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

| | | |
|---|---|---|
| **Case Reference** | **:** | **LON/00BB/HMF/2024/0176** |
| **Property** | **:** | **23 York Close, London, E6 5QN** |
| **Applicants** | **:** | **Anton Abdullah**<br>**Azizah Abdul** |
| **Representative** | **:** | **In person** |
| **Respondents** | **:** | **Earl Hemphill**<br>**Romina Hemphill** |
| **Representative** | **:** | **In person** |
| **Type of Application** | **:** | **Application for a rent repayment order by tenant**<br>Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016 |
| **Tribunal Members** | **:** | **Judge N Hawkes**<br>**Ms S Coughlin MCIEH** |
| **Venue and date of final hearing** | **:** | **Video hearing 17 February 2025** |
| **Date of Decision** | **:** | **10 March 2025** |

---

**DECISION**

---

## Decision of the Tribunal

The Tribunal dismisses the Applicants' application for a rent repayment order.

## The background

1. By an application dated 16 May 2024 ("the application"), the Applicants applied for a rent repayment order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act") against the Respondents.

2. By a written agreement dated 27 September 2023, the Respondents granted the Applicants and one other person a tenancy of 23 York Close, London, E6 5QN ("the Property"). The Applicants are husband and wife and they were a couple, although not yet married, when the tenancy began. The other tenant is the First Applicant's half-brother.

3. It is common ground that the Applicants have paid no rent other than an advance payment in respect of the first six months' rent. The First Applicant states that the rent was paid on 25 September 2023 and that the three tenants moved into the Property on 27 September 2023.

4. The Respondents state that the Property had a selective licence. The Applicants assert that they and the First Applicant's half-brother were living as separate households and that an additional licence was therefore required. The Applicants also allege that harassment offences under the Protection from Eviction Act 1977 ("the 1977 Act") have been committed by the Respondents.

5. The Respondents strongly dispute that they have committed any criminal offence and make assertions of inappropriate conduct on the part of the Applicants, which the Applicants strongly dispute.

6. On 11 July 2024, the Tribunal issued Directions (which were amended on 6 September 2024) leading up to a final hearing.

## The hearing

7. The final hearing took place by video on 17 February 2025. The First Applicant and the Respondents attended the hearing in person. The hearing ran from 9am until shortly before 3pm (rather than from the usual hours of 10am to 4pm) because the Respondents are based in Australia.

8. At the conclusion of the hearing, the Tribunal indicated that it might be necessary to hear further evidence, in which case a further hearing day would be listed. It follows from the Tribunal's determinations below that the further hearing day is not required.

9. At the conclusion of the hearing, after the Respondents had left the video hearing platform, the First Applicant asked the Tribunal some procedural questions. The Tribunal stated that Ms Coughlin is the expert member of the Panel, that details of how any party could apply for permission to appeal would be set out at the conclusion of the Tribunal's decision, and that the Tribunal could not discuss the substance of the case with one party in the absence of the others.

10. The First Applicant was also reminded that the Tribunal cannot advise any party and that the Case Officer had sent the parties a list of organisations which may be able to provide them with independent legal advice, some of which may be able to do so free of charge.

11. The Tribunal heard oral evidence from one witness of fact, Mr Stephen Watson, who was called to give evidence by the Applicants.

12. The final hearing was originally due to take place on 16 and 17 January 2025. The procedural history has been summarised in correspondence. On 17 January 2025, the Tribunal sent a letter to the parties which included the following:

"On 16 January 2025, the Tribunal drew the parties' attention to *Kowalek and another v Hassanein Ltd* [2022] EWCA Civ 1041 and asked the Case Officer to send the parties a copy of the judgment. The Tribunal then adjourned for an hour in order to give the parties the opportunity to read the judgment and consider its implications. After this adjournment, the parties confirmed that they had had sufficient time to consider the judgment. The Applicants stated that they disagreed with the judgment in *Kowalek* but that they accepted that it covered the issues in this case.

