



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

Case Reference : **LON/00AG/HMB/2021/0001**

HMCTS Code : **V:CVPREMOTE**

Property : **50A Woodsome Road, London NW5 1RZ**

Applicant : **Miss Jonea Geary**

Representative : **In person**

Respondent : **Ms Jessica Slamon**

Representative : **Mr Imran Mahmood, Counsel**

Type of Application : **Rent repayment order under the Housing and Planning Act 2016**

Tribunal Members : **Tribunal Judge Dutton
Mr T W Sennett MA FCIEH**

Date of Hearing : **10th August 2021**

Venue : **By video conferencing**

Date of Decision : **31 August 2021**

DECISION

© CROWN COPYRIGHT 2021

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and no one requested same. The documents the Tribunal were referred to were in a number of bundles totalling approximately some 650 odd pages although there was a certain amount of duplication. We have noted the contents of these bundles.

DECISION

The tribunal dismisses the application by Ms Geary for a Rent Repayment Order against Ms Slamon for the reasons set out below.

BACKGROUND

1. This is the hearing of the second application made by the Applicant Jonea Geary for a rent repayment order against the Respondent Jessica Slamon. This first application for a rent repayment order was made 21st June 2020. This resulted in a decision of the Tribunal in case LON/OOAG/HMF/2020/0140 on 12th January 2020 striking out Miss Geary's application. In those proceedings she had alleged harassment by Ms Linda Boyd-Canton (LB-C) and that the Property was not licensed as an HMO. In fact, the case is that a licence had been granted to 50 Woodsome Road Limited in respect of the Property for the period from 20th February 2018 to 25th February 2023, this limited company being the freeholder. Accordingly that element of the claim failed. The Tribunal also held that the Respondent was not responsible for the actions of LB-C, certainly not to the extent that an offence had been committed under the Protection from Eviction Act 1977. As a result although allegations were made concerning incidents at the beginning of January 2021, the Tribunal considered that the matter would be better dealt with by striking the claim out and leaving the Applicant to make a fresh allegation in respect of conduct by way of a new application.
2. That new application was made by Miss Geary on the 19th January 2021 and alleged offences under the Protection from Eviction Act 1977 and repeated an allegation that an offence under section 72 of the Housing Act 2004 in respect of the licensing of the Property had also been committed.
3. It is this application that came before us for hearing on 10th August 2021.
4. Prior to the hearing we had been delivered a number of bundles of documents. The first bundle is headed Rent Repayment Order hearing index and exhibits JG A-Y and consists of some 187 pages including documentation relating to a protective injunction that Miss Geary sought against Mr Davis. The bundle also included an undated statement of case, an expanded witness statement by Miss Geary, a copy of her tenancy agreement, videos of Mr Davis attending her Property, emails, details of the two County Court claims brought by Ms Slamon for possession and rent arrears, a 'Just in Case' letter sent by email to family and

friends by Ms Geary and confirmation of the email terminating the Applicant's tenancy with the Respondent. In a second bundle headed Request for Judgement to be set aside index and exhibits A-P we were provided with some duplication but in addition copies of applications made by Miss Geary to set aside a judgment obtained by Ms Slamon in respect of the rent arrears and possession case in May of this year. A copy of a without prejudice letter sent by Miss Geary's solicitors to Ms Slamon on 29th May 2020 was produced together the response. Included within this bundle were particulars of claims in respect of a claim by Miss Geary against Ms Slamon for damages and details of the application for a protective injunction. In addition Miss Geary had included the four bundles that Ms Slamon had produced in support of her position which were consolidated in one setting but unfortunately were numbered in a somewhat confusing manner. The final document was a defence rebuttal dated 30th July 2021.

