Case No: G00W1579

IN THE COUNTY COURT AT THE MAYORS AND CITY OF LONDON COURT

Guildhall Buildings
Basinghall Street
London

Date: 3 May 2024

Before:

RECORDER GAVAGHAN

- -

Between:

(1) SHANTHA GODAGAMA

(2) SUMUDU EDIRISINGHE

Claimants

- and -

RAYMOND HANSON

Defendant

- -
- -

The **Claimants** acted in person and were unrepresented

Mr Nick Bano of Counsel (instructed by **Advice 4 Renters Solicitors**) for the **Defendant**

Hearing dates: 11, 12 and 13 March 2024

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JUDGMENT

RECORDER GAVAGHAN:

INTRODUCTION

1. These are possession proceedings brought in respect of an assured shorthold tenancy of a property known as Flat Garden Rear Right, 2 Richborough Road, London NW2 3LU ("the Unit"), the tenant of which is the Defendant, Mr Richard Hanson ("Mr Hanson"). The claim was preceded by a notice under section 8 of the Housing Act 1988 dated 10 January 2020, with the claim form being issued on 10 March 2020. The notice and claim form relied originally on five grounds under Schedule 2 to the Housing Act 1988 namely Grounds 6, 8, 10, 11 and 12.

2. The claim was originally brought by the First Claimant, Dr Shantha Godagama ("Dr Godagama"). On the first day of the trial, I made an order by consent to add Dr Godagama's daughter, Mrs Sumudu Edirisinghe ("Mrs Edirisinghe"), as Second Claimant/Part 20 Defendant.

3. Mr Hanson opposed the Claimants' claim for possession and brings a counterclaim which in summary seeks damages for failures on the part of the Claimants to keep or put the property into repair or habitable condition along with additional pleaded claims for damages arising out of breach of right to quiet enjoyment and disability discrimination. In a Reply and Defence to Counterclaim, it is asserted among other things that Mr Hanson repeatedly refused to provide access to workmen employed by the Claimants whenever he had raised any issues and therefore denies any liability for disrepair or poor condition, as well as denying the other counterclaims.

THE PROPERTY

4. The relevant freehold property is 2 Richborough Road, London owned originally by Dr Godagama and then transferred in 2015 to his daughter Mrs Edirisinghe.

5. It consists of a terrace house with a garden and outbuildings in Cricklewood and has been converted by the Claimants into some nine separate units which are rented out. It is now registered as a house in multiple occupation: this appears to have occurred in 2017, a significant time after the property had been converted.

6. The Unit in question is positioned in the back garden. It is shown on a plan (at page 1 and 140B of the Claimant's bundle) marked as "Garden Studio". The Garden Studio is a small room shown on the plan as having a front door and a very small window next to it. It is common ground that it also had a Velux rooflight in the ceiling. The plan shows a toilet and a sink in the room. Adjacent to that room was a storage area shown on the plan which formed part of the same physical building but not accessed from the studio room. It is marked on the plan as "Open Storage (Bicycles, bins and stroller)". As I will explain below, the Defendant is the tenant of the Unit which originally consisted only of the room marked "Garden Studio" but this area was extended in 2017 to include the area marked "Open Storage (Bicycles, bins and stroller)" under circumstances which remain in controversy.

THE TENANCY

7. The relevant tenancy agreement is dated 1 August 2016 and was signed by Dr Godagama on behalf of the landlord and Mr Hanson as tenant. The term was for twelve months beginning on 1st August 2016 for a rent of £260 per week payable in advance on the Monday of each week. It was recognised expressly to be an assured shorthold tenancy and therefore continued after the expiration of the terms as a statutory periodic tenancy on the same terms.

8. In terms of the demise, it is common ground that the tenancy when originally entered into related to the single room marked "Garden Studio" on the plan referred to above. Sometime in 2017, Mr Hanson broke through the wall between the "Garden Studio" and the "Open Storage" Area and extended his Unit into that area as well – putting up new sliding doors and installing kitchen units in what had been the storage area. I will return to that point below.

9. Turning first to the terms of the tenancy, the key ones for the current purposes are as follows:

   i) The rent was payable under clause 2.1.

   ii) By clause 2.3 the tenant was to keep the interior of the Property in good, clean and tenantable start and condition and not to damage or injure the property.

   iii) Under clause 2.5 the Tenant was not to make any alteration or addition to the Property nor without the Landlord's prior written consent do any redecoration or painting of the property.

iv) By clause 2.10 the Tenant was required to permit the Landlord or anyone authorised by the Landlord at reasonable hours in daytime and upon reasonable prior notice (except in emergency) to enter and view the Property for any proper purpose (including the checking of compliance with the Tenant's obligations under this Agreement).

10. The Landlord's obligations under clause 3.3 of the lease included the following:

i) Keep in repair the structure and exterior of the Property (including drains, gutters and external pipes).

ii) Keep in repair and proper working order the installations of the Property for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary convenience).

iii) Keep in repair and proper working order the installation at the property for space heating and heating water.

iv) The above was subject to a caveat namely that the landlord would not be required to do works for which the Tenant is responsible by virtue of his/her duty to use the Property in a tenant-like manner.

11. There are also a number of relevant obligations on the landlord which are implied by Statute and are of a similar if not identical nature. Under section 11 of the Landlord and Tenant Act 1985 ("the 1985 Act"), there is an implied covenant by the lessor:

(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes);

(b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity); and

(c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.

12. Section 11(2) makes clear that those obligations do not extend to having to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant like manner.

13. During the course of the tenancy (on 20 March 2020), the implied term contained in section 9A of the 1985 Act also came into force. Section 9A(1) of the 1985 Act imposes an implied covenant by the lessor that the dwelling let:

i) Is fit for human habitation at the time the lease is granted or otherwise created or, if later, at the beginning of the term of the lease;

ii) Will remain fit for human habitation during the term of the lease.

14. The covenant is extended to the common parts where the dwelling forms part only of a building under section 9A(6).

15. The implied covenant is again curtailed by the provisions of section 9A(2) of the 1985 Act which includes the clarification that the lessor is not required to carry out works or repairs for which the lessee is liable by virtue of the duty of the lessee to use the premises in a tenant-like manner or an express covenant of

the lessee of substantially the same effect as that duty. Section 9A(3) further states that the implied covenant does not impose any liability if the unfitness for habitation is wholly or mainly attributable to the lessee's own breach of covenant.

PROCEDURAL BACKGROUND

16. This claim has taken a substantial time to come to court – partially caused by the stay of possession actions which occurred during the covid crisis and partially because there has been one trial date which had to vacated at the last minute.

17. The landlord was originally represented by counsel and solicitors but by the time the matter came before me, was acting in person. Mr Hanson instructed Advice 4 Renters Solicitors to represent him.

18. The matter was supposed to be heard at a trial commencing on 5 June 2023 but had to be adjourned because there had not been compliance with pre-trial directions. This was as I understand primarily because the Claimant had not produced a proper trial bundle in good time for the hearing. The matter was listed for further case management directions on 7 June 2023 before Recorder Ellington at which the Claimant was represented by Mr Ehtesham Khan (a solicitor advocate) and the Defendant by Mr Nick Bano of Counsel. That was the same representation as had appeared before Recorder Kelly at a previous directions hearing on 23 November 2022.

19. There was obviously a discussion at the hearing before Recorder Ellington as to the ambit of the claim at trial for possession at a time when the orderly conduct of the case was already in peril. In the light of that discussion, the recital of that order included the following important words "*AND UPON the Court recording that the claim is founded on rent arrears alone, and possession is sought under grounds 8, 10 and 11 under Schedule 2 to the Housing Act 1988*" before it went on to give further case management directions for the trial before me.

20. I note in passing that there was no attempt on the part of the Claimant, who was legally represented at the time, to challenge that part of the Order.

THE TRIAL BEFORE ME

21. The trial before me commenced on 12 March 2024 and lasted for three days.

22. The Claimants appeared in person at the trial with the assistance of a Mackenzie Friend who had worked on the case previously for their previous solicitors. Mr Hanson remained represented by Mr Bano.

23. There had been a somewhat disappointing approach to the production of trial bundles for the hearing before me which was again left late by the parties. The Defendant produced a bundle which consisted of the core pleadings, witness statements and documents he wished to rely on but there was insufficient time given to discuss its content with the Claimants who wanted to rely on additional documents and that led to them producing their own bundle – with documents often not presented in chronological order, incomplete and not always legible

or dated. The overall result of the failure to prepare bundles in a timely manner is unfortunate.

24. However, I pay credit to the way both sides conducted themselves in the actual hearing before me. This was potentially a highly charged dispute but everyone before me maintained a respectful and reasonable approach to the resolution of this dispute which does them credit. Each side sought to take me to the documents they relied upon in the somewhat haphazard bundles when making submissions and I am grateful to all participants for their assistance at trial.

25. As mentioned above, an application was made at the outset of the trial by Dr Godagama to add his daughter Mrs Edirisinghe as a Claimant (and defendant to the counterclaim). Mrs Edirisinghe had been the registered freeholder at all material times – having had the freehold of the entire house and grounds transferred to her by Dr Godagama in 2015. Dr Godagama however had her authority to act as landlord on her behalf: I was shown a letter to this effect from 2015. The Defence had challenged whether he was the correct Claimant but the Reply and Defence to Counterclaim asserted that although he was not the registered freeholder, he was an intermediate landlord. That dispute however was pragmatically resolved by Dr Godagama's application which was made by consent of both Mrs Edirisinghe and Mr Hanson on the basis that the Claimants would be jointly entitled to any relief sought in the claim and liable for any counterclaim brought by Mr Hanson. The parties also agreed that it would not be proportionate nor necessary to amend the pleadings which could be read as if incorporating the two Claimants/Part 20 Defendants. Given that all the parties were agreed to this approach and that it reduced areas of conflict by avoiding

any need to ascertain the exact distinct roles of Mrs Edirisinghe and Mr Hanson, I accordingly ordered that Mrs Edirisinghe should be added to the proceedings as both Claimant and Second Defendant to the Defendant's Part 20 Claim, that order being made by consent.

26. There was a discussion at the outset of the trial as to the ambit of the dispute. The Claimants in their skeleton argument and some of their evidence had at times appeared to suggest that they wished to raise issues beyond rental arrears as a ground for possession, despite the order of Recorder Ellington. When this was pointed out to them, they acknowledged that their claim for possession was restricted to rent arrears and the trial has proceeded accordingly.

27. Similarly, the Claimants sought in opening to suggest that they wanted to call evidence and refer to documents to the effect that there had been a series of previous decisions by other tribunals or district judges which bound me as a matter of *res judicata* to find in their favour. Mr Bano objected to these arguments on the basis that these were not pleaded and were new arguments which would require investigation and could not be dealt with fairly at the trial which had already, of course, been postponed. The Claimants accepted that the *res judicata* point was new and did not pursue it.

