HM COURTS & TRIBUNALS SEVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Section 168(4) of the Commonhold and Leasehold Reform Act 2002

Case No.	**CHI/29UN/LBC/2011/0036**
Property:	**Flat 6** **2-8 Athelstan Road** **Margate** **Kent** **CT9 2BF**
Between:	
	Ms S. Tamiz ("the Applicant")
	and
	Ms H. Bedford ("the Respondent")
Date of Hearing:	**22nd February 2012**
Members of the Tribunal:	**Mr. R. Norman** **Ms E. Morrison** **Mr. R. Athow FRICS MIRPM**
Date Decision Issued:	**15th March 2012**

FLAT 6, 2-8 ATHELSTAN ROAD, MARGATE, KENT CT9 2BF

Decision

1. The Tribunal found that there had been a breach of the covenant contained in Paragraph 21 of Part I of the Fifth Schedule to the lease in that Ms Bedford ("the Respondent") had failed to give to Ms S. Tamiz ("the Applicant") notice of 5 lettings by Assured Shorthold Tenancies and to provide certified copies of the letting agreements. The Tribunal was not satisfied that there were breaches of any other covenants in the lease.

Background

2. The Applicant is the lessor of Flat 6, 2-8 Athelstan Road, Margate, Kent CT9 2BF ("Flat 6") and has made an application under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition in the lease has occurred so that Section 168 (2) of that Act can be satisfied and the Applicant may serve a notice under Section 146 (1) of the Law of Property Act 1925 and seek forfeiture of the lease. The Respondent is the lessee of Flat 6.

3. With the application dated 1st December 2011 the Applicant supplied a copy of the lease and a document headed "Applicant's Details of Breach". In that document the following breaches were alleged:

(a) To provide access:

Paragraph 9 of Part I of the Fifth Schedule to the lease provides:

"To permit the Lessor the Lessor's Managing Agents and their duly authorised Surveyors or Agents with or without workmen at all reasonable times by appointment (but at any time in case of emergency) to enter into and upon the Flat or any part thereof for the purposes of rectifying any lack of repair causing or likely to cause loss or damage to any other flat or part thereof in the Building or viewing and examining the state of repair thereof or of the Flat"

The nature of the breach was said to be that the Applicant's Managing Agent had written to the Respondent on 21st February 2011 inviting the Respondent to visit the property. The Respondent could not attend due to the birth of her child but stated that she would accept this offer at any other time. The Applicant requested access to Flat 6 on 19th May 2011 and the Respondent had failed to provide access

(b) Not to allow Flat 6 to be used for any illegal or immoral purpose and for it to be occupied by one family only:

Paragraph 16 of Part I of the Fifth Schedule to the lease provides:

"Not to hold on any part of the Flat any sale by auction nor to use the same or any part thereof nor allow the same to be used for any illegal or immoral purposes but only to use the same as a private residential flat in the occupation of one family only"

The nature of the breach was said to be that the former sub-tenant was frequently under the influence of drugs and alcohol and the tenants in one of the Applicant's other properties frequently found the sub-tenant unconscious on the floor. On one occasion the sub-tenant was found slumped in the common hall and acted in a way that both the police

and ambulance had to be called. It was established that the sub-tenant was a drug user and he was taken to hospital for 2-3 days.

(c) To provide a copy of the sub-tenancy agreement:

Paragraph 21 of Part I of the Fifth Schedule to the lease provides:

"To give notice of any transfer mortgage assignment Underlease parting with possession which expression includes letting by assured shorthold tenancy charge Order of the Court or Probate Letters of Administration or other devolution of the term hereby created within twenty-one days of such devolution together with a certified copy of every instrument of which *(sic)* devolution to the Lessor's Solicitor paying a reasonable registration fee therefore *(sic)* (which shall not be less than Thirty Pounds (£30) plus any Value Added Tax payable thereon at the rate for the time being in force"

However, in the "Applicant's Details of Breach" document the Paragraph was incorrectly quoted. In particular the words "together with a certified copy of every instrument of which devolution" were omitted.

The nature of the breach was said to be that the Respondent sublets Flat 6 but had failed to provide to the Applicant a copy of the current sub-tenancy agreement. Also that a copy of a sub-tenancy agreement in respect of a former sub-tenant which had been supplied did not contain restrictions similar to those set out in the lease.

The second part of that allegation as to the contents of the agreement does not fall within Paragraph 21.

(d) Contents of tenancy agreement:

Paragraph 22 of Part I of the Fifth Schedule to the lease provides:

"(a) Not to assign underlet or part with possession of part only of the Flat whatsoever
(b) Not to assign underlet or part with or share possession of the whole of the Flat without the Lessee prior to any assignment procuring the execution of a Deed of Covenant by the assignee direct with the Lessor in such form as shall be prepared by the Lessor's Solicitors
(c) To procure that any underletting of the Flat contains restrictions similar to those set out in the Ninth Schedule and does not contain terms inconsistent with the terms of this Lease"

The nature of the breach presumably was that set out incorrectly as being a breach of Paragraph 21.

(e) To keep Flat 6 in a clean good and substantial repair and condition:

Paragraph 1of Part II of the Fifth Schedule to the lease provides:

"To keep the Flat and additions thereto and the Lessor's fixtures and fittings and sanitary water and gas and electricity apparatus installed in or affixed to the Flat and the window glass thereof in a clean good and substantial repair and condition"

In the "Applicant's Details of Breach" document no nature of breach was attributed to Paragraph 1 of Part II of the Fifth Schedule to the lease.

(f) Behaviour by tenants which may mean that insurance is void or voidable:

Paragraph 4 of Part II of the Fifth Schedule to the lease provides:

"Not to do or permit or suffer to be done any act deed matter or thing or keep any material of a dangerous or explosive nature whatsoever whereby the risk or hazard of the Flat or any part of the Building being destroyed or damaged by fire shall be increased or which may require an additional premium for insuring the same or for any adjoining premises or which may make void or voidable any policy for such insurance and to give notice to the Lessor of any act thing or matter done or brought on to the Flat which may lead to an increase in the premiums for insuring the same and to pay any increase in the insurance premium attributable to the Flat or the Building by reason thereof"

In the "Applicant's Details of Breach" document, the nature of the breach was said to be "The subtenants' behaviour was distressing to the Applicant and other tenants and actions of the subtenants are such that the Applicant believes that the building and contents insurance is at risk. Permitting these acts could make the insurance voidable which is a breach of Clause 4 of Part II of the Fifth Schedule of the lease."

(g) Nuisance and disturbance:

Paragraph 5 of Part II of the Fifth Schedule to the lease provides:

"Not to do or permit to be done upon or in connection with the Flat or the Building anything which shall be or tend to be a nuisance annoyance disturbance or cause of damage or inconvenience to the Lessor or the Lessor's tenants or any neighbouring adjoining or adjacent property or the owner or occupiers thereof"

The nature of the breach was said to be that the current sub-tenant created a nuisance and disturbance and the following examples were given:
(i) There are up to 10 people living in Flat 6.
(ii) There is a high volume of people going in and out of Flat 6 late at night.
(iii) There are large groups of children playing cards in the hallway and running up and down the stairs late at night.
(iv) The sub-tenant removed an internal lobby door and left it outside in the hallway.

The nature of the breach in respect of a former sub-tenant was said to be that he was subject to a Care & Justice Services Monitoring Agreement with respect to electronic

monitoring of a curfew order and that he vandalised and littered the building and created a nuisance and disturbance. Also that the Respondent had notice of such nuisance from the Applicant and the Managing Agent, Luke Parry of Prospects UK, but allowed the sub-tenant to remain at Flat 6 permitting the nuisance to occur.

