FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/18UE/LBC/2020/0016
Property	**:**	The Flat, 20 Highfield Road, Ilfracombe, Devon EX34 9LZ
Applicant	**:**	Mr Philip and Mrs Sarah Longshaw
Representative	**:**	-
Respondent	**:**	Miss Mitzi Meadlarkin
Representative	**:**	Taylors Solicitors
Type of Application	**:**	Breach of Lease. Section 168(4) Commonhold and Leasehold Reform Act 2002
Tribunal Member(s)	**:**	Judge J Dobson Mr J Reichel MRICS Ms J Playfair
Date of Hearing	**:**	11th February 2021
Date of Directions	**:**	19th March 2021

DECISION

Summary of the Decision

1. **The Tribunal determines that the Respondent has breached the covenants in clauses 2 (a), 2(b), 2(d), 2(e), 2(f) and paragraphs 2, 5 and 8 of the First Schedule**

2. **The Respondent is ordered to pay the application and hearing fees incurred by the Applicants in the sum of £300 within 28 days.**

The Property

3. The building at 20 Highfield Road ("the Building") comprises two dwellings. The first is The Flat, 20 Highfield Road, Ilfracombe, ("the Property"). The Property was held by the Respondent under a long lease granted on 16th November 1988 for a term of 999 years ("the Lease"). The Property is described in the Lease as "Flat 1" but it is abundantly clear that "Flat 1" and The Flat are one and the same.

4. The second property in the Building is named The Maisonette, which is held under a long lease by the Applicants.

5. The freehold of the Flat is owned by the Applicants: the freehold of The Maisonette was held by the Respondent. In practice, that appears to have led to some confusion in the context of this application. Both the front and rear gardens were included in the Respondent's leasehold title. The Applicants' outside space is a roof terrace to the rear of their property and above part of the Property.

Application and History of Case

6. The Applicants made an application dated 2nd February 2021 for a determination by the Tribunal in which they alleged various breaches of covenants of the Lease by the Respondent. Mrs Sarah Longshaw explained in the hearing that February 2021 was when the Applicants first started putting the paperwork together and that there was a five- month gap before it was submitted.

7. The Tribunal considered that the application was not suitable for determination on the papers and so directed that a hearing be listed, originally listed on 2nd December 2020. Directions were given on 19th August 2020 for steps to be taken to prepare the application for hearing.

8. Subsequent potential issues arose as to the medical situation of the Respondent but nothing specific came of that. A few days prior to the original hearing date, representatives appointed on behalf of the Respondent applied to adjourn the hearing on the basis that the Property was on the market for sale, then also explaining more about the Respondent's medical situation and stating that she would not return to the Property. The Tribunal determined that an adjournment was appropriate- although not for as long as the Respondent had requested.

9. Further issues arose, including as to the bundle and separate court proceedings issued by the Applicants against the Respondent, which included a claim for the fees payable for the application to this Tribunal and costs of advice in relation to these proceedings. Additional Directions were required, including in respect of the hearing bundle.

10. A subsequent and so rather last- minute application was made on behalf of the Respondent for the case to be determined on the papers rather than at a hearing. However, as the case was not suitable for determination on the papers, that was refused.

11. The Tribunal is aware that since the hearing- see below- the Respondent has sold the Property to a third party. That has no direct bearing on the question for determination by the Tribunal, irrespective of any impact on the wider effects of that determination. The references to the Respondent having been the lessee, and similar references in the past tense, do however reflect that sale.

The Law

12. The relevant law in relation to breach of covenant is set out in section 168 Commonhold and Leasehold Reform Act 2002, most particularly section 168(4), which reads as follows:

> "A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for determination that a breach of a covenant or condition in the lease has occurred."

13. The Tribunal must assess whether there has been a breach of the Lease on the balance of probabilities.

14. An application under Section 168(4) can be made only by a lessor in relation to an asserted breach by a lessee. It cannot be made by a lessee in respect of an alleged breach on the part of a lessor.

