Case No: F01CL101

IN THE COUNTY COURT AT CENTRAL LONDON
SITTING AT OXFORD COMBINED COURT

St Aldate's, Oxford OX1 1TL

Date: 24 February 2020

Before:

HER HONOUR JUDGE MELISSA CLARKE

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B e t w e e n :

MS NOELIA DEL RIO SANCHEZ **Claimant**

- and -

SIMPLE PROPERTIES MANAGEMENT LIMITED **Defendant**

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- -

Mr Timothy Baldwin (instructed by **Jones Hodge Allen**) for the **Claimant**
The **Defendant** did not attend and was not represented

Trial date: 11 February 2020
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JUDGMENT

Her Honour Judge Melissa Clarke:

INTRODUCTION

1. On 11 February 2020 I heard the trial of a claim for damages arising from what the Claimant alleges was an unlawful eviction from her tenancy of a room in a five-bedroom flat known as 41C Kilburn High Road, NW6 5SB ("the Property") on 22 February 2019, and a claim for damages for harassment under the Protection from Harassment Act 1997. The claim raises issues of interest because it relates to the letting of a room in a shared property by a relatively new type of business calling itself an 'membership club', which by its terms and conditions purports to avoid, *inter alia*, granting tenancies and the protection to occupiers of residential property granted by the Protection from Eviction Act 1977.

2. The Defendant did not attend and was not represented at trial. After closing arguments from Mr Baldwin for the Claimant, I found that the Claimant had been unlawfully evicted and harassed by the Defendant, for reasons which I would provide in writing. These are my reasons.

3. I note here that I awarded the Claimant:

   i) £19,000 general damages at common law for unlawful eviction, being £200 per day for 90 days;

   ii) £20,595.91 special damages for trespass to her goods and property which were destroyed or disposed of by the Defendant;

   iii) damages for harassment of £8,800;

   iv) aggravated damages of £2,000;

   v) exemplary damages of £2,000; and

   vi) interest at 2% on general damages from the date of service of the claim and interest at 2% on special damages from the date of service of the schedule of loss.

4. I also ordered that the Defendant pay the Claimant's costs to be subject to detailed assessment on the indemnity basis and make an interim payment £24,000 on account of such costs to the Claimant's solicitors by 4pm 25 February 2020. The Claimant is publically funded.

5. When I gave my decision I indicated that I would not award the sums sought in respect of the tenancy deposit. On further reflection I have decided that I would be wrong not to do so for the reasons given later in this judgment, and award the additional sum of £2600. I am entitled to make that change before the order is perfected.

BACKGROUND

6. The Claimant at all relevant times was a Spanish citizen and a full time university student at the University of Westminster. She was born in 1990.

7. The Property is a third floor flat in a building at 41 Kilburn High Road. This building has been split into three long-leasehold flats, the freehold of which is owned by the London Borough of Brent. The registered owner of the leasehold of the Property is a Mr David Van Dyk. It is not disputed that at the time of the alleged eviction Mr Van Dyk had leased it to the Defendant, with the right to sublease, pursuant to an agreement dated 7 February 2019 ("**SPM Lease**").

8. The Defendant was incorporated under company number 11567939 on 13 September 2018. Hannah Bellin is the sole shareholder and was the sole director from incorporation until she resigned her directorship on 20 March 2019. The sole director from that date was and is Miguel Cabeo Cespedes.

9. The Claimant alleges the Defendant was her landlord at the relevant time, having taken over responsibility for her tenancy from a company which styled itself as an 'accommodation club' with whom she had originally contracted. This company was called Lifestyle Club London Limited and was incorporated in August 2017 under company number 10900705 ("**LSC London**"). The sole director and shareholder was Enzo Gallardo. LSC

London was compulsorily struck off the register and dissolved on 8 January 2019.

10. The Claimant's pleaded case is that she was a lawful residential occupier of the Property and that the Defendant unlawfully deprived her of occupation of the Property by changing the locks to the front door of the flat, removing and disposing of her belongings from the room that she had occupied within it and installing two men into the Property as new occupiers of it. Her primary case is that she occupied the property as an assured shorthold tenant, alternatively as a licensee. She also pleads a number of actions by the Defendant before, during and after the eviction which she says is a course of conduct amounting to harassment within the meaning of sections 1 and 3 of the Protection from Harassment Act 1997 ("**PHA 1997**").

11. In the Amended Defence the Defendant denies:

    i) the Claimant was unlawfully evicted from the Property on 22 February 2019;

    ii) the Defendant evicted her from the Property on 22 February 2019 or at all;

    iii) the Defendant had given the men found in the Property on that date (described as *"the Claimant's unlawful subtenants"*) access to the Property;

    iv) the Defendant or anyone on its behalf disposed of the Claimant's property; and

    v) a number of actions which the Claimant relies on a part of a course of conduct of harassment.

12. The Defendant avers that the Claimant "had excluded herself voluntarily from the premises by waiving her occupation rights and passing them to the unlawful sub-occupiers", "seeking to create profit by 'sub-letting' the vacant rooms".

