FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: BIR/00FY/HMK/2022/0013**
Property	**: 7 Crofton Close, Beechdale, Nottingham, NG8 3HH**
Applicant	**: Nikita Richards**
Respondent	**: Simon Ashmore**
Representative	**: Emma Tookey**
Type of Application	**: Application for Rent Repayment Order by tenant** Sections 40,41,43 and 44 Housing and Planning Act 2016
Tribunal Members	**: Judge T N Jackson** **Mr A McMurdo MSc CIEH** **Mrs K Bentley**
Date and venue of Hearing	**: 25 November 2022, 28 and 29 September 2023 and 8 November 2023** **Nottingham Justice Centre**
Date of Decision	**: 5 December 2023**

DECISION

Decision

The Tribunal determines that the Respondent has not committed any relevant offence under the Housing and Planning Act 2016 within the 12 months prior to the making of the application to the Tribunal and the Tribunal makes no Rent Repayment Order.

The Tribunal makes a costs order against the Applicant in the sum of £750 which must be paid to the Respondent within 28 days of the date of this Decision.

Reasons for Decision

Introduction

1. On 10 May 2022, the Tribunal received an application by the Applicant for a Rent Repayment Order stating that the Respondent had committed the offences of a) unlawful eviction or harassment of occupiers under the Protection from Eviction Act 1977 and b) failure to comply with an Improvement Notice under section 30 Housing Act 2004. The Applicant sought a Rent Repayment Order in the amount of £8340.

Procedural background

2. Directions were issued on 19 May 2022 regarding case management and the preparation and submission of bundles. The case was due to be heard on 8 August 2022 but was postponed due to difficulties with the Applicant's preparation of her bundle. The case was subsequently listed for 25 November 2022.

3. The Applicant was due to submit her Statement of Case by 10 June 2022, but failed to do so and was sent a reminder. On 23 June 2022, the Applicant asked for an extension of time for 2 weeks and advised that she had now instructed solicitors. An extension was granted to 8 July 2022 but the Applicant did not send her Statement of Case until 11 July 2022 in the form of 3 emails with attachments. The Tribunal had queries regarding the bundle as there were redactions and the Applicant asked for an extension to 25 July 2022 to resubmit her bundle. On 24 July 2022, the Applicant advised the Tribunal that her printer had run out of ink so she could not submit by 25 July 2022 but could by 26 July 2022. The Applicant failed to do so and on 29 July 2022 she was warned that unless she submitted her bundle within 7 days her application would be struck out. She appears to have submitted her Statement of Case on 5 August 2022.

4. By Directions dated 15 August 2022, the original dates for the receipt of the Respondent's bundle and Applicant's Response in Reply to the Respondent's bundle were amended. The Respondent sought an extension due to the 'endless documents' within the Applicant's bundle which was granted. Following receipt of the Respondent's bundle, by email on 20 September 2022, the Applicant stated that she had 'held back some evidence' and wanted an extension to submit an additional bundle. The Applicant sent additional evidence on 4 October 2022, 14 October 2022

and 18 October 2022 including an audio recording and comments regarding the Respondent's evidence.

5. On 19 October 2022, the Tribunal advised the Applicant that she needed to raise the submission of the additional documentation as a preliminary matter and explain why it had not been sent earlier. The Applicant was advised that the Tribunal had no facility to play audio recordings so they needed to be transcribed but that any such transcripts were still subject to the need to be considered as a preliminary matter.

6. On 26 October 2022, the Applicant sought an extension to submit transcripts of ten audios that she had not had time to type, and further emails from the Council. The Tribunal refused the extension and advised that the Applicant needed to raise the matter as a preliminary issue at the hearing.

7. Following an inspection of the Property on 8 November 2022, the Tribunal used the hearing as a case management hearing due to the failure by the parties to comply with the Directions and an apparent lack of understanding by the parties, who were unrepresented, that the case related solely to alleged offences committed and rent paid during 11 May 2021 to 10 May 2022. There appeared to have been difficulties in the landlord and tenant relationship from approximately 6 months after the beginning of the tenancy in April 2019 and the bundles included matters from 2019 onwards relating to a wide range of matters not relevant to the application before the Tribunal.

8. The Tribunal issued Directions dated 1 December 2022 which required the parties to resubmit new bundles. The Directions clarified the relevant time period to which bundles should relate, (11 May 2021 to 10 May 2022), and detailed exactly the types of information required and the need for witness statements regarding any facts relied on. They also set out clearly what the Tribunal would NOT be making determinations on namely:
    a. allegations of housing disrepair not referred to in the Improvement Notices;
    b. whether the Applicant was justified in withholding rent due to what she considers to be breaches of the tenancy agreement by the Respondent;
    c. matters relating to possession proceedings; and
    d. the standard of workmanship carried out by the Council when carrying out works in default.

9. The Directions gave a substantial period for the parties to comply.

10. The Applicant failed to comply with the Directions by 13 January 2023 as directed. On 17 January 2023, the Tribunal sent a reminder email to the Applicant requiring compliance within 7 days. The Applicant failed to comply.

11. By Directions dated 26 January 2023, the Applicant was warned that unless she complied by 10 February 2023 her application would be automatically struck out. Both parties were encouraged to take legal advice.

12. The Applicant did not provide the bundle in the format directed, but rather sent a multiple of emails with attachments. By email 16 February 2023, the Applicant was directed to combine her evidence into one paginated and indexed document and advised that piecemeal submissions would not be accepted in evidence. She was warned that if she did not provide such a bundle in 7 days, her application would be struck out.

13. On 20 February 2023, the Applicant provided to the Tribunal only a digital link to numerous documents which were indexed and paginated. She did not provide paper copies as directed due to the expense, and requested the Tribunal copy the bundle.

14. On 24 February 2023, the Tribunal issued additional Directions as it was not able to access some of the links, and in addition to the large volume of documentation and submissions filed, the Applicant had requested leave to file 5 supplemental witness statements. The Tribunal confirmed it would copy the bundle if the Applicant provided a paper copy, and that the Applicant must provide to the Tribunal and Respondent a list of the witnesses, the nature of their evidence, it's relevance to the specific issues in the case and confirm that each witness has agreed to attend the hearing for cross examination. The Respondent was able to provide any comments on the application by the Applicant to file additional statements. The Applicant did not subsequently provide the list of witnesses.

15. On 15 March 2023, the Tribunal emailed the parties that the Applicant had filed a paper bundle that was unpaginated and it was returned for her to paginate and was advised how to do so. The Tribunal advised the Applicant that the bundle did not appear to have considered the Judge's comments in the Directions dated 1 December 2022 regarding the limited nature of the case or whether the evidence in her bundle was relevant to the issues in the case. The Applicant was reminded of the grounds on which she was seeking the RRO and advised to consider removing from the bundle evidence which related to disrepair and alleged incidents of harassment that fell outside the relevant period of 11 May 2021 to 10 May 2022.She was advised that undated and/or unidentified extracts of phone messages or social media accounts should not be included as they are of little or no evidential weight. She was advised to remove personal documents relating to the landlord's character as the Tribunal was only concerned with relevant conduct. She was advised of how the maximum amount of a Rent Repayment Order would be calculated. She was required to return the revised paper bundle within 14 days.

16. On 20 March 2023, by email to the Tribunal only, the Applicant confirmed that she had made changes to the bundle and that it comprised at least 500 pages and was relevant to allegations of harassment and failure to comply with the Improvement Notices.

17. On 29 March 2023, the Tribunal advised that the paper bundle needed to be filed by 5 April 2023 failing which a strike out warning would be issued. She was advised that the Tribunal office could not provide legal advice and independent legal advice should be sought. She was advised that no further correspondence from her would be considered by the Tribunal unless it was copied to the Respondent. She was also advised it was for the Tribunal to determine how cases should be managed, not the Applicant and for the Tribunal to determine what evidence was likely to be relevant to the issues in the case.

18. By 17 April 2023, the Respondent had received a copy of the Applicant's bundle as he queried with the Tribunal via email whether he had to respond to what he described as a large proportion of the Applicant's bundle falling outside the Directions.

19. The Applicant responded to say that the bundle was completed with legal guidance and copied in a representative at Nottingham Law centre.

20. On 27 April 2023, the Tribunal sent a copy of the Applicant's bundle (205 pages) to the Respondent. He was required to provide a Respondent's bundle by 12 May 2023. The Applicant was able to file any response to the Respondent's bundle within 14 days of receipt of the bundle.