The Tribunal then wrote to the parties stating that the decision of the Court of Appeal in *Kowalek and another v Hassanein Ltd* [2022] EWCA Civ 1041 appears to conclusive of the Applicants' application insofar as it concerns allegations of a failure to licence the Property. However, having considered the matter further, before reaching its final decision it would be of assistance to the Tribunal to hear from the parties on the issue of whether the threshold for establishing beyond reasonable doubt

the commission of a relevant offence under the Protection from Eviction Act 1977 has potentially been met.

The Applicants responded making reference to their witness' availability and the Tribunal replied stating that the Tribunal had been unable to locate any witness statement from the Applicants' potential witness. It does not appear that any witness statement from the potential witness has been served in accordance with the Tribunal's Directions.

Parties are generally only able to rely upon the evidence of a witness if a witness statement setting out the evidence of that witness has been served in accordance with the time limit set out in the Tribunal's Directions. This is so that the other parties are not taken by surprise and can prepare their questions for the witness in advance of the hearing. It also enables the Tribunal to prepare for the hearing and is relevant to the hearing's time estimate.

The parties were invited to return to the remote video platform at 10 am on 17 January 2025 to discuss the case further. The Applicants were unable to attend but responded by email providing some proposed alternative dates on which they are available. The Tribunal is unfortunately unavailable on those dates.

The Respondents were able to attend at 10 am on 17 January 2025. The Tribunal explained (and the Respondents entirely accepted) that the Tribunal was unable to deal with the substance of the case in the absence of the Applicants. However, the Tribunal asked the Respondents whether they would consent to the Tribunal giving the Applicants further time in which to submit a witness statement from their proposed witness and the Respondents agreed to this.

Accordingly, the Tribunal directs that:

The Applicants have permission to send the Respondents and the Tribunal a copy of a witness statement of Mr S Watson **by 5 pm on 24th January 2025.**

The witness statement must contain the evidence of fact of Mr Watson on which the Applicants rely, it must identify the name and reference number of the case, have numbered paragraphs, and end with a statement of truth and the signature of the witness and the date on which the statement of truth was signed.

Mr Watson should also be provided with clean copies of the hearing bundles because he may be referred to them when he gives evidence at the adjourned hearing.

**This direction must be complied with if the Applicants wish to rely upon the evidence of Mr S Watson at the adjourned hearing.**

...

The legal issues are potentially complex and the Tribunal has not heard any witness evidence. Accordingly, the parties will be permitted to make legal submissions at the adjourned hearing of this matter (after any witness evidence of fact has been given) on all aspects of this case including:

> 1.Whether the reasoning in *Kowalek* covers the alleged Protection from Eviction Act 1977 offence when that is an offence mentioned in row 2 of the table in section 40(3) of the Housing and Planning Act 2016 and so by section 44 the amount must relate to rent paid by the tenant in respect of *"the period of 12 months ending with the date of the offence"*.
>
> 2.Whether the threshold for establishing beyond reasonable doubt the commission of a relevant offence under the Protection from Eviction Act 1977 has potentially been met.

**The parties may wish to take independent legal advice.** The Case Officer has been asked to attach a list of organisations which may be able to provide the parties with independent legal advice, some of which may be able to do so free of charge."

13. By letter dated 22 January 2025, the Applicants explained that they had not disagreed with the judgment in *Kowalek* but rather they did not agree that it covered the issues in their case.

14. On 24 January 2025, the Tribunal wrote to the parties stating:

"The Tribunal confirms receipt of the Applicants' correspondence and notes that the Applicants assert that the *Kowalek* case does not cover the issues in their case.

In any event, legal submissions will be made after the oral evidence has been heard. A witness statement of fact has now been served and the parties will not be restricted in their legal submissions by anything which was said before the witness gives his evidence."

