



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

**Case Reference** : **LON/00AG/LBC/2016/0022**

**Property** : **50 Sprules Road, London SE4 2NN**

**Applicant** : **Mr Kai Fabiunke**

**Representative** : **In person**

**Respondent** : **Mrs Agatha Manu**

**Representative** : **Mr K Oppong- Manu  
Mr A Darko**

**Type of Application** : **Application for a determination  
UNDER Section 168 (4) of THE  
COMMONHOLD AND LEASEHOLD  
REFORM ACT 2002  
in respect of whether the  
Respondent has breached a  
covenant in the lease**

**Tribunal** : **Judge Daley  
Ms S Coughlin MCIEH**

**Date of Hearing** : **10 June 2016 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **21 July 2016**

---

**DECISION**

---

## Decisions of the Tribunal

- (1) The tribunal makes the determinations as set out in paragraphs 19-22, in relation to the obligation to insure the premises and produce a copy of the certificate 40-43 in relation to the obligation to keep the property in good repair and to allow access for the purpose of carrying out an inspection, and 52 to 55 in relation to the obligation to use the flat as a single dwelling and not to sub-let the premises and 60 to 61 of the Decision in relation to the obligation to pay ground rent and service charges.

## The application

- a. On 10 April 2016 the Applicant, made an Application for an order that a breach of covenant or condition in lease had occurred pursuant to Section 168(4) of the Commonhold and Leasehold Valuation Act 2002.
- b. The background to this matter was set out in the grounds of the Application which stated-: *“The Respondent has failed to pay ground rent for 4 years. To provide notice of insurance cover for her flat. To keep her flat and water services in good repair and condition causing recurring damage to our property, stress and disturbance. To rectify the causes and to compensate for the damages caused. To allow entry to her flat for a notified inspection...to use the premises as a single private dwelling...to pay her contribution of half of all cost for repairs and decorations... remove upon request the religious display posters from her external doors and windows...The respondent is in breach of a number of covenants of her leases, causing damage stress and disturbance and putting the safety of people and property at risk...”*
- c. The actions were alleged to have been carried out by the Respondent, Mrs Agartha Manu, who did not accept that a breach of covenant had taken place.
- (2) Directions were given on 13 April 2016. The directions were settled on the papers without a case management conference.
- (3) The directions stated at paragraph 4, that -: *“...The tribunal will reach its decision on the basis of the evidence produced to it. The burden of proof rests with the applicant. The Tribunal will need to be satisfied: (a)*

*that the lease includes the covenants relied on by the applicant; and (b) that, if proved, the alleged facts constitute a breach of those covenants.”*

- (4) The Directions also provided that the Applicant should send the Tribunal, and the Respondent copies of the hearing bundle by 25 May 2016, and thereafter that the matter be set down for hearing on 10 June 2016.
- (5) At paragraph 2 of the directions the Tribunal provided that copies of these directions together with the application should be sent to the mortgagees of the leasehold interest.

### **The Background**

- (6) The Premises are a 2 bedroom flat situated in a two storey converted Victorian end of terrace house, comprising a ground floor and first floor flat. The Respondent resides in the first floor flat. The ground floor flat is occupied by the applicant landlord.
- (7) The Respondents hold a long lease of the flat, which requires the landlord to provide services and the Respondent leaseholders to observe specific covenants under the terms of the lease. The specific provisions of the lease will be referred to below, where appropriate.

### **The Hearing**

- (8) At the hearing the applicant attended in person and represented himself, also in attendance with him was his wife and a neighbour (Mr Annan). The Respondent was also in attendance and was supported by two friends Mr K Oppong- Manu (former partner) and Mr A Darko who took it in turn to advocate on Mrs Manu's behalf. It was also stated that Mrs Manu's spoke English as an additional language and also had literacy needs.
- (9) Also in attendance were two representatives of Walter Murray Solicitors who were instructed on behalf of the Mortgagee, who were in attendance as observers. The Tribunal informed the parties that they would consider each of the breaches in turn and would hear all of the evidence both from the Applicant and Respondent on each alleged breach.
- (10) At the hearing the following additional documents were provided:-

- (i) A copy of the Home insurance schedule provided by the Respondent.

(11) At the hearing, the Tribunal stated that of the grounds in the Application the Tribunal had no jurisdiction to deal with the failure to pay ground rent in breach of clause 2(1) and 1(8) of the Lease. Mr Fabiunke stated that a declaration was sought on breaches of clause 2(4) and clauses 1(A) and (B) on the Deed of variation and clause 2(10) of the lease.