13. I have had the benefit of a skeleton argument and chronology produced by Mr Timothy Baldwin, counsel for the Claimant, for which I thank him. I have had no skeleton argument from the Defendant.

14. I heard from three witnesses for the Claimant: the Claimant herself; her friend Ms Hazel Omukoko who allowed the Claimant to share her own student accommodation for three months after the date of the alleged eviction; and from Mrs Iryna Rybina, an independent witness who owns the ground-floor flat in the same building as the Property, being 41A Kilburn High Road. The Claimant filed two witness statements and Ms Omukoko and Mrs Rybina filed one each. All attended court, were sworn in and confirmed the contents of their witness statements. I allowed Mr Baldwin to ask one or two supplementary questions of the witnesses and I asked a question of Mrs Rybina. Their witness evidence is unchallenged.

15. The Defendant filed two witness statements of: (i) Kasparas Kulinkus, who describes himself as a property inspector for the Defendant; (ii) Agnesa Sergeieva, who describes herself as a property manager for the Defendant. The court has been given no explanation for why they did not attend court on 10 or 11 February, and no Civil Evidence Act notices have been filed in respect of them. The evidence they contain goes to the heart of the factual dispute between the parties and the Claimant has not had the opportunity to test the witnesses in cross-examination. For those reasons I give them very little weight. The Defendant has also filed two statements purportedly from the two men to whom it says the Claimant sublet the Property, being James Kelly and Jose Fernandes-Viana. These are addressed to *"To whom it may concern"* and are not signed with a statement of truth. I cannot know if those who signed them knew that they were to be used in litigation, and they are not witness statements which comply with the civil procedure rules. For those reasons I give them no weight at all.

FACTS

Before 22 February 2019

16. There is no dispute that Claimant entered into a written agreement with LSC London which was expressed to commence on 9 September 2019 and expire on 31 May 2019. The agreement described itself as a 'membership application form'. It provided that the Claimant was taking out an 'individual membership' of a 'club' for which the following sums were payable:

    i) a 'joining fee' of £200;

    ii) a 'membership fee' of £650 (expressed to be "repurchased by LSC at the end of the membership");

    iii) and a 'monthly contribution fee' of £693.

17. It is the Claimant's evidence that she was told by LSC London that the payment of the joining fee and membership fee was a deposit and the payment of the monthly contribution fee was rent. Attached to the 'membership application form' was a *"Membership Agreement"* which provided that the Claimant was granted a licence *"to occupy any Club Property, subject to availability and under written approval by the Club Management"*. It purports to grant an excluded tenancy under the Protection from Eviction Act 1977 and excludes the let being an assured shorthold tenancy.

18. On 7 September 2019, after signing those documents and paying £1543, the Claimant was given occupation of a double room in the Property. She continued to pay the £693 'monthly contribution' which was expressed in the Membership Agreement to be inclusive of water, council tax and internet bills.

19. Despite the Membership Agreement containing a declaration on the first page that it *"does not confer exclusive possession of any Club Property upon the Club Member…",* it provides in clause 10.4 that *"Club Members may secure occupied bedrooms by installing a padlock with a code"* and it is clear from the Claimant's evidence, and photographs provided by the Defendant, that the Claimant's room at the Property was indeed secured with a lock. I am

satisfied that as a matter of fact she did have exclusive occupation of her room, and non-exclusive access to the communal areas of the Property including the kitchen and bathroom.

20. In the Amended Defence the Defendant states at paragraph 8:

> "8. It is true that there is no signed agreement between the Claimant and [the Defendant]. However, [the Defendant] had left posters at each address around the beginning of November 2018 which informed all occupants of the takeover and that the LSC agreements will be honoured by [the Defendant] and so remain in force."

and at paragraph 29:

> "29. In December 2018 Simple Properties Management Ltd have taken over the Property from Lifestyle Club London."

21. The Claimant agrees that she received such a notice in November 2018, but says that whether she was supposedly dealing with LSC London or the Defendant, the actual staff members in the office did not change.

22. It does not appear to be disputed that from early on, the Claimant was unhappy with the condition of the Property and the number of inspections made on behalf of LSC London and the Defendant, both with and without notice. The documentation in the trial bundle discloses complaints made by her and her flat-sharers about unannounced visits by or on behalf of the managers of the Property in September 2018 (and their apologies in response), about a partial roof collapse in October 2018, about an ongoing leak in the Property in November 2018, etc. On 29 January 2019 the Claimant messaged the Defendant complaining about entry of workmen on behalf of the Defendant to the Property without notice. On 8 February 2019 she complained about the roof leak, the boiler not working, broken lights, low water pressure and bailiff removal notices for unpaid bills of the landlord. The Defendant responded by threatening her with "termination" for non-payment.

23. On 9 February 2019 the Defendant entered into the SPM Lease with Mr Van Dyk. The SPM Lease refers to lawful occupiers being under-lessees of the Defendant. There is no reference to intermediaries such as Air B&B. The Defendant is obliged at clause 4.6 to keep the property in tenantable repair and at clause 4.9 to carry out repairs. Clause 8.2 provides that Mr Van Dyk may only recover possession against the Defendant and/or lawful occupiers by possession proceedings in court.