In addition that he created nuisance and disturbances and the following examples were given:
(i) The sub-tenant was fighting with his visitors in the courtyard creating a nuisance to other residents in the block.
(ii) The sub-tenant banged on the windows to Flats 2 and 3.
(iii) The sub-tenant walked uninvited into Flat 2.
(iv) The sub-tenant and his visitors climbed onto the flat roof of Flat 3 to gain access to Flat 6 and in doing so damaged the wooden gate on several occasions and caused nuisance to the occupier of Flat 3.
(v) The sub-tenant left unused needles in the back courtyard.
(vi) The sub-tenant damaged the front lock on the building.
(vii) The sub-tenant damaged the door frame to the 'Property' (it is not clear whether this was a reference to the door to the street or to the door to Flat 6).
(viii) The sub-tenant caused damage to the 'property' (again it is not clear whether this was a reference to the building or to Flat 6) and is believed to have vandalised the fire alarm system.
(ix) The sub-tenant was seen spitting in the internal communal hallway.

4. Directions were issued on 9th December 2011 which included the following:

(a) A requirement that the Applicant prepare a written statement of case setting out the facts and evidence on which the Applicant relied. The statement was to refer to specific clauses in the lease which were alleged to have been breached and why. Full details of all evidence on which the Applicant relied was to be included in the statement of case and the statement of case was to include copies of all correspondence, documents or other papers that the Applicant wished the Tribunal to see. Such papers were to be in chronological order and have their pages numbered consecutively. A copy of the statement of case and copy documents was to be sent by the Applicant to the Respondent no later than 21st December 2011 and 4 copies were to be sent to the Tribunal.

(b) A requirement that the Respondent prepare and send to the Applicant's Solicitors within 28 days of her receipt of the Applicant's statement of case, a written statement of case stating why she contests the application and giving her reasons. The statement was to be accompanied by copy correspondence, documents or other papers as she considered relevant to the matters at issue. Such papers were to be in chronological order and have their pages numbered consecutively. The statement was to be the Respondent's case and 4 copies of the statement and copy documents were to be sent to the Tribunal by the Respondent.

(c) "If any party wishes to bring oral witness evidence at the Hearing, they shall first send to the other a Witness Statement in writing setting out the evidence which that

witness proposes to give. If this Direction is not complied with the Tribunal may decide not to allow that witness to give oral evidence at the hearing. Such Witness Statements shall be sent to the other party at least 21 days prior to the Hearing. A copy of all such Witness Statements shall be sent to the Tribunal at the same time."

5. In response to the Directions the Tribunal received:
(a) The Applicant's supplemental statement with an appendix.
(b) The Respondent's statement and documents.
(c) The witness statement of Mr. Pedram Tamiz, the son of the Applicant.
(d) A further submission from the Respondent in reply to the witness statement of Mr. Tamiz
(e) From the Respondent a copy of a letter dated 15th February 2012 sent by email from the Applicant's Solicitors to the Respondent. The letter was stated to be in anticipation of the hearing on 22nd February and requested disclosure of any written agreements or copies of retainers between the Respondent and any letting agents she had used in relation to Flat 6 since 2009. The letter also stated if the documents were not provided prior to the hearing the Respondent was asked to "..please accept this letter as notice of our intention to request any disclosed documents at the hearing." Presumably the reference should have been to undisclosed documents.

Inspection

6. The inspection of Flat 6 was scheduled to commence at 9.30 and by that time the Respondent and her husband Mr. Cleary had attended. There was no appearance by the Applicant or by anybody on her behalf. In the presence of the Respondent and Mr. Cleary, the Tribunal inspected the exterior of 2-8 Athelstan Road, the common entrance hall, stairs and landings and the interior of Flat 6.

7. Flat 6 is approached by steps from the street to the front door of the building. There was a lock on the front door but the door was not locked. Inside is a hallway with stairs leading to flats on other floors and landings outside the doors of flats. Near the front door there was a fire alarm panel fixed to the wall. Usually such a panel would have lights illuminated indicating either that it was working or that there was a fault but no lights were illuminated on this panel. On the door of Flat 5 and on the wall to the side of the door there were marks which could have been blood. On the landing outside Flat 6 it could be seen that there had been a repair to the plaster to the left of the door frame but the work had not been completed. To the right of the door some work had been carried out to the plasterboard. Apparently it had been re-fixed and was closer to the wall structure; thereby leaving a narrow strip of stair wall a few millimetres wide unpainted in the corner where it met the plasterboard. Entry to Flat 6 was through a door to a narrow lobby and a second door to the lounge/kitchen. Downstairs there were two bedrooms and a bathroom. Flat 6 appeared to be in good condition and occupied by a woman and two young children. At the side of the building there was an alleyway off which there were two gateways to the courtyard at the rear of the building. The first gateway had a wooden gate but the second gateway did not have a gate. From the courtyard the windows of Flat

6 could be seen. They were just above a flat roof which was about one metre above the courtyard.

8. As the Tribunal was leaving the area after completing the inspection a vehicle arrived. Mr. Tamiz and two other people alighted from it. At the hearing they were found to be Miss Reid, counsel representing the Applicant and a Mr. Mandleson. Mr. Tamiz stated that he knew he was late for the inspection and asked if the Tribunal had seen inside the flats. He was told that the Tribunal had seen inside Flat 6, that the inspection was completed and that the Tribunal was proceeding to the hearing venue.

Hearing

9. Before the hearing commenced, Mr. Tamiz asked the Clerk to the Tribunal to pass on to the Tribunal his apologies for being late for the inspection.

10. Present at the hearing were Miss Reid, Mr. Tamiz, Mr. Mandleson, the Respondent, Mr. Cleary and Mr. Paul Hutton and Mr. Lee Hutton of Green Knight Lettings Limited ("GKL"), the Respondent's letting agents.

11. Miss Reid raised a preliminary point. She informed the Tribunal that Mr. Mandleson lives at Flat 8. He had not made a witness statement but could give evidence on behalf of the Applicant and confirm most of the contents of Mr. Tamiz's witness statement. It would be relevant and short evidence as to nuisance. The Applicant's Solicitors had been in contact with him but his laptop had broken so he could not check over his statement and had been away as well. Ms Bedford was asked if she objected to Mr. Mandleson giving evidence. She submitted that the directions as to oral evidence were clear. She assumed he had been living there for some time and could have been contacted. She had not been made aware of what he would say and had to be prepared to answer to it. She also suggested that if the Applicant was going to rely on Mr. Mandleson's evidence to back up points Mr. Tamiz was making there would have been a reference to him in Mr. Tamiz's statement.

12. The Tribunal retired to consider the application and decided that because the Applicant was professionally represented, the directions were clear and made on 9th December 2011, some time ago, the Respondent would be disadvantaged by evidence being produced in that way and that even by the start of the hearing the Respondent had not been provided with a witness statement from Mr. Mandleson, the Tribunal was not prepared to allow Mr. Mandleson to give evidence. The hearing resumed, the decision was announced and Mr. Mandleson left.

13. Miss Reid outlined the breaches alleged and the relevant paragraphs of the lease as follows:
(a) To provide access: Paragraph 9 of Part I of Schedule 5.
(b) To keep Flat 6 clean and in good repair and condition: Paragraph 1 of Part II of Schedule 5.
(c) To provide a copy of sub-tenancy agreements: Paragraph 21 of Part I of Schedule 5.

