

**Re: Basement storage withdrawal of permission and miscellaneous points**

1 message

**Tarquin Management** <tarquin.management@gmail.com>

27 September 2022 at 09:13

To: John Galani <john@galani.com>, Karolina <karolina@galani.com>, Dominic Galvin <dgalvin@c-sr.com>, Bahadır Erdem <bahadirerdem@erdemhukuk.com>, Pınar Erdem <pinarerdem@erdemhukuk.com>, Sibel Erdem <sibelerdem@erdemhukuk.com>

This was drafted over the weekend, but I have had no internet for the last two days, only just restored the connection.

Dear John,

**Roof inspection (one month on since access was requested)**

It has now been a full month, 4 emails and some text messages asking for available dates and times for a site visit without you providing a single possible time, on the basis of some lame pretext or another. Your latest email is more of the same and now apparently subjecting even a site visit to satisfaction of your demands, ignoring your obligations under the lease and rights reserved to the freeholder.

For someone that constantly emphasises the urgency of repairing the roof in words, you certainly seem to be doing everything in your power to delay those repairs and have prevaricated at every stage. You just invent issues where there are none and ask for clarifications of matters that are as clear as they come. Or you impose so many pre-conditions that it is impossible to move forward.

The conclusion that your delaying tactics for pretty much the last 20 months are quite deliberate and that you have some ulterior motive seems inescapable. All that remains to be seen is what that ulterior motive may be or what advantage you are hoping to gain from putting off a roof inspection.

So far, we have just wasted another month to the altar of your unwillingness to cooperate. We wonder how difficult you will make it for contractors to come to inspect the roof.

The basic starting has to be what the lease provides in terms of freeholder inspections, as you keep acting as if you have a free hand and can decide whether to allow the inspection to go ahead. The lease leaves no room for doubt or interpretation: we have an absolute the right to enter the flat for the purpose of inspection, you have an absolute obligation to let us exercise that right. Third Schedule, Rights reserved to the freeholder, Clause 5, [The landlord has] *"The right upon reasonable notice to enter into and upon the Demised Premises (but without notice in case of emergency) with or without workmen and plant for the purpose of inspecting repairing or maintaining or building demolishing and rebuilding or carrying out works to any adjoining premises or any other part of the property ...."*. That is matched by an obligation to allow us to exercise that right, Clause 3(8): *"To permit the Landlord and the Tenants of other parts of the property and others with like rights to exercise the rights hereby excepted and reserved to them"*. We would prefer to proceed by agreement, that is why we asked for availability and have been patient, so far. But if you make reaching an agreement an impossible task, as you seem intent on doing, we will proceed by way of notice which you will have to comply with or be in further breach of the lease. The refusal would then become an actionable breach in itself and you would become potentially liable for any damage arising from that refusal and further delay it causes.

To be absolutely clear, what you do not seem to grasp is that this site visit is not optional, it is not subject to your discretion whether to allow it or not and it cannot be subject to any pre-conditions you appear to be seeking to impose by your latest email, it is just not a matter for negotiation. We are not obliged to liaise with you in advance, we are only obliged to give you reasonable notice. It is a visit by me for the freeholder plus a surveyor to inspect the roof. That, in theory, is all you are entitled to know about it. We would be exercising our right under the lease. If even arranging a site visit to move forward with the roof replacement becomes a long drawn out process like this, where you attempt to score points and extract concessions that have nothing to do with the inspection anyway, it is time to stop trying to find common grounds and reason with you as you will never willingly cooperate, it would seem.

We would rather proceed by agreement, though you seem intent on NOT agreeing with anything we suggest, even when it does not require you to settle any amount upfront. Any excuse to postpone will do, it seems. We will give you one more chance to provide by midday tomorrow, Wednesday 28 September, a range of dates and times that would best suit you for an inspection to take place in the coming weeks. The surveyor assigned to this task is extremely busy, so some flexibility on your part would be required and appreciated. If you do not provide any suitable times or if the dates and times are too restrictive we will proceed by way of notice as above, as this cannot be allowed to drag on indefinitely. We have, so far, pandered to your every request and got absolutely nowhere. We expect some other excuse to be wheeled out to justify refusing access, but maybe you will surprise us and cooperate in an honest and straightforward manner, for a change.

In any event, what we asked for is very straightforward, simple and not open to misunderstandings. It is the same request as we made in January 2021.

We do not need to provide a full explanation or justification or otherwise negotiate the terms of what the surveyor is there to do. But, so we can put it to rest, we confirm it is a site inspection involving myself and a surveyor going to your roof terrace to examine the roof, I am guessing probably for 15-20 minutes at the most, in order for our consultant to draft contract specifications so the competitive tenders for works to the roof (and now front elevation also) can get underway. That is the start and the end of it.

