



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

**Case Reference** : **BIR/00FY/LBC/2021/0004P**

**Property** : **3 Royal Standard House, Standard Hill,  
Nottingham, NG1 6FX**

**Applicant** : **RSH & CP Limited**

**Applicant's  
Representative** : **LMP Law Solicitors**

**Respondents** : **Janet Ann Burgass & Amanda Claire Kent**

**Type of Application** : **Application under S168(4) Commonhold  
And Leasehold Reform Act 2002 for a  
Determination that a breach of covenant  
in a lease has occurred**

**Tribunal** : **Tribunal Judge P. J. Ellis.  
Tribunal Member Mrs S Hopkins FRICS**

**Date of Hearing** : **29 July 2021**

**Date of Decision** : **9 August 2021**

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**DECISION**

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1. ***The Respondents have breached certain clauses in the lease made 2 December 1998 between Crosby Homes (Midlands) Limited and Janet Ann Burgass in that they have:***
  - a) ***carried out work at the property without the consent of the Landlord contrary to Clause 3.5 of the lease.***
  - b) ***Caused or permitted an accumulation of flammable material and the other damage to the internal structure of the property which poses a fire risk which may render void or voidable any policy of insurance maintained in respect to this state contrary to regulation 4 of schedule 4 to the lease.***
  - c) ***failed to repair maintain renew uphold and keep the property in good and substantial repair and condition contrary to clause 4.1 of the lease.***
  - d) ***failed to keep the property in a good state of decoration contrary to clause 3.4 of the lease.***

## **Introduction and Background**

1. This is an application pursuant to section 168(4), Commonhold and Leasehold Reform Act 2002 (the Act) by RSH & CP Limited (the Applicant) for an order that a breach of covenant or condition in the lease of 3 Royal Standard House Nottingham (the Property) has occurred. The Respondents to the application are Janet Ann Burgass and Amanda Claire Kent.
2. The application was issued on 17 March 2021. Directions were issued on 18 March 2021 directing the Respondents to serve a joint Statement of Case by 16 April 2021. They did not do so without explanation. On 26 April 2021 the Respondents were directed to serve their Statement of Case by 4 May 2021. The Respondents failed to comply with the direction. On 10 May 2021 Sarah Sutton, the sister of Amanda Kent, wrote, by email, to the Tribunal explaining her sister was suffering with ill health needing hospital treatment. Ms Sutton also stated the flat was being slowly renovated and it was her sister's intention to move back into it.
3. On 13 May 2021 the Tribunal stayed the matter until 27 May 2021 in order to allow the parties to discuss the matter. On 27 May 2021 Amanda Kent requested a further two week extension in order to sell the property rather than renovate it. The Applicant's solicitors opposed the request.
4. On 3 June 2021 the Tribunal directed that unless the Respondents serve their Statement by 11 June 2021, they would automatically be barred under Rule 9(8). The Respondents sent an email to the Tribunal on 11 June 2021 which the Tribunal, on 15 June 2021, directed be treated as their Statement of Case.

5. The Applicant served its Statement of Case with supporting documents in accordance with Tribunal directions on 9 April 2021. It also served a brief reply to the Respondents Statement of Case on 25 June 2021.
6. Both sides agreed that an oral hearing was not required. The matter was heard without an internal inspection of the Property, but the Applicant supplied the Tribunal with a video showing the interior of the Property which the Tribunal observed. This Tribunal has made its decision on the basis of written submissions by the parties and the video.

### **The Applicant's allegations of breach of covenants**

7. The Applicant alleges the Respondents are in breach of four clauses in the lease namely:
  - a. A breach of Regulation 4 of the Fourth Schedule which provides that the Respondents will not “*do or permit to be done any act or thing which may render void or voidable any policy of insurance maintained in respect of the estate or may cause an increased premium to be payable in respect thereof or to keep or permit to be kept any petrol or other inflammable substances in or about the Premises and to repay to the Landlord all sums paid by way of increased premium and all expenses incurred in or about the renewal of any such policy or policies rendered necessary by a breach of this regulation all such payments to be recoverable as rent in arrear*”
  - b. A breach of clause 4.1 which requires the Respondents to “*repair maintain renew uphold and keep the Premises and all parts thereof including so far as the same form part of or are within the Premises all window glass and doors (including the entrance door to the Premises) locks fastenings and hinges sanitary water gas and electrical apparatus and walls ceilings drains pipes wires and cables and all fixtures and additions and the surface of the balcony or terrace (if any) adjoining the Premises and the railings enclosing the balconies (if any) thereon (but excluding the external wall of the Premises adjoining) in good and substantial repair and condition save as to damage in respect of which the Landlord is entitled to claim under any policy of insurance maintained by the Landlord in accordance with the covenant in that behalf hereinafter contained except insofar as such policy may have been vitiated by the act or default of the tenant or any person claiming through the tenant or his or their servants agents licensees or invitees*”
  - c. A breach of clause 3.5(b) of the lease which requires the Respondents” *not to make any internal non-structural alterations or additions without first*