5. It may be helpful to give some chronology as to the relationship between the parties and how the matter has developed.
- On 15th August 2019 Miss Geary entered into a tenancy agreement with Ms Slamon for a period of 12 months commencing on 2nd September 2019. However, this tenancy continued until the Applicant gave notice to quit on 27th January 2021. The rental paid under the tenancy agreement was £1,733 per month. This was shortly after Mr Slamon died.
 - On 26th April 2020 Miss Geary wrote to Ms Slamon asking for a reduction in her rent of £100 a week said to be because of the stress caused to her by LB-C and also because of the Covid situation. The Respondent confirmed on 1st May that the rent could be reduced to £1,300 per month.
 - On 29th May 2020 Miss Geary caused Moore Barlow Solicitors to write to Ms Slamon on a without prejudice save to costs basis listing experiences said to have been suffered by their client and the breaches on the part of Ms Slamon. This letter suggested a compromise on the basis that Ms Slamon paid to Miss Geary the sum of £17,000 and agreed for her to remain living rent-free for the remainder of the term. At about this time Ms Geary stopped paying rent.
 - This letter was responded to on the 23rd June 2020 by W H Matthews & Co raising issues concerning the format of the correspondence and the lack of information in respect of the allegations raised. We are not aware that there were any further items of correspondence between these solicitors.
 - On 21st July 2020 the first application rent repayment order was made.
 - In or about November 2020 Ms Geary commenced County Court proceedings seeking damages against Ms Slamon, which is ongoing.
 - 1st January 2021 is the first allegation of harassment against the Respondent involving Mr Daren Davis.
 - On 2nd January 2021 Mr Davis is said to have delivered a section 8 notice seeking possession and claiming rent arrears.

- On 3rd January 2021 there is an email from Mr Davis advising that proceedings had been commenced in two claims.
 - On 12th January 2021 the Tribunal's decision on the first rent repayment application involving the parties was struck out.
 - On 19th January 2021 a second rent repayment application was made.
 - On 29th January 2021 Miss Geary sent to Ms Slamon one month's notice terminating the tenancy with effect from 28th February 2021.
 - On or about 11th February 2021 it appears the Applicant vacated the Property and flew to Australia.
6. This sets out the basic chronology of the history between the parties although it should be noted that in addition proceedings were commenced by Miss Geary against Ms Slamon alleging various matters. This document was set out at page 133 of the Respondent's bundle. As we understand it the Court was unhappy with the contents with the particulars of claim and by an order of District Judge Avant the particulars of claim were struck out with a requirement that full and detailed particulars complying with CPR was lodged by 4.00pm on 15th March 2021. Such particulars of claim appear in the bundle dated 14th March 2021 and seek to support allegations against Ms Slamon leading to damages in the region of £100,000 to which a defence has been filed. That seems to us to be a matter that we do not need to concern ourselves with as it is before the Court, and it will be for the Court to decide whether or not the allegations made are proved by Miss Geary.
 7. As we have indicated there have been proceedings taken by Ms Slamon against Miss Geary for arrears of rent and possession. Those are two proceedings split to ensure that both remained within the small claims procedure. Again we do not think that it is necessary for us to get involved in those matters, although much in the way of documentation has been produced.
 8. The other matter that we do not propose to get involved in is the protective injunction application taken out against Mr Davis. That matter has not been concluded and again whilst the allegations made in those proceedings are relevant insofar as the instances at the beginning of 2021 are concerned, it is not for us to pre-judge the County Court's view in respect of the civil claim that is made by Miss Geary.
 9. What is of some relevance in these proceedings is the sad death of Ms Slamon's husband on the 3 June 2019 which of course left Ms Slamon a young widow with children to support.
 10. Amongst the bundles is confirmation that 50 Woodsome Road Limited is the owner of the freehold and that the late Mr Slamon was the owner of the leasehold of the subject property in this case 50A Woodsome Road, London NW5 1RZ.

11. We have considered the relevant documentation in the bundles that have been produced to us and bear those in mind in reaching the decision which we will set out in due course.

