FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	CHI/29UE/LBC/2022/0016
Property	**:**	4 Delf Mews Cottages, Delf Street, Sandwich, Kent, CT13 9BZ
Applicant	**:**	Delf Mews Limited
Representative	**:**	Mr David Nicholls of Counsel
Respondent	**:**	Mr Alain Boselli & Mrs Sandra Boselli
Representative	**:**	None
Type of application	**:**	Breach of Covenant. Section 168(4) Commonhold and Leasehold Reform Act 2002
Tribunal member(s)	**:**	Mrs J Coupe FRICS Mr S Hodges FRICS
Hearing Date and venue	**:**	8 September 2022 Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL
Date of decision	**:**	21 September 2022

DECISION

Summary of the Decisions of the Tribunal

The Tribunal determines that the Applicant has demonstrated that there has been a breach of the following clauses of the lease pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002:

(i) Paragraphs 9.4(b) and 9.4(c) of Schedule 4;
(ii) Paragraphs 6 and 7 of Schedule 5

The reasons for our decision are set out below.

Background to the application

1. By way of an application dated 1 June 2022, the Applicant seeks an order that a breach of covenant or a condition in the lease has occurred pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act").

2. The application concerns alleged breaches at 4 Delf Mews Cottages, Delf Street, Sandwich, Kent, CT13 9BZ ("the Property"), the grounds of which were set out in sections 5 and 13 of the application form.

3. The Applicant, Delf Mews Limited ("the Landlord"), is the freeholder of 12-12a Delf Street, Sandwich, Kent, a property which comprises three residential dwellings, these being Nos 3, 5, and the subject property No 4 Delf Mews Cottages. The freehold was transferred to the Applicant on 19 November 2019.

4. The Respondents are the registered proprietors of the leasehold interest in No 4 Delf Mews Cottages under a lease dated 18 November 2016 between Realite Investments Europe Limited (as lessor) and Delf Mews Limited (as managing Company) and the Respondents (as lessees), for a term of 999 years commencing 1 January 2016 at a peppercorn rent. It is this lease that is before the Tribunal.

5. The property is a first floor flat within a Grade II Listed Building converted into residential and commercial accommodation, albeit all units are now residential. Access to the property is via a pedestrian door set within a more substantial, now fixed, garage door, leading to a communal inner courtyard with post boxes, utility meters and individual bin stores. The pedestrian door opens directly onto the pavement of Delf Street and is operated by a yale key from the street side.

6. In accordance with Directions issued, the Tribunal did not inspect the property but, instead, viewed the premises and locality via publicly available online platforms.

7. The Applicant relies on two provisions in the lease:

(i) Breach of the alienation provisions;
(ii) Breach of the insurance regulations.

8. Between 25 September 2021 and 29 June 2022, the property was occupied by Ms Jennifer Rogers and her two adult children under an Assured Shorthold Tenancy ("AST"). Ms Rogers and Mrs Boselli advise that they have been friends for in excess of fifty-five years.

The hearing

9. The hearing was a hybrid hearing, with the chairman, Mrs Coupe, sitting at Havant Justice Centre, and Mr Hodges of the Tribunal, the parties and the Applicant's representatives, joining via the online platform CVP.

10. Mr Fraser Pearce, sole Director of the Applicant company, attended the hearing; the Applicant was represented by Mr David Nicholls of Counsel. Also, in attendance for the Applicant were Mr Mark Sullivan solicitor, of North Star Law, and Mr Parker, an observer from North Star Law. The Respondents, Mr and Mrs Boselli, attended the hearing with their witness, Ms Rogers.

11. At the outset of the hearing Counsel for the Applicant sought permission to rely on video evidence captured by CCTV located in the communal courtyard. Having heard submissions from both parties the Tribunal adjourned to consider the application and, on reconvening, granted the application having determined that the evidence was material to the substance of the application.