(d) Use for illegal or immoral purpose and occupation by one family only: Paragraph 16 of Part I of Schedule 5.
(e) Nuisance and disturbance by at least 2 tenants: Paragraph 5 of Part II of Schedule 5.
(f) Behaviour by tenants may mean insurance void or voidable: Paragraph 4 of Part II of Schedule 5.

At this point Miss Reid confirmed the Applicant was not proceeding with the alleged breach of Paragraph 22 of Part II of Schedule 5.

14. Mr. Tamiz was called to give his direct evidence in respect of the alleged breaches and at this point the Applicant attended the hearing.

15. Mr. Tamiz referred to his statement dated 1st February 2012 and to the photographs and documents exhibited to it.

16. As to the failure to provide copy tenancy agreements, he confirmed that copies had been requested. He believed that the Applicant's Solicitors had requested them. He believed that the response from the Respondent was that she had never been asked for them in the past so why now? One agreement had then been provided in respect of the tenancy of Mr. Ricky Ford but that tenant had moved out and a new tenant had moved in. Even though by that time the Respondent knew she had to provide copy tenancy agreements she did not do so. Mr. Tamiz thought that the request had been made by a letter from the Applicant's Solicitors dated 19th May 2011 (at p. 21 of appendix 1 to the Applicant's supplemental statement). He was aware that there had been a number of different tenants but the only copy provided was that of Mr. Ford's agreement.

17. As to access, Mr. Tamiz dealt with this in paragraph 10 of his statement. He added that he was never allowed access at any time even when the Applicant's Solicitors wrote to the Respondent about it. He was not allowed access on 5th March 2011. On that date he sent a text to Lee Huttton of GKL (exhibit PT1 to the statement). It was because of complaints he was receiving and the street door was unlocked again. Lee and Paul Hutton attended and agreed it was unacceptable. They knocked on the door to Flat 6 and opened it. There was a half response from the sub-tenant Mr. Ford. Flat 6 was a complete tip. It was disgusting. Mr. Ford was half unconscious. Mr. Hutton said this was unacceptable; to leave it to him and he would deal with it; the sub-tenant would leave. Mr. Hutton was supportive but there was no action as a result. Mr. Tamiz did not go into Flat 6 but both doors were opened. This was not a formal visit arranged through the Respondent. The letter dated 19th May 2011 was after that visit. There had been no access to any properties dealt with by GKL until the week before the hearing.

18. As to nuisance and annoyance, Mr. Tamiz dealt with that in paragraphs 14 to 20 of his statement. Paragraphs 14 to 17 contain a number of allegations against Mr. Ford including that he had caused a considerable amount of damage in the communal areas but when asked what damage he had seen Mr. Ford cause, Mr. Tamiz stated that he had not seen him do any damage but that Mr. Ford had admitted that he had damaged the front door and the fire alarm system when he was "so drugged up" and thought he had fixed

the fire alarm. This was around March 2011. Mr. Ford had said that he had lost his keys for the front door and for the door of Flat 6. Asked why he did not call the agents he said he called Christine Pearce but she never returned calls. Mr. Tamiz stated that Mr. Ford would shut the door of Flat 6 and leave by a window at the back onto a flat roof and put a metal gate up against the window. Presumably he thought that would stop people getting in. He would get in again by jumping on to the flat roof and climbing in through the window. Mr. Tamiz had never seen him do that but had taken a photograph of the gate in place against the window. He tried to find that photograph in the papers but could not do so. He believed he had sent it to the Applicant's Solicitors. The photograph was on his phone. Mr. Ford had told him he had put the gate there but Mr. Tamiz had never seen him do it. A letter was exhibited (P 20 of the appendix to the Applicant's supplemental statement). It was dated 12th June 2011 and was from Mr. Turner and Miss Steele who lived at Flat 2. It contained complaints about the behaviour of the tenant of Flat 6. The letter is not signed but Mr. Tamiz stated that he believed he had something signed by them. However nothing signed by them was produced. The letter had been sent as an attachment to an email but there was no copy of the email in the papers produced. Mr. Tamiz had asked Mr. Hutton what he was going to do about Mr. Ford. He left of his own accord and lives in another flat let by GKL. Apparently he is a very good tenant in another block. Paragraph 19 also relates to Mr. Ford's behaviour.

19. In paragraph 20 of his statement Mr. Tamiz stated that Mr. Turner and Miss Steele had vacated Flat 2 and that he did not have a forwarding address for them.

20. Alleged breaches by other tenants of Flat 6 were dealt with in paragraph 18 where he stated that after Mr. Ford, a family lived in Flat 6 for a few months but that every time Mr. Tamiz visited the block he was aware that there were at least 12 adults and 5 children residing in Flat 6, buggies were left outside Flat 6 and children used to play in the communal parts of the building even though he told them they were not allowed to. In oral evidence he stated that every time he went in the building there were buggies outside Flat 6. He did not know how many people were living in Flat 6 but Eastern European people say there is only one family but then move in cousins and other relatives, wreck the place and then go.

21. Flat 6 has a door inside. This is also dealt with in paragraph 18. Mr. Tamiz added that a woman in middle to late twenties said she put the door on the landing because it was loose and dangerous. The woman said she had contacted the letting agents. The door was taken off the landing for one day then put outside Flat 5. Mr. Paul Hutton said they would remove it. They did and Mr. Tamiz assumed they fixed it. This was around June to September 2011. He was sure Mr. Hutton could confirm this. He had not taken up this matter with the Respondent because she said Mr Tamiz lied whenever he communicated with her and that Paul and Lee Hutton were in the building but they were not and Mr. Tamiz had proof in the form of the copy of the text he had produced. If Flat 6 were his, Mr. Tamiz would have proved to the landlord's son that he was lying. Mr. Tamiz further stated that he got people to make repairs not the Huttons. Mr. Tamiz had 19 flats in phase 2, he is a teacher, there are managing agents but after work he always looks in to see if everything is all right. He gets stopped by other tenants

of GKL. He never harassed any tenants. He received no help from the Respondent. She is just a mockery. Had Mr. Tamiz been the lessee and there was something so serious he would have come to the property. He considered that if they all worked together they would have bad tenants from time to time but would end the problem.

22. Mr. Tamiz pointed out the following in the Respondent's statement:
(a) At p 4 she accepted that Mr. Ford had gone off the rails a little, turning to alcohol and drugs.
(b) At p 8 paragraph ii she accepted that before a new key was issued, Mr. Ford had no choice but to get others to let him in.
(c) At p 8 paragraph iv as to climbing onto the flat roof, she understood that that practice was the only way the tenant could gain access and stopped when he was finally given a key to the main door after the night latch was replaced.

23. As to unused needles and rubbish in the back courtyard, Mr. Tamiz stated that he did not see needles but he saw one needle and beer cans. He considered they were coming from Flat 6 because that was the only flat with that type of tenant in it and the tenants told him. He saw beer cans in Flat 6. As Mr. Ford was using the flat roof to get in and out, it was Mr. Tamiz's opinion that in that way it would have been easy to throw rubbish out from Flat 6.

24. Asked how long since there had been a gate to the yard, Mr. Tamiz stated it was since October/November time 2011 and Mr. Ford was not there at that time.