HEARING

12. The hearing was held on 10th August and at the start Miss Geary asked for an adjournment because she was not able to instruct Counsel to represent her without her having an instructing solicitor. We see from the file that there were two requests by Miss Geary to make an adjournment, which were responded to by the Tribunal on 3rd August refusing such requests for postponement. It is appropriate to record that the directions in this case were given on 29th March 2021 with a hearing date set then for 10th August 2021. We were of the view that there was no reason why Miss Geary could not have arranged for representation to have been in place. We could understand that Counsel might have been reticent to take on the role with a client instructing him or her from Australia and would have felt that the comfort of an instructing solicitor something that they wished. This should have been known to Miss Geary and she should have resolved these issues long before the week in advance of the hearing. In those circumstances given that there have been substantive written submissions made by Miss Geary we were satisfied that the proceedings should go ahead not least of which because Miss Geary would be able to rely on her written documentation and of course Ms Slamon had arranged for representation.
13. The first person we heard from was Miss Geary. She told us of the circumstances surrounding her allegations of behaviour and harassment on 1st January 2021. There were also, she said, subsequent examples of behaviour that she relied upon. She said that there had been some 18 months' previous behaviour by a tenant (L B-C) which had not been addressed by Ms Slamon and that she herself had suffered harassment at work.
14. On 1st January 2021 she said an unknown man turned up at her property demanding money, which she disputed. She said that this and the following events put her in a vulnerable position. She said that Ms Slamon was videoing it and if the intention was to start a dialogue, then sending a man round who was not known to her, at night, was not the way to deal with the matter. She said that there could have been email, letter or contact through the estate agent. She said that Mr Davis' attendance had put her in fear for her safety and she had written a letter which she called a 'Just in Case' email sent to her father, the Tribunal and a Shannah Lucas giving details of Ms Slamon including her address, telephone number and place of employment. She also provided the addressees with the name of Mr Davis and his telephone number and said that she had applied for a restraining order against him.
15. She told us that Mr Davis had first visited the Property and there had been some communication through the window. Mr Davis is apparently said to have invited Miss Geary to see him outside to discuss matters. That did not happen. It then appears that Mr Davis left and then came back to leave his telephone number on a piece of paper.

16. Her view was that the Respondent recording this as she appears to have been with Mr Davis at the first visit to the Property, showed that the Respondent had planned this and was therefore involved. She was also concerned that personal details had been given to Mr Davis which she had not been asked to release and was concerned that if she had gone outside that she may have been in danger. She said she feared for her safety.
17. In cross-examination Mr Mahmood went to some of the history of the occupancy dealing with the initial agreement and the reduction of rent which is referred to above.
18. She was asked whether she had ever intended to pay the rent after the reduction. Miss Geary's response was that for nine months she had met her obligations until May of 2020 and that she had intended to leave the Property but was unable to do so because of Covid and her inability to work for which she was receiving counselling.
19. Asked if she agreed that arrears were owed she said that she did not. She said there was a contract in existence between her and Ms Slamon and that Ms Slamon had not met her obligations.
20. Asked about Mr Davis' attendance she said that she felt vulnerable. It was dark when he arrived and that he had threatened by implication to evict her apparently that night. It was put to her that Mr Davis had not raised his voice nor had he asked her to leave. She said that this was mischaracterising the position. She was a woman living alone, did not know Mr Davis and felt threatened. Mr Davis had said that he had Court experience of evicting over 400 people.
21. She was then taken to some email correspondence that was sent by her following Mr Davis' attendance on 1st January 2021. It is appropriate to set out some of the wording in these emails. The first is at 17.37 on 1st January 2021 and says as follows:

Dear Jessica

Thank you for just sending a massive goon of a man around named Darren who just threatened me personally and threatened to sue me for the rent.

You are a despicably nasty, greedy woman and I would ask you to provide paperwork instead of sending a threatening man to intimidate me, a lone woman who you have driven to almost end her life due to your direct negligence.

I am protected by the First Tier Tribunal process but this action very clearly illustrates your character to everyone.

I have called the Police to attend and to report you.

