



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

<b>Case reference</b>	:	<b>LON/OOAW/LBC/2013/0068</b>
<b>Property</b>	:	<b>Flat 5, 18-20 Sloane Gardens London SW1W 8DL</b>
<b>Applicant</b>	:	<b>18-20 Sloane Gardens Ltd (“the company”)</b>
<b>Representative</b>	:	<b>Brecher, Solicitors</b>
<b>Respondent</b>	:	<b>Elizabeth Mew</b>
<b>Representative</b>	:	<b>Oliver Fisher, Solicitors</b>
<b>Type of application</b>	:	<b>For an order that a breach of a covenant or conditioned in the lease has occurred</b>
<b>Tribunal members</b>	:	<b>Angus Andrew Mr Neil Martindale FRICS</b>
<b>Date and venue of case management hearing</b>	:	<b>23 October 2013 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>15 November 2013</b>

---

**DECISION**

---

## **Decision**

1. Miss Mew has not been in breach of the covenants contained in clause 2(5) and 2(13) of her lease.
2. In both 2006 and 2010 Miss Mew was in breach of the covenant contained in clause 2(14) of her lease. Since January 2011 Miss Mew has not been in breach of that covenant.
3. Between August 2012 and July 2013 Miss Mew was in breach of the covenant contained in paragraph 3 of the fourth schedule to her lease. She is no longer in breach of that covenant.

## **The application and hearing**

4. The company” applied under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination that Miss Mew has been in breach of four covenants contained in her lease. The covenants are to be found in clauses 2(5), 2(13), 4(a) and also in clause 2(23) and paragraph 3 of the fourth schedule to her lease.
5. At the hearing of the application on 23 October 2013 the company was represented by Mr A Bastin, a barrister instructed by Brecher, solicitors. Miss Mew was represented by Mr M Dencer, a barrister instructed by Oliver Fisher, solicitors. Mr P John and Ms K Downham gave evidence on behalf of the company whilst Miss Mew gave evidence on her own behalf.

## **Statutory framework**

6. Section 168 of the Commonhold and Leasehold Reform Act 2002 states:-
  1. *A landlord under a long lease of a dwelling may not serve a notice under s.146 (1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless sub-section (2) is satisfied.*
  2. *This sub-section is satisfied if –*
    - (a) *it has been finally determined on an application under sub-section (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 sub-section (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 a Leasehold Valuation Tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*
5. *But a landlord may not make an application under sub-section (4) in respect of a matter which -*
  - (a) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
  - (b) *has been the subject of determination by a court, or*
  - (c) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

### **The background**

7. 18-20 Sloane Gardens is Victorian mansion block of 18 flats all of which have been sold on long leases. Miss Mew purchased her flat in 1979. It is a small studio flat and she lives there alone. The company owns the freehold reversion in the building and is under the control of five of the lessees none of whom appeared or gave evidence at the hearing. Thus despite its name it is not a true collective in that it is not under the control of all or a majority of the lessees.
8. Miss Mew suffers from a compulsive hoarding disorder. Not only does she find it difficult if not possible to discard items that are no longer of any use to her but it is apparent that she has a propensity to collect and hoard items that are no longer of any use to their original owners. Miss Mew has recently received psychological and weekly practical support from a National Health Service Mental Health Recovery Team. She has also received help and assistance from the Housing Health and Adult Social Care Unit of her local authority, the Royal Borough of Kensington and Chelsea.
9. Miss Mew's condition has resulted in her storing within her flat large quantities of second hand and largely obsolete material. It is not clear when Miss Mew first developed this disorder. However it came to light in 2006 when the company obtained forfeiture of Miss Mew's lease on the grounds of substantial unpaid service charges. 18-20 Sloane Gardens has since 2004 been managed by Tideway Investment Management Ltd on behalf of the company. In 2006 Mr Phillip John BSc Hons MIRCS of Tideway was responsible for managing the building and he gave evidence at the hearing. Having entered the flat in 2006 he found that it was "*crammed with rubbish and other items*". Miss Mew subsequently obtained relief against forfeiture but relief was granted subject to a

condition that she allow Tideway to remove the “*rubbish and other items*” from her flat. Mr John’s evidence, which in this respect was accepted by Miss Mew, was that the clearance took seven days and that “*approximately 8-10 tonnes of newspapers and other items were removed from the flat*”. It seems that the contents were weighed by the removal company and their charges were calculated by reference to the weight. In evidence Miss Mew confirmed that she had seen the clearance company’s invoice recording the weight of the material that was removed.

