FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/11UC/HMB/2022/0002**
Property	**:**	**The Old Chapel, 35B Church Street, Great Missenden, Buckinghamshire HP16 0AZ**
Applicant	**:**	**Mr Kenneth Jolivet and Mrs Parvaneh Khosravi**
Representative	**:**	**Applicants in person**
Respondent	**:**	**Mrs Brenda Bellis and Mr Rob Bellis**
Representative	**:**	**Respondents in person**
Type of Application	**:**	**Application for a rent repayment order under sections 40, 41, 43 and 44 of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge Dutton** **Mr J Francis QPM**
Venue and date of Hearing	**:**	**Video hearing on 10th November 2022**
Date of Decision	**:**	**30 November 2022**

DECISION

DESCRIPTION OF HEARING

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was CVP Remote. A face-to-face hearing was not held because it was not practicable and no-one requested same.

The Tribunal were referred to documents contained in two bundles numbering some 227 pages, the contents of which have been noted.

DECISION

For the reasons set out below the Tribunal dismisses the application for a Rent Repayment Order

BACKGROUND

1. An application was made by the Applicants on 14th July 2022 alleging that the Respondents had been guilty of offences under the Protection of Eviction Act 1977 sections 1(2)(3)(4)(3A). As a result of this alleged criminality the Applicants sought to recover a rent repayment for the period from 28th June 2021 to 21st November 2021.

2. The claim relates to the Applicants' occupancy of the Old Chapel, 35B Church Street, Great Missenden, Bucks HP16 0AZ (the Property) which is owned by the Respondents and is part of the title which includes both 35 and 35A Church Street, Great Missenden.

3. Prior to the hearing we were provided with two bundles. The first contained the Applicants' documents including the tenancy agreement and a narrative, which was dated 22nd August 2022 and was requested by the Tribunal prior to the granting of directions, which were issued by Judge Wayte on 23rd August 2022. Also included in this first bundle were the documents lodged by the Respondents, which included the response to the narrative and witness statements from Ms Bev Burton, Miss Zoe Russell-Stretten and Mr David Hill. There were also various other documents and emails to which we will refer as necessary during the course of this decision.

4. A second bundle was prepared by the Applicants which included a 16-page reply to the Respondents' 7-page response, as well as a copy of planning permission and some emails and various other documents which again we will refer to as necessary during the course of the decision.

5. The summary of alleged actions by the Respondents was, as we have indicated above set out in an email to the Tribunal dated 22nd August 2022. This has ten matters which it is said support the Applicants' belief that they were harassed and unlawfully evicted by the landlord. They are as follows:

1. Actions that interfered with the peace and quiet enjoyment of the Property.
2. Lack of actions that interfered with the peace and quiet enjoyment of the Property.
3. Trespass on two occasions.
4. Nuisance by way of omnipresent observation which as a result of her previous actions we nearly always felt on guard worrying what might upset the landlord and consequently what she might do in response.
5. Intimidation by actions, language and behaviour and refusing to address many issues related to the Property, insulting and derogatory language, rude behaviour (calling me disgusting while trespassing and pouring bleach on our plants/drive).
6. Bullying with the intent of causing emotional and psychological harm facilitated by the natural imbalance of power which tends to exist with a landlord over the tenant.
7. We believe that the landlord would have known that her behaviour and actions would lead to us wanting to leave this home. In fact, she was told this very thing on 11th September 2021 over email, and she responded on 12th September.
8. Refusing to carry out repairs as reported by the tenants (us) on many occasions (denying what was reasonable to a rental home, what was stated in the lease and what we had before things went sour).
9. Passive aggressive/revenge expressed through deprivation of previously available amenities/items (parking space) maintenance/provision of appliances/fittings, proper sanitation (with the aim of compelling us to leave/break the lease).
10. The landlord's interference/actions/behaviours resulting in much reduced living conditions and quality of life at the Property.

6. The document went on to provide a narrative history of the issues confirming that the Applicants moved into the Property on 21st May 2021. On 10th June nine faulty items were reported, which were intended to show that the Property had not been checked properly for problems before the Applicants moved in.