28. The question for the Court on the possession claim was therefore whether there were arrears due and owing so as to justify possession under one of Grounds 8, 10 or 11. That in turn will require a consideration of Mr Hanson's counterclaims against the Claimants.

FACTUAL WITNESSES

29. I heard evidence for the following witnesses on behalf of the Claimants:

i) Dr Godagama.

ii) Mrs Edirisinghe.

iii) Mr Sanka Edirisinghe, who is Mrs Edirisinghe's husband, and was involved in managing the block including the Defendant's flat.

iv) Mr Janos Szasz who had been an onsite caretaker and handyman until around 2017.

v) Mr Asong Mbeboh who was another tenant in the main building and had acted as informal caretaker in the main building of the HMO for a period.

vi) Mr Balazs Balogh a qualified electrician working with a company called Bestfix who was sent to carry out electrical works on the property.

30. Mr Hanson gave evidence on his own behalf. Mr Hanson also originally intended to rely on the evidence of a Mr Mark McIntyre who had produced a witness statement, served on behalf of the Defendant. Mr McIntyre when he commenced his evidence however voiced concern as to whether all parts of his witness statement were accurate. In order to clarify matters, I allowed the Defendant to interpose Mr Ronald Daly of the Defendant's solicitors to explain to the Court how Mr McIntyre's witness statement had been prepared. Having heard his evidence, which I accept, I am satisfied that nothing untoward had occurred in the preparation of Mr McIntyre's statement. Having clarified that matter, Mr Bano then confirmed that the Defendant would not be relying on Mr

McIntyre's evidence and accordingly I released him as a witness and have disregarded his written statement.

31. I will return below to my conclusions on the witness evidence below, but will say something now about the witnesses generally. In terms of the two main witnesses, Dr Godagama and Mr Hanson, I have to say that I approach both their evidence with a level of caution having heard them. I do not consider either of them were attempting to mislead the Court but both have become entrenched in their views. Both at times sought to argue their case from the witness box and this appeared at times to colour their recollection – for example Dr Godagama in terms of whether consent had been given where he focussed on whether formal written consent had been given and Mr Hanson in for example insisted initially that photographs taken were taken by him when it was evident that at least some of them could not have been as he was in the photographs. His original insistence seemed to be based on seeking to support his argument that Dr Godagama had not entered his flat beyond the entrance way in December 2019 rather than an analysis of the photographs. He did however eventually accept that he personally had not taken the photographs. Another example was how he used emotive language to paint his landlord in a bad light: for example suggesting he had been "blackmailed" into entering the tenancy for the lease. He used this language because the landlord would not give him the keys until he had signed the contract: however, it seems to me to be unreasonable to characterise such a normal practice as "blackmail". Both men clearly feel passionately that they are in the right and as I say this has in my view coloured their recollection of events.

32. Mrs Edirisinghe had very little first-hand knowledge of what had happened nor did her husband: other than short interactions with Mr Hanson, they had not dealt with the matter on a day to day basis. It was Dr Godagama who dealt with the Mr Hanson on a regular basis. While Mr Edirisinghe originally purported to have had involvement with fitting out Mr Hanson's room before he moved in, it became apparent that if he had had such involvement his recollection had faded. That was evident by his confusion over where any storage heater was positioned. The Edirisinghes' evidence was therefore not of real assistance in determining the dispute between the parties.

33. Mr Szasz and Mr Mbeboh were more helpful witnesses although not independent in their viewpoint as they clearly were fond of Dr Godagama and had issues with Mr Hanson following arguments between them. Finally, Mr Balogh was in my view the most reliable witness as he was removed from what might be considered akin to a neighbour dispute and was able to maintain a more dispassionate assessment of the dispute – at least in so far as his relatively limited involvement in late 2019 and 2020.

SINGLE JOINT EXPERT

34. I also had the benefit of a written expert's report from Mr J G Flowers FRICS, Dip. Proj. Man. of Flowers Consulting Limited dated 26 April 2022 who considered the condition of the Unit. Mr Flowers was a single joint expert and his report was produced in accordance with the Court's earlier case management directions. Mr Flowers is a Chartered Building Surveyor and a Fellow of the Royal Institution of Surveyors with over 40 years of experience mainly involved

with residential buildings, dealing with all aspects of defect diagnosis, repairs, conversions, modernisation and maintenance of housing stock.

35. Neither side has challenged the content of that report. I will return to Mr Flowers' conclusions in his report when considering the question of the condition and disrepair at the Unit.

THE PARTIES' CONTENTIONS ON POSSESSION

36. As I have said earlier, the Claimants' claim for possession at trial is based on rent arrears alone. The Defendant admits that rent has not been paid for a significant period of time and that, if one were to ignore the Defendant's counterclaims, there would be money owing to the Claimants. The exact extent of such arrears is not admitted and the Defendant has effectively put the Claimants to proof as to the extent of those arrears. He also argues that a sum of £2,800 of arrears was waived by the Claimants in early 2020.

37. Mr Hanson in response brings a counterclaim for disrepair and asserts that there has been a failure to keep the Unit fit for human habitation. He argues that his damages for that will far outweigh the alleged arrears.

38. The Claimants reject the claims for disrepair and condition. In summary, they resist on two grounds:

    i) They say that the disrepair and/or poor condition has been caused by Mr Hanson in particular by him knocking through to the store room without consent and therefore in breach of his obligations.

ii) They say that they have attempted to conduct remedial works but have been prevented from doing so by Mr Hanson and that that therefore means they are not liable.

39. Mr Hanson has also pleaded claims for damages related to disability and breach of the covenant of quiet enjoyment. Those claims are again denied by the Claimants.

RENTAL ARREARS (SUBJECT TO THE DEFENCE AND COUNTERCLAIM)

40. I will address first the question of rent arrears in the absence of any defence and counterclaim for disrepair or condition.

41. There are 3 relevant grounds under Schedule 2 to the Housing Act 1988 for possession relating to rental arrears. Ground 8 is a mandatory ground for possession and is as follows:

> "Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing—
>
> (a) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
>
> (b) if rent is payable monthly, at least two months' rent is unpaid…
>
> and for the purpose of this ground "rent" means rent lawfully due from the tenant."

42. The other two Grounds are discretionary grounds for ordering possession. Ground 10 states:

> "Some rent lawfully due from the tenant—
>
> (a) is unpaid on the date on which the proceedings for possession are begun; and

> (b) except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings."

43. Finally, Ground 11 states:

> "Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due."

44. There is an updated schedule of rent arrears in the Claimants' Bundle. It is apparent that the order of the pages has been inadvertently mixed up when the bundle was produced but if one takes the pages from the Claimants' Bundle in the following order (427, 428, 329 and 429) a coherent schedule arises. The schedule shows rent due of £260 per week which the Claimants then claim at the rate of £1,040 per month. The schedule records payment from the Camden in the form of housing benefit or from the Defendant direct.

45. The schedule is consistent with Dr Godagama's witness evidence that rental arrears of £41,286.55 had accrued by the date of the trial.

46. I should for the sake of completeness mention that clause 2.1 of the tenancy agreement purports to restrict the right of the tenant to set-off. However, the Claimants (whether in their pleaded case when represented nor in submissions before me) did not seek to rely on this provision. They were correct in my view not to do so, given that such a provision would have been unfair in a lease such as this given the terms of section 62 the Consumer Rights Act 2015,

47. The Defendant has not produced evidence to challenge the record of payments produced by the Claimant. The only substantive issue raised by Mr Bano was that £2,800 had been waived by the Claimants by virtue of an email dated 11

February 2020 (which appears in the Defendant's Bundle at page 54). In that email Dr Godagama stated that he gave permission to Mr Hanson to use some of the rent arrears (expressed to be £2,800) to employ plumbers or electricians of Mr Hanson's choice to carry out works. The permission was caveated with a requirement that any such workmen call Dr Godagama first to talk about "certain restrictions". No further steps were taken in respect of this email by either side. It seems to me that this could not be said to be an unconditional waiver of £2,800 rent. If it had any effect, it would have been a conditional waiver and subject to Mr Hanson using that money to carry out works. Those works were not done and that therefore any condition of the waiver was not met. In the circumstances therefore I reject the submission made by Mr Bano that the £2,800 became irrecoverable by reason of waiver.

48. Having rejected the waiver argument, I accept the Claimants' schedule of arrears is accurate. In January 2020, when the section 8 notice was served there would have been over £10,000 of arrears and arrears of £41,286.55 would be due at the date of trial ignoring for the moment the Defendant's counterclaim. Such arrears would therefore be sufficient to satisfy Ground 8 as the rent was payable week in in advance and over 8 weeks of rent would be due at both the notice stage and at trial - subject to the Defendant failing in his counterclaim.

49. I will therefore turn to the issue of the condition of the Unit raised in the Counterclaim.

CONDITION AND STATE OF REPAIR OF THE UNIT

50. There is no dispute that the Unit is in a delipidated state of disrepair and that it is not fit for human habitation. That is the conclusion of the single joint expert report of Mr Flowers: no issue is taken by either side on the contents of his report. It is also apparent from a number of other third party sources, in particular the earlier letter from Mr Hollowood and the notices served in 2020 by the Camden following their inspection of the Unit.

(a) MR FLOWERS' REPORT

51. Mr Flowers inspected the property on 13 April 2022. He made a number of comments in respect of the property:

i) The flat was a freestanding detached building which had been constructed in the rear garden of 2 Richborough Road.

ii) His understanding (which has not been challenged) was that the building was originally constructed without planning or Building Regulations consent and that no retrospective approvals have been obtained.

iii) There was no hot water provision at the time of inspection.

iv) There was electrical supply to the bedroom, but not direct to the kitchen area in the former store room: extension leads had to be used to provide electricity to that part of the premises.

v) The storey height was approximately 2.0 metres.

vi) Heating was supplied by a portable electric heater.

vii) There is an infill in the original opening on the right hand side of the store room which was fitted with timber stud partitioning plasterboard. This, says Mr Flowers, will have very poor thermal performance.

52. Mr Flowers addressed the particulars of disrepair pleaded in the Particulars of Claim. In terms of the electrics, Mr Flowers noted that the electricity to the kitchen area (i.e. the former store room) had been disconnected – hence why it was necessary to use multiple extension leads from the bedroom area. He considered this was potentially hazardous with overloading and also formed a trip hazard as the cables were within the entrance doorway.

53. In terms of heating, Mr Flowers there was no fixed space heating within the building and noted that a portable fan heater was being used to heat the premises. His opinion was that such heating was unlikely to be adequate as the building was not insulated in accordance with building regulations.

54. He found there was no supply of hot water to the wash basin, shower or either of the kitchen sinks.

55. He was unable to inspect the shower which was filled with stored materials. He did not therefore give an opinion as to whether the shower was operable. He found there was missing grouting between the tiles and that the tiles below the shower tray were loose.

