FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/33UC/HMB/2022/0003**
Property	**:**	**The Old House** **Ranworth** **Norfolk** **NR13 6HS.**
Applicant	**:**	**Patricia Ramshaw**
Represented by:		**In person**
Respondent	**:**	**Sam Cator**
Represented by	**:**	**James Castle, Counsel**
Type of Application	**:**	**Application for a rent repayment order pursuant to ss.40 to 44 of the Housing and Planning Act 2016.**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Mrs Mary Hardman FRICS IRRV(Hons)**
Date and venue of Hearing	**:**	**5 December 2022 & 21 February 2023,** **by remote CVP**
Date of Decision	**:**	**3 April 2023**

DECISION

DECISION

The Tribunal dismisses the Application for a rent repayment order.

REASONS

Introduction

1. By Application received on 13 July 2022, the Applicant seeks an order for the repayment of 7 months' rent, which it is accepted she paid to the Respondent in advance of her tenancy commencing on 4 November 2021.

2. The Grounds for making the Application were set out in the briefest form in the application form at section 8, as follows:

   "Harassment to give up my tenancy rights, leave the Property before I have to by law. Threatening and actually changing locks, entering Property without permission, monitoring me by watching me from a church tower, asking staff to photograph my home, giving two notices of intention to evict, removing intent to allow animals at the Property, contacting past property owner I have lived at. Allowing the use of poison in the gardens so causing the death of my animals. Deposit £4038.46. £24,500 rent = £28,538."

3. The matter came before the Tribunal for directions, who noted that the Tribunal had no jurisdiction over the deposit. The Applicant accepts this, but advances a claim for the full amount of rent paid by her after 4 November 2022 (£42,000) less £17,500 refunded by the Respondent, making a sum of £24,500.

4. The Applicant then produced a 33 paragraph "Application Statement" and a 10 page Reply with attachments, in response to the Respondent's 3 statements and exhibits.

Relevant Law

5. See Appendix 1 to this decision for the relevant statutory provisions.

Brief facts

6. The Tribunal heard and read detailed evidence. The parties have had a chequered history over the last 18 months, replete with allegation and cross-allegation. The following is but a flavour of the facts.

7. The freehold title to the Property was vested in Mrs Jane Cator and Jessica Campbell on 27 May 2020.

8. At a viewing of the Property on 28 October 2021 with a view to renting it, the Applicant states she told Nicky Blyth, representative for the Respondent, that she had animals she wanted to bring along.

9. Emails followed on 4 November 2021 when the Respondent's representatives said that a separate agreement in respect of the animals could be reached.

10. The Applicant paid 12 months' rent in advance and signed a written Assured Shorthold Tenancy on 4 November 2021, at a rent of £3500 pcm.

11. The tenancy names the landlord as "Sam Cator Estate" but it is common ground that the Applicant's landlord is the Respondent.

12. There followed discussions over the keeping of animals and the extent of the demise. On 18 November 2021, for example, Nicky Blyth for the Respondent sent the Applicant a letter indicating he would accept 2 Great Dane dogs, 7 sheep, split between the penned enclosure and the Glebe field, and a maximum of 20 ducks, 8 geese and 6 chickens securely penned in the pond area.

13. On 22 November 2021 the Applicant sent a list of the animals she wanted to bring, and a meeting took place between the Applicant, Nicky Blyth and Jane Cator, the Respondent's mother, on 26 November 2021. At this meeting the Applicant states she complained of the house being freezing.

14. On 26 November 2021 the Applicant was given a letter granting her consent for 25 ducks, 9 geese, 6 chickens, 12 sheep, 6 lambs, 2 goats and 3 dogs, subject to their being kept in the areas stipulated. The letter said that no other animals must be kept at the Property without prior written permission of the landlord, who reserved the right to vary the term should he believe that the Property condition was being affected. She did not accept these terms.

15. On 27 November 2021 the Applicant brought animals onto the Property. By 3 December 2021 there were complaints of the Applicant's animals eating apple trees, and cross allegations of trespass against the Respondent's staff /agents.

16. On 8 December 2021 the Applicant complained of the Respondent removing locks.

17. On 17 December 2021 the Applicant alleges the Respondent trespassed by parking his vehicle outside the Property, and she therefore blocked him in, although she says she did not know it was the Respondent at the time.

18. By 5 January 2022 the Respondent was complaining to the Applicant of livestock damage to fruit trees. On the same day the Applicant complained of the use of rat poison in the grounds.

19. On 11 January 2022 the Respondent through solicitors served a notice under s.8 of the Housing Act 1988 on the Applicant alleging various breaches of tenancy

consequent on the keeping of animals. Consent to keep animals was withdrawn in the covering letter.

20. On 15 January 2022 the Respondent's mother emailed the Applicant to complain of the keeping of a pig in the grounds of the Property.

21. On 18 and 19 January 2022 the Applicant requested an EPC for the Property, and an EICR. The EPC was given the next day and recorded an "F" rating. The EICR was also given, but it was heavily redacted.

22. By 25 January 2022 the parties had begun to commence negotiations for a surrender by the Applicant of the tenancy, on terms.

23. On 27 January 2022 Broadland District Council inspected the Property after a complaint by the Applicant.

24. By 2 February 2022 the Applicant was complaining to the Respondent of the laying of mole traps.

25. By 29 March 2022 the Applicant had complained to her landlord of a fall she had suffered on the stairs.

26. On or about 13 April 2022 the Applicant complained that the Respondent had released her animals without permission.

27. On 20 April 2022 the Respondent served a notice on the Applicant pursuant to s.21 of the Housing Act 1988.

28. On 3 May 2022 Broadland DC served an Improvement Notice under s.30 of the Housing Act 2004 on the Respondent.

29. On 9 May 2022 the Respondent emailed the Applicant to say the s.21 notice had been served in error.

30. On 13 May 2022 the Respondent paid the Applicant £17,500 in the belief she had agreed a surrender of the tenancy, but she did not leave.

31. By 24 June 2022 the Applicant had brought 2 horses onto the Property.

32. By 12 July 2022 the Applicant was complaining to the Respondent of a misuse of her data.

33. On 15 July 2022 the Applicant admitted bringing a pig onto the Property grounds.

34. On 20 July 2022 the Respondent complained to the Applicant of her horses being in the Arboretum.

35. On 8 August 2022 complaints were made to the Norfolk Wildlife Trust about persons who had hired the Property on Airbnb paddleboarding on Ranworth Broad, next to the Property.

36. On 9 August 2022 the Council granted a 6 week extension to the Improvement Notice.

37. On 10 August 2022 the Applicant emailed to refuse access to any part of her demise without her agreement.

38. On 14 August 2022 the Applicant alleged a personal injury claim against the Respondent.

39. On 2 September 2022 Mrs Cator reported the alleged theft of sheep hurdles by the Applicant to the Police, and complained about this and the escape of animals to the Applicant.

40. The Applicant responded with a "cease and desist" notice to Mrs Cator.

41. On 7 September 2022 the Respondent served a second s.8 Notice on the Applicant.

42. On 9 September 2022 Norfolk Wildlife Trust had cause to write to Mrs Cator about the misuse of the Broad.

43. As of 21 February 2023 the Applicant remained in occupation of the Property, although a possession order had been made against her in the County Court (in her absence), albeit she is now seeking to set it aside.

Procedural background

44. At the first hearing on 5 December 2022, the Applicant made an oral application that the Tribunal Judge recuse himself. The grounds advanced by the Applicant were that there was bias or an appearance of bias: the Tribunal Judge had been the chair of a Tribunal which had made a decision granting a rent repayment order in relation to accommodation of which her ex-partner had been a tenant, and which she had for a time occupied before moving into the Property; and that the Tribunal had given advance notice of this decision to the Respondent before the very first hearing. This was a decision dated 8 August 2022 in proceedings with case reference CAM/33UC/HMB/2021/0004. She was also concerned that the Respondent had been in direct contact with her ex-partner's previous landlord, in circumstances where her ex-partner had been abusive/violent to her in the past.

45. It is correct that the Tribunal had emailed the parties a copy of the decision in CAM/33UC/HMB/2021/0004 before the first hearing. They were informed of the constitution of the Tribunal which was to hear the matter on 5 December 2022. Attention was drawn to the fact that the Tribunal chair had also heard CAM/33UC/HMB/2021/0004, and that he now appreciated that the former partner of the Applicant in that case might be the Applicant. The parties were invited to make any representations as to the relevance of the decision in CAM/33UC/HMB/2021/0004 to the hearing of the current proceedings, to be made by 5pm on Thursday 1 December 2022, copied to the other party. The parties did make representations, but the Applicant's representations fell short of

any request for recusal. The Respondent's submissions, in short, were that the previous decision was of little relevance to the instant case.

46. Be that as it may, on 5 December 2022 the Tribunal chair heard the Applicant's oral application for recusal, and refused it. The reasons may be briefly stated.

47. The question in all cases is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal (chair) was biased: *Porter v Magill* [2002] 1 AER 465, HL.

48. The Tribunal chair did not consider that test to be satisfied. In CAM/33UC/HMB/2021/0004 the Tribunal had not needed to determine, nor did it determine, any issues of conduct by the Applicant against her ex-partner, or vice versa. Whilst it did reduce the rent repayment order award by reason of conduct - rent arrears and the keeping of animals (pigs, sheep, goats, chickens) by the Applicant's ex-partner as sole tenant in breach of covenant under his tenancy - the Applicant had not given evidence in these proceedings, nor did the Tribunal have anything written to indicate her side of the story. The Tribunal had been careful not to name or identify the Applicant in the previous case. The Tribunal Judge therefore did not consider a fair minded and informer observer would consider the previous proceedings to be prejudicial against the Applicant, nor the fact that the Tribunal chair had heard them. Lastly, it is noted that the Respondent had already been aware of the decision in CAM/33UC/HMB/2021/0004 before it was sent by the Tribunal, and did not consider it to be of any real weight.

49. Next, at the hearing of 5 December 2022, the Respondent made an application to strike out the application pursuant to rule 9(3)(a) of the Tribunal's Procedure Rules. By a skeleton argument filed shortly before the hearing, the Respondent took issue with the following:

    (1) The Applicant's failure to produce any witness statement or summary of evidence, such that the Respondent understood and had prepared for the hearing on the basis that no witnesses would be called by the Applicant;

    (2) Any oral evidence being given by the Applicant.

