FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LBC/2016/0017**
Property	:	**Flat 5, 44 Elm Park Gardens, London SW10 9PA**
Applicant	:	**44 Elm Park Gardens Limited**
Representative	:	**Mr N Modha – Counsel Miss A Pantling of Ashley Wilson Solicitors**
Respondent	:	**The Mayor and Burgesses of The Royal Borough of Kensington & Chelsea (the Council)**
Representative	:	**Miss England – Counsel instructed by the Council**
Type of application	:	**An application for an order that a breach of covenant or condition of the lease has occurred pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act)**
Tribunal members	:	**Tribunal Judge Dutton**
Date and venue of paper determination	:	**10 Alfred Place, London WC1E 7LR on 8th June 2016**
Date of decision	:	**5th July 2016**

DECISION

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DECISION

The Tribunal determines there has been a breach of covenant or condition of the lease for the reasons set out below.

BACKGROUND

1. This is an application brought by 44 Elm Park Gardens Limited (the Applicant) against the Mayor and Burgesses of The Royal Borough of Kensington and Chelsea (the Council) alleging a breach of covenant or condition of the lease under which the Council is the lessee of Flat 5 (the Flat), at 44 Elm Park Gardens, London SW10 9PA (the Building). The Council has a long lease of the Flat dated 28th April 2008 for a term of 999 years (the Lease) and the Flat is currently occupied by Miss Carmen Lopez-Dea (the Tenant)

2. The Tribunal issued directions in respect of this matter on 29th March 2016 and provided for a hearing to take place on 8th June 2016.

3. The Applicant alleges that the Council has breached two clauses of the Lease. At Clause 2.12 of the lease the following wording is set out:-*"Not to do or permit or suffer to be done upon the Demised Premises or any part thereof any act of thing which shall or may be or become a nuisance annoyance damage or inconvenience to the Lessor or its tenants and occupiers of the remainder of the Building or the tenants or occupiers of any adjoining or neighbouring house or flat or of the neighbourhood."* Further it is said that Clause 6 of the fourth schedule to the lease has also been breached and the wording contained there is as follows:- *"No child or other person (being a person under the lessee's control) shall loiter in any entrance hall, passage, landing or staircase of the building."* The Council's obligation to observe the regulations is contained at Clause 3.3 where it states that the lessee has to *"observe and perform the management restrictions and regulations set out in the fourth schedule hereto."*

4. In a helpful skeleton argument prepared by Mr Modha he sets out the various issues which are levelled against the Council directed in fact at the actions or inactions of the tenant. These include allegations that there been breaches in relation to fire at the Flat, flooding, graffiti, urinating in the premises and the common parts, sleeping, sitting, lying in the common parts, leaving or throwing garbage items into the common parts and shouting abuse, swearing, screaming and generally noise. The Applicants rely on the evidence of Mr Van-Geens and Mr Yazitzis.

5. Prior to the hearing I had made available to me two bundles of papers. The Applicant's bundle included the application, directions, statement of case, copies of the freehold and leasehold title, the Lease and witness statements of Mr Van-Geens, Nicky Mechan and Mr Yazitzis.

6. For the Council I also had a bundle for the hearing which included the Respondent's statement of case, a witness statement of Mr Martin Barr and a further witness statement of Miss Svetlena Vasile.

7. The Applicant's statement of case at page 12 onwards of the bundle alleges at paragraph 5 that the Council *"has permitted and continues to permit the occupier of the premises to cause a nuisance, damage, annoyance and inconvenience to the landlord. The occupier of the premises are urinating in the premises and the same can be smelt from outside the premises in the common parts. In addition, urine has escaped from the premises and caused and continues to cause nuisance to the landlord and other occupiers of the building."* The allegations go on at paragraph 6 to assert that the tenant is known to:

- Shout at other residents.
- Rant and shout from the premises.
- Defecate in the common parts.
- Sleep in the common parts.
- Sleep outside on her balcony.
- Kick black bags of rubbish down the stairs.

The statement of case further alleges that the Council allows or permits the tenant to cause nuisance, annoyance, damage and inconvenience by failing to prevent or take action to stop the nuisance or disturbance and the parts of the leased referred to above are relied upon.

