IN THE COUNTY COURT AT MANCHESTER

Case No. J01MA652

1 Bridge Street West
Manchester
M60 9DJ

Monday, 19th June 2023

Before:
DISTRICT JUDGE DAVIES

B E T W E E N:

DALTON

and

FORHOUSING LIMITED

MS R BURGIN appeared on behalf of the Claimant
MR G LEWIS appeared on behalf of the Defendant

JUDGMENT
(Approved)

DJ DAVIES:

1. This is a case involving a claimant who is the tenant of 3A Westway, Little Hulton, Manchester, M38 9QN, pursuant to the terms of a written tenancy agreement commencing on 19 August 2013. She seeks damages arising from a claim against her landlords, the defendants, for disrepair. She also seeks an order for specific performance. The claimant, in her pleaded case, contends that on 2 January 2020, she reported a leak to the roof above her daughter's bedroom. That, in the defence, is admitted but it is contended by the defendant that the repair was undertaken on 3 January 2020. Secondly, on 21 May 2020, the claimant says that she reported a further leak. That is denied. The report, says the defendant, was that of the claimant's neighbour in the flat below because the claimant's kitchen sink was leaking and the claimant failed to report this.
2. Thirdly, on 24 August 2020, she reported damp in the bathroom, bedroom and kitchen. That is denied by the defendant. They say a report of damp was raised by the claimant on 30 July 2020 and the defendant arranged for a damp inspection to take place on 24 August. The claimant failed to provide access on that date in 2020. A card was left and the claimant failed to rearrange the appointment until 29 October 2020. Following that, the defendant inspected on 3 November to inspect the roof space and noted no leaks but that additional insulation would be fitted which was fitted on 2 December 2020. Fourthly, on 3 November 2020, the claimant reported a further leak to her daughter's bedroom. That is denied and it is contended that it is a misunderstanding of the defendant's records. The claimant contends that as a result of the defendant's failure to remedy the disrepair, she suffered personal injury and general damage, including an ability to enjoy the property as well as special damages.
3. The duties contained in the Landlord and Tenant Act 1985 for the purposes of this claim are set out as follows: section 9A inserts an implied covenant that the property should be fit for human habitation, although the landlord is not responsible for unfitness caused by the tenant's failure to behave in a tenant-like manner or that results from the tenant's breach of covenant. Section 10 set out the matters to which regard is had in determining if a dwelling is unfit for human habitation, including freedom from damp and states that it shall be regarded as unfit for human habitation if it is so far defective in one or more of those matters that it is not reasonably suitable for occupation in that condition. Section 11 inserts an implied covenant by the landlord to keep and repair the structure and exterior of the property.
4. Section 4 of the Defective Premises Act imposes a duty of care to all persons who might reasonably be affected by defects in the premises, and the duty is to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property. Remedying an inherent or existing defect constitutes a work of repair. Damp, itself is not an actionable defect under section 11 but it is usually a consequence of an actionable defect to the structure, exterior or installation. Damage to walls caused by damp also falls within the landlord's repairing obligation.
5. It is, of course, for the claimant to prove her case on the balance of probabilities, and she must establish four points:
    1) an actionable defect;
    2) that the defendant was on notice of the actionable defect;
    3) after the landlord had knowledge of the disrepair, it failed to carry out works within a reasonable time;
    4) the failure to carry out works within a reasonable time caused loss to the claimant.