50. Respondent's counsel relied on *Raza v Bradford MDC* [2021], but had to accept that it was putting it too high to say that the Upper Tribunal decided that it is "never acceptable" for a Tribunal to make findings of fact on the basis of evidence that has not been tested in cross-examination. Nevertheless, Counsel contended that no document by the Applicant bore any statement of truth, and oral evidence should not be allowed; that this Tribunal should apply the approach in *Cobb v Jahangir* [2022] UKUT 201, notwithstanding that the Upper Tribunal had found the FTT had been wrong in its approach to the evidence.

51. Further, the Respondent submitted that the "application statement" and "reply" of the Applicant did not set out what offences the Respondent was accused of. The Respondent alleged through his Counsel that he was "functionally blind" as to the offences alleged, and that only "surface level" consideration could be given to the offences. As put orally, Mr Castle submitted that it was not acceptable that his lay client had to proceed on a "best guess" as to the matters of which he was accused.

52. Counsel was taken to his skeleton argument, in which he had examined in detail the essential elements (acts and mental intent) in relation to 14 categories of alleged "harassment" by his lay client, as advanced by the Applicant.

53. Counsel was asked why, if the Respondent was so prejudiced, the application to strike out was only being taken on the morning of the hearing, rather than much earlier in the proceedings. Counsel said that he had been instructed by direct access only recently; that, although he had provided some assistance with the drafting of the witness statements for the Respondent, he had not been asked to advise in the round. Up to that point the Respondent had done his best to deal with it himself, and had not seen the significance of the omission.

54. Lastly, Counsel submitted that, because there was more in play as a result of this lack of focus by the Applicant, the case would last longer than a day. In rebuttal to that point, the Applicant asserted she had previously submitted to the Tribunal the case was likely to take more than a day. She said that she did not understand that when asked by the Tribunal how many witnesses she had, that number would include herself. Hence, she had written no witnesses. She said she believed she had listed the necessary events and covered all necessary points, to make good her case. She emphasised she had been self-representing at all times. She agreed the matter could be now dealt with, if she was limited to the 14 categories identified in Counsel's skeleton argument.

55. The Tribunal dismissed the oral application of the Respondent for the following reasons. Firstly, the Tribunal was mindful at all times of the overriding objective, including the need for flexibility, informality and doing justice. It was correct to say the Applicant had not strictly complied with all directions, for much of which there was little good excuse. However, the Tribunal took the view that if the Applicant were confined to the 14 categories of harassment set out in paragraph 30 of the Respondent's skeleton argument, justice could be still done. It was clear that the Respondent had been able to prepare his defence to those 14 categories, given the detail to which Counsel had gone in his written materials.

56. Further, the Tribunal considered the case of *Cobb* to be against the Respondent, rather than for him. In that case, the UT held that the FTT had overlooked the fact that the landlord had made admissions as to the Property being a HMO, such that the Applicants were not required to prove that fact by witness statement. Here, the Applicant had submitted her arguments in writing (by her application form verified by statement of truth, plus her statement of case and reply) albeit without any subsequent witness statement bearing a statement of truth; if, however, she were simply asked to confirm her documents by the Tribunal as the truth, they might advance facts which could disclose a criminal offence.

57. The Tribunal also took the view that justice might require the case to be adjourned part-heard if it could not be completed in 1 day, but this would not appear to be the fault of the Applicant, whom the Tribunal accepted had queried the time estimate.

58. The remainder of the hearing on 5 December 2022 consisted of the Applicant's opening, wherein she confirmed her written materials as being true, followed by cross-examination by Mr Castle. During the course of the hearing, the Tribunal referred the parties to the case of *R v Ahmad* (1986) 18 HLR 416, CA, which appeared to be authority for the proposition that an offence is not committed if the landlord fails to act. The matter was thereafter adjourned part-heard to 17 January 2023.

59. On 11 January 2023 the Applicant emailed the Tribunal to state that she had had pneumonia over Christmas and was still not well; that medical staff had recorded that this was occasioned by damp and freezing conditions at the Property and that she was looking to delay the hearing.

60. The matter was referred by the case officer to Regional Judge Wayte, who directed that any application for the hearing to be adjourned needed to be copied to the other side and accompanied by medical evidence confirming that the Applicant is unable to take part in the remote hearing.

61. On 13 January 2023 the Applicant emailed to the Tribunal, copied to the Respondent, a certificate of unfitness to work, which referred to a chest infection, and stated that the Applicant was unfit to work until late January 2023. It was signed by a nurse practitioner.

62. On 13 January 2023 the Tribunal emailed the parties to indicate that it was minded to adjourn the hearing unless the Respondent made representations in writing.

63. The Respondent did make representations and drew the Tribunal's attention to relevant caselaw, and that he would be prejudiced by an adjournment.

64. The Tribunal then emailed the parties attaching a copy of an appellate decision, and invited the Applicant to provide better evidence of her unfitness to attend the remote hearing on 17 January.

65. On 15 January 2023 the Applicant sent to the Tribunal a statement of unfitness for work, signed by a doctor.

66. The Tribunal then determined that this case should be adjourned yet again, part-heard, to a 1 day hearing. The reasons were put in writing to the parties, but may be briefly recorded as: there was evidence from a doctor that the Applicant was not well enough to attend court; this is the first request for an adjournment, by a litigant in person; the matter was part-heard, and the Tribunal had no reason to believe the Applicant was wishing to delay the prosecution of her application for a RRO; if the matter were to proceed without an adjournment, the Applicant's ability to test the Respondent's evidence would be substantially compromised; the Tribunal was unable to conduct a mini-trial of issues such as whether the Applicant had somehow caused her own medical condition, which the Respondent seemed to be alleging. There was prejudice in terms of delay to the final determination of the case, but the Tribunal aimed to fix another date in February 2023; any prejudice in respect of costs which might be found to have been caused by conduct which did not merit of a reasonable explanation could be

the subject of a rule 13 application; in particular considering the overriding objective under rule 3, of considering the importance of matters to both parties, and their resources, of avoiding delay but enabling parties to participate fully in proceedings, the Tribunal considered it fair and just to adjourn the hearing on 17 January 2023.

67. The hearing was then adjourned to 21 February 2023. Another case was vacated by the Tribunal to accommodate the adjourned hearing.

68. On 21 February 2023 the Respondent called his evidence (himself, Mrs Jane Cator and Nicky Blyth). The Applicant was able to ask questions of the Respondent and his witnesses. The parties were given time to make concluding remarks.

Issues

69. As the Tribunal directions stated the issues we have to decide are:

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

(2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

(3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

(4) What is the maximum amount that can be ordered under section 44(3) of the Act?

(5) What account must be taken of:

(a) The conduct of the landlord?

(b) The financial circumstances of the landlord?

(c) Whether the landlord has at any time being convicted of an offence?

(d) The conduct of the tenant?

(e) Any other factors?

70. There was, in the event, no issue between the parties as to (2) above.

DETERMINATION

Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

71. We now turn to the 14 categories of allegation advanced by the Applicant ("A"), and the contentions in opposition made by the Respondent ("R").

Being denied heating

A's contentions

72. In her opening remarks, the Applicant alleged that when Nicky Blyth, representative for the Respondent, took her round the Property at the initial viewing, Mrs Blyth said the Property could be quite comfy. This did not turn out to be the case, she alleges. In her statement of case the Applicant contends the house was and is freezing, and the billing was wrongly set up to show the house as a business address; that she spoke with the electric company, and did raise the issue with both the agent and the landlord, but they did nothing, despite saying they would sort it out.

73. She goes on to say that on 26 November 2021 she met with the landlords and told them she was frozen through. She says she was told to use the electric oil filled heaters that were in the Property, because there was no central heating. She says that at the meeting she did suggest that she move back out, but was assured by the landlord that they wanted her to stay.

74. The Applicant alleges that at this meeting on 26 November 2021 she was almost sick with the cold, having been at the house, and the landlord's representatives appeared concerned about this.

75. The Applicant contends that on 20 January 2022 she was given the EPC for the Property, but only after requesting this from the agent of the landlord; that she found it was given as category F, but the removal of the Stanley oven would have reduced it further to G. This was unlawful, she says. She says that the landlord said the Property did not need an EPC because it was a listed building, but then admitted it did.

76. She contends that there are three heaters and six wall mounted electric plug in heaters, but she was still frozen at the Property.

77. She explains that on 19 January 2022 she had asked the Council environmental health department for advice; as a result of which someone called Laura Crosby did attend on 21 January 2022. Following this visit, the landlord was given an Improvement Notice citing the hazard of excess cold, which included requirements to provide insulation and to install a central heating system, because the electric heaters were insufficient, and Mrs Cator knew this.

78. In her reply to the landlord's statement of case, the Applicant contends that the landlord was aware that the Property did not have sufficient heating before she moved in, and he therefore provided plug-in oil-fired electric heaters, which could be floor standing or wall mounted. However, his offers to wall mount such heaters would be of no benefit, as they would still be insufficient to heat the rooms.

79. She accepts that she brought no additional electric heaters, and contends that the bill for three months heating was £10,000.

80. In her reply to the landlord's statement of case, the Applicant alleges that wall insulation and heating are still not resolved.

81. In her reply to the landlord's statement of case, the Applicant also contends that the Respondent knew there was an issue with the billing for the electricity, and said he would not be paying it, but would contest it; however, he left it to the Applicant to resolve the issue, which meant she had no electricity for three weeks.

82. In her reply to the landlord's statement of case, the Applicant contends that the Council environmental health officer found the house to be unsafe, due to freezing conditions, and by reason of plug-in heaters which were not acceptable. The Applicant says that a Stanley oven and heaters had been removed before she moved in, after the Respondent's grandmother's death, so the Property is really a G rating. The Applicant contends that the heaters would not have worked, whether on the floor, or on the wall, because they were ineffective.

83. She accepts that she cancelled two heating appointments, one when there was an issue with her getting back from Wales, and one after hearing her ex-partner had just hanged himself. She contends that the landlord cancelled certain attendances. She contends that she has given access to the house on many occasions.

84. She contends that the EPC was not correct as heaters had been removed, and a cooker and boiler; and that Nicky Blyth accepted that it was very cold in the house.

85. The Applicant contends that the landlord is intentionally keeping her with no heat, and that after the decision to evict was taken on 22 December, she froze.

86. The Applicant contends that Jane Cator said there is no way she could have frozen, and laughed about her claims within messages sent to her son.

87. The Applicant further contends that the landlord wanted her to leave the Property because she had found out about the unlawful EPC.

88. In her reply to the landlord's statement of case, the Applicant contends that she only uses one room at the house as it is so cold.