No "preparations" are necessary, it is not a state visit by King Charles. There is no "scope" other than inspect the roof and establish what to include in the specifications. It is not to prepare a plan of anything or to implement a strategy nor is it to protect the landlord's interest whatever you may refer to by that expression, other than our interest, since July 2018, in getting the roof replaced. It does not have any secret or ulterior motives or any other connotations. We leave the cloak and dagger stuff to you. We lay all cards on the table, always have done and have no interest or time to play your kind of positioning games. It is exactly what it says on the tin, as the saying goes. Nothing more, nothing less.

All that is needed is someone to open the door, show us to the roof terrace at the front of the house and let us out of the flat when done. End of. You have a housekeeper, so, in any normal world, unless you don't trust me coming into the flat just with the housekeeper, that visit could have taken place at almost any time when she is at home. A normal counterpart would have said so and the visit would have already taken place and we would be tendering the contracts by now. And all without you having to part with any cash upfront, no less.

This, of course, is exactly what happened in January 2021: we asked you to confirm an appointment for the structural engineer to come out to site for exactly the same purpose, draw up contract specifications and start the tendering exercise under the aegis of a s.20 consultation. Then, like now, you never confirmed availability, issued a letter of claim instead and then refused to communicate directly with us for the following 12 months, insisting that all communications go through solicitors. That is a matter for the record, clearly evidenced in writing throughout, so you will not be able to deny it.

In the absence of any sort of indication of availability and taking into account the various excuses, qualifications and pre-conditions you sought to introduce so far, plus the rather vague and obscure pre-conditions you now seek to impose before you even confirm availability and grant access, unless you revert by tomorrow midday, we will just fix the inspection with the surveyor and give you notice exercising our right pursuant the terms of the lease.

We trust that sufficiently clarifies the position. Refusal to grant access will now result in immediate legal proceedings. You will find some further specific comments in the body of your email.

#### ***Your bedroom ceiling and service charge account***

We do not know how you presented the case for enfranchisement to your fellow leaseholders and what reasons you gave for the work to the roof, front elevation, common parts and entryphone not having been done yet and the building starting to look like an eyesore and how you sought to blame us for it. They are all items that we have repeatedly indicated need to be done with increasing urgency and we have been keen to undertake them for quite sometime now. Were it down to us, every one of those items would have been done long ago: the roof would have been completed in 2018; for the entryphone we had quotes ready before Brexit, in late 2020 and would have replaced it then if funds had been available; front elevation would probably have gone ahead in late 2020 or spring 2021, with the common parts redecoration and new carpet to follow soon thereafter. The only reason that has not happened and has not been possible is lack of funds to do any of it, pure and simple. Your consistent refusal to pay any amounts towards anything has been the key factor that prevented any major expenditure, there is no possible escape from that. There is nothing much we can do unless leaseholder pay their share of costs and pay for major work in advance, as envisaged under the lease.

Between 2018 and today you made one payment in May 2019 of around £4.9K towards ongoing costs of running the building, just over 50% of the demand for 2018-19, Flat 2, 3 and 4 paid their liability in full for the same demand and Flat 1 paid around 20% of it for a total of just under £20K altogether. As a ballpark, basic ordinary costs (i.e. not major works) since April 2018 included somewhere near £1.5K in electricity; £9K in small repairs and maintenance, mostly reactive repairs and emergencies, £10K building insurance, another £10K in weekly cleaning and £6K in management costs. You can do your sums and maybe you will understand why larger items have not gone ahead yet.

There are currently be no surplus funds in the service charge account to even pay for the electricity bill or ongoing maintenance, let alone any major works. In fact, the service charge account is "in the red" by about £17K after paying the renewal insurance premium at just under £2,500 last month, so as to avoid your claim lapsing or being looked at less favourably as we are no longer customers. So we repeat the rhetorical question you dodged so far: where do you think funds to pay for the ongoing expenses have come from in the past 4 and 1/2 year and previously every time you were between late and very late in settling your service charge demands, the Tooth Fairy? Father Xmas?

Over the years it has always been me who has plugged that gap. I have always pre-funded ongoing expenditure whenever there was a shortfall in the service charge account, which was most years due to your own tardiness in settling demands. I never sought to charge interest, not least as you would have objected in to me getting any money from lending to the company. At no point in our discussions you have even acknowledged this fact or taken any account of it. You just expect me to providesfunds indefinitely till you decide to finally pay the amounts you owe and

your allies follow your lead. Not only that, but it would seem you are convinced I am somehow taking advantage of funds you have provided for my own benefit.

And all because of your bedroom ceiling. Everything, but absolutely everything, is on standstill as you create a ridiculous overblown conflict because of your bedroom ceiling, which can be completely replaced for £1,500 plus around £200 in materials. And that is not our estimate, it is the actual quote we have from our handyman.