*To keep the premises insured and to allow the landlord to inspect a copy of the insurance clause 2 (4)*

(12) The Applicant had helpfully prepared a schedule of the alleged breaches of the lease. Mr Fabiunke stated that clause 2(4) of the lease stated:- *“ At all times during the said term at his own expense to insure and keep insured from loss or damage by fire aircraft storm and tempest and any other risks normally covered by a house owner comprehensive policy the premises hereby demised... to the full value thereof with the Phoenix Assurance Company Limited through the agency of the Landlord or some other insurance office of repute nominated by the Landlord in the joint names of the Landlord and the Tenant in conjunction with the name or names of the Landlord and the Tenant in conjunction with the name or names of any other person or persons legally or beneficially interested in the demises premises AND at all times upon the request of the landlord or its Surveyor or agent for the time being to show forth to it or them the Policy of such insurance and the receipt for the premium for the current or ensuing year...”*

(13) The Applicant informed the Tribunal that he had purchased the freehold of the premises in 2011, He had written to the Respondent on 20<sup>th</sup> May 2012 asking for a copy of the Notice of Cover, In the letter he stated -: *“...Please note the notice and contents must be in the prescribed form set out in Statutory Instruments SI 2004/3097 and 2005/177. Please note you are required to serve a Notice of Cover within 14 days of any request by the landlord...”*

(14) Mr Fabiunke stated that there had been no response to this letter or indeed any of his follow up requests.

(15) In her written statement Mrs Manu stated that – *“... with regard to the allegations of failing to pay ground rent, service charges and to provide notice of insurance cover to the landlord, I was not aware that I had to do those things. This is because when I bought the property, the lawyer who acted for me never explained to me what my responsibilities were and because I cannot read, I did not know what was required of me. 3. I have now... instructed a lawyer who have {sic} advised me of what my responsibilities are with regard to the lease and I am going to comply with the lease covenants...”*

(16) At the hearing Mrs Manu provided a copy of the Home Insurance Schedule from Nat West Bank, which was dated 3 June 2016, she

accepted that she did not have copies of previous policies for the preceding years at the hearing.

(17) Mr Fabiunke was asked by the Tribunal whether he was satisfied that clause 2(4) had now been complied with. He stated that he did not accept that the insurance complied with the terms of the lease. He referred to his email to Walker Morris Solicitors ( for the Mortgagees) in which he stated that the insurance cover was invalid because it was not in the prescribed form in line with The Leasehold Housing ( Notice of Insurance Cover) (England) Regulations 2004 as it did not include relevant information . Regulation 3 provided that details of the address, registered office, the policy number and the frequency with which premiums are payable and the amount of any excess. The applicant also stated that details stated in the policy were incorrect.

(18) Mrs Manu through her representative did not admit that she had not previously insured the property although it was stated on her behalf that she had not insured every year. However it was stated that in addition to the policy presented at the hearing there were some other insurance policies.

### **The decision of the Tribunal on the breach of clause 2(4) of the lease**

(19) The Tribunal having heard the evidence and having looked at the insurance cover provided by Nat West are satisfied on a balance of probabilities that the Respondent is in breach of clause 2 (4) of the lease as at the date of the hearing. Clause 2(4) of the lease required the Respondent to arrange insurance in the names of both the landlord and herself as tenant. It also required her to produce copies on request from the landlord. Despite requests in 2012, and a request from the landlord's solicitors in September 2014, the Respondent did not provide a copy of the insurance policy, until June 2016, after this application was made.

(20) It is also clear having looked at the policy that there are inaccuracies which may have the effect of rendering the policy void. The policy states that there is an intruder alarm at the premise. The Applicant, Mr Fabiunke, gave evidence that there was no alarm at the premises. This evidence was not contradicted by Mrs Manu.

(21) Mrs Manu, in her statement, also admitted that she was unaware of the obligation to insure the premises, although she now accepts that this is her responsibility under the terms of the lease. Notwithstanding this, the Respondent has not provided insurance cover in the terms required under the lease in that it is not in the joint names of the parties. Even if the insurance complied with the terms of the lease, the Respondent would nevertheless have been in breach of the terms as she did not produce evidence of this prior to proceedings being issued.