15. A determination under Section 168(4) does not require the Tribunal to consider any issue other than the question of whether a breach has occurred. The Tribunal's jurisdiction is limited to the question of whether or not there has been a breach. As explained in *Vine Housing Cooperative Ltd v Smith* (2015) UKUT 0501 (LC), the motivations behind the making of applications, are of no concern to the Tribunal, although they may later be for a court.

16. The Lease is to be construed applying the basic principles of construction of such lease as set out by the Supreme Court in Arnold v Britton [2015] UKSC 36. Hence the Tribunal must identify the intention of the parties by reference to what a reasonable person having all of the background knowledge which would have been available to the parties would have understood the language in the contract to mean, in their documentary,

factual and commercial context, disregarding subjective evidence of any party's intentions.

The Lease

17. The covenants by the Lease are contained in paragraph 2 of the Lease and other relevant provisions are found in the First Schedule and the Fourth Schedule to the Lease. The provisions of the Lease relevant to the particular alleged breaches by the Respondent as lessee are as follows (punctuation, capitals and other clerical matters reflecting the Lease as drafted):

> "The Lessee hereby covenants with the Lessor and with the Lessee of the other flat comprised in the building as follows:
>
> (a) That the Lessee and the persons deriving title under her will at all times hereafter observe the restrictions set forth in the First Schedule hereto
> (b) To keep the demised premises (other than the parts thereof comprised and referred to in paragraphs (b) and (d) of Clause 4 hereof) and all walls party walls sewers drainpipes cables wires and appurtenances thereto belonging in good and tenantable repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter protect the parts of the Building other than the demised premises
> (c) To contribute and pay a to third part of the costs expenses outgoings and matters mentioned in the Fourth Schedule and in the manner therein provided
> (d) So long as the demised premises shall not be separately assessed .....and to maintain in efficient working order a sufficient electric light of not less than sixty watts in the hallway outside the demised premises in a position designated by the Lessor for the benefit of persons using the Building such light to be operated by a time-lag switch and keep the same at all times on electricity supply
> (e) To permit the Lessor and others authorised by him with or without workmen and others at all reasonable times on notice (except in the case of emergency) to enter into and upon the demised premises or any part thereof for the following purposes namely:
> (i) To repair any part of the Building or adjoining or contiguous premises and to make repair maintain rebuild cleanse and keep in order and good condition all sewers drainpipes cables watercourses gutters wires party structures or other conveniences belonging to or serving or used for the same and to lay down maintain repair and test drainage gas and water pipes and electric wires and cables and for similar purposes the Lessors or other person exercising such right (as the case may be) doing no unnecessary damage and making good all damage occasioned thereby to the demised premises
> (f) to make good all defects decays and wants of repair of which notice in writing shall be given by the Lessor to the Lessee and for which

the Lessee may be liable hereunder within three months after the giving of such notice

THE FIRST SCHEDULE hereinbefore referred to
Restrictions imposed in respect of the demised premises

2. Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on any flat in or part of the Building or may cause an increased premium to be payable in respect thereof
5. ..... no bird dog or other animal which may cause annoyance to any owner or occupier of the other flat comprised in the Building shall be kept in the demised premises without the written consent of the Lessor which consent may be revoked at the discretion of the Lessor.
8. To keep the garden of the demised premises in a cultivated condition and free from weeds

THE FOURTH SCHEDULE hereinbefore referred to
Costs expenses outgoings and matters in respect of which the Lessee is to contribute

1. The expenses of complying with the lessor's covenants hereinbefore contained including the costs of maintaining repairing redecorating and renewing:
   (a) The main structure and in particular but without prejudice to the generality of the aforementioned words the roof foundations chimney stacks gutters and rainwater pipes of the Building

.....

6. When any repairs redecorations or renewals are carried out by the Lessor he shall be entitled to charge as the expenses or costs thereof its normal and reasonable charges 9inclduing profit) in respect of such work

The hearing

18. The hearing was conducted remotely, as video proceedings. A bundle of documents had been provided and was considered by the Tribunal. To the extent that includes letters and emails, those are not referred to individually in this Decision, there being ample witness and photographic evidence, to which the letters and emails to not substantively add.

