FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LBC/2017/0005**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**29a Grosvenor Road, Hanwell, London, W7 1HP**
Applicants	**:**	**Mah Jabeen Khan**
Representative	**:**	**Ian Rees-Phillips (Counsel)**
Respondent	**:**	**Nadeem Hussain**
Representative	**:**	**Chris Green (Solicitor Agent)**
Type of application	**:**	**1. Breach of Covenant;** **2. Liability to pay service charges;**
Tribunal Members	**:**	**Judge Robert Latham** **Stephen Mason BSc FRICS**
Date and Venue	**:**	**22 and 23 March 2021 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**4 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected 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 Applicant has provided a Bundle of Documents which totals 509 pages. The Tribunal has also considered the additional documents specified at [8], [9], [15] and [15] below.

Decisions of the Tribunal

(1) The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, the following breaches have occurred (particulars of which are provided in our decision):

(i) The Respondent has converted the first floor into two self-contained flats without the consent of the landlord;

(ii) The Respondent has underlet the flat as more than one unit;

(iii) The Respondent has failed to pay sums due under the lease.

(2) The Tribunal determines that the following service charges are payable, namely insurance premiums of £445.29 for 2018 and £466.31 for 2019.

(3) The Tribunal determines that a service charge would be payable for repairs to the roof, which are currently assessed to cost £4,200.

(4) The Tribunal is satisfied that the service charge demands have complied with the statutory requirements imposed by sections 47 and 48 of the Landlord and Tenant Act 1987.

(5) The Tribunal does not make any order pursuant to section 20C of the Landlord and Tenant Act 1985.

(6) The Tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Applications

1. On 17 January 2020, the Applicant, Mrs Mah Jabeen Khan, issued two applications. In the first, the Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent, Mr Nadeem Hussain, is in breach of his lease in respect of 29a Grosvenor Road, Hanwell, London, W7 1HP ("the Flat"). The Applicant specifies 17 breaches, which can be broken down under three heads:

> (i) The Respondent has converted the first floor into two self-contained flats without consent of the landlord, namely breaches 1, 2, 2 (the tribunal will refer to these as 2a and 2b), 3, 7, 8, 9, and 16. The substance of the complaint is that the Respondent has converted the first floor into two self-contained flats without the consent of the landlord and in breach of the planning regulations. Enforcement action is now being taken by the London Borough of

Ealing ("Ealing"). The Applicant also complains that the second floor has been converted to create a third self-contained flat. The date when this occurred is less clear.

(ii) The Respondent has underlet the flat as more than one unit, namely breaches 4, 6, 11, and 12. The tenant covenants not to sublet part of the Flat. The Applicant complains that it has been sublet as three self-contained flats. The manner in which the first floor is now used, and the additional footfall, has caused noise nuisance to the ground floor flat. The lease requires all rooms, other than the kitchen and the bathroom to be carpeted.

(iii) The Respondent has failed to pay sums due under the lease, namely breaches 5, 8, 10, 13, 14, and 15.

2. In the second application, the Applicant seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2018, 2019 and 2020. In 2018 and 2019, the application relates to insurance premiums of £445.29 (2018) and £466.31 (2019). In 2020, the application relates to proposed works to the roof at an estimated cost of £4,200. These works have not yet been executed, so this is an application under section 27A (3) of the 1985 Act. The Respondent disputes that the landlord has lawful demands for these sums, relying on section 47 and 48 of the Landlord and Tenant Act 1987.

3. On 30 January 2020, the Tribunal gave Directions which were amended on 2 July 2020. Pursuant to these Directions, the Applicants have provided official copies of the entries on the registers of the Respondent's title. The tribunal notified the mortgagee of these proceedings.

4. The Applicant has provided a Bundle of Documents which totals 509 pages and is broken down into four electronic files. The Bundle includes:

(i) A Schedule of the Service Charges in Dispute (at p.56). The Respondent disputes that a formal demand has been made for the insurance premiums. He contends that the premiums are too high. In his Statement of Case, he suggests that the works to the roof should be funded from insurance or from a sinking fund.

(ii) The Respondent's Statement of Case, dated 20 March 2020 (at p.38). The Respondent contends that the second floor had already been converted into a self-contained flat when he acquired the lease in 2004. The more recent works which have been executed to the first floor were not such as to constitute any breach of the terms of the lease. He had been informed that planning permission was not required and he was appealing against the enforcement notice that had been served.

(iii) A witness statement of the Respondent, dated 20 March 2020 (at p.46).

(iv) A witness statement of the Applicant, dated 17 June 2021 (ay p.59).

(vi) The Respondent's Supplementary Reply, dated 8 July 2020 (at p.69)

5. In his Supplementary Reply, the Respondent avers that the previous freeholder, Mr Kevin Arrowsmith, gave him permission to make any internal alterations as he sought fit and that this would extend to the most recent works which he has executed. A copy of an undated letter purportedly signed by Mr Arrowsmith is at p.81. The letter is said to be some 16 years old. The Applicant contends that this letter is a forgery. This caused the Applicant to apply for further Directions to be permitted to file a statement in response and to instruct a handwriting expert.

