would preclude getting such insurance.

19. The Respondent provided the tribunal with a letter from her current insurers (2017 to date) which confirms that Mr Segbedzi's interest and the payment of premiums in full.

20. She has also contacted her previous insurers Natwest Home Insurance (2012 -17) but they were unable to provide a letter of confirmation due to reduced working practices during the Covid lockdown.The Respondent included all the insurance polices held with them for the period of time and proof of payments.

21. The Respondent has contacted Tesco Home Insurance (2009 – 2012). There were unable, because of the passage of time and because of working practices in the pandemic, to provide any evidence of the Applicant's interest being noted on the insurance documentation. She told the Tribunal that she had had a conversation with them which confirmed that the Applicant was named on the policy.

22. The Respondent points out there is no evidence to support any allegations made by the Applicant in relation to the insurance.

23. The Respondent has provided the Applicant with six years worth of insurance policy details including details of all payments made. She tells the tribunal that the property is fully and properly insured with Churchill Insurance and all premiums have been paid upfront.

24. The Respondent's current insurance company advised that to have Mr Segbedzi named on the policy was sufficient for his interest to be recognised by the insurer. The current policy names him as the freeholder. This, she argues, enables him to make contact with the insurer and prevents his position from being prejudiced.

25. The Respondent also told the Tribunal that she has never received any insurance documents or proof of premium payments from Mr Segbedzi, despite correspondence requesting this as part of his lease obligations.

26. The Respondent produced a Tribunal decision which shows that Mr Segbedzi was unable to provide proof of insurance and premiums as part of that tribunal.

27. The Respondent also told the Tribunal that she had never made any claims on the insurance policy.

28. In summary the Respondent argues that the Applicant has not met the burden of proof regarding this allegation

The Tribunal's decision

29. The Tribunal determines that there is a breach of Clause 3.8 (b)

Reasons for the Tribunal's decision

30. The Tribunal accepts the evidence of the Respondent, that she has throughout her period of ownership ensured that the Applicant's name is endorsed on the insurance policy. The Applicant has suggested that this is not true but has not discharged the burden of proof.

31. The Tribunal also has sympathy with the Respondent who does not trust the Applicant to behave properly in connection with outgoings relating to the property and in particular the insurance. The Tribunal has read the decision LON/00AH/LSC/2019/0193 dated 9th September 2019 and notes the observations of the Tribunal in that instance.

32. The Tribunal agrees with the Respondent that it is very difficult to find an insurer who is prepared to insure a property in joint names as per the terms of the lease. Nonetheless that is what the clause of the lease requires. Moreover the proviso within the clause of the lease means that even if compliance was not possible, the Applicant would have the right to insure and reclaim the costs from the Respondent.

33. The Tribunal has considered the decision in **Atherton Kallendar and Allison v MB Freeholds Ltd LRX/178/2016**.This is an Upper Tribunal decision, and the Tribunal is bound by it.

34. Although the decision in that case concerned an application under s.27A of the Landlord and Tenant Act 1985 rather than an application under s.168 of the Commonhold and Leasehold Reform Act 2002, the decision considers a clause that is similar to the clause in the lease of the subject property.

35. The clause in the Upper Tribunal case provided as follows;

> "To insure and keep insured the demised premises at all times throughout the term hereby created in the joint names of the Lessor and the Lessee from loss or damage by fire and such other risks as are included in a Tariff Company's Comprehensive Policy in the full insurable value thereof with the Road Transport and General Insurance Company Limited in the Agency of the Lessor or such other Office and Agency as the Lessor shall from time to time approve and to make all payments necessary for the above purposes within 7 days after the same shall respectively become due and to produce to the Lessor or its agents on demand the Policy or Policies of insurance and the receipt for each such payment and to cause all moneys received by virtue of such insurance to be forthwith laid out in rebuilding and other wise reinstating the demised premises … under the direction of the Surveyor of the Lessor … PROVIDED ALWAYS that if the Lessee shall at any time fail to keep the demised premises insured as aforesaid the Lessor may do all things necessary to effect or maintain such insurance and any monies expended by the Lessor for that

> purpose shall be repayable by the Lessee on demand and be recoverable forthwith by action."

36. The Tribunal notes that the requirement to insure in the names of the Lessor and the Lessee is a requirement of the clause as it is in the relevant clause of the lease of the subject property. It also notes the proviso.

37. The decision records that the leaseholders in the Upper Tribunal case all accepted that the insurance they procured was not in the joint names of themselves and the lessor but that the lessor's interest was noted on their insurance documents. This is a similar position to the facts before this Tribunal.

38. The Deputy President of the Upper Tribunal said this at paragraph 56:

> Assuming it is possible, though unusual, to insure in joint names it is clear that the appellants have not complied with their obligation under clause 3(vii). Even if it were not possible to insure in joint names, the appellants would still have failed to comply with their obligation.

39. The Tribunal therefore has no alternative than to find that the Respondent has failed to comply with the insurance provision of the lease

Has the Respondent committed noise nuisance caused by disrepair?

40. The Applicant argues that ever since the property was let out there has been noise nuisance caused by the tenants. He made a number of allegations in connection with the noise made by the dog barking, and dog faeces. His primary allegations related to the constant baning of doors, both the front door and the two interior doors on the first floor.

41. He told the Tribunal that the noise was so severe he was unable to sleep.

42. He told the Tribunal that the Respondent did not deal adequately with his complaints. He considered that the actions of Foxtons, the Respondent's agents, were very limited.

43. He considered that the doors banging was the result of disrepair to the doors, either expansion or contraction of the doors.

44. He did not consider the report on the condition of the doors provided by the Respondent to be satisfactory. He disagreed with its findings and considered that the Respondent needed to provide a report from a more experienced and qualified person.

45. He provided photographs and a fit to work note to support his allegations.

46. The Respondent says that there is no evidence to support the allegations made by the Applicant.

47. When the Applicant wrote to the Respondent about his complaints she immediately contacted Foxtons, her management agency. The Respondent provided her emails and a copy of the letter that Foxtons sent to the tenants.

48. She asked the managing agents to terminate the tenancy 12 months early to avoid conflict with the applicant. This was despite the fact that she does not accept that they were causing a nuisance. This action caused her loss.

49. The Respondent has procured and paid for a contractor to visit the property and conduct an assessment of the internal doors. She told the tribunal that although the contractor was only a handyman, this was all she could find in the context of the pandemic, and also she considered his opinions were of sufficient weight bearing in mind that he was not being asked anything very technical.

50. The Respondent asserts that the Applicant has not met the burden of proof regarding the allegation.

The Tribunal's decision

51. The Tribunal determines that there is no breach of Clause 3.10

Reasons for the Tribunal's decision

52. The Tribunal agrees with the Respondent that the Applicant has failed to discharge the burden of proof in relation to the allegations of nuisance.

53. The Tribunal accepts the evidence of the handyman, who it considers to have appropriate expertise for the report he was asked to provide, that there is no faults with the doors that would make them particularly noisy.

54. It is not sufficient for the Applicant to state that there has been noise nuisance. He needs corroboration for his statements.

55. The evidence he has provided is not adequate. The audio files of noise could not be heard, and even if they could be heard they only demonstrate noise and are not independent corroboration of a nuisance. The same is true of the photographs he provided. Neither does the Unfit to Work note provide corroboration.

Other applications

56. The Tribunal considers that in the light of its findings it will not exercise its discretion to make an order under s.20C of the Landlord and Tenant Act 1985. The Respondent also made an application that the Applicant be prevented from making applications to the Tribunal in connection with the subject property without permission from the Tribunal. In the light of the findings above, the Tribunal does not grant such an application.

Name: Judge H Carr **Date:** 22nd March 2021

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).