*having received the Landlords written consent which shall not be unreasonably withheld”, and*

- d. A breach of clause 3.4 which requires the Respondents *“in accordance with the tenants covenants in that behalf here enough to contained to repair decorate and make good all defects in the repair decoration and condition of the Premises of which notice in writing shall be given by the Landlord to the tenant within two calendar months next after the giving of such notice.”*

## **The Property**

8. The subject Property is a one-bedroom lower ground floor apartment with its own separate entrance which was acquired by the Respondents in December 1998. The first Respondent acquired flat 10 directly above flat 3 in 2010 and vacated flat 3 in September 2010 and has not lived in the Property since that time. Both Respondents reside or have their address for service at 10 Royal Standard House. From a review of the video evidence supplied and the written submissions of the parties the Tribunal has deduced that the subject Property is unoccupied.

## **The Lease**

9. The lease of 3 Royal Standard House was acquired by the First Respondent on 2 December 1998. The term of the lease is 125 years with effect from 1 January 1998. The first Respondent assigned an interest in the lease to the Second Respondent in 1999. The first Respondent is mother of the second Respondent.
10. The relevant terms of the lease in addition to those set out above are:
  - a. At clause 1.21 *“the Premises” means the Property referred to in Paragraph 4 of the particulars more particularly fully described in the First Schedule which defines the Premises as “The Ground Floor Flat edged red for identification purposes only on Plan One. The First Schedule then goes on to describe what is included in the opening description and includes internal plastered coverings and plaster work of the walls, internal walls and partitions, all conducting media, fixtures and fittings in or about the Premises not otherwise excluded.”*
  - b. At Clause 3.3 *“To permit the Landlord and its duly authorised surveyors or agents with or without Workman at all reasonable times by appointment (but at anytime in case of emergency) to enter into or upon the Premises or any part thereof for the purpose of viewing and examining the state of repair thereof”*

- c. *At Clause 3.5(a) “not to make any structural alterations or additions to the Premises or any part thereof or any alterations to the exterior of the Premises and not to alter the colour texture or appearance of any glass in the windows”*
- d. *At clause 3.6” if the tenant shall make default in the performance of any of the covenants herein contained for or relating to the repair decoration or maintenance of the Premises to permit the Landlord and or its agents at all reasonable times with or without workmen and others to enter upon the Premises and repair decorate maintain or reinstate the same at the expense of the tenant (but so that no such entry repair decoration maintenance or reinstatement shall prejudice the right of re-entry under the provisions hereinafter contained) and to repay to the Landlord on demand the cost of such repair decoration maintenance or reinstatement (including any Solicitors Counsels and Surveyors costs fees reasonably incurred by the Landlord in respect thereof) such cost to be recoverable by the Landlord as a debt and as if the same were rent in arrear”*
- e. *At clause 4.6 “observe and perform the regulations in the 4th schedule provided that the Landlord reserves the right to add to alter or waive such regulations in its reasonable discretion.*
- f. *At Clause 6 “Provided Always and this lease is made upon condition that if the respective rents hereby reserved or any part of the same respectively shall at any time be in arrear and unpaid for 21 days after the same shall become due (whether any formal or legal demand therefor shall have been made or not) or if the tenant shall at any time fail or neglect to perform or observe any of the covenants conditions or provisions herein contained and on the part of the tenant to be performed or observed then it shall be lawful for the Landlord to re-enter upon the Premises or any part thereof in the name of the whole and peaceably to hold and enjoy the Premises thenceforth as if this lease had not been made and the term shall absolutely determine but without prejudice to any rights of action or remedy of the Landlord”.*

### **The Applicant’s submissions**

11. On 24 July 2020 the Applicant by its solicitors LMP Law sent Notice of Entry to the Respondents at 3 Royal Standard House and also at 10 Royal Standard House notifying them as owners of the lease of 3 Royal Standard House that they are required to abide by the terms and covenants of the lease and further stated that the Applicant had been made aware of the breach of their lease. The Notice identified the relevant clauses as 3.5(b) and 4.1 having regard to the potential alteration of the Property resulting in a possible issue with the covenant to repair the Property and the fixtures and fittings. The purpose of the Notice was to draw

to the attention of the Respondents to the relevant terms of the lease and to request entry in order for the Applicant to ascertain the state of repair within the Property.