10. Miss Mew’s having retaken possession of her flat it is apparent that she once again started to hoard newspapers and other items in it. On 1 December 2010 the Royal Borough of Kensington & Chelsea served notice on Miss Mew under the both the Prevention of Damage by Pests Act 1949 and the Public Health Acts 1936 and 1961. The notices amongst other things required Miss Mew to “*remove and appropriately dispose of any articles or accumulation inside the property*” and stated that in default “*the Council may themselves carry out the requirements*”. A covering letter records that the author, Katrina Wallis, first visited Miss Mew’s flat on 1 November 2010 to investigate a complaint “*about rubbish accumulation*”. Following the service of these notices Kensington and Chelsea cleared the flat at their own cost either in December 2010 or January 2011.
11. In November 2010 day to day responsibility for the management of 18-20 Sloane Gardens was transferred from Mr John to Ms Katrina Downham who also gave evidence at the hearing. It is apparent that at that time Ms Downham was unaware of the public health notices served by the local authority and it seems that they only came to light when she was preparing her statement for these proceedings.
12. Having assumed responsibility for the day to day management of 18-20 Sloane Gardens Ms Downham first inspected the flat on 5 July 2012 following a water leak from the flat above. It was during that inspection that Ms Downham discovered that Miss Mew had again hoarded a substantial quantity of items in her flat. At that time Miss Mew was again in arrear with her service charges although we were told that those arrears have now been discharged. Nevertheless following Ms Downham’s inspection on 5 July 2012 the company’s solicitors were instructed and they entered into correspondence with both Miss Mew and the various agencies that were attempting to help her with her disorder. Clearly believing that Miss Mew had not made sufficient efforts to clear her flat and remedy the asserted breaches of covenants the company made its application to the tribunal on 28 August 2013 and directions were issued on 5 September 2013. The directions made no specific provision for an inspection and neither party requested us to inspect the flat. Given the large number of photographs in the hearing bundle including those taken within recent weeks an inspection would have served no useful purpose.

## **Reasons for our decision**

13. We accept Mr Bastin's submission that we must consider not only whether breaches exist at the date of the hearing but whether breaches have occurred at any time during the period under consideration which dates from Mr John's inspection of the flat in 2006 [see *Forest House Estates Ltd v Dakhil Allah* [2013] UKUT 479 (LC)]. We also remind ourselves that it is not our function to consider whether the company may have waived the right to forfeit Miss Mew's lease. However applying the Upper Tribunal's reasoning in *Swanston Grange (Luton) Management Ltd v Eileen Langley-Essen* (LRX/12/2007), to which we drew the parties attention, we can consider whether the company may have waived a covenant in the sense of being estopped from enforcing it at least until reasonable notice has been given to Miss Mew.

### **Clause 2(5)**

14. By Clause 2(5) the lessee covenants: *"from time to time and at all times during the term hereby granted well and substantially to repair cleanse maintain amend and keep the interior of the flat and the landlords fixtures and fittings therein including glass and window fittings (damage by fire excepted unless the Lessors insurance shall be vitiated by any act or default of the Lessee) and the interior of the window frames (except insofar as any want of repair or painting to such window frames is caused by the failure of the Lessor to repair and decorate the exterior of the building) and to keep the same in good and substantial repair and condition and clean the windows of the flat at least once a month during the said term and in particular to clean all balconies if any and when required to clean replace and keep in good order and condition all cisterns water pipes ballcocks gas pipes electric wires and tubes the water tank and central heating system serving the flat exclusively and immediately to replace all broken windows and before repairing such water pipes gas pipes or electric wires tubes water tank and central heating system to give notice to the Lessor stating the nature of the defect or the damage to be made good and in repairing the same to comply in all respects with the requirements of all local and statutory bodies having jurisdiction in the matter and to make good all damage caused in carrying out any such repairs"*.
15. Miss Mew agreed that she had never cleaned the outside of her windows but Mr Dencer on her behalf asserted that this was in any event the company's responsibility under the terms of her lease. Miss Mew asserted that she had cleaned the inside of the windows as required by clause 2(5) but that was disputed by Ms Downham who said that it would have been impossible for her to clean the inside of the windows both because of the quantity of material in the flat and also because of the height of the windows.
16. As far as the outside of the windows are concerned we agree with Mr Dencer's interpretation of the lease. The lessor's obligations are set out in

clause 4 of the lease and at 4(1)(a) it covenants to: “*maintain repair redecorate renew amend clean and repair paint grain varnish colour as appropriate ... the structure roof and exterior of the Building*”.