*Regards
Jonea.*

22. There was then a response by Ms Slamon at 18.49 on 1st January 2021 which says as follows:

Dear Jonea

Myself and my friend/agent Daren Davis (telephone number included) (who is a property landlord) attended 50 Woodsome Road today at 5.00pm to ask you to pay the £13,814.33 in rent that you owe me. You chose to pay nothing. You asked Daren Davis to give you his contact details. He put a piece of paper through your communal letterbox with his name and phone number on it.

The request for payment is part of standard pre-action protocol.

As you correctly deduced in your email today Daren did explain that Court action would have to be started if you did not pay me what you owe. Indeed claims will be issued forthwith.

*Best regards
Jess.*

23. This email then prompted a response from Miss Geary at 20.53 on the same day which says as follows, it being sent to the Respondent, Mr Davis and Ms Slamon's solicitor:

Dear All

You have acted illegally and inappropriately.

Jessica it's going to be a hard sell to have people believe you are a poor, grieving, vulnerable widow when you are sending goons to intimidate me and without any legal grounds. This is not the actions of someone beside herself with grief, it is pretty nasty and calculating especially given my "vulnerable" status. Are you in the mob.

24. The email then went on to request more information from Mr Davis and rejects that she owes Ms Slamon any money and instead that Ms Slamon owes her in excess of £17,000. There is also an allegation that personal details had been given to Mr Davis without consent. She requests that Mr Davis cease and desist. The letter ends:

*Have a fabulous evening x
Jonea*

25. Asked by Mr Mahmood what her views were on these letters she said that they were not insulting or offensive. The incident had happened on the first day of the year and were the words of someone who was fearful. Asked whether Mr Davis had threatened her personally she responded that his manner was intimidating to come to her home and ask her to go outside.

26. Asked about the email in which she refers to Ms Slamon as 'despicable' and whether she considered this was offensive and insulting, her response was that these were the words of someone who feared that she was about to be beaten up.
27. Asked why she considered the issuing of County Court claims was harassment she said that the claim was disputed and that issuing two claims to keep them under £10,000 was an abuse.
28. She was asked whether she considered the issue of a claim amounted to harassment. She thought it did. There had been the visit on 1st January 2021 and a second on 2nd January 2021 when a section 8 notice had been put under her door. There then followed emails confirming that County Court proceedings had been commenced. She considered that these were intended to scare her and that she would be made homeless during the pandemic.
29. Asked about her complaint relating to the disclosure of details, she was taken to her email which she entitled the 'Just in Case' email, which disclosed full details of Ms Slamon, both her home address, telephone number and place of employment. Asked why she did not think that was disclosure she thought it was fair to do so. She denied that the email was intended to shore up her position for not paying the rent. In her rebuttal document Mr Mahmood asked about some of the wording employed by Miss Geary who alleges that unlike Ms Slamon and Mr Davis she is not vindictive, malicious, underhanded or unscrupulous. Asked what this meant her response was that she considered it was all of these matters to commence proceedings in respect of the recovery of the rent.
30. Mr Mahmood then asked Miss Geary about the reduction of rent in 2020 and the letter in respect thereof in which there was no mention made of any disrepair. She was also referred to an email that was sent by Miss Geary to Ms Slamon on 7th July 2020 in which she says as follows:

I am writing this to you because frankly your lawyer either doesn't understand what is going on is just creating issues and confusion in order to charge you fees and profit from your wilful ignorance. This isn't a problem for me as you are going to be paying for my lawyer's fees eventually especially if I take you both to the Tribunal and to Court but even though you have completely left me out in the cold. I am still this one last time urging you to put your head out of the sand so that you can avoid the absolute tsunami of crap coming your way in the hopes we can reach an amicable solution.

31. The email then went on to pose two scenarios to enable the matter to be resolved. Both seemed to be predicated on the basis that the Property did not have a licence to be used as an HMO, which of course was not the case.
31. Miss Geary followed this up with a second email which the allegations concerning the lack of licence are repeated, suggests that Mr Slamon may have had a rent repayment order made against him by the Council and that Ms Slamon was attempting to avoid her responsibilities in the situation which was adversely affecting Miss Geary's health both physical and mental. She signs off with a view that it was despicable and contemptible behaviour.