89. The Applicant, as with all other 13 categories, alleges that the Respondent's conduct was deliberate, being part of a series of harassment to force her to leave the Property.

90. Under cross-examination, she said she did not know the from the outset there was no central heating. She said that there were installations which looked like radiators. She denied not using the heaters provided, pointing to her extremely high electricity costs. She accepted the Cator Estate said it would help, but this was only "positive affirmations" unbacked by action. She also accepted she had cancelled 2 access appointments.

<u>R's contentions</u>

91. R has taken positive steps to try and remedy the heating situation, but R's attempts to gain access to install new electric heaters have either been ignored or denied. A has also been delaying R's attempts to arrange the installation of a new central heating system (as directed by the local authority's enforcement notice), which has resulted in R having to apply for at least one time extension.

92. A made her ultimate position clear to R on 11 March 2022 by stating "No electric heaters will be installed":

93. Section 1(2) does not appear relevant, the Respondent alleges, citing *R v Yuthiwattana* (considered in paragraph 111 below).

94. In respect of Section 1(3) of the Act:

95. R has not done any relevant acts "likely to interfere with the peace and comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for occupation of the premises as a residence" ("S.1(3) Acts") because any lack of heating has been caused not by R's decision not to act, but by A's frustration of R's attempts to; and

96. In any event, R has never acted in the context of heating with the intent either to cause R to "give up occupation of the premises or any part thereof" or to "refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof" ("S.1(3) Intent").

97. R has earnestly tried to address the heating issues, and is being frustrated by A.

98. In respect of Section 1(3A):

99. R has similarly not done any relevant 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 in question as a residence" ("S.1(3A) Acts") because any lack of heating has been caused not by R's decision not to act, but by A's frustration of R's attempts to;

100. R does not know, or have reasonable cause to believe, that said 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" ("S.1(3A) Intent"). R is being frustrated by A, so must assume that A is content to live in the Property with the heating unaddressed; and

101. R has "reasonable grounds for doing the acts or withdrawing or withholding the services in question" ("S.1(3B) Defence") in that it is A that has prevented R from addressing issues relating to heating at the Property.

102. In answer to questions, the Respondent said he thought he understood the law relating to EPCs before renting to the Applicant, but in hindsight he was not aware of the extent of the same. He said he guessed a lack of administrative organisation had led to be non-disclosure of certificates at the time of renting.

103. He added that he became aware the Property was not exempt from having an EPC following emails in January 2022, after the Section 8 notice was served.

104. He said he was not aware of the law relating to fitness for habitation. He added he was aware of the electricity having been cut off for three weeks, but only several weeks after the event, when the Applicant emailed him.

105. He accepted that the Applicant was unable to comply with clause 3(s) of the tenancy which reads "To confirm that the tenant has been provided a certificate which satisfies the requirements of the Energy Performance of Buildings

(Certificates and Information)(England and Wales) Order 2007 prior to the signing of this agreement".

106. He said that there was a valid electrical certificate when the Applicant moved in, although it had recently expired, but he was trying to get access to do a renewal. He added that he did not know why the Property had been business rated at the time of the Applicant's occupation.

107. He denied that the council had found the Property uninhabitable in January 2022. he added that the council had been happy with his compliance with the improvement notice, and had granted extensions because of obstruction on the part of the Applicant. In cross examination he added that he had no recollection of saying that he would contest the electricity bill. He accepted that planning permission for heating only went in during October 2022, the delay being caused by the fact that there needed to be 3 surveys in relation to the system. The siting of the oil tank, given its proximity to Ranworth Broad, was part of the consideration, but something he was unaware of until contractors pointed it out.

108. He agreed that some of the electrical installations were at least 45 years old, but contended there had been no problems with the same prior to the Applicant's occupation.

109. In answer to questions, Mrs Blyth denied the Property had a G rating for EPC. She stated that she understood the law as she managed the Property; she said put an unredacted copy of the EICR had been later given to the Applicant. She could not say why the solicitors had not been aware of whether the Property was exempt or not from requiring an EPC. She added that the house was always lovely and warm when she had attended before the Applicants occupation; although the Stanley oven was then in place, she asserted it heated only the kitchen and a towel rail, and not the remainder of the house.

110. In answer to questions, Mrs Cator informed the Tribunal that she had been told by a plumber the bedroom, kitchen and sitting room were very warm; hence her incredulity to the claim by the Applicant that the house had been freezing. She added that she also thought that the Property had been exempt from having an EPC when it was rented to be Applicant.

Findings

111. Firstly, we accept the Respondent's submissions that Section 1(2) is not in play in relation to this allegation, or indeed any of the other 13 heads of alleged harassment in this case, given the decision in *R v Yuthiwattana* (1984) 16 HLR 49, CA, as approved in *R v Burke* [1991] 1 AC 135, HL. To constitute the offence of deprivation of occupation, there must be something having the character of an eviction; this does not mean permanent eviction, but could include a period of weeks or months such that the occupier has to find alternative accommodation; however "looking out cases" or not admitting an occupier on one or even more than one isolated occasion, so that the occupier continues to be allowed to occupy the premises albeit that he is on such occasions unable to enter, constitute cases of "harassment" under s.1(3), not eviction or attempted eviction under s.1(2): see Kerr LJ at p.63.

112. As for s.1(3) and (3A) of the Act, we must be satisfied that the Respondent has done acts likely to interfere with the peace or comfort of the Applicant, or has

persistently withdrawn or withheld services reasonably required for her occupation.

113. As indicated to the parties before the resumed hearing, the case of *R v Zafar Ahmad* (1986) 18 HLR 416 is authority for the proposition that these sections use the phrase "does acts"; they do not impose a responsibility to rectify damage which the defendant has already caused by an act done without either of the intentions necessary to constitute an offence. Accordingly, in that case, the Court found that the failure of the landlord to take steps to complete work was not the doing of an act or act for the purposes of section 1(3) (and by extension of the proposition to the amended Act, s.1(3A)).

114. In the instant case, there is no doubt that the level of heating within the Property has not met the Applicant's expectations, albeit it is clear from the rental particulars that the Property did not have the benefit of central heating. The Property was demised with additional heaters, we find, because the Respondent was aware that it needed more heating. We are naturally concerned, as this Tribunal always is, that the Property was assessed as having a category 1 hazard of excess cold, requiring improvement by way of a full oil central heating system or a suitable alternative, as well as upgrade of insulation. This is clear from the Improvement Notice which the Respondent did not appeal. It is a further concern to us that the Respondent and his agents and lawyers did not seem to know the full extent of the law relating to EPCs or fitness for habitation.

115. That said, we can find no "act" done by the landlord which was likely to interfere with the peace or comfort of the Applicant, at least to the criminal standard. It may be (and we have no jurisdiction to find, and do not find) that the Applicant has a civil remedy against the Respondent under her express or implied terms of contract. By contrast, to make a rent repayment order, we must be satisfied so as to be sure of a criminal act, rather than an omission by the Respondent. We are not so satisfied. Even if there was a delay in improving the heating or getting the works done pursuant to the Improvement Notice, this was not an act, but a failure to act.

116. As to whether the Respondent persistently withheld or withdrew services, again we are not satisfied of this beyond reasonable doubt. The landlord did not switch off the heaters or take them away, or interfere with the heating system in anyway. It remained as it was at the time of demise.

117. We also do not find to the criminal standard of proof that the Respondent is guilty of an offence by reason of the fact that the electricity supply was not working for a period of three weeks. We do not find that the Respondent persistently withheld or withdrew the electricity supply. The Tribunal accepts his evidence, and found him to be credible, when he says he was only aware of it after the event. He did not withhold electricity or withdraw it.

118. But even if the Applicant were able to prove the acts required under s.1(3) or (3A), the Tribunal is not satisfied to the criminal standard that the Respondent had the necessary mental intent for the offences prescribed. We do not consider that the Respondent wanted, through its conduct relating to the heating, to make the Applicant give up occupation of the Property, notwithstanding that the tenant had paid all the rent in advance. We do not consider that the Respondent wanted

the Applicant to refrain from exercising any of her rights or pursuing any remedy. We reject the submission that the Respondent was intentionally keeping the Applicant with no heating, whether as a part of a series of harassment to force her to leave the Property or otherwise. We listened carefully to the evidence of the Respondent under questioning of the Applicant, and the Tribunal considers that any failure to address the heating inefficiency any quicker was caused by a combination of factors, including lack of robust management, lack of understanding of the law, and reasonable delays in obtaining planning permission. This falls short of the intent required under s.1(3), and for the purposes of s.1(3A) we are not satisfied that he knew or had reasonable cause to believe that any conduct on his part or that of his agents was likely to cause the Applicant to give up occupation etc.

119. We do not find that the Respondent had a reasonable excuse under s.1(3B) on balance of probability, because she allegedly failed to give access by the Applicant. The evidence was insufficiently clear cut for us to make such a finding.

120. Accordingly, we find no offence was committed because the Applicant has not proven beyond reasonable doubt any criminal conduct or mental intent on the part of the Respondent.

Keys being withheld initially

A's contentions

121. In her statement of case the Applicant alleges that she was not given house keys for some time, and was originally met by Jane Cator who was angry with her as she thought she was late and had parked on the grass.

122. In her reply to the landlord's statement of case, the Applicant contends that there was a delay in handing over keys, and that she finds this bizarre conduct from a landlord so experienced in renting properties.

R's contentions

123. At no point did R withhold keys from A.

124. A wanted to move into the Property so quickly that many keys to various parts of the Property had not yet been cut for the tenant. Once these were cut, R tried to organise delivery of the keys to A, but A would not engage. Eventually, on 19 November 2021, the extra keys were left in the Property's porch for A, and A was informed of this by e-mail.

125. Section 1(2) cannot be relevant, as it relates to actual attempts to evict the tenant such that they must find alternative accommodation. This was settled in *R v Yuthiwattana* (1985) 80 Cr App R 55 at 63: "cases which are more properly described as "locking out" or not admitting the occupier on one or even more isolated occasions, so that in effect he continues to be allowed to occupy the premises but is then unable to enter, seem to us to fall appropriately under subsection (3)(a) or (b), which deal with acts of harassment."

126. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts, because A was made aware that the initial non provision of keys was temporary, for good reason, and subsequent attempts to deliver keys to A earlier than 19 November 2021 were frustrated by A's non-engagement;
- R did not have any S.1(3) or (3A) Intention for obvious reasons – R always intended to supply A with the relevant keys as early as possible; and
- R has the S.1(3B) Defence as delays were caused by A's decision to move in earlier than R was ready for, and A's subsequent failure to engage with R.

