



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

Case Reference : **LON/00BE/LBC/2014/0070**

Property : **Flat 46, Tyers Estate, Bermondsey Street, London SE1 3JG**

Applicant : **London Borough of Southwark**

Representative : **Ms Sonia Rai (Counsel)
Devonshires Solicitors**

Respondent : **Ms Florence Nkechi Duval**

Representative : **Mr Nnaemeka Mpamugo of
Bestway Solicitors**

Type of Application : **Determination of an alleged breach
of covenant under S.168(4) of the
Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Mr Jeremy Donegan – Tribunal
Judge
Mr Hugh Geddes JP RIBA MRTPI –
Professional Member**

**Date and venue of
Hearing** : **11 February 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **31 March 2015**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that breaches of covenants in the lease of Flat 46, Tyers Estate, Bermondsey Street, London SE1 3JG ("the Flat") have occurred. Further details of the breaches are to be found at paragraphs 54 and 55 of this decision.
- (2) The tribunal determines that the Respondent shall pay the Applicant £190 within 28 days of this Decision, in reimbursement of the hearing fee paid by the Applicant.

The application and procedural history

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) that the Respondent is in breach of covenants within her lease.
2. The application was originally made by Leathermarket Joint Management Board ("Leathermarket") and was received by the Tribunal on 22 August 2014. Directions were issued on 28 August 2014. These were varied in a letter from the Tribunal dated 19 September 2014. The variation included provision that the London Borough of Southwark be substituted as the Applicant.
3. Further directions were issued on 24 October 2014 in response to a letter from the Respondent of the previous day. They provided that the Respondent should send her statement of case to the Applicant and the Tribunal by no later than 17 November 2014 and that the application would be heard on 10 December 2014.
4. The further directions and the original directions were both prefaced with the Tribunal's standard notes, which include:

"Failure to comply with directions could result in serious detriment to the defaulting party e.g the tribunal may refuse to hear all or part of that party's case and orders may be made for them to reimburse costs or fees thrown away as a result of the default"

5. The Respondent failed to serve her statement of case by 17 November 2014. In a letter dated 25 November 2014, the Respondent informed the Tribunal that her daughter had died in a motor accident in Nigeria. She also advised that she would be unable to attend the hearing on 10 December 2014, as she would be abroad between 27 November 2014 and 20 January 2015. Enclosed with that letter were various photographs and extracts of correspondence passing between the parties. The hearing scheduled for 10 December 2014 was subsequently postponed to 11 February 2015.

6. In a letter dated 08 January 2015, the Applicant's solicitors informed the Tribunal that the Respondent still had not served her statement of case and requested a debarring or unless order.
7. On 19 January 2015 the Tribunal issued a notice specifying that the respondent would be debarred from taking any further part in the proceedings unless she provided a full statement of case "*..within 7 days of the date of these directions..*". The Respondent failed to comply with the notice. On 28 January 2015 the Applicant's solicitors wrote to the Tribunal, asking that the Respondent be debarred from taking any further part in the proceedings. They also sought a determination of breach, based on the papers already submitted and an order for costs.
8. On 30 January 2015 the Respondent wrote to the Tribunal, opposing the applications. She referred to her letter of 25 November 2014 in which she had given details of her emergency travel plans, arising from her daughter's tragic death.
9. On 03 February 2015 the Tribunal wrote to the Applicant's solicitors in the following terms:

"Thank you for your letter of 28 January which has been put before a Procedural Judge.

The Respondent in this matter has now contacted the Tribunal, letter dated 30 January, and in order to resolve this matter finally, the Tribunal considers that she may present her case at the hearing on listed for 11 February 2015. The issue of costs will be dealt with at the hearing and the Applicants should prepare their bundle and serve it on the Respondent by 6 February 2015."

10. On 06 February 2015 the Respondent's solicitors wrote to the Tribunal, requesting an adjournment of the hearing on 11 February 2015. The grounds for the request were that they had only been instructed by the Respondent earlier that day and would need time to take full instructions and peruse the case bundles and file. The request was refused in a letter from the Tribunal dated 09 February 2015.
11. The hearing of the application took place on 11 February 2014. The tribunal were supplied with a detailed hearing bundle that had been prepared by the Applicant's solicitors and which included copies of the application, the various directions, the Applicant's statement of case, the lease, statements from the Applicant's witnesses, photographs and relevant correspondence and documents.
12. The Applicant was represented by Counsel, Ms Rai, at the hearing. Initially the Respondent appeared in person. After approximately 30

minutes she was joined by her solicitor and representative, Mr Mpamugo.