17. It is apparent from the two repairing obligations that the draughtsman intended that the lessor should be responsible for cleaning the exterior of the building whilst the lessees should be responsible for cleaning the interior of their flats. We were told that 18-20 Sloane Gardens is a six storey building. It would be extremely difficult for those on the top floors to clean the exterior of their windows and it seems unlikely that the parties to the lease would have intended that they should do so.
18. We accept Mr Bastin’s point that the “*glass in the windows*” is by implication included in the demise and that in consequence the lessee would be responsible for replacing any broken panes. However in contrast to cleaning, responsibility for replacing broken panes must rest on the shoulders of one party alone. The logic of Mr Bastin’s argument is that if the window glass were excluded from the demise the lessor would be obliged to enter the lessee’s flats and clean the interior of the windows and such a conclusion defies common sense.
19. As far as the interior cleaning is concerned Miss Mew’s evidence conflicted with that of Ms Downham. Although we accept that in respect of the window cleaning Miss Mews did shift her position under cross examination nevertheless we prefer her evidence for each of two reasons. Firstly, because she lives in the flat and is in a position to say whether or not she has cleaned the inside of the windows. In contrast Ms Downham’s assertion that she could not have cleaned the windows was speculation. Miss Mews could indeed have moved the various items in the flat to allow access to the windows and there is no reason to suppose that she could not have reached upper panes by using a “squeezy” mop of the type shown in one of the photographs. Secondly because Ms Downham did not suggest in her evidence that the windows were dirty or in need of cleaning despite the monthly inspections of 18-20 Sloane Gardens that she said were undertaken by Tideway.
20. Had we come to the conclusion that Miss Mew was responsible for cleaning both sides of the window panes and that she had failed to fulfil that obligation we would nevertheless have concluded that the covenant to clean the windows had been waived by the company. As pointed out above Tideway have inspected 18-20 Sloane Gardens on a monthly basis during the last 7 years. Miss Mews has lived in her flat for the last 34 years. During that time neither the company nor any predecessor in title has ever complained about the cleanliness of the windows. In answer to our questions Mr Bastin accepted that the company was asserting a breach of both this covenant and also that contained in paragraph 3 of the fourth schedule because the lease did not contain covenants dealing specifically with floor loading and fire risk that would be found in more modern leases and which were at the heart of this dispute. Consequently and for each of the above reasons we consider that the company has waived any obligation

on Miss Mews to clean the windows at least until reasonable notice is given to her.

### **Clause 2(13)**

21. By clause 2(3) the lessee covenants: *“Not to light or floodlight or permit to be lit or floodlit the elevation of the flat or of the Building or any part thereof and not to set up on any part of the flat or of the Building any steam gas oil electric hot air or other engine or any forge or furnace except such as may be required for purely private domestic purposes and not at any time during the said term to store or permit to be stored in any part of the flat or of the Building any petrol or other inflammable liquid or material other than shall be expressly permitted by the Insurance Company with which the building shall from time to time be insured and in all respects to comply with the rules and regulations of such Insurance Company with regard to the method of storing petrol or other inflammable liquid or material and to pay any additional sum required by the Insurance Company in respect of any extra risks involved”*.
22. There was a dispute between the parties as to whether the material stored in the flat were *“inflammable ... material”* within the meaning of the clause.
23. Mr Bastin relied on a definition of the word *“inflammable”* taken from an internet edition of *“Oxford Dictionaries”*. It is there defined as *“a substance which is easily set on fire”*. As Mr Bastin pointed out much of the material hoarded by Miss Mew, such as newspapers and carrier bags, is easily set on fire. Thus he concluded that Miss Mew must be in breach of this covenant. The difficulty with Mr Bastin’s approach is that it would put every lessee in breach of the covenant. A well stocked library or a collection of oil paintings would be equally inflammable. The parties to the lease cannot have intended that the storing of all inflammable materials should be prohibited.
24. The word *“inflammable”* has to be read both in the context of the phrase *“petrol or other inflammable liquid or material”* and the clause as a whole. The clause is clearly intended to prevent the lessee from maintaining any potentially dangerous appliance in the flat and from storing any fuel for such appliances. It is not intended to prevent the lessee from keeping other material within the flat that falls within the dictionary definition of *“inflammable”*.
25. Consequently and for each of the above reasons we conclude that Miss Mews has not been in breach of this covenant at any time.