The Law

12. The relevant law relating to the Tribunal's jurisdiction 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 is required to assess whether there has been a breach of the Lease on the balance of probabilities *(Vanezis and another v Ozkoc and others* (2018) All ER(D) 52).

14. 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.
Whether any breach has been remedied, or the right to forfeit for that breach has been waived, are not questions which arise under this jurisdiction. Neither can the Tribunal consider a counterclaim by the Respondent as an application under Section 168(4) can only be made by a landlord. The motivations behind the making of an application are also not relevant to the determination of whether a breach has occurred.

15. In *Kyriacou v Linden* (2022) UKUT 288 LC the Upper Tribunal held that

the Tribunal's only task is to determine whether a breach of covenant has occurred. Whether that breach has been remedied, or whether the right to

forfeit for that breach has been waived, is irrelevant to the First Tier Tribunal's ("FTT") determination. Furthermore, the FTT is not restricted to considering whether a breach existed at the date of application.

16. The Lease is to be construed applying the basic principles of construction of such leases as set out by the Supreme Court in *Arnold v Britton* (2015) UKSC 36 where, at paragraph 15, Lord Neuberger said:

> *"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffman in Chartbrook Ltd v Persimmon Homes Ltd (2009) UKHL 38, (2009) 1 AC 1101, para 14. And it does so by focusing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."*

17. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise at paragraph 17:

> *"the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g in Chartbrook (2009)* AC 1101, paras 16-26) *should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."*

The issues

18. The only issue for the Tribunal to determine is whether or not a breach of covenant or a condition of the lease has occurred pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002. The two grounds on which the Applicant advances the alleged breach are as follows:

(i) **Breach of the alienation provisions** – that the Respondents failed, by virtue of the AST granted to Ms Rogers in September 2021, to ensure that the tenancy contained covenants substantially the same as those contained in the Regulations in Schedule 5 to the lease; and that the Respondents, within the AST, failed to provide that the undertenant must not do

anything that would or might cause the Respondents to be in breach of the Tenant covenants.

(ii) **Breach of the insurance regulations** – that the Respondents failed in their Tenant covenant not to do anything that may cause any insurance of the Building to become void or voidable or which may cause an increased premium to be payable; and, or, that the Respondents failed to comply with the requirements and recommendations of the insurers relating to the Property.

The relevant clauses of the Lease

Clause 5 Tenant Covenants

The Tenant Covenants:

(a) with the Landlord and by way of separate covenant with the Management Company to observe and perform the Tenant Covenants; and

(b) with the Flat Tenants to observe and perform the Regulations

Clause 1.1 defines the Tenant Covenants as *"the covenants on the part of the Tenant set out in Schedule 4 and the Regulations."*

Clause 1.1 defines the Regulations as *"the covenants on the part of the Tenant set out in Schedule 5."*

Schedule 4 Tenant Covenants

9. Assignment and Underletting

Paragraph 9.4 of Schedule 4 provides:

Not to underlet the whole of the Property unless:

(a) The underlease is on an assured shorthold tenancy agreement or any other tenancy agreement whereby the tenant does not obtain security of tenure on expiry or earlier termination of the term;

(b) The underlease contains covenants substantially the same as those contained in the Regulations, other than the Regulation contained in paragraph 24(a) of Schedule 5; and

(c) The underlease provides that the undertenant must not do anything that would or might cause the Tenant to be in breach of the Tenant Covenants.

Schedule 5 The Regulations - Paragraphs 1 – 25 inclusive, and in particular:

Paragraph 6:
Not to do anything which may cause any insurance of the Building to become void or voidable or which may cause an increased premium to be payable in respect of it (unless the Tenant has previously notified the Landlord or, until the Handover Date, the Management Company and has paid any increased premium).

Paragraph 7:
To comply with the requirements and recommendations of the insurers relating to the Property and the exercise by the Tenant of the Rights.

Chronology

19. The following list of events is taken from the parties written submissions, the Witness Statements of Mr Pearce and Ms Rogers and from oral evidence at the hearing. It is a summary only.