32. In answer to questions from the Tribunal she confirmed that she had been working in London for some 15 years and had been renting privately during that time. She said that she had viewed the flat for about 15 minutes before agreeing to take the tenancy and had been assured by the then tenants that there were no issues. She accepted that there was an agent who she had been in contact with.
33. She said she had been looking to leave the Property in May of 2020 but could not because of Covid. She confirmed that she had been in receipt of Universal Credit at the end of her tenancy and after the period for which she seeks to claim the rent repayment order, which was from 2nd January 2020 to 2nd April 2020, a four-month period.
34. She was asked whether she had contacted the local authority and she said she had as well as the Police. Asked whether on Mr Davis' attendance and she had phoned the Police whether she had been given a crime number, but it appeared not. She was advised by her counsellor to report the matter to Shelter and homeless charities. That concluded the evidence we had from Miss Geary.
35. The Respondent Ms Slamon had made a witness statement which was dated 20th June 2021 and included in her bundle at pages 29 to 39. We have noted all that has been said. She confirmed that her late husband was the sole leasehold owner of the subject Property and had been a co-director of the freehold company 50 Woodsome Road Limited with a Mr Ward. The inheritance of properties owned by her husband was a new situation for her as she had no experience of being a landlord. Following her husband's death, she sought the assistance of a Mr Rae of Buchanan Rae Wilson, local agents, to help. The statement gives some history as to her personal situation regarding employment which we have noted.
36. She says in her statement that she had carried out works to the Property required under the terms of the HMO licence and had been in contact with the local authority. She said the balance of the works had been carried out on 25th June 2020 and produced some evidence of payment of invoices in respect of the works that had been done. There is also email correspondence between Mr Deans of Camden Council's Environmental Health Office concerning issues. As far as we are aware no enforcement action has taken by the local authority in connection with the condition of the Property.
37. It then seems that because of communications from the Applicant, including the emails we have referred to and the commencement of proceedings against her, she sought the support of her neighbour Daren Davis. He apparently is an experienced landlord.
38. She says at paragraph 32 of her witness statement that dealing with the multiple unreasonable claims against her, starting a full time job, parenting newly bereaved daughters through huge life changes as well as school and Covid challenges has put pressure upon her, not helped by the death of her parents the year before her husband's demise. Her witness statement goes on to address matters of a legal nature concerning the alleged offences under section 1 of the Protection from Eviction Act 1977.

39. In her evidence to us she went through some of these matters. The question of the reduction in rent was discussed and she said that she had had no contact with Miss Geary after the letter seeking such reduction other than the without prejudice letter sent by her solicitor.
40. She confirmed that the mortgage was still in her husband's name and had not been transferred to her but that she had kept paying this. On the question of the licence, she said that she had not been involved as this was undertaken by her husband and his co-director and she had no knowledge of the HMO licensing position. When this was raised by Miss Geary, she made enquiries and determined that a licence was in place and that there was a plan of action put together to deal with the outstanding works. Her view was that all major works required under the licence had now been addressed. There was some discussion over a use of a contractor that she thought may have upset Miss Geary but it was not a matter that we needed to dwell upon.
41. Asked to give more information about the attendance on 1st January 2021 she said that this had arisen because she felt she had "hit a brick wall" at Christmas and she asked her neighbours to assist. She thought Mr Davis had been a huge support and she trusted him. She was asked by Mr Davis whether she had made a request for the rent to be paid. She said she had not. Apparently, Mr Davis said it was a simple process, that the conversation should be recorded so that there was no problem. His intention was she said to see if Miss Geary would pay the rent. There was certainly no intention to force Miss Geary to leave. All they wanted to establish was whether or not she would pay the rent. Ms Slamon said she remained in the car about 20 metres away and could not really hear what was said. She had certainly not given Mr Davis any specific instructions. She said she saw Mr Davis knocking at the door and buzzing but there was no reply notwithstanding that lights were on. He then knocked at the window and there appeared she thought to have been a short conversation. They then after a short while left. The next thing she received was a email of threats from Miss Geary. She confirmed that she had never been contacted by the Police and contents of the emails sent on 1st January by Miss Geary to her had shocked her.
42. Asked about Mr Davis' emails relating to County Court issues she said that she had to try and get recoupment of the rent which had not been paid. She had filed in the small claim court online and that had been issued not intending to be intimidating but to get the money that she was due, as she was entitled to do.
43. She said that she thought the emails from Miss Geary were shocking and it got the point where she said she had to get her sister to open them.
44. Under cross-examination from Miss Geary, she confirmed that the flat and freehold were being sold. She was asked by Miss Geary if she had read Mr Davis' witness statement, which she said she had and was asked whether she had shared details with Mr Davis concerning the Property and her personal details. Miss Geary did state that she had not come prepared to ask questions as she did not have Counsel.