7. On 17th June it appears that the first incident arose that the Applicants felt was harassment, which came in the form of the landlord revoking and/or restricting visitor parking rights. Subsequently a complaint had been raised concerning the state of the bedroom curtains, which appeared to interfere with the Applicants' ability to sleep beyond daylight. This resulted in the Applicants sticking newspaper to the windows to prevent light ingress. There was then an incident on 28th June where the Applicants' dog urinated on the flowerpots that were their property but was situated in front of the Property. It is alleged that shortly thereafter (it seems a matter of seconds) the landlady rushed out in a somewhat unusual state of attire and proceeded to tip some form of cleaner over the plant and surrounding area apparently. It is said that she made comments indicating that Mr Jolivet who was walking the dog at the time was "disgusting." We have then noted the attempts to try and discuss this matter.

8. Problems in relation to the Property were raised; this included a faulty dishwasher, faulty washing machine and a faulty fridge. It is also suggested that two toilets did not flush properly, that there was a loose and unstable patio slab

and an unusable shower which only ran hot. It is alleged that these matters were not corrected satisfactorily, or not in a reasonable time.

9. The statement goes on the say that on 11th September 2021 an email was sent to the landlord indicating the problems and the fact that they, that is the Applicants, did not feel they could enjoy the house anymore. We have noted the contents of both these emails.

10. The summary goes on to refer to the landlord's frequent absence from Great Missenden away in France. It was said that they were required to wash dishes by hand, work through the faults on the washer/dryer and the fridge and had apparently been required to throw away fresh vegetables which were ruined by the fridge's unstable temperature. There was also a repeat of the allegation that the toilets did not flush properly which resulted in them needing to push matter down the toilet with a "loo brush."

11. It says at this point that *"it felt like revenge (intentional) and was harassment most days and overall (ie the entire tenancy) giving our living reality*".

12. There is also the question of trespassing. Two allegations are made; the first relates to the use of some form of disinfectant to deal with the urination by the dog, as referred to above and the second is when the landlord moved the wheelie bin just onto the Property, which required her to open the side gate and to park the wheelie bin a few feet down the passageway to the side.

13. The final paragraph to this opening submission says this: *"It goes without saying that we felt we had not choice but to leave. Our early departure could not have been a total surprise to the landlord because we mention such an option earlier on by email (29th June and 11th September) to make our displeasure formal and put them on notice where things were heading. Considering all the above, on 15th October 2021 we sent an email giving notice that we were moving out for reasons of harassment, general inconvenience, suffering and indignation the way we were treated over many months including anti-social behaviour (and more) all things considered (a lack of peace and quiet enjoyment of our home at 35B) which amounted to what we believe was retaliatory and constructive/illegal eviction and harassment."*

14. This document listed a response from the Respondents running to some seven pages with detailed replies to the matters that were raised. We will endeavour to deal with those fairly succinctly.

15. The Respondents confirmed that they own the Grade II Listed property, which includes the two-bedroomed cottage known as Wilton Cottage, 35A Church Street and the separate dwelling, the Property. These properties are set around a private courtyard owned by the Respondents with a short driveway leading to Church Street. A site plan was provided. We had details of Mrs Bellis' occupation and current status as well as those for Mr Bellis. There is confirmation that witness statements had been provided by past and present occupiers of the Property and Miss Burton who occupies 35A.

16. The Applicants entered into a 12-month fixed term tenancy commencing on 21st May 2021 and paid six months in advance. The Respondents said they ensured the Property was in good order and left a card and a bottle of wine as a welcome gift. They record in their response that the Applicants had mentioned that they were looking to buy a property in the Bourne End/Marlow area.

17. Dealing with the allegations made by the Applicants the Respondents dealt with the parking arrangements, allegations of trespass, the failure to repair and allegations of harassment, eviction, bullying, intimidation and nuisance.

18. Insofar as the parking was concerned, the tenancy agreement it is said provides that there is a parking of one car. It was explained to the Applicants that occasional visitor parking was acceptable but the extended parking of a second vehicle in the courtyard would not be acceptable and fell outside the terms of the tenancy. It appears that for a period of some six days or more the Applicants' daughter parked on the driveway and that there were other occasions where there was extended parking. It appears that sometime in June 2021 Mr Bellis visited the Applicants with a form to enable them to apply to the local authority for residents parking. It appears not to have gone down well. It is the Respondents' case that the tenancy agreement clearly limits the parking, and they did nothing other than to ask the Applicants to adhere to those requirements.

19. In respect of the allegations of trespass, one related to the placement of the wheelie bin in the side passage of the Property. Mrs Bellis accepted that she had done this, but it was for nothing other than a kindly neighbourly action but that she would not do so again. The second item of alleged trespass is when the Applicants' dog urinated on the cobbles in the courtyard which Mrs Bellis saw and who went out to put down some form of disinfectant. It is the Respondents assertion that this area was not part of the rental property and that the Applicants only had the right to use same for access and egress and to park one vehicle. The Respondent considered that disinfecting the area where the dog had urinated was reasonable and she denies that there was any damage caused to the Applicants' plants.

20. There are other matters stated which we have noted. The next matter to which the Respondents referred is the allegations of failing to repair. It is admitted by them that they own a house in France and which they visited on a regular basis, although not so much during 2021 because of Covid issues.

21. On the allegations of harassment, eviction etc response is made to the overlooking of the Applicants' Property by the Respondents. The Respondents say that their kitchen windows of which there are three are positioned so that it looks over the courtyard, but they could not see into the Property. It is admitted that the kitchen is used frequently but certainly not for the purposes of watching the tenants' activity in the courtyard.

22. It appears that the Applicants referred the matter to the local authority but this was not known to the Respondents and was not made clear to them until the Applicants' narrative in August of 2022. The Respondents deny intimidation or bullying. Reference is made to the fact that Mr Jolivet is a former RICS surveyor

and ex-military veteran who indeed included in the second bundle two statements of a meritorious service.

23. It is said by the Respondents that other than to request the Applicant to cease his abusive correspondence and request that they observe the parking arrangements, the Respondents asked nothing of the Applicants and certainly made no threats, complaint or comment which could be construed as any form of harassment etc. Indeed it appears there was no verbal communication between Mrs Bellis and Mr Jolivet following the dog incident on 28th June 2021. This was confined to email, although Mr Bellis did manage issues on a day to day basis and was in contact with both Applicants throughout. We have noted the remainder of the response and the general defence that is set out.

24. This then elicited a detailed reply from the Applicants running to some 14 pages where each matter is reviewed and commented upon. We have noted all that has been said as well as the various photographs which are attached.

25. This matter came for hearing on 10th November by way of video and the Applicants and the Respondents both attended as did the witnesses Mr Hill, Miss Burton and Miss Russell-Stretten.

26. Mr Jolivet opened up indicating that the Respondents had intentionally carried out a plan of punishment and retaliation to comply with an early vacation of the Property. He reasserted that the Respondents had the means to bring this action as they had all the power and that the Applicants were at the mercy and goodwill of the Respondents. As to the question of the dog urination, it was said that other dogs urinated along the frontage of the Property, which was on a public roadway, and it was asked why Mrs Bellis had opted a more helpful approach to others than they did to the Applicants.

27. We were referred to the actions which the Applicants considered interfered with their quiet enjoyment, including lack of action, continued observation, intimidation, rude behaviour, trespassing and bullying.

28. Insofar as the electrical items were concerned and the problems that they had, it is said by the Applicants that these were not repaired as they should have been and were probably beyond their useful period. They made reference to the fact that one of the previous tenants, Miss Russell-Stretten, had been told by Mr Bellis that the dishwasher was to be replaced, but it was not. Concern was expressed about the shower which was apparently issuing boiling water which for two months meant that the Applicants could not make use of the shower. The downstairs toilet in particular did not flush properly and it was suggested that the previous tenant did not use this facility. They thought that the plumber had attended some 20 times to sort these problems out and that on the last occasion had dislodged a small tile by the toilet, which the Applicants had retained. Details of the trespass both relating to the dog urination and Mrs Bellis placing the bin to the side of the Property were dealt with. In the views of the Applicants the fact that Mr Bellis put the bin inside the gate showed that she owned the area and could do as she wished.

29. Insofar as the parking was concerned, the Applicants considered that they "owned" the front of the area in front of the Property where they had been allowed to put plants. Also, they relied on the fact that Miss Burton appeared to have an area where she had installed plants and created a small sitting place, which they thought they should also have been entitled to. They complained that it had taken six weeks or so to change the shower door, Mrs Khosravi also indicated that she had been upset by the manner in which the Respondents had dealt with their dog. She accepted that Mr Bellis was a "nice guy" but that he had no power and that he was not allowed to deal with matters without the agreement of Mrs Bellis. She said that she was upset at being in the house, that she knew that they were watching and that they were going to do something crazy. She knew they were watching from the kitchen window. The Applicants went on to ask why they had considered the dog urinating on the pot was wrong, why they had put down some form of disinfectant and why Mrs Bellis had not acted as a 'nice lady' and dealt with the matter more appropriately.

30. As to the curtains, we were told that the Applicants were deprived of sleep and had to get up at 4.30am in the morning. The poles for the curtains were too far from the wall and although blackouts had been tried they did not work. The question of parking was raised and it is said that the form that Mr Bellis gave to Mrs Khosravi was in fact thrown at her.

31. The Applicants confirmed that there were no windows to the west and east of the Property but windows only to the north overlooking the garden and the south side which overlooked the driveway. The appliances they thought were too old and should have been replaced.

32. They did confirm that there was only the one incident concerning the dog on 28th June 2021 but that matters had not been dealt with, for example the loose slab had not been repaired. They said that they had stopped asking for assistance of the Respondents because they were so offended by the actions or inactions. They did confirm that they intended to rent the Property to give them time to find somewhere to buy.

33. We then heard from the Applicants' witnesses. We do not propose to go into any great detail as the witness statements were included in the bundle. We heard firstly from Mr Hill who was a solicitor. His witness statement is short and confirms that he has been a tenant at the Property since 17th November 2021 and has enjoyed a good relationship with the Respondents. He said he had no occasion to complain about the Property and that he had never felt that he was being watched. There had been no problems with the appliances and that certainly the washing machine was working well because his partner's parents were staying at the Property for the moment and were carrying out washing relating to a new-born child that Mr Hill and his partner had just been delivered of.

34. He was asked whether he had written the witness statement but he pointed out that it contains the following words: "I believe the facts stated in this witness statement are true" and he confirmed that was the case. Asked by the Tribunal he confirmed the washing machine was working and that he did not use the dishwasher on any frequent occasion but that the fridge/freezer appeared to be in

good order. We took Mr Hill's evidence out of order because he had to leave before the hearing was to be concluded.

35. After we heard from Mr Hill the Respondents asked questions of the Applicants. In the course of this evidence it appears that the Applicants had purchased an alternative property in Marlow on 21st October 2021 having given three days' notice prior to the completion of that purchase to vacate the Property. The Applicants said that they had relatives who were able to provide them with accommodation if completion had not happened or that they would have stayed at a hotel.

36. On the question of the car parking it was said in answer to questions from Mrs Bellis that the daughter had stayed for a few nights and after 17th June had been asked if she could park either on the road, although Mrs Khosravi said that she had been parking in the Abbey car park. The Applicants had not applied for residents parking. They however felt intimidated.

37. An allegation was made that Mr Bellis had been looking at the Property. This turned out to be an allegation that he had been standing in the nearby park and looking at the rear of the Property and had seen that there was newspaper stuck to the windows. Mr Bellis denied this.

38. Insofar as their purchase of 37 Temple Mill Island, Marlow was concerned, we were told that they had made an offer to purchase this in August, which had been accepted shortly thereafter. They then had to instruct solicitors and arrange mortgage finance and carry out searches and completion had taken place on 21st October 2021.

39. We then heard from Mrs Bellis who dealt with some of the allegations raised. She confirmed that she had returned the bin to the Property as she had done previously with other tenants and as was often undertaken by Miss Burton. She put it behind the gate automatically and confirmed that she would not do this again.

40. Insofar as the dog incident Mrs Bellis told us that she had been told by Miss Burton that the Applicant's dog had taken to urinating on the steps by her back door. She had not seen it but on this occasion she did see the dog urinating on the driveway and took steps to disinfect the area in question.

41. On the question of parking Mrs Bellis said that it had been explained to the Applicants that occasional parking on an irregular basis was ok. However, the daughter had stayed for six nights on succession and it was felt that this was within a month of the Applicants moving in and it appeared to be a regular occasion and they were reminded that there was only parking for one vehicle.

42. Insofar as the urinating by other dogs was concerned Mrs Bellis said that there was a distinct difference between the highway land to the front of the Property over which she had no control and the private land which belonged to the Respondents. Accordingly there could be no trespass insofar as dealing with the dog's urine. No area in front of the Property was included within the letting agreement but it was agreed that the Applicants could place some pots to the

front. Insofar as Miss Burton's property was concerned, it had been agreed at the time of her tenancy that there was a designated area that she could use as she had little or no garden land and the pots were put in place and she was entitled to make use of same.

43. Mrs Bellis confirmed they were not prepared to change the curtain rails or to drill more holes. The curtains had been in place for some years without complaint. It was also pointed out the windows faced north although they would have accepted that new curtain rails could have been put up if the existing drill holes had been used. Insofar as the shower mixer was concerned, it was accepted that there was an extended problem. To repair it, it appeared that it would have been necessary to take out the unit from wall but some five or six weeks were required to obtain the unit from the manufacturer. It was denied that the shower did not run cold. There was also a bath at the Property. In addition, there was the ability to adjust the temperature by reference to the hot water tank which was run by a thermostat.

44. Mrs Bellis confirmed that a drainage engineer had attended on 15th June 2021 and had checked the drains and the toilets and could find nothing wrong. There was a leak in the toilet upstairs which was repaired.

45. Insofar as the white goods, Mrs Bellis confirmed the dishwasher was some 14 years told, the washing machine 7 years and the fridge 8 years. She said that these had functioned during and before the tenancy and indeed the washing machine had never been reported as an issue until these proceedings began. She also pointed out that Mr Hill said it was working satisfactorily.

46. The dishwasher was checked after the Applicants left and was found to be functioning satisfactorily. As to the fridge, it was not considered that this was requiring of replacement as it was not in poor condition.

47. The allegation of the Respondents overlooking the Applicants was denied. The kitchen windows did overlook the area to the front but there was no possibility of being able to see into the subject Property from those windows because of the angles. In addition, Mrs Bellis was working full time and was not standing at the kitchen window as alleged.

48. Some comment was made concerning the statement relating to Mr Jolivet's experiences. Mrs Bellis felt that the use by Mr Jolivet of an allegation that she was hysterical and suffering from OCD was in her experience a phrase used by men to shut women down. We then heard about the provisions of a TV which the Respondents had provided to the Applicants as theirs had been broken on moving in. We were told the deposit had been returned. The Respondents have re-let the Property from 17th November 2021 to Mr Hill.

49. The Respondents deny harassment or withdrawing services and that the Applicants were determined to leave and raise the rent repayment order to recover monies. In the Respondents' view the proceedings were nothing more than an attempt to exit from the 12 month tenancy agreement. It was also said by Mrs Bellis that given Mr Jolivet's military background as we have referred to, it would seem to her unlikely that he would be the subject of bullying.

50. Some questions were asked of Mrs Bellis by Mr Jolivet. These related to the curtains and why would not allow different holes to be installed, which the Respondents said that they did not want further poles drilled. Allegations that they treated other tenants before them more appropriately were made and rebutted. On the question of the toilets, it was suggested by Mr Jolivet that maybe bigger toilets should have been provided but Mrs Bellis said there was no previous or subsequent complaint on this point. We noted all that was said.

51. We then heard from Bev Burton who's witness statement was as with Mr Hill's included in the bundle. She told us that she had been a tenant at 35A Church Street since March of 2019 and throughout the Applicants' occupation. She said that she had never been subject to or witnessed any intimidation, harassment etc. She had no occasion to complain about her tenancy to either the Respondents or others. She did not feel that she had ever suffered "omnipresent observation." She said she often exercised in the courtyard and had no fear of being watched or observed. She said that when she had needed repairs those had been carried out. She said she had also asked the Applicants to prevent their dog from urinating on her potted plants and indeed on one occasion the Applicants' dog entered her property and urinated there. The witness statement contains a statement of truth.

52. Expanding on some points, she told us that she had to place the bins for 35B by the gate because the previous tenant kept that locked. We had discussions concerning other dogs, which did not in truth really assist us. She confirmed that when she did exercises to the front she did wear gym clothes as this appeared to have caused Mr Jolivet some concern as raised in his statement. She was in fact asked about the clothes she wore to exercise by Mr Jolivet and her response was essentially that she could wear what she wanted.

53. We then heard from Miss Russell-Stretten whose witness statement was included in the bundle again containing a statement of truth. She confirmed that she had been a tenant of the Property from 31st January 2019 until 30th April 2021 and that she had never felt that she was being watched coming or going to the Property and enjoyed a good relationship with the Respondents. She said they were helpful to her in taking in parcels and permitting occasional overnight parking by guests. She said that if there had been problems with any items those had been fixed quickly. In addition, the Respondents had also been helpful in fitting a new lock to the front door. She confirmed that when she vacated at the end of April 2021 there were no faults with any of the appliances at the Property and that she left on good terms.

54. In giving oral evidence she said that there were a couple of matters she wanted to clarify. She confirmed she did use the fridge but did not stuff it with food as she was living on her own by that time. She said that the dishwasher did stop functioning and she had been told by Mr Bellis that it would be replaced although it was working when she left. She confirmed she did use the downstairs toilet on occasions perhaps once or twice a week with no problems and there were not difficulties with the fittings upstairs. She did say that she had had a problem with the hot water but this was explained to her by Mr Bellis that this could be controlled by the thermostat. She confirmed that her understanding was that

there was only one car parking space. She expressed her sadness that there had been a breakdown over the relationships between the parties.

55. We invited short submissions from the parties. Mrs Bellis said there had only been one occasion previously when the tenancy had ended early because the partners had separated. She found the current position both eye-opening and depressing. She considered there were two innocent incidents which had been blown out of proportion and the parking had been clarified. Certainly they did not ask the Applicants to leave. They had entered into a 12-month contract with not break clause.

56. Mr Jolivet said that the problems had started before July with the Property. They were not happy with it and they are not happy with the property that they have bought. The evidence he says showed that there was harassment and offences and the emails supported this. It is said that the Respondents sought to punish the Applicants and reference was made to an email sent by Mrs Bellis of 29th June 2021 and a further email of 12th September 2021 both of which we have noted. Reliance was placed by Mr Jolivet on exchanges of emails around 9th July 2021. The first from the Applicants is a wish to move forward in a positive way and work in a neighbourly way for the sake of health and happiness. The response from the Respondents is: *"We were pleasantly surprised to receive your email and will be pleased to continue a cordial professional relationship with you. We are very much enjoying France, thank you."* Mr Jolivet felt that this was something of a threatening document.

TENANCY AGREEMENT

57. It seems appropriate to set out some of the terms of the tenancy agreement. The agreement appears to have been prepared by Hydegate Estates who are agents for the Respondents. It runs for a term of 12 months and thereafter on a month to month basis with a monthly rental of £1,750. The landlord is recorded as Brenda Mary Bellis and the Applicants are the tenants. The agreement provides for the tenant to pay six month's rent up front covering the period from 21st May 2021 to 20th November 2021 and thereafter on a monthly basis. The agreement goes on to provide that the tenant will keep the Property in good condition and repair subject to section 11 of the Landlord and Tenant Act 1985. The tenancy agreement indicates initially that no domestic animals are to be kept without consent but in an addendum to the agreement, which we will turn to shortly gives permission for the Applicant's dog to reside at the Property.

58. On the part of the landlord there is an agreement to provide quiet enjoyment and to keep in repair and proper working order all mechanical and electrical items including all washing machines, dishwasher and other similar mechanical or electrical appliances belonging to the landlord as are included in the check-in inventory. The tenancy agreement also provides for the landlord to comply with sections 11 to 16 of the Landlord and Tenant Act 1985 and to keep the Property in good repair and also the installation in the premises for the supply of water, gas, electricity, sanitation, water and heating.

59. In the special clauses as we have indicated above, there is provision for one pet dog to be kept at the Property, a requirement to clean thoroughly in a

professional manner at the end of the tenancy and to keep the garden free of fouling by the pet. In addition also, there is a provision for the wheelie bins to be stored out of sight behind the garden gate and at 11.3 it says "parking for one car is permitted, located adjacent to the garden gate."

FINDINGS

60. The appropriate Act for this case is the Protection From Eviction Act 1977. At section 1(2) it says as follows: *"If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.*

(3) If a person with intent to cause a residential occupier of any premises –

(a) to give up the occupation of the premises or any part thereof; or
(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts (likely) to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to sub-section (3B) below, the landlord or the residential or occupier or agent of the landlord shall be guilty of an offence if –

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of the household, or
(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and in either case he knows or has reasonable cause to believe that the conduct is likely to cause the residential occupier to give up occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises."

61. It is a defence for the person who is alleged to have committed these matters if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services.

62 It is appropriate to note that the allegations raised in June 2021 concerning parking, the dog and the alleged trespass all occurred more than twelve months before the date of the application, which was 14 July 2022. However, we will endeavour to deal with those for the sake of completeness and to set the scene, as it were. There are two allegations of trespass. The one relates to Mrs Bellis tipping some form of disinfectant over the courtyard following the Applicants' dog's urination and the second is the placement of the wheelie bin behind the gate to the side of the Property at perhaps some ten feet down the passageway. Our findings on these are that firstly the common area to the front does not

belong to the Applicants and accordingly the use of Dettol to clean the dog's urination cannot be a trespass.

63 The placement of the wheelie bin behind the gate, which happened once, may technically be a trespass but we accept the Respondent's evidence that she did this in a neighbourly fashion and would not do so again. It seems to us that the Applicants are overreacting in relation to these to matters.

64 There is then the suggestion there has been some form of 'omnipresent observation' by the Respondents. We do not find that that can be case. The windows to the kitchen of the Respondents' property look out over the common access way. It is not unreasonable for them to be in the kitchen at various times of the day. We have seen a site plan and it does not seem to us that given the positioning of the respective properties that the Respondents would be able to see into the Applicants' Property. Accordingly we find that this is an overinflated allegation and that whilst there may have been occasions when the Applicants were aware that the Respondents were at the kitchen we do not accept that that was intended to be some form of "omnipresent observation."

65 In respect of the allegations of intimidation and bullying are concerned, we do not consider that they have been made out by the Applicants. We do find it somewhat surprising that Mr Jolivet who reached the rank of Major in the United States Air Force and by reference to the citations included in his bundle would be somebody who would be easily bullied. There is no particular incidents relied upon by Mrs Khosravi to say that she felt particularly bullied, indeed she said that she had a good relationship with Mr Bellis who she appears to have dealt with on a day to day basis,

66 Insofar as the repairs to the white goods, shower and toilets are concerned, we do have some sympathy with the Applicants in that it does seem to us that renting a property at £1,750 per month might have resulted in the Respondents ensuring that all white goods were in good order and were perhaps new. We accept, however, that the evidence is that the white goods were certainly working satisfactorily before the Applicants took occupation and the evidence of Mr Hill is that they were functioning satisfactorily after the Applicants left. We do, however, accept that for example the attempted repair to the shelves in the fridge was perhaps misplaced by Mr Bellis and that there should have been an immediate replacement. Insofar as the shower is concerned we accept the evidence of Mr Bellis that there was a thermostat on the hot water tank which could have been used to control the temperature and we are not wholly convinced that the showers could not be used during this period, but maybe with some careful alteration of the thermostat. We accept the Respondents' evidence that it took some time to obtain a replacement valve and that this necessitated some major works to install in the wall of the shower area but that was done. The shower screen appears to have been dealt with reasonably speedily. Insofar as the toilets are concerned, we have conflicting evidence. We have evidence from the previous tenant, Miss Russell-Stretten, that they worked satisfactorily, and Mr Hill appeared to have no concerns. It may be that they have backed up on occasions as does happen but a drainage engineer was called and appears could find no faults.

67 Turning to the question of the curtains, we find it somewhat surprising that so much light was let into the room as to prevent the Applicants from sleeping beyond dawn. The windows face to the north and accordingly any ingress sunlight would be somewhat affected. Furthermore, we were told that a blanket had been hung over the windows but that did not seem to have prevented the problem. It seems to us that the susceptibility to light ingress as suggested by the Applicants is unusual and there is certainly no complaints made either before or after relating to the curtains.

