



Case No: E7PP7365

**IN THE COUNTY COURT AT CENTRAL LONDON**

Thomas More Building  
Royal Courts of Justice  
Strand, London  
WC2A 2LL

17 May 2023

BEFORE:

**HIS HONOUR JUDGE LUBA KC**

BETWEEN:

**PHILIP TAHIR**

Claimant

- v -

**OMAR AGHRI**

and

**SIMONA COLAVIZZA**

Defendants

Hearing dates: *13, 14 and 15 March 2023*

Written closing submissions: *31 March 2023 and 14 April 2023*

**Mr Jonathan Trussler** appeared on behalf of the Claimant

**Mr Alex Grigg** appeared on behalf of the Defendants

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## JUDGMENT

*I direct that no recording shall be taken of this Judgment and that copies of this version as sealed and handed down may be treated as authentic.*

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### **Introduction**

1. These proceedings began life as a landlord's claim for possession of residential premises issued in September 2018. The basis of the claim was that the tenants were in arrears of rent and that their right to occupy had been determined by a notice to quit. A possession order was sought together with judgment for the alleged arrears of rent. The claim was defended, and the defendants advanced a counterclaim. The landlord defended the counterclaim and purported to advance a counterclaim of his own.
2. By the time that the proceedings came on for trial before me in mid-March 2023, they had been transformed by multiple developments. First, the landlord had written to the Court in December 2018 withdrawing 'the entire case'. That was treated, by an order made in January 2019, as a notice of discontinuance of the claim. Second, the tenants had left the premises in April 2019 and the tenancy was then ended if it had not earlier been so. Third, the former tenants' case had undergone many iterations and was now framed in a Re-Amended Defence and Counterclaim made in September 2022. Fourth, the former landlord's case had been re-cast into an Amended Reply & Defence to Counterclaim made in October 2022, purporting to include, by cross-reference, his own earlier counterclaim advanced in a statement of case from October 2021.
3. The trial had been set down for three days. But the first day and part of the second were taken up by repeated short adjournments for the parties to explore the possibilities for a last-minute negotiated settlement and by the need to deal with a slew of late applications. Indeed, I was invited by the claimant to vacate the trial so that the applications might be dealt with. I rejected that invitation, dealt with the applications as advanced, and got on with the trial. Although much of the responsibility for that state of affairs arose from the late instruction of new solicitors and counsel by the former landlord, counsel for the claimant was right to observe in his closing submissions that none 'of the parties are in a position to assert that their respective cases were in particularly good order.'
4. The second and third days of the trial were occupied with the evidence of the parties, leaving no time remaining for closing speeches or judgment. I directed that sequential written closing submissions be filed after a short further stay for the parties to reflect on their positions in light of the evidence and to consider whether a negotiated settlement might still not be achieved. Such settlement proved impossible and closing submissions were delivered in March and April as scheduled.

5. Among the applications determined at the outset of the trial were three from the claimant, two of which were filed on the morning of the first day (13 March 2023). The first sought permission to advance the claimant's purported counterclaim to the tenants' counterclaim. For reasons given in a short *extempore* judgment, I refused that application. The second sought permission to introduce a significant number of additional documents as an exhibit to a new witness statement of the claimant that itself had been filed pursuant to an application notice dated as recently as 9 March 2023. That application was unopposed and led to the production of a significant supplementary bundle to add to the substantial documentation already contained in the poorly organised two-volume trial bundle. The third application, made orally on the second day of trial (14 March 2023), was for permission to rely on another new witness statement of the claimant which made apology for and withdrew improper comments earlier made and referring to the defendants' counsel. That statement was then made and dated 15 March 2023. Over the final days of the trial there were also several further applications - to replace documents in, and add documents to, the trial bundle - which were made by both parties.
6. As a result of the developments in the litigation, the matter that actually now falls for determination by the Court is the defendants' *counterclaim*. Their case was advanced in helpful written and oral argument from Mr Grigg of counsel. The claimant's answer to it was framed in succinct written and oral argument from Mr Trussler of counsel. I am grateful for their assistance. Happily, counsel are agreed as to the applicable law relating to all aspects of the proceedings. Accordingly, what remains for determination by the Court is the resolution of disputes as to fact and the quantification of any recoverable loss for the defendants.
7. The counterclaim seeks damages for: alleged failure to comply with tenancy deposit protection requirements; alleged failure to maintain the premises in good condition; alleged harassment and discrimination; and alleged unlawful eviction.
8. At trial, I heard and read only the evidence given by the parties themselves. First from each of the two defendants and then from the claimant. Neither party called any other witness.