21. The Respondent was granted an extension of time until 26 May 2023 to obtain information from the local authority.

22. Following receipt of the Respondent's bundle, (283 pages), the Tribunal issued Directions dated 29 June 2023, directing that, with the exception of the Applicant's brief Reply to the Respondent's bundle, (as provided for in the Directions dated 1 December 2022), neither party was allowed to file any additional evidence or submissions without the Tribunal's permission. The Applicant was directed to submit by 13 July 2023 any Reply she wished to make in the form of a statement and that the Reply must only relate to specific evidence in the Respondent's bundle and should not:

    a. include any submissions or evidence already included in the Applicant's bundle;

    b. include any evidence or submissions that are not directly relevant to the issues in the case;

    c. introduce new evidence in support of her allegations of harassment that are not a direct rebuttal of evidence contained in the Respondent's bundle.

23. The Applicant was concerned that the bundle she had received from the Respondent was not the same as that provided to the Tribunal. The Respondent was asked to confirm they were the same which he subsequently did.

24. The Tribunal directed that it was not carrying out an investigation of points raised by the Applicant's emails of 14 and 18 June 2023 regarding the Respondent's bundle. The Applicant would have an opportunity to cross examine and make her own

submissions. The parties were once again reminded that the Tribunal would attach little weight to statements within text messages that are not confirmed by a witness statement.

25. On 21 August 2023, the Tribunal issued Directions relating to the Applicant's Reply to the Respondent's Bundle. The Applicant had failed to file her Reply by 13 July 2023 and had not sought an extension of time. A Reply comprising 265 pages was posted to the Tribunal by Special Delivery on 27 July 2023 but was not copied to the Respondent. The Reply was out of time, included lengthy submissions and evidence which was not a direct rebuttal of the Respondent's case, and stated that the Applicant intended to prove at the hearing that documents had been doctored as opposed to including the documentation within the Reply to prove it, such as a witness statement. The documents included transcripts of phone conversations without any confirmation that the original recordings of the transcribed conversations had been provided to the Respondent to review or confirm the accuracy of the transcript. The bundle was returned to the Applicant as it was inadmissible in its current form. She was directed that if she wished to file a brief Reply, she had to complete an Order 1 Form to seek an extension of time, provide reasons why she had failed to comply with the Directions and attach a draft of the Reply she wished to file. As the Applicant had indicated that she intended instructing a solicitor to represent her at the hearing, she was advised that it would be helpful if the solicitor could review any application for extension of time.

26. In the same Directions, the Respondent was also advised to submit an Order 1 application to seek admission of a Supplemental Statement regarding new evidence from the Council and an extract from a medical statement which he wished to submit. He was directed to explain why the information was relevant to the issues in the case and why it could not have been produced when the Respondent filed his Response.

27. On 21 August 2023, the Applicant emailed the Tribunal, (without copying the Respondent), raising concerns at the exclusion of her Reply bundle.

28. On 22 August 2023, the Tribunal advised both parties that it is not necessary for the Applicant to file a Reply and explained the purpose of such a Reply. The parties were again advised re the weight to be attached to a disputed transcript of a phone call unless the original recording is played at the hearing and also in relation to an uncorroborated transcript of a phone conversation between a party and someone not being called as a witness. Parties were advised that they could seek a review of the Directions of 21 August 2023 and that they would need to submit an Order 1 form. The Tribunal could direct a short case management hearing or the request could be considered as a preliminary issue at the hearing.

29. On 15 September 2023, in response to 3 emails on 12 September 2023 and 5 emails on 13 September 2023 from the Applicant, the Tribunal advised both parties that it would only consider submissions served in accordance with Directions. It advised

that an Order 1 application must be completed and a copy sent to the other party. The Directions again reminded parties to consider taking legal advice without delay.

30. On 21 September 2023, further Directions were issued as the Respondent had filed an application for permission to file 3 supplemental witness statements and correspondence with Ms L Khan of the Council dating between 4 April 2023 and 6 April 2023.The Tribunal did not accept into evidence the witness statements as no good reason had been given for the delay in providing them. If the Respondent wished to rely on the L.Khan correspondence and it was not in his bundle, he was directed to file a further Order 1 within 7 days explaining why it was not included in his bundle. [The Tribunal notes that the correspondence was actually contained within the Respondent's bundle that he had already submitted and therefore he did not need to have made the application in relation to this aspect.]

31. On 22 September 2023, the Tribunal directed that if the Respondent sought permission to admit the correspondence, then the Applicant's email of that date in response would be put with the Tribunal's papers together with any formal written response the Applicant files.

32. The Respondent did not file an Order 1 application.

33. The hearing was reconvened on 28 and 29 September 2023. At the hearing on 28 September 2023, it became apparent to the Tribunal that the Applicant was referring to her Reply bundle which had not been admitted following the Directions of 21 August 2023. The Respondent appeared to have a copy. The Tribunal did not and directed that it was not to form part of the proceedings as it had previously been excluded and the Applicant had not complied with the procedure to be adopted for consideration of inclusion of an Applicant's Reply as set out in emails dated 22 August and 15 September 2023.

34. The hearing was not concluded on 29 September. The Applicant had given her evidence and been cross examined and the Respondent had started his evidence. The hearing was reconvened on 8 November 2023.

35. On 18 October 2023, the Applicant submitted an Order 1 application seeking admission of a Reply bundle but did not attach a copy. By Directions dated 22 October 2023, the Applicant was asked to provide a copy of the Reply bundle to the Tribunal and the Respondent to assist in the determination of the application, was reminded of the need to read previous Directions regarding admissibility of evidence and the Respondent was offered the opportunity to provide comments on the application. The Tribunal received the Reply bundle, (minimum 347 pages-unclear due to incorrect pagination), on 30 October 2023.The Respondent provided comments on the Order 1 application.

36. By decision dated 6 November 2023, the Tribunal refused the Order 1 application and did not allow the admission of the Reply bundle. The decision set out numerous reasons for the decision, including the size of the Reply bundle; the timing of the application vis a vis the stage in the proceedings; the presentation of the bundle with

missing pages, duplication, and errors in pagination; but also for the same reasons as set out in Directions dated 21 August 2023 which excluded the Applicant's first Reply bundle.

37. The hearing was reconvened and concluded on 8 November 2023.

Background

38. By agreement dated 8 April 2019, the Applicant commenced the tenancy in April 2019 for a period of 6 months at a rent of £695 per month. Utilities, council tax and service charges were excluded from the agreement and were the direct responsibility of the Applicant. The agreement is inconsistent as to the date of commencement as it refers both to 10 and 13 April 2019. However, the point is not relevant to the matter before us.

39. On 28 October 2019, the Applicant reported disrepair to the Council including a faulty boiler, poor heating, mould and damp and excessive draughts. The Council inspected the Property in November 2019 and sent a Schedule of Works to the Respondent in December 2019 but to the wrong address. It was sent to the correct address in late January 2020. The Respondent agreed to do the works by February 2020.The Council arranged to inspect again on 1 April 2020. It completed a video inspection in October 2020 and issued a new Schedule of Works dated 19 October 2020 which was substantially the same as that issued in January 2020 and which referred to 19 items.

40. An Abatement Notice dated 17 November 2020 was issued on 19 November 2020 in relation to the lack of adequate hot running water supply which was prejudicial to the health of occupants during a pandemic. The Notice set out remedial works to the gas boiler to be carried out within 5 days of the service of the Notice.

41. A new boiler was fitted in December 2020 by contractors engaged by the Council. There was an issue as to whether the works had been carried out satisfactorily.

42. The Applicant made a complaint to the Ombudsman regarding the Council's failure to act following the HHSRS inspection in November 2019 resulting in her being without heating for approximately 10 months. The Ombudsman found the Council at fault for not taking formal action under the Housing Act 2004.

43. Due to pandemic measures, the Council did not consider that it could carry out a further inspection of the Property until 22 June 2021. The inspection report identifies 7 matters requiring attention but they were either categorized as 'observation' or 'requiring attention' but none were categorized as 'legal requirements'.

44. The Tribunal does not know what prompted it, but on 9 July 2021, the Council issued an Improvement Notice, setting out two Category 1 Hazards (Fire and Excess Cold)

and four Category 2 Hazards (Falling on Stairs, Damp and Mould, Entry by Intruders and Food Safety. The works were required to be started by 16 August 2021 and completed within 2 months ('Improvement Notice 1'). The Improvement Notice was sent to the Respondent at the Property.