20. An AST, dated 25 September 2021, was granted by Mrs Sandra Boselli as Landlord, in favour of Ms Jennifer Rogers as Tenant, for a term commencing 25 September 2021 until 24 March 2022, and thereafter from month to month, at a rent of £200.00 per month.

21. Two additional occupiers were named in the AST, these being Miss Jessie Rose Rogers and Mr Tom Parsons, both of whom being Ms Rogers adult children.

22. On 3 December 2021, the Applicant's solicitors, North Star Law (NSL) emailed the, then, solicitors of the Respondent, Brethertons, concerning, amongst others, issues relating to the use of the communal entrance door.

23. On 6 December 2021, NSL emailed Brethertons in relation to the behaviour of the subtenants.

24. On 15 December 2021, NSL emailed Brethertons concerning the communal door being fixed open by Ms Rogers and requested details of the *"life threatening risks"* which Ms Rogers claimed necessitated the door being left open.

25. By way of a letter dated 14 December 2021, Brethertons wrote to NSL advising that, in the absence of other arrangements, the Applicant had agreed to the communal door remaining unlocked during the day to facilitate deliveries. The Applicant disputed this statement.

26. On 24 December 2021, Mr Pearce reported an attempted break-in and theft of a power tool to the police. The Respondents were advised of such by Mr Pearce, and Ms Rogers was notified of the same by NSL solicitors.

27. On 29 December 2021, Ms Rogers replied by email, advising that her preference was for the communal door to be *"kept open"*.

28. On 22 February 2022, the Applicant's insurance brokers, Alan Boswell Group, advised Mr Pearce that the buildings insurance policy contained no requirements in relation to the communal door but, in the same response, made suggestions concerning the mitigation of risk. They wrote *"The insurers don't have any requirements as such, however if the gate being open is causing unwanted access and possible incidents to occur then it is in the best interests of all involved to do what you can to mitigate the risk (essentially by keeping the gate closed as much as possible and certainly within the times these previous 'incidents' occurred)"*.

29. Further to a telephone conversation with Mr Pearce on 23 February 2022, the insurance broker wrote, that same day, referring the insured to page 37 of the policy wording in regard to *"Reasonable Precaution",* whereby the insured will:

> *(a) maintain the Residential Building in a satisfactory state of repair*
>
> *(b) take all reasonable precautions to prevent*
> *(i) loss, destruction or damage to Property Insured*
> *(ii) accident or injury to any person or loss, destruction or damage to their property*
>
> *(c) comply with all legal requirements and safety regulations and conduct The Business in a lawful manner.*

30. On 15 February 2022, the First Tier Tribunal Property Chamber (Residential Property) determined an application made by Mr and Mrs Boselli under Section 27A of the Landlord and Tenant Act 1985, and other associated applications. The Respondent, in that matter, was Delf Mews Limited. The Tribunal's decision, dated 22 February 2022, was included within the submissions.
Reference:
CHI/29UE/LSC/2021/0084;
CHI/29UE/LAC/2021/0008.

31. On 4 March 2022, Mr Pearce, on behalf of the Applicant, wrote to the Respondents advising them of the insurers response and provided a further copy of the insurance policy. The policy had been the subject of the previous application to the First Tier Tribunal and hence the Applicant was satisfied that the Respondent had, previously, held a copy of said policy.

32. On 5 April 2022, Brethertons advised NSL that they were no longer under instruction by the Respondents.

33. On 8 April 2022, Mr Pearce provided quotations for an intercom installation to the Respondents.

34. On 12 April 2022, the Respondents offered to sell their property to Mr Pearce.

35. On 12 April 2022, Mr Pearce declined the Respondents offer to purchase the property and, again, referred the Respondent to the insurance policy and insurance brokers' email.