15. The final hearing was subsequently listed to take place on 17 February 2025.

16. At the hearing, it was explained that the parties should present the entirety of their cases orally at the hearing and that the Tribunal would not base its decision on documents contained in the hearing bundles which had not been referred to.

17. This was so that everyone would know exactly what the other party's case was and how it was being presented, and so that any party with an alternative viewpoint would have the opportunity to make oral representations to the Tribunal in response to each point which was being raised.

18. The Tribunal has considered all the submissions that were made and all the documents which were referred to at the final hearing but will only refer below to those matters which it is necessary to set out in order to understand this decision.

## The Tribunal's determinations

19. Chapter 4 of the 2016 Act, enables the Tribunal to make a RRO where a landlord has committed any of the offences described in the table set out in section 40(3).

20. The offences include eviction or harassment of occupiers contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (row 2 in the table); control or management of an unlicensed house in multiple occupation contrary to section 72(1) of the 2004 Act (row 5 in the table); and control or management of an unlicensed house contrary to section 95(1) of the 2004 Act (row 6 in the table).

21. To make an order, the Tribunal must be satisfied beyond reasonable doubt that the landlord has committed a relevant offence (see section 43(1) of the 2016 Act). Accordingly, in any case, it would be insufficient for a Tribunal to be satisfied that it was possible or even probable that an offence had been committed.

### *The alleged licensing offence*

22. Section 40(2) of the 2016 Act provides that a RRO is an order requiring a landlord "to … repay an amount of rent paid by a tenant" or "to … pay a local housing authority an amount in respect of a relevant award of universal credit paid … in respect of rent under the tenancy".

23. A rent repayment order may be sought by either a tenant or a local housing authority. So far as applications by tenants are concerned, section 41(2) provides:.

"A tenant may apply for a rent repayment order only if— (a) the offence relates to housing that, at the time of the offence, was let to the tenant,

and (b) the offence was committed in the period of 12 months ending with the day on which the application is made."

24. Section 43(3) of the 2016 Act provides that, where an application for a rent repayment order is made by a tenant, the amount is to be determined in accordance with section 44 .

25. Section 44 of the 2016 Act includes provision that:

"(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

"(2) The amount must relate to rent paid during the period mentioned in the table.

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

26. As stated above, the Tribunal drew the parties' attention to *Kowalek and another v Hassanein Ltd* [2022] EWCA Civ 1041.

27. The First Applicant submits that the Applicants' case can be distinguished from *Kowalek*. However, in our view, the general principle set out in *Kowalek* applies in the present case.

28. At paragraphs 20 and 21 of the judgment in *Kowalek*, the Court of Appeal recorded:

*20. Mr Justin Bates, who appeared for Mr and Mrs Kowalek with Ms Brooke Lyne, argued that the Deputy President's analysis was erroneous. The opening words of section 44(2) of the 2016 Act, Mr Bates said, cross-refer to the table which follows, and the relevant period is simply that given in the table for the offence in question. The result in the case of, say, an infringement of section 95 of the 2004 Act (i.e. an*

*offence mentioned in row 6 of the table in section 40(3) of the 2016 Act) is that the amount of a rent repayment order "must relate to rent paid by the tenant in respect of … a period, not exceeding 12 months, during which the landlord was committing the offence". There is, Mr Bates contended, no need for the rent to have been paid at a time when the offence was being committed.*

*21. … If, Mr Bates argued, it were the case that, to be taken into account under section 44(2), any offsetting had to occur during the period specified as applicable in the table, section 52(2) would be deprived of any meaningful operation in most cases. Mr Bates suggested, too, that the Deputy President's approach could have absurd consequences. Suppose, he said, that a tenant paid 12 months' rent in advance and that the licence in respect of the property were revoked a month later. On the basis of the Deputy President's construction of section 44, it would not be possible to make any rent repayment order against the landlord even though he had been committing an offence for 11 of the 12 months in respect of which rent had been paid.*