127. In answer to questions, the Respondent said he was not withholding keys -the Applicant had been given sufficient keys to enable her to enter the Property, whilst others were being cut. These were provided some 10 days later he said after they had made several attempts to give the Applicant's the keys.

Findings

128. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

129. In the instant case, we do not find that the failure to supply the additional keys was an "act" as opposed to an omission or failure to act. Nor are we satisfied beyond reasonable doubt that the landlord withheld or withdrew "services", even assuming extra keys to get access to the Property would fall within the compass of that word. There was a basic delay in providing additional keys, not that the Respondent withheld the same. The Applicant could still access the Property with the keys she had.

130. But even if the Applicant were able to prove the acts required under s.1(3) or (3A), the Tribunal is not satisfied to the criminal standard that the Respondent had the necessary mental intent for the offences prescribed. We do not consider that the Respondent wanted the Applicant to give up occupation of the Property at any time, notwithstanding that the Applicant had paid all the rent in advance. We do not consider that the Respondent wanted the Applicant to refrain from exercising any of her rights or pursuing any remedy. We determine that the Respondent did not know or have reasonable cause to believe that his conduct would be likely to cause the Applicant to give up occupation or refrain from exercising any right or remedy. We believe the Respondent, and found him credible, when he said he wanted to provide the additional keys, but there was a delay in providing the same due to the need to get them cut, and difficulties in arranging a mutual time for delivery of the same.

131. Accordingly, we find no offence was committed because the Applicant has not proven beyond reasonable doubt any criminal conduct or mental intent on the part of the Respondent.

Locks being changed, areas being locked, or permission to use parts of the Property or its grounds being denied to her

A's contentions

132. The statement of case of the Applicant contends that the landlord has locked doors, restricted access to rooms, and locked gates. She contends that all activities involve trespass and that she had no idea who was at the Property, when and what they were doing. She contends that this was especially terrifying for her as she had moved to the Property as a safeguarding move from domestic violence.

133. In her reply to the landlord's statement of case, the Applicant alleges that three rooms were locked to keep her out, and gates were locked. She contends that Nicky Blyth said they were not available for her to use, despite the Applicant pointing out that these areas were not excluded from her demise and therefore she could not be kept out of them.

134. The Applicant's reply to the statement of case of the landlord contends the Arboretum access was denied immediately upon her taking the lease. She alleges that, despite it being in the particulars of tenancy, it was not included in the map that was sent, so she had to query this. She says that she had been locked out of it and that the intent was to keep her from being able to secure the Property. She refers to the fact that there are emails from her repeatedly asking for keys as well as written communication from someone called Tim Taylor on her behalf, also asking for the keys.

135. She said in cross-examination that she felt the lack of provision of the keys was part of the landlord's intent to exercise control over her. She accepted all outside keys had been dropped off within a couple of weeks after the tenancy began. She added that it took some time to get the codes to the outbuildings after an initial refusal by the landlords.

136. In answer to questions, the Respondent accepted the harness room and the room containing gardening equipment were locked at the time of letting, despite the Applicant having been granted exclusive possession of these. However, he said that items were moved out of these rooms and codes given to the Applicant when she complained.

<u>R's contentions</u>

137. In respect of the gardening and harness rooms, these were locked with code-padlocks for security in order to protect gardening equipment, not to keep out A. A was given the codes to each when she requested them.

138. The double gates to the Arboretum were locked from 11 January 2022 to prevent A from releasing her menagerie inside, which was causing extensive damage to its valuable contents. A retained personal access to the Arboretum at all times through the pedestrian side gate. The double gates were subsequently unlocked after a couple of weeks, at A's insistence.

139. The gates giving access to the Clarkes Arches fields were locked to prevent A from accessing them. Those fields were not demised to A, nor was she granted any right of way over them.

140. Section 1(2) is again not relevant given the settled law in Yuthiwattana.

141. In respect of Sections 1(3) and (3A), R has not done any S.1(3) or (3A) Acts as:

- The gardener and harness rooms being code-padlocked did not interfere with A's peace or comfort, particularly as she was given codes upon request,
- The Arboretum gates being locked did not affect A's peace or comfort, as she retained at all times access to that land, and
- The Clarkes Arches gates being locked did not affect A's peace or comfort, as she had no right of access onto that land;

142. R did not have any S.1(3) or (3A) Intention because –

a. The gardener and harness rooms were not locked with the intent to exclude A, and R had no reason to believe that locking them would affect A in any way, as the rooms simply stored gardening equipment for use by R's staff in the managed gardens

b. The Arboretum gates were not locked with the intent to exclude A (only her menagerie of animals, which did not have permission to roam or graze there), and R had no reason to believe that locking them would affect A's ability to enjoy the Arboretum in any way, as she retained at all times access to that land (including with her dogs, who could use the pedestrian gate), and

c. The Clarkes Arches gates were not locked with the intent to exclude A from land demised to her, and R clearly had no reason to believe that this would affect A's ability to enjoy the Property; and

143. R has the S.1(3B) Defence as –

a. R reasonably padlocked the gardener and harness rooms for security, and had no good reason to suspect that A would want or need codes to access them,

b. R reasonably locked the Arboretum gates to prevent A from causing damage to the Arboretum in breach of covenant, and

c. R reasonably locked the Clarkes Arches gates as A had no right of entry.

<u>Findings</u>

144. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

145. We find that some gates were locked (Arboretum except pedestrian gate, and Clarkes Arches) and some doors were locked, including the garden machinery room and harness room. We do not find that these actions were likely to interfere with the peace and comfort of the Applicant; in relation to the Arboretum, she could still access via the pedestrian gate; and the Clarkes Arches field, we find, was not part of the demise. As regards access for animals to the Arboretum, and for her to the garden machinery room and harness room, it is a sad feature of this case that the parties did not properly agree the extent of the demise before the Applicant entered into occupation. This was a lack of adequate management and consideration by the Respondent and his team, but was unlikely to interfere with the Applicant's peace or comfort beyond a short period.

146. But even if the Applicant were able to prove the acts required under s.1(3) or (3A), the Tribunal is not satisfied to the criminal standard that the Respondent had the necessary mental intent for the offences prescribed. We do not consider that the Respondent, by means of its conduct under this issue, intended the Applicant to give up occupation of the Property at any time. There was an initial failure on his part to recognise the 2 rooms were demised and that they should have been let with vacant possession. Codes were eventually provided, and items moved, evidencing his intent was not to interfere with occupation. As regards the Arboretum, the Respondent's mental intent for both subsections was a motivation to prevent damage to this area from the Applicant's animals, not to force her to leave the Property or give up occupation of part of it. She could still access the Arboretum in person. We do not consider that the Respondent wanted the Applicant to refrain from exercising any of her rights or from pursuing any remedy.

147. Accordingly, we find no offence was committed because the Applicant has not proven beyond reasonable doubt any criminal conduct or mental intent on the part of the Respondent. We therefore do not need to consider a defence of reasonable excuse.

Permission to keep animals being revoked

A's contentions

148. The Applicant's statement of case alleges that on 11 January 2022 she was given a notice of intention to evict her under Section 8 of the Housing Act 1988, and was told to remove animals from the Property. She says that despite having multiple possible grazing alternatives, she was given none, despite assurances that the animals would be housed on the land.

149. The Applicant further contends that the landlord had not asked her before her arrival for the numbers of animals she was bringing; but she gave this information at a face-to-face meeting and was assured that it would not be a problem. She said 2 things in this regard in oral evidence. Under cross-examination, she said at the initial viewing she had listed all the horses, pigs, sheep, dogs, birds, and goats she would be bringing. She also contended that the arrangement made at the meeting on 26 November 2021 was that she could move animals to the Property and then the parties would work out where they could be placed. She resisted any suggestion in cross examination to the contrary. However, she accepted in opening and in her cross examination that she had not been granted any permission to keep a pig or any horses. She accepted that she received the letter dated 18 November 2021 which stated what animals the Respondent would be prepared to accept, but she would not agree to it. She does not understand why, if there was an issue with farm animals, her pet dogs were included in the request to remove all animals from the Property.

R's contentions

150. The facts are clear:

- A initially asked Nicola Blyth (agent for the Estate) ("NB") for permission to bring 2 dogs and 7 sheep onto the Property;

- A was not told yes, but was told this would need to be discussed with the Estate;
- NB discussed this with Jane Cator ("JC"), who approved 2 dogs and 4 sheep only;
- On move-in day (4 November 2021), A asked for further permission to bring a few ducks, geese and chickens with her too;
- NB discussed this with JC, and it was decided that fowl would need to be kept in the pond enclosure, chickens fenced in at the top of the shrubbery. Further, that 7 sheep could be accommodated by splitting them up into separate pens (one inside the Memorial Stone Garden, and one, generously, outside the immediate grounds of the Property on land not even demised to A). This was relayed to A by JC, who made clear to A that a formal pet agreement would need to be signed;
- A signed the AST on 4 November 2021, which contained an express covenant against keeping animals at the Property without consent (for which reasonable conditions could be imposed): see Clause 3(o)
- On 18 November 2021, A was provided with a letter granting her consent to keep 20 ducks, 8 geese, 6 chickens, 7 sheep and 2 dogs (specifying where these should be kept, and subject to variation in the event of Property damage);
- A was not happy with this, as she wanted to keep yet more animals at the Property. On 26 November 2021, A was provided with a letter granting her consent to keep 25 ducks, 9 geese, 6 chickens, 12 sheep, 6 lambs, 2 goats and 3 dogs (again specifying where these should be kept and subject to variation in the event of Property damage);
- At no time was A ever given permission to graze her animals outside of the areas in which they were to be enclosed. The Property was never advertised with stabling or grazing – the advertisement said only that "Dogs may be considered at the Property";
- A moved in all the animals, and then rejected the proposed terms of consent in the 26 November 2021 letter;
- On 8 December 2021, A was offered a grazing licence in respect of neighbouring Property– this was never entered into, or even addressed, by A;
- Following this, it was discovered that A's menagerie was starting to cause damage to the Property's grounds, including the beloved (and valuable) Arboretum;
- On 11 January 2022, R formally notified A that any consent given to her to keep any animals on the Property was revoked;
- Since consent was revoked, A has essentially let her animals run amok. Not only are they destroying the grounds of the Property, but they are also leaving the grounds and causing both damage and havoc in the local community. A's menagerie has become a blight upon the local area, and now includes pigs and horses.