45. The deficiencies giving rise to the Hazards related to:

    a. 3 holes in the kitchen ceiling where pipework has been removed providing a potential route for the spread of fire, smoke and fumes;
    b. Inadequate insulation in chimney breast in fireplace in first floor bedroom;
    c. Lack of stair handrail the full length of main internal staircase;
    d. Front ground floor living room window does not open to right hand side facing window and small bedroom window does not open;
    e. Lack of window keys to lock top opener windows throughout the Property; and
    f. Two security lights at rear of the Property not working.

46. Some items were repeated under Category 1 and 2 Hazards.

47. The Council reinspected the Property on 19 October 2021.

48. On 29 October 2021, the Council issued an Improvement Notice setting out one Category 1 Hazard (Excess Cold) and one Category 2 Hazard (Electrical). The works were required to be started from 6 December 2021 and completed within 2 weeks ('Improvement Notice 2).

49. The deficiencies giving rise to the Hazards related to:

    a. Kitchen radiator not fully heating and a crack in the first-floor front small bedroom radiator;
    b. Intermittent/flickering lights in the ground floor kitchen, ground floor living room wall lights, first floor landing and first floor front main bedroom

50. On 8 November 2021, the Council reinspected the Property to ascertain whether Improvement Notice 1 had been complied with.

51. In a letter dated 4 March 2022 from the Council to the Applicant, the Council summarized their findings following the reinspection. They determined that all matters had been addressed with the exception of the replacement of a bedroom window. This was required as the locking mechanism could not be replaced as required by the Improvement Notice. The Council understood that the window had been installed on 14 January 2022 and subject to checking that was the case, consideration would be given to revoking Improvement Notice 1.

52. The Council advised that they would need to carry out a further inspection to determine what works had been undertaken in relation to Improvement Notice 2. The Council reminded the Applicant that on several occasions the Council had asked her for suitable time to visit to inspect. She had not been available for a proposed visit on 7 March 2022 and a further visit was arranged for 14 March 2022.

53. On 25 March 2022, the Council served Notice on the Respondent that as it appeared that reasonable progress had not been made towards compliance with the Improvement Notices, that the Council intended to enter the premises to carry out the work specified in the Schedule attached to the Notice on or after 31 March 2022. The Schedules related to a Category 1 Hazard of Excess Cold and a Category 2 Hazard of Entry by Intruders, although the Tribunal appears to have an incomplete copy of the Notice as it relates to the Category 2 Hazard.

54. The deficiencies giving rise to the Hazards were:

    a. Kitchen radiator not fully heating;
    b. Crack to first floor front small bedroom radiator;
    c. Inadequate insulation in chimney breast in fireplace in first floor bedroom;
    d. Category 2 Hazard ?

55. On 6 April 2022, the Council confirmed by email to the Respondent that *'the reason why we have decided to carry out works in default is because you are having difficulty gaining access for the works to be carried out and you stated that you were happy for the Authority to undertake the works on your behalf*'.

56. The Improvement Notices were revoked on 20th July 2022. The majority of the works were completed. Works relating to the Hazard regarding Entry by Intruders were not completed, but as this was a Category 2 Hazard, the Council was to serve a Hazard Awareness Notice.

57. On 1 September 2020, the Respondent's agent served a Notice under section 21 Housing Act 1988, ('Section 21 Notice'), seeking possession of the Property and requiring the Applicant to leave by 4 March 2021.

58. On 8 January 2021, the Respondent's agent served a Notice under section 8 Housing Act 1988, ('Section 8 Notice'), seeking possession on grounds 8,10 and 11 Schedule 2 Housing Act 1988 due to alleged rent arrears of £4613.50. Between March 2020 and December 2020, the Applicant did not pay rent as she was in dispute with the Respondent regarding damage to stock as a result of the alleged disrepair of a shed. Prior to that issue, the Respondent alleges that there were other arrears.

59. On 25 August 2021, the Respondent's agents sent the Applicant a copy of the Governments guide entitled 'How to Rent- the Checklist for renting in England' (which is a pre-requisite before serving a section 21 Notice).

60. On 26 August 2021, the Respondent's agent served on the Applicant a section 21 Notice requiring the Applicant to leave the Property after 1 January 2022 failing which the landlord may apply to the court for a possession order.

61. On 11 February 2022, solicitors representing the Applicant wrote to the Respondent under the Pre-Action Protocol for Housing Conditions Claims (England) claiming housing disrepair and seeking proposals for compensation.

62. On 19 April 2022, the Respondent's agent served a section 8 Notice on the Applicant seeking start possession under Grounds 8,10 and 11 in relation to rent arrears alleged to be £4613.50.

63. The possession proceedings held on 8 July 2022 were adjourned pending the outcome of this hearing which was originally listed for 5 August 2022.

64. The Tribunal understand there were possession proceedings in approximately September 2022 but are unclear as to their outcome. Possession proceedings were heard on 30 March 2023. As the Applicant's documentation was not served within time, her defence to the claim was automatically dismissed. As she did not attend the hearing, the matter was considered in her absence and a possession order was granted under Ground 8, namely rent arrears of £4,381.83.

65. At a further hearing on 16 August 2023 to consider an application by the Applicant to set aside the above possession order, the Applicant attended and was represented by Counsel and a solicitor. The possession order was upheld. The Tribunal understand that the Applicant is taking further legal proceedings in relation to that decision.

Inspection

66. The Tribunal inspected the Property on 25 November 2022 in the presence of the Applicant and the Respondent. The Tribunal asked the Applicant to show the Tribunal each of the items referred to in the Improvement Notices.

Hearing

67. The matter was heard on 25 November 2022, 28 and 29 September 2023 and concluded on 8 November 2023. All hearings were attended by the Applicant, the Respondent, and the Respondent's representative (and partner) Ms E Tookey. Ms Tookey is not legally qualified, but as a reasonable adjustment to the Respondent's stated health condition, the Tribunal agreed that Ms Tookey could represent and assist the Respondent. On 28 September 2023, the Applicant was accompanied, although not represented by an individual from an organization 'Support Through Court'.

68. No preliminary applications were made by either party on 28 and 29 September 2023.

69. On 28 September 2023, the Respondent indicated that a witness was attending later in the day. As no prior notification had been given, nor was a witness statement included in the Respondent's bundle, in breach of previous Directions, the Tribunal determined that it would not hear the witness.

70. On the same date, during the hearing, the Applicant was observed by the Tribunal to refer to a bundle which the Tribunal did not have. On questioning, it was clear that the bundle was the Applicant's Reply to Respondent's bundle which had been ruled inadmissible by Directions dated 21 August 2023. The Tribunal determined that the Applicant could not refer to the bundle.

71. During the hearings on 28,29 September 2023 and 8 November 2023, the Tribunal continuously directed the parties regarding what was relevant to the matters before it, and specifically that it was not concerned with matters occurring before the relevant period. Despite this, the Applicant continued to refer to such matters and was therefore directed to move onto another point that was relevant. On several occasions the Applicant said words to the effect that there was no point in her being there as she was prevented from speaking and that she was not allowed to use the evidence in her excluded Reply bundle which is where the bulk of her evidence relating to harassment lie. The Tribunal explained that the Directions from 1 December 2022 onwards had been clear as to what the hearing was and was not concerned with and the relevant period that needed to be considered and the Tribunal would ensure that the Directions would be complied with by stopping either party who did not comply during the hearings.

72. On at least two occasions whilst giving evidence, the Applicant stated that she no longer wished to continue with the hearing. She raised concern that the Tribunal had stopped her from referring to matters. These were matters occurring before the relevant period and were therefore not relevant. She also raised concern that the Tribunal asked her to direct its members to evidence in her bundle which corroborated her oral evidence. However, she was unable to do as she stated it was in her Reply bundle which had been excluded.

73. During her cross examination of the Respondent, the Applicant was asked to move on when raising matters from before the relevant period. After repeatedly making the same point, (that the Respondent had allegedly manipulated documents), by questions of the Respondent in relation to different documents, including one outside the relevant period, the Tribunal advised her that it understood the point she was making, that it would consider the point in deliberations and it did not need any further examples, as the point was clearly understood by the Tribunal. The Applicant then stated that she would not carry out any further cross examination which she did not.

74. During the Respondent's representative closing speech, and despite being advised that the hearing would continue in her absence, the Applicant left the hearing and therefore did not make her own closing speech.

75. The Respondent had previously indicated that he wished to make an application for costs against the Applicant and the Tribunal asked both parties at the conclusion of the hearing on 28 September 2023 to submit any such applications to the Tribunal before the date of the next hearing. The Tribunal explained the basis on which costs may be awarded namely, if the Tribunal considered that a party had brought, conducted or defended proceedings unreasonably.