29. At paragraph 26 of the judgment the Court of Appeal determined that:

*"the maximum amount of a rent repayment order must be determined without regard to rent which, while it might have discharged indebtedness which arose during the period specified in section 44(2), was not paid in that period."*

*30.* Accordingly, in respect of a licensing offence, an RRO must relate to rent which was paid at a time when the offence was being committed. On 25 September 2023, the only date on which rent was paid by the Applicants and the First-Applicant's half-brother, the tenants had not yet moved into the Property. Accordingly, the alleged need for an additional licence (if the Applicants and the Applicants' half-brother had formed more than one household) had not yet arisen at the time when the rent was paid.

*31.* As the rent was not paid during the period specified in section 44(2) (if the Applicants were to succeed in establishing beyond reasonable doubt that the alleged licensing offence had been committed), there is no rent in respect of which the Tribunal could potentially make an RRO under this heading.

*32.* Accordingly, it is not necessary for the Tribunal to hear evidence on the issue of whether or not the Applicants and the First-Applicant's half-brother formed one household.

***The alleged harassment offences under the Protection from Eviction Act 1977***

33. Protection from Eviction Act 1977 offences are offences mentioned in row 2 of the table at section 40(3) of the 2016 Act and so, by section 44 of the 2016 Act, the amount of any RRO must relate to rent paid by the tenant in respect of *"the period of 12 months ending with the date of the offence"*.

34. Section 1 of the Protection from Eviction Act 1977 ("the 1977 Act") includes provision that (emphasis supplied):

*(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.*

35. Accordingly, under each paragraph the requisite intent or knowledge of the landlord must be established.

36. It is common ground that, at all material times, the Respondents (who, as stated above, are based in Australia) instructed Chase Evans to act as managing agents and manage the Property.

37. The First Applicant stated that the Applicants' case that the Respondent has withheld services concerns the state of repair of the Property. In particular, it is the Applicants' case that:

    (i) Water penetration caused cracks to the ceiling and there was an extensive and significant problem of damp and mould at the Property which adversely affected their physical and mental health and the health of their baby. The Tribunal was referred to documentary evidence in support of this contention.

    (ii) There were occasions when contractors came to the Property but did not carry out work.

    (iii) There were no lights in the living room for around six months.

    (iv) There was no adequate heating because the roof of the Property was poorly insulated until remedial work was carried out.

    (v) There were other smaller wants of repair at the Property including damaged floorboards, cracks (including to floor tiles and window sills) and a hole in a ceiling.

38. The First Applicant stated that the Applicants did not have any direct contact with the Respondents. However, he is of the view that the Respondents sent contractors to the Property to make it look as if they were remedying defects and then did not authorise remedial work to be carried out due to the expense. He is also of the view that the Property was left in a poor condition by the Respondents to in order to induce the Applicants to leave before it would have been possible to serve a notice pursuant to section 21 of the Housing Act 1988 on the three tenants.

39. A representative of the local authority inspected the Property on 21 February 2024. The local authority then sent the Respondents an advisory letter but did not issue any prohibition order, improvement notice, or hazard awareness notice. The First Applicant informed the Tribunal that the gutters at the Property were cleared on 13 November 2023, so before the local authority's visit.

40. As regards any positive acts on the part of the Respondents which are relied upon by the Applicants, the First Applicant stated that it is the Applicants' case that the Respondents sent the Applicants invalid and retaliatory notices under section 21 of the Housing Act 1988 and repeatedly sent contractors to the Property who did not carry out the necessary repair work.

41. The Respondents informed the Tribunal that the Applicants had initially incorrectly asserted that a section 21 notice which had been served on them was invalid due to the absence of a gas safety certificate. They referred the Tribunal to a copy of the gas safety certificate which had been obtained in respect of the Property. They indicated that they had been advised that an initial section 21 notice was invalid because the First Applicant had changed his name, and the name change had not been reflected in the notice.

