FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/19UC/LBC/2021/0025
Property	**:**	Flat 2, Wharncliffe Court, 29 Beacon Drive, Christchurch Dorset, BH23 5DH
Applicant	**:**	Wharncliffe Court (Highcliffe) Limited
Representative	**:**	Ian MacFarlane (Chairman of the Applicant)
Respondent	**:**	Coldstreamer Limited
Representative	**:**	Stuart Armstrong of Counsel
Type of Application	**:**	Breach of Covenant. Section 168(4) Commonhold and Leasehold Reform Act 2002
Tribunal Member(s)	**:**	Judge J Dobson Ms J Coupe FRICS Mr L Packer
Date of Hearing	**:**	6th December 2021
Date of Decision	**:**	24th January 2022

DECISION

Summary of the Decision

1. **The Tribunal determines that the Respondent breached the covenant contained in paragraph 1 of the Fourth Schedule of the Lease from 12th April 2021 to 22nd September 2021.**

2. **The Respondent is ordered to pay the application and hearing fees incurred by the Applicant in the sum of £300 within 28 days.**

The Property and the Application

3. The Property is a two- bedroom flat situated in a block ("the Building"), which is one of two blocks which together constitute Wharncliffe Court (termed in the Lease as "the Development"). Each block contains six flats.

4. The freehold of Wharncliffe Court is owned by the Applicant. The Applicant is a lessee-owned company which acquired the freehold in 1986. Each lessee is a member of the Applicant.

5. The Respondent is a company which owns the leasehold interest in the Property pursuant to a lease dated 2nd December 1970 ("the Lease"), of which the Director is Emmajayne Peaty.

6. The Applicant made an application dated 29th September 2021 for a determination by the Tribunal in which they alleged various breaches of covenants of the Lease by the Respondent. Directions were given on 19th October 2021 for steps to be taken to prepare the application for hearing.

The Law

7. The relevant law in relation to breach of covenant is set out in section 168 Commonhold and Leasehold Reform Act 2002, most particularly section 168(4), which reads as follows:

> "A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for determination that a breach of a covenant or condition in the lease has occurred."

8. The Tribunal must assess whether there has been a breach of the Lease on the balance of probabilities.

9. A determination under Section 168(4) does not require the Tribunal to consider any issue other than the question of whether a breach has occurred. The Tribunal's jurisdiction is limited to that question. As explained in *Vine Housing Cooperative Ltd v Smith* (2015) UKUT 0501 (LC), the motivations behind the making of applications, are of no concern to the Tribunal, although they may later be for a court.

10. The Lease is to be construed applying the basic principles of construction of such leases as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.

15. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in Chartbrook [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision.

16. Various other decisions of courts and tribunals have dealt with uses of properties for short-term lets and those to which one or other party referred plus one more identified by the Tribunal are considered below where appropriate.

The Lease

17. The relevant covenants by the Lease are contained in the Fourth Schedule to the Lease. The Applicant relied in its application on the following provisions of the Fourth Schedule:

> 1. Not to use or occupy the Flat nor permit the same to be used for any purpose whatsoever other than as a private residential Flat in the occupation of one family only nor for any purpose from which a nuisance or annoyance can or might arise to the owners tenant and occupiers of any part of the Development or of any property in the neighbourhood nor for any illegal or immoral purpose.
>
> 4. Not to assign sublet share part with the possession of or hold as agent or in trust for any person only of the Flat.

18. Whilst the Tribunal considered the Lease as a whole, it is unnecessary to set out more of it in this Decision.

The hearing

18. The hearing was conducted as a hybrid hearing. Judge Dobson sat in person. Mrs Coupe and Mr Packer sat remotely. The other participants all attended in person.

19. Mr Macfarlane represented the Applicant as he had done throughout. Mr Armstrong of Counsel, who had not previously been involved in the application, represented the Respondent. He had been instructed the previous week. The Tribunal was grateful to both for their assistance, not least their submissions on the case authorities put before the Tribunal, which the Tribunal carefully considered.

20. There were several other attendees from whom it was not necessary to hear. Ms Peaty attended as an officer of the Respondent company.

21. Mr Macfarlane took issue with the service of the Respondent's Skeleton Argument at 5pm on the afternoon of Friday 3rd December 2021. However, Mr Armstrong noted that the Skeleton Argument did not provide new evidence but rather contained legal submissions and that those could be made orally. The Tribunal accepted that as correct, such that the Respondent was entitled to rely on the contents of the Skeleton Argument. Mr Macfarlane provided a shorter document, named "Hearing Script" which contained his closing comments. The representatives each relied on case authorities, four (over and above *Chartbrook*) by Mr Macfarlane and three in particular by Mr Armstrong.