56. He considered that the toilet and WC wash basin were not operable but was unable to confirm the reason for this. He noted that the toilet pan was not fixed to the floor and the wash basin was loose and required refixing.

57. He examined the Velux rooflight but was unable to confirm whether staining around it was caused by a defective window or flashings on the one hand or whether the rooflight was left open during rainfall. He conducted a limited inspection from a ladder positioned at the front of the building and confirmed that there were felt covering which appeared to be in sound condition.

58. Mr Flowers also noted other areas of concern which had not been raised expressly in the Particulars of Claim:

    i) There was inadequate insulation within the roof and walls.

    ii) The tiling within the shower room was missing below the shower.

    iii) The extractor fan within the bathroom was inoperative.

    iv) There was no cooking provision within the kitchen and no extractor fan.

    v) The guttering on the corner of the roof was leaking.

59. In his conclusions, Mr Flowers indicated that in his expert opinion that it was unlikely that the building was constructed in accordance with Building Regulations and as such it would have poor insulation, poor ventilation and generally provide poor accommodation for the resident.

60. He reiterated in his conclusions that at the time of his inspection, there was no washing facilities, no hot water, poor provision for heating and a dangerous electrical installation with part of the building being run via extension leads from the other part of the building. He also noted that there was an active rodent infestation which was significantly harmful to the health of the resident which required eradication.

61. In the light of the above, he concluded that it was his belief that the building did not satisfy the criteria for the Homes (Fitness for Human Habitation) Act 2018 ("the 2018 Act"), since it was originally created as a garden storeroom rather than to provide residential accommodation.

62. Mr Flowers set out the remedial works he considered needed to be done in a schedule to his report. His report does not suggest that the Unit needs to be demolished and rebuilt – instead he refers to the remedial works necessary to put the Unit into repair and make it habitable.

63. There is no suggestion that these or any works have been done to the Unit since his report was produced in April 2022.

(b) MR HOLLOWOOD'S REPORT DATED 12 DECEMBER 2019

64. Mr Flowers' report is foreshadowed by a report from Mr Hollowood (a chartered Building engineer and building surveyor) dated 12 December 2019 obtained by Dr Godagama and exhibited to the Particulars of Claim.

65. The report was in the form of a letter and stated that the structure of the unit overall did not comply with current applicable Building Regulations and that the whole unit was in a dilapidated condition. He indicated that although not condemned by Camden as being not suitable for human habitation, the exterior and interior were of a very unsatisfactory standard. He raised particular areas of concern (which were said not to be exclusive):

i) The solid exterior walls were uninsulated and exhibited damp penetration requiring substantial repair or rebuilding.

ii) The roof was inadequately insulated and was dilapidated.

iii) Fire protection was inadequate.

iv) An efficient water and space heating system was required.

v) The electrical system required certification and necessary upgrading or re-wiring.

vi) The bathroom ventilation fixtures and fittings and waste water installation required repair or replacement or upgrading.

vii) The whole unit required re-decoration.

(c) COUNCIL NOTICES

66. The printed records from Camden London Borough Council ("Camden") show that Camden officials visited the Unit on 17 December 2019. They reported that the "*Flat is in a very poor state. Shower doesn't work. Windows are boarded up, no fixed heating, there are two kitchens. Electrics are all over the place. Multiple over loading of sockets throughout the flat. Sink and WC coming off the wall*."

67. Camden subsequently issued a Hazard Awareness notice dated 13 February 2020 addressed to Mrs Edirisinghe as freeholder drawing the hazards to her

attention and listing remedial works necessary to remedy the deficiencies. This raised a number of hazards:

i) Excess cold hazard based on the fact that there was no fixed heating in the flat, the rooflight did not close properly and there was inadequate wall and roof insulation.

ii) Domestic hygiene (pests and refuse) hazard based on the fact that there was a large rat hole in the front garden and evidence of rat runs in the external yard areas.

iii) Personal hygiene sanitation and drainage hazard based on the fact that the shower did not work, the toilet was not attached to the wall properly and the sink was coming away from the wall.

iv) Electrical hazards in that there was no electrical installation condition report or records for the installation and the works carried out on the Unit, there was overloading of sockets throughout the Unit and light switches hanging off the walls, and wires going through an open window of the Unit to the main house.

v) Food safety hazard based on the kitchen in the original part of the Unit being in poor condition with damaged work surfaces and cupboards.

68. On 18 June 2020 Camden served a notice under the Prevention of Damage By Pest Act 1949 – this called on Mrs Edirisinghe within 21 days to employ a competent pest control contractor to carry out treatment to eradicate the active rat infestation. That effectively repeated the terms of the remedial works listed

in the earlier Hazard Notice which referred to the treatment within the private drainage system belonging to the Claimants to eradicate the rat infestation.

69. Camden then issued a Prohibition Order dated 23 July 2029 under section 20 and 21 of the Housing Act 2004 based on the hazards listed in their previous hazard awareness notice. It was again addressed to Mrs Edirisinghe. This notice recorded that "*The dwelling does not have full planning permission for use as residential accommodation. It was created over four years ago and is therefore beyond the scope of planning enforcement. The dwelling is therefore of poor quality and would not have been approved by planning or building control for use as residential accommodation*."

70. I am told that no steps have been taken by Camden to enforce the notices.

NOTICE OF DISREPAIR

71. Mr Bano accepts that on order to be liable under an obligation to repair, a landlord must be informed of any disrepair within the area demised to the tenant. Having considered the evidence, I consider that Mr Hanson complained about the state of disrepair of the unit in December 2019 when he sent a text to Dr Godagama complaining about the cold in the flat. There were previous complaints by Mr Hanson about the Unit in 2017 – however electrical works were done following complaints and paid for by Dr Godagama (Mr Hanson having selected his own electrician). With no real evidence of complaint between then and December 2019, it was in my view reasonable for the Claimants to consider that any items of disrepair had been dealt with. I consider

that any potential breach of the duty to repair therefore arose in December 2019 with notification by Mr Hanson to Dr Godagama relating to the temperature in the Unit.

CONDITION OF THE UNIT: MY FINDINGS

72. In my view the Unit (whether one considers the bedroom alone and/or the extended Unit once what was originally a storage area was added to it) was already inherently defective when it was let to Mr Hanson – an unchallenged conclusion reached by Mr Flowers as single joint expert.

73. Despite the lack of challenge to Mr Flowers' report, the Claimants in evidence sought to suggest that they had in fact carried out a proper and full refurbishment of the original unit just before Mr Hanson moved in. I do not accept that the work done meant that that room was properly fit for habitation or at least would last for long in such state. I have not been shown any real evidence to contradict this conclusion. I have no specifications or design plans of the work done or any invoices. I have photographs which are said to show the state of the premises immediately before it was let to Mr Hanson referred to in particular by Mr Edirisinghe. They do not really take matters forward significantly. They are not date stamped and it is not possible to assess the quality or the work done, whether anything works or the quality or insulation for example. They are said to show the flat immediately before it was let to Mr Hanson but this could not be independently confirmed to me.

74. They do not therefore constitute evidence which can undermine the evidence of Mr Flowers or indeed the letter from Mr Hollowood – both of which indicate that in their professional opinions the property had not originally been converted properly into residential premises.

75. I consider that given the condition of the Unit was such by December 2019 that Mr Hollowood concluded that it needed to be demolished as being uneconomic (a consideration that Mr Balogh in evidence suggests he also considered to be the case when he saw the Unit in January 2020), it is more likely than not that it was already in a poor condition in terms of being a poor conversion when it was let to Mr Hanson only a few years before. For it to have deteriorated to such an extent from August 2016 strongly supports the view that it was already in an inherently defective state when let and this supports Mr Flowers' views.

76. I acknowledge that there is a letter said to be from a builder at page 2 of the Claimants' Bundle. However that letter is not in any way compelling evidence. It is said to be from a Martin Krygier and is dated 25th July 2016:

> "This is to certify following work carried out at above flat as instructed by landlord and supervised by architect [*sic*].
>
> Installation of bathroom with separate entrance door work included insulation of external works [*the word works is crossed out and the word "walls" is added in manuscript*] bathroom extractor- shower – toilet- wash basin and all necessary electrical and plumbing work done to specification.
>
> Installation of new kitchen units, sink, taps, kitchen extractor, plumbing for washing machine and installation of electrical sockets for fridge and appliances use on work top.
>
> All external walls and ceiling are fully insulated to specification".

77. I do not consider that this letter goes anywhere near enough to satisfy me that the original conversion works were carried out to a proper standard. That letter is not on headed notepaper and I have no evidence as to the qualifications or experience of Mr Krygier. Mr Mbeboh described him as being a "handyman builder" when giving evidence which does not give me confidence (when combined with the lack of headed notepaper) that he was a builder suitable for carrying out refurbishment works of the complexity required. Mr Krygier himself has not given evidence. I have not been shown the "specification" and I have no evidence from the "architect" whoever that was. The reference to the external walls and ceiling being fully insulated is it seems to me directly contradictory to the evidence of the single joint expert. I note also that the Claimants have not provided any invoices or other detail of the nature of the works done before the Unit was let.

78. Even if I were to accept the letter at face value, it again does not prove what the quality of the works done were.

79. Taking all the above into account, along with the other evidence I have heard and been shown, I conclude that:

    i) The original room occupied by Mr Hanson, and then the extended Unit, was an outbuilding poorly converted into a dwelling with poor insulation and ventilation and generally provided poor accommodation for the tenant from the outset. It is clear that the condition then deteriorated over time.

    ii) Prior to December 2019 there were a series of power failures as a result of the insufficient electrical supply to the HMO block as a whole. That

in my view meant that the electrical system broke down from time to time because it was not able to cope with the demands of the tenants using the property. The power supply into the building was not sufficient for a multi-occupancy block and required upgrading to a Phase 3 electrical system. This appeared to me to be undisputed and indeed was in any event the view of Mr Balogh who was of course called by the Claimants. Mr Balogh was not an independent expert, but he was a qualified electrician and appeared to me to be a knowledgeable witness. That upgrade did not occur when the block was converted into multiple occupancy or when it was licenced as an HMO – instead being only done in 2020.

iii) I conclude that there was insufficient insulation when the Unit was originally converted. That is clear from all the inspections by third parties – Mr Flowers, Mr Hollowood and also consistent with the hazard and prohibition notice served by Camden.

iv) I find that there was no operative or effective storage heating from at the latest December 2019 when Mr Hanson complained to Dr Godagama of the cold. In fact, I accept the evidence of Mr Hanson (recorded at paragraph 42 of his witness statement) that there was no storage heater when he moved in and that the Claimants installed second hand ones in around 2017 when the building received its HMO licence but that his one failed soon afterwards as it kept tripping and was removed and not replaced:

a) The list of works done to the flat in Mr Krygier's letter of 26 July 2016, such as it is, does not mention storage heating which provides some support for Mr Hanson's version.