19. The Applicants and witnesses on their behalf were present. In the event, the Tribunal did not need to hear from the Applicants' witnesses, given that their evidence was not challenged in cross-examination.

20. The Respondent and her representative did not attend. The Tribunal considered her written case but mindful that her assertions could not be tested in questioning. The Tribunal noted that the Respondent's written case did not assert any breaches were waived or that any matters alleged had otherwise been accepted by the Applicants.

21. The Tribunal did spend a little time checking what part of the Property and the Maisonette was said to be shown in various photographs within the bundle, in order to have a clear understanding of the building in the absence of an inspection being possible, which was neither possible in the context of the lockdown or required.

22. The Tribunal dealt with the alleged breaches item by item, as set out below.

23. After that, the Applicants were given the opportunity to clarify anything in closing comments. They denied harassing the Respondent, saying that the allegations had been very upsetting. They stated that any communications had related to the Respondent's breaches of the Lease and that they had tried to give the Respondent time and to be fair. Finally, that the application to the Tribunal had been the final recourse and would not have occurred if the Respondent had complied.

24. No other matters arose which require recording.

The Respondent's written case

25. As the Respondent was not present, it is important to state that the Tribunal had regard to her written case as set out in her witness statement dated 12th January 2021. However, it should also be said that as the Respondent was not in attendance and her evidence could not be tested by questioning, whether from the Applicants or by the Tribunal, that limited the weight which could be given to the evidence. The evidence was corroborated by documents relied on by the Respondent and specifically attached, but those are not directly relevant to the allegations for determination.

26. The Respondent asserted that the Applicants had harassed and intimidated her for many years and erected CCTV cameras that spied on her. No detail was provided on the last point. The Respondent asserted that the Applicants sought to force the Respondent to sell the Property to them at a knockdown price. Other comments were made about her situation and the sale of the Property. The Tribunal has made no findings in relation to any of those allegations. The Respondent admitted owing for building insurance for 2019 and 2020, about which allegations were brought- although see below.

27. The written evidence of the Respondent about the individual allegations is referred to when considering the allegation below.

Consideration of the alleged breaches of covenant

Allegation 1 – breach of clause 2(a) of the Lease

28. The allegation is that the Respondent has failed to observe the restrictions detailed in the First Schedule to the Lease, more specifically clauses 2., 5., and 8. of that Schedule.

Findings of Fact

29. The Tribunal makes findings of fact made in relation to other and more particular allegations detailed below. The Tribunal does no rehearse those in this part of the Decision.

Decision and reasons

30. The Respondent was in breach of the requirements of the clause of the Lease.

31. The Tribunal finds that the Respondent was in breach because of the breaches of specific covenants and restrictions referred to below and on the basis of the findings detailed below.

Allegation 2- breach of clause 2(b)

32. The allegation in relation to this clause is that the Respondent failed to keep the rear of the Property in good and tenantable repair and condition. Reliance is placed on three photographs and on various letters and emails.

33. It is said that the rear of the Property has not been painted for over twenty years, that the wooden fascia boards were rotten, that the guttering at the end of an extension had fallen and that the drainpipes needed repairing.

34. It is further specifically alleged that water was leaking from summer 2019, that any effort to fix it was unsuccessful and that the Respondent attempted to cover up the problem with a dustbin lid. It is additionally asserted that the Respondent prevented access to the rear of the building, thereby preventing the Applicants erecting scaffolding to enable maintenance of their property.

35. In oral evidence, Mrs Longshaw added that the stopcock had only been turned off after the Respondent was admitted to hospital. She also asserted that the two properties in the Building have a shared water supply and that the leak affected pressure to the Applicants' boiler. She added that the leaking water was not flowing away down the drain.

36. The Respondent's written evidence stated that the rear of the Property was in good order until she left, that the drainpipe fell down but she picked it up again and that a broken tap washer caused water to leak into her drain but the stopcock was turned off and no water leak caused problems to the Applicants.

Findings of Fact

37. The Tribunal finds as a fact that the Respondent failed to maintain the Property and that the Respondent failed to fix an ongoing leak.