### **The premises**

9. These proceedings are concerned with premises at 10 Urmston Drive, London, SW19. That is a first floor flat in a multi storey block of flats of which the freeholder is the Wandsworth London Borough Council.
10. The claimant, Mr Tahir, had been the council's tenant and had occupied the flat with his family. In 2004, he bought the flat from the council at a discount and became the long leaseholder. Later, he and his family moved out to live elsewhere and by early 2015 he had converted the property from an ordinary three bedroomed flat to comprise four self-contained studio flats. He had no permission from the council to convert the premises in that way. These new units were let out to tenants. Because the self-contained units were modest bedrooms with adjacent bathrooms and kitchen areas, they provided little room for storage. Accordingly, the common hallway contained lockable storage units for each tenant's goods. The whole was therefore a house in multiple

occupation, for which Mr Tahir would have required a local authority licence, given the four self-contained units. There is a dispute as to whether, some time later, one of the four units was converted into a shared kitchen and/or shared bathroom for communal use by the remaining residents and as to whether Mr Tahir at some stage himself lived in one of the units during periods of separation from his wife.

11. The present defendants, Mr Aghri and his partner Ms Colavizza, moved into No.10 and lived there as their home from February 2015 until April 2019. They occupied one of the four units. It comprised a bedroom with adjacent wc and shower unit and a small adjacent cooking and food preparation area. From the language used in their statements of case, a reader might well understand that they were claiming to have been in occupation of the whole premises at No.10 but that was never so and probably arises from a misunderstanding by the solicitors they instructed. Not least from a manuscript sketch plan one or other of them drew at an earlier stage in the proceedings, it has only ever been their correct case that they occupied one small unit in the flat, sharing the common parts and other facilities with the other tenants.
12. From early 2018, Mr Tahir took steps to give effect to a plan he had to sell No.10 with vacant possession. Tenants who left were not replaced and by late 2018 or early 2019, the present defendants were the only tenants remaining in occupation. That was the position in January 2019 when the property was inspected by a surveyor instructed as a single joint expert.
13. It appears that the property was initially marketed in its sub-divided state, but that eventually Mr Tahir undertook the works necessary to fully convert it back to its original function as a three-bedroom flat for a single household. After the departure of the defendants, it was completely refurbished and sold by the claimant with vacant possession.

### **The parties' cases and their evidence**

14. The parties give diametrically opposed accounts of what happened at the flat and between them during the latter period of the defendants' occupation. In short, the tenants contend that they were driven out by the landlord as part of his project to sell with vacant possession. Initially, this took the form of the landlord's deliberate failure to maintain the condition of the property and his deliberate interference with the services in the flat. Thereafter by his giving of notice and issue of proceedings. When they did not leave voluntarily, they were subjected to direct harassment culminating in their being locked out and their possessions stolen or discarded.
15. The landlord's account is that it is he who was and is the victim of malicious allegations by the defendants. This arises, he claims, from his refusal to further support their applications relating to their immigration status and/or his refusal to co-operate with a scheme they had hatched to secure their own council flat elsewhere. His case is that it is the tenants themselves who behaved badly - by failing to pay rent, cutting off services, changing the locks and by threatening him with violence.
16. Before I turn therefore to the determination of the individual elements of the counterclaim it is necessary to set out my general assessment of the evidence given by

the parties. In doing so, I make allowance for the fact that English is not the first language of any of the parties and that their mastery of it both in writing and orally was incomplete. Likewise, I make allowance for the fact that, by the time they came to give their oral evidence, they were dealing with matters which had occurred at least four years earlier. I have read and re-read their many witness statements and carefully considered the documents to which I was referred in support of their competing cases in the Trial Bundle and supplementary bundle.

