



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

**Case Reference** : LON/00AN/LBC/2017/0004

**Property** : 58A Collingbourne Road,  
Shepherds Bush, London, W12 0JQ

**Applicant** : Ms S Trimmell-Ritchard

**Representative** : In person

**Respondent** : Ms M Tuffley

**Representative** : Mr N Laming

**Type of Application** : Determination of an alleged breach  
of covenant

**Tribunal Members** : Judge I Mohabir  
Mr A Lewicki BSc (Hons) FRICS  
MBEng

**Date and venue of  
Hearing** : 30 March 2017  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 25 April 2017 (Initial draft)  
Amended 21 May 2017

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**DECISION**

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## ***Introduction***

1. This is an application made by the Applicant under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that the Respondent has breached various covenants and/or conditions in her lease.
2. The Respondent is the leaseholder of the property known as 58A Collingbourne Road, Shepherds Bush, London, W12 0JQ (“the property”) pursuant to a lease dated 23 July 1996 granted by Caroline Sarah Lewis to Declan Gerard Ganefor a term of 999 years from 25 March 1996 (“the lease”).
3. The property is one of 2 self-contained flats in a converted house and is located on the first floor. At the time of the Tribunal’s inspection, the property was being sub-let by the Respondent. The Applicant is the freehold owner of the building and lives in the ground floor flat.
4. Pursuant to an agreement made between the parties dated 19 March 2013, extension works were carried out to the both flats, which included the creation of a roof terrace to the rear of the property (“the 2013 agreement”).
5. By an application made dated 6 January 2017, the Applicant applied to the Tribunal seeking a determination that the Respondent had variously breached one or more of the covenants in the lease.
6. The breaches complained of by the Applicant are:
  - (a) the installation of Virgin media cabling in breach of paragraph G of the Third Schedule of the lease. This breach is admitted by the Respondent.

- (b) the installation of different doors giving access to the roof terrace for which she had not given consent in breach of clause 2(Q)(i) of the lease.
- (c) failing to comply with the repairing obligation in breach of clause 2(J) her lease in relation to a water leak to the bedroom in the Applicant's flat and squeaking flooring in the kitchen area of the property by either refusing to give access and/or failing to carry out the required remedial work for the leak.

It was agreed that this issue regarding the leak should be stayed for 6 months pending further investigation as to the cause of the leak and if not restored it would be automatically struck out. However, in subsequent correspondence received from the Applicant this issue was restored and is dealt with below

The Applicant agreed to withdraw the allegation in relation to the squeaking flooring. However, in correspondence received subsequently by the Tribunal, the Applicant sought to resile from this agreement. It is not open to her to now do so and this allegation remains withdrawn.

- (d) whether the Respondent breached paragraph F of the Third Schedule of the lease by hanging clothing from the balustrades of the roof terrace. This breach was admitted by the Respondent.

7. Therefore, the only issues that fell to be decided were in relation to the roof terrace doors and the water leak.

### ***Decision***

8. The hearing in this case took place on 30 March 2017 following the Tribunal's internal inspection of both flats earlier that morning. The

Applicant appeared in person. The Respondent was represented by Mr Laming, her partner.

**Roof Terrace Doors**

9. Clause 2(Q) of the lease provides that:

*“Not during the said term:*

*(i) Without the consent in writing of the Lessor such consent not to be unreasonably withheld to alter cut or maim any of the walls floors timbers stanchions or girders of the demised premises or the roof of the Maisonettes.”*

10. The facts relating to this allegation of breach are largely a matter of common ground. The 2013 agreement expressly provided that the roof terrace would be constructed in accordance with the plans, specification and planning consent granted under reference 2010/03639/FUL or such other consent as may be granted for the Respondent’s application dated 9 February 2013 under reference number 2455399VL by the London Borough of Hammersmith and Fulham or with the Applicant’s prior written consent not to be unreasonably withheld.