25. Repair of fixtures and fittings are dealt with at paragraphs 21 to 23 of the witness statement. Mr. Tamiz added that he saw inside Flat 6 and it was in a bad state. The front door had been damaged and Mr. Ford admitted he had done it. He used a sock to stop the door to Flat 6 locking. Mr. Tamiz had taken a photograph of that but it was not in the photographs exhibited to his statement. He had not looked at all the photographs exhibited. Later during the hearing Miss Reid showed to the Respondent two photographs on Mr. Tamiz's phone which he said he had sent to the Applicant's Solicitors with an email but they had not been produced. The Respondent did not object to the production of the photographs and they were shown to the Tribunal. One showed what appeared to be a sock between the door and the door frame near the lock and the other showed a metal gate over a window.

26. As to those photographs which were exhibited, Mr. Tamiz stated that the numbers in the top right hand corner of each photograph showed the date on which each photograph was taken by him and added the following comments about each one:
1. Shows cracks round the door frame of Flat 6.
2. Is a close up of the damage.
3. Is a close up of the damage.
4. Shows cracks and door bell of Flat 6. The tenants slam the doors and cracks get worse. There must be others living there as a mother and two daughters would not have the strength to cause such damage by slamming the door.
5. Is a close up of the damage.

6. Shows plaster on the floor.
7. Is a photograph of the wrong flat.
8. Shows a buggy and the only children are in Flat 6. Mr. Tamiz tells them about it and they take the buggy upstairs and then when he leaves back it comes. This is a Health and Safety issue and could invalidate the insurance.
9. Is a photograph of the wrong flat and shows damage to another flat.
10. Shows the damage slightly better.
11. Is a photograph of the wrong flat.
12. Shows rubbish on the stairs but these stairs lead to Flat 6 and other flats.
13. Shows fallen plaster.
14. Shows plaster damaged. If agents are supposed to be managing they should notice this. If the Respondent visits twice a year she should have picked up this damage but nothing had been done. The door itself is for the lessee to repair but the walls are for the freeholder to repair. Miss Reid checked the lease and confirmed that the doors and door frames are included in the demise (Second Schedule) and that the Lessor's covenants in the Sixth Schedule include repair of the internal walls. Mr. Tamiz expressed the opinion that these tenants were causing damage to the door frame and door by slamming the door and that that is a nuisance committed by those tenants.
15. Shows the same.
16. Shows plaster on the floor and no smoking sign taken down.

27. Mr. Tamiz had been told that the week before the hearing, on Friday or Monday, probably Monday afternoon, builders went to Flat 6 to make a repair but the repairs were not good and he wondered why they were they done so late in the day.

28. The insurance issue is dealt with in paragraph 24 of the witness statement.

29. Miss Reid drew attention to section 2 of the policy conditions at p 26 of the exhibits to Mr. Tamiz's statement which reads: "2 Precautions You will be required to take all reasonable precautions to prevent a claim and must keep all the Property insured in good condition and repair"

30. Mr. Tamiz stated that even though the Respondent has been told, she thinks she can do as she pleases. It is a mockery. The letting agents and the Respondent are never to be seen. He appreciated that the Tribunal had to look at the evidence, but even when things are brought to their attention the Respondent and the letting agents take their time. They say divide the repair costs by 10 and it is insulting that they say Mr. Tamiz is lying.

31. Asked if the Applicant had written to the Respondent asking her to carry out repairs, Mr. Tamiz referred to an email dated 21st February 2011 (p 11 of appendix) but that email did not contain a request to carry out repairs. Asked if the Applicant had taken up rights to repair the building, Mr. Tamiz stated that the Applicant had repaired the front door to make sure no one could come in but that if he arranged for the repair to the door frame the Respondent would say he was harassing tenants. Mr. Tamiz also referred to copies of emails at pp 51 and 53 of the Respondent's documents concerning visiting the property but the email from Luke Parry of Prospects UK did not request an inspection on

a set date. Mr. Tamiz stated that if a formal request were made, the Respondent would say he was harassing the tenants so it was thought best to make this application.

32. The Respondent cross-examined Mr. Tamiz.

33. She referred to the letter from the Applicant's Solicitors dated 19th May 2011 at p 21 of the appendix. That letter refers to previous correspondence but the Respondent stated she had not received previous correspondence from them and presumed that if there had been previous correspondence copies would have been included in the Applicant's bundle of documents. Mr. Tamiz stated he had seen other letters from the Applicant's Solicitors to lessees asking for dates to inspect but they were not produced and he could not provide them. The Respondent knew that other leaseholders had received such letters but she had not.

34. As Mr. Tamiz in his statement had stated that he assists the Applicant with management, the Respondent asked why emails came from Prospects UK and where did they fit in. Mr. Tamiz explained that the Applicant has 19 flats in this and the next block. He goes there every day after work because Athelstan Road is a deprived area but it makes a difference if it is known that somebody is coming in every day. If something is faulty he relays that information to Luke Parry at Prospects UK and he relays it to the Respondent. Sometimes Mr. Tamiz relays the information direct to the Respondent. He considers that if the Respondent took an interest it would help to preserve the building. If it were left to GKL the building would be going downhill. Mr. Tamiz did what he did for the good of building. He was not causing harassment and it would benefit the Respondent if she and Mr. Tamiz worked together. He understood that she had to take care when she was pregnant but her husband could have come to the property. If the Respondent visited she could see the problem. Luke Parry comes and sees the problem and then he sends an email. Asked, if Prospects UK were seeing problems and sending emails and being paid by lessees through service charges, why were they not involved in this case, Mr. Tamiz said it was because they are a small business and as Luke Parry would say the same as Mr. Tamiz there was no difference; it was the same facts. The Respondent suspected that Mr. Tamiz had written emails in the name of Luke Parry but Mr. Tamiz stated he had never done that. The Respondent pointed out that GKL are a small business but that they had provided a statement and Paul and Lee Hutton had attended the hearing.

35. The Respondent had bought Flat 6 in December 2004 as a buy to let and wondered why it was not until 19th May 2011 that she was first asked for a copy of a tenancy agreement. Mr. Tamiz stated that it was because of poor tenants that the Applicant consulted solicitors. He had not just asked for a copy because every time he said anything he was accused of harassment and things he had in the past sent to the Respondent and to other lessees had not arrived so solicitors were engaged. The Respondent said she had never accused Mr. Tamiz of harassing her but Mr. Tamiz said she had, either directly or indirectly, and referred to the email (P53 of the Respondent's bundle) dated 24th November 2011 from Mr. Cleary to Luke Parry in which Mr. Cleary asked Mr. Parry to stop harassing the Respondent.

36. In May 2011 the Respondent supplied a copy of a tenancy agreement and asked why, if the agreement was non-compliant she had not been made aware of that until the application was made in December 2011. Miss Reid confirmed that the alleged breach of Paragraph 22 of Part I of the Fifth Schedule to the lease concerning the contents of the tenancy agreement was not being pursued.

37. In the application there was an allegation that up to 10 people were living in Flat 6 but in contradiction of that Mr. Tamiz, in his statement, stated that there were 12 adults and 5 children. Mr. Tamiz stated this was in relation to the current tenants. About two or three weeks ago he had seen 8 people going into Flat 6 but cannot prove they are living there. He said he saw 6 or 7 children each time he visited. He considers there are too many people, at least two households, living there. Asked how he knew who was inside Flat 6 he suggested that if there was only one woman and two children he did not see how they could damage the door to that extent.

38. As to the visit on 5th March 2011, Mr. Tamiz stated he had not entered Flat 6 but that when the lobby door was open he could see the lounge and kitchen. The lobby door and the front door of Flat 6 were both open and he could see Flat 6 was a tip. He was aware that Mr. Ford was not completely conscious from the way he was talking. He sounded half asleep; he was mumbling. Mr. Tamiz is not an expert but he considered that Mr. Ford did not look well. He could hear other voices coming from the flat.