76. The night before the hearing of 8th November 2023, via email the Respondent circulated to the Tribunal and the Applicant, details of costs claimed, his financial circumstances, up to date rent statements and a copy of a voice recording dated November 2021, a copy of the transcript of which was in the Respondent's bundle.

77. At the beginning of the hearing on 8th November 2023, the Tribunal confirmed to the parties that it had received the Respondent's email and noted that a copy had been sent to the Applicant. The Applicant expressed concern that the Tribunal had accepted the voice recording into evidence and yet was not allowing either her transcripts or voice recordings into evidence. The Tribunal advised the parties that the voice recording had not been 'admitted' into evidence. No application had been made by the Respondent to do so. The transcript was already within the Respondent's bundle. The transcript would be treated in the same way as all audio transcripts within each party's bundle.

78. During the hearing of 8 November 2023, the Tribunal sought to clarify whether there was any agreement between the parties as to the amount of alleged rent arrears, as this may be relevant in calculating the amount of any Rent Repayment Order. The Tribunal noted that a possession order had been granted in the County Court on 30 March 2023 on the basis of rent arrears of £4,381.83 and which order was subsequently upheld on 16 August 2023 following a hearing at which the Applicant was legally represented. The Applicant said that she disputed the amount, the due date as per the tenancy agreement, queried a charge of £486.50 which the Respondent's representative advised was the pro rata rent for the first period of the tenancy and also queried the reconciliation of the payments made. As the matter was disputed, the Tribunal did not consider the matter further but noted that there was a County Court order in place which, the Tribunal understood from the parties, was being challenged legally by the Applicant.

79. As the Applicant left the hearing on 8 November 2023 before it's conclusion, the Tribunal emailed both parties on 9 November 2023 to give the Applicant the opportunity to make written representations in response to the Respondent's costs application against her. She was also asked if she wished to make a costs application

of her own to which the Respondent would be given the opportunity to make written representations. Her responses are considered later in this Decision under the paragraph headed 'Costs'.

The Law

80. Section 41 of the Housing and Planning Act 2016 ("the 2016 Act"), provides that a tenant may apply to the Tribunal for a Rent Repayment Order against a landlord who, in the 12 months prior to the application being made, has committed an offence to which the 2016 Act applies.

81. The 2016 Act applies to an offence committed under-

    a. *section 1(2), (3), or (3A) of the Protection from Eviction Act 1977, namely unlawful eviction or harassment of occupiers; and*

    b. *section 30(1) Housing Act 2004, namely failure to comply with an Improvement Notice.*

82. Section 43 provides that the Tribunal may make a Rent Repayment Order if satisfied, beyond a reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies (whether or not the landlord has been convicted).

83. Section 44 of the 2016 Act provides for how the Rent Repayment Order is to be calculated. In relation to offences under sections 1(2), (3), (3A) of the Protection from Eviction Act 1977, the period to which a Rent Repayment Order relates is the period of 12 months ending with the date of the offence. For offences under section 30(1) Housing Act 2004, the period to which a Rent Repayment Order relates is a period, not exceeding 12 months, during which the landlord was committing the offence. The rent the landlord may be required to pay in respect of that period must not exceed the rent paid in respect of that period, less any relevant award of universal credit paid in respect of rent under the tenancy during that period.

84. Section 44(4) of the 2016 Act states that in determining the amount of a Rent Repayment Order, the Tribunal should take account of the following factors:

    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 that Chapter of the Act applies.

Submissions

85. Both parties provided detailed written submissions. For the avoidance of doubt, the Tribunal did not consider either the Applicant's Reply that had been excluded by

Directions dated 21 August 2023 nor the one excluded by the decision of the Tribunal dated 6 November 2023.

86. A significant part of the Applicant's bundle referred to matters before the relevant period.

87. The Applicant's bundle contained transcripts of phone recordings between the Applicant and 9 separate contractors (pages 178-201). The transcripts relate to alleged conversations between the Applicant and the individuals, making arrangements for access to carry out works.

88. The Applicant's bundle contained a written statement (pages 85-90) but of which there were additional parts throughout the statement.

89. The Respondent's bundle included matters before the relevant period and also matters not relevant to the matter before the Tribunal. It also contained text threads allegedly between him and contractors and a transcript of an audio recording. It included invoices, receipts and letters/emails from external organisations' such as the Council, British Gas and contractors.

90. It contained a written statement (pages 77-81).

91. Neither bundle contained witness statements.

The Applicant

Harassment

92. In her written statement in her bundle, (page 85), the Applicant says that she has 'removed harassment from her claim to minimize the size of the bundle' and 'this claim is for the failure to comply. I have separated the claims due to the size of the evidence' (page 90). However, at the hearing on 28 and 29 September 2023, the Applicant suggested that she wished to continue with the claim for harassment.

93. The Applicant was asked to identify each allegation of harassment from 11 March 2021 to 10 March 2022 and identify within her bundle any corroborative evidence. She was unable to do so. She referred to documents which were in her Reply to the Respondent's bundle which had been excluded from admission by Directions dated 21 August 2023 and the decision of 6 November 2023.

94. As the Applicant was unrepresented, the Tribunal attempted to assist her in articulating the acts she alleged to be harassment, although the Tribunal was clear that it could neither step into the role of representative on her behalf nor 'make the case for her' by identifying, of its own initiative, matters within the Applicant's bundle that could potentially form an allegation of harassment. The Tribunal

established with the Applicant, (and the matters were referred to, to some degree in the bundle) that she considered that she was harassed by the landlord as follows:

The condition of the house and the Respondent's continuing failure to repair the house on matters not included within the Improvement Notices;

95. The Applicant did not clearly articulate to which repairs she was referring.

The Respondent arranging with Purple Bricks, and without any notification to her, for open house viewings of the Property when it was for sale.

96. The Applicant said that 69 people visited the Property in a period of 2 days and knocked on her door. She sent a video to the Respondent of a car on the road. She contacted Purple Bricks who she alleges said firstly that they could not discuss the matter with her as they had to discuss it with the landlord and secondly that they did not know the Property was tenanted.

The Respondent arranging appointments for contractors on dates when the Respondent knew that she was not there or available and hindering the Improvement Notice works being done.

97. The Applicant relies on her bundle to establish this.

The service of section 21 Notices as retaliation evictions.

98. The Applicant refers to the service of the two section 21 Notices and two section 8 Notices as evidence of harassment. She says that the Respondent issued the second section 21 Notice despite knowing that he could not do so as there was an Improvement Notice and that it was issued shortly after the service of Improvement Notice 1.

Improvement Notices

99. The Applicant says that in relation to Improvement Notice 1, works were required to be completed by 15 October 2021 and repairs remained outstanding, such as the security lights which though had been refitted did not work or (with the exclusion of the works to the window) were not done properly, such as the work to the chimney breast. Works were not completed by the required time in relation to Improvement Notice 2. She alleges that the landlord hindered the works being carried out by making appointments with contractors on days he knew she was not available or without giving her notice. She has produced numerous text threads with contractors which she asserts supports this.

100. The Applicant says that as the Council carried out works in default, this proves that the Improvement Notices were not complied with. She disputes the authenticity of the email dated 6 April 2022 from a Council Officer to the Respondent which states *'the reason why we have decided to carry out works in default is because you are having difficulty gaining access for the works to be carried out and you stated that you were happy for the Authority to undertake the works on your behalf*. She alleges that the Respondent has 'doctored' the email by the inclusion of that sentence. She refers to the format of the email address to show that it is unusual. She refers to the Council 'security string' at the end of the email thread with a suggestion that it is in the wrong place. She says that the Council have confirmed to her that the email was never sent. She refers to other documents she alleges that the Respondent has doctored such as a quote from Rightmove Environmental Services regarding a job with a start date of 8 December 2022 as she alleges that the letterhead is not properly aligned and that the company did not exist as at that date. She refers to the Works Schedule by G Stout where she alleges that the signature at the bottom is not that of G Stout and the format of the Works Schedule is the same type format as the Respondent's with the inference that the Respondent had drafted the whole document.

The Respondent

Harassment

101. As the Applicant's written statement had stated she had withdrawn the claims regarding harassment, the Respondent attempted, as best as he was able to respond to the areas raised.

The condition of the house and the Respondent's continuing failure to repair the house on matters not included within the Improvement Notices;

As the Applicant had not clearly articulated this, the Respondent was unable to respond.

Arranging with Purple Bricks, and without any notification to the Applicant, for open house viewings of the Property when it was for sale.