13. On the morning of the hearing the tribunal was supplied with a lengthy document headed "*Statement of case of Ms Florence Duval*". This document, which took the form of a 4-page witness statement with various exhibits, was dated 11 February 2014 but had been sent to the tribunal (by fax) the previous evening.
14. The relevant legal provisions are set out in the Appendix to this decision.

The background

15. The Applicant is the freeholder of the Tyers Estate, Tyers Gate, London SE1 ("the Estate"). The Estate is managed by Leathermarket Joint Management Board ("Leathermarket"). The Respondent is the leaseholder of the Flat, which is a two-bedroom maisonette. She does not live at the Flat, which is sublet to tenants.
16. The Respondent holds a long lease of the Flat. The specific provisions of the lease are referred to below, where appropriate.

The issues

17. The application relates to leaks through the kitchen ceiling of 45 Tyers Estate. The Applicant contends that these leaks amount to breaches of clauses 2(4) and 3(5) of the Respondent's lease.

The lease

18. The lease is dated 27 August 2001 and was granted by the Mayor and Burgesses of the London Borough of Southwark to the Respondent for a term of 125 years from 27 August 2001.
19. The definition of the Flat, as set out in the recitals to the lease is:

"the flat" means the flat and land (if any) shown coloured pink on the plan or plans attached hereto and known as Number 46 on the second and third floors of the building and including the ceilings and floors of the flat the internal plaster and faces of the exterior walls of the flat and the internal walls of the flat (and internal walls bounding the flat shall be party walls severed medially) but excluding all external windows and doors and window and door frames the exterior walls roofs foundations and other main structural parts of the building

20. The Applicant contends that the Respondent has breached clauses 2(4) and 3(5) of the lease, which obliges her:

2(4) To keep the flat and every part thereof (except any part which the Council is obliged to repair under Clause 4 hereof) and all walls sewers drains pipes cables wires and appurtenances thereof in good and tenable repair and condition (including decorative repair)

3(5) Not to do or permit or suffer to be done any act or thing that which may be or become a nuisance or annoyance to the Council or the Lessees owners or occupiers of adjoining or neighbouring property

The hearing

21. At the start of the hearing, Ms Rai invited the tribunal to debar the Respondent from taking part in the hearing. This was upon the basis that the Respondent had failed to comply with the notice dated 19 January 2015 and had only served her statement late the previous day. Ms Rai advised the tribunal that the statement served on her instructing solicitors did not include the lengthy exhibits and that she had only received the exhibits that morning. She referred the tribunal to the various delays on the part of the Respondent and argued that the Applicant had been prejudiced by the very late service of the Respondent's evidence.
22. The Respondent argued that she should be able to participate in the hearing. She referred to her letters to the tribunal dated 23 October 2014 and 30 January 2015 and reiterated that she had been abroad when the notice dated 19 January 2015 was issued. The Respondent also stated that the delay in serving her statement, following her return to the UK on 21 January 2015, was due to ill health.
23. After a short adjournment the tribunal informed the parties that the Respondent would be able to participate in the hearing but would not be able to rely upon the contents of her witness statement or the exhibits. This was upon the basis that this evidence had been served extremely late. In her letter to the tribunal of 30 January 2015, the Respondent sought an extension of *"..7 days of date of this letter"* in which to serve her statement. That 7-day period expired on 06 February 2015 but it was not until the morning of the hearing, on 11 February that a complete copy of the statement and exhibits was served.
24. The tribunal disallowed the statement and exhibits pursuant to Rule 18(6)(b)(iii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"). This was upon the basis that

it would be unfair to admit this evidence, given the very late service of these documents and the resultant prejudice to the Applicant. The Tribunal informed the parties that although the Respondent could not rely upon the statement and the exhibits, she would be able to cross-examine the Applicant's witnesses and respond to their evidence.