6. On 17 September 2020, the Tribunal issued further Directions. The Procedural Judge refused the Applicant permission to call a hand writing expert, being of the opinion that an expert could not express any informed opinion on a copy document. Pursuant to these Directions, the following have been filed:

(i) The Applicant's Supplementary Statement, dated 8 October 202 (at p.135. The Applicant has also provided particulars of the insurance to enable the Respondent to obtain alternative quotations.

(ii) The Respondent's Supplementary Statement, dated 20 November 2020 (at p.341). This includes two alternative insurance quotations.

7. On 12 March 2021 (at p.507), the Applicant applied for a witness summons to compel Mr Arrowsmith to give evidence. On the same day (at p.509), a Procedural Judge refused this application. He noted that the application had been made to too late to afford the witness the requisite notice to which he is entitled. The Judge noted that the burden of proof was on the Respondent to prove that the requisite consent had been given.

8. On 19 March 2021, both parties provided N260 Statements of Costs. The Applicant is claiming £35,400, whilst the Respondent is claiming £21,229.86. This is normally a "no costs" jurisdiction.

9. On 22 March 2021, the Applicant provided an Appeal Decision from the Planning Inspectorate, dated 20 July 2020. On 6 January 2020, Ealing had issued an enforcement notice in respect of the works which the Respondent had executed to the first floor. The Respondent's appeal was dismissed and the enforcement notice was upheld.

The Hearing

10. The Applicant was represented by Mr Ian Rees-Phillips (Counsel) instructed by Derrick Bridges and Co, Solicitors. Mrs Khan gave evidence.

11. The Respondent was represented by Mr Chris Green (Solicitor's Agent) instructed by SLC Law. The Respondent produced some additional documents, namely (i) the sale particulars which apparently relates to March 2000 when Mr Hussain purchased his leasehold interest and (ii) a valuation report by Winston Dunsin FRICS, dated 17 June 2016, which he obtained in connection with his application for a statutory lease extension. Mr Hussain gave evidence. He occupies the Flat.

12. Neither advocate provided a Skeleton Argument or a Chronology. The factual background to this case is far from straightforward. Neither party provides a clear or reliable account to the background of this dispute in their witness statements. The documents are not in chronological order. Witness statements are not cross-referenced to the page numbers in the bundle which extends to 509 pages.

13. On the whole, we prefer the evidence that was given by Mrs Khan. She owns a number of properties and manages them under the trade name "JK Property Management Services" ("JKP"). She has limited understanding of the responsibilities of a managing agent and has not operated the service charge account in accordance with the lease.

14. Mr Rees-Phillips described Mr Hussain "shifty and disingenuous". We agree with this assessment. A significant issue has been whether the undated letter purportedly signed by Mr Arrowsmith was a forgery. We are satisfied beyond reasonable doubt that it was.

15. The parties agreed to a joint inspection of the Flat so that they could provide the Tribunal with an agreed plan of its current layout. On 26 March, this inspection was caried out by Mr Matthew Timmis (the Applicant's Solicitor) and Mr Hussain. Mr Timmis has provided a statement with a Sketch Plan of both floors of the Flat illustrated by a number of photographs. Mr Timmis sought to agree this with the Respondent. Mr Hussain has also filed a witness statement. No criticism is made of the plans and the photographs which Mr Timmis has provided. However, Mr Hussain indicates that further works have now been executed to comply with Ealing's enforcement notice.

16. The Tribunal was also told that Ealing was to inspect the Flat on 30 March. We requested an update on that inspection. A report on that inspection has been provided by Mr James McDonnell, Ealing's Planning Enforcement Officer, dated 1 April 2021.

The Lease

17. The original lease in respect of the Flat is dated 8 May 1998 (at p.101). The Applicant and her husband, Nabil Khan, granted Mohd Belal Hussain a term of 99 years, from 25 March 1998. On 8 October 2018, the Respondent acquired a statutory 90 year lease extension. This was effected by a surrender and regrant upon the terms of the previous lease. The new lease is at p.97.

18. The demised premises are described in the Second Schedule. The Flat is identified in a lease plan. The first floor is clearly defined. It is thus easy to compare the original layout of this floor with the layout revealed in the sketch plan produced after the joint inspection on 26 March. Unfortunately, the lease plan does not provide any proper illustration of the second floor.

19. The Respondent sought to argue that the lease demised two self-contained flats, namely No.29 on the first floor and 29A on the second floor. We reject this contention. Whilst Schedule 2 of the lease refers to "all that flat situate and known as First and Second Floor Flat at No.29 and 29a Grosvenor Road .... and known as 29a Grosvenor Road", we are satisfied that No.29 relates to the ground floor flat. Further the reference to "the singular shall include a plural reference" in Clause 8 cannot be used to construe the lease as a demise of "flats" as opposed to a "flat".