36. On 13 April 2022, Mr Pearce wrote to the Respondents referring them to the terms of the insurance policy and, on 14 April 2022 instructed the Applicants solicitors, NSL, to write to the Respondents advising that, without further communication, an application for breach of covenant would be made to the Court.

37. On 15 April 2022, the Respondent replied, referring to a public right of way through the front gate. NSL replied on behalf of the Applicant on the 19 April 2022 disputing such claim.

38. On 19 April 2022, Mr Pearce employed a cleaner to attend daily and ensure the communal door was closed.

39. On 21 April 2022, the Respondents wrote as follows: *Ms Rogers and I are complying with the terms of the lease and are not in breach of the terms of the policy since the insurers 'have no requirements as such' regarding the gate and the latter is not mentioned in the lease."* The Respondents continue *"Ms Rogers, in conformity with the insurance policy, will close the gate during the day 'as much as possible' once the expected deliveries are made and the post has been delivered in compliance with the right of way to my Property."*

40. On 29 April 2022, and on 11 May 2022, NSL wrote to the Respondents advising that the Applicant was considering an application against the Respondents for a breach of covenant.

41. On various dates between 3 December 2021 and 11 May 2022, the Applicant and their solicitor requested, from the Respondents, a copy of the AST.

42. Ms Rogers, and both additional occupiers, vacated the property on 27 June 2022.

43. A copy of the AST was provided in August 2022, two months after service of the Landlord's application and in response to the Tribunal's directions for the exchange of evidence.

44. It is now common ground between the parties that the underlease is on an Assured Shorthold Tenancy.

The alleged breach of the alienation provisions

45. Having received a copy of the AST the Applicant was satisfied that the underlease was on an Assured Shorthold Tenancy and, accordingly, the Respondents are not in breach of paragraph 9.4(a) of Schedule 4.

46. However, the Applicant pursues the application on the basis that the Respondents are in breach of paragraphs 9.4(b) and 9.4(c) of Schedule 4, by virtue that the underlease does not contain Tenant covenants

substantially the same as those contained in the Regulations in Schedule 5, and because the underlease does not provide that the undertenant must not to anything that would or might cause the Tenant to be in breach of the Tenant Covenants.

47. Counsel for the Applicant referred the Tribunal to the twenty-five Regulations contained within Schedule 5 and contended that, with the possible exceptions of paragraph 1, 3, 4 and 18 of the Regulations, the AST does not contain covenants substantially the same as those contained in the Regulations.

48. By way of example, Counsel referred the Tribunal to paragraph 23 of Schedule 5 Regulations which require the Tenant *"Not to park any vehicles on the external areas of the Retained Parts",* and contrasted this against Clause 6.11 of the AST which states *"Not to keep any vehicle at the Premises other than for domestic use. Any such vehicle must be roadworthy, fully taxed, insured and parked within the allocated parking space provided for that purpose."*

49. Counsel contended that it would have been a relatively straight forward exercise to include the twenty-five regulations within the AST, simply by writing them into the agreement, copying and pasting, or to "incorporate by reference", the latter suggestion being withdrawn by Counsel later in the hearing upon questioning from the Tribunal.

50. Furthermore, in breach of paragraph 9.4(c) Counsel contended that the AST does not provide that the undertenant must not do anything that would or might cause the Tenant to be in breach of the Tenant covenants in the Lease. Counsel suggests that, with the exception of the First Schedule, the AST included no specific reference to the Head Lease or to the Tenant covenants.

51. In response, the Respondents relied on clause 4.7 of the AST, under the heading *"Use of the Property"* which read *"Where the Landlord's interest is derived from another lease ("the Headlease") then it is agreed that the Tenant will observe the restrictions in the Headlease applicable to the Property. A copy of the Headlease, if applicable, is attached."*

52. Ms Rogers confirmed to the Tribunal that she had been provided with a copy of the Head Lease simultaneously with the AST.