22. Mr Macfarlane helpfully narrowed the issues before the Tribunal. He accepted that the Property had been let to a tenant from 17th January 2021 to 12th April 2021 and that was not pursued as a breach. The same applied to occupation by Ms Peaty's parents from 1st October 2021. He also stated that the Applicant did not pursue the allegation that the Respondent had split the occupation of the Property, or that nuisance and annoyance had been caused by the letting of the Property or further that annoyance had been caused in relation to parking of vehicles.

23. Accordingly, the sole breach advanced by the Applicant at the hearing was the breach of the user clause, namely that the Respondent had let the Property out as short-term lets through AirBnB and in doing so had used the Property for a purpose other than as "a private residential flat in the occupation of one family only" from 12th April 2021. It was accepted by the Respondent both prior to and at the hearing that there had been such lettings, the last said to end on 22nd September 2021. A short break was taken to enable the parties to establish whether the specifics of that alleged breach could be agreed.

24. Following that break, the parties explained that it was agreed that six flats plus the Property were used as second homes and that, of the five flats permanently occupied, two were occupied by the lessees and three by assured shorthold tenants. Within the block containing Flat 2, there is one permanent resident who is an assured shorthold tenant: the other four flats are holiday homes.

25. The matter not quite agreed was that the Respondent contended that there had been twenty-five short term lets, the longest for fourteen days, whereas the Applicant contended that there had been twenty-seven, there being three separate lets it said during that fourteen day period. The Applicant however, stated that it would accept the Respondent's position.

26. Accordingly, it was agreed between the parties that there had been twenty-five short lets of the Property, the longest being fourteen days, and ending on 22nd September 2021, such that no findings of fact were required to be made. The question for the Tribunal to answer was therefore the legal one of whether such admitted lets constituted a breach of the particular Lease.

27. It should be recorded that the Tribunal was unable to consider the case on the day and following the hearing, because of another hearing listed for the afternoon session, and so the Tribunal reconvened to discuss the case, principally on the Wednesday after but partly on Friday 17th December 2021. In the intervening period, the Tribunal sought the supplemental representations of the parties as to any impact of the decision of the Upper Tribunal of *Triplerose Limited v Beattie* [2020] UKUT 180 (LC), to which neither of the parties had made reference but which the Tribunal was well aware of as authority commonly relied upon by parties in cases similar to this one. Those were received on 15th December 2021.

Consideration of the parties' cases and the Lease

28. The Tribunal is very much aware that the Tribunal must determine the intentions of the contracting parties to the particular lease in using the particular words at the time of that lease being entered into, and to construe the Lease as a whole. As Mr Armstrong submitted, the decision needs to be made in each case in the appropriate context for that case, including the factual background in the given instance. The Tribunal accepted that the Upper Tribunal in *Nemcova v Fairfield Rents Limited* [2016] UKUT 303 (LC) made the point that each case is fact- specific and such that caution is required in considering decisions where the Lease and the clause are different and that even the same wording in another lease entered into different context may correctly be construed differently.

29. The parties particularly focused on one or more of the three words "private residential flat", although Mr Macfarlane also submitted it to be important that the whole of the wording "private residential flat in the occupation of one family only" be addressed. The Tribunal concentrated on the three words but also considered the remainder of the longer phrase, and the Lease as a whole and so also addresses the other words of that longer phrase, albeit rather more briefly.

30. The Tribunal carefully noted the position advanced by the Respondent that in terms of the factual background, the fact that the flats are predominantly second homes situated in a popular area for such and close to the sea, "ideal for use as holiday accommodation", is relevant. However, the Tribunal was equally mindful that the fact that the majority of flats are used as second homes as at 2021 should be applied with some caution when considering the factual background and the intentions of the parties when the lease was entered into some fifty-one years earlier in 1970. Mr Armstrong accepted that there was no evidence as to the actual position when the Lease was entered into. Whilst Mr Armstrong asked the Tribunal to infer that the position was the same at that time, the Tribunal considered that there was no evidence before it from which such an inference could properly be drawn.

31. Mr Macfarlane prayed in aid the asserted negative impact on the value of the flats by use for short-term holiday lets being permitted. However, there was no evidence as to what that might have been in 1970 or how it might have impacted on the approach of the contracting parties.