24. On 11 February 2019 the Claimant complained that a person had entered her room in her absence, without notice, to deposit a letter from the Defendant. She says they did so by tampering with her lock. The Defendant disputes this was the case, saying that they had entered the Property, but not her room, and left the letter wedged into the jamb of her locked door. I prefer the Claimant's evidence on this point and accept it. The Claimant also complained again about the leak and the poor quality of purported repairs. On 12 February 2019 the Claimant complained about the water supply and internet being cut off. On 14 February 2019 she complained about the gas and internet being cut off. By this time all of the Claimant's flatmates had moved out, and she was alone in the property. On 21 February 2019 there was an exchange of messages between the Claimant and the Defendant relating to a broken boiler, and the Defendant told her that someone would attend the next day to deal with the ongoing internet issues. All of these messages are documented in the bundle and the fact they were sent and received does not appear to be disputed.

22 February 2019

25. On 22 February 2019 at around 11am, Mrs Rybina says she was in her ground floor flat carrying out some decoration works when she noticed a man accessing the key locker for the Property. This is located outside the building and requires a code to open it to obtain the keys. She says she asked him if he was a new tenant for the Property and if so, *"good luck"*. He reacted badly, asking what her problem was, in an aggressive tone. She told him that the previous tenants were having a terrible experience with leaks, receipt of bailiff notices for non-payment of bills etc., and he immediately moved away

and started making phone calls. She said she later heard two men going up the stairs towards the Property. I accept her evidence.

26. The Claimant says that she was at the Property on 22 February 2019 when two men stating that they were repairmen instructed by the Defendant to fix the boiler entered the Property with their own keys. She had been told by the Defendant that some repairmen were coming the previous day, so she left the Property, with the men in it, at about 3.15pm to go to university.

27. The Claimant says that she returned at about 8pm and was shocked to find on her return that her key would not fit in the front door of the Property, as the lock had been changed. By this time Ms Rybina had left her own flat. She says she knocked on the door and nobody opened it although she could hear people inside. She asked the people through the door what they were doing there, and they told her they had a new contract with the estate agents and were expressly told not to let anyone in.

28. The Claimant telephoned the police, her friend Ms Omukoko, Ms Rybina, and the Defendant. Ms Omukoko thinks the call she received was between 9 and 10pm and describes the Claimant as crying. She thought the Claimant had been mugged. Ms Omukoko says that the Claimant asked her to come to the Property as soon as possible because she had been locked out. She set off to the Property with two other friends.

29. Ms Rybina times the call she received from the Claimant between 9 and 9.30 and describes the Claimant as *"distraught",* and *" crying and screaming that she could not get the key to work in the lock and could not get in"*. Ms Rybina, who was elsewhere, also set off to 41 Kilburn High Road to offer the Claimant her assistance.

30. Ms Omukoko and her friends say they arrived at the Property first. Ms Omukoko said that they had tried to get the men in the flat to talk to them, and the men said they had only just been asked to move in by the estate agency.

31. Ms Rybina says that on arrival, she was shocked to find that not only had the Property locks been changed, but there were men in the flat. The men said they had spoken to the police after the Claimant had called them, and told them not to come because it was just a tenancy dispute, and so the police were not coming. Ms Rybina phoned the police herself and, with some difficulty, eventually persuaded them to attend. When the police arrived, they did not allow the Claimant to enter the Property, but went in to talk to the men alone. She says they emerged stating: (i) the men were tenants; and (ii) everything had been cleared out of the room the Claimant had occupied.

32. None of the Claimant, Ms Rybina nor Ms Omukoko report the men in the flat as saying anything about the Claimant subletting the Property to them, rather that they had a contract with 'the estate agents'. Ms Rybina says that the police did not report the men saying anything about the Claimant subletting the Property to them. The first time this allegation appears to have been made was when the police and the Claimant's group all retreated into Ms Rybina's flat for the police to take statements. While they were all in the living room, Ms Rybina noted that the Claimant was getting regular messages from the Defendant through an app which the Defendant uses to communicate with tenants. Ms Rybina says she did not see the messages but the Claimant read them out and showed them to the police as they came through. They included allegations that the two men in the Property were claiming to be the Claimant's clients, and accused the Claimant of changing the locks.

33. This is the Defendant's case. Mr Kurlinkus states in his witness statement that on 22 February he arrived at the Property for a visit at about 4pm, but his key did not fit in the keyhole. He says there were two men there who let him in who identified themselves as James Kelly and Jose Fernandes-Viana who said they had moved their belongings in in the morning. He says he phoned Ms Sergejeva and passed the phone to Mr Kelly to speak to her. Ms Sergejeva says he phoned her at around 4.45, and Mr Kelly told her that *"he had met Miss Sanchez by coincidence the day before, who was advertising rooms… all that Miss Sanchez required was £400 deposit each. He explained*

that the next day they moved in… I agreed to refund both James and Jose the full 'deposits' on condition that they wrote statements for our records, in case the police needed those, and vacated the Property as soon as possible. James thanked me. I asked Kasparas to stay with them whilst they wrote their statements… James and Jose vacated the Property on the 25 February 2019".