42. It is noted that a section 21 notice includes provision that "If you do not leave, your landlord may apply to the court for an order under Section 21(1) or (4) of the Housing Act 1988 requiring you to give up possession". Accordingly, it is for a Court to determine at a later date whether or not a residential occupier is required to give up possession.

43. The Tribunal heard oral evidence of fact from Mr Watson who was called by the Applicants to give evidence.

44. Mr Watson confirmed the contents of a written witness statement which he made on 22 January 2025 (although it is incorrectly dated 22 February 2025) in which he stated in respect of the Respondents:

*"Unfortunately I didn't know that Earl and Romina Hemphill still owned the property as I would have attempted to make contact with them in Australia as from the time that they lived in the property I know them to be caring, genuine and very community minded individuals who would be worried about the fabric of their property and any anyone affected by its condition."*

45. Mr Watson's oral evidence, which the Tribunal accepts on the balance of probabilities, included the matters summarised below:

(i) Mr Watson stated that he knew that the Respondents had paid for repairs to the Property during a previous tenant's tenancy of the Property because he had seen the scaffolding.

(ii) Mr Watson reported a problem with gutters at the Property to Chase Evans because he came home from a trip away to find water flooding through his window.

(iii) He phoned Chase Evans and spoke to a woman who told him that someone would fix the gutters that afternoon. However, at 4.45pm he spoke to a contractor who stated that Chase Evans had not in fact instructed them to fix the gutters but had said "there is an issue with the gutter, would you pop round".

(iv) When Mr Watson phoned Chase Evans again, the woman he spoke to contradicted everything she had previously said to him. He politely berated her and said he would take legal action.

(v) Mr Watson spoke to the contractor again and the contractor said that he would return the next day. The next day the contractor returned and was "really good". Mr Watson stated that it was Chase Evans and not the Respondents who were being obstructive when it came to carrying out this work.

(vi) Mr Watson gave evidence that Chase Evans told him that the Respondents had not permitted work to be carried out to the Property but that he knew that this could not be correct because it was the middle of the night in Australia so Chase Evans could not have contacted the Respondents. He reiterated that it was Chase Evans "that was causing the issue" and stated that Chase Evans had lied to him.

(vii) Mr Watson stated that he could not comment on the nature and extent of any mould in a bedroom at the Property because he never went into a bedroom.

(viii) Mr Watson said that he knew the Respondents really well and that, when he had taken part in a teacher exchange in 2004 to 2005 (the Respondents were residing at the Property at this time), the Respondents had been very caring and supportive to the person who had stayed in his home. He stated that, when a fence came down, the Respondents replaced it "so I knew that's the kind of people they are".

(ix) Mr Watson also stated that, on his return to his Property, the Respondents had had a problem with squirrels and they had been very worried in case this had affected him.

(x) He said that the Respondents had told him that they were paying to have Property Manager at the time of the Applicants' tenancy.

46. The Respondents referred the Tribunal to various documents including:

(i) An email dated 5 April 2024 from the local authority, (relied upon as evidence that the local authority considered the Respondents to be good landlords) in which the local authority stated:

*"I understand why you are considering selling the property. It's extremely difficult having to manage things from Australia so I can well understand why you might think it's causing more problems than it's worth ultimately. I'm sorry about that because we really need good landlords to remain in the private sector but you have to do what's right for you."*

(ii) An email dated 10 May 2024 from the local authority stating:

*"I haven't served an Improvement Notice. The letter you received was just an advisory and we send these letters to give landlords an opportunity to comment on the action we propose to take. You've done*

*that and the information you've provided has been taken into consideration so on balance, an Improvement Notice is not the most appropriate course of action in this case. The only exception would be if conditions deteriorated and nothing was being done to resolve the situation but that's not the case here. So the Section 21 would not fail due to an Improvement Notice. Section 21 notices can fail for other reasons, you've discovered one. Unfortunately it appears that the tenants have chosen not to comply with the Section 21 which means that Chase Evans will have to seek possession through the court and that is a lengthy process.*