32. The Tribunal considered the known and not disputed factual background, namely that there were flats situated close to the sea, which had the potential for use for holidays, although also for use as permanent homes by those for whom the situation of the flats made that appealing. Mr Armstrong was probably correct to say that properties were let in 1970 for holiday purposes. However, there was no evidence as to that before the Tribunal, Mr Armstrong certainly not being in a position to give any, and the parties themselves not having done so, such that the Tribunal could not make any finding about the extent or other nature of any such letting, whether in the locale of the Property or elsewhere.

33. The Tribunal found that the user covenant is likely to have been included for the protection of lessees of the other flats, not least where leases were entered into with other lessees around the same time, but that there were no other facts known or which could properly be inferred to have been known or assumed by the contracting parties at the time and which provided assistance with the interpretation of the Lease.

34. Account was taken by the Tribunal of the submission of Mr Armstrong that the fact that extensions of leases in 2006 had provided that lets must be for at least six months and that holiday lets were excluded, indicated that such matters had been contemplated in the original leases and acceptable but were not considered desirable by 2006. The Tribunal did not find those amendments in the 2006 leases took matters very far. The Tribunal did accept that the Lease could have included an explicit prohibition on short-term holiday lets but did not.The Tribunal did not find there to be any cogent evidence before it which demonstrated that the firming up of the provisions in the 2006 leases lent support to there being an appropriate inference that holiday lets had been contemplated in 1970.

35. The Tribunal was mindful that both the drafting of leases and many other matters had changed significantly between 1970 and 2006. It is stating the obvious to say that AirBnB and similar did not exist in 1970- the internet as a whole was a long way into the future and so its use for facilitating short- term holiday lets could not possibly have been in the minds of the contracting parties in 1970. Neither did AirBnB exist in 2006 and no evidence was advanced as to what the actual position was then in respect of the internet and letting of flats for holiday use. Similarly, seeking to determine the clause which might have been agreed in 1970 in the event that AirBnB or an equivalent had existed, which would be a matter of complete speculation, is no part of the proper exercise to undertake.

36. The Tribunal accepted, insofar as it went, Mr Armstrong's submission that the parties could have chosen to use different wording such as "private residence" or "private dwelling-house" as used in *Newcova* and *Triplerose* respectively, or indeed other phrases, but found that did not advance matters. Aside from the fact that there could still have been an argument that the circumstances of those cases were different, speculation about other wording that the parties could have used but did not use was not, the Tribunal considered, a useful exercise.

37. In the circumstances, the Tribunal considered that the only correct approach was to consider the natural and ordinary meaning of the specific wording actually used, any other relevant provisions of the lease, the overall purpose of the clause and the lease, and commercial common sense, drawing such assistance as properly could be drawn from decisions reached in other cases, in which inevitably wording and/ or the factual matrix was not identical.

38. Mr Armstrong's key argument was that the particular phrase used by the contracting parties was, or at least included, the words "residential flat". He sought to distinguish "residential" and "residence" and hence "residential flat" and "residence", applying the judgment of Mann J in *Westbrook Dolphin Square Ltd v Friends Life Ltd (No2) [2014] EWHC 2433(Ch)* and his approval of the following words of the following words of the VAT Tribunal in *Urdd Gobaith Cymru v Customs and Excise Comrs* [1997] V & DR 273:

> "I agree that "a residence" clearly implies a building with a significant degree of permanence of occupation. However, the word loses that clear meaning when used as an adjective. In ordinary English "residential accommodation" merely signifies lodging, sleeping or overnight accommodation. It does not suggest the need for such accommodation to be for any fixed or minimum period."

39. Mann J expressed some uncertainty as to whether "residence" meant what he described as "permanence attributable to the occupation of a single occupier, or permanence of a general use". He reached no firm conclusion. The particular distinction does not require determination in this case.

40. The Tribunal agreed with Mr Armstrong that "residence" on the one hand and "residential" on the other are not the same and determined, applying *Westbrook*, that "residential" is a descriptive term: "residence" is a noun used as a description for a specific unit. The Tribunal further accepted that there may be use for "residential purposes"- the specific wording considered by Mann J as set out in the Leasehold Reform, Housing and Urban Development Act 1993- provided in something which is not a "residence". Whilst, Mr Macfarlane did not accept the level of distinction argued for by Mr Armstrong, the Tribunal did.