(22) **Accordingly the Tribunal finds that the Respondent is in breach of clause 2(4) of the lease**

***To keep the premises in good repair clause 1(A) and B and clause 2 (10 ) of the lease***

(23) In his witness statement Mr Fabiunke sets out that he experienced three incidents of water leaking from Mrs Manu's premises between 2007 and 2009. The Applicant stated that water leaking had occurred on at least 9 occasions in breach of clause 1 (A) and (B) of the Deed of Variation dated 29 September 1988. Which stated-:(A) *"To keep the interior of the demised premises and every part thereof and the supports thereof in good and substantial repair and condition and properly decorated throughout the term hereby granted..."* B. *To keep in repair and replace where necessary all cisterns pipes ducts, radiators and other things installed for the purpose of supplying water... for the purpose of draining away water and soil or for allowing the escape of steam or other deleterious matter..."*

(24) Mr Fabiunke stated that on the first occasions he spoke with Mrs Manu, thereafter he wrote to Mrs Manu informing her of the water leaking into his property. He stated that thereafter he had written to the Respondent and had asked to inspect her premises in accordance with the terms of the lease.

(25) The Tribunal was referred to a letter dated 4 April 2016 which was written following an incident the previous day when water leaked into his premises, Mr Fabiunke stated-: *"Yesterday, 3 April 2016 at 2.30pm water started running down again from all four walls of our dining room and our acoustic dining room ceiling. I called on your flat door and after 10 to 15 minutes your tenant, Mr Oliver Curtis opened. He went into bathroom and found the shower head sitting on the rim of the tub with the water left on running... Mr Curtis then came into our flat to witness the water running down on the walls and the shelves..."*

(26) In the letter the Applicant referred to a further incident later on the same day where water again leaked into his premises. In the letter he stated that although he knocked and could hear the respondent talking to her tenant she did not answer the door. Mr Fabiunke had enclosed photographs of the water damage which he had also enclosed in the bundle.

(27) In answer to the Tribunal's questions about the previous occasions on which water leaks had occurred the Tribunal were informed that the first occasion was in 2006 when the kitchen drainage pipe caused damage as a result of not being properly connected, subsequently leaks had been caused by a new shower being fitted where the workman had not turned off the stop cock. The main water tap at street level had been broken and it had been necessary to call Thames Water. Mr Fabiunke stated that he

had on one occasion had his builder carry out a temporary repair. This may have been to the incorrectly fitted drainage pipe; also one of the leaks was caused by a leak to the boiler when one of the pipes was in need of renewal.

(28) In her statement in reply the respondent stated that she denied that she had failed to keep her flat in good repair and stated that the water services have always been in good condition. Through her representative she stated that had a leak under her bath which had been fixed by a member of her church who had plumbing experience. She also accepted that there had been an incident in April 2014, where a tap repair in her bathroom resulted in water leaking because the external water tap had not been turned off while the repair was carried out. Although she did not express this in exact words, her case appeared to be that separate incidents had led to water leaks rather than as alleged, a failure to abide by the terms of clause 1 (A) and (B) of the lease ( deed of variation).

(29) Clause 2(10) of the lease provided that the respondent must on notice, allow access for the purpose of enabling the landlord and his workmen to inspect the condition of the premises. Mr Fabiunke alleged that despite sending letters on the 8.06.2014, 25.06.2014 and 2 August 2014, when Mr Fabiunke arranged for a surveyor to attend Mrs Manu refused or ignored his request for access in breach of clause 2(10) of the lease.

(30) The first two letters were informal and suggested that Mrs Manu could meet with the Applicant to discuss issues and the water leaking. The letter dated 2 August 2014 was notice of the landlord proposing to inspect the property on 15 August 2014

(31) The Applicant stated that he had written a reminder letter to the Respondent dated 11 August 2014, which was also pinned to the Respondent's flat door. The letter stated -: *"... I would like to remind you that I will be carrying out a landlord inspection together with a specialist Engineer to check state and condition of your premises in order to identify defects...The inspection should take approx. 30 minutes..."*

(32) In the written witness statement of Lee Heward, a Certified Plumbing and Heating Engineer, he stated that at 9.00am he met with Mr Fabiunke and despite repeated knocking on the Respondent's door the flat door was not opened by the time he left the premises at 9.30am.

(33) In answer to a question from the Tribunal, Mr Fabiunke stated that had Mrs Manu contacted him and stated that the time of 9.00am was not convenient then he would have rearranged the inspection time to one of her convenience.

(34) In reply, Mrs Manu provided various explanations, for her failure to provide access to the premises. She stated that as a result of an incident which occurred when she tried to fit a letter box at the premises, which resulted in an altercation between herself and the Applicant, she was in fear of the Applicant. Mrs Manu stated that she had been threatened by the Applicant and this had been reported to the police. She stated that as a result of Mr Fabiunke's behaviour, on that occasion, she was in fear of the Applicant and as a result was unwilling to have him in her premises. She also stated that she had taken her child to school and the time of 9.00am was not convenient.