*If the tenants are at least 2 months in arrears I would suggest that a Section 8 notice be served in addition to the Section 21. If there's a problem with the Section 21 then the Section 8 might be a better route to possession. It would still require a court process but it's a more substantial possession claim than the 'no fault' process under Section 21.*

*Follow this link for further information: Section 8 notice seeking possession: 10 points for private landlords (anthonygold.co.uk)*

*I'll provide a more detailed reply to your email at a later date. Thank you very much for providing an update on the current situation."*

(iii) Various emails to the Respondents from Chase Evans, including correspondence updating the Respondents concerning the management of the Property and correspondence informing the Respondents that the tenants were refusing access to enable repairs to be carried out.

47. The Tribunal was also referred to correspondence from Chase Evans to the Respondents in which the agents describe two reports of leaks at the Property and assert "These were the only 2 reports of leaks, which were addressed promptly".

48. The Applicants dispute that they unreasonably refused access to enable repairs to be carried out. The First Applicant contended, for example, that a handyman was asked to leave the Property by the Applicants only because he became abusive and that, when a contractor came to the Property without any prior notice from the agents, entry was refused because the managing agents failed to answer the phone to provide confirmation to the Applicants that the contractor was genuine.

49. As regards the Respondents' intentions, the Applicants rely upon an email sent by the First Respondent to the local authority dated 10 May 2024. As particular reliance was place on this correspondence, we will set it out in full:

*"Unfortunately the tenants have not moved out of 23 York Close and the section 21 eviction notice has been extended to early July, without our knowledge and to our shock, because of a name change of one of the tenants which apparently affects the notice. We have found this out on the 8th May without knowing this before.*

*The tenants are currently staying at the property for free as they are overdue on their rent.*

*We have recently had British gas visit and we would've liked them to do many of the items in your to do list but unfortunately the management company only had them check the gas but fortunately we understand it was all fine and there were no gas issues (as per attached picture in the attached zip file). This work was only a few days ago and we are still yet to receive an official report, they wrote a handwritten report. So I believe that takes care of the gas issue at the house as there are no issues. The gas fire in the living room is a fake one only there for decoration.*

*British gas is currently being arranged to come back out to the house to look at the extractor fan and the spotlights and the loose power sockets and such things so that should all be taken care of soon if the tenants allow British gas to come in. Regarding the roof we are arranging with the contractor Newman Roofing to fix all the tiling and ensure there is insulation in the roof as I believe is now required by law (see attached quote from Newman Roofing in the zip file).*

*Unfortunately Romina and I are not so well versed in English law and have come to learn yesterday by seeking free legal advice that a Section 21 will be invalid if the council has issued an improvement notice of works . Chase Evans issued a Section 21 on the 5th Feb (as per attached) which we were not aware that it was invalid.*

*Yesterday we had to contact a solicitor because we were shocked that after calling Chase Evans we were advised that they have extended the Section 21 till July without us knowing.*

*Accordingly to the solicitor a 2nd Section 21 will still be invalid is there is an Improvement notice in place. We wasted 3 months to find this out.*

*This worries us greatly and we were wondering if it would be possible as you stated in your previous email that we could finish the works when the tenants leave that you could issue a notice that either the works have been completed or the works are no longer required.*

*Of course we would complete the works before new tenants arrive. If you would like to carry out an inspection at that time and see that the works have been completed that might be option for you to assist the work end issue whatever documentation is required for us to continue with the eviction notice of the current tenants.*

*Alternatively, we can allow the council to send whatever contractors they require to have these works done quickly. Please note that the tenants are not very helpful when allowing contractors in. For example, over the last month a contractor has visited or tried to visit because the tenants do not seem to be there many times to replace a fridge and pick up the old fridges (see attached). Recently they came to pick up the old fridge and the tenants were informed to make sure that all things were removed from the fridge that was currently being used. Because the tenants did not do this the old fridge remains at the property and again this had to be rescheduled which costs us extra money for replacement and redelivery.*