41. In contrast, Mr Armstrong sought to argue that the decision of HHJ Luba QC in *Bermondsey Exchange Freeholders Ltd v Ninos Koummetto (as trustee in bankruptcy of Kevin Conway)* (unreported), in which the term was "residential flat" but the Judge had said that *Westbrook* did not assist him, was neither binding nor clear as to the reasoning, not engaging with the difference between "residential" and "residence". The clause considered in that case read, "Not to use or permit the use. ..... otherwise than as a residential flat with the occupation of one family only."

42. Mr Macfarlane argued the Bermondsey decision was very much to the point. Mr Macfarlane submitted that the hotel-style of booking of stays at the Property was different to occupation as a "residential flat", the occupiers staying a few days and then going to their home and emphasised the judgment of the District Judge as upheld by HHJ Luba QC that holiday lets "are not using as residential". He also submitted that "residential purposes" as discussed in Westbrook was different to "private residential", although the Tribunal perceives he may have meant to say "residential flat", given that is the term used in the particular case. Mr Macfarlane contended that the flats dealt with in *Westbrook* were quite different, and the decision was reached in the context of collective enfranchisement.

43. The Tribunal considers that *Westbrook* is binding authority on the particular point it dealt with unless properly distinguishable but that it is so distinguishable. Mann J was considering occupation for "residential purposes" and so was looking at activities of a residential nature and he gained assistance from previous definition of "residential accommodation". Mann J was not considering "residential flat", where "flat" is more specific than the fairly loose word "accommodation" and the even looser one "purposes". *Snarecroft Ltd v Quantum Securities Ltd* [2018] EWHC 2017 (Ch) mentioned in Mr Armstrong's Skeleton Argument is not found by the Tribunal to assist because the court was again considering a different term to even the two of the words in the phrase in this Lease, "residential flat".

44. Whilst Mr Armstrong was correct to say that *Bermondsey* is not binding authority on the Tribunal as to the meaning of the phrase "residential flat", it is very persuasive, where the court in that case considered the phrase "residential flat" in a clause bearing strong similarity to that used in this case, albeit the context is inevitably not the same as here, save that the word "private" is omitted. The court found that the phrase "residential flat" prevented AirBnB lettings/ similar lettings. The District Judge, in a

judgment upheld on the appeal to HHJ Luba QC, referred to a "qualitative difference" between an assured shorthold tenancy and the sort of short-term lets through AirBnB and other websites.

45. Mr Armstrong argued that the question was the use to which the flat was put at the time being, which he said was for the occupier's residential purposes at the particular time of occupation. He further asserted that a holiday or indeed another type of short stay could be residential. He argued that use as a "residential flat" permitted such occupation, although that necessarily involved rejecting the basis of the judgement in *Bermondsey*. Mr Armstrong sought to distinguish the instant case from all of the terms used in all other authorities because none of those involved the word "residential".

46. However the Tribunal was not considering the word "residential" in isolation- as explained below- and still less the terms in *Westbrook*- whereas as Mr Armstrong himself had urged, the meaning of term in one instance is not necessarily the same as that in another where the context is different. In a similar vein, even "residential flat" is a combination of only two of the actual three consecutive words, which in the instant case were preceded by the word "private".

47. Mr Armstrong sought to argue that "private" had been intended to convey no more than the accommodation being private to the occupier whilst in occupation. Mr Armstrong said that the Property was used as private accommodation whilst the short-term occupiers used it. Essentially the same argument had been advanced in *Triplerose*. He otherwise distinguished in his closing oral submissions "private" from "commercial". Mr Armstrong's argument was that the word "private" did not add a great deal to the other words "residential flat" and did not modify those words.

48. The Tribunal sought clarification, in response to which Mr Armstrong submitted that the company could not itself use the Property and so use would be by individuals. The Tribunal accepted the points by Mr Armstrong that the Lease does not require the Respondent to occupy the Property (in practice by an officer, employee or similar, the Company itself plainly not being able to occupy) or preclude letting of the Property. The Upper Tribunal also reached that conclusion in respect of letting by the particular company in *Triplerose*. It is additionally abundantly clear that other lessees of flats in the Building do not occupy permanently and that some let their flats out- those facts are accepted by the parties.