11. Prior to the works commencing, it seems that the Respondent had submitted an amended application for planning consent to significantly widen the door giving access to the roof terrace. The planning consent was granted and the larger door installed despite the Applicant’s protests.

12. The Respondent accepts that the larger door giving access to the roof terrace had been installed without the Applicant’s formal consent. Mr Laming said that the Applicant’s Surveyor had identified a deficiency in the original specification for the lintel to the terrace door. The original wooden lintel had been replaced with a steel one and the work had been carried out to the satisfaction of the Applicant’s Surveyor.

13. Mr Laming submitted that the installation of the wider roof terrace door had been carried out with the full knowledge of the Applicant and

her Surveyor had been closely involved in the amendments to the specification for the door. Therefore, the Respondent had complied with the spirit of the 2013 agreement.

14. The Tribunal did not accept the submission from the Respondent that the Applicant had, in effect, through the conduct of her Surveyor waived or was now estopped from alleging that the installation of the larger roof terrace door was a breach of her lease. A careful consideration of the evidence and, in particular, the correspondence passing between the parties reveals that her stance in relation to the installation of the larger door remained the same. At all material times she clearly and expressly maintained that she was not giving consent to the installation of the larger door.
15. Despite this, the Respondent proceeded to install the roof terrace door and neither the Applicant nor her Surveyor could physically prevent this. The Tribunal, therefore, concluded that by installing the larger roof terrace door without the prior written consent of the Applicant, the Respondent had breached clause 2(Q)(i) of her lease and that the Applicant had not waived the breach or was estopped from relying on it.

#### ***Water Leak to the Applicant's Bedroom***

16. The surveyors instructed by both parties agreed a method statement dated 7 March 2017 that should be adopted by the contractor investigating the water leak.
17. A plumbing contractor ("Aspect") instructed by the Applicant later carried out an investigation as to the source of the alleged water leak to the Applicant's bedroom. The report and its findings are set out in an e-mail from Aspect to the Applicant dated 25 April 2017 following an inspection of both premises. It was noted that the tile grout in the corner of the Respondent's shower was cracked and missing. When water was poured on this area, it immediately came through under the

bath. It was also noted that there was silicon sealant where the floor met the wall and had never had any applied to the shower area walls.

18. The author of the report, whose identity is unknown, concluded "*in my professional opinion, the cause of the leak is from the shower as water finds its weakest point in the property below.* There was no other cause of the leak.
19. Clause 2(J) of the lease requires the lessee to permit the lessor access to the Respondent's premises after having received reasonable notice to view the condition and to leave a written notice to the lessee to remedy any defects or disrepair found. The notice must also require the lessee to make good any defects or disrepair within two months of service of the notice.
20. The relevant notice relied on by the Applicant is contained in an e-mail to the Respondent dated 25 May 2016. It was a request to investigate the water ingress to the bedroom ceiling of her flat and to carry out and repairs that were needed within two months of the e-mail. In correspondence between the parties, there was much discussion as to the actual cause of the leak. The Respondent suggested it might be caused by a leaking waste or soil pipe.
21. The Tribunal concluded that the e-mail from the Applicant dated 25 May 2016 amounted to a valid notice within the meaning of clause 2(J) of the lease. The Tribunal felt it was bound by the findings of the investigation report prepared by Aspect dated 25 April 2017. The cause of the leak was the missing and cracked tile grout in the corner of the shower. This appeared to be long standing and there was no evidence before the Tribunal that it had occurred after the Applicant's e-mail dated 25 May 2016 or has been remedied since the report.
22. Accordingly, the Tribunal found that the Respondent had variously breached:

- (a) Paragraph G of the Third Schedule of the lease.
- (b) Clause 2(Q)(i) of the lease.
- (c) Clause 2(J) of the lease.
- (d) Paragraph F of the Third Schedule of the lease.

Judge I Mohabir  
25 April 2017  
(amended 21 May 2017)