



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

**Case Reference** : **BIR/37UJ/HS/2024/0001**

**Property** : **47 Windmill Lane Nottingham NG2 4QB**

**Applicants** : **Marcin Piotr Hryniewicz (1) and Sylwia Ewa Kolodziej (2)**

**Respondent** : **Ashfaq Ahmad**

**Representative** : **Mr L Perry of Counsel**

**Type of Application** : **Application for Rent Repayment Order by tenant**  
Sections 40,41,43 and 44 Housing and Planning Act 2016  
**Application for reimbursement of fees** under Rule 13 of  
the Tribunal Procedure (First-Tier Tribunal) (Property  
Chamber) Rules 2013

**Tribunal Members** : **Judge T N Jackson**  
**Mr A McMurdo MSc CIEH**

**Date and venue of hearing** : **1 August 2024**  
**Video Hearing**  
**Midland Residential Property Tribunal**

**Date of Decision** : **19 September 2024**

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**DECISION**

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## **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 determines that there should be no reimbursement of the Applicants' application and hearing fees.

### **Reasons for decision**

#### **Introduction**

1. On 2 January 2024, the Applicants applied for a Rent Repayment Order stating that the Respondent had 1) harassed and illegally evicted the Applicants in breach of the Protection from Eviction Act 1977 and 2) let an unlicensed house in breach of the Housing Act 2004. The Applicants sought a Rent Repayment Order in the amount of £5036.67 in relation to the period 1 January 2021 to 31 December 2021. The Applicants also sought reimbursement of the £100 application and £200 hearing fees.

#### **Procedural history**

2. Directions were issued on 10 January 2024. A Case Management hearing was held by video on 30 March 2024 regarding two issues namely 1) potential striking out of the claim relating to the alleged offence under section 95(1) Housing Act 2014 which appeared to be out of time and 2) whether there should be a stay of proceedings pending the outcome of debt recovery proceedings in Nottingham County Court. Further Directions were issued on 30 April 2024 to which both parties responded.
3. Late documents were submitted by the Respondent's solicitor a week before the hearing, namely a witness statement of Ilona Glowack dated 17 July 2024, a witness statement of Tariq Malik dated 17 July 2024 and a copy of the trial bundle relating to County Court debt recovery proceedings.

#### **Background**

4. The Respondent is the sole registered owner of the Property. The First and Second Applicants were tenants at the Property from 1 April 2018 to 1 April 2023.
5. The Applicants entered into an Assured Tenancy agreement signed between the parties on 25 March 2018 from 1 April 2018 for 12 months at a rent of £700 per calendar month subject to an 8% increase on a yearly basis on 1 January of each year. No deposit was taken and one month's rent in advance was required. The Assured Tenancy Agreement came to an end on 1 April 2019 and became a statutory periodic tenancy on the same terms.
6. The Applicants raised concerns via email with the Respondent regarding aspects of disrepair in May 2018; December 2019; February 2020; November 2020 and October 2022. The Respondent responded as detailed later in this Decision.