34. The purported typed statements of James Kelly and Jose Fernandez-Viana, signed in manuscript and dated 28 February 2019, were sent to the Claimant's solicitors on 25 March 2019. The Defendant has not explained to how and why they were signed on 28 February when Ms Sergejeva says that she asked Mr Kurlinkus to stay with them while they wrote them on 22 February, and they had moved out of the Property on 25 February. An unsigned version of both statements was annexed to the Defence originally filed to the claim on 10 July 2019. The Defendant has not explained how or why it came into the possession of unsigned versions of the earlier-provided signed statements, or why it annexed the unsigned version to the original Defence.

35. I am satisfied on the balance of probabilities, and in fact there is no real doubt in my mind, that the Claimant has given a truthful account of the events of 22 February 2019. The evidence of Ms Rybina and Ms Omukoko supports it. The timings of the Defendants case – that the men moved in in the morning with a key provided by the Claimant, and the Defendant's representative did not get there until around 4pm, does not accord with Ms Rybina's evidence that a man accessed the key cubby at about 11am and went straight upstairs. I can think of no reason for the Claimant to phone the police, the Defendant, Ms Rybina and Ms Omukoko that evening, and insist on police attendance that evening, if she had cleared the Property of her own belongings and sub-let all or part of the Property to the two men. I accept the evidence of Ms Rybina and Ms Omukoko that when the Claimant phoned them she was distressed and upset by finding the locks changed and men in occupation of the Property that evening, and required their help, and there is no reason that

I can think of why the Claimant would pretend to be distressed if she had cleared the Property and sub-let it to the two men.

36. Ms Omukoko's evidence is that from the night of 22 February until the end of May 2019 when the Claimant returned to Spain, the Claimant was homeless and so stayed on the floor of Ms Omukoko's student room. She says the Claimant had no belongings at all, and had to borrow everything from Ms Omukoko, including her clothes. I accept that evidence which is supported by Ms Rybina's evidence that after 22 February she found the Claimant's bedding stuffed in a cupboard in the communal parts of 41 Kilburn High Road, and that on 25 February she saw and photographed rubbish bags being loaded into a van and dumped, which included some of the Claimant's belongings (see below). Ms Rybina also describes accompanying the Claimant to the Spanish embassy to report the loss of her Spanish passport when she was deprived of access to the Property and her belongings cleared. I accept this evidence, which supports the Claimant's case but is not, in my judgment, compatible with the Defendant's version of events. Mr Baldwin submits that the Defendant's story is patent nonsense. I accept his submission. I am satisfied on the balance of probabilities that the evidence of the Defendant's witnesses about the events of 22 February 2019 is not true, and it was made knowing that it was not true. I prefer the account of the Claimant and her witnesses.

37. Accordingly I am satisfied on the balance of probabilities that the Defendant, through its employees or agents, changed the locks on the Property in order to deprive the Claimant of occupation of the Property. I am satisfied that the Defendant, through its employees or agents, unlawfully took and disposed of the Defendant's belongings, and that in doing so it evidenced an intention permanently to deprive the Claimant of her occupation of the Property. I am satisfied that the Defendant installed or caused the installation of Mr Kelly and Mr Fernandez-Viana (if that is indeed who they were) into the Property. I infer that they did so in order to warn the Claimant away, to prevent her from re-occupying it, and to put sufficient doubts about her *bona fides* into the minds of the police, if called, such that they would not be minded to

assist her or properly to investigate the eviction and theft of her belongings. It is disappointing to note that the Defendant appears to have been successful in this latter regard.

After 22 February 2019

38. The next day, 23 February 2019, the Claimant with Ms Omukoko attended at the Defendant's offices at 65 Whitechapel Road, asking why she had been locked out of the flat and seeking the return of her possessions. She and Ms Omukoko say that the employees of Defendant did not substantively respond, but after keeping her waiting for some time told her that they had called the police. They left. The Claimant later received a message from the Defendant stating that it had reported her to the police alleging that she let people into the property and took money from them. It threatened her with private prosecution. The Defendant's witness Ms Sergejeva says that she called the police because the Claimant was behaving aggressively. The Claimant denies it, and Ms Omukoko says she was not. I prefer their evidence and find that it is more likely than not that the Defendant called the police in order to intimidate the Claimant, to prevent her from continuing to question and complain about her exclusion from the Property and the removal of her belongings.

39. On 25 February 2019 Ms Rybina saw a van attend the Property, pick up bags of rubbish, and dump them in Brent. She took a photograph of the van and the bags, which she promptly texted to the Claimant. I have seen those photographs. The Claimant identified the contents of the bags as including some of her belongings, including a lamp. I accept her evidence. She went to retrieve them but they had been cleared away by the time she got there. She provided the photograph of the van, including its index number to the police, but if they investigated it they have not reported the results of any investigation to the Claimant's solicitors, despite repeated requests. I am satisfied on the balance of probabilities that the Defendant removed or procured the removal and disposal from the Property of items including some of the Claimant's belongings, in order to clear the Property ready for re-letting.