b) No invoices or delivery note for a storage heater or any replacement or their installation have been provided in evidence by the Claimants.

c) Mr Flowers indicated there was no storage heater evident when he visited the flat, and although there were many belongings in the flat piled up, there is no suggestion that he hadn't been able to ascertain whether there was one present.

d) Mr Hollowood and Camden in their notices also noted the lack of effective space heating.

e) Given that there is now no storage heater, I find it unlikely that Mr Hanson would have removed an operative storage heater himself – there was no reason for him to do so as it would not have provided him with an increase in space of any significance.

f) I note also that the photographs said to have been taken just before Mr Hanson moved in do not show a storage heater.

g) While the Claimants' witnesses sought to explain the absence of the storage heater in the photographs by saying its position must have been out of camera shot – their evidence as to the position of the heater became contradictory which in turn undermines the

suggestion that Mr Hanson was wrong when he said that there was not one at the outset. In particular:

i) Mr Edirisinghe in oral evidence for the first time claimed to have carried out work himself on the Unit before it was let to Mr Hanson (he thought he had painted it) and said that there was a storage heater on the left of the original entrance door as one entered. This appeared to fit a narrative that the storage heater had been removed by Mr Hanson when the wall had been knocked through to extend into the storage area. However, when challenged with photographs relied upon by the Claimants as being taken before the letting to Mr Hanson, he accepted that there was a wardrobe where he had said the heater was and therefore his original explanation had to be wrong. He then suggested that it might have been underneath the small window but he was not sure. That seems highly unlikely as the window seems far too small to have accommodated an effective storage heater underneath it.

ii) Mr Szasz, who heard the evidence of Mr Edirisinghe, said he was wrong and said that he recalled he had installed a replacement heater to the right of the door. He said the heaters regularly broke down and had to be replaced. I accept Mr Szasz's evidence that he installed a heater to the right of the door – but do not accept that this was a

replacement heater for one that had been in existence before Mr Hanson moved in. I consider it was the heater referred to by Mr Hanson as being installed for a relatively short period and then removed.

h) Even if I had been wrong on that and there was originally a storage heater, whatever storage heater was in situ in 2109 had clearly failed by December of that year: Mr Hollowood, Camden and Mr Flowers inspected as all of them commented on the lack of effective space heating. If the Claimants were correct on there being a storage heater installed permanently by them – it had stopped working by December 2019 and was in need of repair or replacement.

v) There is a clear message in Mr Hanson's text dated 1 December 2019 to Dr Godagama complaining about the temperature in the Unit at night being 2 degrees and therefore the Claimants were aware of the lack of functional heating by that point at the latest and that the state of repair of the Unit needed to be checked and any disrepair fixed.

vi) I accept that there was functioning hot water in the Unit when it was originally let. This was an electric heating system. However, this appears to have been faulty by the time Mr Hollowood reported (he refers to his particular concern regarding the lack of an efficient water heating system among other things) and has not been fixed since.

vii) By December 2019 the toilet and sink were only partially attached to the wall and needed repair to be properly operable.

viii) That December text does appear to have prompted Dr Godagama to seek Mr Hollowood's report which is dated 12 December 2019. From then on it is apparent that the Claimants were aware of the issues relating to disrepair and condition and yet over four years later those issues still remain.

ix) There was also a problem with rats in and around the Unit – that can be seen for example from the hazard awareness notice which refers to a rat hole and rat runs in the common parts and must relate to the inspection which took place on 17 December 2019. What is apparent from that notice is that the rats appear to be using the drains to gain entrance to the Unit and the private drains are in the control of the freeholder and not let to any of the tenants, along potentially though holes in the structure of the Unit.

80. It seems to me that the state of repair and condition of the Unit needs to be considered in two periods – the first from December 2019 relates to disrepair from when the Claimant was clearly informed of such disrepair. The second relates to the fitness of human habitation from 20 March 2020 onwards when the section 9A implied term came into force in respect of this tenancy. (Mr Hanson had a periodic tenancy when the amendments under the 2018 Act came into force hence why the provisions did not trigger until 20 March 2020: see section 9B(4): section 9A having come into force legally on 20 March 2019 – thus meaning existing periodic tenancies being caught a year later).

81. Given the poor condition and disrepair in existence in December 2019 and onwards, the Claimants are on the face of it responsible for that failure as they

were under an obligation to repair once notified (in December 2019) under clause 3.3. of the lease and/or section 11 of the 1985 Act and (from 20 March 2020 onwards) to put and keep the Unit in a state fit for human habitation under section 9A of the same Act. That latter duty is more onerous than a simple duty to repair – the landlord from then on was obliged to fix inherent defects existing in the Unit if they were necessary to make the Unit fit for human habitation even if those could not be classified as repairs.

82. From December 2019, in my view the Claimants were under a prima facie duty to do repairs, in particular:

a) Reinstate electricity to all parts of the Unit;

b) Fix the supply of hot water to the Unit;

c) Carry out works to prevent the damp penetration into the building from the external walls;

d) Fix the sink and toilet to the wall so they could be used properly and safely;

e) Fix the broken window;

f) Fix the private drains serving the Unit and carry out any repairs to the structure of the Unit so as to take reasonable steps to eliminate the rat infestation.

83. From 20 March 2020, the Claimants became on the face of it obliged to carry out not only the above repairs but the works of improvement required to bring

the Unit into a state fit for habitation – works which I will take as being the full works listed in the schedule to Mr Flowers' report.

THE CLAIMANTS' CONTENTIONS AS TO THE DISREPAIR/CONDITION ISSUE

84. I have referred to the Claimants as having obligations "on the face of it" or "prima facie" because it is necessary to consider whether the Claimants are excused from such duty to repair or improve either because:

i) Mr Hanson has created the disrepair/condition himself by his breach of tenancy; and/or

ii) that he has prevented the necessary repairs by repeatedly refused to provide access to workmen to fix the issues and that therefore he could not claim damages for inadequate condition while preventing access.

CAUSE OF THE DISREPAIR: BREACH OF DUTY

85. There are two strands to the Claimants' argument on the first of these points – the Claimants argue that Mr Hanson has caused the disrepair by his own actions rather than them being a result of a decline from the original poor state of the conversion when let to him and/or that problems have been caused by him extending the Unit by knocking through the wall into the storage area without the landlord's consent in breach of his lease.

86. For the reasons set out below I do not accept either of those contentions.

(a) DEFECTS CAUSED BY MR HANSON?

87. It is apparent from those witnesses who have been inside his Unit and from recent photographs that Mr Hanson has kept a great deal of personal effects in his room and it is very untidy. Items are piled on top of each other and there is little surface or floor space left uncovered which has caused people like Mr Balogh and Mr Flowers difficulty in fully inspecting the Unit. However, there is no evidence to establish that that in itself has not caused any defects to the property, especially in circumstances where the Unit itself had not been properly converted into residential accommodation in the sense of complying with Building Regulations for a habitable structure. I note that there is no expert evidence that his untidiness or other mode of use of the Unit has caused the defects in the property. Mr Flowers was specifically asked to report on whether any defects to the property have been caused by the tenant and did not find that they had been.

88. There is a question raised in that respect by Mr Flowers related to the rooflight and whether the disrepair around that had been caused by it leaking or being left open in the rain. In the main part of his report, Mr Flowers says he is not able to confirm either way but the schedule to his report suggests his view at one stage was that it was on balance most likely that water penetration caused by leaving rooflight open during rainfall. It seems to me that I should take the comment on the main part of his report as being his final view i.e. that he made no conclusion. This seems to me to be a relatively small item of disrepair/condition in the context of the dispute. However, it seems to me that

in circumstances where there is inadequate ventilation or functioning extractor fans in the Unit even if the damage was caused by the skylight being left open, I am not satisfied that it was practical for Mr Hanson to always have the skylight shut in case of rain occurring. I also reject the suggestion put to Mr Hanson in cross examination that he went out of his way to cause damage to the Unit to worsen the condition of the Unit and to discredit the Claimants. There is nothing of substance to support the argument that Mr Hanson did this and I find it inherently unlikely that he would do so deliberately. He had enough to complain about the quality of the accommodation, without having to inflict further issues on himself. In so far as any disrepair was caused by leaving the skylight open, I consider that the ultimately responsibility for this was the lack of repair in respect of the extractor fans being operable coupled with the lack of adequate ventilation generally.

(b) DID THE CLAIMANTS CONSENT TO THE EXPANSION OF THE UNIT?

89. Dr Godagama gave evidence to the effect that no consent had been given for the Mr Hanson's expansion into the storage area in 2017. He claimed when giving evidence that he did not find out about what had been done until after 2017 and later in cross examination said it was months after the works had been done that he discovered about them. On the evidence before me, however, I consider on the balance of probabilities that the Claimants through Dr Godagama, was aware of and consented to the works he carried to the Unit in order to knock through the adjoining wall, enclosing it with sliding doors and setting up a

kitchen in it and that Dr Godagama knew what was happening at the latest when the works were being done and most likely before.

90. When Dr Godagama denied this in evidence I consider him at times to be focussing too much on whether he had provided formal written consent for Mr Hanson's actions. I accept that there is no signed written document expressly giving consent from the landlord in the form of an amendment to the lease or formal deed recording the consent. However, I find that Dr Godagama by his conduct gave consent on behalf of the Claimants and that any breach of the lease was accordingly waived by and on behalf of the Claimants. As I will explain, the contemporaneous documents and the evidence of Mr Mbeboh show this. The Claimants sought and obtained rent in knowledge of what was happening physically to the Unit and did not object and by doing so, implicitly consented to the extension of the living area into what had originally been a storage area.

91. On the evidence I have heard, I also accept Mr Hanson's version of events to the effect that the storage area was already being used as accommodation by other tenants before him. Dr Godagama denied this but the evidence of both Mr Szasz (who accepted he had used the area himself to live at one point) and Mr Mbeboh (who did not accept that he had used it, but did acknowledge that others had) satisfies me that it was being used for accommodation before Mr Hanson knocked through. Works had obviously been carried out at some point to convert it from an open storage area into an enclosed area which could be used for accommodation: I note for example that when Dr Godagama wrote to Camden in May 2017 he referred to Mr Hanson having "*taken off [the] external entrance door*" from the storage area which gives some additional support to

the view that the open storage area shown on the plan had already been converted into an enclosed area before Mr Hanson moved in: however that was already apparent from the evidence of Mr Szasz and Mr Mbeboh as well as Mr Hanson himself.