7. In September 2022, the Respondent asked the Applicants for payment of the rent arrears as well as a direct debit arrangement, as it was not unusual for the rent to be paid late. The Second Applicant then asked for a new tenancy agreement between the Respondent and the Second Applicant only, with a separate supplementary tenancy agreement between the Respondent and the First Applicant. The Respondent agreed and increased the rent to £775 per month with the Second and First Applicants paying £600 and £175 per month respectively. The Second Applicant signed the agreement on 1 September 2022 and entered into an Assured Tenancy Agreement from 1 September 2022 for 12 months at a rent of £600 per calendar month subject to a 5% increase at the end of the term. No deposit was taken. The First Applicant did not sign the supplementary agreement or provide the required documents for the supplementary tenancy agreement to take effect.
8. From 1 September 2022, the Respondent received £600 per month from the Second Applicant until February 2023 and £175 per month from the First Applicant until November 2022.
9. The Respondent was out of the country from mid-September 2022 to the beginning of December 2022.
10. In December 2022, during discussions regarding outstanding rent from the previous 2018 tenancy agreement, the Respondent became aware that the Second Applicant had submitted the tenancy agreement dated 1 September 2022 to the benefit agencies for a benefit claim as a single occupant. The Respondent was aware from personal knowledge that both Applicants continued to live at and run business activities from the Property. The Respondent raised his concern with the Applicants at the potentially fraudulent claim. He advised that it may be better for the Applicants to find a different property.
11. On 8 December 2022, the Applicants reported the disrepair of the Property to Nottingham City Council ('the Council').
12. On 23 December 2022 the Respondent applied for a selective licence which was considered by the Council to be 'duly made' and a licence was granted with an expiry date of 29 December 2027.
13. On 28 December 2022, further discussion took place and it was agreed that there would be two separate agreements with the Second and First Applicants paying rents of £600 and £175 per month respectively. The Second Applicant signed a draft of an assured shorthold tenancy agreement with handwritten amendments individually signed by her for a tenancy from 1 January 2023 for 12 months. It was agreed that the First Applicant would provide the relevant documentation in order to complete his agreement. During this meeting, the Applicants are said to have agreed to email the Council to withdraw the complaint on the assurance that the repairs identified would be carried out.
14. On 30 December 2022, both Applicants refused to sign the final draft of the separate tenancy agreements.

15. On 3 January 2023, the Respondent wrote to the Applicants setting out the background and stated that he wished to give them the opportunity to make arrangements to sign the agreed documents before he took the matter further.
16. The Respondent alleges that the Applicants caused malicious damage to the Property's bathroom between December 2022 and April 2023. It is alleged that at the end of December 2022, the Applicants caused damage to the bathroom sink inlet pipe with consequential damage to the kitchen caused by the egress of water and which was subsequently repaired. At the beginning of March 2023, it is alleged that the Applicants caused damage to the toilet outlet bend which caused consequential damage. The Respondent reported the damage to the police on 30 March 2023.
17. On 10 January 2023, the Council inspected the Property and on 31 January 2023, issued an informal Schedule of Works to the Respondent regarding hazards that had been identified and asking him to contact them within 14 days to arrange a timescale to complete the works.
18. The Respondent engaged a contractor and commissioned the required repair work. The repair work was unable to be carried out due to limited access provided by the Applicants.
19. On 28 February 2023, the contractor noted further alleged 'malicious damage' caused to the bathroom. The Council subsequently confirmed that on its inspection on 10 January 2023, it had not seen the disrepair to the bathroom alleged by the Applicants.
20. On 1 March 2023, the Respondent served a section 8 Notice of Intention to begin possession proceedings<sup>1</sup> which stated that court proceedings would not commence before 15 March 2023. The Notice states that possession was sought on Grounds 8,11,12,13, and 17 as set out in Schedule 2 to the Housing Act 1988.
21. On 3 March 2023, the Respondent issued proceedings in Nottingham County Court for rent arrears of £2745.92 on the basis of unpaid 8% increase in rent for the period 1 January 2019 to 31 August 2022, rent arrears of £700 for the period 1 November 2022 to 28 February 2023 and £5300 in malicious damages alleged to have been caused by the Applicants from December 2022.
22. On 1 April 2023, the Applicants left the Property.
23. On 18 April 2023, a Council officer confirmed via email that at the time of the inspection in January 2023, the Property could not be considered to be unsuitable to occupy or pose significant risks to the Applicants.
24. On 26 April 2023, the Council confirmed all works required under the Schedule of Works had been completed.
25. On 17 July 2023, the Applicants, through a solicitor, commenced the pre action protocol for housing disrepair requiring immediate withdrawal of the County Court action for rent arrears and the payment of general damages of £11,150.