45. Miss Slamon was then asked some questions by the Tribunal. She confirmed that no notice had ever been served on her by the local authority and that she had no other property that she rented.
46. She confirmed that there had been no contact with Miss Geary between the letter seeking a reduction and ignoring the without prejudice letter in May of 2020 there had been no contact and no chase by her for payment of the rent. She said that she did not know what to do and was waiting to see how things developed.
47. Asked whether she thought Mr Davis' attendance was threatening she said the intention was for him to ask to pay for the rent. She confirmed that she had gone with him but did not leave the car. She did not think it would be threatening.
48. After we heard from Ms Slamon Mr Davis was called to give evidence. He had made a witness statement which appeared in the Respondent's bundle at page 197 and was dated 20th June 2021. This confirmed his involvement with Ms Slamon and that he was a full time residential landlord or some 25 years and had been named as a responsible person in a number of HMO matters. He did not have a criminal record. He recited the problems that Ms Slamon had told him about concerning the Property and we have noted all that was said. He confirmed that in respect of the Property he was helping Ms Slamon as a friend and not in a professional capacity. He confirmed also that he had no intention whatsoever to cause Miss Geary to give up occupation of her flat or part of it nor to stop her from exercising any rights. All that he wished to do was to recover the rent on behalf of Ms Slamon.
49. He said that he considered that Ms Slamon was too scared to see Miss Geary in person because she had proved to be "difficult and angry" and had little regard for Ms Slamon's fragile state. He sets out in the witness statement the meeting he had with Miss Geary on 1st January and we have noted everything that was set out therein.
50. Asked by Mr Mahmood whether he was aware of the position prior to 1st January 2021 he repeated that which he had said in his witness statement. He was aware that there were arrears of rent and that there was an application against Ms Slamon for a Rent Repayment Order coming up in the New Year. He thought it would be a good idea to start the ball rolling at the beginning of the year and to establish why rent was not being paid. His view was that Ms Slamon felt out of control and on the back foot and was being attacked on a number of fronts. The decision was for him to go and speak to Miss Geary to find out if she would pay any rent. He hoped that by going to see her there might have been some common ground. They went to the meeting in his car, and he kept a dictaphone and video available as he was aware that there might be problems. He told us that he knocked at the front door but there was no answer, saw a light was on, tapped on the window and stepped back to the pavement. Miss Geary came to the window and opened it and he asked her if she was going to pay the rent, which she said she would not. They then parted company but he was called back by Miss Geary and asked for details, which he agreed to give and left a note for her. He did not know whether the Police attended, although he did wait for a while to see if they arrived but they did not.