Decision and reasons

38. The Tribunal finds that the Respondent was in breach of the Lease in relation to lack of maintenance, including in relation to the leak.

39. The Tribunal has considered the evidence and accepts that of the Applicants, preferring it to the imited evidence of the Respondent, which is contradicted by the photographic evidence.

40. The facts found demonstrate that the Respondent failed to keep the Property in the condition required. The requirements of the Lease are clear and it is equally clear that the Respondent has not taken the steps required of her.

41. The Tribunal determines that there was not a breach of clause 2(b) in relation to lack of access being afforded to the Applicants or their workmen. That properly falls under clause 2(e).

Allegation 3- breach of clause 2(c) and paragraph 1.(a) of the Fourth Schedule and
Allegation 4- breach of paragraph 6. of the Fourth Schedule

42. It is alleged that the Respondent failed to pay a contribution to the cost of maintenance of the area of flat roof to the front of the Building.

43. The Applicants stated that previously the parties had split the cost equally- rather than the Applicants paying two-thirds and the Respondent one-third as provided for in the Lease- where the Applicants had undertaken the work themselves. That was considered a more cost- effective approach. The Applicants further stated they obtained the materials, completed the work and provided photographic evidence of that and evidence of the cost.

44. The Applicants' evidence was that Respondent said that she could not pay and the Applicants stated that they would accept payment at £5 per week.

45. Reliance was placed on various letters sent.

46. The Respondent's written evidence in relation to the flat roof is that no letter was received by her asking for payment, that she was awaiting a letter and that she was willing to pay. However, she also alleged that the Applicants had made up maintenance work and then charged her 50% rather than 33%.

Findings of Fact

47. The Tribunal finds that there has been no demand for payment of service charges made by the Applicants of the Respondent at the time provided for in the Lease or attaching a Summary of Rights and Responsibilities.

48. The Tribunal finds that no specific admission was made by the Respondent that the sum was owed, which would prevent the Tribunal having jurisdiction to determine the question of a breach.

49. The Tribunal finds that the Applicants have not made up maintenance work, no sufficient evidence having been presented on which such a finding of fraud could be made and where it is inevitable that maintenance has been required to the Property from time to time. It is unnecessary to make any other findings of fact about Allegations 3 and 4 in this instance.

Decision and reasons

50. The Tribunal finds that the Respondent was not in breach of the Lease in relation to these allegations.

51. The reason is that Applicants failed to demonstrate that a valid demand had been made for the sums in question or that the Respondent should be taken to have admitted the sum to be owed.

52. There was insufficient evidence that any specific agreement was reached by both parties that the in respect of payment of the sum and so no finding is made of any such agreement. A willingness to pay is not the same as an admission of liability to pay at the given time or an agreement to pay.

53. The Applicants do not appear to fully understand the requirements of the Lease and of legislation in respect to demands for sums from the Respondent to contribute to costs incurred for the Applicants to fulfil their obligations under the Lease or to otherwise understand the service charge mechanism in the Lease. Providing evidence and cost and photographs of the work does not amount to a valid service charge demand.

54. In respect of the sums demanded, whilst the Tribunal has not made any specific determination in relation to the particular sums, it is appropriate to record that the Lease requires the Respondent to contribute one-third of the cost of the Applicants fulfilling their obligations as Lessor, assuming a valid demand is made. The parties may agree to vary that on an informal basis and no issue may be taken in the event of such agreement and for as long as that agreement subsists. However, in the absence of such agreement, the terms of the Lease apply.

Allegation 5- breach of clause 2e (as expressed)

55. Mrs Longshaw explained that the relevant clause was in fact 2(d) rather than 2(e). The allegation is therefore that the Respondent failed to maintain a suitable electric light in the communal hallway.

56. The Applicant's case was that the Respondent had not maintained an electricity supply to the light in the communal hallway, also stating that the Respondent has asserted that the electric kept tripping but that she had not then had that fixed. It was added that the fire/ smoke alarm had gone off on a couple of occasions and is on the same loop but that the

Respondent had been shown how to deal with that without turning off the electricity. As at the date of the application, the light was said not to have been on since November 2019.

57. The Applicants also relied on the unchallenged witness evidence of Mrs Elliott, Mr David Kirby and Mr Richard Bradley, who said that they had witnessed the hallway being dark and the electric turned off, Mr Kirkby stating the hallway was still dark when he left some hours later. The Applicant also relied on various letters sent to the Respondent.

58. Mrs Longshaw stated in oral evidence that the lights and the fire alarm are on the same system and that she assumed that they had been disconnected at the meter. She stated that the bulbs were there, the switches worked but that the meter and fuse-box could not be seen, being inside the Respondent's Property. It was necessary to use torches because of lack of other light. The fire alarm was also switched off and would otherwise have been connected by wi-fi to the alarms in the Applicants' property, on the recommendation of the Fire Service, and so would have sounded at the same time.

59. The Respondent made no comment about this allegation in her witness statement.

Findings of Fact

60. The Tribunal finds that the Respondent did fail to maintain an electricity supply to the light in the communal hallway, accepting the Applicant's case in relation to that and noting the lack of contrary evidence.

Decision and reasons

61. The Tribunal has determined that the Respondent was in breach of clause 2(d) of the Lease.

62. The requirement in the Lease is very clear. The factual findings make it apparent that the requirement was not met, the required electric light not having been maintained.

63. The lack of a working fire alarm to the hallway is further referred to below.

Allegation 6- breach of clause 2(e)

64. Two linked breaches are alleged in the sense that two separate requirements set out in the Lease are said to be engaged. However, they are split for the purposes of this Decision, the other allegation being dealt with in a separate section below.

65. The Applicants state that they informed the Respondent on many occasions that they needed access to enable work to be undertaken to their property. It is additionally said that the Respondent subsequently agreed

through a representative and in November 2019 to workmen having access to the rear garden but would not allow access to the Applicants themselves.

66. Mrs Longshaw said that she had nothing to add by way or oral evidence or submissions in respect of the breach itself, saying that the Respondent accepted that she had not allowed access. Mrs Longshaw added that it would be very difficult to deal with scaffolding starting two storeys up on the roof terrace and working down. She added that the back garden of the Building backs onto the garden of another property and that there is no rear alleyway.

67. The Respondent stated in her witness statement that she did not deny access for maintenance. She also asserted that scaffolding can be erected from the Applicant's roof terrace just as easily as it can from the back garden.

68. Mrs Longshaw clarified in reply to a question from Mr Reichel that she had not spoken to scaffolders about the job specifically but that she has friends who are builders who had told her that a scaffolder would not be able to work from the roof terrace.

69. The Applicants also relied on various letters and an email.

Findings of Fact

70. The Tribunal has found as a fact above that there was at least a period in which no access wasprovided by the Respondent. There was a further period from November 2019 onward in which access was agreed to workmen. The Tribunal finds that the Applicant accepted access being granted to workmen and not to themselves.

71. The Tribunal finds that requests for access were made and the reason why access was sought was explained. In addition, reasonable notice of requiring access was given by the Applicants to the Respondent. The Respondent failed to allow access where the Applicants were entitled to that access to facilitate maintenance.

Decision and reasons

72. The Tribunal determines that there was a breach by the Respondent of the covenant in clause 2(e)(i).

73. The Respondent did not as a matter of fact allow access for repair, maintenance and similar work to the Maisonette. The Tribunal does not accept the written evidence of the Respondent that she did not deny access, preferring the more detailed and oral evidence of the Applicants. The provision in the Lease is clear that the Respondence must provide access on reasonable notice.

74. The Tribunal does not accept the Respondent's assertion that scaffolding can as easily be erected, down, from a roof terrace as it can be from the

ground and considers that assertion retracts from, rather than supports, the other assertion of allowing access, at least prior to November 2019. However, there is no evidence from a scaffolder or similar stating that the condition of the back garden prevented the erection of scaffolding. The Tribunal does not consider that the Applicants have sufficient expertise to give an opinion on the ability to erect scaffold for the Tribunal to give weight to that.