92. Turning to the question of knowledge and consent to the works carried out by Mr Hanson, text messages between him and Dr Godagama support Mr Hanson's version of events and undermine Dr Godagama's claim that he was unaware at the time of what was going on. On or around 10 January 2017 there was an exchange of texts with Mr Hanson where he says that "*it would be ideal for me if it was knocked into one but right now it's a tight squeeze*". It is apparent that that refers to knocking through the internal wall between the room and storage area and extending the living space into it: that is clear evidence of Dr Godagama being aware of Mr Hanson's desire to knock through from the bedroom into the storage area before it was done. Dr Godagama's response far from rejecting the idea was to say "*Wait until we sort out asong*" which was a reference to Mr Mbeboh's first name. (Mr Mbeboh's evidence was that there had been doubt about where he would live because of arrears that had built up and a possibility that he might live in the storage area was being discussed. In fact, he was allowed by Dr Godagama to stay in his original flat in the main part of the HMO building.) Mr Hanson replied "*Yes I understand that but I can't wait I'm starting studying and I must be settled. I've waited already and now I need more room*".

93. On 23 January 2017, Mr Hanson emailed Dr Godagama to say "*Hello dr can you tell me what is going on with the room you keep saying one thing then another*".

94. The response from Dr Godagama was "*As I promised I have given you common storage space, and removed items in the room to make more space at my cost, it is you wanted some work top and cupboards I said when my son remove and dispose unwanted units I can bring them there, may be 2 or 3 weeks time. That's all I can do*".

95. That is evidence of actual consent to use of the storage area and followed on less than two weeks from Mr Hanson having referred to knocking through. Dr Godagama sought to explain this text exchange by saying that he had simply given consent for Mr Hanson to use the store room for storage not as a kitchen as part of his living space. However, in my view the reference to "*work tops and cupboards*" is far more consistent with Mr Hanson's account that Dr Godagama knew that he intended to use the area as a kitchen than as storage, along with his previous knowledge of Mr Hanson's desire to knock through from his then room so as to have more room.

96. In cross examination Mr Hanson mentioned a text where he had told Dr Godagama that he intended to break through the wall and that Dr Godagama had agreed to him doing but warned him that he would be required to reinstate the wall if Camden took enforcement action. In the Claimants' bundle there is an undated text exchange which supports this. That exchange is at page 62. It starts with what appears to be a request by Mr Hanson for the remainder of items to be removed from the storage area with the words "*Please tell them to move*

the stuff out of there because I am pulling down the wall. Thank you." The response, which appears to be from Dr Godagama stated, "*As I explained if you are trying to connect it to your flat I cannot officially allow, if you open it and council had any knowledge they will write to me to close it, if that happened I will have to inform you to close it at your cost*." Mr Hanson responded that he had already spoken to the Environmental Health to explain the room was being made bigger and "*he was ok with that*". From that exchange, on a natural reading it appears to me that Dr Godagama was giving his informal consent but with the caveat that if Camden took enforcement proceedings Mr Hanson would have to reinstate the wall on demand from the Claimants. The absence of *written* consent appears to me not to be because consent was not given between landlord and tenant, but rather because Dr Godagama wished to distance himself from any consent if Camden, in particular its planning department, decided to take enforcement proceedings. I note that Camden has not sought to enforce planning or building regulations and has taken no step to enforce the Prohibition Notice which it issued in 2020 and to which I will make reference below. Added to that, it is not part of the Claimant's case that possession should be granted because of failure on the part of Mr Hanson to reinstate the wall. (Instead the Claimants have denied that Mr Hanson had any consent to carry out the works at all and used that argument to justify the position that insofar as any problems of condition were caused by the enlargement of the Unit that was unlawful and that they had caused any disrepair or defect in condition. There is no expert evidence which in my view establishes that the poor condition as the Unit as a whole was caused by the extension – and even if it had been, it was done in my

view with consent given the subsequent conduct of Dr Godagama in continuing to accept rent after the works were done.).

97. In addition to the above text exchange, Mr Mbeboh's evidence confirmed that he was aware of Mr Hanson doing the works to extend into the storage area and set up a kitchen and had informed Dr Godagama at once and had discussed it on a number of occasions with him, while Mr Hanson was carrying out the works. I accept that evidence and note that there was no sign of Dr Godagama refusing rent thereafter or insisting that Mr Hanson stop the work. Instead he continued to demand and accept rent from Mr Hanson.

98. Reference has also been made to a letter dated 18 October 2018 written and signed by Dr Godagama where he states among other things "*This is to confirm that I have done following adaptations to Mr Hanson's above flat…Sliding door for easy access*". That letter was put to him in cross examination and he accepts he wrote it but says it was dictated to him by Mr Hanson and that he wrote it as a favour to Mr Hanson without knowing whether comments in the letter about Mr Hanson's health issues were correct. In terms of timing, had that been the first time Dr Godagama had discovered about the works I would have expected him at that point to raise objection, however he does not do so and was prepared to tell Camden that the Landlord had installed the sliding doors. While I accept that Dr Godagama did not see documentary evidence about Mr Hanson's health issues (none having been presented to the court either) – that letter again reinforces the fact that Dr Godagama consented to the works done to the Unit. The sliding doors provided access to the Unit through what had been the storage area and in my view again supports the view that Dr Godagama was aware that

access was now occurring though the storage area, rather than the bedroom and the storage unit being separate and unconnected.

99. I would add that in the light of that letter, it does not lie in the mouth of the Claimants to suggest that the installation of the sliding doors was a breach of the tenancy. Whatever his knowledge of Mr Hanson's medical condition, Dr Godagama cannot legitimately have complained that he was deceived into thinking that sliding doors had been added to the flat. They had been and he knew it. He had been aware of their construction since at the latest his conversations with Mr Mbeboh who told him what was happening at the time Mr Hanson was carrying out the works and they would have been apparent on the most cursory inspection of the Unit from Dr Godagama or any of his agents when they were in the garden of the main building. As I have said, there is no record of any proper complaint about the doors or request that they be removed – and the letter of 18 October 2018 is in my view the opposite of a complaint: it acknowledges and implicitly approves of the installation and continued existence of the sliding doors.

100. The legal result of that it would seem to me was a surrender and regrant of the original tenancy to extend the demise into the storage area – as far as the parties to the lease were concerned however, the area to be occupied by Mr Hanson under the tenancy was increased to cover the storage area. The consideration for such surrender and regrant was the continued presence of Mr Hanson as a tenant beyond the term of his original lease: he had, as is apparent from the text exchanges, been implicitly threatening to leave the Unit if it was not increased in size.

101. In those circumstances, the Claimants cannot in my view seek to blame any disrepair or condition issues in the Unit (whether the original bedroom or the kitchen area added from the area originally marked storage) on an unauthorised annexation by Mr Hanson.

(b) REFUSAL OF ACCESS

102. I turn now to the allegations of refusal of access to carry out repairs. Mr Bano in his skeleton argument recognises that a refusal to allow access for repairs could in theory be a defence to a counterclaim for damages. He refers me to the case of *Granada Theatres Ltd v Freehold Investment (Leytonstone) Ltd* [1959] Ch 592 and the principle that liability to repair (or to improve) is suspended where a landlord was "ready and willing" to comply with a repairing obligation but where the tenant has prevented him from doing the work by a refusal to co-operate for example by refusing access.

103. The Court of Appeal in *Granada Theatres* also accepted that a landlord who is ready and willing to do works of repair should give the tenant sufficient notice of intention to enter and information about the work intended to be carried out. As Ormerod LJ stated at page 613:

> "The tenants are, I think, entitled to know the general nature and purpose of the works to be performed. They have to put up with the inconvenience of having workmen on the premises, and it is reasonable that they should have such information as would enable them to judge whether the proposed repairs would be likely to fulfil their purpose."

104. Mr Bano says that the Claimants have not shown any proper evidence that they were ready or willing to do the necessary works nor did they indicate to Mr Hanson what works they intended to do. He also says that while there were occasions when workmen were not given access, when one steps back and looks at the position generally, Mr Hanson gave access on multiple occasions and that the reality of the situation was that the Claimants did not properly attempt to do the works or gain access. He points to the lack of evidence of requests for access and argues that in fact the electricians Bestfix for example were ordered not to do any works by the Claimants despite them being necessary. He argues that in circumstances where there was clear disrepair and poor condition, the Claimants have not proved that they were ready and willing to do the necessary works and that the absence of documentary evidence of works being ordered or attempted is particularly significant.

105. While the level of Mr Hanson's co-operation when it comes to access has given me pause for thought, I consider ultimately that there is force in Mr Bano's criticism of the Claimants' case on each of these points.

106. Mr Balogh's commented in evidence that he was concerned as to whether any repairs were economic. That is consistent with Mr Hollowood's report. I take the view that the Claimants were aware of this and decided that the carrying out the extensive repair and improvement works which were likely to be required to the Unit were not economic and was not keen to pursue them. I accept that the Claimants had an informal system of handyman available and was prepared and did arrange for general day to day repairs to flats which were let in the HMO. There is a difference however between sending a handyman to carry out

one off minor repairs and replacements and the wholesale works required to repair and/or bring the Unit up to a proper condition given the state it had been let in originally and how it had deteriorated from December 2019 onwards. The Claimants did not make in my view a serious attempt was made to gain access or plan the works that were needed after Mr Hollowood had attended. They have no proposed schedule of works for example. Mr Hanson was not informed of the nature of any works which were intended to be carried out nor was he able to assess whether such works were likely to fulfil their purpose. Thus in my view the Claimants have not shown that they were ready and able to carry out the necessary works. I think it more likely than not that the Claimants had concluded too easily that Mr Hanson was being awkward in his dealings with neighbours and visiting workmen. There was obvious friction between him and some of the other tenants and it is apparent that Mr Hanson was prepared to adopt somewhat of a combative approach to resolving issues of disrepair. His approach managed to alienate Mr Szasz for example and was not always well advised. Had the condition of the Unit been better, I might have had more sympathy for the Claimants' reaction but it seems to me that the awkwardness and anger on the part of Mr Hanson was substantially a result of the poor state of the Unit. While he could have shown considerably more restraint in his style of making complaints to those involved, the basic position remained that the Unit's condition was unacceptable because of its poor design and implementation and it was wrong for the Claimants to continue to expect him to pay rent without taking strenuous efforts to fix the problems which had been highlighted by him and then Mr Hollowood, Camden and finally Mr Flowers. Mr Balogh's complaints of Mr Hanson were not that he was preventing him

doing the works but rather that Mr Hanson was bombarding him with requests for work to be done urgently. I think having seen him give evidence, Mr Balogh felt caught between a rock and a hard place – namely Mr Hanson's undiluted anger and Dr Godagama's instructions not to deal with the situation directly but to leave it to him. Mr Balogh was told to leave it to Dr Godagama but there were then no real steps taken to correct the electrical issues or carry out any other repairs or improvements or even to plan such works or inform Mr Hanson of what was planned.

107. I see sparse evidence of consistent attempts to gain access from January 2020 onwards. That is especially startling after the Claimants had received a hazard notice from Camden.

108. While reference had been made to an email sent by Dr Godagama on 25 February 2020 to Bestfix asking for some issues to be fixed, that does not appear to have been followed through by anybody – no requests for access appear to have been made, or refusals given, in respect of that email – or if they were, they were not recorded and have not been proved before me. Nor is there any sign of Dr Godagama chasing up Bestfix to carry out works they were neglecting to do.