6. I will deal, firstly, with the question of actionable defect. There are four areas of defect: the kitchen, the main bedroom, the second bedroom and bathroom. All contend a section 10 engagement. The second bedroom, it is contented by the claimant, engages section 11. The position of the experts before they gave evidence at the trial is represented in the joint report of January 2022 that can be found at pages 117 through to 134 of the bundle. The kitchen is referred to at pages 124 and 125 of the bundle. In that, a summary of it is probably best contained in the colour-coded column. Mr O'Neil, the claimant's expert, stated that it is his opinion, in relation to the kitchen, that the lack of or inadequate insulation to the raked ceiling was the primary operating cause with regards to condensation and the proliferation of black mould growth. That, in his opinion, was supported in evidence due to the localised nature of the mould growth, which, for the most part, is confined to the raked ceiling and surrounding surfaces only and is not found at the majority of other surfaces throughout the property.
7. He concedes that humidity levels were considered high at the property although that was not to be unexpected as the inspection was undertaken early in the morning following the tenant's normal bathing practices, and external humidity levels which were in excess of 70% at the time of inspection. Mr O'Neil remained of the opinion that eradication of the mould growth fell within the landlord's responsibility under the Homes (Fitness for Human Habitation) Act 2018, specifically, given the at-risk age group classified under "Hazard: mould and damp" and the problem, will, on balance, he thinks reoccur until the raked ceiling is insulated to an adequate level. Mr Hill, in his comments, states that irrespective of improving insulation levels, the growth of mould on walls and ceilings will continue should humidity levels remain above 70% for prolonged periods. Should the landlord wish to improve insulation to the raked ceilings, he considered that would amount to an improvement.
8. In relation to the main bedroom; this is at pages 129 and 130 of the bundle, the experts, essentially, comment along very similar lines, except agree that irrespective of liability, mould is considered a health hazard and should be treated accordingly. Their comments in relation to the bathroom, which are at pages 131 and 132, are, again, along a similar vein. In relation to the second bedroom, the comments are at pages 126 to 129 of the bundle, and, again, they make very similar comments save that they then go on to consider the affected ceilings and walls being tested with a moisture meter with elevated readings recorded to both the ceilings and wall plaster, Mr O'Neil being of the opinion that, on the balance of probabilities, that was a result of historic water ingress due to a poorly detailed verge allowing for water penetration.
9. He said that sections of missing mortar were identified to the verge and that would have an impact with regards to the thermal performance of the structure and provide a pathway for water penetration. In his opinion, the repair undertaken should be considered temporary in nature only and was not an acceptable standard of repair. Mr Hill disagrees. He states that although foam insulation is present, the verge is not so far deficient it amounts to a statutory disrepair. The verge is not structurally impaired or compromising water protection, he considers. There is no resulting impact on the internal accommodation and, therefore, he considers it a *de minimis* matter.
10. These experts gave evidence. Mr Hill gave evidence first. He dealt with the kitchen. The alleged defect is dampness and mould on the walls, he says, skirting and ceiling, causing damage to the plasterwork and décor. His view is that the mould is not caused by defective insulation but by the elevated humidity and the excess condensation. Humidity readings, at the time, he said, were over 70% and he referred, in the joint report, to the relevant code of practice, stating that if humidity readings stayed at 70% for long periods of time, the external wall surfaces would be sufficiently humid to support the growth of mould. Moisture would condensate on surfaces with unequal insulation and surfaces restricted by furniture. He confirmed, on cross-examination, that this would be on cold surfaces and that the photo at

page 109 of the bundle shows a cold surface that corresponds with the mould. He also confirmed that he thought mould would reoccur because of prolonged humidity.

11. In relation to Mr O'Neil's observation that the high humidity levels were not unexpected as the inspection was undertaken following the tenant's bathing practices, Mr Hill stated, on cross-examination, that various humidity readings were taken throughout the property and he did not believe that bathing in the morning would have a bearing on the readings in other areas of the property. Although humidity readings were higher in the bathroom, it was over 70% throughout and he was, I found, credible in this respect and in his evidence generally. In relation to Mr O'Neil's contention that external humidity levels were in excess of 70% at the time of inspection, he was asked what steps the tenant could take to reduce humidity. He commented that a tenant could open windows, turn the extractor fan on. Even with 70% external humidity, that would help. He said extracting moist air would help. He candidly conceded that a tenant's activities such as a putting washing on radiators as a one-off would not cause a problem but that, for example, placing towels on radiators would cause humidity if done over a few days. Again, I found him credible on this point.
12. An air vent, which is at page 114 of the bundle, was taped up. Mr Hill's view was that if vents are blocked, that can contribute to lack of air circulation and inadequate ventilation and lead to elevated humidity. The vent at page 114 is designed to provide ventilation. He candidly accepted that the mould in the kitchen at page 101 of the bundle was potentially detrimental to health and that it was significant and that the mould in the bedroom at page 105 of the bundle was significant and potentially detrimental to health but did not make a concession on causation. He was taken to the conclusion of Mr O'Neil in relation to the daughter's bedroom that the elevated moisture readings recorded to both ceiling and wall plaster was the result of historic water ingress due to a poorly detailed verge allowing for water penetration and that some remedial work had been undertaken to the verge which had previously been filled with expanding foam.
13. Mr O'Neil suggested that the verge was re-pointed to prevent future water penetration. Mr Hill commented that the foam was often used for this type of area prior to re-pointing and it can provide a weathertight seal. He was candid, and convincingly so, that it was not a great repair but it was a repair that would not allow water penetration. There was no damage to the plaster, he explained, and the verge was above the ceiling area anyway. In relation to the daughter's bedroom, he accepted that there were elevated conductance water meter readings but that he would not necessarily say that there was damp or moisture there. He accepted the raised readings but said there was no structural deterioration to indicate damp in that area and that there can be raised readings when the area is dry.
14. In any event, on re-examination, he clarified that the readings shown in the photographs on pages 105 and 106 of the bundle did not show wet and saturated walls or ceilings which would mean readings of 60 to 80. He confirmed, on re-examination, that excessive furniture in a property would restrict airflow as will a taped vent shown in the photo at page 114, and restricted airflow would increase humidity. He further confirmed that excessive clutter and drying items on radiators was poor humidity management. It was high humidity which caused the mould growth, he considered.
15. The photographs in the bundle are, to my mind, clear in demonstrating excessive clutter: a dryer in the living room, drying items on the radiator and an air vent being blocked by the claimant; all would have been conducive of condensation mould growth. Mr O'Neil was also, then, called to give evidence. He was taken to the photographs at page 107 and contended that although there was clutter, it was not overly cluttered. He suggested that the tenant was boxing up items because of the mould. He felt that the photograph at page 99 did not show clutter in the lounge because there was adequate space. He was also resistant to the notion

that the photographs on page 107 showed excessive clutter, despite items being pushed close to an air vent and bags and boxes being piled up in the main bedroom. He accepted that they prevented circulation of air but said there was no evidence of condensation.