20. The Applicant relies on the following tenant's covenants in Clause 2 of the original lease in respect of her claim for breach of covenant:

(i) to comply with the provisions and requirements of the Town and Country Planning Acts (Clause 2(12)(a));

(ii) to obtain any necessary planning consents in respect of carrying out any alterations or additions to the Flat (Clause 2(12)(b));

(iii) to indemnify the lessor in respect of any reasonable costs, charges or expenses incurred in respect of any matters appertaining to the above Acts (Clause 2(12)(d));

(iv) not to permit the Flat to be used for anything that shall or may be a nuisance, annoyance or inconvenience to the lessor or to the lessee of the ground floor flat (Clause 2(15);

(v) to cover all floors in the Flat, other than the kitchen and bathroom, with carpet or other sound inhibiting materials if so reasonably required (Clause 2(16));

(vi) not at any time to underlet or part with any part of the Flat as distinct from the whole thereof (Clause 2(18));

(vii) to notify the lessor's solicitors within 21 days of any underlease, to produce a copy of the underlease and to pay a reasonable registration fee (Clause 2(20));

(viii) not to do any act which may render the insurance of the building void or voidable (Clause 2(21));

(ix) not to make any alterations to the Flat or to cut or maim any of the walls, floors, timbers, stanchions and girders of the building with obtaining the lessor's approval (Clause 2(22)(a));

(x) not to make or permit to be made and laceration in the elevation or the means of access to the building or the Flat (Clause 2(22)(b));

(xi) not to allow to be done anything whereby the insurance may be rendered void or voidable or whereby the rate of premium may be increased (Clause 2(22)(e));

(xii) to pay all costs, charges and expenses occasioned by any breach of the Clause 22(2) covenants (Clause 2(22));

(xiii) not to use the Flat otherwise than as a private dwelling in the occupation of one household (Clause 2(23));

(xiv) not to do any act or deed at the Flat which may be annoyance or nuisance or disturbance to the lessor or occupiers of the ground floor flat (Clause 2(25));

(xv) to pay all costs, charges and expenses properly incurred by the lessor in abating at the Flat (Clause 2(33));

(xvi) to keep the lessor fully indemnified against all actions, costs, claims and demands arising from any act, neglect or default of the lessee (Clause 2(34)); and

(xvii) to pay all costs, charges and expenses (including solicitors' costs) incurred by the lessor for or incidental to the preparation of any notice under sections 146 or 147 of the Law of Property Act 1925 (Clause 2(29)).

21. The lease provides for a right of forfeiture (Clause 4).

22. The following provisions are relevant to the service charge issues:

(i) The lessee covenants to pay 60% of the "maintenance charge" (a) in respect of maintaining, repairing, redecorating the structure and exterior of the building, including and renewing the roof of the building; and (b) the premium for insuring the building. This is reserved as rent (Clause 2(4));

(ii) The lessor covenants to insure the building to the full reinstatement value including Architects fees (Clause 3(4)(d));

(iii) The mechanism for the payment of the maintenance charge is set out in Clause 2(5). The lessee covenants to pay £200 on account of the maintenance charge on 25 March. The lessee further covenants to pay 60% of such further sums as the lessor may properly and reasonably require to meet future estimated and/or ascertainable liabilities for the maintenance expenses. Within 14 days of the delivery of Annual Accounts, the lessee to obliged to pay for any shortfall in respect of the difference between the actual and the estimated expenditure.

The Background

23. The property at 29 and 29a Grosvenor Road is a two storey semi-detached building which was built in about 1900 as two purpose built flats, one on each floor. Each has its own front door.

24. In her witness statement, Mrs Khan is silent about the circumstances in which she acquired her interest in the building. It seems that Mr and Mrs Khan acquired the building at auction in December 1980 (see p.173). At the time, it was let to two Rent Act Protected tenants (see p.174). On 20 July 1993 (at p.175), they were granted planning permission for an "extension to rear roof space to provide additional residential accommodation for first floor unit". On 18 August 1995, Ealing issued a completion certificate for a "loft conversion". Mrs Khan stated that the extension consisted of a bedroom and a bathroom. There was no kitchen and no intention to create an additional self-contained flat.

25. On 8 May 1998, Mr and Mrs Khan granted a leasehold interest which is now held by the Respondent. The original tenant was Dr Mohd Belal Hussain. The demise is described as the first and second floor flat. As noted above, the lease plan illustrates the layout of the first floor, but not the second floor.