### **Clause 2(14)**

26. By clause 4(a) the lessee covenants: *“not to do or permit to be done on the demised premises or any part thereof any act or thing that may be or become a nuisance or annoyance to the Lessor or to the superior Lessor”*

*or their respective tenants or to the owners or occupiers of any adjoining or neighbouring premises”.*

27. The company asserted the material stored in the flat was “*a nuisance or annoyance*” to itself and the other occupiers of 18-20 Sloane Gardens for two reasons. Firstly because the weight of the material undermined the structural integrity of 18-20 Sloane Gardens with the result that the floor of the flat might collapse. Secondly because the material constituted a fire risks that might void the company’s insurance policy and entitle Royal Sun Alliance to reject any claim.
28. Mr Dencer on behalf of Miss Mew argued that the material could not itself amount to “*a nuisance or annoyance*” because the floor showed no sign of collapsing and there had been no fire: in any event the covenant was intended to control the lessee’s behaviour and not the contents of the flat. In the event that that submission failed he said that the company had produced no cogent evidence to support its assertion that the material either threatened the integrity of the building or constituted a fire risk.
29. We do not accept Mr Dencer’s primary argument that the material in the flat could not amount to “*a nuisance or annoyance*” until such time as either the floor collapsed or the flat was engulfed in flames. The words “*or become*” encompass a situation that might at some future date result in a collapse or fire. Although we accept Mr Dencer’s point that the covenant relates to the lessee’s behaviour it is not a point that assists Miss Mew. It is her behaviour that has resulted in the accumulation of material within the flat.
30. The issue is essentially whether the material stored in the flat has during the relevant period either threatened the structural integrity of 18-20 Sloane Gardens or constituted an unacceptable fire risk that might void the company’s insurance policy.
31. It is common ground that in 2006 the material stored in the flat weighed between 8-10 tonnes. Mr John’s evidence as an experienced surveyor was that a flat in a building of this age and type would have a maximum safe floor loading of about 4.5 tonnes. Mr John is not a structural engineer but his evidence was persuasive and there was none to set against it. On that basis we accept that the weight of the material stored in the flat in 2006 constituted a “*nuisance or annoyance*” such that Miss Mew was at that time in breach of this covenant.
32. Moving forward to 2011 neither Mr John nor Ms Downham could give any evidence as to the quantity or type of material stored in the flat. Nevertheless the local authority following a complaint had served two statutory notices on Miss Mew. On the basis of her evidence the local authority had inspected the whole of 18-20 Sloane Gardens following a complaint of rodent infestation. She said that she was not responsible for that infestation and it was not suggested that she had been responsible. Miss Mew also said that the notices had been served primarily to enable local authority to clear her flat at public expense. That may well be right



but it nevertheless remains the case that the local authority considered the position so serious that it justified the service of two statutory notices. Generally local authorities do not serve statutory notices lightly and without good reason. Consequentially we conclude that in late 2010 when the local authority inspected the flat Miss Mew was in breach of this covenant.