51. In questioning from Mr Mahmood he confirmed that he was not there to get Miss Geary to leave. He denied that he had threatened her.
52. Miss Geary was offered the opportunity to asked Mr Davis questions, but she did not feel able to do so. We asked her if she would like some time to gather herself but she declined.
53. We asked Mr Davis some questions. He confirmed he was a member of the National Association of Landlords and had undertaken courses. He confirmed that he had HMO licences with Camden and Barnet. Asked whether he had permission to record he said no but he did not think that he needed to do so whilst he was standing in the street. Asked whether he thought saying that there was going to be an application to take Miss Geary to Court was extreme he responded by saying that in his view it was extreme not to be paying rent for nine months. He believed that by attending to ask whether rent was to be paid and then subsequently serving the notice under section 8 of the Housing Act 1988 had done all that he needed to do. He did accept however that on reflection it was perhaps not a good idea to have visited Miss Geary.
54. We asked Miss Geary whether there was anything she wished to add. She said that she stood by all that had been said in her documentation.
55. Mr Mahmood in a brief closing said that although Universal Credit had been paid it had not been used to discharge the rent. His view was that we were dealing with an Applicant who had been pursuing the Respondent for money since May of 2020. This was evidenced by her application to the Court and two rent repayment applications. In addition there had been harassing emails. In respect of the allegations under the Protection from Eviction Act he accepted that with hindsight it had not been the perfect choice for Mr Davis to arrive on 1st January. However, it should be put in context of nine months without the Applicant paying any rent and notwithstanding there had been a request for a rent reduction which had been granted that she had failed to pay anything thereafter. We were also taken to the letter before action from Miss Geary's solicitors and the threats contained in earlier emails.
56. The claim he said arises from the Protection from Eviction Act 1977 and the burden of proof rests with the Applicant. Under section 1(2) this is a serious criminal offence but there had been no eviction and no intention. There had been no physical entry to the Property and that in his view this limb was a non-starter.
57. In respect of section 1(3) there was no intention indicated to Miss Geary that she was required to give up possession. This was he said misconceived. There had been no attempt made by Ms Slamon to evict or dispossess Miss Geary.
58. Insofar as sections 1(3)(A) and (B) are concerned the intent of Mr Davis did not vicariously make Ms Slamon liable for his act. There was no specific intent to get Miss Geary to leave. She has issued proceedings against Mr Davis and that Ms Slamon was a responsible landlord and was only attempting to obtain monies.
59. Miss Geary did make some closing submissions to us. She reminded us that she was not a barrister and had not been expecting to deal with the matter. The

correspondence referred to was after months of trying to get the landlord to sort out matters when she felt she was ignored and a person without power.

60. In trying to assign liability to Mr Davis and to Ms Slamon she was of the view that both had been acting together, they had planned to come over and to record her on a public holiday. Ms Slamon was not separate from this, she was an integral part and they were in fact not separate entities.
61. She told us she did not know Mr Davis, nor did she know why he knew details of her personal situation. It was only after the letter before action was sent that any work was undertaken to the Property and that she had vacated the Property because she feared for her safety. She confirmed that she was seeking four month's rent and that Universal Credit had been paid after the period for which she was making any claim.

FINDINGS

62. The Protection from Eviction Act 1977 under section 1 deals with unlawful eviction and harassment of occupiers. The burden of proof in respect of all these matters is the criminal level beyond reasonable doubt. The term of the Act is set out at the end of this decision.
63. Section 1(2) is aimed at a person unlawfully depriving somebody in Miss Geary's position of their occupation of the premises or part thereof or attempting to do so.
64. The offence under section 1(3) has an intent to cause the residential occupier to give up occupation of part thereof or to refrain from exercising any right or pursuing any remedy. But those matters under section 3(A) and (B) are on the basis that acts are undertaken that are likely to interfere with the peace or comfort of the tenant or withdraw services reasonably required for occupation. Under section 1(3)(A) the offence is extended both to the landlord and to the agent but in any event that the person committing the offence must know or have reasonable cause to believe that the conduct is likely to cause the tenant to give up occupation of the whole or part of the premises or refrain from exercising rights. However, section 1(3)(B) states that a person is not guilty of offence under section 3(A) if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services.
65. Under the 2016 Act an offence under sections 1(2), (3) or (3)(A) is one to which a rent repayment order may be made. There does not appear to be any dispute that Miss Geary was entitled to make an application for a rent repayment order. The question is whether or not an offence has been committed.
66. Our findings in respect of this matter are as follows. There was no evidence that was before us that the actions of Mr Davis or indeed Ms Slamon were with the purpose of getting Miss Geary to leave. Miss Geary told us that she had planned to leave in May of 2020 but Covid and other matters had prevented her from so doing. However, notwithstanding that intention she stopped paying any rent. Complaint was made that the other tenant LB-C had caused harassment and that the Property was in a state of disrepair. We cannot really comment on the actions