53. The Respondent further relied on the "*Special conditions"* of the First Schedule which stated *"A copy of the head lease has been provided to the tenant to which the contents have been pre-agreed by both landlord and tenant prior to this agreement being drafted …".*

54. It is the Respondent's position that, in signing the AST, Ms Rogers and the other named occupiers, agreed to be bound by the terms of the head lease. Ms Boselli explained to the Tribunal that she took her responsibilities as a landlord seriously, evidenced by the safety certificates and legal documentation in place for the letting, and that she engaged the services of a local professional letting agency to prepare a *"watertight"* tenancy agreement.

55. Mrs Boselli explained to the Tribunal that she had not provided a copy of the AST when so requested by the Applicant as the relationship between them had broken down to such an extent that she did not trust what Mr Pearce would do with any information supplied. Furthermore, subject to paragraph 9.5 of Schedule 4 Ms Boselli considered that she was not obliged

to provide such information unless the underletting was for a period in excess of one year, which, the underletting to Ms Rogers was not.

The Tribunal's decision on Ground 1

56. The Tribunal determines that a breach of Paragraph 9.4(b) and Paragraph 9.4(c), both within Schedule 4 of the Respondents' Lease occurred between the period 25 September 2021 and 27 June 2022.

Reasons for the Tribunal's decision

57. The Tribunal must determine whether there has been a breach of the Tenant covenants contained within the headlease. It is not the Tribunal's position to determine how serious any such breach may be or whether it has been remedied by the undertenant vacating the property. The Tribunal has, therefore, adopted a literal and legalistic approach. Whilst the Tribunal believes that there has been substantial compliance with Schedule 4, paragraph 9.4 of the lease, a strict reading of that paragraph leads the Tribunal to find that it has actually been breached.

58. The Tribunal finds that the property was let, to Ms Rogers and her family, on an AST throughout the period 25 September 2021 – 27 June 2022. The Tribunal finds, in accordance with paragraph 9.5 of Schedule 4 of the Lease, that the Respondents were not obliged to provide the Applicant with a copy of the AST, being for a term less than one year.

59. The Tribunal finds that, contrary to paragraph 9.4(b) of Schedule 4 of the Respondent's lease, the terms of said AST did not contain covenants substantially the same as those contained in the Regulations in Schedule 5 to the lease.

60. A side-by-side comparison of the Tenant covenants contained within the Lease against the clauses of the AST show a number of inconsistencies and omitted provisions. By way of example, the Lease prohibits the parking of any vehicle on the external areas of the Retained Parts and yet the AST provides for parking within the allocated space provided for that purpose, albeit that the no such space is allocated.

61. The Respondents Lease contains both positive and restrictive covenants, so do the Regulations. However, clause 4.7 of the AST, upon which the Respondents rely, only obliges the undertenant to observe the restrictions in the headlease applicable to the property and does not, specifically, cover any positive covenants in the Lease.

62. The Tribunal considers clause 4.7 inadequate in regard to the twenty-five

Regulations contained in Schedule 5 of the Respondent's lease. The Tribunal considered carefully Counsel's suggestion that the Regulations could, easily, have been written, or copied and pasted, into the AST, or, as subsequently retracted, incorporated by reference. The Tribunal agrees that incorporation by reference to the Lease would have been a satisfactory option but concludes that clause 4.7 is inadequate for such purpose,

referring as it does, to restrictions only.

63. Furthermore, the Tribunal determines that, contrary to paragraph 9.4(c) of Schedule 4 of the Respondent's lease, the AST did not provide that the undertenant must not do anything that would or might cause the Tenant to be in breach of the Tenant Covenants.

64. Accordingly, the Tribunal accepts the evidence of the Applicant.

The alleged breach of the insurance regulations

65. Paragraph 6 of Schedule 5 of the Lease obliges the Tenant not to do anything which may cause any insurance of the building to become void or voidable or which may cause an increased premium to be payable in respect of it.

66. Paragraph 7 of Schedule 5 of the Lease obliges the Tenant to comply with the requirements and recommendations of the insurer relating to the property.