12. On 7 October 2020 the Applicant, by its solicitors, sent a Notice of Breach of Lease to the Respondents. The Notice recited that the Applicant had gained access to the Property for the purposes of inspecting and checking whether there were any breaches of the lease and noted that substantial works had been undertaken at the Property including the removal of the plasterboard and internal partition walls within the Property. The Applicant was satisfied that the works carried out were a breach of the terms of the lease and must be remedied immediately. The Notice contained relevant terms of the lease. It also recited an extract from a report obtained by the Applicant by a safety assessor. The report stated that it was more likely for there to be deficiencies in the void which would allow for rapid fire spread. It also stated that the missing plasterboard which should be over the steelwork forms part of the fire protection. In particular it stated that *“it will be encased to ensure structural integrity is maintained, the steel beam required encasement of plasterboard to meet the requirements for fire protection”*. The Notice further recorded that the assessor stated that the vent system was incorrectly fitted which, in the (assessor’s) opinion allows for a much quicker fire spread which had already been identified in the assessor’s Fire Risk Assessment.
13. The Applicant notified the Respondents that they were in breach of clause 4.1 of the lease as alterations had been made to the Premises including but not limited to the removal of the heating system bathroom and kitchen apparatus thereby meaning that the Premises were not being kept in proper repair. They also were in breach of clause 3.5 (b) as alterations had been made without obtaining Landlord’s consent.
14. The Applicant had made a video of the condition of the Property during the course of the inspection. The video was produced to the Tribunal. It showed an accumulation of flammable material throughout the apartment, a lack of Fire Protection around the steel lintol, the venting system had been compromised, in addition to works to the communal extraction system which has compromised its functioning throughout the building as a whole. Openings had been punctured into the ceiling void and plasterwork finishes and limiting the effectiveness of the fire compartmentalisation.
15. The Tribunal was not shown any response from the Respondents to the Notices but it was shown letters from Sarah Sutton who is the sister of Amanda Kent. Her position in relation to the matter is unknown but she appears to be familiar with

the Property. By letter dated 26 October 2020 Miss Sutton agreed the flat is “*rather full of stuff*” and explained the contents did not belong to her but to a third party who was due to move everything by the end of the month. She then stated that the plumbing heating and replacement bathroom will be finished by end November. The joinery and plastering and decorating will be completed by mid December. By a further letter of 11 November 2020 the same Miss Sutton stated that “*the 21 year old kitchen needs to be removed and some old wardrobes but the flat will be ready to be occupied in January*”.

16. The Applicant did not hear any further from the Respondent or Miss Sutton after the letter of the 11 November 2020 and has no reason to believe that any further work has been carried out. As a result the Applicant contends the Respondents are in breach of the terms of their lease and in particular have failed to make good alterations which were made without Landlords consent. The premises in their present condition are considered by the Applicant and their advisors to be a fire risk hazard not only to the apartment but to the remainder of the building.

### **The Respondents submissions**

17. The Respondents did not answer the Landlords complaints and it was not until 11 June 2021 the Respondents made any statement regarding the state of the Property. Tribunal had previously ordered that a letter of 11 June 2021 sent by Amanda Kent should stand as the Respondents’ Statement of Case.
18. By the Statement of 11 June, it was admitted that when the first Respondent purchased flat 10 in the Building she decided to renovate flat 3 and removed the bathroom, hall cupboard, fitted bedroom wardrobes, plasterboard arch in hall, boiler and water tank. Miss Kent further asserted that water gas and electricity had been switched off or capped and the flat did not pose a fire or flood risk to other flats. She then stated that a programme of work of eight weeks had been agreed for the renovation of the flat but indicated as it was her intention to sell the Property.
19. In a response to this statement the Applicant asserts that the Respondents have admitted there were unauthorised alterations to the Property which were not renovations as submitted by the Respondents. The Applicant also contended that the state of the Property constituted a fire or flood risk

### **Decision.**

20. The Respondents have not challenged the accuracy of the video nor have they denied that they have undertaken works at the Property without consent. The only evidence given to the Tribunal by the Respondents regarding the condition

of the Property was a short statement in their Statement of Case that if the Landlord insisted the eight-week programme of work could be carried out between July and September 2021. No evidence was given regarding the content of the programme of work.

21. The Tribunal is satisfied that that the Respondents have not had regard to the terms of their lease, nor have they considered the seriousness of the situation they have created by going ahead with supposed refurbishment without the Landlords permission. Moreover, the holes in the plasterboard, the exposure of steels and the accumulation of flammable material in the Property causes a serious fire risk which will endanger the entire building.
22. The Tribunal reviewed the correspondence submitted by or apparently on behalf of the Respondents to the Tribunal before the hearing relating to compliance with Directions. It is satisfied that the Respondents decided to make changes to the Property without consultation with the landlord. Those changes which the Respondents considered as refurbishment or modernisation were undertaken over a prolonged period without completion. They have carried out work at the Property without the consent of the Landlord which amounts to an unauthorised alteration of the Property contrary to Clause 3.5 of the lease.
23. The accumulation of flammable material and the other damage to the internal structure of the Property together with the exposed steels together pose a fire risk which may render void or voidable any policy of insurance maintained in respect to this state contrary to regulation 4 of schedule to the lease.
24. The work carried out by the Respondents also amounts to a failure on their part to repair maintain renew uphold and keep the Premises in good and substantial repair and condition contrary to clause 4.1 of the lease.
25. It follows that the work also amounts to a failure to keep the Property in a good state of decoration contrary to clause 3.4 of the lease.

## **Appeal**

26. If either of the parties is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).