39. Referring to the email dated 24th February 2011 from the Respondent to Luke Parry (P 12 of the appendix) the Respondent had explained why she could not attend on that occasion and would come any other time and informed him that GKL were the letting agents. She asked why she had not been asked again to provide access or why GKL had not been asked. Mr. Tamiz said they were not easy to contact and had taken 3 months to cure a plumbing problem in another flat. However, they did respond sometimes, as on 5th March 2011. Miss Reid referred to an email from Luke Parry to the Respondent dated 1st March 2011 (P 13 of the appendix) which contained a request for the Respondent's partner with GKL to visit Flat 6 and the tenant. The Respondent pointed out that that was not a request for the Applicant or Luke Parry to visit and Miss Reid agreed. She considered that the important letter was the letter from the Applicant's Solicitors. The Respondent referred to her reply to that letter, which had not been produced by the Applicant but was at pp 63 – 66 of her bundle. Nothing had happened because GKL had not been contacted and the next thing was this application. As Mr. Tamiz was in contact with GKL he was asked why he had not asked them to arrange access. Mr. Tamiz said he believed Luke Parry had been asked. Asked by the Tribunal if there had been a formal attempt to contact GKL to gain access, Mr. Tamiz said it was not in the case papers. The Respondent stated that she and GKL had no reason to deny access.

40. As to Mr. Ford jumping on the flat roof, the Respondent stated that one reason he knocked on other peoples windows and climbed on the flat roof was because when a new lock was fitted to the street door neither the Respondent nor her letting agents were given

keys. From October 2010 there was no lock on the street door for many months then a new lock was fitted in April 2011. Mr. Tamiz said that the lock was changed in April 2010. Around March 2011 the shutting mechanism was damaged but the lock was not changed, nobody else had mentioned this and there had been no emails requesting keys. However, the Respondent said that GKL had asked Luke Parry for keys and Gareth Martin, one of the other lessees had sent an email asking for keys. As keys were not supplied the tenant was using the roof to gain access then at some stage GKL obtained some keys. Mr. Tamiz said 2 sets of keys were provided in April 2010 and none since then. The barrel had not been changed and there had been no need for new keys. At this point Mr Tamiz also accepted that the internal door to Flat 6 had only been outside the flat on the landing for 2-3 days before the situation was resolved.

41. As to the unsigned letter from Mr. Turner and Miss Steele, Mr. Tamiz stated at paragraph 20 of his statement that Mr. Turner and Miss Steele had vacated Flat 2 and he did not have a forwarding address for them. However, he had now said that the letter was emailed to him so presumably Mr. Tamiz had an email address for them and could have invited them to attend the hearing. Mr. Tamiz accepted he had not emailed them but that if he had they would not have turned up because of their experience in the flat. On 21st December 2011 the Respondent had written to the Applicant's Solicitors about Mr. Turner and Miss Steele but had received no reply (P73 of the Respondent's bundle). She wondered if they existed. A similar letter had been written about the tenants of Ms Bello, another lessee. The Respondent also asked whether all the lessees had been accused of having more than 10 people living in their flats. Mr Tamiz said only 4 leaseholders out of 7 were being taken to the Tribunal.

42. The Respondent referred to the photographs exhibited by Mr. Tamiz. No. 4 was dated 24th April 2011 and showed damage to the plaster by the door frame. She said the damage had been repaired but Mr. Tamiz said it had not. However, photographs 1 to 3 are dated 31st January 2012 and No. 4 is dated 25th January 2012 and these photographs show different damage. Mr. Tamiz accepted that his statement contained a statement of truth but said the photographs had been muddled up by the Applicant's Solicitors who put the dates on the photographs. The Respondent pointed out that photograph No. 8 shows a buggy but is dated 30th April 2011 when Mr. Ford was a tenant. Mr. Tamiz suggested that the dates could be wrong because there was no suggestion that Mr. Ford was using a buggy.

43. In the letter dated 19th May 2011 concerns were expressed about insurance but if those concerns were really serious the Respondent wondered why they had not been chased up again or more formally enquired about. Mr. Tamiz stated that the Respondent had been emailed about it. He had liaised with the insurance broker to ask what would happen if the property was vandalised. Would there be an excess charge or could the policy be void? He got the solicitors involved and they wrote in May 2011. He liaised with lessees and had meetings. Emails were sent but there were no copies in the bundle. Only one lessee replied. The others ignored it.

44. On Friday 17th February 2012 the Respondent received the letter referred to in paragraph 5 (e) above and wondered why she had been asked to supply the information. However, Miss Reid stated that that matter was not being pursued.

45. The Respondent believed she was the most responsible leaseholder in the building but Mr. Tamiz did not agree.

46. In re-examination Mr. Tamiz stated that there was confusion over the dates on the photographs and that damage to the plaster may have been repaired and then damaged again. If the door was slammed the plaster could fall out. He considered that the repair carried out on the Friday before the hearing was a complete disaster and needed to be done properly. As to photograph No. 8 he believed that the date was correct but that the buggy belonged to the tenant of another flat.

47. The Respondent gave her evidence in chief. She considered that she and GKL acted in a responsible way to help Mr. Ford and if there was any real evidence that he was doing the things being accused of then GKL were instructed to do whatever they could to move him on as soon as possible. He moved out 6 months before this application was made. He was being electronically monitored but that expired in December 2010. He was found slumped in the hallway and a plumber called an ambulance. The Respondent said Mr Ford had told her he is epileptic and had had a seizure. She accepted he had caused damage to the front door of the building but whether it was the damage shown on the photographs she did not know. It was fixed at the time. She did not know if he damaged the fire alarm but during that time the front door lock was not working and there were other people in the building and their visitors. Other than Mr. Tamiz saying Mr. Ford admitted it there was no evidence. There was no evidence that Mr Ford had kicked in the front door of Flat 6. If the insurance policy stipulated no drink or drugs this should be passed on to lessees so it could be passed on to the letting agents. She feels she is a responsible leaseholder. She keeps Flat 6 in good order, is in regular contact with the letting agents and does not feel she has breached any covenants in the lease. The Applicant's case had been inaccurate. In some instances there was no evidence, some evidence has been corrected and some concerned a tenant who moved 6 months before the application was made. She knew other leaseholders were being treated in the same way.

48. The Respondent was cross-examined by Miss Reid.

49. As to providing copies of tenancy agreements, when the Respondent bought Flat 6 from the Applicant the Applicant had an arrangement with a Housing Association and for a time after the purchase that continued. She accepted she had not provided copies of five tenancy agreements. Only Mr. Ford's had been supplied.

50. As to failure to provide access, the email dated 21st February 2011 (P11 of the appendix) was the first time there was a request but it was not a formal request. Miss Reid accepted that it was not a formal request. The Respondent's reply explaining why she could not attend was at P 12 of the appendix. Miss Reid had no issue with that but

referred to the email dated 1st March 2011 at P 13 of the appendix. The Respondent pointed out that in that email it did not ask if the Applicant or Luke Parry or Mr. Tamiz could visit. It referred to GKL visiting, as they did. Mr. Tamiz had access to Flat 6 on 5th March 2011. He did not ask for access again.