68 Insofar as the parking is concerned, it is quite clear that the tenancy agreement provides for one parking space and no more than that. Mr Jolivet seemed to imply that there was included within in it the right for visitor parking which is not denied by the Respondents. They say, however, that the Applicants' daughter parked for six days and they were concerned that this was setting some form of precedent and it was for that reason that the approached the Applicants suggesting the possibility of acquiring a residents parking permit. We do not accept that at any time did the Respondents say to the Applicants they could not have visitors parking at the Property, there was merely an indication that they did not wish that to be on a regular basis.

69 We must also bear in mind the Applicants entered into a 12-month tenancy with no break clause and paid six months upfront. This would hardly be an inducement to the Respondents to seek to terminate the tenancy early. Indeed the Respondents accepted the early termination and were able to find an alternative tenant thus avoiding any claim against the Applicants for rent for the remainder of the term. We also bear in mind that the Applicants appeared to have found a property they wished to purchase in August and must have gone through the procedures leading to exchange and completion, which took place on 21st October 2021. It seems to us, therefore, that the Applicants had every wish and intention of leaving the Property before the 12-month period and we are concerned that this wish and intention has influenced them in seeking to claim a rent repayment order from the Respondents.

70 We do accept that there is some failing on the part of the Respondents. They should have considered replacing some of the white goods given the level of rent they were receiving from the Applicants. We suspect that their times in France would have had an impact on the ability to deal with certain issues but Mr Bellis, who we understand is a retired engineer, has done his best to try and deal with the issues or to obtain tradesmen who could deal with the issues. There were some delays. However, we find that the Applicants have been unusually susceptible to issues.

71 The Applicants must satisfy us beyond reasonable doubt that the Respondents have committed the offences which we set out above. We have noted that the allegations raised in June 2021 concerning parking, the dog and the alleged trespass all occurred more than twelve months before the date of the application, which was 14 July 2022 and would not therefore form part of the complaint.

72 We are not satisfied that they have discharged that burden of proof. Whilst accepting that the Applicants may have some merit in their arguments that matters were perhaps not dealt with as speedily as they may have been, equally it

seems to us that the items that are complained of are, by and large minor in nature and certainly could not be construed as being acts likely to interfere with the peace or comfort of the Applicants. There is no evidence, for example, that any services were withheld or withdrawn. In those circumstances we find that the Applicants' claim is not proved and we therefore dismiss the application.

Andrew Dutton

Judge: _____
A A Dutton

Date: 30 November 2022

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.

Protection from Eviction Act 1977

Unlawful eviction and harassment of occupier.
1(1)In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.
(2)If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.
(3)If any person with intent to cause the residential occupier of any premises—
(a)to give up the occupation of the premises or any part thereof; or
(b)to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.
3A)Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—
(a)he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
(b)he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,
and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

Housing and Planning Act 2016
Introduction and key definitions
(1)This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
(2)A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
(a)repay an amount of rent paid by a tenant, or
(b)pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
(3)A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4)For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41Application for rent repayment order
(1)A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
(2)A tenant may apply for a rent repayment order only if —

(a)the offence relates to housing that, at the time of the offence, was let to the tenant, and
(b)the offence was committed in the period of 12 months ending with the day on which the application is made.
(3)A local housing authority may apply for a rent repayment order only if—
(a)the offence relates to housing in the authority's area, and
(b)the authority has complied with section 42.
(4)In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

43Making of rent repayment order
(1)The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
(2)A rent repayment order under this section may be made only on an application under section 41.
(3)The amount of a rent repayment order under this section is to be determined in accordance with—
(a)section 44 (where the application is made by a tenant);
(b)section 45 (where the application is made by a local housing authority);
(c)section 46 (in certain cases where the landlord has been convicted etc).
44Amount of order: tenants
(1)Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
(2)The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	*the amount must relate to rent paid by the tenant in respect of*
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3)The amount that the landlord may be required to repay in respect of a period must not exceed—
(a)the rent paid in respect of that period, less
(b)any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
(4)In determining the amount the tribunal must, in particular, take into account—
(a)the conduct of the landlord and the tenant,
(b)the financial circumstances of the landlord, and
(c)whether the landlord has at any time been convicted of an offence to which this Chapter applies.