taken by LB-C other than to indicate in our findings that these would not be the responsibility of Ms Slamon as was found by our colleagues in January of this year. Further, the state of disrepair was not raised by Miss Geary in her letter requesting the refund of rent and appears to be of a minor degree. There is clear evidence that Ms Slamon had provided for works to be undertaken to the Property and is in contact with the local authority who have taken no action in respect of any breaches of the HMO licence. Accordingly our finding is that there was no justification for Miss Geary not paying her rent.

67. Instead rather than pay the rent she went on the offensive. Proceedings followed from the somewhat misconceived letter before action sent by solicitors in May of 2020 when allegations concerning the other tenant and the lack of licence were raised. Proceedings were commenced against Ms Slamon for what appears to be substantially damages which we will not comment upon further other than to say it will be for Miss Geary to substantiate before the Court that her losses are provable. She then commenced an application for a Rent Repayment Order against Ms Slamon, notwithstanding that she was not paying any rent from May 2020 onwards.
68. We are of the view that it was not appropriate for Mr Davis to attend the Property on 1st January 2021. Nonetheless, we accept Mr Davis' position that he was not intending to be threatening although he accepted that an unknown man of some bulk arriving at the Property unannounced was not the best way to deal with the matter. Certainly, his demeanour captured on video did not appear to be threatening and there was nothing in the recorded conversations which led us to believe that threats were being made. Mr Davis had been accepted by Ms Slamon as somebody who could offer assistance. She is not an experienced landlord and as we now know is intending to dispose of the Property. In contrast, it does not seem to us that Miss Geary is naive. She certainly was able to commence proceedings in 2020 albeit by a somewhat prolix statement of claim which had to be amended and certainly was aware enough to commence a claim for a rent repayment order which she persisted with notwithstanding that the allegation concerning the lack of licence was misconceived and known to her before the matter came before the Tribunal in January of 2021.
69. We bear in mind also the email exchanges between Miss Geary and Ms Slamon, which do not seem to us to indicate a person who is in fear of their safety or their occupancy of the Property. The content of these emails is unpleasant and is in itself threatening. By contrast such replies as there are from Ms Slamon either on her own or on her behalf are neither threatening nor aggressive. The issuing of a further rent repayment application just a few days after the first one had been dismissed does not strike us as being the action of somebody who is in fear for their safety, and starting further proceeding to seek to recover rent would appear to negate the suggestion that exercising her rights had been in any way interfered with.
70. The standard of proof as we have indicated is the criminal one beyond reasonable doubt. We are not satisfied that Miss Geary has discharged that burden. We are not satisfied that there is any evidence that Mr Davis or Ms Slamon, for whom we accept Mr Davis was acting as an agent, had acted in a manner which was intended to persuade Miss Geary to leave. Indeed, she told us she had intended

to go earlier. She was the one who served a notice to quit after proceedings had been against her for possession and for the claim for rent. We do not consider that commencing proceedings to recover rent and possession for non-payment is a step which could constitute harassment. It is an entitlement that the landlord has to protect their position.

71. We are satisfied, therefore, that the claim is not made out and accordingly we dismiss Miss Geary's claim for a rent repayment order.

Andrew Dutton

Judge: _____
A A Dutton

Date: 31 August 2021

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.