25. The tribunal then proceeded with the hearing. The evidence and submissions are summarised below.

The Applicant's evidence

26. The tribunal heard oral evidence from two witnesses for the Applicant, Mr Timothy Clark and Mr Ron Elston, who both verified the contents of their witness statements.
27. Mr Clark is the leaseholder of 45 Tyers Estate, which is a split level flat. The kitchen in his flat is immediately below the bathroom in the Flat.
28. Mr Clark purchased his flat in April 2014. Prior to his purchase, he noticed a damp patch in the corner of the kitchen ceiling. The estate agents informed Mr Clark that this had been caused by a leak from the Flat, which had been fixed. They also stated that insurance funds had been set aside to redecorate the stained area once the damp had dried out.
29. Following completion, the kitchen ceiling was redecorated and Mr Clark sublet his flat to tenants. Soon afterwards he started to receive complaints about a leak in the kitchen, which he referred to Leathermarket. Mr Elston of Leathermarket investigated these complaints. However the leak is still ongoing and the kitchen ceiling is wet. Mr Clark informed the tribunal that he had inspected his flat the previous day and the damp stain in the kitchen ceiling had got worse since his last inspection. He was unable to comment on the precise cause of the leak but was quite clear that it is continuing.
30. Mr Elston has been employed by Leathermarket as a Repairs Manager for approximately 20 years and has been dealing with properties at the Tyers Estate since 2010. He has attended 45 Tyers Estate and the Flat on a number of occasions, in connection with complaints of water penetration.
31. In December 2010 Mr Elston inspected the Flat, as water could be seen seeping through the brickwork directly above the main entrance. The service pipe that runs through the bathroom in the Flat through the concrete floor slab into the kitchen in number 45 below had corroded and was leaking. This was causing water to penetrate down to the hallway of the Flat and into the kitchen of 45. The pipe in question was made of copper and had not been sleeved. Leathermarket carried out

remedial works to stop the leak. This involved cutting into the concrete slab, replacing approximately 2 meters of the pipe with a sleeved pipe and then replacing the boxing for the pipework. In addition the bath was replaced.

32. The Respondent made an insurance claim in relation to the internal damage to the Flat caused by the leaks in late 2010. The hearing bundle included email correspondence passing between insurance claims handlers, Acumen Claims Limited ("Acumen") and Mr Elston. This included an email from Jayne Webster of Acumen dated 25 October 2011, referring to the following defects in the Respondent's bathroom: a missing flexi hose connection between the overflow outlet and the waste, poor silicone sealant to the boxing around the bath, a gap between the bath and WC that allowed shower spray to run down onto the floor and an incorrectly positioned shower curtain.
33. Leathermarket subsequently arranged for the waste pipe to the bath to be reconnected, as a goodwill gesture. In a letter to the Respondent dated 31 October 2011, Mr Elston outlined this work and previous work undertaken in December 2010. That letter spelt out that the maintenance of the bath was the Respondent's responsibility.
34. No further issues were raised about damp or leaks within the Flat or number 45 until early 2014. On 03 March 2014 Mr Elston inspected the Flat and number 45, following complaints of water penetration to 45. He found a number of problems in the bathroom in the Flat, including a cracked tile and missing and inadequate grouting in the tiles adjacent to the bath taps, the underside of the bath was wet and evidence of water spillage. There was also water on the pipes behind the cistern and on the bottom of the cistern, which was probably caused by a leak on the joint of the water feed to the cistern. The grout between the floor tiles and the corner trim gave high moisture readings, which indicates that they are not waterproof.
35. Mr Elston's typed record of the inspection on 03 March includes the following note:

"It is my opinion to say that the amount of water to the bath panel and surrounding areas would be due to showering. It is possible also that at times the shower head is left hanging over the bath due to no fixing point within the bath area. The tenant also informs me that water is evident after showering in the hallway".
36. Mr Elston's colleague, Mr Alan Gawler, wrote to the Respondent on 03 March 2014, outlining the problems in the bathroom. The water penetration continued and the issue was escalated to the deputy manager at Leathermarket, Ms Anne Timeyin. She wrote to the Respondent on 16 May and 19 June 2014. The first letter outlined the remedial work required and the latter referred to the relevant

obligations in the lease and warned that an application might be made to the tribunal.

37. There followed an exchange of emails between the Respondent and Ms Timeyin. The Respondent denied liability and suggested that the service pipe in the concrete between the Flat and number 45 might still be leaking. In an email dated 09 July 2014, she stated that she was *"..instructing an expert to carry out a detailed investigation to ascertain whether or not the causation of the leakage and damage to my wall is still the damaged pipe in the wall"*.
38. Ms Timeyin subsequently suggested a joint inspection of the Flat, by the parties' experts and requested a date for the inspection. On 28 July 2014, the Respondent sent an email to her reading:

"Anne

I am waiting to get a date from my tenant, but if you feel that the tenant valuation tribunal is your best option, I cannot stop you from doing that. I will re-contact my tenant regarding your expert inspection

Regards

Florence Duval"

There was no further contact from the Respondent, regarding the proposed inspection.

39. As far as Mr Elston is aware, the Respondent has not undertaken any of the recommended works to her bathroom. The water penetration to number 45 is continuing and the Applicant has issued these proceedings with a view to taking action to forfeit the Respondent's lease, if the repairs are not undertaken.
40. In his oral evidence, Mr Elston acknowledged that he could not identify one specific area in the bathroom that was causing the leak to number 45. Rather water was coming from a number of different areas.
41. Mr Elston's last visit to the Flat and number 45 was in June 2014. On that occasion he took various damp readings, using a Protimeter. There was a reading of 15.7 for the kitchen ceiling in 45. There was no reading for the concrete slab in the Flat, adjacent to the replacement pipe, which was dry. Upon this basis, Mr Elston's view is that the leak is not emanating from this pipe.

42. In cross-examination, Mr Elston was referred to problems with leaks in the Flat in 1997, 1999 and 2000. He was unable to comment upon these, as he had no knowledge of the historic leaks.
43. Mr Elston accepted that he did not know whether the Respondent had undertaken any remedial work to her bathroom since his last inspection. However he made the point that the leaks into number 45 were continuing and these could not be emanating from the pipe that was repaired in December 2010.
44. Mr Elston was also cross-examined about the quality of the works undertaken in December 2010 and October 2011. He was satisfied that the work was undertaken satisfactorily and pointed out that no leaks were reported following the latter works, until 2014.
45. Mr Elston advised that there was no other possible source of the current leaks into the kitchen in number 45. They must emanate from the bath in the Flat in that the leaks occur whenever the bath or shower in the Flat is being used. The damaged area in the kitchen ceiling is under the centre of the bath.

The Respondent's evidence

46. The Respondent is a caseworker at Bestway solicitors and will shortly start a training contract with that firm. Her letter to the tribunal of 25 November 2014 appeared to have been sent from Bestway.
47. The Respondent stated that she had undertaken all of the remedial work to the bathroom, as recommended by Leathermarket "*and more*". However she failed to produce any invoices from the contractors that undertook the work.
48. The Respondent's case is that the leaks into the kitchen in number 45 are attributable to the pipe that Leathermarket repaired in 2010. She relies on the fact that the leaks are continuing, even though she has now undertaken the work recommended by Leathermarket. Originally the Respondent stated that this work had been undertaken in June 2014. However in cross-examination she acknowledged that the work had not been undertaken at the time of her email to Ms Timeyin of 09 July 2014.
49. The Respondent was asked if she had obtained an expert's report on the cause of the leaks into number 45, as proposed in her email of 09 July 2014. She advised that she had not, as she could not afford the expert's fees of £725.
50. Following the lunch break the Respondent supplied the tribunal and Ms Rai with photographs of her bathroom that had been undertaken in

late January 2015. It was clear from the photographs that not all of the work recommended by Leathermarket had been undertaken. The Respondent stated that her contractors had replaced the wall tiles and the flooring in the bathroom and fitted a new showerhead.

Submissions

51. Mr Mpamugo submitted that the Respondent had not breached clauses 2(4) or 3(5) of her lease and that the ongoing leaks into number 45 are the Applicant's responsibility. He pointed out that there had clearly been a problem with the pipe running through her bathroom and into the kitchen below, as evidenced by the repairs undertaken in December 2010. The Respondent's case is that this problem persists and is causing the leaks.
52. Ms Rai reiterated that the previous leaks from the service pipe had been remedied in December 2010. She referred to the photographs of the repaired pipes in the bundle, the absence of complaints between late 2011 and early 2014 and Mr Elston's evidence as to the cause of the current leaks and the Protimeter readings he had taken in 2014.
53. Ms Rai also referred to the absence of any expert evidence from the Respondent to contradict Mr Elston's evidence and the inconsistencies in the Respondent's evidence. In her submission there was overwhelming evidence that the Respondent is responsible for the leaks and is in breach of her lease.

The tribunal's decision

54. The tribunal determines that the Respondent has breached clause 2(4) of her lease in that she has not kept the bathroom, in particular the bath, the adjacent tiles and the floor tiles, in good and tenable condition.
55. The tribunal determines that the Respondent has breached paragraph 3(5) of her lease by permitting or suffering water to escape from the bathroom, so as to become a nuisance or annoyance to the leaseholder of number 45 (Mr Clark) and the occupants of that flat.

Reasons for the tribunal's decision

56. The tribunal accepts the evidence from Mr Clark and Mr Elston, whom they found to be credible and reliable witnesses. It is quite clear that water has leaked from the bathroom of the Flat through the kitchen ceiling of number 45 and that the leaks are continuing. Further the tribunal is satisfied, on the balance of probabilities, that the cause of the leaks is the Respondent's failure to keep her bathroom in good and

tenantable condition and that water has penetrated through the wall tiles and the floor tiles, adjacent to the bath.

57. The Respondent failed to produce any expert evidence to support her contention that the leaks were emanating from the pipe repaired in December 2010. The tribunal is satisfied that this pipe no longer leaks, based on the Protimeter readings and the absence of any complaints from late 2011 to early 2014. Further it is clear that the leaks emanate from the bath area, given that they occur when the bath and shower are being used and the location of the ceiling stains is immediately below the middle of the bath.
58. The photographs produced by the Respondent at the hearing show that she has undertaken some, but not all, of the work recommended by Leathermarket. However it was unclear when this work was done, save that it was after 09 July 2014. There was a considerable delay on the part of the Respondent in arranging the work and it still has not been completed.
59. Inevitably the ongoing leaks and the Respondent's failure to remedy these have become a nuisance and annoyance to Mr Clark and his subtenants.

Costs

60. At the end of the hearing Ms Rai made an application for costs under Rule 13(1)(b)(ii) of the 2013 Rules.
61. Ms Rai submitted that the Respondent had acted unreasonably in defending these proceedings. This was upon the basis that the evidence against the Respondent was "*overwhelming*" and she had failed to produce any evidence to support the contention that the pipe repaired in December 2010 was the cause of the leaks.
62. Ms Rai also submitted that the Respondent's conduct of the proceedings had been unreasonable. She referred to the Respondent's persistent failure to comply with the directions and pointed out that the application could have been dealt with on paper, had the Respondent complied with the original directions. Ms Rai also referred to the late service of the Respondent's witness statement, which had prolonged the final hearing.
63. The hearing bundle contained a statement of the Applicant's costs up to 28 January 2015, being the date when its solicitors asked the tribunal to debar the Respondent. Ms Rai explained that additional costs had been incurred since that date, including her brief fee of £1,500 plus VAT. At the request of the tribunal, Ms Rai agreed that further statements of cost would be filed and served, so as to provide a detailed breakdown of

all of the Applicant's costs. These were supplied by the Applicant's solicitors on 12 February 2015.

64. Mr Mpamugo opposed the application for costs, on behalf of the Respondent. He contended that the Respondent had tried her best to comply with the directions and had already been penalised for her non-compliance, by the exclusion of her witness statement. Mr Mpamugo also suggested that the Respondent had not been given a reasonable opportunity to remedy any breach of her lease, before the commencement of these proceedings. He suggested that the Applicant had not exhausted its own internal procedures before referring the matter to the tribunal.
65. Mr Mpamugo also made various challenges to the level of the Applicant's costs. He suggested that the sum claimed for photocopying (£553.25 plus VAT) was excessive, as was the time spent on attendances. Mr Mpamugo also challenged Ms Rai's brief fee and suggested that a reasonable figure would be £500 plus VAT.

The tribunal's decision

66. The tribunal refuses the application for an order for costs.

Reasons for the tribunal's decision

67. The starting point is to consider the tribunal's power to make a costs order under Rule 13(i)(b)(ii). It may make such an order only "*if a person has acted unreasonably in bringing, defending or conducting proceedings*". This power is discretionary and the wording makes it clear an order can only be made if a person's **conduct** of the proceedings is unreasonable (in bringing, defending or conducting the proceedings), rather than his behaviour generally. It is for the Applicant to prove unreasonable conduct, which is a high threshold.
68. The tribunal concluded that the Respondent did not act unreasonably in defending the proceedings. Clearly there has been a history of leaks at the Flat and number 45. The Respondent did not accept that she was responsible for the recent leaks and it was reasonable for her to put the Applicant to proof. Although the substantive application has been successful the evidence was not as overwhelming, as Ms Rai suggested. There was no expert evidence to establish the cause of the leaks and Mr Elston candidly admitted that he could not identify the precise cause. In these circumstances it was reasonable for the Applicant to contest the proceedings.
69. The tribunal also concluded that the Respondent did not act unreasonably in the manner in which she conducted the proceedings, up until 05 February 2015. She did not comply with the original

directions dated 28 August 2014 but it appears she only received the application on 23 October 2014. The tribunal notes that the address given for the Respondent in the application was the Flat, which is sublet to tenants. For this reason it is unsurprising that there was a delay in her receiving the papers.