49. However, the Tribunal does not accept that supports the distinction Mr Armstrong sought to argue for. Rather the Tribunal finds that the more logical distinction is between residential and commercial, being both a pair of contrasting descriptive terms and the two categories into which properties are commonly placed. Indeed, Mr Armstrong himself had drawn that distinction, as opposed to the one adopted in oral submissions, in his written Skeleton Argument. It scarcely needs saying that it would be unlikely for "commercial" to be the contrast to both "private" and to "residential" and the Tribunal rejects any such suggestion. The Tribunal

considers that the equivalent distinction would be between private and public, the former for a given person or group and the latter open to all.

50. Mr Armstrong indeed accepted in response to queries raised by the Tribunal that private conveyed exclusive use and not being open to the public. However, he submitted that was meant no more than as reinforcement of the use, at the given time, by a single family. Mr Macfarlane, in contrast, submitted that the requirement for use by a single family supported longer term use by the same family- and so flew in the face of short term lets.

51. The Tribunal does find the use of word "private" was significant in this Lease. Indeed, to the extent that there may be one word of the three more significant than the others in the circumstances of this application, the Tribunal finds that word to be "private". It describes the nature of the "residential flat", being a "private" one.

52. Mr Macfarlane relied on the judgments of the Upper Tribunal when considering terms such as "private flat", "private dwelling- house" and "private residence".

53. The phrase "private flat" was, as noted above, that adopted by the original parties to the lease considered in *Nemcova*. Whilst it is right to say that the meaning of the phrase in that lease does not determine the meaning of the same words in this Lease, HHJ Bridge undertook a characteristically careful and thorough examination of the previous authorities in respect of "private residence" and "private dwelling-house" before reaching his judgment in that case that the user clause had been breached, where there were also short-term lets.

54. Similarly, the phrase "private dwelling-house" was found in *Triplerose* to amount to be found in a clause only very slightly different and where the issue was essentially the same thing.

55. The Tribunal considers that the use of other nouns to describe the given property rather than flat in other instances does not prevent case authorities which use such essentially equivalent words from being of some assistance. Whilst the Tribunal therefore makes careful allowance for some of the facts of both *Nemcova* and *Triplerose* being different to those of this case and that the word following the word "private" is different, it is notable there was consistent treatment of the word "private" and the effect of that.

56. The use of "private" was significant in demonstrating that the contracting parties intended the flat being used as a private flat and not otherwise, albeit not necessarily the lessee's only or main home, none of which specific requirements were mentioned at all. The Tribunal further concluded that private use by the lessee properly included allowing friends and relatives to stay and in this instance, properly encompasses friends and family of appropriate officers and/ or employees of the company.

57. In addition, the Tribunal found that private use allowed for such use by a tenant of the lessee who occupied the Property as a home, it did not prevent sub-letting by the Respondent for such use. An assured shorthold tenancy, the type of tenancy which would be usual now, would require occupation as the tenant's sole or main home. However, such tenancies could not specifically have been contemplated back in 1970, long before they were created and so it is inevitable that such type of tenancy was not referred to.

58. In contrast, the short- term holiday lets permitted by the Respondent involved just the sort of occupation which was held in *Nemcova* to be so "transient" that the occupier could not regard the given property as his or her private residence- the phrase in that case- "even for the time being".

59. More fully HHJ Bridge said (paragraph 53):

> "It does seem to me that in order for a property to be used as the occupier's private residence, there must be a degree of permanence going beyond being there for a weekend or a few night in the week. In my judgment, I do not consider that where a person occupies for a matter of days and then leaves it can be said that during the period of occupation he or she is using the property as his or her residence. The problem in such cases is that the occupation is transient, so transient that the occupier would not consider the property he or she is staying in as being his private residence even for the time being."

60. In addition, Martin Rodger QC stated at paragraph 20 of his judgment in *Triplerose*;

> "But short-term occupation by paying strangers is the antithesis of occupation as a private dwelling-house. It is neither private, being available to all comers, nor use as a dwelling-house, since it lacks the degree of permanence implicit in that designation."

61. It is the first part of the later sentence which is most relevant at this juncture. Mr Armstrong, in his supplemental submissions in respect of *Triplerose* does not accept Martyn Rodger QC to have been correct in his comments about "private" and addressed that question at some length. Whilst the Tribunal has carefully considered those submissions, it does not agree with them.

62. The Tribunal is unable to identify any difference in the documentary, factual and commercial context or otherwise to result in the effect of the word "private" being different in this instance to any material extent. In contrast the conclusions reached in *Nemcova* and *Triplerose* are entirely consistent with the intention the Tribunal finds to have been conveyed by the word as used in this Lease.