40. On 28 February 2019 the Claimant obtained legal advice. Her solicitors emailed the Defendant a copy of a letter before action. The Defendant emailed the Claimant's solicitors on 1 March stating that it had made three separate complaints against the Claimant to the police, listed as: on 13 February 2019, a complaint for false accusations of someone entering the room she was staying in; on 22 February 2019 for fraud and unlawful subletting; and on 23 February 2019 for the Claimant's aggressive behaviour in the office. It stated that *"the landlord has started trespassing proceedings against the unlawful occupiers who your client unlawfully let a property to. We are quantifying losses and will start a civil claim against your client"*. Given my findings, those complaints to the police (if indeed they were made) were untrue.

41. The Defendant emailed the Claimant's solicitors on 4 March 2019 denying taking possession of the Claimant's belongings and again threatening a civil action against her. Given my findings, those denials were untrue and the threats were unwarranted. The Defendants have taken no steps to bring any civil claim against the Claimant and make no counterclaim in this action.

DISCUSSION AND DETERMINATION OF ISSUES

Was the eviction by the Defendant lawful?

42. I have found that the Defendant excluded the Claimant from the property by changing the locks, and that it intended to exclude her permanently. I accept the Claimant's submission that in the circumstances of this case, whether she was a tenant pursuant to an assured shorthold tenancy or a licensee pursuant to a licence, the Defendant cannot exclude her from it without a court order, for the following reasons.

43. If the Claimant was an assured shorthold tenant, she could not lawfully be evicted from the property unless the landlord had: served a valid notice under section 21 of the Housing Act 1988 (as amended) and established the existence of a ground in schedule 2 to the Housing Act 1988; sought and obtained a possession order from the Court. It is no part of either party's case that a section 21 notice was served upon the Claimant at any time and no

possession order was obtained from the court. In those circumstances the eviction was unlawful.

44. If the Claimant was not an assured shorthold tenant but a licensee, then section 3(1) of the Protection from Eviction Act 1977 provides that where a premises have been let as a dwelling which is neither a statutory protected tenancy nor an excluded tenancy where the tenancy has come to an end, and the occupier continues to reside at the premises, it is not lawful for the owner to recover possession other than by proceedings before the court. Those proceedings could only be brought after service of a notice to quit.

45. Excluded tenancies are defined in section 3A and include properties which the occupier shares with the landlord or licensor, but in this case the Defendant has admitted that the Property was not one with a resident landlord (and of course the Defendant, as a company, cannot physically share accommodation with the Claimant). The Defendant does not plead that this was an excluded tenancy and I am satisfied this it was not. Accordingly if the Claimant's occupation was not pursuant to a statutory tenancy, then the Defendant needed to give the Claimant a valid notice to quit under section 5 from the Protection from Eviction Act 1977, and if she did not leave a court order was necessary before the Claimant could lawfully be evicted from the Property. Once again, the Defendant does not plead that any notice terminating a licence was given to the Claimant, and no court order was obtained.

46. For those reasons, I am satisfied that the Defendant's eviction was unlawful, whether the Claimant enjoyed an Assured Shorthold Tenancy or occupied the Property pursuant to a licence.

On what legal basis did the Claimant occupy the Property?

47. However, since the claim includes a claim for return of a deposit paid to LSC London, I must determine whether the Claimant occupied the Property pursuant to an assured shorthold tenancy, as is her primary case.

48. The Claimant submits that on its proper construction in accordance with the well-established principles of *Street v Mountford* (1985) 1 AC 809, [1985]

UKHL 4 *("the only intention which is relevant is the intention demonstrated by the agreement to grant exclusive possession for a term at a rent"*), the Membership Agreement with LSC London granted her a tenancy at the Property. That is because she was granted exclusive possession (as I have found) of a room for a fixed term of more than 6 months, for the payment of a monthly contribution which must, Mr Baldwin submits, be construed as rent. The Housing Act 1988 (as amended) means that any private tenancy is an assured shorthold tenancy unless the annual rent is over £100,000 a year, which it was not in this case.

49. Although the Defendant at paragraph 6 of the Amended Defence describes the nature of the Claimant's occupancy as *"irrelevant because we deny evicting the Claimant"*, it goes on to state at paragraph 7 of the Amended Defence:

> "7. In any case, the agreement between the Claimant and LSC is a license [sic] because:
>
> a) The agreement between us and Mr Van Dyk is largely irrelevant and it is irrelevant what we refer to our clients as. It is practical for us to put higher restriction upon how our landlord should recover his property to prevent him from bypassing us and recovering possession directly from our clients;
>
> b) The agreement is not strictly for a fixed term. Either party can terminate *at any time*, as per their agreement.
>
> c) The agreement expressly states that the Claimant does not enjoy exclusive possession. The fact that there is no resident landlord does is not [sic] a determining factor.
>
> d) Freedom of contract means that autonomous bodies are able to govern the terms that bind them. The agreement is express and clear from the outset that it is a license and in any case as per *J Spurling Ltd v Bradshaw* [1956] EWCA Civ 3 'red hand rule' there was sufficient notice of the term in the Acknowledgement Document and thus it is valid."