26. The Respondent produced a mortgage valuation, dated 28 May 1998, which had been carried out by the Royal Bank of Scotland for Dr M D Hussain. The report notes: "although the property is purpose built, a loft conversion has taken place and consents for this loft conversion to form a bed/sitting room with kitchen annexe area and bathroom should be checked by solicitors or legal advisers". The report added: "The property appears to be largely rented out on a room by room basis…

27. In 1999, the Respondent rented the first floor rear room from Dr M D Hussain. The Respondent states that there were four tenants on the first floor, namely one in each of the three bedrooms and one in the front lounge. He states that the first floor flat was a self-contained flat with a bathroom and kitchen. This is denied by Mrs Khan who stated that she would not have permitted a kitchen because of the risk of fire. In the light of the RBS valuation report, we consider that it is likely that there were some kitchen facilities on the second floor. However, we do not consider that this was a self-contained flat at this stage.

28. On 16 July 1999, Mr and Mrs Khan granted a separate 99 year lease of the ground floor flat (29 Grosvenor Road). In the same year, Mr Kevin Arrowsmith acquired both the freehold and this leasehold interest from Mr and Mrs Khan. Mrs Khan stated that she assisted Mr Arrowsmith in managing the Flat and with the paperwork, for example the service charge demand at p.357. She stated that Mr Hussain did not pay the service charges which had been demanded.

29. In March 2000, the Respondent acquired the leasehold interest in the Flat for £215k. The Respondent provided the Tribunal with the Estate Agent's particulars. The asking price was £225k. The Flat is described as having four large bedrooms on the first floor and a self-contained studio flat on the on the second floor. It is described as an "ideal investment property" with an estimated annual rent value of £25k. Thus, it is apparent that the lounge on the first floor was being let out as a bedroom. This confirms Mr Hussain's evidence that there had been five lettings, namely four in respect of each of the bedrooms on the first floor and one is respect of the studio flat on the second floor.

30. On 15 May 2004 (at p.358), Mr Arrowsmith issued an invoice to the Respondent for arrears or rent and service charges. Mr Arrowsmith gave his address as 29 Grosvenor Road. He demanded sums of £100 for ground rent and £200 for the interim service charge which had become payable on 25 March 2002, 25 March 2003 and 25 March 2004. He also claimed the 60% contribution towards the insurance of £520.49 for 2002 and £415.80 for 2003. On 15 October 2004 (at p.357), Mr Arrowsmith demanded £431.86 for the 2004 insurance. The Tribunal accepts the evidence of Mrs Khan that she assisted Mr Arrowsmith to draft these demands.

31. On 21 December 2004, Mrs Khan acquired the leasehold interest from Mr Arrowsmith in 29 Grosvenor Road for £190k. On 28 January 2005 (at p.115c), the transfer was registered. On 29 August 2006, Mrs Khan acquired the freehold interest in the building from Mr Arrowsmith for £10k. On 28 September (at p.78), the transfer was registered.

32. The Respondent contends that at some date between 1999 and 2006, Mr Arrowsmith gave permission to carry out such internal changes to the Flat as he saw fit. He relies on an undated letter a copy of which appears

at p.81. He is not able to produce the original. On 1 July 2020 (at p.351), he sent a copy of this letter to Mrs Khan. On 6 July, Mrs Khan texted a copy to My Arrowsmith. He responded "Not from me". The screen shot is at p.178. We accept Mrs Khan's evidence on this point. We consider it most unlikely that Mr Arrowsmith would have written a letter in the terms suggested.

33. On 8 June 2016, Mr Hussain obtained a Valuation Report from Winston Dunsin FRICS for his statutory lease extension. The report describes the Flat: "First Floor: landing. Three Bedrooms, Lounge, Kitchen/Dining Room, Bathroom with WC. Second Floor: Landing, Studio Room with ensuite Bathroom and WC". On 8 October 2018, the lease extension was completed as a surrender and regrant. Mrs Khan stated that her expert was unable to gain access to complete her report.

34. In order to complete the lease extension, it was necessary for the Respondent to clear the arrears of service charges and ground rent. The only relevant service charge items were the insurance premiums of £751.15 for 20016 and 2017 (see p.247). These were the last service charges which Mr Hussain has paid.

35. On 29 July 2016, Ealing served a number of statutory notices on the Respondent under the Housing Act 2004, the Environmental Protection Act 1990 and the Prevention of Damage by Pests Act 1949. It is apparent that Ealing were asserting that the Flat was an HMO that required a licence. On 1 August 2016 (at p.385) Mr Hussain informed Mrs Khan that he would be making such adjustments to the Flat, as necessary, to prevent enforcement action by Ealing. It would seem that this led Mr Hussain to carry out the structural alterations to create two self-contained flats on the first floor and a third self-contained flat on the second floor. Mr Hussain contends that Ealing informed him that planning permission was not required for internal works.

36. On 15 September 2018 (at 2.216), the Applicant demanded payment of £445.29 for insurance. The Respondent did not pay. Indeed, he has made no contribution towards his service charges since this date. On 10 September 2019 (at 2.216), the Applicant demanded payment of £466.31 for insurance for 2019.