8. The Council's statement of case, which in the bundles and is undated and unsigned but prepared by Miss England, sets out what the Respondents consider the issues to be. They are as follows (a) has the Respondent been given notice of the behaviour in order to permit or suffer to be done the behaviour contrary to Clause 2.12 of the lease (b) has the Council responded to complaints of anti-social behaviour (c) to what extent has Clause 2.12 impose an obligation on the Council to provide support and supervision of the tenant (d) to what extent is the occupier "in control of the lessee" for the purpose of paragraph 6 of the fourth schedule of the lease (e) what is the extent of the Council's breach of Clause 2.12 if the alleged behaviour carries on and (f) has there been an "act or thing which causes nuisance, damage or annoyance or inconvenience."

9. The statement of case then went on to address these various issues which I do not need to set out in full as they are within the papers that are common to the parties.

HEARING

10. At the hearing Mr Modha represented the Applicants. Also in attendance were Miss Pantling of instructing solicitors Ashley Wilson for the Applicant and witness Mr P Van-Geens and Mr Yazitzis. Miss England represented the Council and was accompanied by Mr Barr the

Head of Neighbourhood management for the Council who had made a witness statement and Mrs Svetlena Vasile a Neighbourhood Officer with the Council. In addition, the Tenant attended although did not give evidence.

11. Initially Miss England suggested that the case went beyond the terms of the application containing additional allegations. Mr Modha, perhaps siding to a certain extent with Miss England, thought that the time allowed might be insufficient. Miss England, however, was not in a position to either admit nor deny the nuisance. However, the parties agreed that the hearing should proceed. The issues that is was said I needed to decide were whether there had been a nuisance, had it been permitted, were the Council liable and is the Tenant under the control of the Council.

12. The Applicant's evidence was to be found in the witness statements of Mr Van-Geens and Mr Yazitzis. Mr Van-Geens confirmed that the contents of his witness statement dated 22nd April 2016 were true. That witness statement does not require detailed recounting but I should record that Mr Van-Geens is the leaseholder of Flat 3 at the Property sited below the Flat. It seems that from 2007 Mr Van-Geens' property has been let out to tenants or has alternatively been vacant, he not living there. The Tenant he tells me has been an occupier of the Building for some 17 years and is an elderly lady who has caused nuisance to him and his tenants.

13. His witness statement spoke of a fire which occurred in 2006 and although it is suspected that the tenant had caused this it was not possible to prove arson and the matter did not result in any conviction. He suggested the Tenant had been sectioned under the Mental Health Act following the fire, which had enabled the Council to redecorate the premises. However, the Tenant returned to the premises but in that intervening period Mr Van-Geens had apparently been granted access to the Flat and had seen what can only be described as offensive graffiti on the walls, which appeared to refer to other occupiers/owners of flats in the Building. It appears that similar graffiti had been daubed on a bed sheet, which was hung up it seems of occasions outside the Flat but on other occasions within the Flat but visible from outside. The witness statement went on to deal with allegations of shouting and abuse by the Tenant, urinating both in the Flat and in the common parts and sleeping on the steps to the Flat.

14. Mr Van-Geens said in his witness statement that the Council were well aware of the Tenant's "disturbing and unreasonable behaviour" as he had been informing them of the problems since July of 1999. His statement went on to refer to flooding from the Flat into his property and that it has been agreed with the Council to keep a nuisance diary. Reference is also made to an email sent to the Council in October 2012 in which a number of instances were set out and also that his belief was that a number of leaseholders in the Building had also provided the Council with incident logs. In addition, it appears that Mr Van-Geens

wrote to the local MP complaining about the lack of action by the Council and a number of emails were exhibited showing communications between him and the Council. It is said that in September 2015 his tenants had complained to his managing agent about the noise emanating from the Flat and had threatened to leave. This information was conveyed to the Council but he says no action was taken.

15. In cross examination on the contents of his witness statement he indicated that the last instance referred therein of shouting was September 2015. However he said that it had persisted since then but he had wearied of the matter. He said that he had not continued to report it because he had "run out of steam and was impatient with the local authority." He confirmed he had not sent diary sheets to the Council but had sought assistance on a number of occasions. Unfortunately there had been frequent changes of personnel and the only response he received from the Council was that they were "dealing with it."

16. He was asked about the stain to his ceiling which he said was yellow in colour and had happened some 20 times during his ownership of his flat. He said in some cases he had been able to repaint the ceiling but on others it had collapsed. He said his insurance company would not cover the claim any more. On one occasion he was told it was a leaking bath and had asked the Council to put lino down in the Flat but he was not aware that anything had been done. He was aware that Social Services were involved. When asked if he had wished to have the Tenant evicted he responded that whilst the Tenant was an elderly lady it was unreasonable to expect the occupiers of the Building to allow the matter to continue. He did not think that the Tenant could really live in the community and that the Council were negligent in that they had not handled her difficulties with appropriate care and attention. He made comments about the graffiti and said that it was visible from the street and that he had seen it within recent months. He did confirm that is tenants had changed in 2015 with only a small void period and that there had been no complaints from the present tenants who had been in the property since October but that with the warmer months coming and windows being open that might change.