50. Taking these arguments in turn, I agree that the agreement between Mr Van Dyk and the Defendant in February 2019 is irrelevant to the construction of the Claimant's agreement with LSC London reached in September 2018, but it is not irrelevant to the basis on which the Defendant 'took over' the Property in February 2019 for reasons which I will come on to explain.

51. I do not accept the submission that the agreement is not for a fixed term. The Membership Agreement does not provide that LSC London may terminate the agreement, merely that the Claimant may terminate on 30 days notice.

52. I have already found that the Claimant had exclusive possession of a room in the Property. I accept the Claimant's submission that there can be an assured shorthold tenancy where there are elements of sharing (per *Uratemp Ventures Ltd v Collins; Uratemp Ventures v Carrell* [2002] AC 301).

53. It is true that the Membership Agreement contains the following provision:

> "This Membership Agreement does not confer exclusive possession of any Club Property upon the Club Member, nor does it create the relationship of landlord and tenant between the parties. The Club Member shall not be entitled to an assured tenancy, a statutory periodic tenancy under the Housing Act of 1988 or to any other statutory security of tenure now or upon the determination of the Membership Agreement on any of the club properties. The Club Member accepts that this Membership Agreement does not confer any statutory protection and/or rights that would otherwise be applicable to an assured tenancy or a statutory periodic tenancy under the Housing Act of 1988".

54. However, *Street v Mountford* held that the facts of the nature of occupation could overrule the express terms of a written agreement as to the nature of tenure. As Lord Templeman put it in his leading judgment: *"...the consequences in law of the agreement, once concluded, can only be determined by consideration of the agreement, once concluded, can only be determined by consideration of the effect of the agreement. If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy and the parties cannot alter the effect of the agreement by insisting that they only created a licence. The manufacture of a five pronged*

implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade".

55. In this case, the Defendant does not appear to dispute the Claimant's case that the monthly 'membership fee' was in fact payment of rent. In fact, the Defendant refers to it as the payment of rent in several places in the Amended Defence. I am satisfied that it was rent. In circumstances where I have found the Claimant was given exclusive possession of a room at the Property, for a term of more than 6 months, and charged a monthly rent, I am satisfied that the Claimant's tenure of occupation of the Property was a tenancy, for all the Membership Agreement stated otherwise.

56. It is not clear from any documents before me what right LSC London had to grant any tenancy or licence over the Property. Although there is no witness evidence from the landlord Mr Van Dyk in this case, I have seen correspondence from him in which he states that he has entered into only two lease arrangements in relation to the Property: the SPM Lease in February 2019 and an earlier agreement with Real Estate Network Ltd trading as Belmonts ("**Belmonts**") for 18 months commencing on 30 May 2018 ("**Belmonts Lease**"). This provided in clause 4.3 that Belmonts should not let the property *"except upon Licences whose initial term does not exceed 18 months or such other legal mechanism as shall from time to time be available so as to ensure no Tenant of the property shall obtain security of tenure"*. Despite the capitalisation, 'Tenant' does not appear to be a defined term. There are therefore three possibilities – the first is that LSC London granted the tenancy to the Claimant as an agent for Belmonts. The second is that it granted the tenancy to the Claimant as an agent for Mr Van Dyk. The third is that it entered into a rent for rent agreement with Belmonts and granted the tenancy to the Claimant in its own right.

57. Belmonts was incorporated under company number 10174361 on 11 May 2016. It was wound up by the High Court on the petition of the London Borough of Hamlets on 21 August 2019. I have seen messages sent to the Claimant by LSC London stating that its management office had moved as of

1 October 2018 to Belmonts premises at 46 Brick Lane E1 6RL, so there seems to have been some ongoing business connection between LSC London and Belmonts around the time of the Membership Agreement with the Claimant, although there are no shared directors or shareholders between those two companies.

58. It also seems that the agreement between Mr Van Dyk and Belmonts terminated early. In correspondence he refers to Belmonts having ceased trading, and says that is why he entered into the SPM Lease. He could not have entered into the SPM Lease if the Belmonts Lease remained in force.

59. Although there is a paucity of evidence, and although the Membership Agreement does not disclose an agency agreement between LSC London and Belmonts, it seems to me to be more likely than not that LSC London entered into the tenancy with the Claimant as agent for Belmonts as Landlord, with the intention merely carrying out management functions for Belmonts after that date. That is because the existence of any rent for rent agreement between LSC London and Belmonts is merely speculative: I have seen no evidence for it. In addition, I am satisfied on the evidence before me that the whole idea of 'membership' of a 'club' as presented by LSC London is sham intended to avoid granting its 'members' the tenancy protections that statute provides. I accept Mr Baldwin's submission that on the authority of *R v Rent Officer for Camden LBS ex p Plant* (1980) 7 HLR 15 and *Buchman v May* (1978) 7 HLR 1, if a letting agreement is found to be a sham then the letting will not be excluded from the protections of the Protection from Eviction Act 1977.