109. The email from Mr Balogh of 30 April 2020 (Defendant's bundle page 300) is significant. He wrote to both Dr Godagama and Mr Hanson. He did not seek access in that email – he said that Dr Godagama had instructed him not to move the coin meter and mentioned that they were awaiting a date from UK Power Networks for the new phase 3 supply installation. The email records that he had sent a report with photographs to Dr Godagama detailing work but he does not

suggest he had been instructed to carry those out or that he was seeking access. As I understood his evidence in fact he considered that he had been instructed not to take any further steps by Dr Godagama and leave it to him to move matters forward. That suggests that the email of 25 February 2020 had been countermanded. If not, it was ignored: if there was a breakdown in communications between Dr Godagama and Mr Balogh then that was not Mr Hanson's fault. Either way, it was ultimately up to the Claimants to comply with their duties.

110. What is not in issue is that Mr Hanson gave access on a number of occasions after he had complained in early December 2019. He gave access to Dr Godagama and also on a separate occasion to Mr Hollowood in December 2019 and then to Mr Balogh in January 2020. After the initial covid lockdown and the involvement of the environmental health officer ("EHO"), Mr Hanson indicated as relayed to the Claimants by Toby Dean's email of 26 June 2020, that he would be prepared to give access on 24 hour notice and requested that the EHO be copied into such notice. However, the Claimants did not properly take up that offer – and indeed neither Dr Godagama nor Mrs Edirisinghe offered any real form of explanation as to why that offer was not taken up. It may be that they were cynical of whether Mr Hanson meant it, but without a concerted and proper effort to gain access I do not accept that Mr Hanson would have prevented access if proper notice of what works were to be done so he could be reasonably satisfied that they would be effective had been given to him along with reasonable warning.

111. Significantly, the Claimants struggled to justify their pleaded case as to the alleged repeated denial of access during the trial. Their pleaded case at paragraph 7(ii) of the Reply and Defence and Counterclaim refers to ten alleged refusals. However, three of those relate to either social workers or EHOs from Camden and so do not establish the Claimants' case. Another relates to the EHO asking on 13 March 2020 whether Mr Hanson would be prepared to give access, but does not contain a request from the Claimants or relate to specific works.

112. Of the others, the Claimants fail to set out clear requests for access with a reasonable notice or an indication that they were genuinely ready and willing to carry out the necessary works. Nor is there any record of them informing Mr Hanson what works were to be carried out. Looking at those pleaded accusations:

i) The first pleaded incident relates to 2017, where there appears to have been an altercation between Mr Hanson and Mr Szasz. Mr Hanson's issue with Mr Szasz was that he was a handyman rather than an electrician and Mr Hanson had asked to see identification as a qualified electrician which ended up, according to Mr Hanson, with Mr Szasz saying he hoped the flat burnt down. In analysing this situation, if there was an issue with the electrics, it does not seem unreasonable that Mr Hanson wanted to know that the person attending was a qualified electrician, something that Mr Szasz (who at the time was, or had recently been, a tenant in the HMO) was not able to show. That view is supported by the Court of Appeal's comments in the *Granada Theatres*

case about tenants being entitled to have information that would satisfy them that the proposed works would be likely to fulfil their purpose. That, added with the exchange of words that followed, means that I do not consider that the incident in 2017 with Mr Szasz demonstrates an unreasonable refusal to allow access. In any event, it is not relevant to the situation from December 2019 onwards: given that the main disrepair and problems in condition came to a head in my view in December 2019, the incident does not take matters further in my view.

ii) Two of the incidents relate to Denis Fitzgerald attempting access in December 2019. He was a qualified electrician but it appears to me that Mr Fitzgerald was suggesting that he intended to cut off the electricity to Mr Hanson's Unit – as I understood his evidence, Dr Godagama subsequently ordered that not to happen which did suggest to me that Mr Fitzgerald had overstepped the mark in his dealings with Mr Hanson. That is also supported by the fact that Mr Balogh who acted in a professional manner was granted access the following month and went to some length to disown himself from Mr Fitzgerald in an email which appeared at page 299 of the Defendant's Bundle stating:

> "Denis Fitzgerald does not work for any of our companies and he has failed us in many ways and he did not become partner [sic] in any of our ventures due to lack of capital and time investment.
>
> At the time you had the incident with him Bestfix Ltd was carrying out works for Shanta Godagama and Denis was responsible for his own actions as contractor…
>
> We have found out that Denis was misusing our company name and carried out some works at 2 Richborough Road and at other customers in our name but without our knowledge ad he has taken payments without authorisation and contribution to our running costs.

> You and Denis are both grown men, we are not responsible for your actions and we cannot assist you to resolve your aggravated argument."

iii) It is said that Mr Hanson refused access to pest control and builders on 24 February 2020. However, there is no record of what works were intended to be carried out. Mr Hanson says that he had spoken to the pest controllers and that their role was not to carry out an inspection of the drains but rather to simply lay some traps as part of their existing contract: he says this was not what was required under the hazard notice which was dated 13 February 2020 which listed specific works to be carried out to the private drainage system. The Claimants do not plead nor have they drawn my attention to any instructions on their part to carry out the works set out in the hazard notice or indeed any specific work to eradicate the rat infestation. Had they explained to Mr Hanson what was planned to be done, any refusal of access may have been less reasonable, but they did not.

iv) There are then no pleaded requests until December 2021 which relates to apparent requests to allow access for electrical works. Again however I have not been taken to written requests or details of the works to be carried out – these appear to relate to short term problems with the electrics. The electrician is not identified and Mr Hanson told me that he wished any electrical works to be carried out by a qualified electrician.

v) The final pleaded request is when a handyman attended following a specific complaint from Mr Hanson. Mr Hanson allowed external works to clear a gutter but did not allow entrance. However, again this was not

a visit designed to deal with the overall issues but appears to have been at best someone sent round to deal with a specific new fault.

113. In closing, the Claimants purported to take up Mr Bano's challenge to find examples of entry being requested but denied by Mr Hanson. They drew my attention to what they said were 20 occasions when the Defendant requested access from Mr Hanson but was denied access – listing a series of documents in the bundle as evidencing those alleged refusal of requests. Had they been able to establish that, then I would see some force in their response to the disrepair/condition claim. However, as Mr Bano submitted – out of those documents there were actually only two or three requests directed at Mr Hanson for access. The other documents were emails from Dr Godagama asserting to third parties generally that the Claimants had been refused access.

114. Of interest is pages 26-37 (repeated at page 38) of the Claimants' bundle which is an undated email which appears to have been sent in the first half of 2020 – complaining about lack of access generally but not containing a direct request for access and appears to be adopting an approach, to quote the email, that the "*building needs complete rebuild, as it is unsuitable for occupation, therefore I again request you to find accommodation as landowner in the process of replacement building, therefore your continuation of occupation of this flat is at your own risk*." That in my view shows the underlying approach of the Claimants which was that the repairs were considered uneconomic.

115. I accept that there were occasions when Mr Hanson failed to provide access and could be said to have been less than fully co-operative. However, the Claimants have in my view failed to prove that this was consistent or to such an extent as

to excuse them from actively remedying the condition of the Unit. As I have said, in December 2019 and January 2020, Mr Hanson allowed access to Dr Godagama, Mr Hollowood and Mr Balogh into the Unit to inspect it. The only clearly qualified electrician he appears to have refused access to was Denis Fitzgerald – but given the threat to cut off the electricity and Mr Balogh's email distancing himself from Mr Fitzgerald seems to me that there may have been justification for Mr Hanson's distrust of him.

116. I also note that for 2020 in particular from March onwards, Covid struck and there would have been an understandable issue in terms of allowing access and an increased need to explain in advance who was coming and why at a time when there were no vaccination available and infection rates were high.

117. However, despite the Covid crisis Mr Hanson, through the EHO, indicated on 26 June 2020 that he would give access on twenty four hours' notice – but there appears to have been no real attempt to take him up on that offer. No proper explanation was given for that failure.

118. I agree with Mr Bano that for the Claimants to excuse their failure to remedy the defects in the Unit, one would have expected to see a series of requests and refusals to give access over a substantial period of time. I would have expected more than the occasional text or email seeking to obtain access and I have not seen any proper or formal assertion by the Claimants of a right to access and the consequences of any continued refusal or a description of what works were intended to be carried out. That that did not come even after the various notices from Camden and the EHO's email of 26 June 2020 is telling.

119. I also note Mr Balogh's comment in evidence that there appeared to be a mutual misunderstanding between Mr Hanson and Dr Godagama relating to clear access. Mr Hanson had given access to his flat – but needed to tidy away some of his belongs to allow workmen to get to the electrics etc. Nowhere have I seen a request from the Claimants for this to happen let alone a series of requests which were refused. There appears to have been an assumption made by Dr Godagama that Mr Hanson would constantly refuse access but I do not consider that he was justified in reaching that conclusion without making more effort to obtain access and if necessary to draw Mr Hanson's attention to the consequences of not having done so. I consider that the Claimants did not to take proper steps to arrange the necessary works and also reject that they were ready and willing to carry out the necessary works.

120. I also consider that the issue of access is not relevant for all aspects of the disrepair or habitable condition. The rat infestation was dealt with in Camden's notices and this meant that the Claimants were obliged to take steps to have a reputable pest controller deal with the situation including investigating the drains. The Claimants have not directed my attention to any evidence that such works were done, so again it appears to me to be evidence that the Claimants have not rigorously or professionally dealt with the severe issues relating to these premises.

DR GODAGAMA'S ROLE

121. In passing I should say that I reject the characterisation perhaps hinted at by Mr Hanson that Dr Godagama was some form of Rachman landlord who had no

regard at all for the welfare of his tenants. That provoked a response from the Claimants which relied on the fact that Dr Godagama was a man with a good reputation who cared for his tenants and could not have been responsible for the failures of which he was accused. Mrs Edirisinghe was at pains to protest at the depiction of her father and of the attempts by Mr Hanson as she saw them to whip up unfair media criticism and demonisation of her father and herself. It was apparent to me that Dr Godagama on a number of occasions showed genuine concern and compassion to his tenants – including Mr Hanson who, it was common ground, had been lent money by Dr Godagama when he was having difficulties abroad. Dr Godagama did not have to do so, and it was hardly the actions of a money-grabbing Rachman landlord. Other tenants such as Mr Szasz and Mr Mbehoh spoke highly of him. I also accept that Dr Godagama was keen to provide accommodation for previously homeless people not just out of a desire to make money. However, that is not the same as saying that Dr Godagama dealt with all matters professionally or that he provided fully suitable accommodation for Mr Hanson. I do not see this case as being a binary choice between concluding that Dr Godagama was as an evil rapacious landlord on the one hand or a saintly and altruistic man on the other. It seems to me that this was a case where Dr Godagama, a senior citizen in his seventies, let units in a building both to assist people and to receive a return on his investment for himself and his family. He sought to look after his tenants on a day to day basis and had arrangements for informal repairs but he (and through him Mrs Edirisinghe) did not adopt or adapt to the full obligations which a modern landlord is expected to adhere to and failed to take planning or building regulations seriously enough to ensure the accommodation provided to Mr

Hanson was fit for purpose or to commit to the repairs and improvements necessary to bring the accommodation up to that standard.