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<sup>1</sup> Section 8 Housing Act 1988

26. On 15 August 2023, the Respondent's solicitor replied, denied the claim and offered to withdraw the County Court action only on the basis that the Applicants reimburse the rental arrears and the alleged malicious damages caused in the amount of £5300.
27. On 14 February 2024, the County Court ordered judgement in favour of the Respondent in the sum of £3164 with the Applicants' required to pay a contribution to the Respondent's costs of £400.50. The figure related to rent arrears but no order was made in relation to the alleged malicious damage caused by the Applicants.

### **Inspection**

28. Having regard to the issue to be addressed and the evidence in the bundle, we did not consider it necessary to inspect the Property. The Applicants describe the Property as a 3 bedroomed semi-detached house with 2 floors comprising lounge, kitchen, 3 bedrooms and combined bathroom and toilet and an attic. The Property has front and rear gardens, front and side driveways and a detached utility building. The evidence includes photographs of the Property's interior.

### **Hearing**

29. The Applicants attended and were unrepresented. The Respondent attended and was represented by Mr L Perry of Counsel. In addition to the Respondent, Ms Ilona Glowacka, a tenant of the Respondent and Tariq Malik of TM Building Services gave evidence through his son, Mr Malik, who acted as an interpreter.

### **The Law**

30. 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 has committed an offence to which the 2016 Act applies.
31. The 2016 Act applies to an offence committed under section 1(2), (3), or (3A) of the Protection from Eviction Act 1977, (namely unlawful eviction or harassment of occupiers) and section 95(1) of the Housing Act 2004, (namely control or management of an unlicensed house).
32. 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).
33. Section 44 of the 2016 Act provides for how the Rent Repayment Order is to be calculated. In relation to an offence under 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 95(1) of the 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.
34. Section 44(4) of the 2016 Act states that in determining the amount of a Rent Repayment Order, we 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.

## **Documentation**

35. The Applicants had provided a bundle including a joint witness statement from the Applicants with exhibits including text exchanges between the Applicants and the Respondent regarding repairs; letter of complaint dated 8 December 2022 to the Council regarding alleged disrepair; Schedule of Works issued by the Council dated 31 March 2023; email dated 9 March 2023 from Respondent; letter from Respondent dated 3 January 2023; section 8 Housing Act 1988 Notice dated 1 March 2023; confirmation of Respondent's ownership of the Property; letter from the Council dated 21 July 2023 regarding the selective license; tenancy agreements dated 2018 and 2022; bank statements for period 1 January 2021 to 31 December 2021; Universal Credit Statements for the same period and bank statements covering 1 April 2018 to 1 April 2023.
36. The Respondent had provided a bundle including a witness statement from the Respondent; tenancy agreements of 2018, 2022 and draft December 2023; letter dated 10 February 2023 from T M Building services setting out the history of the repair work to the leak in the bathroom; email exchanges in February and March 2023 between the parties regarding alleged malicious damage and attempts to arrange dates for contractors to complete the works set out by the Council; letters from the Council dated 18 April 2023 and 14 April 2023; Safety certificates; letter dated 24 April 2024 from T M Building Services regarding work carried out from 6 April 2024 and details of payment made for the repair work by the Respondent; details of correspondence with police regarding the alleged malicious damage; County Court documentation regarding debt recovery proceedings; pre action protocol letter dated 17 June 2023 regarding housing disrepair from the Applicant's solicitor; letter of response from Respondent's solicitor dated 15 August 2023; Council letter dated 26 April 2023.
37. The Applicants had no objection to the admission of the late documents and we admitted as evidence witness statements from the builder, Mr T Malik of T M Building Services and Ms Glowacka, a tenant of the Respondent at a previous address and who, upon the Applicants' departure from the Property, had moved to the Property. We admitted the full trial bundle in relation to the County Court debt recovery proceedings of 14 February 2024 and a copy of the Nottingham County Court Order of the same date.