102. The Respondent wrote to the Applicant on 6 January 2022 advising her that he was selling the Property through Purple Bricks who would like to take internal and external photos of the Property on 17 January 2022 between 10am and 12.30pm. The Applicant was advised that under the tenancy agreement she was required to allow access for inspection by future owners and the estate agent to take pictures. He advised that he was happy for the Applicant to contact Purple Bricks directly to arrange viewings as opposed to passing on her personal information and provided 2 phone numbers for the estate agents.

103. The Respondent's oral evidence was that the arrangements for viewings were a matter for the estate agent rather than him and he did not suggest 'open house' viewings. He produced evidence that the Property was advertised online by Purple Bricks.

104. The Respondent produced a letter from a Partner at Purple Bricks dated 13 February 2022 sent to him advising that they as had been unable to access the Property they had had to cancel over 70 viewing requests and turn down 9 offers. There had been no contact from the tenant and without being able to gain access to the Property, they were unable to proceed with any offers as surveyors would need access. The Respondent's oral evidence was that he had accepted an offer without the person having viewed the Property but the sale fell through as no access was given for the surveyor.

The Respondent arranging appointments for contractors on dates when the Respondent knew that she was not there or available and hindering the Improvement Notice works being done.

105. The Respondent's oral evidence is that the Applicant refused access to contractors and did not rearrange appointments when she has failed to allow them to attend. The majority of the Respondent's evidence on this point is contained within text threads between him and the contractors.

106. The Respondent had a prepaid British Gas service covering the boiler to which the Applicant had full access and which allowed her to contact British Gas directly.

107. The Respondent produced letters from British Gas which show their attempts to complete a gas safety check on numerous dates of which notice was given directly to the tenant both by British Gas and the Respondent but access was not granted, nor did the Applicant contact British Gas to arrange an alternative date. There is a summary from British Gas of their attempts to access the Property on at least 6 dates between 24 January 2022 to 2 September 2022, including to gain access to quote for a replacement radiator in approximately mid- February 2022.

108. The Respondent alleges that the Applicant has made it clear in a text message of 12 June 2022 that without a valid gas safety certificate, the Respondent is unable to seek possession and asserts that is her motivation for ensuring lack of access.

109. The Respondent had contacted the Applicant's solicitor, as requested by the Applicant, in order to secure dates for access but they were also not forthcoming. On 28 February 2022, the Respondent emailed the Applicant's solicitor and the Council asking for confirmation that the Applicant would allow access for British Gas on a specific date but there does not appear to have been a response. The Respondent had asked for dates for access by email and text as the Respondent's plumbing/heating engineer and British Gas had been unable to secure access and remained on standby

having completed works on the Respondent's other properties. The Respondent says that the Applicant did not supply any convenient dates and cancelled any that were booked and notice given.

The service of section 21 Notices as retaliation evictions.

110. The Respondent's evidence was that after the moratorium on possession proceedings had been lifted, his agent had contacted him asking him if he wished to proceed with the Notices now the courts were open again and that he'd understood, (mistakenly), that the agent would be continuing with the Notices already served rather than serving new ones. He said that he was not aware that there was an Improvement Notice at the time the second section 21 Notice was served.

Improvement Notices

111. The Respondent says that he did not receive Improvement Notice 1 as it had been sent to him at the Property rather than his home address. The postal redirection he had in place after he had moved out prior to the Applicant's tenancy in 2019 had expired. He was made aware, following separate contact by the Council, at the end of September 2021/ early October 2022.

112. He produces paid invoices from contractors detailing works carried out on 15 and 16 October 2021 in relation to works required under Improvement Notice 1. He produces an Electrical Installation Condition Report dated 15 October 2021 which identified the electrical installation to be satisfactory and records an observation regarding the consumer unit.

113. He produces letters and emails from British Gas who were unable to get access to the Property, including to quote for and carry out work to replace the radiator in the first- floor front bedroom as required by Improvement Notice 2.

114. The Respondent accepts that he was unable to complete the works required by the Improvement Notices by the dates required but that this was due to the Applicant refusing access to contractors. He was unable to complete a Gas Safety check as the Applicant told contractors that the boiler was not working and therefore such a check could not be carried out.

115. He relies on the email of the Council Officer dated 6 April 2022.He denies that he has doctored the email or any other documentation referred to by the Applicant or that he has falsified contractor's signatures. During the proceedings he had sent both to the Tribunal and the Applicant a password protected link from the Council regarding the disputed email.

Deliberations

116. The Tribunal considered the application in four stages –

a) Whether we were satisfied beyond a reasonable doubt that the Respondent had committed an offence under Section 1(2), (3), or (3A) of the Protection from Eviction Act 1977 or Section 30(1) Housing Act 2004

b) Whether the Applicant was entitled to apply to the Tribunal for a Rent Repayment Order;

c) Whether we should exercise our discretion to make a Rent Repayment Order;

d) Determination of the amount of any Order

Introduction

117. The Tribunal have to be satisfied beyond a reasonable doubt that the Respondent has committed one of the relevant criminal offences. This is a high bar. As the Applicant has initiated the proceedings, it is her responsibility to provide evidence to satisfy us that the Respondent has committed each element of the criminal offence. It is not the Respondent's responsibility to prove that he did not do something.

118. As the nature of the case is one of 'he said/she said', we need to assess the credibility of each party and look for corroborative evidence on matters of dispute. We are driven by evidence and not by someone's belief, assumption or interpretation of matters.

119. It was not helpful that the parties' bundles related to matters before the relevant period.

120. As the parties had previously been advised in Directions, in matters of dispute, the Tribunal attaches little weight to text threads without accompanying evidence such as a witness statement and the availability of a witness to be cross examined on the texts as there are difficulties in establishing dates and also whether the texts produced are a full and accurate representation rather than an excerpt or manipulation.

121. Again, as previously advised in Directions, we attach little weight to transcripts of phone conversations, without accompanying evidence such as a witness statement from each of the parties involved in the phone call and the availability for cross examination to confirm the accuracy and completeness of both the recording and any subsequent transcript. Phone calls can be recorded without the

knowledge of the other person on the call. This allows the person recording the call to 'lead' the person in discussion, phrase things in a particular way or 'set up' the person being recorded. The person being recorded is placed at an unfair disadvantage.

122. Neither party called any witnesses or produced witness statements. The Tribunal was therefore restricted to the parties' oral evidence and any corroboration within the contemporaneous letters/invoices and emails within the parties' bundles from external organisations' or contractors to which, in the absence of any evidence of forgery or manipulation, the Tribunal attached weight.

123. The Tribunal found the Applicant to be less credible than the Respondent. For example, we find it implausible that if 69 people were knocking on the Applicant's door over a period of 2 days that she would not take any action other than send a video of one car to the Respondent and contact the estate agent only once without requiring immediate action. Further, the letter from the estate agent says they had had no contact from the tenant and that they had had to cancel 70 viewings due to the lack of contact. We are unclear why the estate agents would make a false statement.

124. There are examples where the Applicant's interpretation of a document appears to be at complete odds with what the document actually says. For example, in her oral evidence she refers to the British Gas email to the Respondent dated 5 September 2022 which sets out British Gas's attempts to access the Property as evidence that the boiler was not working on 14 February 2022 whereas it actually says that she said that there was no gas to the Property and the boiler was not working. This is manifestly different to a qualified gas engineer attending, assessing the boiler and arriving at a conclusion that a gas safety check could not be conducted.

125. The Applicant's written statement refers to her heating not working January to June 2021 and yet her oral evidence referred to 2022.

126. She refers to the Respondent knowing that the boiler was not working and refusing to fix it and yet she did not contact the Respondent directly to advise him. She contacted H &V an external firm who, as the boiler was out of warranty, contacted the Council on behalf of the tenant, and the Council then contacted the Respondent by email on 9 February 2022. The Applicant says that the Respondent did not contact her and yet the Respondent texted the Applicant on the same day to say that he 'understands she says he needs a heating engineer'. There is email evidence from a plumber contacted by the Respondent on the same day who advises that he has contacted the Applicant to request access for repair to the radiator, to check the heating system and issue a gas certificate and he states that the Applicant said that all communication needed to be with her solicitor and the plumber gave her his details to pass to the solicitor. We do not see these actions as being consistent with a tenant who is genuinely seeking a boiler repair. The Applicant did not respond to the Respondent's text of 9 February 2022 until 23 February 2022 and said that she doesn't understand why the Respondent has made that comment

and refers to the works required by the Improvement Notice. The Applicant's evidence is inconsistent.

127. If evidence had been properly presented, with appropriate witness statements and corroborative evidence of the allegations, then the Tribunal may have been able to gain a more accurate picture of what actually transpired during the relevant period. However, the Tribunal is restricted to making a determination based on what it considers to be the unsatisfactory evidence before it, which itself is the result of an inordinate and disproportionate amount of procedural direction over a period of 18 months. We have had to do our best with the evidence available which lacks independent corroboration in many critical areas.