67. The Applicant contended that the Respondents subtenant, with the Respondent's knowledge and thereby implied consent, on multiple occasions failed to shut the communal door; opened and left unsecured the communal front door; and fixed open the communal front door.

68. The Applicant averred that, in failing to secure the communal entrance door, the Respondents failed to take reasonable precaution against loss, destruction or damage to the property as evidenced by the entry of an intruder and, at other times, the public, by theft as reported to the police, and, furthermore, an allegation that, on occasion, the use of the area as a public convenience.

69. The Applicant stated that, despite repeated requests to refrain from doing so, and the pointing out of risk of theft and intrusion, the Respondents subtenant continued with such actions.

70. In evidence, the Applicant relied on CCTV footage, taken from cameras located within the communal yard, on six occasions between 3 December 2021 and 23 February 2022, which purport to show Ms Rogers and Ms Jessie Rose Rogers opening and fixing open the communal entrance door by a variety of means including taping the door latch and placing a wheelie bin against the open door. A compilation, of approximately seven minutes in length, was played in the hearing.

71. The Applicant relies upon the wording of the email from the insurance broker, which they construe as a recommendation, that the entrance door be closed.

72. The Applicant further relies on condition 12 of the insurance policy which requires the Tenant to take all reasonable precautions to prevent loss, destruction or damage to the insured property, and reasonable precaution to prevent accident or injury to any person or loss, destruction or damage to their property.

73. The Applicant considers the repeated opening and fixing open of the communal door as evidenced in email communication, oral submissions, witness statements and CCTV footage to breach the requirement of condition 12 of the insurance policy to take all reasonable precautions.

74. In evidence the Applicant filed a schedule, detailing dates and periods of time, between 3 April 2022 and 25 May 2022, when the communal entrance door was unsecured by Ms Rogers and family. The schedule lists multiple dates when the door was opened for long periods, during which no visitors or deliveries arrived. By way of example, the first two entries record:

    (i) 3 April 2022: Door opened 10.14am / closed at 19.06pm
    No deliveries/ no visitors;

    (ii) 4 April 2022: Door opened 7.56am / closed at 16.59pm
    No deliveries/ no visitors.

75. Acknowledging the subject property to be a first floor flat with no pavement frontage, doorbell or intercom, the Applicant advised the Tribunal that, on multiple occasions, Mr Pearce offered the Respondents various options on how to remedy the impracticalities of the situation. His evidence was that all such suggestions were rebuffed.

76. It is common ground between the parties that, with the exception of the Royal Mail who hold a key to the communal door, no deliveries can be communicated to the occupiers of the subject property without access through the communal front door.

77. In her witness statement Ms Rogers refutes the suggestion that she, or her family, "fixed" open the communal door. In oral evidence Ms Rogers contended that the door was either open or closed, and that there is no such state as "fixed open". Ms Rogers referred to a cabin lock, which latches the door open when so required.

78. In the hearing, and in response to questions, Ms Rogers conceded that, on occasion, she left the door open whilst she "popped out", in addition to her initial reasoning of leaving the door open for urgent medical deliveries. However, she questioned the accuracy of Mr Pearce's schedule of dates and the alleged periods of time when the door was open to the pavement.

79. In response to questioning as to why the Respondents had not engaged in discussion with Mr Pearce over potential solutions such as an intercom installation, Mrs Boselli repeated her earlier assertion concerning the poor relationship and lack of trust between Mr Pearce and herself. She acknowledged that Mr Pearce had made such offers and that she had

chosen not to pursue them.

80. In summary, the Respondents defended the allegation firstly on the basis that, due to the lack of intercom, it was reasonable to leave the door unlocked when deliveries were due, and, secondly, that the insurance brokers had neither required nor recommended the door be closed as a condition of the insurance policy.

The Tribunal's decision on Ground 2 – alleged breach of the insurance regulations

81. The Tribunal determines that a breach of Paragraph 6 and Paragraph 7 of Schedule 5 of the Respondents' Lease occurred between the period 3 December 2021 and 27 June 2022.