37. For a number of years, it seems that the insurance premium was the only service charge which had been demanded. In October 2018, The Respondent reported a leak to the room. On 7 January 2019 (at p.220), the Applicant served a Stage 1 Notice of Intention and requested an interim payment of £1,920. On 1 March 2019 (at p.268), the Applicant served a Stage 2 Notice of Estimates. The Respondent was asked to pay the outstanding arrears. The Respondent has declined to discharge the outstanding arrears or to make an interim payment towards the cost of repairs. The works to the roof are still outstanding.

38. On 6 January 2020 (at p. 443), Ealing served an enforcement notice on a range of relevant parties including the Applicant (as freeholder) and the Respondent (as lessee). It was also served on David Goncalves and Flavia Correia (occupants of the first floor front flat) and Sylwia Tyszkiewicz (occupant of the second floor loft flat). The alleged breach of planning law was the material change of use of the first floor to two self-contained units. The requirements of the notice were to (i) cease the use of the first floor as two self-contained flats; (ii) remove the kitchen and drainage connections from one of the self-contained flats; (iii) remove the bathroom and drainage connections from one of the self-contained flats (iv) remove all internal doors, partitions and locks that facilitate the use of the first floor as two self-contained flats; and (v) remove all resultant debris. Mrs Khan stated that she was unaware of these works as she had not had any access to the Flat since 2016. We accept her evidence.

39. On 17 January 2020, the Applicant issued her two applications to this Tribunal.

40. On 7 February 2020, the Respondent appealed against the enforcement notice. Mr Hussain obtained a report from LRJ Planning Limited in support of his appeal (at p.415). This includes a plan of the new configuration of the first floor (at p.454). On 20 July 2020, the Planning Inspector inspected the Flat. On 20 July 2020, the Inspector issued his decision. Planning permission was refused. The Respondent had three months to comply with the enforcement of the notice.

41. On 30 March 2021, Ealing inspected the Flat. In an email, dated 1 April, James McDonnell, Planning Enforcement Officer sets out the current situation:

> "I can confirm that step 1 of the enforcement notice (cessation of the use as two self-contained flats) has been achieved. However, I am not satisfied that all steps of the notice have been fully complied with. Whilst I recognise that the toilet, basin and shower head has been removed from one of the bathrooms, there are still some drainage connections that remain in that bathroom. These include the shower tray with drainage and the pipes for the basin and toilet. Additionally, I recognise that one of the kitchens and its drainage connections, as well as the doors and locks that facilitated the use, have been removed. However, I noted that the doors and locks and some of the cooking facilities remain stored in one of the bedrooms of the site. I therefore do not consider that steps (2), (3), (4) and (5) have been fully achieved. I have let Mr Hussain know via email this morning that the shower tray with drainage will need to be removed; the pipes where the toilet and basin were will need to be cut off to the wall; and the doors with locks and cooking facilities will need to be removed from the site. I do not consider that this work is lengthy, therefore Mr Hussain

should be able to quite easily do this in a timely manner. I have requested that he inform me once this has been done."

Findings in Respect of Breach of Covenant

42. Section 168(4) of the 2002 Act requires this Tribunal to determine whether there has been any breach of covenant by the Respondent. It is not our role to determine whether any such breaches have been waived or whether relief from forfeiture should be granted. These are matters for the County Court. The application form specifies 17 alleged breaches under 14 separate provisions of the lease. Mr Rees Phillips broke these down under three heads:

(i) The Respondent has converted the first floor into two self-contained flats without consent;

(ii) The Respondent has underlet the flat as more than one unit;

(iii) The Respondent has failed to pay sums due under the lease.

Conversion of the first floor into two self-contained flats without consent

43. The Applicant's primary concern is the Respondent has converted the first floor into two self-contained flats without consent. The extent of those changes is apparent from two documents:

(i) The lease plan annexed to the Respondent's lease; and

(ii) The agreed plan which has been produced as a result of the joint inspection on 26 March 2021. This is based on the plan produced by LRJ Planning Limited.

44. The Respondent sought to create two self-contained flats on the first floor:

(i) Front Flat: An additional door had been added to create the self-contained flat at the front of the Flat, consisting of two bedrooms, a kitchen and a bathroom. An additional kitchen had been created in what had been the lounge. It had a laminated flooring. The bathroom, at the front left of the property, had been reconfigured and a new door had been created from what had been the lounge into the bathroom. New water supply and drainage pipes had been installed for the new kitchen. By 26 March 2021, the fridge, washing machine, sink, kitchen units and hob/oven had been removed from the kitchen. The basin and toilet had been removed from the reconfigured bathroom. The shower was still in place.

(ii) Rear Flat: There had originally been a dining area and kitchen in the rear extension. This had been reconfigured to create two bedrooms, a kitchen and a shower room. This flat incorporated what had been "Bedroom 1". A new door had been added into the new flat and a door from "Bedroom 1" into the hallway was blocked off. The second bedroom was only 1.97 x 2.4 m. Mr Hussain stated that this was only a store room. The new bathroom has a shower, toilet and sink. Its floor is tiled. A new soil pipe has been required for the toilet which feeds into a down soil pipe which is shared with the ground floor flat. The former kitchen is now redesigned as a kitchen/diner with new units and a tiled floor.