*Another recent example, Adriana from Chase Evans tried to organise a handyman to visit the property to give us a quote unfortunately the tenants are not cooperating to allow this to happen. We personally contacted this handyman who explained that it is very difficult to gain access to the property and therefore give us a quote.*

*We are trying to look after the tenants fridge but unfortunately for us this has cost us an extra few hundred pounds. Perhaps if they receive a call from the council indicating that various contractors are coming out they will be more attentive to people attending the property.*

*Please note I mentioned the cost to us and of course they are not currently paying rent so this is a extra cost for us given that my wife is the only earner in our household as I am disabled by visual impairment and do not work. I use text to speech to write this email And Romina is very helpful with all her research activities. So sorry for any*

*grammatical errors. While I do get a pension which is very helpful it is not enough to add to my wife's income to continue*

*With this predicament. We personally do not have money and willing to help another family in London that refuse to pay us the rent.*

*Please see the attached which show the various contractors that have visited over the last couple of years for various issues and one of these issues was the mold. Issues like the mold and others are reoccurring so we can just assume that the tradies are not fixing the issues properly and being charged for investigating issues and not properly fixing them.*

*To recap, below is the situation of the issues:*

*1 : The roof is leaking - we arranged to go with Newman Roofing we are scheduling the time with him*

*2.The extractor fan in the bathroom is not powerful enough- Chase Evans will arrange British Gas to attend if they can get access to the property.*

*3. Ventilation in the bathroom causing possible mould- Chase Evans will arrange British Gas to attend if they can get access to the property.*

*4. The gas boiler is apparently working (as per attached photo in the zip file)*

*5. Gas fire in the living room is only there as decoration. it is fake so it will not work*

*6. The spotlights in the living room do not work- Chase Evans will arrange British Gas to attend if they can get access to the property.*

*7. The kitchen floor is sprung. As per attached check in report, we believe that the tenants have seen the property before signing the lease contract. if this was an issue, they should have not taken the property considering that we did not know that one of the tenant was pregnant and due to have a baby.*

*8. The power sockets are not working - as per attached inspection and check in report there were not mentioned of such issues but Chase Evans will arrange British Gas to attend if they can get access to the property.*

*Thanks for your time to ensure that we can evict the tenants Quickly and legally.*

*If you would like to talk about any of the above issues over the telephone then please arrange a time that is convenient to you. Please note we are 9 hours ahead in Australia."*

50. We note that the First Respondent expressly states that the Respondents wish to evict the tenants "legally". As stated above, the local authority confirmed that no improvement notice had been served.

51. The Tribunal was not referred to any evidence which establishes beyond reasonable doubt that the service of the section 21 notice on the incorrect name was anything other than the result of the Respondents following the advice of Chase Evans who were instructed to manage the Property whilst the Applicants were in Australia.

52. Having carefully weighed up all of the evidence we find that the Applicants have failed to establish beyond reasonable doubt that any offence of harassment under the 1977 Act has been committed. In particular, the correspondence referred to above and the fact that the Respondents, who are located in Australia, instructed professional managing agents to manage the Property on their behalf together with Mr Watson's very positive evidence concerning the Respondents and Mr Watson's negative evidence concerning the managing agents raises considerable doubt (and certainly a reasonable doubt) as to whether the Respondents had the mental state required under the 1977 Act in order for a criminal offence to be committed.

53. Having found that the relevant mental state on the part of the Respondents has not been established beyond reasonable doubt, it is not necessary for the Tribunal to go on to determine whether the other elements of the alleged criminal offences have been established beyond reasonable doubt.

54. As the Tribunal is not satisfied beyond reasonable doubt that an offence of harassment under the 1977 Act has been committed, the Applicants' application is dismissed.

**Name:** Judge Hawkes **Date:** 10 March 2025

## Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).