Offences

Section 1(2), (3), or (3A) of the Protection from Eviction Act 1977

Unlawful eviction and harassment of occupier.

Section 1

(1) …

(2) …

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

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(c) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(d) 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) …

128. The Applicant's allegations of harassment specified in her application relate to incidents on non -specific dates in 2020. As the alleged incidents in the application form do not relate to the 12- month period before the Tribunal application was made, then those alleged incidents cannot form the basis of an offence in determining a Rent Repayment Order.

129. The Applicant's bundle does not clearly particularise what she alleges to be the acts of harassment. She claims that her evidence relating to harassment was contained in her Reply to the Respondent's bundle which was determined to be inadmissible by Directions dated 21 August 2023 and the decision dated 6 November 2023. She told us at the hearing on 28 September 2023 that she had made a conscious decision to take such evidence from her Applicant's bundle as she wished to see the Respondent's statements regarding harassment and then 'catch him out' with the evidence in her Reply Bundle. This strategy was disastrous for the Applicant. The intention of Directions requiring parties to file statements and evidence prior to the hearing is to ensure that parties are not taken by surprise. It is for the Applicant to prove that there was harassment, not for the Respondent to prove that there was not.

130. The matter was not assisted by the Applicant having said in her Applicant's bundle on two separate occasions that she was not pursuing the claim in relation to harassment and yet then sought to resurrect it at the hearing.

131. The Tribunal did consider the matters identified by the Applicant after assistance by the Tribunal, as they were referred to in some degree in her written statement but with limited particularity or corroborative evidence.

<u>Condition of the house and continuing failure to repair the house wider than the Improvement notices</u>

132. We are not clear as to exactly what items of disrepair outside of the Improvement Notices the Applicant refers to. There had been Schedules of Work issued by the Council in December 2019 and January 2020 which are outside the relevant period and the Applicant has not clearly articulated that any of those items of disrepair remained outstanding during the relevant period. There was a further inspection by the Council on 22 June 2021, which was within the relevant period and which identified 7 matters for attention but none were legal requirements. However, the Tribunal notes the confusing nature of the Council's language in the sense that these items can only become 'legal requirements' upon the service of an improvement notice. The Housing Act 2004 is not drafted in such a way as to create direct offences, but rather it requires a risk assessment and the service of a notice to create binding legal requirements.

133. Outside of the Improvement Notices, neither the Applicant's bundle nor her oral evidence particularise, during the relevant period, what repairs were required, on what dates she had raised them with the Respondent, his response, whether the disrepair was ever remedied and how long they had remained outstanding. Further, assuming that the Applicant had been able to satisfy us that the Respondent had not carried out any such specified repairs, the Applicant then needed to satisfy us that such action or omission was likely to interfere with the peace and comfort of the Applicant AND that the Respondent knows, or has reasonable cause to believe, that that conduct is likely to cause the Applicant to give up the occupation of the whole or part of the premises.

134. Whilst the Tribunal can appreciate that a consistent failure by a landlord to carry out repairs, may, in certain circumstances , (and subject to consideration of the decision of *R v Ahmad (1986) 84 CR APP R 64* which held that the 1977 Act requires 'an act' not an omission) and depending on the nature of the repairs, amount to interference with a tenant's peace and comfort, the Applicant has provided limited evidence that the Respondent knew, or had reasonable cause to believe, that a consistent failure to carry out specified repairs, that we are not clear what they are, was likely to cause the Applicant to give up occupation of the Property.

135. On the evidence provided, the Tribunal are not satisfied that there is sufficient particularity of the acts alleged to have been done, (or not done), to allow us to consider whether or not there is a criminal offence under section 1 (3) or (3A) of the Protection from Eviction Act 1977.

136. <u>Arranging with Purple Bricks, and without any prior notification to her, for open house viewings of the Property when it was for sale.</u>

Whilst the Applicant contends that the Respondent arranged 'open house' viewings over the 2 days, she has not provided any evidence to support either that open house viewings were actually arranged or if they were, by whom.

137. As the Property had a for sale board outside and was advertised online, it is very likely that potential purchasers may have come to look at the Property from the outside and some may have knocked on the door, even though they did not have an appointment to visit, as that is not unusual. However, that is not evidence that the Respondent himself instructed the estate agents to arrange for open house viewings. The Tribunal note that the Applicant sent a video to the Respondent of a car on the road at the time, but that does not support her assertion. At the hearing the Applicant accepted that she had no evidence that the Respondent had directed any 'open house viewings. We are therefore satisfied that the Respondent did not commit an offence under section 1(3A) of the Protection from Eviction Act 1977.

Arranging appointments with contractors on dates when he knew she was not available

138. The Applicant has not explained to our satisfaction how the Respondent would know that the Applicant was not going to be at the Property when making such appointments. The tenancy agreement required him to give 24 hours' notice before access.

139. The Applicant had blocked the Respondent from contacting her by via email between March 2020 and November 2022 and she had also changed her email address. and required contact to be via text/whats app. Unfortunately, the majority of the evidence relating to this aspect for both the Applicant and Respondent is contained within text threads for both parties and transcripts of audio recordings for the Applicant to which, for reasons previously explained, the Tribunal attach little weight. The Tribunal have had regard to the email correspondence relating to the fitting of the window in the front bedroom in which the Applicant is noted to changes dates she had agreed with the contractor.

140. In the absence of any corroborative evidence, such as contemporaneous documents and associated witness statements, on the basis of the evidence produced, the Tribunal are not satisfied that the Applicant has proven that the Respondent was arranging appointments on dates that he knew that she was not available. On the basis of the available evidence, we are not satisfied beyond a reasonable doubt that the Respondent has committed an offence under section 1(3A) of the Protection from Eviction Act 1977.

The service of section 21 Notices.

141. During the relevant period, the landlord's agent served a section 21 Notice on 26 August 2021 and a section 8 Notice on 19 April 2022. Section 33 (1) of the Deregulation Act 2015 prevents the service of a section 21 Notice within 6 months beginning with the day of the service of an Improvement Notice, subject to exceptions in section 33(8) which do not apply in this case.

142. The Tribunal accept that the provisions of the Deregulation Act make the section 21 Notice dated 26 August 2021 invalid. However, we have to consider whether the service of the section 21 Notice (and section 8 Notice) during the relevant period could be considered to be harassment.

143. The Tribunal note that prior to the relevant period, the landlord's agent had issued a section 21 Notice on 1 September 2020 and a section 8 Notice on 8 January 2021, both during the pandemic and which had been affected by the moratorium on possession proceedings during this time. The evidence demonstrates that prior to the Improvement Notices being served, the Respondent had started to take steps to evict the Applicant by using two different methods namely 'no-fault' under section 21 and

due to rent arrears under section 8. This suggests to us that the subsequent section 21 and section 8 Notices in the relevant period were not retaliatory but a continuation of the Respondent's previous attempts to evict the Applicant. The Respondent was acting on the advice of a professional agent in terms of the service of eviction notices.

144. The Tribunal accept the Respondent's evidence regarding how the second section 21 Notice and section 8 Notice were issued. We accept that he considered that the agent was continuing or resurrecting the section 21 and section 8 Notices that had been held in abeyance during the pandemic whilst the courts were closed and therefore before an Improvement Notice had been served. Further, it is the Respondent's evidence that he was unaware that Improvement Notice 1 had been served until the end of September /early October 2021 as it had been sent to the Property rather than his home address.

145. If the Respondent had continuously served Notices of seeking possession which had been consistently refused by the court, the Tribunal may consider that to be harassment. However, we do not consider that the service of section 21 or section 8 notices per se are acts of harassment as landlords have the right to use the legislation in order to regain possession, provided they can satisfy the grounds for possession. It is not unusual to proceed under both section 21 and section 8 where there are rent arrears. We also accept that possession proceedings were affected during the pandemic. We therefore do not consider the service during the relevant period of the section 21 Notice (which was in any event invalid due to the service of the Improvement Notice) or the section 8 notice as acts of harassment falling under section 1 of the Protection from Eviction Act 1977. On the basis of the available evidence, we are not satisfied beyond a reasonable doubt that the Respondent has committed an offence under section 1(3A) of the Protection from Eviction Act 1977.

146. The Applicant sought the assistance of the CAB regarding issues with her tenancy who wrote to the Respondent on 12 September 2021 referring, inter alia, to the Applicant disclosing 'several incidents' 'which would likely amount to landlord harassment if evidenced'. However, the letter does not detail the incidents and neither are the Tribunal aware as to whether they are alleged to have occurred during the relevant period.