FIRST TIER TRIBUNAL

122. I should briefly mention the decision of the First Tier Tribunal (Social Entitlement Chamber) dated 2 September 2021 (Tribunal Ref SC242/20/20357). The Tribunal rejected an appeal against Camden's decision on 10 January 2020 that Mr Hanson's Housing benefit should be paid directly to Dr Godagama. While the Claimants had not pursued their full blown *res judicata* argument based on multiple decisions, reference was made to this decision during closing submissions. Mr Hanson did not attend that hearing of his appeal, but the Tribunal proceeded in his absence hearing only the evidence of Dr Godagama. In reaching the decision to proceed in Mr Hanson's absence the Tribunal expressly stated that they did not purport to reach a decision which was binding on this Court as to the disrepair claim and damages for disrepair (see para 6(c) of the Tribunal's decision). In the circumstances, I consider that I am not bound by the Tribunal's reasoning when they made a decision as to whether housing benefit should be paid directly to the Claimants or to Mr Hanson.

LAW: THE COURT'S APPROACH TO DAMAGES

123. In the circumstances, I am of the view that Mr Hanson has established his defence and counterclaim for lack of repair (from December 2019) and a failure

(from 20 March 20020) to comply with the requirement for a dwelling to be fit for human habitation. The question then arises as to how I should approach the calculation of damages for such breaches of duty.

124. As set out in *Woodfall: Landlord and Tenant* at para 13.089, the usual approach to damages for a breach of repair covenant on the part of a landlord is, so far as money can, to restore the tenant to the position he or she would have been had there been no breach. *Woodfall* goes on to indicate that how one does that will depend on a case by case basis depending on its particular circumstances. That is the standard starting object of all compensatory claims beyond the landlord and tenant position.

125. Mr Bano, in his helpful and concise submissions, argued that the Court should adopt a different approach when it comes to the question of damages for a breach of section 9A of the 1985 Act (inserted by the 2018 Act). That would have relevance to any claim for damages after March 2020 – which is when the Act affected Mr Hanson's tenancy under the transitional provisions in section 9B of the 1985 Act (as amended).

126. Mr Bano urged me to take the same approach as the District Judges in *Dezitter v Hammersmith and Fulham Homes* and *Mason v Olivera* – two district judge decisions recorded in Legal Action February 2024 at p. 34-35.

127. In *Dezitter*, the Deputy District Judges accepted the proposition that fitness is "*a binary decision: either a property was fit for human habitation or it was not, and where it was not, it could not be said that the tenant had received any benefit from the tenancy for that period*" and awarded 100 percent of the rent as damages during the period the property was unfit for human habitation. Mr

Bano sought support from earlier cases such as *Collins v Hopkins* [1923] 2 KB 617 as showing that a failure to have a dwelling fit for human habitation was repudiatory breach as it went to the core of the contract and that therefore a claimant tenant was entitled to accept the repudiation but if he or she did not, they were still entitled to damages.

128. Mr Bano said it was apparent from the report of *Mason* that the District Judge took the same approach as in *Dezitter* awarding 100 percent of the rent (indeed more in certain respects) for the period that there was a breach of the implied covenant as to fitness for human habitation.

129. Despite Mr Bano's articulacy, I reject the submission that there is a binary choice and that once a breach of section 9A of the 1985 Act is established no rent is due from a tenant:

i) Firstly, this appears to me to be confusing a claim for damages for a breach of contract with a claim for restitution for a total failure of consideration. No such claim is pleaded here.

ii) Secondly, I see no reason to depart here from the usual test of compensatory damages for breach of duty i.e. that the Court should seek to order compensation to the tenant so as, so far as money can, to restore the tenant to the position he or she would have been had there been no breach. That requires a determination to be made on a case by case basis – and a simple binary rule in my view is inappropriate and would be unjustified in a case determining compensatory damages. A property might fail to reach the requirement of fitness for habitation for many different reasons and that may affect the amount of any compensation

which was due. One can, for example, imagine a case where there is a tenancy of a large house with extensive grounds where a defect in condition in say one significant part of the property might lead the Court to conclude that the property was not fit for human habitation but that the tenant still got some benefit from continuing the tenancy. To allow tenants to stay there rent free until the defects had been remedied might well be in danger of overcompensating the tenants. It seems to me therefore that a "one size fits all" approach is not justified.

iii) Thirdly, while Mr Bano argued that I should follow *Dezitter* and *Mason* to ensure consistency in approach at County Court level, it seems to me that the approach would be contrary to the usual approach taken to compensatory damages in the law. In my view, consistency between all courts determining compensatory damages is more important than me declining to follow a previous decision or two at district judge level in this specific area. Furthermore, it is only *Dezitter* that expressly adopted the binary approach. It is not clear to me from the case report whether the District Judge in *Mason* adopted the same approach as had been done in *Dezitter* or whether the Court carried out a more traditional approach in reaching the decision on the level of damages.

130. In my view, therefore, a claim for damages for the breach of the implied covenant contained in the new section 9A of the 1985 Act should be approached in the same way as a claim for the breach of the implied covenants in section 11 and it would be wrong to depart from the usual rule as to how to calculate compensatory damages. I therefore will not follow the District Judge decisions

of *Dezitter* or *Mason* in so far as they suggest that one should bypass the usual analysis when calculating compensatory damages and reach a quick decision that a breach of the requirement for fitness for human habitation in respect of any tenancy inevitably results in a counterclaim which equals or exceeds the rent normally payable.

131. Having said that, I can see force in Mr Bano's fallback submission that even applying the traditional non-binary approach to damages, there is no or limited benefit for a tenant where a small one or two roomed dwelling is not fit for human habitation. One might therefore end up at the same destination as the Courts in *Dezitter* and *Mason* in such a case albeit by a different route than the one Mr Bano suggests I take on his primary argument.

132. Finally, I remind myself that in cases such as here where a tenant has remained in occupation despite disrepair (or in my view a non-habitable condition), the loss requiring compensation is the loss of comfort and convenience which results from living in a property which was not in the state of repair it ought to have been if the landlord had performed his obligations: see *Wallace v Manchester City Council* (1998) 30 HLR 1111 at 1120-121. Morritt LJ (with whom Kennedy LJ agreed) said the question was what sum was required to compensate the tenant for the distress and inconvenience experienced because of the landlord's failure to perform his obligation to repair. Such sum may be ascertained in a number of different ways, including but not limited to a notional reduction in the rent. Some judges may prefer to use that method alone, some may prefer a global award for discomfort and inconvenience and others may prefer a mixture of the two.

MY FINDINGS ON QUANTUM OF DAMAGES FOR DISREPAIR/CONDITION

133. I consider the notional reduction of rent approach to be the most satisfactory approach to measuring general damages in this case.

134. Here, the small size of the Unit and the failings set out in Mr Hollowood's letter, the Hazard Notice and Mr Flowers' report are very significant. The flat in particular did not have effective space heating, was not properly insulated, did not have hot water, was not properly ventilated, did not have properly fixed toilet or sink and was subject to a rat infestation. That level of a failure to meet the requirement of human habitation is very considerable indeed.

135. Up until March 2020, the Claimants were only obliged to repair. The failings in heating and the like were due in part to the inherent failings in design of the building rather than a lack of repair. However from March 2020, the fitness for human habitation implied covenant came into effect and the Claimants were obliged to put right the defects in the property even if they were inherent.

136. As I have already said, I take the view that on the evidence before me that the lack of repair/poor condition was brought to the attention of the Claimants in December 2019 and they failed to rectify the issues. While there were some difficulties in obtaining access they were not so serious as to absolve the Claimants of carrying out the necessary works.

137. The obligation on the Claimants was to repair up until March 2020. After that the obligation was to go further and to take steps to ensure and improve if necessary the Unit let to the Defendant so as that it was fit for human habitation

138. The poor state of the Unit in December 2019 is, as mentioned above, is supported by the independent and contemporaneous reports from Mr Hollowood and Camden (as recorded in their subsequent notices). Had the Claimants carried out their repair obligations, there would have been a flat without damp and rats. The shower would have worked with hot water and the toilet and sink would have been attached people to the wall. There would have been a proper consistent supply of electricity to the Unit.

139. I would not compensate Mr Hanson in December 2019 for the lack of ventilation or the poor insulation in the walls and ceiling – as these appear to me to be an inherent defects in the Unit when it was originally let to him and are not subject to an obligation to repair. There was no obligation on the part of the Claimants to improve a property by remedying inherent defects such as those. My approach to the first period however takes into account that the Unit was damp which was an issue of repair in my view. From 20 March 2020 the obligation in respect of ensuring that a dwelling was fit for human habitation will have come into force, and therefore from then on the tenant is entitled to compensation for the landlords' failure to do so, because the Unit without proper insulation or effective storage heating was not fit for human habitation.

140. This leads therefore to a two stage analysis over time, the first period from December to 20th March 2020, and the second period from then on.

141. I will for consistency approach the figures in the same way that the Claimants do in their schedule of arrears – i.e. taking the weekly rent as being £260 per week and the monthly rate as being £1,040. I will take those figures to calculate damages by carrying out a reduction on that sum to reflect the distress and

inconvenience experienced by Mr Hanson because of the Claimants' failure to perform their obligations in a two stage approach.

142. The starting point for the first stage should in my view be from when the Claimants should have completed the repair works having had a reasonable period from being notified of the issue. The repairs should it seems to me have been carried out by 20 December 2019: i.e. a few weeks after notification of the issues.

143. Mr Bano has referred in his skeleton argument to various County Court decisions with percentage deductions ranging but all those turn on their own facts. I consider that the correct deduction to the rent to make to reflect Mr Hanson's distress and inconvenience floor lack of repair would be 60% for the period from 20 December to 20 March 2020: a period of 13 weeks. Thereafter, it seems to me that once one can fully take into account the improvements which were required so as to ensure a properly insulated/heated dwelling fit for human habitation, I am of the view that Mr Bano is correct that the failure to provide basic conditions fit for such occupation in a small flat was such as that 100 percent reduction in the rent would be appropriate to reflect the inconvenience and distress caused to Mr Hanson. Thus the award of damages can be set out as follows:

Date	**Time period**	**Percentage rent reduction**		**Amount of damages**
20/12/19 to 19/3/20 2020	13 weeks	60%	13 x 260 x 0.6	£2,028
20/3/20 to trial (March 2024)	4 years	100%	4 x 12 x 1040	£49,920
Total				£51,948

TEN PERCENT UPLIFT

144. The Court of Appeal in *Simmons v Castle* [2012] EWCA Civ 1039, [2012] EWCA Civ 1288 [2013] 1 WLR 1239 at paragraph 50 declared that with effect from 1 April 2013:

> "[T]he proper level of general damages in all civil claims for (i) pain and suffering, (ii) loss of amenity, (iii) physical inconvenience and discomfort, (iv) social discredit, or (v) mental distress, will be 10% higher than previously, unless the claimant falls within section 44(6) of the 2012 Act."