51. As to nuisance by tenants, the email dated 21st February 2011 (P11 of the appendix) was the first time the Applicant's concern about Mr. Ford was communicated to the Respondent. The email dated 24th March 2011 (P14 of the appendix) pointed out issues and the Respondent was asked if she admitted that Mr. Ford forced the street door. She replied that she guessed she accepted that was damage but she did not accept it was a nuisance. She was not sure that Mr. Ford had damaged the door to Flat 6 but the agents arranged for it to be repaired to save arguments as to who had damaged it. In an email GKL had stated that they suspected Mr. Ford had damaged the door. The Respondent had been told that Mr. Ford had been found slumped in the hall and accepted that it had happened once. GKL told her he had had a seizure. She accepted he was a target for undesirable people and she assumed they went to Flat 6. She knew he was taking drugs and alcohol and knew why it had started to happen, but was she to throw him out or try to help him to get back to the position he was in before his mother died? She had taken the matter seriously and had not made a joke of it. She was concerned that his behaviour was unacceptable but he was not doing things to other people. GKL had done more than they were required to do. They were trying to help him. The Respondent did not accept that there were up to 10 people living in Flat 6 or that they were running up and down the stairs but accepted that a door from inside Flat 6 was on the landing. It was there for a short time and then removed.

52. As to keeping Flat 6 in good repair the Respondent accepted that Flat 6 had been dirty on 5th March 2011 but did not accept that it had been trashed. She had visited the flat the week before. The lower floor of Flat 6 was not a problem as Mr. Ford did not live down there. Flat 6 was in good and substantial condition although the lounge area was untidy and dirty. She had not seen Flat 6 on 5th March 2011 but GKL had told her and something was done about it. It was put to the Respondent that she had had to fully redecorate and carpet Flat 6 because of what Mr. Ford had done but the Respondent stated that if the carpets needed changing it was not just because of Mr. Ford but because they had not been changed for years.

53. As to the conduct of tenants causing problems with the insurance, the Respondent accepted that a door had been left in the hallway but only for a few days and had been dealt with. Had it been left there for months then she agreed that could have been a problem, but it had not. What more could she have done? It was impossible to know what tenants would do before they did it.

54. Mr. Paul Hutton from GKL gave evidence in chief.

(a) He confirmed that he had signed the letter at Pp 58 to 59a of the Respondent's bundle and that the contents were correct except that in paragraph 2 where he had stated that during a visit to Flat 6 he and his brother Lee had bumped into Mr. Tamiz. At the time of

writing the letter he believed that to be correct. He had received a call from Lee asking him to meet him at the property. It was not unusual to have them both present to deal with something; especially when dealing with vulnerable people. Until he saw the text messages between Mr. Tamiz and Lee it appeared to Mr. Paul Hutton that they had bumped into Mr Tamiz rather than that he had asked Lee to meet him there. On 5th March 2011 Mr. Tamiz had entered the lobby of Flat 6 through the front door and had peered round the second door. Only Mr. Ford was in Flat 6 and Mr. Tamiz would have had a limited view of the flat. He would not have been able to see Mr. Ford unless he went further in. Also Mr. Hutton pointed out that he is not small and neither is Lee Hutton and without going into Flat 6 Mr. Tamiz would not have been able to see past them. Only Mr Ford was in the flat at the time.

(b) As to the allegation of having too many people in a flat, Mr. Hutton stated that GKL are accredited agents and the Council and other bodies look dimly on overcrowding. One way he determines who is living there is to look at the number of beds or sleeping places. Flat 6 does not have more beds than the number on the assured shorthold tenancy.

(c) As to Mr. Ford, he had an alcohol dependency and was progressing. Mr. Hutton and his brother tried very hard to work with him and saw what way they could help. They involved the mental health unit, Thanet Council and the Police Task Force to try to get him help. He had a lot of antisocial behaviour. The only evidence Mr. Hutton saw of injecting drugs was something next to a prescription on top of a book case with what appeared to be a prescription issued needle. He never saw any drug users' paraphernalia and Mr. Hutton had had experience of places where there had been drug abuse. It was put to Mr. Hutton that if Mr. Ford had done all the things he was accused of should there not be a way to quickly evict him? Mr. Hutton explained that the service of a Section 8 notice would give 2 weeks notice or a Section 21 notice 8 weeks but in either case the matter would then have to go to court which would take about 6 to 10 weeks before a possession order. A vulnerable person would be expected to stay beyond a possession order and then there would be a wait for bailiffs. The process would be expected to take 12 to 18 weeks. On top of the help he was being given, a Section 21 notice was served to keep him keen. It was explained to him that there would be punishment in the form of eviction if he did not correct his habit. In the event with his agreement he was moved on to another property. He did not admit causing damage. There was a delay in being given keys after a new lock was put on the street door. Several requests were made by GKL to call in to Prospects UK to collect them but the problem was that they needed authority to collect them. GKL had to jump through several hoops and it took at least 2 weeks to obtain the keys. The damage around the door frame of Flat 6 which was in the original application was repaired by Mr. Hutton last year. New damage was spotted on 19th January 2012 in connection with another tribunal hearing. Even after the repair the frame was becoming damaged in the same areas and he suspected there was an underlying problem. A tradesman said the frame was extremely badly fitted and that normal use would cause damage. The self closing device made it likely.

55. Miss Reid cross-examined Mr. Hutton. It was put to him that although he had confirmed the contents of his letter as being correct he later admitted a mistake in that he

had not just 'bumped into' Mr. Tamiz and that he had been forced to admit that because of the production of the texts. Mr. Hutton stated that at the time he wrote the letter he believed the contents to be correct and had realised only at the hearing that he was wrong. Miss Reid suggested that he could have made other mistakes and that the contents of his email dated 24th March 2011 (pp 24 and 25 of the Respondent's bundle) were more likely to be correct. Mr. Hutton stated that on 5th March 2011 Mr. Tamiz had stepped into Flat 6 and had stood close to him as he remonstrated with Mr. Ford. Mr. Hutton agreed that Mr. Ford had gone off the rails. It was not disputed that he had gone down the wrong path but he was getting better. He was not the tenant they had put into Flat 6 and as stated in his email dated 24th March 2011, he suspected that Mr. Ford had damaged around the door. Mr. Ford was accused of knocking excessively on another flat's window to gain access to the building and Mr. Hutton had stated in his letter that that was not at all surprising as the main door had had long periods of having a broken latch, missing latch or missing latch and cylinder and then when the Applicant fitted a new cylinder and latch to the door they did not provide Mr. Ford or GKL with a new key. GKL did try to obtain a new key and it had taken days to do so because Prospects UK stated that they did not believe that GKL acted for the Respondent and every step had to be confirmed with Mr. Tamiz. Effectively the Applicant had locked Mr. Ford out of the building in which he rented a flat. Mr. Tamiz knew they were the letting agents. He was sending texts to them as agents and refused to give them a key. Mr. Hutton had attended the day the ambulance took Mr. Ford away and saw him again the day when he was released. He said he had had an epileptic fit as a result of a head injury earlier that day. Mr. Hutton had served notices on Mr. Ford as a back up but he agreed to leave. Mr. Hutton did not remember when he got the keys but it was up to 2 weeks after the locks were changed and within Mr. Ford's tenancy in March or April 2011. Mr Hutton had asked Mr Ford specifically whether he had damaged the front door lock or the fire alarm panel and he had denied this. It was possible that he may have been responsible for the damage around the door to Flat 6 by pushing it open rather than using his key. The door to the street could be opened at any time by pressing the trade button. It was open access from Athelstan Road, which the Chief Constable of Kent had described as the worst street in the area. As to the door to Flat 6, the plasterboard to the right of the door was loose. It had been painted several times and if the plasterboard were pushed back an unpainted strip could be seen. The door frame became loose and he had found that at one side of the frame there was a 3 inches by 1 inch tanalised batten and 3 rawlplugs were holding one side of the door frame across the blockwork. The frame had now been fixed directly to the blockwork. It would not be pretty until tidied up but it was functioning.

56. Miss Reid made submissions. The Respondent had accepted that she had not given notice of sublettings and had provided a copy of only one assured shorthold tenancy agreement. This was a breach of covenant. As to providing access, there had been informal ways of asking for access and the visit on 5th March 2011 was not a formal visit. It was only as a result of Mr. Tamiz contacting GKL. The Respondent and Mr. Hutton agreed that Mr. Ford did not keep Flat 6 in a clean good and substantial condition. That breach was proven. As to nuisance and illegal or immoral use, there were admissions that Mr. Ford was on drugs, that he was off the rails and that there were drugs on the premises. This was a breach of the covenant not to permit any nuisance, damage

or inconvenience. There was no mention in the covenant of a breach not being a breach if it were not corrected, for example, within 21 days. When Mr. Ford was lying slumped in the hallway that was not an epileptic fit, on the balance of probabilities it was because he was on drugs. Climbing on the roof was a clear nuisance. The reason for the covenant is so that other tenants do not have to put up with this. This application had been made so as to record that this took place. Both parties accept that there has been a breakdown in relations between them. The Applicant and Mr. Tamiz, her son, always tried to be reasonable and do the right thing. Mr. Tamiz attends the building daily whereas the Respondent lives in London. Mr. Tamiz had observed what had happened. On a balance of probabilities it should be accepted that Mr. Ford damaged the door lock. He had admitted this and that he lost his keys. Mr. Tamiz had given evidence and there was no reason for him to lie. By the phrases used in some emails, the Respondent made light of what was happening when Mr. Ford was there. If she had been living there she would not have liked it. There were breaches of the covenant against nuisance especially by Mr. Ford. Also there was the time when a door from within Flat 6 was removed and placed in the hallway. This was a huge fire hazard and a nuisance. It was also a failure to keep the property in repair. As to insurance, there was a real genuine concern that a breach would make the policy void or voidable. That was why the application was made.

57. The Respondent submitted that she was a respectable, truthful person as well. If she had found it all a joke then there was no reason why she and GKL would have put in time to help a vulnerable person. Other than guessing what tenants were going to do she could do no more.

58. The Respondent stated that she had submitted an application for an order under Section 20C of the Act but the application had not been received and would have to be dealt with separately when received.

Reasons

59. The Tribunal considered all the documentary and oral evidence supplied and the submissions made and made findings of fact on a balance of probabilities.

60. There was no dispute that notice of underlettings had not been given and that apart from the tenancy of Mr. Ford, copies of tenancy agreements were not supplied. There was therefore a breach of Paragraph 21 of Part I of the Fifth Schedule to the lease.

61. The Tribunal was not satisfied that there was sufficient evidence of the other alleged breaches of covenants and conditions in the lease.

62. The application contained a long list of alleged breaches. One of them, the allegation of a breach of Paragraph 22 of Part I of the Fifth Schedule to the lease, was not pursued at the hearing. In respect of some nature of breach allegations made in the application no mention was made at the hearing. In respect of others the evidence was unsatisfactory.

63. The only oral evidence given on behalf of the Applicant at the hearing was that of Mr. Tamiz. He did give some direct evidence of what he had seen but in the main his evidence was hearsay; reporting what other people (not always identified) had told him and his suspicions and assumptions. There was a conspicuous lack of specificity in his evidence, particularly as to dates and times. There were times when he contradicted himself. It was also surprising that the managing agents for the building, despite apparently having sent many emails to the Respondent about the matters in dispute, were not called to give evidence. He said that GKL could not be contacted but also gave evidence of successfully contacting them, for example on 5th March 2011. He said that GKL never got anything done but gave evidence of them carrying out repairs. He said that on 5th March 2011 Mr. Hutton said he would deal with Mr. Ford and that Mr. Hutton did not do so but Mr. Hutton's evidence was that he rehoused Mr. Ford and Mr. Tamiz said that he understood that Mr. Ford was now a good tenant in another flat. Some of the photographs which he had produced with his statement were, he conceded at the hearing, of the wrong flat, some were missing and there was a possibility that not all the dates on the photographs were correct. He blamed the Applicant's solicitors for these mistakes. He stated that some documents which he had supplied to the Applicant's solicitors had not been included in the evidence and again blamed the Applicant's solicitors for such omissions. The fact remains however, that he signed the statement and should have satisfied himself that the statement was correct and that the photographs were correct. Clearly, he had not done this. These matters cast doubt on the accuracy of his evidence.

64. The overall impression was that of the allegations made in the application, some were exaggerated, others were unsubstantiated by the evidence and others simply did not happen at all.

65. It was accepted that Mr. Ford, who left Flat 6 more than 6 months before this application was made, was not an ideal tenant but, as Mr. Tamiz stated, they could all have bad tenants. He considered that if they all worked together they could improve things.

66. Mr. Hutton of GKL gave evidence. There was a minor inaccuracy in his letter but he explained how that came about and the Tribunal accepted that explanation. The Tribunal found his evidence specific, consistent, clear and founded on direct knowledge, and where it contradicted the evidence of Mr Tamiz it was therefore to be preferred.

67. As to providing the Applicant with access to Flat 6, there was never a formal notice requiring access until the Applicant's solicitors' letter of 19th May 2011. In response the Respondent had asked the Applicant to contact GKL to arrange an inspection. The Applicant had done nothing further before applying to the Tribunal. The Tribunal found that there was no breach of Paragraph 9 of Part I of the Fifth Schedule to the lease.

68. As to not allowing Flat 6 to be used for any illegal or immoral purpose and for it to be occupied by one family only, the Tribunal was not satisfied by the evidence that there was a breach of Paragraph 16 of Part I of the Fifth Schedule to the lease.

(a) The only relevant illegal or immoral purpose was unlawful drug use. There was insufficient evidence of Flat 6 being used for the taking of illegal drugs. The only probative evidence was that on one occasion the Respondent's tenant Mr Ford , admittedly a drug- user, had been found slumped in the hallway and been taken to hospital. There was no evidence that this was as a result of drug use in the flat or building. It was possible that this was as a result of an epileptic fit, as Mr Ford had claimed. The only evidence of drugs Mr Hutton had seen in the flat was a prescription next to what he thought was a prescription-issued needle.

(b) The evidence of overcrowding in the statement from Mr. Tamiz was that after Mr. Ford left, a family moved in for a few months but that every time he visited the block he was aware that there were at least 12 adults and 5 children residing in Flat 6. In his oral evidence he stated that buggies were left outside Flat 6 and children used to play in the communal parts of the building even though he told them they were not allowed to. There was no evidence that the children were from Flat 6. He did not know how many people were living in Flat 6 but stated that Eastern European people say there is only one family but then move in cousins and other relatives, wreck the place and then go. On the basis of this evidence together with what the Tribunal had seen at the inspection the Tribunal was not satisfied that more than one family was living in Flat 6.

69. As to keeping Flat 6 in a clean good and substantial repair and condition, the Tribunal was not satisfied by the evidence that there was a breach of Paragraph 1of Part II of the Fifth Schedule to the lease.