45. Ealing's enforcement notice requires the Respondent to use the first floor as a single flat. He was required to remove a kitchen and a bathroom from one of the units. Rather than remove the new shower room from the Rear Flat, the Respondent has rather chosen to remove the units from the original bathroom.

46. The position in respect of the second floor is less clear. Mr Timmis has provided a plan of the current layout. This is now a self-contained flat which consists of a bedroom, bathroom and an open plan kitchen area, breakfast bar and lounge area. There is a carpet in the bedroom and laminated floor in the living area.

47. There is no adequate description of the second floor in the lease plan. The lease is dated 8 May 1998. The Tribunal is satisfied that at this date there had been a loft conversion which consisted of a large bedroom/living area and a bathroom. There may also have been a kitchen annexe area in the living area. However, on a balance of probabilities, we are satisfied that there was no separate bedroom. This was not a self-contained flat, but part of the first floor flat. We are satisfied that since March 2000, the Respondent has reconfigured the second floor to make it a self-contained flat with a separate bedroom. It is unclear whether planning permission was required for this work. If so, there is no indication that Ealing is minded to take any enforcement action.

48. We reject Mr Hussain's evidence that Mr Arrowsmith gave him permission to carry out these conversions. We find the undated copy letter on which the Respondent seeks to rely to be a forgery. We accept Mrs Hussain's evidence that Mr Arrowsmith was not familiar with the terms of the lease and that he would have consulted Mrs Khan had Mr Hussain had sought consent to carry out improvements. We would also have expected Mr Arrowsmith to have disclosed the letter when Mrs Khan acquired the freehold in September 2006. The conversion works to the first floor were carried out after this date. Mr Arrowsmith could not have given consent to works which were proposed after he ceased to be landlord.

49. The Tribunal accepts that on 1 August 2016 (at p.385), Mr Hussain informed Mrs Khan that he would be executing works to the Flat to comply with Ealing's statutory requirements. There were further discussions, including a meeting outside a branch of Sainsburys on 13 January 2018 (see p.393). On 26 January 2018 (at p.396), Mrs Khan stated that she would require detailed plans, she would need to appoint a surveyor and that an administration fee would be payable. No such plans were provided.

50. In the light of these findings, the Tribunal is satisfied that the Respondent has breached the following terms of his lease: (i) Clauses 2(12)(a), (b) and (d) (in respect of the first floor); (ii) Clauses 2(21) and 2(22)(e); (iii) Clause 2(22)(a) and (b); and (iv) Clause 2(22).

Underletting the flat as more than one unit

51. By Clause 2(23) of the lease, the Respondent covenants not to use the Flat otherwise than as a private dwelling in the occupation of one household. This is reinforced by Clause 2(18), by which he covenants "not at any time to underlet or part with any part of the Flat as distinct from the whole thereof".

52. The Tribunal is satisfied that the Flat has been occupied by more than one household for many years, a fact which was known to Mrs Khan. We accept Mr Hussain's evidence that he was initially granted a tenancy of the first floor rear room in 1999, there were four other tenants occupying the three bedrooms on the first floor and the bedroom on the second floor. After Mr Hussain acquired the leasehold interest in March 2000, he continued to let out the rooms which he did not occupy. He has provided a number of tenancy agreements. The Tribunal is satisfied that Mr Hussain did not formally notify Mrs Khan of these lettings as required by Clause 2(20) of the lease.

53. Matters were brought to a head by the intervention of Ealing's Environmental Health Department. They were concerned about the manner in which Mr Hussain was operating the Flat as an HMO. Mr Hussain seems to have thought that the solution was to convert the Flat into three self-contained units. This has brough Mr Hussain into conflict with Ealing's Planning Department.

54. The Tribunal is further satisfied that the manner in which the first floor has recently been occupied has caused noise nuisance to the occupants of the ground floor flat. The lease plan to the Respondent's lease illustrates the layout of the ground floor flat. Thus, the dining and kitchen areas are both in the rear extension area. The Respondent installed a second kitchen immediately above a bedroom on the ground floor. It had laminated flooring. This had previously been a lounge which should have been carpeted. The new layout would inevitably increase the impact of footfall on the ground floor flat.

55. In the light of these findings, the Tribunal is satisfied that the Respondent has breached the following terms of his lease: (i) Clause 2(15); (ii) Clauses 2(16); (iii) Clauses 2(18); (iv) Clause 2(20); (v) Clause 2(23); and (vi) Clause 2(25).

56. The issues of any waiver of breach and relief from forfeiture are matters for the County Court. There is cogent evidence that Mrs Khan was aware that the flat was being let to a number of tenants. It is therefore arguable that she has waived past breaches. However, there is no evidence that she was aware, or consented, the Flat being converted into two or more self-contained units. For the future, the lease stipulates that the Flat is to be occupied by one household.