17. After his evidence I heard from Mr Antonios Yazitzis who is a director of the Applicant having been appointed at the end of May 2014. His witness statement was to be found staring at page 172 in the bundle and was dated 22nd April 2016. He confirmed the veracity of same. The witness statement confirms that he is the leasehold owner of Flat 8 at the property and that he had lived at that flat from 2011 to 2013 and again from 2015 to date. He listed, at paragraph 5, a chronology of specific events of nuisance, which he had personal experience of and which I have noted. He says that the Building almost constantly smells of urine and that he is embarrassed to invite guests because of the Tenant's behaviour. His witness statement indicated that his former tenant, a Mr English, who had occupied the flat between 2012 and 2015

had vacated the building as a result of the Tenant's behaviour and the Council's failure to combat this. He said at paragraph 8 that apart from a recent site visit in March of this year where he understood the Council admitted the existence of urine smells, no other action had been taken to prevent the nuisance, damage, annoyance and inconvenience. He said the application had been made as a last resort.

18. On giving oral evidence he confirmed that he was a director of the Applicant and that in his view the Council had not addressed the problem. He said diary sheets had been submitted to the Council to the point of frustration but that in any event it was not the occupier's requirement to fill out diary sheets. He expected the Council to deal with the matter. Since he had moved back into the flat he had encountered a number of examples of the behaviour of the Tenant which included leaving rubbish outside her flat, hygiene problems and that the exhibits, including a photograph apparently of the Tenant asleep in the communal area, was not a one-off. He said that he had made complaints via the Applicant's property manager, Ms Nicky Mechan, who had also provided a witness statement but was not called to give evidence. She was on sick leave at the time of the hearing. Nonetheless it was submitted that her witness statement should be noted and that there was a chronology of actions taken at page 122 of the bundle and the issues that she had encountered.

19. For the Council Mr Barr gave evidence. His witness statement was to be found at page 7 of the Council's bundle. This told me that he had been Head of Neighbourhood Management since 2nd November 2015 and had reviewed the house file for the Flat. He also confirmed he had read the Applicant's witness statement. The statement indicated that he did not have permission of the Tenant to disclose her personal data so was not able to disclose documents which relate to her or provide evidence of the Council's contact with her and other support services. All he could say was that the Council had complied with their policy and procedure for dealing with anti-social behaviour, which was produced and exhibited in the bundle. However, he did go on to say "it is true to say that we have accepted that the behaviour of the Tenant does cause a nuisance to residents but it is not true to say that we have not taken any action to deal with the problems."

20. It is said that the Council had worked with Social Services and he stated that for a period of six months the Tenant had been away from the property. He said that the file showed fewer complaints than in 2013 and it was the Council's view, therefore, that the Tenant's behaviour had improved. The witness statement went on to confirm that the Council's file showed that they have recognised the Tenant has caused a nuisance at times and that they had consistently asked for residents who have complained to provide specific dates and times when they have witnessed the Tenant causing a nuisance. This it was said was vital to enable them to be successful in any legal action against the Tenant.

21. He accepted that when Ms Mechan took over the management there was an increase in complaints about the Tenant and that she had provided them with dates and times of behaviour that she had witnessed or had been reported to her. It was said that in 2014 Olivia Hutchinson, the Neighbourhood Management Team Leader had invited the Tenant to the office to discuss matters and that apparently action was taken in response to the complaint but no information was provided. There were further exchanges between Ms Mechan and Miss Hutchinson. It is said that Miss Hutchinson asked the Tenant about a complaint of shouting which she had denied.

22. In an email of 27th October 2014 from Olivia Hutchison to Ms Mechan it was said by the Council that "without evidence the ASB (*anti-social behaviour*) you are reporting cannot be used in Court to take tenancy enforcement action. It is essential that residents keep diaries and contact Environmental Health about the shouting and noise in the corridor."