17. My task is well-described in the claimant's closing submissions as being to 'make an assessment as to who is more likely to be telling the truth'. That is an assessment not to be limited to, or even principally based upon, performance in the witness box. It is one to be made in the round and particularly by relating what each had written and said to the wealth of contemporaneous documents, photographs and video material placed before the Court. Although I cannot encumber this judgment with reference to all that I heard and read - and cannot sensibly refer to and resolve each and every minor dispute of fact - I have firmly and freshly in mind all the evidence that was advanced at trial.
18. In terms of general assessment, I am satisfied that the defendants were doing their best to offer an accurate and truthful account to the Court. Their evidence was detailed and consistent, internally, with each other, and with the contemporaneous documents. When appropriate to do so, Mr Aghri made sensible concession when giving his evidence. His wife, Ms Colavizza, was equally candid and clear in the giving of her evidence. I reject Mr Trussler's submission that their production of two separate video clips of one stage of their alleged unlawful eviction, rather than one continuous clip, in some way undermines their account. That, with respect to him, was a 'clutching at straws'. Its weakness, as an example of why I should find that their evidence fell short, rather underscores my assessment that I am able to accept the general thrust of their evidence. Their account of a landlord determined to drive them out in order to clear the premises to sell them was one which, in my judgment, was more likely than not to be true.
19. In contrast, Mr Tahir was not a good witness. His account I found to be exaggerated and, in many respects, implausible. His evidence was as inconsistent as his pleaded case. I will refer to particular examples in dealing with the discrete aspects of the case later in this judgment. No doubt on direct instructions, Mr Trussler advanced Mr Tahir's case in his closing submissions as being that 'the defendants deliberately caused damage and disrepair to the property with the intention of making themselves homeless' and that they were engaged in 'a cynical and dishonest attempt to secure money in the form of damages'. This was consistent with the claimant's evidence that they had been engaged in 'criminal' and 'illegal' behaviour.
20. Sadly, the evidence demonstrates a propensity on the part of Mr Tahir to make outlandish allegations. They have previously been directed at the conduct of not only the defendants but of others including his own earlier counsel, counsel for the defendants, and the single joint expert. Both those counsel were described in writing as having 'cheated' him and Mr Grigg was alleged to have sought a bribe. The expert was described as 'unprofessional' and 'anti-landlord'. He was accused of 'falsifying your report' and of 'dishonesty'. There was never any substance in any of those allegations and in his witness statement made at the trial Mr Tahir withdrew them, at least in respect of Mr Grigg, the defendants' counsel.

21. At the heart of Mr Tahir's account was a contention that he himself had been in occupation of part of the flat for a significant portion of the time that the defendants had been his tenants of their part of it. It was in those circumstances, he contended, that he had been present and directly experienced their misconduct and aggression towards him including violence and threats or attempts to kill him. The defendants said that he had never lived in the flat at any time during their occupation.
22. His account was that he was living at the flat because he and his wife had separated. I cannot accept the truth of that. It is inconsistent with his use of his family home address on various of the tenancy agreements from 2015 and in notices that he gave in 2018. It is likewise inconsistent with the language used in texts exchanged between the parties in 2017 and 2018 strongly suggesting he was living elsewhere and only coming to the flat occasionally, for example to collect the rent and pick up the utility bills addressed to him. The suggestion (that he was living in the flat) was not made by him in his witness statement of October 2018. And most significantly, he called no witness, whether a family member, relative or friend who could or would confirm that he had been living at the flat at any material time. It is perhaps therefore no surprise that he adduced no witness evidence from anyone who saw - or received a report from him of - the alleged criminal, illegal, violent behaviour of the defendants.
23. In short, where there is disagreement in the factual accounts of the claimant and the defendants, I generally prefer the evidence of the defendants. I am only able to accept the correctness of the claimant's account where it is not disputed or if it is corroborated by an independent contemporaneous document.

### **The Elements of the Counterclaim**

#### **Tenancy deposit**

24. The defendants contend that they paid a tenancy deposit of £800 on taking up occupation of their studio unit in the flat in February 2015. That was paid in cash, in addition to payment of £740 for the rent. They produced a bank account entry showing £1000 withdrawn by debit card on the payment date which they say is money used to provide most of those funds. Their account is that they received in return a written tenancy agreement for three months and that their copy of it was collected from them and retained by the claimant when, in May 2015 they entered into another written agreement with him for a new tenancy of a further 13 weeks. That agreement is silent as to a deposit. In a further agreement made in August 2015, there is reference to a 'security deposit' and 'the £800 deposit' but it is recorded that 'Tenant did not give the deposit' and 'agreed to pay it in the next three months'. A later six-month tenancy agreement made on 11 November 2015 makes detailed provision in relation to the security deposit and provides that the tenant 'will pay' £800.
25. The claimant's case is that the deposit was first paid in November 2015 and that upon receiving it he protected it and complied with the statutory requirements as to providing the tenants with prescribed information. Prior to that he had neither sought nor been paid any deposit. His account was that the defendants had been let into occupation on a short-term licence and on trust as a charitable gesture, as a result of which he did not

seek and was not paid a deposit. It was only when he entered into the six-month assured shorthold agreement in November 2015 that he took and promptly protected the deposit.