Reasons for the Tribunal's decision

82. The Tribunal finds that, on multiple occasions between 3 December 2021 and until the subtenants vacated the property on 27 June 2022, the front communal door was left unsecured, either by simply leaving the door unlocked or latching open the door using the cabin-latch or other methods. The Tribunal finds these were deliberate acts, aimed at preventing others from easily closing the communal door and to ensure the entrance was left unsecured to the public pavement.

83. A contract of insurance is one of the utmost good faith, calling for full candour on the part of the insured. As such, the insured is duty bound to inform the insurance company both that the premises were deliberately left in a less than secure state and that whilst in that state a theft occurred.

84. Having done so, the insurance broker issued, by way of an email dated 22 February 2022 and 23 February 2022, recommendations concerning the security of the premises and referred the insured to the 'Reasonable Precaution' provision of Clause 12, found on page 39 of the policy document.

85. The Tribunal finds that that there was a deliberate failure on the part of Ms Rogers, and Miss Jessie Rose Rogers, to take all reasonable precautions to prevent loss, destruction or damage to the property insured and/or to prevent accident or injury to any person or loss, destruction or damage to their property.

86. The Tribunal, applying common sense and the experience of the Tribunal, considers that such failure on the part of Ms Rogers, and Miss Jessie Rose Rogers, may cause an increased premium to be payable.

87. The Tribunal notes that on renewal of the policy in August 2022 the premium payable had increased by a sum in the region of ten percent. No explanation for this increase was provided by the broker and the Tribunal note that, by such date, the subtenants had vacated the property.

88. The Tribunal was not provided with the full insurance policy and therefore

cannot say that the actions of Ms Rogers could have caused the policy to be void or voidable.

89. The Tribunal considered carefully the Respondent's defence that, without an intercom or doorbell parcel deliveries would be missed. The Tribunal concurs that this is highly likely. However, the Tribunal finds that the Applicant acknowledged this problem and, in an attempt to remedy the situation, made multiple attempts to reach a practical solution, for example proposing the installation of an intercom and doorbell, but that the

Respondents, by their own admission in oral evidence, rejected all such proposals. The Tribunal therefore finds that the Applicant could have done no more in this regard and it is therefore unreasonable for the Respondent to rely on such grounds as a defence to the allegation of breach.

90. Accordingly, the Tribunal finds that there is a clear breach of clause 12 of the insurance policy as the actions of Ms Rogers may cause an increased premium to be payable.

91. The fact that Ms Rogers' actions were in breach of the Respondents' lease does not necessarily mean that the Respondents were also in breach. The Respondent's did not physically open, or leave open, the entrance door; these were the actions of the subtenant. However, the Tribunal finds that the Respondents were aware of their tenant's actions and that they did not counsel against such actions, but rather they supported and defended the actions of Ms Rogers. Accordingly, the Tribunal finds that the Respondents were a party to the breach.

92. The Tribunal therefore finds that by breach of clause 12 of the insurance policy and by virtue of failure to adhere to a recommendation of the insurance broker, the Respondents are in breach of paragraphs 6 and 7 of Schedule 5 of the Respondents' lease.

Costs

93. The Respondents made an application under Section 20C of the Landlord and Tenant Act 1985 and Paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act that none of the costs of these proceedings be regarded as relevant costs to be taken into account in determining the amount of any service or administration charge payable by the Respondents.

94. Counsel for the Applicant referred the Tribunal to the previous, aforementioned, Tribunal determination in relation to costs and the subject property whereupon it was determined that costs, in that instance, were not recoverable in such manner.
(CHI/29UE/LSC/2021/0084 & CHI/29UE/LAC/2021/0008).

95. The Tribunal finds that the Applicant has made no actual demand for costs in this matter.

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 by email to rpsouthern@justice.gov.uk 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.