33. Finally we consider the current complaint. Although responsibility for the management of 18-20 Sloane Gardens had passed to Ms Downhan, Mr John again inspected the flat in January 2013 and concluded that the floors were overloaded because the flat *"was in a similar condition to when we entered in October 2006"*. Thus he concluded that the weight of the material in the flat must be in the region of 8-10 tonnes.
34. Miss Mew in contrast said that not only was less material stored in the flat than in 2006 but that it was less dense and thus less heavy. This was because in 2006 the material largely consisted of large piles of newspapers that she had hoarded whereas the material now stored was significantly looser and lighter.
35. We again prefer the evidence of Miss Mew for each of three reasons. Firstly because Mr John's evidence that the flat *"was full of newspaper and magazines"* was contradicted by the numerous photographs that showed only a modest quantity of such items. Secondly because Miss Mew has since 2010 received the psychological and practical help to which we have referred. We accept her evidence, which was not seriously disputed, that when she leaves her flat to go to the recycling centre she is accompanied by a helper who ensures that she does not retrieve large quantities of newspapers as she did in the past. Her evidence that the only newspapers now stored in the flat are those that she buys and a Daily Mail contributed by one of her neighbours is consistent with the photographic evidence. Thirdly because the floor area of the flat is 30 square meters and on inspecting the photographs in the hearing bundle we are not persuaded that the materials stored in it would weigh anything like the 8-10 tonnes suggested by Mr John. Much of the material consists of empty bottles and empty packaging and assorted fabrics. On the basis of the photographic evidence the material stored in the flat would in all probability weigh no more than a suite of heavy Victorian furniture or a reasonably stocked library either or both of which are often to be found in similar residential accommodation.
36. Turning to fire risk the company relied in large measure on a letter of 7 October 2013 from its brokers. That letter in turn rested on a description of the flat provided by Mr John. The author of the letter who appears to have no qualification and has not inspected the flat opines that *"the accumulation of rubbish undoubtedly constitutes a fire risk and breaches the reasonable precautions condition"* of the policy. Although the author states that he is *"duty bound"* to inform the insurance company it appears that neither he nor the company has done so.

37. We refer to our observations contained in the previous section of this decision which we do not propose to repeat. If someone took a match to the material in the flat it would no doubt catch fire but as observed previously that observation is equally applicable to materials stored by most if not all occupants. Any well ordered person looking at the photographs in the hearing bundle would be shocked by Miss Mew's way of life. Nevertheless she should not be penalised simply for her chaotic and idiosyncratic life style.
38. In the absence of more cogent evidence that the material now in the flat either threatens the structural integrity of the building or constitutes a fire risk that might void the company's policy we conclude that this aspect of the case has simply not been made out.
39. Mr Bastin clearly appreciated that in respect of the current complaint he was in some evidential difficulty because at the conclusion of the hearing he asked us to consider an adjournment if we were against him so that he might call further evidence. We have considered his request and reject it. Miss Mew is a vulnerable single person who finds herself against a well resourced opponent. It is apparent that she is distressed by the threat of forfeiture that hangs over her head. The company has had every opportunity to prepare and put its case to this tribunal. To grant an adjournment would not only result in inevitable delay and additional cost but it would be neither fair nor just: in short it would not be consistent with the overriding objective.

### **Paragraph 3 of the fourth schedule**

40. By clause 2(23) and paragraph 3 of the fourth schedule the lessee covenants that: *"No rags dirt rubbish refuse or other substance shall be inserted into or placed or left in the sinks baths lavatories cisterns or any pipe in the flat nor shall any obstructions or break be caused therein in any other manner whatsoever"*.
41. It was common ground that until a relatively recently Miss Mew had stored a large number of items in the bath. Ms Bastin argued that Miss Mew was clearly in breach of her obligation not to insert, place or leave *"any rubbish .... or other substances in the .... bath"*. Mr Dencer argued that the paragraph was intended to prevent the lessee from obstructing the pipes within the building to avoid the possibility of any flooding and that there was no evidence that the pipes had been obstructed by the items placed in the bath by Miss Mew.
42. The photographs taken in August 2012 and January 2013 show the bath crammed full with a large number of assorted items. Even if we accept Mr Dencer's interpretation of the clause it is apparent that the number of items stored in the bath was such that one or more of them could ultimately have obstructed the outlet pipes and could in certain conditions have resulted in flooding that would have adversely affected the flat below. Consequently we conclude that during that period Miss Mew was in breach of this covenant. She has nevertheless recently cleared the bath as was

evidenced by the most recent photographs in the hearing bundles. It may well be that the bath was cleared specifically with this hearing in mind but nevertheless it has been cleared and the evidence before us was that at the date of the hearing there was no continuing breach of the covenant.

**Name:** Angus Andrew

**Date:** 15 November 2013