26. This, he contends, is corroborated by a payment into his bank account at that time. But no bank statement was adduced and, in an agreed note on evidence submitted immediately after Mr Tahir had given evidence, it was agreed that a reference by him, to an entry in a list of documents said to be to a statement showing that a deposit had been paid at that time should be corrected to read 'not' being paid at that time.
27. I have no hesitation in accepting the defendants' account. It is inherently implausible that the claimant would have let this couple, unknown to him, into occupation of his property without the assurance of a deposit or that, in May 2015, he really agreed to give them a further three months to come up with the money. The account as to what actually happened, given by Mr Aghri in his oral evidence, was clear and compelling and consistent with his written evidence and with the significant cash debit from his bank account on the date of payment. Given his poor English and inexperience I accept that he signed the August agreement without reading it, at the claimant's prompting to sign it quickly and without spotting or checking for what was said about any deposit. In any event, in May 2017 the claimant again presented the defendants with an agreement for signature providing for payment of a deposit of £800 'on execution', even though he well knew he was already in receipt of that sum.
28. I am therefore amply satisfied that the defendants have discharged the burden of showing that they paid a deposit in respect of their February, May and August 2015 tenancies but that the deposit was not protected until November 2015.
29. I should record that it appeared to be the claimant's case that it could not be right that there was any obligation to protect a deposit because the defendants were (at least initially) his licensees. But he is wrong. They had exclusive possession of their studio unit, at rent, for a term, from the outset. They were tenants. The claimant's contrary contention was never a sensible one as he appears to recognise in his statement of case dated 14 October 2022 at paragraph [37] by writing '*...when subletting the room to the Defendants in February 2015.*'
30. It follows that there was non-compliance by the claimant with his obligations in respect of the deposit - cast upon him by the Housing Act 2004 - in February, May and August 2015 and only belated compliance with those obligations in respect of protection in November 2015. As to provision of prescribed information. I am satisfied that the defendants have established want of compliance by the claimant over a significant period.
31. By Housing Act 2004 section 214(3), I must and do order the claimant to repay the deposit (£800) to the defendants if it has not already been repaid.
32. Further, pursuant to section 214(4), I must impose a penalty (for each breach) which is in a sum between the multipliers of one and three times the deposit. I consider that the lowest level award should be made in respect of technical breaches and insignificant delays in compliance, the highest for the gross cases in which a deposit is deliberately never protected.

33. Here the landlord was dealing with a young inexperienced couple with a vulnerable immigration status and poor English. He took their money in cash, giving no receipts, and retrieving and retaining their initial written agreement. He could produce no audited accounts dealing with the money he had and received. He was no amateur. I consider that the appropriate sum to fix for non-protection and non-provision of information is £1600 in respect of each of the February, May and August 2015 breaches amounting in total to £4800.
34. At least, from November 2015, the deposit was eventually protected but there was a continuing failure to provide the prescribed information until the proceedings were on foot, notwithstanding further tenancy agreements in November 2015 and May 2017. In respect of that further default, I fix the statutory sum at £1000 – something above the minimum - in respect of each further breach (2 x £1000 = £2000).
35. My award under this head will accordingly be £4800 plus £2000 (= £6800) plus the deposit of £800 itself, if it has not already been repaid.
36. The claim in respect of the deposit is bizarrely also advanced by the defendants as a contractual claim for breach of an implied term. I do not find that there was any relevant implied term or breach of any such term.

### **Disrepair**

37. The defendants' pleaded case is that their studio unit of accommodation and parts of the common parts of the flat were in disrepair during part or all of their period of occupation. They seek redress for alleged breach of the landlord's express and/or implied contractual obligations in respect of the condition of the premises and rely on the Landlord and Tenant Act 1985 (s11) and the Defective Premises Act 1972 (s4). They plead the defects set out at paragraph [16](a) to [16](g) of their re-amended statement of case dated 30 September 2022 and they assert that the claimant was informed of the wants of repair by phone, text and in person.
38. The claimant rejects the contention of any breach of obligations. He asserts that any legitimate items of disrepair were rectified within a reasonable period of notice to him and that such other damage as was caused in the studio or in the common parts of the flat was done by the tenants themselves.
39. On this aspect of the case, I have the assistance of a report from a joint expert surveyor following his inspection conducted in January 2019 (while the defendants were in occupation, but the rest of the flat was otherwise empty). His report is accompanied by a series of colour photographs but, unhappily, no plan. I have also considered the condition of the flat as shown in photographs and video clips from the parties and have heard and read their respective accounts of the condition of the property.
40. I shall take, in turn, each alleged defect as set out at paragraph 16 of the defendants' statement of case.
41. Shower unit (para [16](a)). There was a shower cubicle in the studio flat immediately behind a partition wall which separated it from the cooking and sleeping area. There



was also a shower unit in the shared bathroom/kitchen area. By the date of the surveyor's inspection, the shower cubicle in the ensuite had been recently replaced and the shared unit was in a room which had been locked out of use.