75. The Tribunal is unable to reach a finding of fact that the condition of the back garden prevented the erection of scaffolding as at November 2019 or subsequently on the evidence presented.

76. As the Tribunal has been unable to so find after the Respondent had agreed to access or that the Applicant continued to require their own access which was refused, the Tribunal determines the Respondent not to be in breach from November 2019 onward.

Allegation 8- breach of clause 2(f)

77. This allegation is that the Respondent failed to make good all defects, decays and want of repair notified within three months of notice having been given.

78. The Applicant assert that there have been many letters and conversations but that the Respondent has not made good defects and similar in respect of which she has been written to, in particular breaches 1, 2, 3, 5 and 6 above. The Applicant also rely on various letters sent by themselves or by solicitors on their behalf.

79. Whilst the Respondent's statement includes her evidence that the gardens were in good condition and does not accept any failings, no specific comment is about this allegation.

Findings of Fact

80. The Tribunal has already made findings of fact in relation to the 5 breaches to which reference is made by the Applicants, although where breach 1 is based on other specific provisions being breached, finding that allegations 2, 5 and 6 were made out and allegation 3 was not.

Decision and reasons

81. The Tribunal determines that the Respondent was in breach of the covenant in clause 2(f) of the Lease.

82. The Tribunal does so on the basis of the determination made above that the Respondent is in breach of clause 2(b), as alleged in Allegation 2. The Respondent's case has been rejected in relation to breaches set out elsewhere in this Decision and upon which this Allegation is founded.

83. The Tribunal does not consider that the breach of clause 2(f) adds anything to that in practice.

84. Whilst the Tribunal has found the Respondent to have been in breach of clauses 2 (d) and (e), those do not relate to defects, decays and wants of repair. They do not therefore produce a breach of this further provision of the Lease.

Allegation 11- breach of paragraph 2 of the First Schedule

85. The allegation made is that the Respondent was in breach of the restriction not to do or permit anything which may render void or voidable any policy of insurance on any flat in or part of the Building or may cause a higher premium.

86. The Applicants assert a breach on the part of the Respondent because of the fire alarm not working in the manner intended.

87. The Applicants state that in 2018, following an inspection from an Environmental Health Officer at the Council, the parties received an Improvement Notice requiring what was described as a "connected" fire and smoke alarm system. It is said that there are rechargeable batteries for when required but that the alarms are wired directly into the electricity fuse boxes and can only be turned off by switching off the supply to the fuse box. The Applicants continue asserting that over 20 occasions have been recorded by them when the electricity supply to the alarm in the hallway was disconnected. There is something of an overlap with alleged breach 5 above.

88. Mrs Longshaw added when giving oral evidence that she had no evidence of insurance company requirements as she had not wanted to make the insurance company aware and potentially cause an issue. She sought to emphasise that the Lease refers to "may". She explained that the battery in the alarm will last a certain time only and is a back-up. The alarm is not meant to be disconnected from the electricity for a long period and requires sufficient power for the wi-fi connecting the four alarms to work.

89. The Applicants further rely on a number of letters, enforcement notices, photograph and a "log" completed by them. They rely on the written evidence of Mr Kirby that Mr Kirby was shown by Mrs Longshaw that the green light to the smoke/fire alarm was not showing. They also rely on the written evidence of Mrs Elliott, who said that she had witnessed the smoke alarm being turned off and malfunctioning, and Mr Bradley, who said that Mr Longshaw had pointed out the fire alarm was switched off on a number of occasions.

90. The witness statement of the Respondent says only that the alarms work from batteries or electricity and that when there were problems with electricity, they worked on batteries.

Findings of Fact

91. The Tribunal finds that the Respondent failed to maintain the mains electricity supply to the alarm, and as identified above failed to ensure connectivity of the alarm in the hallway to the other alarms and that may have impacted on the insurance cover or premium.

92. The Tribunal further finds that if a surveyor, assessor or similar from the insurance company had attended, it is entirely possible that a breach of the terms of the insurance policy would have been found to exist, or at the very least a circumstance which could result in a higher premium being payable to reflect a greater risk.