## **Submissions**

### Harassment

#### *Refusal to carry out essential repairs*

38. The Applicants allege that the Respondent harassed them by refusing to carry out essential repairs to the Property. The Applicants allege that between 2018 and 2022, the Respondent has many times refused to carry out essential repairs to the Property

and had been informed of the need for repairs in texts dated 6 May 2018; 30 December 2019; 28 November 2020 and 30 October 2022 (Exhibits 1-4 of the Applicants Bundle). The Applicants allege that the defects exposed the Applicants to hazards, personal injury and general distress and inconvenience. Due to the lack of action, the Applicants reported the Respondent's inaction to the Council on 8 December 2022 (Exhibit 5). An inspection was carried out and an informal Schedule of Works was issued to the Respondent identifying hazards in need of rectification (Exhibit 6).

39. The Respondent accepts that the Applicants reported repair issues, firstly in 2018. However, he denies that he took no action and says that the Applicants' evidence of electronic exchanges demonstrate that he investigated and took action. Immediately prior to the Property having been let to the Applicants, it had undergone extensive re-modelling and was a recently refurbished property with no issues as at when the Applicants moved in. He says that the Applicants caused many of the items of disrepair.
40. He says that he arranged for contractors to carry out repairs but on more than one occasion, the Applicants prohibited access to the Property. On other occasions, the Second Applicant treated contractors poorly to the extent that the contractor's left early without completing the works.
41. The Respondent says that the Applicants caused the leak to the shower through careless use. Plumbing work had been done to the shower system as part of the previous refurbishment immediately before the commencement of the 2018 tenancy.
42. The Respondent says that each time he sent TM Building Services to address the leak, the appointments were cancelled, rebooked or the Applicants would not allow entry which is confirmed by the contractor (Exhibit 1 of the Respondent's bundle). He refers to emails between himself and the Second Applicant regarding the various cancellations of appointments (Exhibit 1A).
43. The Respondent notes that the Applicants allege personal injury caused by the alleged disrepair but this has not previously been raised by the Applicants.
44. The Respondent says that the complaint to the Council regarding disrepair was made out of fear that the Applicants would be reported for an untruthful benefit claim. The Respondent accepts that an informal Schedule of Works was issued by the Council regarding matters of disrepair.

*Pressure to leave where the legal process for possession had not been followed*

45. The Applicants allege that the Respondent harassed them by pressuring them to leave where the legal process for possession had not been followed. It is alleged that the Respondent pressured the Applicants a few times to vacate the Property and had not commenced any court proceedings for possession and they refer to an email dated 9 March 2023 (Exhibit 7). It is also alleged that the Respondent placed pressure on the Second Applicant to refrain from exercising rights, such as reporting disrepair to the Council and demanded, both verbally and in writing, the withdrawal of the report about problems in the Property, otherwise the Respondent would take further action. The Applicants refer to a letter dated 3 January 2023 from the Respondent (Exhibit 8).

46. The Respondent says that prior to issuing the section 8 Notice, he had tried to resolve concerns with correspondence, meetings and negotiations all of which had failed to achieve a positive outcome. The Applicants refused to sign the agreed tenancy agreements and the First Applicant failed to provide the documents required to allow the supplementary tenancy agreement to be signed. The Applicants refused to pay outstanding rental arrears, allow contractors to enter the Property to carry out repairs and had caused 'malicious damage' to the bathroom. In those circumstances, following the service of the section 8 Notice, he sent the email dated 9 March 2023 which refers to '*vacate the Property without any further damages.*' He says the intention was not to apply pressure but to offer a solution to a broken-down relationship. The Respondent denies that his letter dated 3 January 2023 implies pressure towards the Second Applicant to withdraw the complaint to the Council. He says that the Second Applicant agreed to withdraw the complaint at the meeting in December 2022 if the repairs were made but then later changed her mind. He says that the final paragraph of the letter says that as the parties have failed to reach a mutual understanding, he offered the Applicants the opportunity to make arrangements to sign the agreed documents before he took the matter further.