145. The Court of Appeal in *Khan v Mehmood* [2022] EWCA Civ 79, [2022] HLR 34 held that then ten percent uplift was intended to apply to damages for

disrepair in the landlord and tenant context: those of course reflect loss of amenity and/or physical inconvenience and discomfort. In the circumstances therefore, it is necessary to increase the damages I have awarded to Mr Hanson by 10 percent.

146. This leads to a total damages award under this heading of £57,142.80.

SPECIAL DAMAGES

147. Mr Hanson's evidence was that because of the need to provide heating in the Unit he was obliged to buy:

i) £40 Calor gas heaters every six to seven weeks since he moved into the garden flat.

ii) Four or five £25 electric heaters for the flat since February 2017 (see paragraph 41 of his witness statement).

148. I have no receipts or evidence of payment in respect of those heaters. However I am prepared to accept that he was required to buy additional heating to deal with the cold conditions in the flat since the Claimants' breaches of duty:

i) The estimate of £40 every six to seven weeks would result in around £320 loss per annum. In my view that seems to me to ignore the fact that during the summer there would have been less need for heating. I am prepared to award £1,000 (which is a figure effectively of £250 per annum for a four year period).

ii) In terms of the electric heaters – again the amount claimed cover too long a period – I would estimate the specific cost to Mr Hanson while the Landlord was in breach of duty as being two heaters in addition to the Calor gas heaters mentioned above – amounting to £50.

149. A further claim is that Mr Hanson incurred electricians' fees, I have been shown invoices dating from 4 July 2020 (£175) and 7 September 2020 (£200) paid for by Mr Hanson which refer to emergency call out to restore power. I am prepared therefore to award special damages of £375 to reflect those fees incurred because of disrepair in the electrical supply to the Unit.

150. Other matters pleaded included meals away from home, further electrician's fees and warm clothes at paragraph 22 (ii) of the Defence and Counterclaim – but these are not evidenced with additional invoices and I am not therefore prepared to order special damages in respect of them. The same goes for some of what appear to be improvements mentioned in Mr Hanson's witness statement e.g. at paragraphs 47 and 48 but it seems to me those were either voluntary improvements or did not arise out of breach of a covenant to repair by the Claimants at the time even if they had been properly evidenced with receipts etc.

151. In total therefore I award special damages of £1,425.

152. Mr Bano submitted that there was a lack of consistency as to how Court approached whether the ten percent uplift should be made to special damages in addition to general damages. It seems to me from *Simons v Castle* (*supra*) that the ten percent uplift relates to loss for (i) pain and suffering, (ii) loss of amenity, (iii) physical inconvenience and discomfort of amenity claim – and

therefore not to special damages for specific costs incurred in addition to the claim for loss of amenity. I will therefore not add a ten percent uplift to the special damages I award.

153. The total value of the counterclaim for disrepair/condition is therefore £58,567.80.

QUIET ENJOYMENT/HARRASSMENT

154. Mr Hanson has a pleaded claim for acts said to have been done by the Claimants and/or their agents which were calculated to interfere with Mr Hanson's peace and comfort with intent to cause him to give up his occupation and/or to refrain from exercising his occupation rights.

155. Three of these pleaded allegations relate to Mr Mbehoh (paragraphs 19(i), (iv) and (v) of the Defence and Counterclaim):

i) An incident is said to have taken place on 24 July 2020 within the common parts where a chair is said to have been thrown by Mr Mbehoh and comments made that Mr Hanson should leave his flat.

ii) An incident that occurred in May 2020 at a shop where Mr Mbeboh is said to have shouted verbal abuse at Mr Hanson.

iii) An incident on the same day when Mr Mbeboh was said to have locked the door of the building against the Defendant.

156. According to Mr Mbeboh's evidence, which I accept, he had no formal paid role as caretaker but instead helped informally in respect of the main HMO building

but not Mr Hanson's Unit which was left to Dr Godagama. I do not accept that the events relied on were anything other than disputes between neighbours and were not instigated by or on behalf of the Claimants in order to put pressure on Mr Hanson in respect of his tenancy and cannot properly be regarded as being interference with his quiet enjoyment or harassment. I do not consider Mr Mbeboh could be said to be acting as the Claimants' agent in respect of the incidents either. In so far as is necessary, I reject Mr Hanson's depiction of Mr Mbeboh as being the instigator of abuse – it seems to me that tempers were frayed on both sides – and in particular on the part of Mr Hanson who on my view of the witness evidence I heard took against Mr Mbeboh because he considered he had sided with Dr Godagama in the disputes which were occurring about the state of the Unit.

157. In terms of the accusation in paragraph 19 (iii) of the Defence, that Dr Godagama made an unannounced visit to take pictures and videos and then sent an email in respect of the condition of the premises, I accept Dr Godagama's evidence that he telephoned Mr Hanson in advance of visiting and that he was given access to the flat in December 2019. I do not consider that this was an unannounced visit and in any event I do not believe that an unannounced visit seeking access, after Mr Hanson had written earlier complaining about the cold in the flat, would in any event have constituted a breach of the right to quiet enjoyment or harassment. The comments about whether Mr Hanson should have been living in the Unit would have been as a result of the concerns that Dr Godagama had as to the state of untidiness in the Unit and I do not consider crossed the line into anything which could be considered to be harassment or otherwise unlawful.

158. I reject the suggestion that Dr Godagama persistently withdrew or withheld electricity, hot water or space heating. It appears that Dr Godagama expressly countermanded Mr Fitzgerald when the latter suggested cutting off the electricity to the Unit and while the Claimants have failed to properly repair the Unit, I do not consider that that failure was designed to force Mr Hanson out.

159. Finally, in respect of paragraph 19 (vi) I do not accept that Mr Fitzgerald was acting as the Claimants' agent – he was an independent contractor: he was not employed by the Claimants' as their agent. In any event, any suggestion he made to disconnect the Defendant's electricity was promptly countermanded by Dr Godagama when he heard about it.

160. I therefore reject the allegations that the Claimants have sought to harass or otherwise unlawfully (whether directly or through agents) to put pressure on Mr Hanson to leave his Unit or to refrain from exercising his occupation rights.

DISABILITY DISCRIMINATON CLAIMS

161. The disability discrimination claims were pleaded in the statements of case and mentioned in passing in the Claimant's skeleton, but not pressed by Mr Bano in closing following the evidence called in the trial.

162. Mr Bano was correct not to do so.

163. Firstly, there is no medical evidence before the Court to justify a finding of disability in respect of Mr Hanson. The burden of proof is on Mr Hanson when bringing a claim for discrimination and he would need to identify and prove the

condition he is suffering from and to explain why that falls within the statutory definition of disability. Mr Bano acknowledged the difficulties that the failure to provide medical evidence placed his client in his closing submissions. Mr Bano explained that his client was conscious of the Press being in Court and did not want personal matters discussed openly or reported. That ultimately is a decision for him, as this is his claim and he cannot in my view establish his claim without such evidence.

164. For the avoidance of doubt, the letter signed by Dr Godagama dated 15 October 2019 does not itself constitute medical evidence – I note that Dr Godagama accepted at the time what Mr Hanson told him about his health but that is not the same as medical evidence and there was no suggestion that Dr Godagama examined Mr Hanson or gave some form of medical opinion to that effect. (I note that Dr Godagama is a specialist in alternative medicine not, as I understand it, a general medical practitioner or hospital specialist).

165. Secondly, and in any event, even if I there had been medical evidence, there was no evidence before me to justify any allegation that the Claimants were guilty of harassment based on disability discrimination. The pleaded allegations at paragraph 20(i) and (ii) of the Dependence and Counterclaim were not proved and even if they had been would as pleaded not amount in my view to harassment.

166. The claim for disability discrimination is therefore dismissed.

ARE THE POSSESSION GROUNDS MADE OUT?

167. Mr Hanson is in my view entitled to set off the sum for damages/disrepair against the rent owed – resulting in a net figure being due to Mr Hanson of £17,281.25 on the basis that the arrears figure is £41,286.55.

168. In the light of the above findings, the Claimants have failed to show the mandatory grounds for possession under Ground 8. Mr Hanson's counterclaim at the date of trial extinguishes the claim for arrears.

169. The Claimant also therefore failed to establish the necessary arrears at trial for Ground 10 to be successful.

170. In terms of Ground 11, there were arrears at the outset and until Housing Benefit was paid direct to the Claimants in September 2021, but given that those arrears were subsequently paid and at a time when I consider there was a very poor condition of the property without any proper or concerted effort on the part of the Claimants to comply in particular with their implied duty for fitness for human habitation, I do not consider that it would be reasonable to order possession under Ground 11.

SPECIFIC PERFORMANCE OF LANDORD'S OBLIGATIONS

171. In the light of my findings above, I order that there should be specific performance of the Claimants' obligations under the Lease to put the Unit into repair and into habitable condition.

172. I had considered whether the existence of the Prohibition Notice meant that such an order would be inappropriate. However, the Prohibition Notice has not been enforced and almost four years have passed since it was served. It appears to me to have been superseded, at least as between the parties before the Court, by the subsequent report of Mr Flowers.

173. The works that are required are set out in the schedule to Mr Flowers' report and I order that those should be carried out by the Claimants as soon as reasonably possible. Mr Hanson will be required in return to co-operate with the works and grant any reasonable request for access for the works to be carried out. If there are any issues that Mr Flowers mentions that he was unable to inspect or ascertain (for example whether the Velux rooflight was leaking), these can it seems to me be checked and corrected if necessary when the works are done.

CONSEQUENTIAL ORDERS AND COSTS

174. As discussed at the end of the trial, I invite the parties to attempt to agree a form of order reflecting my judgment dealing with all consequential matters including the form of order for specific performance and costs.

175. I direct that the Defendant through his solicitors shall within 14 days of the formal handing down of this judgment either file an agreed minute of order dealing with consequential orders and costs for my approval or else inform the Court by a letter (filed and also copied to the court clerk) that agreement has not been reached. In the latter situation, all remaining consequential matters will

be determined at a further hearing to be listed before me. In those circumstances, I would ask if the Defendant's solicitors would briefly set out in their letter to the Court the areas of dispute along with a list of the dates in the subsequent eight weeks when the parties or their representatives are unable to attend court.

176. Time for any application for permission to appeal shall be extended so as not to start running until further order.