Decision and reasons

93. The Tribunal has determined that the Respondent failed to comply with the restriction in the Lease.

94. The Tribunal considers that the failure to ensure that the fire/smoke alarm was operating as it ought is a matter which certainly may cause an increase in the premium payable on the insurance policy. It may also render voidable the policy or indeed could render void a policy. As to whether it would actually do so depends on the terms of the policy in place at the time. However, it was capable of producing one of the effects provided for in clause 2 of the First Schedule.

95. The Tribunal noted that the evidence of Mrs Elliott, Mr Kirby and Mr Bradley was not challenged and supported the Applicant's case and accepted the alarm appeared not to be working when Mr Kirby saw it. It was not entirely clear to the Tribunal how Mrs Elliot and Mr Bradley identified that the smoke alarm was off and/ or malfunctioning and what Mr Bradley was shown that demonstrated that, and so no additional weight was placed on their evidence on this particular matter, not that the finding was affected by that.

96. The Respondent's evidence did not address the specifics of the allegation, where the Applicant's evidence was stronger and more compelling.

97. Consequently, the Respondent's actions constituted a breach of the restriction in this Lease.

Allegations 12 and 13- breach of paragraph 5 of the First Schedule

98. Two breaches are referred to because of the two limbs of the paragraph to which the Applicants refer, asserting a breach of the particular restriction contained in each limb.

99. The allegation made is that the Respondent kept cats. That is said to have caused nuisance and annoyance in breach of the provision that no animal may be kept which may cause annoyance, as a consequence of the smell of cat urine emanating from the Property and the garden and also to have

been a breach of the restriction that a cat or other animal can only be kept where there is written permission which has not been withdrawn where the Applicants has written withdrawing their permission for the Respondent to keep cats but where such letters had been ignored.

100. It is said that the Respondent has denied owning cats but that she has at least encouraged cats in the neighbourhood to visit her and that photographs show the same act in the Property on various occasions over a two- year period.

101. Mrs Longshaw said in oral evidence that two cats were at the Property regularly from approximately 2011, that the cats came and went on a daily basis and that they were kept by way of being fed and looked after. She added that the cats were taken by a cat welfare organisation in July 2020. She said that the cats referred to in the Respondent's statement were different ones.

102. Reliance is placed on photographs, the witness statements of Mrs Elliott, Mr Kirby and Mr Bradley and also on various letters and an email. The witness statements referred to seeing cats at the Property and to a strong smell of cat urine being experienced in the hallway.

103. The Respondent's evidence was that she fed some cats which went into her house and were hungry

Findings of Fact

104. The Tribunal finds on the evidence presented that the Respondent kept cats at the Property. The Tribunal accepts the evidence received on behalf of the Applicants.

105. Irrespective of whether the Respondent strictly owned the cats or not, the Tribunal finds that the Respondent fed cats who stayed all or much of the time in the Property and returned to it on regular basis.

106. The Tribunal finds that there was annoyance caused by the smell of cat urine from within the Property and that the Applicants may also have been annoyed by smells from the rear garden.

107. The Tribunal finds that the Applicants wrote withdrawing any consent to the cats being kept at the Property, finding that consent was withdrawn back in .

Decision and reasons

108. The Respondent was in breach of the restriction against keeping animals where consent had been revoked and annoyance was caused to the Applicants.

109. There have been findings made on the evidence that cats were kept by the Respondent, in the sense that they were allowed to use the Property

and were fed by the Respondent. The Respondents own evidence accepts much of that. The Tribunal considers such amounts to "keeping" the cats, irrespective of ownership.

110. The Tribunal does not consider that there is enough evidence to demonstrate a specific breach due to smell of cat urine from the garden. The evidence of such smell and when is too unclear, whilst specific evidence that the urine was of the cats at the Property specifically is, unsurprisingly, lacking.

111. The Tribunal accepts the evidence from the Applicants and three witnesses whose unchallenged statements asserted a strong smell of cat urine in the Building.

112. The Tribunal observes in passing that paragraph 5 of the First Schedule is slightly oddly drafted, referring to "cat" specifically in relation to consent but not in relation to annoyance, although a cat is one type of "other animal" other than a dog or a bird and so is also included in that manner within the animals covered by the annoyance limb.