63. The Tribunal considers the word "flat" to be a simple and easily understood term which conveys exactly what the Property is. Insofar as any specific definition might be required, the simple definition in the Oxford Dictionary is a noun for a "set of rooms usually on one floor as a residence". That definition reinforces the assistance which should be

drawn from the use of "residence" in *Nemcova* and equivalent terms in other cases.

64. Whilst the Tribunal accepts the point made by Mr Armstrong that the Lease does not use the word "home" and that doing so would have added further weight to the Applicant's case, the lack of that word is far from fatal to it and where use as a "home" or otherwise is not the issue here.

65. Nevertheless, the Tribunal determined that the word "private residential flat" all form part of the same description and must be construed together in the context of each other.

66. The Tribunal is consequently considering what the contracting parties intended not by "residential", or even "residential flat", or indeed by "private flat" or any other one or two of the three words, but by "private residential flat" together. The question for the Tribunal to determine is not what any given word or words of the three which constitute the relevant short phrase has been found to mean in another context but rather what the three words together mean in this context. It was indeed specifically observed in the hearing by the Judge the three consecutive words formed part of a single whole and the meaning of all three together had to be construed.

67. A "private residential flat" is not, the Tribunal determined, the same as a "residential flat", the latter of which may perhaps allow for a wider range of uses, although not lettings of the type permitted by the Respondent were *Bermondsey* to be followed. However, the Tribunal finds that the parties did not intend the word "residential", added to the other words "private" and "flat", to change the meaning of those words to increase the range of use of the Property. Rather, the Tribunal finds that the proper construction is that the word "residential" was used to provide additional emphasis to the fact that the flat could not be used as commercial premises, where in the Tribunal' experience it is usual for leases and transfers to exclude that.

68. In respect of the subsequent words in the clause "in the occupation of one family" the Tribunal determined those add to the interpretation of "private residential flat". They do so such that the Tribunal finds them to support longer term occupation and to weigh against short term occupation by a whole series of family groups for short term holiday and similar purposes.

69. Whilst it may be correct to say that there may have been only one family in occupation at any given time, the Tribunal considers that the phrase is used to add to the effect of "private residential flat" and not to detract from it, which is the effect of short term holiday lets being permitted. The Tribunal notes that the same words were found in the lease in *Triplerose* and in *Bermondsey* and, with the caveat that the context is inevitably not entirely the same, those words were similarly not found to take away from the restrictive use provided for. *Westbrook* not only differed in the various ways explained above but also related to a clause which did not contain such additional words.

70. Having considered the words used in their context, the Tribunal has concluded that the phrase "private residential flat" precludes the use of the Property for short-term holiday lets of the nature of the use admitted to have been permitted by the Respondent. Short- term holiday use by unconnected third parties is use which is inconsistent with a "private residential flat". In that regard, all of the periods of such lettings permitted by the Respondent, even the longest- two weeks- is found by the Tribunal to constitute such inconsistent use.

71. Consequently, applying the admitted facts to the meaning of the relevant term of the Lease, the Tribunal finds the Respondent to be in breach of the covenant.

72. The Tribunal observes, although it was not determinative of anything in the event, that the reference in paragraph 1 of the Fourth Schedule to "any purpose from which a nuisance or annoyance can or might arise" is very wide-ranging. There is little from which nuisance or annoyance cannot or might not ever arise, including normal family life. In the event that there had been a need to construe that wording, it may have been construed somewhat restrictively. However, the Tribunal did not consider that altered the appropriate construction of the earlier and relevant part of the paragraph, much as the Tribunal carefully considered whether it ought to do so.

73. For the avoidance of doubt, insofar as the Applicant relied on additional cases to support its case, the Tribunal considered those but did not find those to either be directly relevant or otherwise to add anything to the authorities discussed above and so does not consider it necessary to refer to them.

Decision

74. The Tribunal determined that the Respondent had permitted occupation of the Property as other than a "private residential flat in the occupation of one family only" during the period 17th April 2021 to 22nd September 2021.

75. The Tribunal determined that the Respondent had therefore been in breach of the Lease during that period.

Fees

76. The Applicant has incurred the usual fees in order to bring this application to the Tribunal, namely £100 to make the application and £200 for the hearing.

77. The Applicant has plainly been successful in relation to the key allegation against the Respondent, albeit not successful in relation to all of the allegations brought, given that not all were pursued. The Tribunal accordingly determines that the Applicant is entitled to an award of the unavoidable fees paid by it.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking