FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BA/LBC/2014/0038**
Property	:	**4C Pelham Road, London SW19 1SX**
Applicant landlord	:	**Judith Katherine Willing**
Representative	:	**In person**
Respondent tenant	:	**Thomas William Day**
Representative	:	**In person**
Type of Application	:	**Breach of covenant**
Tribunal Members	:	**Judge Adrian Jack, Professional Member Cartwright FRICS, Tribunal Member Hart**
Date and venue of determination	:	**21st July 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21st July 2014**

DECISION

Background and procedural

1. By an application dated 8th May 2014, Mrs Willing sought a determination that the tenant, Mr Day, was in breach of a covenant in his lease for insurance. The Tribunal gave directions for a paper determination, but each party had the right to request a hearing, so long as the request was made within 28 days of the directions.

2. Mrs Willing outside that period requested a hearing, but in view of its lateness, Deputy Regional Judge Andrews refused the request.

3. This is the most recent of a large number of applications brought to the Tribunal by Mrs Willing. In our view she is bringing these applications not for a proper motive but in order to harass and vex the tenant. As Mr Day submits, the applications appear designed to thwart Mr Day's attempts to exercise his right to a lease extension.

Proper parties

4. The office copy entry dated 27th May 2014 of the freehold of the property shows that it is held in the name of Joseph Charles Willing and Mrs Willing. This document post-dates the bringing of the application. The official copy is proof of who the landlord is. There is no suggestion that Mr Willing is dead or has transferred his legal interest to his wife.

5. In the current case, Mrs Willing is not the sole landlord. In our judgment, an application under section 168 of the Commonhold and Leasehold Reform Act 2002, such as the present, is required to be made by all the landlords jointly: see the discussion of the House of Lords in *Hammersmith & Fulham LBC v Monk* [1992] 1 All ER 1 at 8.

6. Accordingly in our judgment we cannot make the declaration sought, even if it were otherwise justified.

Underlying merits

7. This makes it unnecessary for us to consider the underlying merits of the case. By clause 2(2) of the lease Mr Day covenanted "to insure and keep insured the demised premises against loss or damage by fire storm tempest in an insurance office of repute in the joint names of the Lessor and the Lessee the full rebuilding costs and also Architect's fees in rebuilding the demised premises and also the boilers and heating apparatus (in any) on the demised premises against accidents, the expression 'rebuilding cost' being such amount as the surveyors to the Lessors shall from time to time determine and to provide the Lessor at the expense of the Lessee with a copy of such aforementioned policy within one month of completion of the Lease."

8. The sub-clause is remarkable for a number of reasons. Firstly, it is not good practice to require a tenant to insure the demised premises. A

properly drafted lease provides for the landlord to ensure the whole of the block. Secondly, the requirement to insure in the joint names of the lessor and lessee appears only to extend to the insurance of the premises, not the boiler. Thirdly, the limitation of the insurance only to fire storm and tempest is surprising. Normally insurance against a greater range of perils would be required. Fourthly, the duty to give a copy of the insurance to the lessor is a once-and-for-all duty at the outset of the lease. There is no ongoing duty. Fifthly, the landlords' surveyor has never put a value on the demised premises, rendering the sub-clause in large measure unworkable.

9. In the current case, Mr Day only insures in his name, as appears to have been his practice since he acquired the lease in 2004. This is contrary to the terms of the lease, but the old authority of *Doe on the demise of Knight v Rowe* (1826) 2 C&P 246 shows that a requirement to insure in joint names can be readily waived by a landlord.

10. It is doubtful to what extent this Tribunal has jurisdiction to determine matters of waiver. However, the matter is academic, since in our judgment the chances of the landlords obtaining forfeiture of the lease on these grounds are negligible. The whole application is an abuse of process.

DETERMINATION

The application fails.

Adrian Jack, Judge 21st July 2014