Allegation 14- paragraph 8 of the First Schedule

113. The final allegation numerically is that the Respondent failed to keep the garden of the Property in a cultivated condition and free from weeds.

114. The Applicants stated that the front garden was overgrown, contained rubbish and had a broken fence. Further, that the rear garden was full of rubbish, including several black bin bags, bits of furniture and a disintegrating fridge- freezer, and was over-grown.

115. The Applicant also rely on a number of photographs and various communications.

116. The Respondent's written witness statement simply says that the front garden was perfect and that neighbours would confirm.

117. Mrs Longshaw stated orally that the photographs say it all. She did not accept the Respondent's assertion in her case that the condition at the front of the Property was perfect. The photographs were taken in late June 2020.

Findings of Fact

118. The Tribunal finds that the gardens front and rear were in an untidy state, containing rubbish and being overgrown as asserted. They were not in a cultivated condition and free from weeds.

Decision and reasons

119. The Respondent was, the Tribunal determines, in breach of the restriction at paragraph 2 of the First Schedule.

120. The evidence presented on behalf of the Applicants, including the photographs, is that the condition of the front garden was not perfect. The Tribunal prefers that to the Respondents evidence of the front garden being perfect. The Tribunal notes that no neighbours have supported the Respondent's position.

121. The Tribunal has explained above its findings about the rear garden/ rear of the Property.

122. The provision is a clear one. The Tribunal has made findings of fact about the condition of the gardens. It is plain from those findings that the condition of the gardens constitutes a breach of the requirements of the Lease.

Allegation 7- breach of paragraph 2 of the Third Schedule
And
Allegation 9- breach of clause 4(b)
And
Allegation 10- breach of clause 4(f)

123. These allegations all relate to powers or obligations of the Respondent, as Lessor of the Applicants' property. Those are, respectively, the power to access the Applicant's property, that the Respondent will insure the Building and that the Respondent will decorate the exterior of the Building as provided for.

Findings of Fact

The Tribunal does not make any findings of act in relation to any of the allegations.

Decision and reasons

124. The Respondent is not in breach of her obligations as Lessee in the Lease in relation to any of these matters. The allegations made by the Applicants are of breaches by the Respondent in her capacity of lessor of a different property, that of the Applicants. It is abundantly clear from the provisions relied on that those each refer to obligations of a lessor and not to the obligations of the Respondent as Lessee.

125. However, the application to the Tribunal is, or at least can only in practice be, made in relation to the Respondent's obligations as Lessee of the Lease and where the Tribunal's jurisdiction relates to such breaches. The Tribunal makes no determination in relation to the Respondent's position as lessor of the lease of the Upper Maisonette, which does not fall within the jurisdiction of the Tribunal. The admissions by the Respondent in respect of payments do not alter that.

126. The Applicants have, the Tribunal considers, misunderstood the matters which can be determined in relation to their application and the

relevant capacities of the parties. That is perhaps no complete surprise where the parties are each both lessor and lessee in relation to different parts of the Building.

Fees

127. The Applicants have incurred the usual fees in order to bring this application to the Tribunal, namely £100 to make the application and £200 for the hearing.

128. The Applicants have plainly been successful in obtaining a determination that there have been breaches of covenant by the Respondent, albeit not successful in relation to all of the allegations brought. The Tribunal accordingly determines that the Applicants are entitled to an award of the unavoidable fees paid by them.

129. Whilst the Tribunal expresses some doubt as to the merit in pursuing the application once the Property was in the process of being sold- including in relation to time, expenses and stress arising- the fees would already have been incurred prior to any application being made for delay in the proceedings due to the sale and, in any event, the Applicants remained entitled to the determination made.

130. The Tribunal does make it clear that fees for the application to the Tribunal are in the jurisdiction of the Tribunal: they are not in the jurisdiction of the County Court. No award of the fees had been made at the time of the issue of County Court proceedings claiming such fees, although the Tribunal considers that the County Court was and is unable to give judgment in respect of such fees in any event.

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.

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