42. I found the evidence muddled on the defendants' part as to whether one or other or both of the shower units had been leaking and in what way and with what effect *on them*. It was said that the leaks (from one or other or both) had caused discomfort to downstairs neighbours who had in turn complained to the defendants, but no neighbours were called.
43. The claimant's account was that he had promptly secured the attendance of plumbers to address any reported leaks and that he had commissioned any necessary works and he adduced receipts. Any leaking or water escape was caused, he said, by the defendants showering with the shower door open or otherwise deliberately wetting the floors with water. I cannot accept either aspect of the claimant's response. No plumber or other workman was called to give evidence. Receipts provided appeared to show that the shower had been replaced twice by different contractors at precisely the same cost and at least one purported receipt appeared to be unreliable as to its veracity given obvious misspelling in its header. The allegation of showering with the door open in the small studio flat is outlandish, unsupported by evidence, and consistent only with the claimant's inclination to make unsubstantiated and illogical allegations.
44. I am just about satisfied that the defendants have made out that their shower leaked and that it was reported. I am so satisfied, not least, by placing reliance on (1) the damp readings taken by the surveyor, indicating historic dampness coming from the shower area into the partition wall and (2) from the landlord's replacement of the entire unit in December 2018 which suggests the need to address a serious defect. But there is no suggestion that the defendants were ever unable to shower or that the shower itself did not work properly. Nor is it clear for what period or periods water escaped onto their own floor or remained in situ after they could or should have mopped it up. There will have been some inconvenience, but it will have been modest. I would award £500 by way of general damages.
45. Cooker (para [16](b)). The defendants' pleaded case is that they were told by the claimant from May 2018 not to use 'the cooker' and that they did not do so because they were concerned about its safety. Their evidence was hopelessly unclear as to what this cooker was and where it was. In their own ensuite kitchen unit, they had a microwave and a two-ring portable electric stove. In addition, they had an air fryer. In the communal kitchen, there appears to have been a substantial cooker. But there is no evidence or allegation that any cooker was defective and no evidence that any cooker was in any way dangerous. The surveyor merely suggested that the electric hob be 'checked for soundness'. No want of repair is established.
46. Mould growth (para [16](c)). The pleaded claim is of mould growth to a corner of the defendant's bedroom caused by 'bad drainage outside of the property'. There is no evidence of any such bad drainage (the property is on the first floor of the block) and none is mentioned in the surveyor's report. It is right to acknowledge that the surveyor's report and photographs from the defendants both show mould growth to various parts of the studio unit. But the mould growth the surveyor identifies he attributes to condensation dampness. Not to a drainage problem. The defendants cannot succeed in

a claim for disrepair based on mould growth unless they can show it is caused by or itself causes disrepair. Their only relevant pleaded case as to cause is poor drainage which is a cause that I am not satisfied is made out.