60. In addition, although it appears that from November or December 2018 the Defendant took over LSC London's management responsibilities for the Property, it was not until 9 February 2019 when Mr Van Dyk appears to believe that Belmonts had ceased trading (I make no finding about whether it had in fact done so or not), that he terminated the Belmonts Lease and entered into the SPM Lease with the Defendant. In the meantime, LSC London had dissolved on 9 January 2019. Together that suggests to me that the Claimant's tenancy was with Belmonts until the Defendant took over

responsibility for it from Belmonts on the signing of the SPM Lease, and I so find.

Was a deposit paid and protected?

61. In relation to the Membership Agreement, the Claimant submits that both the 'joining fee' of £200 and the 'membership fee' of £650 should be construed as a deposit, which should have been protected by an authorised tenancy deposit scheme as required by sections 212 to 215 and schedule 10 to the Housing Act 2004 (as amended) either by LSC London as agent for Belmonts, or by Belmonts as Landlord, at the outset of the tenancy. The 'membership fee' is the only one of the two which was expressed to be repayable at the end of the tenancy (or *"repurchased by LSC at the end of the membership")* and for that reason I construe that as the deposit. I do not accept that the 'joining fee' was a deposit as it appears from the documentation it was never intended to be returned. That seems to be something more akin to a contract fee.

62. As the Defendant took over responsibility for the tenancy from Belmonts on 8 February 2019, so it also took over responsibility for the deposit. There is no evidence before me that it was ever protected by or on behalf of Belmonts (or LSC London) under an authorised tenancy deposit scheme, nor that the Claimant was ever served with any prescribed information pursuant to such a scheme. In addition, it was for Belmonts and the Defendant to make arrangements for the Claimant's deposit to be transferred to the Defendant, who was then required to protect it. The Defendant has provided no evidence that it did protect it in an authorised tenancy deposit scheme and indeed does not plead that it did. I note that the Defendant's evidence is that it intended to 'honour' the agreement that the Claimant reached with LSC London and I am satisfied that in these circumstances the Defendant is liable for the failure to protect the deposit, being the return of the deposit of £650 plus a penalty of up to three times the deposit.

63. By section 1(1) of the PHA 1997, a person must not pursue a course of conduct (a) which amounts to harassment of another, and (b) which he

knows or ought to know amounts to harassment of another. Pursuant to section 1(2) of the PHA 1997, the Defendant will therefore be taken to have known that his conduct amounts to or involves harassment *"if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other*." The standard applied under the PHA1997 is therefore objective, notwithstanding the references to what a particular person knows.

64. Section 2 PHA 1997 imposes criminal liability for someone who pursues a course of conduct in breach of section 1, and section 3 PHA provides that an actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question; and that damages may be awarded for (amongst other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

65. "Harassment" is not defined in the act, but section 7(2) PHA 1997 states that it *"includes alarming the person or causing the person distress"* and section 7(4) provides that "conduct" includes speech. It is for the court to assess the gravity of the conduct and determine whether it is sufficient to amount to harassment. Lord Nicholls of Birkenhead in *Majrowski v Guy's and St Thomas's NHS Trust* [2007] 1 AC 224, provided the following well-known guidance on the assessment of the gravity of the conduct at paragraph 30:

> "Where… the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2 [PHA]".

66. I am satisfied that the actions of the Defendant in changing the locks on the Property; putting into the Property two men claiming, falsely, to be sub-tenants of the Claimant; taking possession of and disposing of the Claimant's Property; providing false information and making false complaints to the Police; falsely denying changing the locks and taking possession of the Claimant's belongings in correspondence with her solicitors and making unwarranted threats of civil action against her amount to conduct which is oppressive, and unacceptable and is of an order which would sustain criminal liability. Accordingly it amounts to harassment.

QUANTUM OF DAMAGES

67. The Claimant is entitled to general damages at common law. She seeks additional sums for the nature of the eviction by way of aggravated and exemplary damages and damages for harassment. She relies on a number of comparator cases set out at paragraph 29 – 62 of Mr Baldwin's skeleton argument: (i) *Ahmed v Bains* (2001) Legal Action 25, 18 June 2001 (Brentford CC); (ii) *Daramy v Streeks* (2007) Legal Action 37, 15 November 2006 (Lambeth CC); (iii) *Garcia v Khan* (2005) Legal Action 21, 17 December 2004 (Bow CC); (iv) *Sala v Munro* (2009) Legal Action 31, 29 April 2009 (Willesden CC). In *Sala v Munro* the bare facts were similar to these: the Claimant occupied a room in a shared house on an assured shorthold tenancy, when she returned to the property to find that the locks had been changed and her belongings thrown out of it, with some missing. HHJ Copley awarded a daily rate of £200 as a result of the exclusion of the tenancy with £2000 for aggravated damages and £2000 for exemplary damages.

68. I have considered the time that the Claimant spent as homeless with unsettled accommodation on the floor of her friend's room, stripped of all the belongings that she had in this country except what she was wearing and what she had taken to university that day. I have considered the callous and threatening nature of the eviction without any warning at all, which meant that she was left standing outside the Property, at night, listening to two strange men in occupation of it and no understanding of what had happened.