#### *Illegal eviction*

47. The Applicants allege that the Respondent illegally evicted them by serving an illegal section 8 Notice under the Housing Act 1988 on 1 March 2023 with a deadline of 15 March 2023. The Applicants allege that this was illegal because the Respondent deprived the Applicants of their occupation of the Property by not commencing any court proceedings for possession. They refer to a section 8 Notice of Intention to begin proceedings for possession dated 1 March 2023; an email headed Eviction Notice dated 1 March 2023 which attached the section 8 Notice of the same date (Exhibits 9,10 and 11) and email from the Respondent dated 8 March 2023.

48. The Respondent says that the section 8 Notice was served lawfully and in the prescribed format, giving 14 days' notice to the Applicants.

#### *Certificates*

49. The Applicants allege non-compliance with Safety Standards on the basis of lack of Gas Safety Certificate; Electrical Safety Certificate; Energy Performance Certificate and the failure to provide the 'How to Rent' Guide during their tenancies.

50. The Respondent denies the allegation and says that the above certificates were provided to the tenants with the original tenancy agreement in March 2018. Providing 'How to Rent' leaflets was not a requirement at that time. Those certificates expired in August 2018 and were renewed and copies of those renewed certificates are attached as Exhibit 3 to the Respondent's statement. Up to date copies of the above documents were provided to the Second Applicant on 1 September 2022 and ticked off by her as received when she signed the tenancy agreement on 1 September 2022.

#### *Retaliatory action*



51. The Applicants allege that the Respondent's action in serving a section 8 Notice and commencing debt recovery proceedings was retaliation in response to receiving the Council's inspection report.
52. The Respondent says that the County Court proceedings were not retaliatory but rather pursued as a last resort due to the non- payment of rent, malicious damage alleged to have been caused by the Applicants and a complete breakdown in relationship between the parties.

#### Letting an unlicensed Property

53. The Applicants allege that the Property fell within Nottingham City Council's Selective Licensing Scheme which came into force on 1 August 2018 and the Property was not licensed from 1 August 2018 until 23 December 2022. They refer to a letter dated 21 July 2023 from Nottingham Council confirming that there was not a selective licence in place between 1 August 2018 and 23 December 2022 and that an application was made on 23 December 2022 (Exhibit 13 of the application).
54. The Respondent admits that the Property was unlicensed until 23 December 2022 as he did not appreciate until December 2022 that licensing applies to properties which do not fall under an HMO and are only shared by one household. He had applied for a licence on 23 December 2022 and has a licence which expires 29 December 2027.

#### **Deliberations**

##### Preliminary issue

##### Section 95(1) of the Housing Act 2004

55. A tenant can only apply for an RRO if the alleged offence under section 95(1) of the Housing Act 2004 was committed within the period of 12 months ending with the day on which the application to the Tribunal was made (section 44(2) of the Housing Act 2004). The application is deemed made when it is received by the Tribunal.
56. The Respondent admits that a licence was not in place from 1 August 2018 when a Selective Licence Scheme came into force but that he applied for one on 23 December 2022. We accept the evidence from the Council that an application for a licence was duly made on 23 December 2022 and therefore the offence under section 95(1) of the 2004 Act ceased on that date.
57. The application to the Tribunal was dated 20 December 2023. The Applicants have provided evidence, which we accept, of the application being posted by Special Delivery 1pm service addressed to Cambridge County Court i.e Eastern Region on 22 December 2023. The tracking information shows that it was delivered on 2 January 2024. We note that the application is date stamped as received by the Tribunal on 1 January 2024 but consider this to be an error as that was a bank holiday and the office would have been closed.
58. The Applicants accept that they were mistaken at the case management hearing on 30 March 2024 when they had stated that they had submitted the application to the Tribunal in mid -December 2023 and had received email correspondence from the

Tribunal confirming that the application had been forwarded to Midland Tribunal. They were unable to provide a copy of said email.

59. The Tribunal application form clearly states that the application should be sent to the appropriate Regional Tribunal and sets out the addresses of the Regional Tribunals including which geographical areas are covered. It also says 'IMPORTANT NOTE: The application must be made not later than 12 months after the date of the alleged offence'.
60. Whilst we have some sympathy for the Applicants as they had used a service intended to deliver the form by 1pm on 23 December 2023, the fact is that it was not received by the Eastern Regional Tribunal until 2 January 2024, some 12 months and 9 days after the offence had ceased. Further, there has been no satisfactory explanation why the application form was sent to the wrong Regional Tribunal, despite the clear statement in the notes to the application form itself.
61. As the application in relation to the alleged offence under section 95 of the 2004 Act was not received by the Tribunal within the required 12- month time limit, then we strike out that part of the Tribunal application.

#### Protection from Eviction Act 1977

62. We considered the remaining part of 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;
  - b) Whether the Applicants were 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

#### *Offence*

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

#### ***Unlawful eviction and harassment of occupier.***

#### Section 1

- (1) ...
- (2) *If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.*
- (3) *If any person with intent to cause the residential occupier of any premises-*

*(a) to give up the occupation of the premises or any part thereof; or*

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

*does acts 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—*

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

*(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,*

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

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

*(3C) ...*

63. We have to be satisfied beyond a reasonable doubt that the Respondent has committed the criminal offence. This is a high bar. As the Applicants have initiated the proceedings, it is their 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.
64. 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.
65. We did not find the First Applicant to be credible. In response to the question of when he alleged the harassment had commenced, he gave three different answers. His explanation of the reason why he paid the Respondent £175 per calendar month after 1 September 2022, (in the absence of any tenancy agreement with him specifically), namely that it was to allow the First Applicant to keep his things in the Property and this had been agreed with the landlord, lacked credulity. Any such arrangement should have been between himself and the Second Applicant as the tenant. Neither is it plausible that a landlord who had been receiving £700 per month from 1 April 2018 would agree 4 years later to rent the same Property to one of the same tenants for £600 per month when there had been no significant intervening factor affecting the value of the Property. The First Applicant denied that

Mr Malik had ever been to the Property and yet both documentary evidence and Mr Malik's oral evidence demonstrated otherwise. The First Applicant denied that the Property appeared to have been refurbished before the start of their tenancy in 2018 and yet the photos taken at the beginning of the tenancy which were included in the bundle clearly suggest otherwise. We therefore preferred the evidence of the Respondent.

### Harassment

#### *Refusal to carry out essential repairs*

66. We read each of the documents that the Applicants adduced as evidence of harassment and we have a different interpretation of the correspondence to that of the Applicants. Regarding the text message exchanges in May 2018 regarding the patio door lock and leaking shower, the Respondent responded within 44 minutes stating that he will come to the Property to check. The text message exchanges in December 2019 regarding a leaking bathroom tap and wet floor result in the Respondent responding within 3 minutes saying he will visit the Property that day to check and a further text after the New year period stating that a contractor is coming to sort out the bathroom tap.
67. In February 2020, the text exchanges refer to pieces of concrete falling from the roof some of which fell on the First Applicant's car. The Respondent responds within 9 minutes saying he will visit the following day to view the roof damage and in response to a further text from the Applicant minutes later, states that the Applicants have never raised concerns regarding the roof previously.
68. In November 2020, the Applicant texts the Respondent regarding a wasp nest, leaking shower and windows not sealing properly causing heat loss. The Respondent responds within 2 hours addressing each point raised setting out action he has already taken. In relation to the wasp nest, the contractors didn't complete the job due to the Second Applicant's conduct towards them. The Respondent had advised the Applicants to source another contractor and to advise him when they had the name of one. In relation to the window, we note from the Respondent's solicitor's letter dated 15 August 2023, that the Respondent had obtained a quote from a local upvc contractor to replace the window but that the First Applicant is said to have said that it was unnecessary to replace the window and that tightening a screw would solve the problem, and there were no further complaints following that action.
69. On 30 October 2022, the Second Applicant emails the Respondent setting out concerns regarding the shower area to which the Respondent replies the following day stating that on his visit 2 weeks prior there had not been a concern and that he was currently out of the country but would shorten his visit to discuss the matter further.
70. Correspondence between the parties between 19 January 2023 to 13 March 2023 demonstrate the difficulties encountered by the Respondent in gaining access for contractors to carry out the Schedule of Works issued by the Council to repair the items of disrepair the Applicants complained of. For example, in an email 22 January 2023, the Second Applicant limits the opportunity to attend to between 12pm and 3 pm on 23 January 2023 and states *'I have my own life and I'm not your servant and what is the most important in all this situation, your repair are depends on my free*

*time not yours*'. Whilst we accept that tenants have a right to peaceful enjoyment of a property the subject of a tenancy agreement, they need to be reasonable in allowing repairs to be carried out, particularly when they themselves have raised the specific concerns regarding disrepair and claim that it has the potential to affect their health.

71. We accept that failure to carry out essential repairs may constitute 'acts likely to interfere with the peace or comfort of the occupier' and be a breach of section 1(3)(A) if it can also be demonstrated that the landlord knows, or has reasonable cause to believe, that such conduct is likely to cause the occupier to give up occupation of the premises. However, we do not accept that in this case there has been a refusal to carry out essential repairs. We find that the Respondent has been very responsive to the Applicants' emails/texts regarding disrepair both in the time he takes to respond to them and, from the evidence of Mr Malik, the contractor and the exchanges between the parties, in making arrangements to remedy the alleged disrepair. We note that in relation to the wasp nest and the draughty window, any alleged continuing disrepair was due to the Applicant's own actions.
72. Further, the claim that the failure to deal with ongoing disrepair was harassment is undermined by the fact that, on whichever version of the disputed matter is correct as to the role of the First Applicant regarding a supplemental agreement, the Second Applicant initiated negotiations with the Respondent to enter into a further tenancy agreement in September 2022 and agreed a draft tenancy agreement in December 2022. We suggest that this would be unlikely if the Applicants considered that they were being harassed by the Respondent.
73. As we do not find that there has been a refusal to carry out essential repairs, then we do not find that there have been any 'acts' by the Respondent likely to interfere with the peace and comfort of the Applicants and therefore there can be no breach of section 1(3A) of the 1977 Act.

*Pressure to leave where the legal process for possession had not been followed*

74. It is correct that in the email in November 2020, the Respondent says that "*If you are not happy living in the property and believe it is not up to your standards, please make arrangements to look after (sic) for another house. I as a landlord request you to vacate the property within the specified period in the expired tenancy agreement. I will be grateful if you kindly pay all the outstanding rent and leave the property in a condition as was handed over to you*".
75. We do not find that the comments are a breach of section 1(3A) of the 1977 Act. Whilst a landlord has an obligation to keep a property in good repair, he is not required to meet whatever standards a tenant requires where this is over and above what could be considered to be reasonable repair, particularly where the tenants have prevented (wasp nest) or are satisfied with the resolution of a disrepair (draughty window). We note that on the subsequent 2 days to the email, the Applicants text the Respondent to confirm that they are happy to live at the Property, and would like to stay as long as they need to '*as you're a sensible person*'. The exchange concludes with the Respondent saying '*Good luck. Stay happy as long as we understand each other and appropriate your comments. Kindly clear off the outstanding rent payments please*'. A landlord asking for the payment of rent arrears in the manner described is not harassment. Whilst the Applicants may not have considered that there were rent arrears due to their lack of understanding of the first tenancy

agreement, it is clear from the subsequent County Court proceedings that there were rent arrears.