147. In her written statement the Applicant makes various allegations regarding Ms Tookey (pages 157-158). The Applicant uses the words she 'suspects' and 'believes' Ms Tookey is responsible for a range of matters, some of which are not dated, others of which occurred outside the relevant period. In the absence of particularized allegations with supporting evidence, including evidence that Ms Tookey was acting as the Respondent's agent when carrying out any such alleged activities, we cannot find that such alleged incidents amount to an offence under section 1(3A) of the Protection from Eviction Act 1977.

148. In conclusion, on the basis of the Applicant's evidence available to the Tribunal, the Tribunal are not satisfied beyond a reasonable doubt, that the Respondent committed an offence under section 1(3A) of the Protection from Eviction Act 1977.

Section 30(1) Housing Act 2004

Offence of failing to comply with improvement notice

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

(7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

149. During the hearing, an issue arose as to whether the Respondent had been properly served with Improvement Notice 1 as it was sent to him at the Property. The issue was referred to obliquely in the Respondent's written statement but there is no evidence in the bundle that he had raised this with the Council at the time. Clearly late receipt would have impacted on his right to appeal the Notice within 21 days and the time within which remedial works needed to be carried out. The Respondent accepts that he was eventually made aware of Improvement Notice 1 in late September/early October 2021 as the Council had contacted him regarding a matter.

150. He says that although not given the correct information or timescales, he worked to make arrangements with little notice to ensure that the Notice was complied with.

151. Improvement Notice 1 had been sent to the Property which was the Respondent's address at the Land Registry. He had not lived at the Property after the Applicant began her tenancy in 2019. The tenancy agreement set out the address for the service of Notices by the tenant.

152. An Improvement Notice must be sent to the last known address of an individual.

153. The Tribunal accept that the Improvement Notice 1 was not duly served on the Respondent. The Council officers involved in the service of Improvement Notice 1 must have reasonably known that he did not live there, as, since 2019, they had been in contact with the Applicant regarding allegations of disrepair who they knew lived at the Property under a tenancy agreement as opposed to a lodging arrangement. We do not know what enquiries, if any, were made by the Council to establish the Respondent's last known address, although note that correspondence by the Council to the Respondent in 2019 and 2020 was sent to the Property. An obvious step for the Council to have taken would have been to request a copy of the tenancy agreement which provides the landlord's address and email address. It is apparent from the revocation notice contained within the Respondent's bundle that the Council were communicating with the respondent at his correct address in July 2022.This address is the same as that provided on the tenancy agreement. Section 246(2) of the Housing Act 2004 states that the Council must undertake reasonable steps to identify the person or persons 'having control of premises'. We are not of the opinion that this duty has been met as it would have been reasonable for the Council to have requested a copy of the tenancy agreement from the Applicant in order to gain the address.

154. However, if we are wrong on that point, we have gone on to consider whether the Respondent has failed to comply with the Improvement Notices assuming they were properly served.

155. The Applicant has not been well served by the drafting of the Improvement Notices by the Council. They appear not to have included matters of which she had complained, and which had been in a previous Schedule of Works in December 2019/January 2020, for example black mould. The Improvement Notices also identified matters of which the Applicant had not complained and did not require resolving (e.g. window locks). However, we have to consider the Improvement Notices as drafted.

156. It is clear from the fact that the Council carried out the works in default in July 2022, which related to Improvement Notices 1 and 2, that the works required under the Improvement Notices were not carried out by the Respondent within the timescales required and therefore he has failed to comply with the Improvement Notices.

157. The Tribunal then went on to consider whether, under section 30 (3) of the Housing Act 2004, the Respondent had a reasonable excuse for failing to comply with the Improvement Notices.

158. The Respondent relies on the email from the Council officer dated 6 April 2022 which refers to access difficulties. The Tribunal do not accept the Applicant's assertion that the Respondent has 'doctored' the email by the insertion of the specific sentence disputed. The email is in response to an earlier email of the same date from the Respondent in which he asks the direct question 'can you confirm are these works are being undertaken on my behalf due to tenant restricting access'. We do not consider that the Council's response would not have at least made some reference to the direct question posed.

159. The Tribunal do not accept the Applicant's assertion at the hearing that the email address format and the Council 'security' string' at the bottom of the thread of emails demonstrate that the email has been 'doctored'. Neither the Tribunal nor the Applicant are experts in email security and the Applicant has not submitted any expert evidence on the point.

160. The Applicant has not provided any substantive evidence to substantiate her assertion that the email has been doctored, for example by providing a copy of what she alleges is an accurate copy of the email. We accept that she would have needed the Respondent's permission to obtain a copy of the letter from the Council, but it does not appear that it was sought. We can see no reason why the Respondent would refuse such a request if the email is accurate.

161. In her written statement the Applicant claims that Environmental Health have confirmed that the author did not send the mail. However, the Applicant has not produced any evidence from the Council officer concerned to confirm that the email

as produced is not accurate and does not reflect the copy within the Council's records.

162. The Respondent obtained confirmation of the accuracy of the email from the Council and it was provided to the Tribunal and the Applicant via a link from the Council which required a password. For reasons of which the Tribunal is unaware, the Tribunal office unfortunately did not access the link. The Applicant says that she was unable to get into the link. When it was put by the Tribunal to the Applicant that it seemed a high -risk strategy for the Respondent to forward the Council link to the Tribunal and the Applicant if the email was doctored, the Applicant's response was that the Respondent had provided it as 'a bluff'.

163. The Applicant sought to persuade us that the Respondent had 'doctored' or manipulated other documents in his bundle as support for her allegation in relation to the above email. However, we were again not persuaded. The Applicant had not provided witness statements in relation to the accuracy or otherwise of the documents from individuals involved in the respective businesses where she claimed there had been manipulation. It may be that she is correct, but she has not produced the evidence to satisfy us that that is the case, and without corroborative evidence, her 'belief' is insufficient.

164. The Tribunal find the email of 6 April 2022 from the Council to be compelling evidence.

165. We have considered the parties evidence regarding lack of access for contractors but for reasons previously stated we attach little weight to the text threads and audio transcripts provided by both parties.

166. The Applicant has not provided any corroborative evidence in any other format of her assertion that the Respondent booked contractor appointments and then cancelled them or booked them knowing she would not be there. The Tribunal do not find her assertion to be credible. What would be his motive? He was subject to Improvement Notices, which if not complied with within specific timescales could lead to legal action being taken against him and for which he may have been prosecuted and receive a criminal conviction. Whilst the Applicant has argued that the Respondent's conduct regarding booking appointments was an attempt to harass her, we cannot see how this would be a priority over avoiding a potential criminal conviction.

167. However, there is a motive for the Applicant to prevent access to contractors. It is clear that the Applicant knew, from at least 13 November 2019, following her original complaint to the Council regarding disrepair, that a landlord is unable to serve a Section 21 eviction notice for 6 months from the date of any Improvement notice. She also knew from the same date that if a landlord failed to comply with an Improvement Notice, that she may apply for a Rent Repayment Order. It was in the

Applicant's interests for an Improvement Notice to be served and to prevent the Improvement Notices from being complied with.

168. It is also clear from the documentary evidence that the Applicant knew that a landlord could not evict a tenant if there was no Gas Safety Certificate in place and indeed appears to have made this point to the British Gas engineer on 14 February 2022 according to British Gas records. Preventing access to the Property to allow a Gas Safety check to be carried out would prevent any eviction and was therefore to the Applicant's advantage. The Applicant asserts that the boiler was not working and therefore a Gas safety Check could not be carried out and therefore the continued attempts for appointments to do so were redundant. The Applicant has not produced evidence as to when she told the Respondent that the boiler was not working so that he could make arrangements for a repair and then the outstanding Gas Check could be carried out.

169. According to the British Gas records, the British Gas man who attended on 14 February 2022 did not inspect the boiler and therefore did not confirm that it was not working as is alleged by the Applicant. We note that in the British Gas summary, they have recorded the tenant confirming that there is no gas at the Property. As previously stated, it was the tenant's responsibility to pay for the supply of utilities. It is recorded that the Applicant told the gas engineer that it was not working and that Gas Safe were aware. We have not been provided by the Applicant with a copy of any evidence from Gas Safe to confirm that the boiler was not working.

170. The Tribunal accept the evidence in the British Gas correspondence, an external organization, relating to the number of appointments made and the reasons they were not progressed.