23. Mr Barr's statement went on to indicate that in September of 2015 the Police and Council staff had forced an entry to the Flat and it was thought that since that time the screaming and noise had abated as there had been no complaints. Paragraph 23 of his witness statement explained the Council's position with regard to the Tenant and her rights that she may have. It said at the end of the witness statement that "*although we have no obligation under the terms of our lease with the Applicant to abate the nuisance caused by the Tenant, I suggest that we have taken reasonable steps to deal with the problem in accordance with our policy and procedure. We have not permitted or suffered a behaviour there is evidence that our actions have led to an improvement.*"

24. In oral evidence Mr Barr said that they had not received diary sheets from the Applicants but accepted that there had been complaints. He said that there needed to be details of complaints although was not suggesting there had not been details given. Apparently steps had been taken by the Council with regard to the complaints, there had been interviews and warnings had been issued but none of those written warnings had been included within the papers. He confirmed also that he had no personal knowledge of the Tenant or the difficulties before November 2015. He said he had seen the file relating to the Flat but had not disclosed the documentation as in his view the vast majority of data was personal to the Tenant. He conceded there was no formal requirement for a diary sheet to be completed and it was put to him that complaints had been made on a regular basis. He accepted that there had been complaints about the Tenant over the years, some evidenced and some not and accepted that there had been nuisance caused. As to the actions taken by the Council, he confirmed that these had not been disclosed but the policy required them to investigate, create a plan of action with a risk assessment, respond, interview the Tenant and keep matters updated. However, no documentation to support these steps was produced and he said there were elements that

could not be disclosed, although there were some that could be. Since his involvement in November of 2015, he confirmed that he was personally aware that complaints had been made but was not aware that diary sheets had been completed. He repeated that they needed evidence to take actions against the Tenant and the only way they could remove her would be by way of Court Order.

25. He said that an acceptable behaviour agreement (ABA) had been recently entered into and it seems that one may have been entered into some time ago. No copy of the ABA was produced. Asked why it was not possible to consider possession before December 2015, he said looking back on the file there was significant gaps and there simply was not a body of evidence for him going back the years alleged.

26. In re-examination he said that they had not the amount of evidence available to take action, although warnings had been issued to the Tenant both verbal and written. Apparently there had been more than one verbal and written warning given. It is said that the verbal and written warnings were not disclosable documents.

27. He was followed by Mrs Vasile, the Neighbourhood Officer who has been responsible for the Tenants in the Property since May of 2014. Apparently there are two Tenanted flats, numbers 3 and 5. Her witness statement, which is dated 12th May 2016, confirmed that she had been in regular contact with Ms Nicky Mechan the manager of the block and in addition she had arranged for the resident porters to inspect the building on a regular basis. It was her view that matters had improved since February of 2016. This view was set out in an email to Ms Mechan who responded the following day with photographs showing the dumping of refuse and other items by the Tenant. This continued with another email on 22nd February referring to issues.

28. It appears that in March of 2016 she visited the Tenant to discuss the nuisance and the Tenant denied urinating and leaving debris in the communal areas but admitted sitting and eating there. She also apparently admitted leaving items at the front of the flat but that she would not leave such items in future nor would she eat outside the confines of the Property. It is said that at this meeting Miss Vasile noticed the smell of urine and offered the Tenant a one-off cleaning. Since that meeting in March of 2016 the Tenant had been invited to the Council to sign an ABA, which it seems she did. Within the appendices to the witness statement was a log of visits in April and May of this year, the contents of which I noted. In evidence she told me she had left her post in August of 2015 returning in October 2015. She did not consider that there had been complaints from October 2015 to January/February 2016 and confirmed an ABA had been entered into in April of this year, which was the first agreement within her time of dealing with the Tenant. She accepted that the application being made by the Applicant may have been relevant to steps being taken. She had not produced copies of any notes that she had taken in respect of her involvement with the Property, they being she said in the client's file.

Asked in re-examination why the Council had been influenced by the application brought by the Applicants she gave no answer.

29. I then had submissions from Miss England on behalf of the Council. She told me that the Property had originally been owned by the Council but enfranchisement had taken place. The Tenant was the oldest tenant in the Property both in age and in occupancy having been there since June of 1987. She asked the question whether the Council had permitted or allowed the matters to have been done and if they were allowed were they adopted. She referred to the case of *Mowan v Wandsworth LBC (2001)33HLR66*, *Hussein and another v Lancaster City Council* Court of Appeal case in March of 1998 and *O'Leary v The London Borough of Islington reference 1982 WL 220907.* She said that the Mowan case was one of negligence, the Hussein case indicated that there were no implied terms that the Council must positively abate a nuisance and this was to an extent supported by the O'Leary case. Accordingly, insofar as whether the Council had permitted or suffered the nuisance it would be necessary to show that nothing was being done by the Council to prevent same.