(35) In paragraph 6 of her witness statement the respondent also stated- *"... With regard to the allegation that I refused to open the door for him to come and inspect the property firstly I did not know that I am supposed to allow him to the property and secondly, I fear what he can do to me. I would not allow him in my flat as I am in fear of him. He has a temper. I am a single mother and I fear that his temper may flare up and he kills me like he threatened..."*

(36) It was stated by Mrs Manu's representative on her behalf that she could not read, and as a result was unaware of the notice of inspection.

(37) The Tribunal noted that the notice was pinned to Mrs Manu's door. In response to a question as to whether she had asked someone to read the contents to her Mrs Manu stated that she had not.

(38) The Applicant denied the allegations, concerning threatening behaviour towards the Respondent.

(39) In answer to the question of whether the Respondent was prepared to give access to her premises for an inspection, Mrs Manu accepted (albeit reluctantly) that she would abide by the terms of the lease.

### **The decision of the Tribunal on breach of clause 1(A) and (B) of the deed of variation and breach of clause 2(10) of the lease**

(40) The Tribunal noted that there had been many leaks at the premises, over the years. Although the Applicant could not know the reason for all of the leaks, in his evidence he informed the Tribunal that leaks were caused by a defect in the waste water pipe to the kitchen which was remedied by his workman, and a repair which was carried out incorrectly when the stopcock for the street was broken. There has also been a more recent incident in which a shower appeared to have been left running. From the evidence presented to the Tribunal, there is some



suggestion that rather than the leaking being caused by disrepair, there were at least two incidents in which it was caused by actions or omissions which might be characterised as negligence ( in the legal meaning of the word) on the behalf of the Respondent.

(41) The Applicant has not alleged that the Respondent has been guilty of causing a nuisance or annoyance in breach of the terms of the lease (?) accordingly the Tribunal in order to find a breach of clause 1(A) A and B of the deed of variation must be satisfied that the water leakage that occurred was because of want of repair. From the evidence before us, it would seem that the repair carried out by Mr Fabiunke's workman was effective. Accordingly we find that on a balance of probabilities the Tribunal cannot be satisfied that the leaking was caused by either a failure *To keep the interior of the demised premises and every part thereof and the supports thereof in good and substantial repair and condition (A) or To keep in repair and replace where necessary all cisterns pipes ducts, radiators and other things installed for the purpose of supplying water (B).*

**(42) Accordingly the Tribunal are not satisfied that there has been a breach of the lease.**

(43) In respect of the failure to allow inspection of the premises, the Tribunal noted that Mr Fabiunke had given sufficient notice, and had taken steps to remind the Respondent of the date and time of the inspection. The Tribunal makes no finding on the reason why Mrs Manu failed to provide access. The Tribunal however noted that she accepts that there were others living with her, whom she could have asked to read the letter or who may have been willing and able to accompany her in the flat whilst an inspection was taking place. However no arrangement was made to facilitate the inspection, neither did the Respondent ask for the inspection to be rearranged to a mutually convenient time. Although the Respondent now accepts her obligation to provide access, no access has been provided prior to this hearing. **Accordingly the Tribunal finds that the respondent failed to provide access in breach of the terms of the lease.**

**the obligation not to sub-let contrary to paragraph 2(13)**

(44) The Applicant alleged that the Respondent was in breach of clause 2(13) of the lease which states:- *"(13) To use and occupy the demised premises throughout the tenancy as a single private dwelling and garden and for no other purpose whatsoever and to keep the garden in a proper state of maintenance and upkeep."*

(45) In his statement and at the hearing the Applicant stated that Mrs Manu consistently rents out all her rooms to lodgers through an agency. In his statement he stated:- *"... For long periods there have been up to 5 lodgers living in the small first floor flat in addition to Mrs Manu and her son*

*overcrowding the flat. There are currently 6 occupants living in the first floor flat including a young couple with a baby in a single room...*