(a) Mr. Tamiz gave evidence that on 5th March 2011 he had gone to Flat 6 with Mr. Lee Hutton and Mr. Paul Hutton of GKL and that although he stayed outside Flat 6 he could se that it was a complete tip and disgusting. It was put to Mr. Tamiz that he had entered Flat 6 on that occasion but he was adamant that he had not done so. The Tribunal had inspected Flat 6 and had noted that access was through a front door to a small narrow lobby and then through another door into the living room and considered that it would have been difficult to see much of the Flat from outside on the landing especially as Mr. Paul Hutton and Mr. Lee Hutton, neither of whom are small, were obstructing the view. The Tribunal was not satisfied that this was evidence that the fabric of Flat 6 was not in a clean good and substantial repair and condition. The Tribunal was not satisfied that Flat 6 simply being untidy and in need of normal domestic housework, with beer cans on the floor, was sufficient to be a breach of this covenant.

(b) There was damage to the front door frame of Flat 6 and the plaster surrounding the door frame. At the inspection the Tribunal could see there had been a repair to the door frame and the plaster surrounding the frame and accepted the evidence from Mr. Hutton as to the repair and the strengthening of the attachment of the frame to the wall. When damage occurs and is repaired in a reasonable time then the property is being kept in repair.

(c) Mr. Tamiz suggested that the damage to the door frame and surrounding plaster had been caused by tenants slamming the door but he had no evidence to support that suggestion. He also suggested that the damage could not have been cause by just a woman and 2 small children and that this indicated that adult males who would be strong enough to slam the door and cause such damage were living there and that this was evidence of overcrowding. The Tribunal did not accept those suggestions, which were simply speculation. It was a distinct possibility that the damage occurred because of the way in which the door frame had been secured to the wall.

(d) Paragraph 10 of Part I of the Fifth Schedule to the lease provides:

"In accordance with the Lessee's covenants in that behalf hereinafter contained with all due diligence to repair decorate and make good all defects in the repair and decoration and condition of the Flat of which notice in writing shall be given by the Lessor to the Lessee within six weeks after the giving of such notice or sooner if requisite"

That Paragraph shows an understanding that when repairs are required notice in writing is required to be given to the Respondent and that a reasonable time will be required to carry out repairs.

70. Mr. Tamiz said he had written to the Respondent asking her to carry out repairs and in support of that produced an email but the email did not contain such a request.

71. As to behaviour by tenants which may mean that insurance is void or voidable the Tribunal was not satisfied by the evidence that there was a breach of Paragraph 4 of Part II of the Fifth Schedule to the lease. Such evidence as there was in support of this allegation was vague. There was insufficient evidence that the tenants of Flat 6 were responsible for any situation which might make the insurance void or voidable as alleged. Mr. Tamiz had referred to vandalism and to the property being in a deprived area. That indicated the likelihood of the property being damaged by people other than the tenants. On the day of the inspection the street door was not locked and at the hearing Mr. Hutton gave evidence that by using the tradesman's button anybody could obtain access at any time. There was also open access to the rear courtyard.

72. As to nuisance and disturbance, the Tribunal was not satisfied by the evidence that there was a breach of Paragraph 5 of Part II of the Fifth Schedule to the lease.

(a) At the hearing there was no evidence of the following allegations which were contained in the application:
(i) The sub-tenant was fighting with his visitors in the courtyard creating a nuisance to other residents in the block.
(ii) The sub-tenant banged on the windows to Flats 2 and 3.
(iii) The sub-tenant walked uninvited into Flat 2.
(iv) The sub-tenant and his visitors climbed onto the flat roof of Flat 3 to gain access to Flat 6 and in so doing damaged the wooden gate on several occasions and caused

nuisance to the occupier of Flat 3. At the hearing there was no suggestion that the wooden gate was damaged even once.
(v) The sub-tenant was seen spitting in the communal hallway.
(vi) There was a high volume of people going in and out of Flat 6 late at night.

(b) At the hearing there was limited evidence as to the following allegations which were contained in the application:
(i) In the application there was an allegation that the sub-tenant left unused needles in the back courtyard. However, at the hearing the evidence was more limited. Mr. Tamiz stated that he saw one needle and some beer cans and assumed they were from Flat 6. The area has a reputation for antisocial behaviour and the courtyard is not secure. Those items could have been left in the courtyard by anybody.
(ii) As to Mr. Ford having difficulty getting into the building, there was conflicting evidence as to whether a new lock was fitted to the street door requiring new keys or whether only part of the lock was replaced and no new keys were required. If he did need a key and a key was not provided by the Applicant then if the door was locked the Applicant was preventing him from gaining access to his flat and the Applicant was the cause of any nuisance. The Applicant's agents Prospects UK refused to provide a key for up to 2 weeks on the pretext that they did not know GKL were the Respondent's agents and had to refer to Mr. Tamiz and yet Mr. Tamiz was clearly aware of GKL and contacted them about Mr. Ford. In his statement, Mr. Tamiz stated that the lock was replaced in April 2010 and had not been changed by the Applicant since then but at the hearing Mr. Tamiz gave evidence of a change to part of the lock in March 2011, while Mr Ford was living in Flat 6. It was clear from the documents produced before the hearing that the Respondent was saying that new keys were required and were produced only after a delay but no evidence was produced by the Applicant to show that new keys were not required. The Tribunal was not satisfied that new keys were not required.

(iii) In the application it was alleged that there were up to 10 people living in Flat 6 and that children were playing on the stairs and in the hallway and running up and down the stairs late at night. At the hearing Mr. Tamiz stated that he saw 12 adults and 4 children in Flat 6 but he provided no dates and accepted that he did not know how many people were residing there. He saw children playing cards on the stairs and in the hallway but there was no evidence that they were from Flat 6.

(c) As to evidence of nuisance, Mr. Tamiz referred in his evidence to a photograph of a baby buggy which had been left outside a flat but then accepted it belonged to tenants of another flat. Again, he blamed the Applicant's solicitors for that error.

(d) There was evidence that a sub-tenant had removed an internal lobby door and left it outside the flat in the hallway for a few days. That was accepted and explanations were given for it. Time is needed to execute repairs and the door was repaired and replaced in Flat 6 in a reasonable time. As envisaged by Paragraph 10 of Part I of the Fifth Schedule to the lease, time is needed to deal with repairs. Mr. Tamiz in giving his evidence stated that the Respondent and GKL did not take action, yet he also gave examples of action which was taken such as the removal of the internal door from the hallway within a

reasonable time, the repair to the front door of Flat 6 and the surround, although he was not satisfied with the quality of the repair, and the action taken to remove Mr. Ford from Flat 6.

(e) Other than the alleged admission to Mr. Tamiz, which Mr Hutton's evidence contradicted, there was no evidence that Mr. Ford had damaged the front door lock or set off the fire alarm and no invoice was produced for any repairs. In the application, the allegation was put no higher than that "The subtenant .....is believed to have vandalised the fire alarm system."

(f) An unsigned typewritten letter apparently from Mr. Turner and Miss Steele had been produced. They were not called to give evidence and there was not even a signed statement from them. In his statement Mr. Tamiz explained that he did not have a forwarding address for them but at the hearing accepted that he did have an email address for them but he had not tried to contact them. No evidential weight could be placed on this letter.

(g) A photograph was produced which showed some rubbish on the stairs but there was no evidence that the tenants of Flat 6 had left it there.

73. Except for the breach of Paragraph 21 of Part I of the Fifth Schedule to the lease, the Tribunal was not satisfied by the evidence that there were breaches of any other covenants in the lease.

R. Norman
Chairman