47. Satellite dish (para [16](d)). It appears that the flat had previously had the benefit of a satellite television service by virtue of a dish erected on the exterior without the freeholder's consent. The freeholder had it removed at some stage. I was not taken to any express term requiring provision of a satellite TV service as part of the letting to the defendants. Nor was a case developed for any implied term. The claim is not made out.
48. Certificates (para [16](e)). It is alleged that the claimant failed to provide the defendants with certification of the safety of the gas appliances in the flat or as to the energy performance of the flat. The obligations to provide such certificates arise from statutory provisions which contain their own arrangements for addressing default. I was taken to no express term requiring provision of these certificates nor was any case developed for any relevant implied term (and such was unlikely to have succeeded). This claim is not made out.
49. Access to the internet (para [16](f)). It is alleged that the claimant cut off the internet service to the flat in September 2018. I was taken to no express term requiring the provision of such a service. When, in an exchange of emails, Mr Aghri complained to Mr Tahir about it, the reply received was that there was no obligation to provide such a service. Instead of contending that there was, the defendants simply requested permission to make their own provision and acknowledged that the claimant was 'free to make his own decision' and 'do whatever he liked'.
50. I am certainly satisfied that wiring, probably relating to internet cabling, was cut. There is photographic evidence to that effect. I am equally satisfied that it was cut by the claimant or by those acting at his direction and not, as he alleged, by the defendants. But that act does not sound as breach of any express or implied term relating to repair or condition. At its highest, it may amount to an act of harassment (a subject to which I return below). This claim for disrepair is not made out.
51. The boiler (para [16](g)). The flat was served by a single communal gas-fired boiler supplying central heating and hot water throughout and, for present purposes, supplying those services within the defendant's studio unit. The allegation is that it 'ceased to function' on numerous occasions throughout the tenancy. But when the joint surveyor inspected in January 2019 the defendants reported to him that the hot water and central heating were 'generally reliable'. I am not satisfied that any defectiveness of the boiler has been established.
52. It is certainly the case that for at least some four days in the latter part of 2018 (see surveyor's report at 6.07), the boiler was off. The parties accuse each other of switching it off. The defendants would have had no reason to switch it off and cause inconvenience to themselves. More likely it was switched off by the claimant or those acting under his direction. Switching off a working appliance or installation is not 'disrepair' even if it may be harassment (see below).

53. In light of my findings above, the disrepair counterclaim only succeeds to the modest extent of attracting an award of general damages for inconvenience caused to the defendants measured at £500.

### **Harassment and unlawful eviction**

54. I can now turn to the substantive issue in the counterclaim which is the contention that the claimant landlord deliberately drove the defendant tenants out of his flat by a campaign of action designed to achieve vacant possession, unlawfully if necessary, so that he could attain an objective to refurbish and sell with vacant possession.

55. The claimant accepts that by early spring of 2018 he had resolved to market the flat for sale. A sale that would be with vacant possession. The last of the written tenancy agreements, made between the parties on 11 May 2017, was a one-year fixed term due to expire in May 2018. The other rooms had by then become – or were shortly to become - vacant and, if the present defendants left at the expiry of their term, his project could proceed as planned.

56. But the defendants did not leave. They remained in possession as assured shorthold statutory periodic tenants. To remove them lawfully the claimant needed to serve the appropriate statutory notice(s) and then follow-through with county court possession proceedings. But he failed to take the right steps. He served a deficient and ineffective notice in June and/or again in July 2018. When he sought possession in September 2018, he did so on the basis of a false contention that the tenants only held a licence which had been determined by notice to quit and by (simultaneous) assertion of arrears of rent.

57. The defendants immediately put in a defence contending that there had never been any arrears of any rent. Having secured advice, they then advanced a counterclaim in early December 2018 seeking remedies for breach of the tenancy deposit requirements, disrepair (as to both of which, see above) and harassment and trespass. So, it would have become obvious to him, by no later than early 2019, that legal proceedings were not going to swiftly achieve the claimant's objective and, in due course, as already recounted, he abandoned his claim. I find that this did not diminish his ambition to have the defendants leave so that he could secure the outcome for which he had planned.

58. I have already rejected his contention that the defendants wanted to leave so that they could secure council accommodation and 'manufactured' the circumstances necessary to bring that about. In fact, and to the contrary, the contemporaneous documents show that their initial approaches for advice about what to do led to recommendations to find other accommodation in the private rented sector and that that was advice they accepted and initially acted upon.

59. Instead, I am amply satisfied that the defendants have made good their case that, from early summer 2018, and particularly after the last of the other tenants had left, the claimant embarked on a process designed to get the defendants to leave by whatever means.