Failure to pay sums due under the lease

57. The Tribunal can deal with this briefly. We are satisfied that the Respondent has failed to pay sums that are lawfully due under the lease. The last service charge was paid on 8 October 2018, and this was only paid so Mr Hussain could complete his lease extension.

Findings in Respect of Liability to Pay Service Charges

58. The Applicant has not demanded service charges in accordance with the terms of the lease (see [22] above). No service charge accounts have been provided. In recent years, the Applicant has only demanded payment of the Respondent's 60% contribution towards the insurance premiums. There are now outstanding repairs which are required to the roof. This Tribunal is required to determine the payability and reasonableness of (i) two insurance premiums and (ii) works which are required to the roof.

Liability for Service Charges: Insurance Premiums

59. The Applicant seeks a determination in respect of the payability and reasonableness of two demands for insurance premiums:

(i) On 15 September 2018 (at p.216), the Applicant demanded payment of £445.29. The demand specifies the information required by sections 47 and 48 of the Landlord and Tenant Act 1987. The landlady is stated to be "Mrs Jabeen Khan". Her address for the service of Notices is given as "5 Cardinal Avenue. Herts. WD6 1EN". A copy of the Summary of Rights and Obligations which would have accompanied this demand is at p.331.

(i) On 10 September 2019 (at p.316), the Applicant demanded payment of £466.31. The demand specifies the information required by sections 47 and 48 of the Landlord and Tenant Act 1987. The landlady is stated to be "Mrs Jabeen Khan". Her address for the service of Notices is given as "5 Cardinal Avenue. Herts. WD6 1EN". A copy of the Summary of Rights and Obligations which would have accompanied this demand is at p.331.

60. Mr Hussain contended that these sums were not payable because they failed to comply with the statutory requirements of sections 47 and 48 of the Act. First, he suggests that he was confused by her name which should have been specified at "Mrs Mah Jabeen Khan". Secondly, he disputes that the Applicant was residing at 5 Cardinal Avenue. He refers to the Deed of Surrender, dated 8 October 2018 (at p.108) where her address is given as "51 Regina Road". Mrs Khan states that this was an error by her solicitor. It seems that this is also the address which Ealing had on their records (see p.83).

61. We are satisfied that these were lawful demands. There was no misunderstanding about the name of the landlady. Mrs Khan stated that she moved to 5 Cardinal Road in 2007 after she had divorced her husband. We accept her evidence. We are satisfied that Mr Hussain knew that this was her address as this was the address which he had used when he wrote to her on 1 August 2016 (at p.385).

62. Mr Hussain also disputes the size of the premiums. We were referred to the quotes which he has obtained at p.85-89. These range from £900 to £953.32 if the reinstatement value of the building is £390k and £462.00 to £498.48 if it is £200k.

63. The Applicant's documentation relating to the insurance is at p.186-215 and 285-315. Mrs Khan stated that she used Residents Insurance Services for all her property portfolio. In 2018 (at p.192), the total premium was £742.15. It became apparent that the Respondent's complaint is the level of the buildings declared value of £441,607 and a "Day One Uplift" of £662,410. In 2019 (at p.293), the total premium was £777.17; the buildings declared value of £453,530 and a "Day One Uplift" of £680,295.

64. The Respondent (at p.384) had obtained a rebuilding cost of £219k, using ABI Rebuild Calculator. However, it is apparent that this only related to the Flat and was based on a GIA of 102 sq m. This even underestimated the size of the Flat which had been computed by the Respondent's Valuer at 118 sq m.

65. The Applicant indicated that she was willing to have the building revalued. On 12 March 2021 (at p.499), the Applicant indicated that she was willing to do so at a cost of £432. 60% of this cost would be passed on to the Respondent through the service charge. At the hearing, Mr Hussain stated that he was willing to pay for this.

66. The lease requires the landlord to insure the building to the full reinstatement value including Architects fees. The Tribunal does not accept that the reinstatement value of £450k is excessive. In the experience of this expert tribunal, a "Day One Uplift" of 30/50% is not unusual and is a safeguard in the event of the need to rebuild the building perhaps two years after a total loss occurring on the last day of the policy

cover and such an uplift deals with potential inflation in building costs over such a period. It does not have a significant impact on the overall cost of the policy. The Tribunal is satisfied that the sums demanded are payable pursuant to the lease and that the premiums are reasonable. It is for the parties to decide whether they wish the building to be revalued.

Liability for Service Charges: Roof Works

67. On 18 September 2018 (at p.228), Mr Hussain sent Mrs Khan an email reporting a roof leak which his tenant had reported to him on 30 May. Mr Hussain stated that he had previously reported this to Mrs Khan on 30 May. We consider this to be unlikely as we are satisfied that Mrs Khan would have arranged for repairs to be executed, had she been aware of the disrepair.