That must have been very frightening and I have read and accept witness evidence of how distraught the Claimant was that night. I have considered the actions of those two men, who must have been acting on the instructions of the Defendant, in lying to the police to attempt to prevent even their attendance at the Property, and (apparently successfully) in encouraging the police not to take this unlawful eviction and the taking and destruction of the Claimant's belongings seriously. I have considered the Defendant's actions after the eviction, including making groundless and false complaints about her to the police and making groundless threats of civil proceedings. I have considered the effect of these events on the Claimant's mental health, evidenced by documentation from her university counsellor.

69. I consider that, like *Sala v Munro*, **damages for eviction** should be set at £200 per day to properly compensate the Claimant for the significant inconvenience caused by her eviction. Although the Claimant was in unsettled accommodation until the end of May 2019, I accept Mr Baldwin's submission that 90 days is a reasonable period within which the Claimant could have continued to occupy the Property, being roughly the period to the end of the fixed term. This sum of **£18,000** is subject to a 10% *Simmons v Castle* uplift.

70. Pursuant to *Rookes v Barnard* [1964] AC 1129, **exemplary damages** are available for, *inter alia*, conduct calculated to make a profit. I am satisfied that the Defendant carried out the unlawful eviction in order to make the property available for re-letting for profit. *Kuddus v Chief Constable of Lancashire* [2002] AC 122 provides that exemplary damages are available provided there is unacceptable behaviour on the part of the defendant which displays features such as malice, fraud, cruelty etc. which merit punishment. I have no doubt that those features exist in this case, and for that reason I order the **£2000** sought.

71. The Claimant also seeks **aggravated damages** for the conduct of the Defendant as a result of the distress caused to her (per *Appleton v Garrett* [1996] PIQR 1) at approximately 5-10% of the compensatory award in damages. I accept her submission that given the humiliating, frightening and

distressing nature of the eviction, the Defendant should also pay aggravated damages and I award the **£2000** sought.

72. The Claimant seeks **special damages for the loss of her possessions** which she has detailed in a schedule of loss. I accept her evidence as to the items which were removed from her room at the Property and her evidence as to value and award the **£20,595.91** sought.

73. The Claimant is entitled to **return of the deposit and a penalty of up to three times the deposit**. I see no reason why, in the egregious circumstances of this case, the penalty should not be incurred at the highest level. Accordingly I award the sum of **£2600**.

74. The leading authority on calculating quantum of **damages for harassment** and other damages for injury to feelings is *Vento v Chief Constable of West Yorkshire Police* [2003] IRLR 102. That sets out three bands. The lower band is appropriate for less serious cases, such as where the act complained of is an isolated or one off occurrence. The middle band should be used for serious cases which do not merit an award in the highest band. The top band is for the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. The figures set out in *Vento* are as updated by *Da'Bell v NSPCC* [2009] UKEAT 0227, and since 2017 those have been subject to further annual review by the President of Tribunals.

75. Mr Baldwin for the Claimant submits that this falls within the upper end of the lower band or lower end of the middle band of the *Vento* guidelines i.e. £6,000 per *Da'Bell*, and updated for 2019/2020 to £8,800. The acts of harassment complained of do relate to a one-off occurrence, albeit they necessarily follow a course of conduct, but I agree that the severity of the harassment and the effect on the Claimant are such that the appropriate award is where the lower and middle bands meet. Accordingly I award the (updated) **£8,800 sought, which is also subject to a 10% *Simmons & Castle* uplift**.

76. Those are my reasons.

ADDENDUM

77. I record here that the trial was listed to be heard on 10 and 11 February 2020 at the County Court of Central London. On Wednesday 5 February the Defendant, who has never had legal representation so far as the court is aware, emailed the Claimant's solicitors seeking an adjournment of the trial on the basis that a Director of the Defendant was abroad. The Claimant's solicitors replied by email stating that it could not consent and the Defendant would have to make an application to adjourn to the court. The Defendant did not reply to that email, but I understand the Defendant did make such an application to the County Court at Central London, which was refused on Friday 7 February 2020. On 10 February 2020 the Claimant, her solicitors and witnesses attended the County Court at Central London ready for the trial. Neither the Defendant, any representative, or the Defendant's two witnesses attended.

78. In fact, because of judicial unavailability at Central London the trial could not be started on 10 February. Instead, I offered to hear it in Oxford beginning on the second listed day of trial, 11 February 2020. Notice of change of venue was sent to the Defendant by the court post and by email on the afternoon of 10 February. The Claimant's solicitors also sent notice to the Defendant by email. The email address used was that used by the Defendant throughout the proceedings and as recently as Wednesday last week. There has been no response from the Defendant. Neither the Defendant nor any representative nor its witnesses have attended court either in Oxford or at Central London today. In light of the Defendant's failure to attend the listed start date of trial, I inferred that it had no intention of participating in the trial, and so I heard the trial in the Defendant's absence.