To take this factor out of the equation and out of pure exasperation, as it will be cheaper than taking you to court and cheaper than the cost of my time and missing work deadline while negotiating the impossible with you, we can arrange the ceiling in your bedroom to be completely replaced and repainted, in accordance with the recommendations of your expert report, this coming week or the next or whenever it suits you. With that question dead and buried, will you then finally back down and stop this nonsense so we can get on with the much needed work to the building: roof, front elevation, common parts and entryphone? That involves you paying up the much larger amount you now owe for past expenditure plus your share of the cost of major works.

It is worth putting the whole thing in its proper context and also look at the reality of what has been going on with the roof, not the picture you keep portraying of almost constant leaks and a roof that is neglected and falling apart and could crumble any minute. A picture which you have seemingly persuaded your fellow leaseholder to buy into whereas the reality is quite different.

Whenever you have reported a problem with the roof, this has been fully addressed within a short time. Yes, it is unfortunate that in 2016 to early 2018 there were multiple leaks but they were all repaired at the time and have not reoccurred, or at least you have not notified us that they reoccurred. We then notified in July 2018 that our contractor had advised us the roof had reached the point of not being economically worth repairing anymore and that we intended to replace it straight away. You then stated, and I quote: "*no way we can shoulder that cost at the moment for the roof.*" and asked us to delay the works till you were able to afford your share, which, perhaps foolishly, we agreed to postpone. We made it clear at the time that our agreement was subject to you being prepared to stay with the roof as it was and that we would not carry out any further repairs should anything happen, a key fact you have conveniently forgotten about and taken no account of in your campaign to blame us for having to look at a damaged ceiling all this time. That is all a matter for the record, as per emails we have already referred you to, as well as the covering letter to the following service charge demand.

There was then the one leak in your bedroom in December 2019 which caused , when marks that had been purely cosmetic till then to become something more substantial after a cold spell and snow, followed by heavy rain and a hole in the roof. That leak was repaired as soon as you notified it and as soon as weather permitted. It has never reoccurred and your ceiling has not deteriorated further since. The damage caused by that single leak in 2019 is essentially what this whole circus seems to be about. Or, at least is the only reason you have adduced for refusing to pay your service charge demands.

There is a positive aspect that has come to light due to the extend delay since January 2021 caused by your legal antics and refusal to pay anything towards the upkeep of the building, not even your share of the insurance premium, insurance that you now want to benefit from, let's not forget. It is the fact that nothing much has happened with the "neglected" roof.

There has been nothing else for the intervening 2 years and 9 months in terms of leaks, or just over 4 years if we count from July 2018, so the temporary repairs carried out cannot have been quite so bad or the state of the roof quite so tragic as you now portray.

You did notify a leak in you living room in October 2020, but that turned out to be from the part of the roof which is demised to you and you are responsible for, your roof terrace. You also notified another leak in your bathroom in January 2021, but that turned out to be coming from your cold water tank in the loft space above. Finally you notified us of some slipped tiles earlier this year, which we immediately patched temporarily, in the expectation the roof would be replaced this summer just finished. There was no leak caused by those fallen tiles, at least none that you mentioned so far.

So, the total sum of the impossible conditions in which you have been forced to live by the evil landlord comes down to a single leak in over 4 years and a ceiling that can be replaced for £1,500 plus materials. There is always a chance more leaks will appear and the need to replace the roof remains urgent, that has always been our poiny, but, luckily for all involved, that has not happened so far. Winter is ahead of us, so who knows, but the cause for this delay now stops firmly at your door, as it has done for some time.

So, without accepting any liability but purely as a compromise to move forward, we have taken the bedroom ceiling out of the equation and offered to replace it whenever you wish.

Having the insurance accepting your claim in principle was not good enough. Us offering to carry out the remedial work at a later date should the insurance company reject your claim entirely was not good enough. Is doing the ceiling straight away good enough or do you have a further list of demands to be met?

Also, to be clear, the quote from our handyman will be submitted to the insurance company in due course, so the outcome will be that they will appoint him for the remedial work in any event. It is not as if you can choose to have a

more expensive contractor to do the work instead. In order to move on from this ridiculous stalemate, we would then allow you to sort out the wardrobe with the insurance company however you please, despite our reservations, provided we can now draw a line under it. If not, the quote I have for restoring or replacing the one panel which your expert report identifies as the only damage to be addressed comes to £200. We can submit that also to the insurance company, if you prefer and be done with it. Either way you have your remedy for the damage from the solitary leak in 2019.

We have now offered, as a last resort, to carry out the remedial work immediately. I don't think you can really ask more than that, certainly not in a court of law. Can we draw a line under this and get on with what is needed or are there any other demands that need to be addressed and any other reasons for you to refuse payment of the amounts you owe for service charges? There really cannot be any other excuse at this juncture.

Further comments in the body of your original email.

We await your response

Regards

Mario Angiolini  
for and on behalf of Tarquin Management Lt