30. She also said that any nuisance was limited to that which occurred within the Flat and nothing outside was the responsibility of the Council. As to the question as to whether or not any act or thing within the wording of Clause 2.12 had been established she was of the view that the Tenant was vulnerable and it must be shown that the Tenant had done something which affects anyone else at the premises. As to whether or not there had been a nuisance the Council could not admit or deny that.

31. She told me that the Council took the view that the file on this matter was confidential and that the Tenant had refused disclosure and accordingly it would be unlawful for them to provide such documentation. The obligation under Clause 2.12 was not be admit or suffer things to be done and that insofar as the provisions of the fourth schedule paragraph 6 were concerned, this was not a relevant provision for the Council to concern themselves with.

32. Being specific then on the various headings under nuisance, she said that the urinating was not as part of the demised premises but in the common parts. The screaming and shouting would fall within 2.12 but the allegations were prior to 2013 and led to Social Services intervention and that she was not at the property for a period of some six months. She said there no complaints of shouting since 2015 and therefore the Council had dealt with that. She reminded me that Mr Van-Geens confirmed that his Tenants who had been in occupation since October of last year had not complained. To adopt the nuisance the Council must know about it. The water penetration issues she said did not arise through any fault of the Council and that indeed the Tenant had not been in the Property in 2013 for some six months. There was no direct evidence that the flood was urine rather than water.

33. She posed the question how far do we go back. 2013 there was a period when the Tenant was not in occupation. 2014 the leak related to problems with the bath. It was not known whether the Tenant was incontinent. Certainly it was said by the Council that they had not permitted the urinating. It was said, however, that there had been a deep clean of the common parts and the flat in March of this year and that really there was nothing more the Council could do. To take legal action required a high standard of evidence and a course of conduct needed to be proved with dates. It was said until the claim was made there was no clear course of conduct and it was accepted that the claim had influenced the Council as for the first time they now had a full case. This was she said unfair on the Council. The position from the Applicant appeared to be that they had had enough, that they wanted the Council to evict the Tenant but that they would not give them relevant tools to do so. The forfeiture would lead to them obtaining the flat for free and that that could not be right. It was she said easy to be critical from the side-lines. It was she said always possible for the Applicants to have taken action directly against the Tenant. She said that the Council was not in control of the Tenant but doing the best they could.

34. Mr Modha for the Applicant said that the submissions were incorrect. There was no authority he said which meant that reliance could only be based on recent breaches. There was no limitation issue. All that had to be decided was whether there had been a breach and if so what that breach was. The remedy for the breach was irrelevant. The Tribunal had to consider whether the covenant had been waived, which was not the case. There was no necessity for the Applicant to show that the Council has adopted the nuisance. In this case there is a contract, the Lease between the Applicant and the Council and it is not a question of adopting the nuisance there is a direct contract and the Applicants can sue on that.

35. The authorities he said did not help. The local authority had done nothing to prevent the nuisance and of course they had a contract with the Tenant and there was a multitude of things that could have been done. There was no application made for an injunction or specific performance. He did not know why this had not been pursued. There was he said a wealth of evidence available which may have been sporadic but that nuisance could still be of that nature. The Council could not say what steps had been taken and why and instead had hidden behind disclosure and confidentiality. Had the Council permitted or suffered the nuisance? To suffer was allowing or acquiescing, to do nothing where something could have been done. An ABA was apparently entered into in 2016 but the terms were not disclosed. Steps taken recently might suggest the Council were not 'suffering' the nuisance but the breaches had occurred over the years. It is accepted that the Council had taken some steps, such as deep cleaning, but that this was insufficient and to support this he relied on the skeleton argument at paragraph 22 onwards. There had, he said,

been knowledge of the problems going back to 2006. When the lease was entered into in 2008 it was never contemplated that the Council would occupy. The time the lease was entered into the Tenant was in situ and there was a relationship between her and the Council which was one of control, the Council having such control by the granting of the tenancy. There must be rights and obligations under the tenancy but the document was not disclosed and there has been selectivity and a lack of documents which demonstrated that the Council had sat on their hands.

36. This concluded the evidence and submissions.

THE LAW

37. The law relating to the Act is set out in the appendix hereto.

38. I set out again the wording of Clause 2.12 of the lease. It is as follows:- *"not to do or permit or suffer to be done upon the Demised Premises or any part thereof any act or thing which shall or may become a nuisance, damage, annoyance or inconvenience to the lessor, or its Tenants and occupiers of the remainder of the building or the Tenants or occupiers of any adjoining or neighbouring house or flat or the neighbourhood."* In addition, there is reliance on the fourth schedule to the lease referred to above.