60. Their claim is advanced in *contract* (breach of covenant for quiet enjoyment, non-derogation from grant and breach of other implied terms) and in *tort* (trespass to property, trespass to goods) and in the *statutory tort* of harassment contrary to the Protection from Harassment Act 1997. In my judgment, nothing would be served by compartmentalising it. If, as I have found, the claimant conducted a campaign to make their lives uncomfortable enough to drive them out, the particular routes to establishing such conduct as unlawful are largely immaterial.
61. The particulars of the alleged activities of the claimant are set out in paragraphs [21] to [25] of the defendants' re-amended statement of case. I have already made findings on two aspects of them: the cutting-off of the internet service and the switching-off of the gas boiler. I am quite satisfied that the conduct also included, as alleged, frequent and unnecessary entry by the claimant and his workmen and other visitors to the flat and often without notice. I accept that this included his unwarranted access to the studio unit itself, including an occasion when Ms Colavizza was asleep in bed. To further his sale and refurbishment plans, the claimant needed to bring estate agents, workmen and others to the flat. I am satisfied that the defendants gave access when given reasonable notice, but when they declined – because in mid-June 2018 they were marking the religious celebration of Eid – the claimant took access anyway
62. There was no desistence from this conduct even when the claimant was told in the summer of 2018 that the couple were expecting their first child. The entries to the flat, and to the studio when the defendants were not there, resulted in them returning to find that their personal possessions had been moved around.
63. The claimant's conduct included the installation of CCTV within the flat for no good reason. If it had been for the purpose of securing evidence with a view to bolstering his own allegations of misconduct by the tenants, no such evidence was produced at trial. The claimant not only began to make vile and malicious allegations about the defendants' conduct, but he began to report them regularly to the police. Unsurprisingly, there was no arrest, no charges, and no prosecution of either of them.
64. I find that this conduct was, and was designed to be, unsettling for the defendants. It was directed to the aim of making them so uncomfortable that they would move out. But still, they did not move.
65. I am satisfied that this caused the claimant such frustration that he eventually took matters into his own hands and decided to eject them himself. What is alleged to have occurred on and from 5 April 2019 - until 18 April 2019 when the council provided the defendants with emergency homelessness accommodation - is recounted at paragraphs [26] to [40] of the re-amended statement of case.
66. It is unnecessary to make findings as to each and every particular. I find that what occurred was that on 5 April 2019, while the defendants were out, the claimant or his agents changed the locks of the flat. He also changed the lock to the studio unit itself. When the defendants returned that evening, they could not secure access. They called the police and a locksmith who forced entry. They found that their personal belongings, including their clothes, had been removed. Their mattress had been taken and the bed frame broken. Some, but not all, of their belongings had been dumped outside. The dehumidifier in their room had been removed. Their storage units in the communal

hallway had been broken into, the contents removed, and new locks fitted. Much of this is seen on video footage taken on the defendants' mobile phones. To the extent that it is suggested that such video material was staged or fake, I reject that suggestion.

67. The claimant's activities on 5 April had not been confined to the defendants' own studio. He had removed all the fire extinguishers in the flat and disconnected and disabled the fire alarm. He had locked the remaining shared kitchen out of use.
68. With nowhere else to go, the defendants – having broken back in with the assistance of the locksmith - tried to continue living in the studio and the flat. They placed cardboard on the floor in lieu of a bed and slept on it in their bedding.
69. A week later, on 12 April 2019, the claimant came to the flat again. He broke off the locks that the defendants had installed. He removed the Victim Support alarms that the defendants had been issued with. Mr Aghri was at home and called the police. On the intervention of the police, the alarms were given back to the defendants and the claimant was given a key to the locks that the defendants had installed. The defendants continued living in the flat.
70. But on 17 April 2019, the claimant returned again and, despite having the copy key, forced the locks to the flat and entered with three others. The locks were changed. The police were again called. This time they directed the claimant to give the defendants a copy of the key. The claimant threatened that if the defendants did not remove their belongings from the communal storage units, he would discard them. He and his companions lingered in the flat after the police left.
71. The following day, the defendants were provided with temporary council accommodation and left. They returned the keys in the following few days. Later the flat was, as explained above, refurbished and sold with vacant possession.
72. There were minor inconstancies in the evidence led for and by the defendants, and it was surprising that no council officers or police officers were called to support the account given by the defendants themselves. But as I have already found, I am amply satisfied that it is more likely than not that the claimant engaged in the conduct alleged. I reject the suggestion that the documented reports to the local authority, advice agencies and the police were of no weight and self-serving.
73. Such conduct, as I have found took place, was both reprehensible and unlawful. I have no doubt that it was as unsettling and unpleasant in its effect as it was deliberate in its intent. It was designed to achieve the ousting of the defendants by unlawful rather than lawful means by doing whatever was necessary, however improper, to secure that end.
74. As a matter of law, the conduct constituted the statutory tort of harassment as well as trespass to property (by unauthorised, uninvited or forced entry to the studio flat) and trespass to goods (the removal and loss of personal belongings). The same conduct amounted to a repudiation of the tenancy (accepted by the departure of the tenants and return of keys) and breach of its terms as to quiet enjoyment.
75. By this judgment, the Court must compensate the defendants, so far as money can, for the loss they suffered. The defendants seek special damages, damages for personal

injury, general damages, aggravated damages and exemplary damages. These were reduced to some seven sub-heads in Mr Grigg's helpful skeleton argument for trial.