151. Section 1(2) does not appear to be relevant.

152. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts, because the withdrawal of consent (especially where it is subject to conditions that are broken) is incapable of interfering with A's peace and comfort in any relevant way;
- R did not have any S.1(3) or (3A) Intention because the withdrawal of consent was intended to protect the Property not to interfere with A, and where the withdrawal of consent removes any right to keep animals this cannot by definition be an act intended to cause A to refrain from the exercise of that right; and
- R has the S.1(3B) Defence as his actions were entirely justified. A was and remains manifestly in breach of covenant, and in breach of the terms of consent, and the Property and its grounds require protection from A's menagerie.

153. In answer to questions, Mrs Cator categorically denied granted permission to the Applicant to bring any animals onto the Property during the meeting on 26 November 2021.

Findings

154. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

155. As noted above, it is a sad feature of this case that the parties did not properly agree the extent of the demise before the Applicant entered into occupation. That said, there was an express covenant against keeping animals without consent on any part of the demise, and the fact is that the Applicant moved her animals onto the Property before she had agreed terms in relation to the same with the Respondent. We prefer the evidence of Mrs Cator, tested under cross-examination, that there was no agreement reached at the meeting on 26 November 2021 as to numbers and location of animals. The Applicant was, however, offered in writing on 26 November 2021 (as previously) the terms on which the Respondent would grant consent, both as to numbers and locations of the animals. The Applicant did not agree such terms: see her email of 29 November 2021. Therefore, we find she was in breach of covenant by moving the animals in, from 27 November 2021. Even if we are wrong on that, consent was granted on express conditions which (a) did not allow for any animals in the Arboretum, and (b) a right to vary the term if the Property condition was being affected. It is the case that the Applicant allowed animals in the Arboretum, and we find they did cause damage to trees at the very least.

156. Therefore, we determine that consent was not reached between the parties, but even if it was, it could only have been on the terms of the letter of 26 November 2021. Moreover, the Respondent lawfully withdrew any consent by its letter of 11 January 2022. After that, the Applicant had no right to keep any animal at the Property.

157. We agree with the Respondent that a lawful withdrawal of consent (if ever reached) is incapable of being an act likely to interfere with the peace and comfort of the Applicant. Nor is it a "service" which can be withdrawn or withheld in the sense used in the section, which is aimed at utilities and the like which are reasonably required for occupation.

158. Even if there were any breach, we determine that the Respondent lacked the necessary mental intent for the offence. The withdrawal of the consent was to protect his reversionary interest, not to cause the Applicant to give up occupation etc. And, if the Applicant considered the withdrawal of consent was unlawful, she could go to law. She had a remedy she could pursue. The act of the landlord was not intended to prevent her pursuing any right, either.

Fencing not being erected and/or electricity not being supplied to fencing

A's contentions

159. The Applicant alleges that the Estate did not secure fencing and did not resolve animal grazing, and then chose to hold her responsible for alleged damage.

160. The Applicant further alleges that she had installed electric fencing to protect apple trees, but despite assurances, the Estate did not connect the electricity. In her reply to the landlord's statement of case, she contends that she brought electric fencing which the Estate was to put up.

161. The Applicant contends that after she had boxed up most of her belongings ready to move, during the course of discussions, she had taken down supplementary fencing and electric fencing, and brought her animals together ready to move. She contends she was then subjected to having to hold her animals in areas with no grass, and to being told that she could not add in hay, could not use the outbuildings to store hay, and could not bring in non-Estate workers to help.

162. She contends that she has been told that she can have help from the Estate with fencing, but this has not happened. She contends that her animals were reported daily as being astray, and that she had been reported to the County Council for animal welfare issues.

163. In her reply to the statement of case of the landlord, the Applicant contends that she was first of all told that the landlord would be fencing off the apple trees, but then was told that she needed to bring her own electric fencing. She was then told that no contractor can work on the Estate employed by her, and that she had to wait for the Estate men to sort the fencing, which was never done. She contends that the landlord withdrew the animal contract, and gave 2 notices to evict, preventing her from investing in stock fencing.

R's contentions

164. The allegation is simply false. Fencing for pens was supposed to be entirely A's responsibility, but in any event, A has failed to engage with R's offers to assist her.

165. Other fencing around the Property is repeatedly being damaged by A's menagerie trying to escape, and these have been repaired upon request.

166. Section 1(2) is irrelevant.

167. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts, as R has not done or failed to do anything relevant. A has, however, repeatedly failed to engage with R's attempt to assist (i.e. his offers of help);
- R did not have any S.1(3) or (3A) Intention because, again, the only reason for inaction by R is non-engagement by A; and
- Similarly, R has the S.1(3B) Defence because any inaction on his part is because of A's non-engagement.

168. In answer to questions, the Respondent said he was not at the meeting on 26 November 2021 and could not therefore answer if there had been any mention of additional costs for the renting of the land. He denied any agreement for Estate workers to connect the electricity.

Findings

169. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

170. The positions of the parties are poles apart, the Respondent alleging there was no agreement for him to be responsible for any fencing or electricity supply to it.

171. However, taking the Applicant's case at its highest, we are not satisfied beyond reasonable doubt there was any breach. A failure to provide fencing and a failure to provide an electricity supply are not "acts" for the purposes of the subsections, as opposed to omissions. Nor are they "services" in the sense used in the Act, for the reasons already held.

172. In this regard we also rely on *McCall v Abelesz* [1976] QB 585, CA in which Ormerod LJ held (at p.596) that the offence cannot be committed by the owner withholding or withdrawing something which he has been providing voluntarily. In other words it is only services supplied by virtue of contractual or other obligations which are in point. There is no contractual obligation in this tenancy for fencing or electricity supply thereto, and no animal or grazing agreement was ever reached, in which such matters might be agreed.

173. Accordingly, we do not need to consider the Respondent's mental intent. But, even if there were breach of the section, we are not satisfied beyond reasonable doubt that the Respondent had the necessary mental intent for the offence. The failure to supply the fencing and electricity was because the Respondent did not believe he was required to supply the same, not in order to achieve one of the outcomes prescribed in the subsections.

Releasing or moving A's animals

A's contentions

174. The Applicant alleges that she received a series of phone calls saying the landlord was moving her animals while she was not there.

175. The Applicant further contends that at Easter she wrote to the landlord to say she was going to let her animals graze in a different area at the house. However, she alleges that the landlord released her animals multiple times from that area, as witnessed by their gardener Belinda. The Applicant alleges that this caused her animals to be missing twice, and that she needed a police drone to help to recover them. She says that this was recorded as a crime and criminal harassment, which she stated she did not want to pursue. She contends that the landlord accepts in an email that they had moved the animals and opened gates by trespassing.

176. In her reply to the landlord's statement of case, the Applicant contends that there was movement of her animals out of the Arboretum repeatedly. She contends that more recently, the landlord had released her sheep into the walled garden, presumably to cause deliberate damage.

177. She goes on to say that the landlord admits releasing animals from the Arboretum which led them to unsecured areas and escape, and being pushed onto the road. The Applicant contends that Mrs Cator did this three or four times in one day, and that her gardener did tell the Applicant about this.

178. She contends that Mrs Cator asked her staff to move the animals off the land also. She contends that Nicky Blyth did call her repeatedly while she was working and emailed her to say they were moving her animals. The Applicant contends there was a written apology following a strong complaint by her.

179. The Applicant says that she had to call the police for help when Mrs Cator had moved her sheep and they were nowhere to be found. The Applicant contends that she was aware that this was deliberate by Mrs Cator; and if this was just to protect the trees, why had she not switched on the electric fencing or protected the trees with guards?

180. She contends that later in the dispute it was the landlord's intent to involve as much of the villagers possible to create an atmosphere that she could not live in. The Applicant points to the fact that it had been a very dry year with very little grass and many sheep had been wandering about to get pasture. The Applicant complains that the landlord had reported her to animal welfare, and they did tell her that it had been very difficult to hold sheep to their grazing. The Applicant contends that Mrs Cator has been shooing her sheep onto the road, whilst failing to make sure that other gates were closed.

<u>R's contentions</u>

181. Whilst R and JC admit to having moved A's animals either from the Arboretum into the other parts of the Property's grounds, or from outside the Property back into the Property's grounds, it is denied entirely that they have ever released A's animals from the Property's grounds.

182. It should be noted that A has produced no evidence of this ever having taken place. She merely makes baseless accusations without proof.

183. Instead, the Tribunal can see from the photographs the kinds of holes that A's animals tear in the Property's fencing in order to escape and graze outside the Property's grounds. A patently has no control over her menagerie: see also.

184. Section 1(2) is irrelevant.

185. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. Moving A's animals from the Arboretum (where they are not permitted to be) to the other grounds of the Property(where they are also not permitted to be, but will cause less valuable damage) in no way interferes with A's use or enjoyment of the Property;
- R did not have any S.1(3) or (3A) Intention because said movement was not intended to, and could not reasonably be believed to, cause A to give up possession of any part of the Property or any rights thereover; and
- R would have the S.1(3B) Defence as moving A's animals in the circumstances admitted was patently reasonable.

186. In oral evidence, the Respondent said the parties had never reached full agreement as to where the animals might be kept.

187. Mrs Blyth denied moving any goats.

188. Mrs Cator admitted that she had occasionally moved animals, giving the example of Easter 2022 when she had moved animals out of the Arboretum to the memorial stone garden. she accepted that she had not checked all gates were closed before doing this, so that the animals got into Clarkes Arches field, but could not know if they had got onto the road.

<u>Findings</u>

189. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

190. The Respondent admits that through Mrs Cator the Applicant's animals were moved from area to area within the Property. We are not satisfied that the Respondent or his agent(s) moved animals outside the boundaries of the Property, e.g. onto the road, although this may well have happened when Mrs Cator did not check all the gates were closed.

191. The question is whether these were acts likely to interfere with the peace and comfort of the residential occupier (the Applicant). Potentially they were. However, the Tribunal is not satisfied that the Respondent had the necessary mental intent for s.1(3) or (3A). The acts of the Respondents were done to protect his reversionary interest, not to cause the Applicant to give up occupation etc. We are not satisfied that he knew, or had reasonable cause to believe, that any such conduct was likely to cause the Applicant to give up the occupation of the whole or part of the Property, or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the Property. We reject the suggestion that it was incumbent on the Respondent or Mrs Cator to switch on the electric

fencing or protect the trees with guards, and that the failure to do so is indicative of a deliberate intention to cause the Applicant to leave, or to refrain from exercising rights and remedies. It was the Applicant's responsibility to control her animals, assuming they were allowed to be there.