171. Having regard to the above paragraphs, we determine that the Respondent did have a reasonable excuse in failing to comply with the Improvement Notices. We are therefore not satisfied beyond a reasonable doubt that the Respondent committed an offence under section 30(1) of the Housing Act 2004.

172. As the Respondent has not committed any offence under the Housing and Planning Act 2016 within the 12 months prior to the making of the application to the Tribunal, then the provisions regarding Rent Repayment Orders are not satisfied. We therefore do not need to go on to consider steps b) to d) as set out in paragraph 116 above.

Refund of fees

173. As the Applicant has not succeeded in her application, it is not appropriate to order that the Respondent refund to her the Tribunal fees paid

Costs

174. The Respondent has made an application for costs in the sum of £19,148.20 and has submitted details of the costs. The costs do not include any legal fees and relate to the costs of both the Respondent and his representative attending the inspection, the four hearing days (£700 per day plus petrol, mileage and parking £154.20), the preparation of bundles (£11,900- a total of 238 hours for the Respondent and representative), correspondence with the Tribunal and the Applicant during the proceedings (£3800) and printing and copying costs (£194). There is also the cost of correspondence with solicitors regarding the Applicant's housing disrepair claim (£300).

175. By email dated 9 November 2023, the Applicant responded to the opportunity to comment on the Respondent's application for costs and whether she wished to make an application.

176. As the email was not copied to the Respondent as required, the Applicant was advised that the Tribunal would not consider its contents and she needed either to copy the email to the Respondent or write a separate email regarding costs which she must send to the Tribunal and copy to the Respondent. By email 12 November 2023, sent only to the Tribunal, the Applicant stated that she had sent a separate email to the Tribunal and Respondent regarding her response to the 'expense' claim. However, she did not provide the Tribunal with a copy of the email sent to the Respondent as required. We therefore have had no regard to her comments on the Respondent's application for costs. We note that the Applicant did not wish to make an application for costs.

177. The Tribunal may make an order under Rule 13 (1)(b) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 only if a party has acted unreasonably in bringing, defending or conducting the proceedings.

178. The application of Rule 13 was considered by the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 LC*. The correct application of the Rule requires us to adopt the following approach when determining an application for costs:

(1) Is there a reasonable explanation for the behaviour complained of?
(2) If not, then as a matter of discretion, should an order for costs be made?
(3) If an order for costs should be made, what should be the terms of that order?

179. The Upper Tribunal in *Willow Court* stated that a lay person unfamiliar with the substantive law or with Tribunal Procedure or who fails properly to appreciate the strengths or weaknesses of their own or their opponent's case should not be

treated as unreasonable. Tribunals should also not be over zealous in detecting unreasonable conduct after the event.

180. The Tribunal do not consider that the Applicant was unreasonable in bringing the proceedings and we accept that as a lay person she is likely to be unfamiliar with the law regarding the specific criminal offences she claims has been committed or the legal requirements for a Rent Repayment order to be made.

181. However, we find that her conduct has been unreasonable in how she has conducted the proceedings. The lengthy procedural history detailed earlier in the Decision demonstrates the Applicant's failure throughout the proceedings to comply with Directions and correspondence from the Tribunal. However, despite its powers to strike out the application and three warnings that it was to do so, the Tribunal did not exercise those powers due to her conduct during the proceedings. We therefore consider it inappropriate to consider the Applicant's conduct up to the reconvened hearings of 28 and 29 September 2023 and 8 November 2023.

182. At the September 2023 reconvened hearing, the Applicant attempted to use a bundle which she knew had been ruled inadmissible by Directions dated 21 August 2023. The Directions were clear in their terms and she can have been in no doubt that she was not allowed to use the bundle and yet proceeded to do so without informing the Tribunal that she was doing so.

183. In her written statement in her Applicant's bundle, she says clearly in two separate places that she is not pursuing the harassment claim and yet at the September 2023 reconvened hearing, she stated that she wished to pursue it. This had the effect of placing the Respondent at a disadvantage as he did not know the case he had to answer and the point was raised by the Respondent's representative.

184. At the 28 September 2023 reconvened hearing, the Applicant explained that she had taken all her evidence regarding the harassment claim out of her Applicant's bundle partly due to the size of the bundle but also as a strategic move in order to 'catch out' the Respondent when he submitted his bundle, as her intention was to submit further documents which would contradict what the Respondent had submitted.

185. At the September and November 2023 reconvened hearings, the Applicant attempted on numerous occasions to raise matters which were before the relevant period, despite having being advised, in Directions as early as 2 December 2022, subsequent Directions and during the reconvened hearings , that they could not be considered. This unnecessarily prolonged the length of the case.

186. The Applicant's submission on 18 October 2023 to submit a Reply to the Respondent's bundle, was submitted two weeks after the September 2023 reconvened hearings and after she had concluded her evidence and the Respondent

having started his evidence. She had been advised by Directions 21 August 2023, almost 2 months earlier, on how to submit an application, and yet waited until after she had completed giving her evidence. The application did not include a copy of the proposed bundle, and following further Directions, a copy of the proposed bundle was sent to the Tribunal and Respondent on 30 October 2023.The application was refused on 6 November 2023 for numerous reasons, including those for which the previous bundle had been refused by Directions dated 21 August 2023. The bundle was a minimum of 347 pages, (uncertain due to erroneous pagination) and required the Respondent and his representative to read it at short notice to be able to comment on the application.

187. The Tribunal accept that the Applicant has been legally unrepresented, but so has the Respondent. We also accept that the Applicant has had some health issues during the proceedings. However, in numerous Directions, both parties have been advised to seek legal advice. From both parties' bundles and the Applicant's oral evidence, it is clear that the Applicant initially claimed she had a solicitor assisting her in the proceedings and made continued reference throughout correspondence to her intention to obtain legal advice at various stages; she had the support of a solicitor in relation to her housing disrepair claim against the Respondent; a solicitor and barrister in relation to a possession claim in the County Court running parallel with these proceedings; the CAB; an organization called Support through Court and there is also a reference to Nottingham Law Centre in one document. We understand that the Applicant has owned a business in the past, although we do not know if this is still the case and she clearly demonstrated her intelligence at the hearings. There is no reason why she should not have been able to follow the Tribunal's Directions throughout the proceedings or at the hearings.

188. Having regard to the above, we cannot find a reasonable explanation for her behaviour. The Tribunal considers that an explanation for the behaviour, is that she wishes to 'prosecute' before the Tribunal **all** grievances she has had with the Respondent arising from the tenancy from when it commenced in 2019.We make no comment on this particular landlord and tenant relationship or the alleged condition of the house during the tenancy. However, despite the numerous Directions, from as early as 1 December 2022 and correspondence throughout the proceedings advising of the narrow matters before the Tribunal, the relevance or otherwise of documents in her bundle and the limited weight the Tribunal would attach to evidence in text and audio transcript format without accompanying witness statements, the Applicant has persisted, as late as her application on 18 October 2023 and the hearing on 8 November 2023, in pursuing matters which are not relevant or not in an appropriate format in order for the Tribunal to attach weight.

189. The Tribunal find that the Applicant's conduct in the proceedings, specifically from 28 September 2023 has been more than merely misguided and we find her to have conducted the proceedings unreasonably. We find that her conduct has had an impact on the amount of work the Respondent has had to do to respond to her claim which has been ever shifting, confusingly presented and included irrelevant matters.

The respondent was required to read a 347 page bundle at short notice within just over a week of the final hearing day of 8 November 2023.In our view, the Applicant's conduct has prolonged the length of the hearings by at least a day. We therefore exercise our discretion to make an award of costs.

190. The Respondent's application for costs totals £19,148.20 which relates to the total costs for the Respondent and his representative throughout the whole proceedings. The Tribunal does not award costs based on the outcome of the case but on whether a party's conduct has been unreasonable. We do not consider it reasonable to award costs for both the Respondent and his representative spending the same time on carrying out the activities (double counting). The Respondent also advised us that he was unemployed but that he had used his hourly rate in a previous role as a tennis coach to calculate the costs which we consider to be unreasonable. The costs relating to correspondence with the Applicant's solicitors regarding her housing disrepair claim do not arise out of these proceedings and we discount them.

191. Having regard to the limited period of time during which we consider the Applicant to have acted unreasonably in conducting the proceedings, namely from 28 September 2023 to 8 November 2023, and the likely impact on the Respondent in terms of additional time spent due to that conduct, we have considered the matter in the round and award costs against the Applicant in the sum of £750.

192. The costs are to be paid within 28 days of the date of this Decision unless the parties come to an arrangement beforehand as to payment.

Appeal

193. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson
5 December 2023