76. Mr Trussler's closing submissions took no issue with any of the statutory or jurisprudential underpinning to those sub-heads or to the approach to assessment. With characteristic fairness, although with a measure of under-statement, his submissions recognised that: *'In the event that the court finds that the defendants have been unlawfully evicted in the manner alleged, the court will take a very dim view of the claimant's conduct, and this will doubtless be reflected in any award as to damages.'*
77. First, damages for the anxiety (incorporating emotional distress) caused by the acts constituting the statutory tort of harassment. Such damages fall to be assessed with the benefit of the guidance of the *Vento* bands. I was taken to the medical evidence demonstrating that while Mr Aghri had no significant previous medical history he was by January and February 2019 presenting at his GP surgery with 'a severe degree of anxiety and depression'. What he and his wife were subjected to went beyond the unpleasant and unsettling and was and would have been positively frightening, particularly to a pregnant woman. Mr Grigg put his clients' case for an award at the upper end of the Presidential guidance on middle *Vento* band. He sought £25,000. I consider that to represent a fair assessment of the position and to be amply justified. I award that sum and subsume within it any award for the visit on Eid which was separately pleaded as a matter of unlawful discrimination
78. Second, personal injury. Mr Grigg advances a case for damages for personal injury that Mr Aghri suffered on 27 April 2019 when he fell from his bicycle on his way to the post office to post back to the claimant the keys to the flat. I am not satisfied that the evidence demonstrates that this occurred as a result of the distress and anxiety caused by the claimant's earlier conduct. If I had been so satisfied, I would have held it too remote a loss to be recoverable.
79. Third, lost income. It is submitted that the anxiety and distress caused by the claimant's conduct rendered Mr Aghri unable to work for a very considerable period. I am not satisfied that the necessary connection had been established. Mr Aghri was, on his own account, working at the time of some or all of these events and at the time of the culmination in April 2019 either or both of the defendants were in paid work. This head of loss is not made out.
80. Fourth, loss of quiet enjoyment. I am invited to make the defendants a separate discreet award for the loss of enjoyment of their tenancy occasioned by the consequences of the claimant's conduct. I had initially thought that any such amount would result in double counting with the other damages being awarded, but I accept that they may be treated as separate. They compensate for the fact that the defendants were *paying* for something they were not getting - a peaceful home with the enjoyment of all usual ancillary facilities. They are entitled to damages assessed as an abatement in rent for that. I am satisfied that the £888 sought by Mr Grigg in that respect is reasonable.
81. Fifth, special damages (locksmith). Two receipts were presented for the defendants' costs of the services of locksmiths on 5 April 2019. On my maths, they total £777.60. and I will award that amount.

82. Sixth, lost use of the flat from 18 April 2019. Mr Grigg submits that it is appropriate to award damages of £150 per night, from when the defendants left, down to 29 April 2019 when they returned the keys. I confess not to follow the logic. Certainly, if the defendants had paid rent in advance for a period beyond 18 April they would be entitled to its return. But they did not pay the April rent, having spent the available money on the locksmith. It is not suggested that the circumstances at the council-arranged temporary accommodation were any less comfortable than the studio they had been driven to leave. I make no award under this head.
83. Seventh and Eighth: aggravated and exemplary damages. This is as plain a case as one could find for an award of each form of damages. Mr Grigg sought awards of £5000 under each head. I consider that sum appropriate for each. I will award £10,000 in total.
84. Finally, special damages (loss of goods). The defendants advance a schedule of loss for their cash and personal items which is corroborated by an earlier manuscript list and by some receipts. As drawn, the schedule includes the locksmith's charges. Excluding that and doing the best I can to fairly assess the overall value of the remaining items, I award £2000.

### **Conclusion**

85. For the reasons given above, the counterclaim succeeds and there will be judgment for the defendants in the sums awarded as per each of the following paragraphs above:
- [31] £800.00 (if not already repaid)
  - [33] £4,800.00
  - [34] £2,000.00
  - [55] £500.00
  - [77] £2,5000.00
  - [80] £888.00
  - [81] £777.60
  - [83] £10,000.00
  - [84] £2,000.00

together with interest in an amount that I trust can be agreed.

86. The parties are invited to agree a minute of order reflecting that outcome and the consequences of it. I will deal with any matters that cannot be agreed at the formal handing-down of the judgment.

**HHJ Luba KC**

**17 May 2023**