- (46) Mr Fabiunke stated that he had a list of names that he had gathered as a result of talking to occupants and also seeing names on letters of past and present occupiers of the flats. He had a list of 17 names of people whom he stated had occupied the flat, and a list of 9 names who were mail recipients at the premises.
- (47) Mr Fabiunke was asked by the Tribunal how he had come by this information. He stated that he and his wife occupied the premises and had come across sub tenants in the common parts and they had either introduced themselves to him as Mrs Manu's tenants or he had asked them their names and had established that they were living at the premises. He and his wife had asked them their names. He had also photocopied letters that had come to the premises of people whom to his knowledge did not occupy the premises.
- (48) The Applicant stated that Respondent sublet the flat in order to make a living. He stated that the premises were a really small 2 bed flat, with just one escape route. He was concerned about the overall health and safety of himself and his wife and the occupiers of the premises.
- (49) In her reply, the Respondent stated at paragraph 4-: *"...I can confirm that my niece and her husband and their daughter are living with me for the time being as they had been homeless and were waiting to be rehoused by the council. They are not tenants. With regard to the other occupant, he has referred to me by a friend who wanted me to help with accommodation pending him being able to secure employment and his own place to live as he was new in the country..."* She also stated she was unwilling to live alone because of fear of the Applicant.
- (50) She stated that she was unaware of the names of the recipients of all of the mail although in relation to one of the recipients of mail, she accepted that they had stayed at the premises at one time. She also stated that she had allowed her sister to have her mail delivered at the premises when she was having difficulties with her having her mail delivered.
- (51) Mrs Manu did not accept that all of the names gathered by Mr Fabiunke were, or had been occupants at the property, although she accepted that Mr and Mrs Curtis and their one year old daughter and Mr Yamb were currently occupying the premises.

### **The decision of the Tribunal on breach of clause 2 (13) of the lease**

- (52) The Tribunal noted that the flat was currently occupied by Mrs Manu and at least a couple and their baby and one other person who was not related to Mrs Manu. The Tribunal also heard evidence from Mr Fabiunke

which was compelling and consistent and which was also supported by copies of the envelopes from building societies and other utility providers such as EDF Energy and Thames Water and the HMRC who had all sent letters to different people at the address. The Tribunal considers that there was consistent evidence that a number of different people had occupied the premises, and that this was consistent with subletting of the premises over a considerable period.

(53) Whilst the Tribunal accepts that it is possible for people other than Mrs Manu to reside at the property, unless they were living as part of Mrs Manu's family, such occupation is not permitted in accordance with the terms of the lease.

(54) The Tribunal prefers the evidence of Mr Fabiunke on this point and notes that Mr Yamb is not related to the Respondent and as such the premises is not occupied as a single private dwelling.

**(55) Accordingly the Tribunal finds that the Respondent is in breach of clause 2(13) of the lease.**

**(56) The display of posters contrary to clause 2 (16)**

(57) The Applicant also alleged that the Respondent displayed posters in her front and rear windows and on her entrance door in breach of clause 2(16) of the lease.

(58) Clause 2 (16) stated:- "*...Not to exhibit or suffer to be exhibited on at or from the exterior of the demised premises or in the interior thereof so as to be visible from the outside any signboard advertisement or placard...*"

(59) Mr Fabiunke had taken photographs of religious/Christian posters displayed by Mrs Manu. It was Mr Fabiunke's case that the religious posters displayed by the Respondent had the potential to cause a negative reaction from others.

(60) The Tribunal however noted that the wording of the lease was such that it appeared to the Tribunal that the mischief it was designed to protect against was in relation to bill boards and hoardings such as advertisements for properties for letting or other businesses. Mr Fabiunke stated that he was prepared to accept that this was the case and accordingly would not pursue clause 2 (16) as grounds for a breach of the lease.

**(61) Accordingly the Tribunal finds that there is no breach of clause 2(16) of the lease.**

(62) The Tribunal of its own accord noted that the allegations in relation to a breach of the obligation to pay ground rent were outside the jurisdiction of

the Tribunal. In relation to the Respondent's alleged failure to contribute to the service charges, there had been no determination under clause 27(A) of the reasonableness of the service charges.

**Accordingly the Tribunal finds that the respondent is in breach of clauses 2(4) clauses 2(10) and clause 2(13) of the lease.**

**The Tribunal finds that the Respondent is not in breach of clauses 2(16) or clauses 1(A) and 1(B) of the deed of variation. The Tribunal makes no finding in relation to clauses 2(1) and 1(8) of the lease. Clauses 2(16) and Clauses 2(B) of the Deed of Variation**

**Name:**

Ms M W Daley

**Date: 21 July 2016**

---

### **Appendix of relevant legislation**

A summary of the legislation is set out below

#### **The Law**

#### **Appendix**

*Section 168 (2) of Commonhold and Leasehold Reform Act 2002*

*(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 covenant or condition in the lease has occurred.*

*(5) But a landlord may not make an application under (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*