68. On 26 September (at p.227), Mrs Khan sought details about the leak to which Mr Hussain responded on 13 October. On 16 October (p.226), Mrs Khan responded stating that she would need to check who was responsible for the claim and suggested that it might be an insurance claim. On 23 October (at p.225), Mrs Khan stated that she had attended with a roofer and that they had concluded that this was not an insurance claim. She enclosed a number of photos. She proceeded to obtain an invoice from Top Job Roofing which totalled £6,300 + VAT (p.281). She sent this to Mr Hussain who complained that it was very high and that it was an estimate rather than a quotation (p.222).

69. On 7 January 2019 (at p.220), Mr Timmis, the Applicant's Solicitor, sent the Respondent a Stage 1 Notice of Intention (2.233) and a second estimate from C&T Roofing in the sum of £3,200 (at p.231). A request was made for an interim payment of £1,920. The Respondent prevaricated. He initially suggested that he could not open the attachment and that insurance should cover the cost of the works (p.242). He then suggested that he was minded to execute the works himself (p.244). On 4 February, Mr Timmis sent a further copy by post, stated that the work was not covered by insurance and repeated the request for an interim payment (p.245), On 13 February (p.267), Mr Hussain complained that the notice did not comply with the statutory provisions.

70. On 1 March 2019 (at p.268), Mr Timmis served the Stage 2 Notice of Estimates. This attached estimates from MJ Roofing in the sum of £4,785 and Target Roofing in the sum of £3,792. Mr Hussain was required to respond by 2 April 2019. He did not respond. On 5 March 2019 (at p.279), Mr Timmis informed Mr Hussain that Target Roofing were no longer able to do the work and enclosed the alternative estimate which had been provided by Top Job Roofing.

71. At this time, Mrs Khan was also chasing Mr Hussain for payment of the insurance premiums which were outstanding from 2018 and 2019. On 17

January 2020, she issued this application to the tribunal She seeks a determination pursuant to section 27A(3) that she is entitled to pass on the cost of the roof works through the service charge and that costs of some £4,200 would be reasonable. Mr Husain would be liable for 60% of the cost. The cost of the works has increased as additional works have now been found to be required.

72. Mr Hussain has raised two issues. First, he contends that this should be an insurance claim. He contends that the damage arose on 29 May 2018 when there was unduly heavy rainfall (see p.91). Secondly, he contends that there should be sufficient funds in a sinking fund.

73. The Tribunal is satisfied that the roof is in disrepair and that significant works are required to remedy that disrepair. We are further satisfied that the Applicant has complied with the statutory consultation requirements. There is no evidence that this would be covered by an insurance claim. Mrs Hussain has been advised by a builder that this is wear and tear. Further, there is no evidence of any funds in a sinking fund. It seems that Mr Hussain has paid nothing towards his service charges since a demand was issued to him on 15 September 2018. Further, the Applicant has tested the market, and the estimate of £4,200 is reasonable. Given the delays that have occurred, it is probable that the cost of the works will now be greater.

Refund of Fees and Costs of this Application

74. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application hearing pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). The Applicant has paid a total of £300. Having regard to our findings above, the Tribunal orders the Respondent to refund the tribunal fees of £300, which have been paid by the Applicant, within 28 days of the date of this decision.

75. The Respondent has applied for an order under section 20C of the Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

The Next Steps

76. This Tribunal has found that the Respondent has breached a number of terms of his lease. The next step will be for the Applicant to apply to the County Court for forfeiture. It will be for the County Court to consider whether there has been any waiver of any breach and the terms upon which any relief from forfeiture should be granted.

77. The Respondent has accepted a lease which requires him to use the Flat as a private dwelling in the occupation of one household. For a number of years, the Respondent has breached this term. The Tribunal is satisfied that the Applicant was aware of this. However, we are satisfied that the Applicant did not consent to the Flat being converted into three self-contained Flats. Ealing's Planning Department will be content if the first floor reverts to a single unit. The Applicant is likely to insist that the Flat is reinstated to its original layout.

78. The Tribunal has found that the insurance premiums are payable and reasonable. The Respondent should be aware of the consequences should he fail to pay them.

79. The roof is still in a state of substantial disrepair. It is probable that the Applicant will now need to obtain further estimates. The lease sets out the mechanism for the payment of service charges.

80. Both parties have submitted N260 Statements of Costs. The Applicant is claiming £35,400, whilst the Respondent is claiming £21,229.86. This is normally a "no costs" jurisdiction. There is a high threshold that any party must meet in establishing a claim under Rule 13(1)(b) of the Tribunal Rules on the ground that a party has acted unreasonably in "bringing, defending or conducting proceedings", see *Willow Court v Alexander* [2016] UKUT 290 (LC). If either party wishes to pursue such an application, they must apply to the tribunal. The Applicant has a right to contractual costs under the terms of the lease. This would be a matter for the County Court.

Judge Robert Latham
4 May 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).

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 168

(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 the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.