70. Upon receiving the Respondent's letter of 23 October 2014, the tribunal gave further directions and listed the case for an oral hearing of its own motion. This was not requested by the Respondent.
71. The Respondent did not serve her bundle of documents by 17 November 2014, being the deadline specified in the further directions. Potentially this could amount to unreasonable conduct. However it appears that the death of the Respondent's daughter occurred in November 2014. She referred to her daughter's motoring accident in Nigeria when asking for an adjournment of the original hearing, in her letter of 25 November 2014. That letter also explained that the Respondent would be abroad from 27 November 2014 to 20 January 2015.
72. Given the tragic death of her daughter and her absence from the UK until late January, the Respondent did not act unreasonably in failing to serve her evidence in December or January or in failing to comply with the notice of debarment. In her letter to the tribunal of 30 January 2015, she reiterated that she had been abroad due to her daughter's death in Nigeria and asked for an additional 7 days in which to produce her evidence.
73. The Respondent did act unreasonably in failing to serve her evidence on 06 February 2015, being the last day of the 7-day extension period, or at any time before 11 February 2015. It was only on the morning of the hearing that she served a complete copy of her statement and the exhibits. However the tribunal cannot see that the Applicant has incurred any additional costs by virtue of the 5-day delay in service of this evidence, from 06 to 11 February. The proceedings were listed for an oral hearing on 11 February and Ms Rai would still have needed to appear at the hearing, had the Respondent's evidence been served earlier. Her brief fee would have been exactly the same, whenever the statement was served.
74. The helpful statements of costs served by the Applicant's solicitors included a statement covering the period 19 January to 11 February 2015. The only sum claimed for solicitors' costs in this period was £224 plus VAT. The tribunal thinks it very likely that these costs would still have been incurred, had the Respondent's evidence been served 5 days earlier.
75. In conclusion, the tribunal finds that the Respondent acted unreasonably in failing to serve her evidence between 06 and 10

February 2015 but that the Applicant has not incurred any additional costs, as a result of this unreasonable behaviour. It follows that no costs are payable by the Respondent under Rule 13(i)(b)(ii)

Application under s.20C and refund of fees

76. There was no application for an order under section 20C of the 1985 Act.
77. At the end of the hearing, Ms Rai made an application for a refund of the hearing fee paid by the Applicant¹. Given the tribunal's determination it is appropriate that the Respondent refunds this fee and she is ordered to pay the sum of £190 to the Applicant within 28 days of the date of this decision.

The next steps

78. The tribunal has determined that the Respondent has breached covenants in her lease and that these breaches are continuing. The Respondent will need to remedy the breaches if she is to avoid further action by the Applicant.
79. A failure to remedy the breaches could result in the service of a Notice under section 146 of the Law of Property Act 1925 and possible action to forfeit the lease and repossess the Flat. The Respondent should undertake the outstanding work to her bathroom, to prevent further leaks, as a matter of urgency.
80. Although the tribunal refused the application for an order for costs that does not prevent the Applicant from pursuing any contractual claim for costs that it might have under the lease.

Name: Tribunal Judge
Donegan

Date: 31 March 2015

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 168 No forfeiture notice before determination of breach

- (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
- (2) This subsection is satisfied if—
 - (a) it has been finally determined on an application under subsection (4) that the breach has occurred,
 - (b) the tenant has admitted the breach, or
 - (c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
- (3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
- (4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
- (5) But a landlord may not make an application under subsection (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.
- (6) For the purposes of subsection (4), “appropriate tribunal” means –
 - (a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
 - (b) in relation to a dwelling in Wales, a leasehold valuation tribunal.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 13

- (1) The Tribunal may make an order in respect of costs only –
 - (a) under section 29 (4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –

- (i) an agricultural and land drainage case,
- (ii) a residential property case, or
- (iii) a leasehold case; or
- (c) in a land registration case.

...

- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the tribunal sends –
 - (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) a notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by –
 - (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (“the receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

Rule 18

- (6) The Tribunal may –
 - (a) admit evidence whether or not it –
 - (i) would be admissible in a civil trial in England and Wales; or
 - (ii) was available to a previous decision maker; or
 - (b) exclude evidence that would otherwise be admissible where –
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or practice direction; or
 - (ii) it would otherwise be unfair to admit the evidence.