FINDINGS

39. I read the witness statements of Mr Van-Geens, Ms Mechan and Mr Yazitzis together with their exhibits. I found Mr Van-Geens and Mr Yazitzis truthful witnesses and accepted their evidence that there had been a history of difficulties with the Tenant and that information had been conveyed to the Council, albeit not necessarily in the form of diary-form entries. This submission of evidence had been over a period of time.

40. For the Council Mr Barr's evidence was accepted by me but I was not persuaded that the Council's internal requirements for diary entries to be provided to them was sufficient for them to say that they had insufficient evidence to take actions against the Tenant. The terms of the Council's policy are an internal arrangement and if the Applicant in this case makes a number of complaints whether written or oral it seems to me the Council had an obligation to act on those and not to hide behind its policy. Further, of course Mr Barr only came to his post in November of last year. The evidence of Miss Valise was somewhat limited, she relying to an extent on that which Mr Barr said. It is clear that at least one ABA had been entered into and possibly more than that, but again the Council refuses to disclose, it is said because no permission had been given by the Tenant and also under data protection.

41. I am satisfied on the evidence before me that the Tenant has caused the nuisance complained of. This includes urinating in the Flat and in the common parts, sleeping in the common parts, leaving rubbish outside her flat and also exhibiting offensive wording which are visible on occasions from beyond the confines of the Flat. I do not consider that there is evidence to show that she was necessarily the cause of the fire in her flat nor do I consider that there is sufficient evidence to say that she caused the leaks which are complained of, although I have no doubt that there have been leaks, which have caused damage to Mr Van-Geens' flat. The Council accepts from visits that there has been a smell of urine and I am also satisfied that there have been occasions, not infrequently, of the Tenant shouting and being abusive to other occupiers of the Building.

42. The lease requires that the Council must not permit or suffers any act or thing which shall or may become a nuisance, damage, annoyance or inconvenience to Lessor or its tenants and occupiers of the remainder of the building. I accept that one can read into clause at 2.12 that it is actions done upon the Demised Premises, which is defined within the terms of the lease. However, the regulations go outside the Demised Premises. Having made the findings that I have and having accepted that the Applicants have made complaints to the Council on numerous occasions over a number of years, it seems to me and I find, that the Council has indeed permitted and suffered the matters set out in clause 2.12 of the Lease to occur.

43. Not all the authorities given to me are of real assistance. One that is is the case of *Courtney Lodge Management Limited v Blake [2004]EWCACIV975*. There it was held that *"a nuisance might be suffered by a person even if that person has no legal power to prevent it if having influence – which if exerted might lead to a cessation of the nuisance – the person fails to exert it at least if, as a matter of fact, exertion of the influence would, on the balance of probability have brought about an end to the offending state of affairs."* Although the facts in that case are not the same, it seems to me that the principle involving a landlord and tenant, can be applied.

44. The case of Mowan and Wandsworth is a tenant's application against the landlord complaining of the actions of another tenant as is the Hussein case. In this case, of course, there is a direct contractual relationship between the Applicant and the Council in the terms of the lease. Further, although not disclosed, there must be a direct contractual relationship between the Council and the Tenant.

45. It is my finding that the Council could have done more to have prevented the Tenant from acting in the manner in which she did. What those steps might be would be for the Council to determine but it seems to me that hiding behind the lack of completion of diary entries and the lack of evidence to take action is uncompelling. This is a problem that has been going on for some considerable time and it is my finding that the Council should have grasped the nettle before now and

undertaken some preventative action involving the Tenant. Whether that be to move her to accommodation which might be more suited, greater involvement of Social Services or obtaining some form of injunction to prevent the repetition of these offences, thus giving the Council greater manoeuvrability in preventing future behavioural problems impacting on the other residents of the Building is open to conjecture.

46. In those circumstances, therefore, I find that there has been a breach of the covenant and or condition of the lease.

47. It will be for others to decide what steps may be taken. My finding is purely relating to whether or not a breach has occurred.

48. I should mention that Miss Carmen Lopez-Dea has, since the hearing, been writing lengthy letters to the Tribunal. I should make it clear that we cannot respond to this correspondence. It has not been read by me and has had no influence in reaching this decision.

Judge: Andrew Dutton
A A Dutton

Date: 5th July 2016

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.