192. Lastly, we consider the Respondent would have a reasonable excuse defence in relation to s.1(3A). He had reasonable grounds for doing the acts complained of, to protect his reversionary interest from damage: see s.1(3B) of the Act.

Entering the Property or its grounds without permission

A's arguments

193. The Applicant complains that the Estate (i.e. Respondent) thinks it has control of the grounds, simply because the tenancy at clause 3(f)(I) provides that the landlord is to maintain the garden at no cost to the tenant. This has resulted in multiple trespasses, she alleges.

194. By way of illustration, she alleges that on 22 December 2021 the landlord attended the house, having asked for field gates to be unlocked, and assuring her that he would not attend the house. She goes on to allege that she looked out of the window and saw a car she did not recognise on the drive, and she moved her vehicle to block the car from leaving. When the person returned to the car, he knocked at the door to tell the Applicant who he was and why he was at the Property. She alleges it was the Respondent and that he apologised.

195. In opening remarks, the Applicant alleged the Respondent did this with the intention to demonstrate she had no control over the Property, because he had parked outside when she had asked him not to do so. She said she was very afraid. Under cross examination, it was put to her that she would not have blocked the landlord in with her car if she felt this way. She maintained that she was very, very afraid at the time

196. The Applicant further alleges that the landlords were at the Property daily, often at 8:00 AM, unannounced and refused to leave the Property when requested. She alleges that she was spoken to very sternly at 8:00 AM in front of the gardener by Mrs Cator on one of these unannounced attendances, which was most embarrassing.

197. The statement of case of the Applicant contends that the landlords have locked doors, restricted access to rooms, and locked gates. She contends that all activities involve trespass and that she had no idea who was at the Property, when and what they were doing. She contends that this was especially terrifying for her as she had moved to the Property as a safeguarding move from domestic violence.

198. In her reply to the landlord's statement of case, the Applicant contends that staff and Mrs Cator and the Respondent were at the Property without her knowledge or permission.

199. The Applicant further contends that the landlord wanted her to leave the Property because she had objected to trespass onto the grounds, and had found out about the unlawful EPC.

200. In her reply to the landlord's statement of case, the Applicant alleges that Mrs Cator accessed the Property more than 20 times, and that when the Applicant asked her to leave, she refused. The Applicant says that the agent and landlord wrote to say that she had to allow free access to the grounds. She claims that she looked out of the windows and workmen were on the roof, in the garden, parked on the drive, and that she had no control or knowledge of who was at the Property, and the landlord had no care to address this. The Applicant accepts that the landlord has never come into the house without permission, nor has any contractor, only to the grounds, to which she considers she has a right of exclusive possession.

R's arguments

201. R's evidence is clear: if the Property's grounds have been entered, it has always been with good reason (gardening and grounds maintenance, returning of animals etc.). Only once has an agent for R entered the Property without express consent from A, and this was by the Estate's Estate agent to deliver a Section 21 Notice to precisely where the postman delivers post.

202. Section 1(2) is irrelevant.

203. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. No attendance at the Property by R or his agents has had any real likelihood to interfere with A's peace and comfort therein;
- R has not had any S.1(3) or (3A) Intention. No attendance at the Property by R has been intended to, or would cause R to have reasonable belief that it was likely to, cause A to give up possession of any part thereof or right in respect thereof. The delivery of a Section 21 Notice cannot fall within the scope of this section, otherwise any eviction notice served would potentially be a criminal act, which is entirely unsustainable; and
- R would have the S.1(3B) Defence in respect of all such attendances, as they have always been for good reason.

204. In answer to questions, the Respondent said he was aware of an occasion when his mother had stayed an additional 10 minutes of the Property to speak to the gardener.

205. Mrs Cator herself expanded on that incident. She said that she did not leave the Property immediately, because she had to see Belinda as she was managing the gardens; they walked around the walled garden within the curtilage of the building for about 10 minutes. She admitted that she had written an e-mail in which she had said she believed it was an offence for the Applicant to obstruct the management of the gardens, but that was what the agents had told her. She accepted that there had been regular visits to the garden because of the requirement in the tenancy to maintain it at no cost to the tenant.

Findings

206. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

207. We are not satisfied that the Respondent himself trespassed on the occasion he turned up and parked his car. It appears there was a genuine misunderstanding as to the access he should have been using, and he apologised to the Applicant. We are not satisfied that this was an act likely to interfere with the peace or comfort of the Applicant, because we find she would have been unlikely to have been very, very afraid at the time. If that were the case, she would not have blocked the Respondent's car in.

208. The Respondent does admit that other persons have been on the grounds of the Property including Mrs Cator. We are not satisfied that the Respondent's agents have trespassed regularly on the Property. Mrs Cator and others visited to comply with their contractual obligations under the tenancy, we find, mainly in the gardens. However, the tenancy agreement provides for 24 hours' notice in writing to access to the "Property" (defined in the tenancy agreement to include the gardens). There is little or no evidence of advance notice in writing in relation to such visits. Nevertheless, Mr Cator's unchallenged evidence (statement para 71) was that it was agreed between the parties on commencing the tenancy that garden maintenance would be carried out weekly on a Wednesday, and that if a workman attended on other days, the Applicant was always informed. That makes sense to us. We accept that if notice had not been given, that would have been likely to have interfered with the Applicant's peace or comfort. Certainly, it would have been prudent for Mrs Cator to have left on the occasion she was asked to, instead of staying for 10 mins talking to the gardener.

209. In any event, even if contrary to our findings, there were trespasses, we are not satisfied that the Respondent had any of the various mental intents required under s.1(3) or 1(3A). Any acts done were done with the motive of attending to the grounds maintenance, and compliance with the landlord's obligations under the tenancy. We are not satisfied beyond reasonable doubt that any trespass was undertaken with an intent to cause the Applicant to give up occupation of the Property or to refrain from exercising any right or pursuing any remedy (or knowing, or with reasonable cause to believe, his conduct would be likely to cause her to do so).

Failing to maintain or repair the Property

A's contentions

210. The Applicant's statement of case contends that on 19 January 2022 she had asked Norfolk County Council environmental health department for advice, as a result of which someone called Laura Crosby did attend on 21 January 2022. Following this visit, the landlord was given an improvement notice, which included requirements to provide insulation and to install a central heating system. The Applicant says that she had fallen three times on the stairs, and on each occasion, it had taken nine months to reach arrangement for repair. She also contends that there were several jobs that had been outstanding since she moved in. She says that she felt unable to live at the Property with the hazards and the treatment she was being given.

211. In her reply to the landlord's statement of case, the Applicant contends:

- the Property was poorly maintained with very old carpets and no heating system.
- that no lock was added to the annex front door, and that no letterbox was sited.
- that other maintenance was not resolved, including damp, and lighting, outer doors, and tiling.

212. She further contends that the carpet remains in need of repair, and the back door remains defective; that there is no lighting in two rooms; that tiles have fallen from an en suite bathroom; that there is damp throughout the house; that there is no lock on the front door. She further alleges that she has given plenty of access, including two inspections by the council, three inspections by the landlord; that she has had six heating engineer inspections; that she has given access for several carpet repairs and had three visits from carpet men; that she has had loft insulation installed, smoke detectors, carbon monoxide detectors, furniture removed, cesspit emptied, repairs to garages, works to thatched roof, and two outside water pumps; a carpet removed, a kitchen heater looked at, dripping taps inspected, curtains removed, and pictures removed.

213. The Applicant contends that the landlord cancelled at short notice when a workman had COVID, when a heating firm had COVID, when a worker was poorly, and when they insisted Mrs Cator was going to attend after the Applicant had asked them to send someone else (on the grounds that Mrs Cator had previously failed to leave when asked to do so). The Applicant therefore accepts that she has denied Mrs Cator access.

214. The Applicant further contends that the house is subsiding. She accepts that the hall carpet has been stapled back into place up to seven times, and inspected by a carpet contractor repeatedly. She accepts that it is in the process of being partly replaced, but this has not happened yet.

215. The Applicant contends that the landlord's intent is to make her life a living hell with only budget repairs, so that she has to leave.

<u>R's contentions</u>

216. R's evidence is clear; whereas A does report disrepair, A then fails to engage with R or deliberately frustrates R's ability to engage with and remedy any disrepair.

217. Section 1(2) is irrelevant.

218. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. Any failures to remedy repairs reported to R have been caused by A's failure to engage and permit access as necessary, so nothing R has done has had any real likelihood to interfere with A's peace and comfort therein;
- R has not had any S.1(3) or (3A) Intention. No failures to repair have been intended to, or would cause R to have reasonable belief that it was likely to,

cause A to give up possession of any part thereof or right in respect thereof; and

- R has the S.1(3B) Defence, as any failures to repair have been caused by A's failures to engage with R in order to enable R to facilitate them.

219. In answer to questions, the Respondent accepted that there were several tiles off the wall in the bathroom, which was an aesthetic problem and did not affect its use. He said he did not know if it was caused by damp; he accepted that there were some issues of damp previously the Property, but nothing serious. He doubted whether the carpet could be over 40 years old, and denied a link between the Applicant's complaints and the start of the eviction process.

Findings

220. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

221. In relation to the heating system and tiles, we repeat our determinations previously.

222. In relation to the other matters of alleged disrepair, we do not find these proven beyond reasonable doubt as being acts likely to interfere with the peace or comfort of the Applicant. Taking the Applicant's case at its highest, they were failures to act, or omissions.

223. Again, the Applicant may have (without this Tribunal making any findings in this regard) certain remedies in the civil courts in relation to such omissions. However, for the reasons given, they do not amount to criminal offence(s).

224. Even if such matters were capable of being acts likely to interfere with the peace or comfort of the Applicant, we are not satisfied beyond reasonable doubt that the Respondent intended to cause the Applicant to give up occupation of the whole or part of the Property or to refrain from exercising any right or pursuing any remedy in respective the same. Nor are we satisfied to the requisite standard that the Respondent knew or had reasonable cause to believe that his conduct was likely to cause the Applicant to give up occupation etc. We consider the catalyst for the start of the eviction process was the Applicant's animals and her other breaches of tenancy, and not the fact that she had complained about matters of disrepair. In this regard we prefer the evidence of the Respondent and Mrs Cator to that of the Applicant. We found them credible on that point.

Monitoring A from the local church tower

A's contentions

225. The Applicant's statement of case alleges that there has been supervision from the church tower.

226. In her reply to the landlord's statement of case, the Applicant explains that this was Mrs Jane Cator using binoculars in the church tower to look at the Property, and was followed immediately by an e-mail about alleged breach of

covenant. The Applicant contends that a statement by Nicky Blyth accepts that she has been watched, even in a shop, and that a worker has watched her while she was meditating in the garden.

R's contentions

227. JC spotting the pig from the church tower was purely incidental, as she was carrying on her duties as church warden.

228. Frankly, it is bizarre that A is alleging that R has committed a criminal offence by JC catching her in the act of committing a breach of covenant.

229. Section 1(2) is irrelevant.

230. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. JC spotting A's breach of covenant from the church tower, and then asking A to remove the pig, cannot be a relevant act;
- R has not had any S.1(3) or (3A) Intention. Catching A in the act of breach of covenant, and seeking it be remedied, was not done with any intention to cause A to give up possession of any part thereof or right in respect thereof;
- R has the S.1(3B) Defence, as asking A to remedy a breach of covenant is perfectly reasonable.

231. In answer to questions, the Respondent denied his mother had spied on the Applicant.

232. In cross examination, Mrs Cator made clear that paragraph 22 of her witness statement did not say that she saw the Applicant, only her pig, from the church tower. She denied having binoculars. She admitted looking at the house every time she goes up the church tower. She added she had cause to go up to remember her husband and father-in-law on birthdays and on remembrance days. She also has cause to go up the church tower every day when she is on church duty, which takes place every two months, for a period up to three weeks at a time.

233. In closing submissions, Counsel for the Respondent submitted that Mrs Cator cannot have been the Respondent's agent on these occasions.

Findings

234. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

235. We do not decide this issue on whether Mrs Cator was the Respondent's agent or not. It was not argued before us, but looking at the definition of "landlord" in s.1(3C) in relation to s.1(3A), it is conceivable that it might include Mrs Cator, she being a joint freeholder of the Property.

236. We decide the matter firstly on whether the viewing of the Property by Mrs Cator from the church tower was an act likely to interfere with the peace or comfort of the Applicant. We find that it was not. We believe Mrs Cator when she said she looked at the Property (but not specifically the Applicant) on all occasions she went up the tower. We also believe her when she said she was not using binoculars. On the occasion she saw the pig, we believe that she was not spying on the Applicant.

237. Moreover, we do not consider the requisite mental intent has been proven beyond reasonable doubt. We find Mrs Cator's explanations for going up the church tower entirely plausible. Her looking out at the Property was reasonable, and not with criminal intent required by s1(3) or (3A).

238. Secondly, we can find no link between the Applicant being seen by other workers, whether in the shops or the grounds, and the Respondent. In other words, we do not consider the Respondent gave authority to these people to spy on the Applicant.

Having staff photograph A

A's contentions

239. A says she was told by Estate staff that the landlord had asked for photos to be taken of her and her animals and belongings. She strongly objects to this.

240. The Applicant's statement of case further alleges that the landlord had staff opening and locking gates, and monitoring and photographing.

241. The Applicant's statement of case further contends that she is repeatedly reminded of how much she is watched; that grooms have told her that they are watched and photographed and videoed, and have been so upset about this that they have refused to return.

242. In her reply to the landlord's statement of case, the Applicant alleges that the Respondent agrees that staff have been asked to take photographs, and that it is agreed that she has been watched in shops, and in the garden.

243. She alleges she has been shown photos of mattresses in the annex, and that Belinda had been told to take photographs of anything suspicious.

R's contentions

244. R has had photographs taken for the purposes of recording damage to the Property's grounds. This both assists R in maintaining the Property, and records evidence of potential breaches of covenant by A.

245. It should be noted that whilst A alleges that R's staff have told her that they have been instructed to photograph A herself, this is denied by R and A has produced no evidence in support of this allegation.

246. Section 1(2) is irrelevant.

247. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. Taking photographic evidence of damage, disrepair and/or potential breaches of covenant is not likely to interfere with A's lawful enjoyment of the Property;
- R has not had any S.1(3) or (3A) Intention. Taking photographs is neither intended to cause A to give up possession or any right, nor an act that R would have reasonable cause to believe would make A do so; and
- R has the S.1(3B) Defence, as taking photographs is justified in the context of extensive damage to the Property's grounds and wholesale disregard of covenants by A, of which R must collect evidence to substantiate any possession proceedings brought reliant on those breaches.

248. In answer to questions, Mrs Blyth denied taking photographs of the Applicant, although she accepted that a contractor called Paul Tree had taken a photograph of a goat causing damage. She did not accept that she had told the Applicant that Mrs Cator was a difficult woman and had no recollection of saying that was why Mrs Cator did not show people round the Property.

Findings

249. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

250. We are not satisfied that the Respondent or his agents have photographed the Applicant in person, as opposed to her animals or the damage they have caused. We do not find that the Applicant to have proven to the criminal standard that any such photographs were likely to interfere with the peaceful comfort of the Applicant. We do not accept the contention that the Respondent has instructed or encouraged his staff to watch the Applicant.

251. Moreover, we do not consider the requisite mental intent has been proven beyond reasonable doubt. The motivation for the photographs was not criminal, but to record potential breaches of covenant.

252. In any event, we would find proven on balance of probabilities, at least in relation to section 1(3A), a defence that there were reasonable grounds for doing the acts complained of.

Seeking possession by eviction notices and correspondence

A's contentions

253. The Applicant's statement of case alleges that on 11 January 2022 she was given a notice of intention to evict her under Section 8 of the Housing Act 1988, and was told to remove animals from the Property. She says that despite having multiple possible grazing alternatives, she was given none, despite assurances that the animals would be housed on the land.

254. The statement of case of the Applicant also says that several letters were sent from the landlord's first solicitor, and the Section 8 notice was agreed to be unlawful. She contends that there are emails from the landlord discussing getting

her to leave the Property, but the landlord's solicitor said the actions could look like a vexatious attempt to evict.

255. In her reply to the landlord's statement of case, the Applicant contends that three eviction attempts were made, and that a section 21 notice was hostile and designed to cause her harm and uncertainty.

256. Also in her reply to the landlord's statement of case, the Applicant contends that the Respondent made a decision on 22 December 2021 to evict her from the Property. She prays in aid an e-mail from the agent which reveals that Nicky Blyth had asked for advice as to evicting the Applicant; further that on 23 December 2021 the agent's notes reveal that they called and spoke to Mrs Blyth regarding a Section 8 notice being served.

257. For this reason, the Applicant believes that the intention of the landlord was to make her life extremely uncomfortable and difficult; she said in opening it was "very much to quieten me". She also writes that he has engaged in gossip and GDPR breaches which have enabled him to create a fictional scenario to back up his behaviour.

258. The Applicant contends that she is very aware of the standing of this family and their connections, and that bullying from a powerful person or family is made worse by their standing and power. She considers that the Respondent and his family have had a sense of entitlement, all at a time when they were renting a substandard Property to her.

259. The Applicant contends that Mrs Cator has written about not wanting to pay to evict the Applicant.

260. She further alleges that she has written to the Respondent several times about matters, including rent and compensation, but the landlord has failed to reply; this is evidence of his intention to evict her, she contends.

261. In cross examination, she said she would love to have signed a deed of surrender, but denied saying she wanted all her rent back before she would sign one; the reason for her not signing was that she could not work to the landlord's time scales.

<u>R's contentions</u>

262. R, upon receipt of legal advice, has served a number of notices with the purpose of terminating A's tenancy and regaining possession of the Property lawfully. The parties have also entered into negotiations for a surrender, which ended with A keeping £17,500.00 of R's money (transferred to A in good faith on the basis that a concluded agreement was to be reached) albeit no settled agreement was reached between them.

263. Section 1(2) is irrelevant.

264. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. If the service of (for example) Section 8 or Section 21 Notices were capable of interfering with the peace and comfort of tenants, landlords all around the country would be potentially committing criminal offences every single day. This is absurd;

- R has not had any S.1(3) or (3A) Intention. Similarly, if the service of said notices was capable of forming a relevant intention, this would create an absurd result;
- R would have the S.1(3B) Defence in any event. In the light of A's repeated and patent breaches of covenant, it is perfectly reasonable to lawfully seek possession.

265. In answer to questions, Mrs Cator said the Applicant had broken the tenancy agreement by: bringing animals onto the Property including two pigs and two horses which were never in contemplation of the parties, breaking two windows and refusing to repair them, painting 3 interior walls iron grey, allowing damage to be caused to trees and planting, allowing fences to be broken, allowing the Property to be sublet on Airbnb (and even advertising that pets were welcome) and allowing boats on the Broad. She said that the main reason for the proposed eviction was the damage the animals were doing to the Property.

266. Under cross examination, the Respondent said the decision to seek the eviction was not made until the Section 8 was served, and not in late December. He added that his solicitors had advised that the Section 8 and Section 21 notice were unlikely to succeed because of the EPC rating. He said that he had not personally rented properties before this one; the Estate had done that before, managed by his mother and Mrs Blyth. He asserted that all previous lettings had had EPCs which were valid, and there was a mistake in relation to this Property. He denied that he had pulled out of the deed of surrender, but freely accepted he did change the terms of the offer.

Findings

267. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

268. We are not satisfied that the alleged acts were acts likely to interfere with the peace or comfort of the Applicant, in the sense used within the subsections. We find it cannot have been Parliament's intention that honestly sent letters and notices seeking possession, even if they were mistaken as to the law, are caught by the Act. We accept that a landlord who deliberately sends correspondence to a tenant knowing it to be false might be committing an act within the contemplation of the subsections. However, in the instant case we accept the Respondent's explanation that notices were sent which he believed to be valid, and they were only withdrawn on the advice of solicitors, once the invalidity of them was pointed out. We therefore do not consider the requisite mental intent has been proven beyond reasonable doubt.

269. We also reject the suggestion that the landlord formed an early intention to evict the Applicant, effectively at all costs. We believe the Respondent that his intent was to gain possession lawfully, through the courts.

Contacting previous landlord

A's contentions

270. The Applicant contends that the landlord agreed that her contract was unlawful, and that rent would be returned to her so she could leave the Property. She contends that she had kept everything boxed up ready to move, and that the landlord began the return of her money as arranged. She contends that both parties had a conversation to discuss the date of surrender, and that the Respondent's lawyer advised she should be paid off to leave. The Applicant then contends that the landlord breached GDPR, by misusing data collected by Rightmove on referencing; she alleges that he Googled a previous address she had lived at, and contacted the house owner. She says she had not been a tenant at the Property, rather her abusive ex-partner had been the tenant. She alleges the landlord thereupon pulled out of the negotiations.

271. In her reply to the landlord's statement of case, the Applicant contends that contact was made to her ex-partner's landlord without her permission or knowledge, in breach of confidentiality.

272. In her reply to the landlord's statement of case, the Applicant also contends that the Respondent says that he did not breach the GDPR. The Applicant contends that Rightmove confirmed this breach. She also contends that he has given her old phone number to neighbours, and that she has received abusive messages from Mrs Cator asking why she has not replied to these neighbours. She contends her old mobile number has been given to people to complain about her, and to the Norfolk Broads Authority, without her permission, and deliberately to look as if she is not replying. She contends that Rightmove have confirmed that her data had been taken for referencing on an application, and was only to be used for application purposes, not 8 months later during a Google search, in order to character destroy.

273. The Applicant further contends that the contact with her abusive ex-partner through a person called Steve Small was a hostile act designed to terrify her. She contends that she is sure her safe address is no longer safe from her dangerous ex, meaning that she has move to be safe. She contends that two reports have been made on barristers' advice to the Information Commissioner: 1 for use of personal data without her consent, and the other for accessing personal data and confidential data without permission.

274. She complains there has been a social media vendetta against her, and matters concerning her past have been unearthed in the Respondent's statements.

<u>R's contentions</u>

275. There is nothing in any way improper about contacting a tenant's previous landlord under any circumstances, let alone where said tenant is repeatedly breaching covenants.

276. Section 1(2) is irrelevant.

277. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. Contacting A's previous landlord to discuss her previous behaviour was not likely to interfere with A's lawful enjoyment of the Property;

- R has not had any S.1(3) or (3A) Intention. Making contact was neither intended to cause A to give up possession or any right, nor an act that R would have reasonable cause to believe would make A do so; and
- R has the S.1(3B) Defence, as it was perfectly reasonable for R to contact A's previous landlord in order to obtain an understanding of her rental history and behaviour renting previous Property.

278. Under cross examination, Mrs Cator said the Respondent had contacted the Applicants ex partner's landlord.

279. The Respondent himself denied that he had contacted the man called Steve Small in person, but his office staff had, sometime in late June 2022.

280. When questioned, the Respondent denied that he had contacted the Applicant's ex-partner himself, but his mother had exchanged a few emails in early August 2022 when, unsolicited, he had sent her a bundle. However she ceased communications with him shortly thereafter, having found out matters of a sensitive nature

281. Mrs Cator gave similar evidence; that Linda in the office had contacted Steve Small who runs a livery yard, to see if the Applicant's horses were going to stay with him. Mr Small then attended the Estate office.

282. She added that the Applicant's ex-partner had contacted her with a letter marked "private and confidential", and she had said to her son words to the effect of "we have to be careful because this is the Applicant's ex-partner". She said that two emails were exchanged with the ex, and then she asked him not to contact her again.

Findings

283. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

284. We are not satisfied that the Respondent himself did any act, save for his approach to the Applicant's ex partner's landlord by telephone. The contact with Mr Small and the Applicant's ex-partner in relation to the Applicant's alleged conduct of the tenancy was unsolicited. The use of data amounting to a previous address given on referencing, even if correct, was not an act likely to interfere with peace and comfort, objectively viewed.

285. Accepting for the purposes of argument that the contact made by the Respondent probably did interfere with the peace and comfort of the Applicant, we are still not satisfied so as to be sure that any criminal intent has been made out, as required by the subsections. When the acts were done, it was not known by the Respondent that the Applicant would find out about the contact made. Moreover, the contact was undertaken because the Respondent had no character reference for the Applicant and her behaviour had caused him concern. It was not done with the intent to cause the Applicant to give up her occupation of the Property or any part thereof, or to refrain from exercising any right or pursuing any remedy in respect of the Property or part thereof. The Respondent no doubt genuinely wanted the Applicant to sign the

Deed of Surrender, and to give up her right to a tenancy. It would make no sense for him to do any act to jeopardise that.

286. Nor can it be said that the Respondent knew, or had reasonable cause to believe, that his conduct was likely to cause the Applicant to give up her occupation etc. It is unfortunate for the Applicant that the contact had the effect of causing the Respondent to change his terms of offer of surrender. However, we are not satisfied that was his motive was to prevent the Applicant exercising any right or pursuing an remedy in respect of the Property.

Poisoning animals

A's contentions

287. The Applicant's statement of case contends that on 2 February 2022 she wrote to the landlord complaining about her birds being poisoned, and about rat poison and mole traps being sited without her knowledge throughout the gardens.

288. In her reply to the landlord's statement of case, the Applicant contends that poisons and traps were set without her knowledge; that many of her birds died; and that her goat died.

289. She further explains that all her prize hens died, within two weeks of arriving; that she did see one peck at a device refilled by a gamekeeper; the next day it was withdrawn, and a few days later it was dead. She contends the birds were in excellent condition when they arrived, and that she has spoken with a poison expert who laughed at the Respondent's comment about rat poison. She says that mole traps were used without her consent, and that Mrs Cator released her pet goat into the gardens, and it died later that day, presumed also to be poisoned.

290. In cross examination, she accepted she had no toxicology reports, and had nothing from a vet either. She denied that her birds had been left to run amok. However, she claimed she did see one of her hens eat poison.

R's contentions

291. Rat poison is used at the Property, which was let with managed grounds, to control the local rat population. The conditions the Estate placed on A's keeping of animals within specific areas was also for their safety; to prevent them from being poisoned unintentionally. If A has allowed her animals to be poisoned, it is because she allows them to run amok.

292. In any event, the poison chosen by the Estate was specifically chosen because it is not dangerous to birds. The reality is that A's fowl likely died because they were malnourished, mistreated, or simply neglected by A.

293. It should be noted that A has no evidence of any of her animals having died from poisoning.

294. Section 1(2) is irrelevant.

295. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. Laying rat poison around the Property's grounds (but outside any areas A was permitted to keep

animals) was not likely to interfere with A's lawful enjoyment of the Property;

- R has not had any S.1(3) or (3A) Intention. Laying poison was neither intended to cause A to give up possession or any right, nor an act that R would have reasonable cause to believe would make A do so; and
- R has the S.1(3B) Defence, as it was perfectly reasonable for R to lay said poison.

296. Mrs Cator said that poison was always put down, to keep the rats away from the ducks. She assumed the Applicant had been told about mole traps.

Findings

297. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

298. This allegation may be swiftly dealt with. We are not satisfied that that the Respondent committed any act likely to interfere with the peace or comfort of the residential occupier, i.e. the Applicant. The laying of rat poison and mole traps was not *likely* to interfere with the peace or comfort of the Applicant. It was only possible that the Applicant's hens and other animals might eat poison, and even then, we agree with the Respondent that there is no evidence that on balance of probability the animals did in fact die from poisoning, there being no toxicology or veterinary evidence of the same.

299. In any event, the Respondent's intent, we find, was solely to reduce the rat population, and not to cause the Applicant to give up occupation of any part of the Property, or to cause her to refrain from exercising any rights or pursuing any remedy she might have.

Reporting A to the police for theft

A's contentions

300. The Applicant contends that on 2 September 2022 the landlord reported her to the police for theft, for moving sheep hurdles.

301. In her reply to the landlord's statement of case, the Applicant also contends that Jane Cator reported her for theft of some sheep hurdles, which she states she could see have not left her Property; and this was not viewed as theft by the police. Under cross examination, the Applicant denied taking the hurdles, but admitted later during the hearing taking them on the grounds that she thought they were part of her demised Property.

R's contentions

302. A does not appear to deny that she appropriated hurdles owned by R, without R's consent, to be used by her within the grounds of the Property. Those hurdles were located on the boundary between Clarkes Arches and the Property, on the

Clarkes Arches side, to prevent A's animals from escaping from the Property into Clarkes Arches.

303. Section 1(2) is irrelevant.

304. In respect of Sections 1(3) and (3A):

- R has not done any S.1(3) or (3A) Acts. Any report to the police regarding A's appropriation of these hurdles was not likely to interfere with A's lawful enjoyment of the Property.
- R has not had any S.1(3) or (3A) Intention. Any said report was neither intended to cause A to give up possession or any right, nor an act that R would have reasonable cause to believe would make A do so; and 96.3. R has the S.1(3B) Defence, as where Property is taken without consent it is perfectly reasonable to report the same to the police.

305. It was submitted during the hearing that the hurdles were Mrs Cator's own Property.

Findings

306. We repeat our findings regarding s.1(2) of the Act. We also repeat our decision as to the law regarding s.1(3) and (3A).

307. We are not satisfied beyond reasonable doubt that a criminal act has been committed. We do not consider that reporting the Applicant for moving Mrs Cator's hurdles to the Police was an act by the landlord likely to interfere with her peace or comfort in the sense used in the subsections.

308. Even if we are wrong on that, we consider that the motive was the genuine concern for the loss of the items. Whilst the Applicant considers the hurdles to have been demised to her, Mrs Cator took a different view as to the parties' respective civil rights. We are not therefore satisfied, so as to be sure, that the reporting to the Police was done to cause the Applicant to give up occupation of the Property or for any other reason required by subsection 1(3) or 1(3A). In relation to the latter subsection, we agree that the Respondent has a defence of reasonable grounds for doing the acts. Mrs Cator reasonably believed that the hurdles belonged to her.

Conclusions

309. For all the above reasons, the Tribunal determines that it shall not make a rent repayment order, no relevant offence having been proved by the Applicant to the criminal standard of proof.

310. The entirety of this case centres on the parties' respective civil rights, which is suitable for an entirely different forum. These proceedings provide a salutary lesson for those prospective landlords and tenants who embark on entering into a tenancy without defining the ambit of the demise, and without agreeing all relevant terms of the tenancy, before occupation is taken up.

311. Given that no offence has been proven, it is not necessary for the Tribunal to consider issues (3) onwards, set out in paragraph 69 above.

Judge:

S J Evans

Date:

3/4/2023

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 (i.e. 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.

Appendix 1

Housing and Planning Act 2016

Section 40

(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 …

(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

Section 41

(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.

Section 43

(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 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) …

Section 44

(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.

Protection from Eviction Act 1977

1 Unlawful eviction and harassment of occupier.

(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.

(3B)A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C)In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a)the residential occupier's right to remain in occupation of the premises, or

(b)a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4)A person guilty of an offence under this section shall be liable—

(a)on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b)on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5)Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6)Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.