76. We do not find that the email dated 8 March 2023 from the Respondent to the Applicants is a breach of section 1 (3A) of the 1977 Act. Whilst the email refers to the Applicants letting the Respondent know of their intention to leave the Property, this is within the context that the section 8 Notice had already been served on 1 March 2023. A landlord is entitled to serve a section 8 Notice where he considers that there are grounds to do so and we note that the section 8 Notice set out several grounds on which possession was sought. The email refers again to the long outstanding rent and the failure to pay the £775 monthly rent. We are unclear how it is alleged that a landlord asking for rent arrears constitutes harassment, particularly when a County Court subsequently determines that rent arrears did exist and therefore the claim of rent arrears was not spurious.
77. The Applicants states that the fact that the Respondent had not continued with the possession proceedings to a court hearing is in itself harassment. We accept that the service by a landlord of a section 8 Notice on plainly spurious grounds or the service of repeated section 8 Notices which do not proceed to court proceedings without any reasonable explanation, may constitute a breach of section 1(3)(A) of the 1977 Act. However, that is not the case here. The Section 8 Notice provided that legal proceedings could not commence before 15 March 2023. The Applicants had vacated the Property on 1 April 2023 and therefore the Respondent did not need to pursue the possession proceedings. We do not accept that, in the circumstances described, failure to proceed with the possession proceedings is a breach of section 1(3A) of the 1977 Act.

#### *Illegal eviction*

78. The Applicants were asked to clarify their point under this heading. The Applicants allege that the section 8 Notice was 'illegal' because it contained information with which the Applicants disagreed, namely that they 1) were required to pay the 8% annual rent increase detailed in the 2018 tenancy agreement, 2) had caused malicious damage and 3) that the Property had been let in September 2022 on the basis of false information. The fact that a tenant disagrees with the contents of a section 8 Notice does not make it 'illegal'. If they disagree, then the appropriate course of action is to submit a defence and contest the matter through the court proceedings. The service of a section 8 Notice in the correct format, (which it was), but with which a tenant disagrees, (which is likely to be in the majority of cases), is a landlord's right and is not, in itself and absent of any other compelling factors, harassment or breach of section 1(3A) of the 1977 Act.

#### *Certificates*

79. There is a dispute between the parties as to whether the Respondent provided the Applicants with copies of the relevant certificates during the tenancies. We are satisfied from the evidence in the Respondent's bundle that there were valid certificates throughout the period of occupation. We also note that on the 2018 and 2022 tenancy agreements, the Applicants have confirmed that they have received the relevant certificates upon signing the agreements. In any event, even if we accepted that the certificates were not provided, (which we do not), we are not clear how this is alleged to be harassment. On being questioned on this specific point, the First

Applicant conceded that his issue was that the Respondent had not complied with his landlord obligations in providing them, rather than it being an issue of harassment. As we are satisfied that the certificates were provided and the First Applicant states that he does not consider the lack thereof to be harassment, we do not need to consider the matter further.

*Retaliatory action*

80. Having considered the history of the matter, the evidence of the breakdown in the relationship between the parties and the fact that the County Court determined that there were rent arrears, we do not consider that the service of the section 8 Notice or the commencement of debt recovery proceedings were retaliatory action in response to the service by the Council of the informal Schedule of Works on 31 January 2023.

81. In conclusion, we are not satisfied, beyond a reasonable doubt, that the Respondent was in breach of section 1(2), (3), or (3A) of the Protection from Eviction Act 1977. We therefore did not need to consider whether he had a defence under section 1(3)(B) of the 1977 Act. We did not need to consider steps b)-d) as referred to in paragraph 62 above.

**Costs**

82. No application for costs was made and we make no such order.

**Reimbursement of fees**

83. As the Applicants have not succeeded in their application, we do not make an order that the Respondent refund to them the Tribunal fees that they have paid.

**Appeal**

84. 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