16. On re-examination, he suggested that clutter in the lounge would have a minimal effect on condensation elsewhere in the property. As far as items such as towels being placed on radiators was concerned, he accepted that this restricted heat and impacted humidity but if they were removed in a timely manner, then this would ensure normal humidity levels, he said. He considered that the taped vent at page 114 related to a vent that aided ventilation of the chimney flue which had minimal effect on the ventilation of the room but he accepted that it did have an effect on ventilation. He would not, however, necessarily, accept that this showed that the tenant was not managing the heating of the property. It was a question of keeping the room warm and stopping a draught. However, he accepted that he had not discussed this with the claimant.

17. It was, to my mind, significant that, on cross-examination, Mr O'Neil accepted that by putting items on radiators and taping of air outlets, the claimant was not managing the humidity as she should do. He further accepted that if there was a cluttered room, the tenant would not be managing airflow. He also accepted that if an electric clothes dryer was used, at page 107 of the bundle, then it would affect the management of the humidity levels in the property. Mr O'Neil also accepted that the 70% humidity levels that were recorded at the time of the inspection and referred to by Mr Hill, were high. He was taken to the reference to the code of practice for control of condensation in buildings in the joint report that quotes:

> "If the RH of a room stays at 70% for long periods of time, the external wall surfaces will be sufficiently humid to support the growth of mould".

He accepted that 70% humidity could cause mould growth. He further accepted that the extractor fumes and heating in the property were adequate.

18. In the joint report, at page 130, he conceded that the humidity levels were high at the property but contended that this was not unexpected as the inspection was undertaken early in the morning after the tenant's bathing practices and external humidity levels were in excess of 70% at the time of inspection. On cross-examination, Mr O'Neil accepted that Mr Hill was correct in saying that the tenant's bath before inspection was not the cause of increased humidity elsewhere in the property other than the bathroom, if, as Mr O'Neil put it, the bathroom door was closed.

19. With regard to the assertion at page 126 that it is a lack of adequate insulation to the raked ceiling that was the primary cause of condensation and mould, he accepted that he did not go into the loft space itself, other than his head and shoulders and that he could only see so far, and that the photographs at page 110 and 111 do not, in themselves, show missing insulation. The only way to know for sure regarding the extent of insulation would be to cut into the ceiling, he said.

20. I found Mr O'Neil's comments, under cross-examination, on the sections 9A and 10 issues to be illuminating and significant in my assessment of him as an expert witness. Section 9A, of course, contains an implied covenant on the part of the landlord to keep the property in a condition that is fit for human habitation, and section 10 identifies the factors to which regard must be had in determining whether a house is, indeed, fit for human habitation. That includes freedom from damp. Section eight of the inspection report refers to the works which need to be carried out, and he says:

> "I consider that the extent of the works required at your property means that the property will remain habitable. As a result, alternative accommodation will not be required".

That is at page 87 of the bundle. He goes on, "It is my opinion that the tenant will not require decanting".

21. He seemed to accept, on cross-examination, that it remained habitable but not in relation to sections 9A and 10; that the tenant simply did not need to decant. He then said it was habitable but it was a question of whether it was suitable for occupation. He seemed to say that under the Act, it was a question of whether it was 'reasonably suitable for occupation' and he did not consider it was suitable for occupation. However, then he went on to say that it could be 'unsuitable for occupation' but that did not render it uninhabitable. His confusion was worrying. His apparent justification that the tenant simply did not need to decant while the works were being undertaken was wholly unconvincing. I found his evidence on this point betrayed a lack of understanding of the Act and fatally undermined his credibility. It also fatally undermined any claim under section 9A or section 10, on the balance of probabilities, that the property had been rendered unfit or uninhabitable with regard to the mould.
22. With specific regard to the daughter's bedroom, Mr O'Neil accepted that there was no physical damage to the plaster and he accepted that there was no evidence of water ingress and, in addition, there was no staining other than mould growth. The readings at 25 to 30 to that bedroom were, he accepted, consistent with compensation damp and that he would expect higher readings than 25 to 30 if there was penetrating damp. With regard to the missing pointing of the roof verge and the assessment by Mr Hill that it was still watertight, he accepted that with the exception of the roof void, he did not assess the roof and there was no evidence of water penetration, and that if water was not let in, then it was *de minimis*. For a section 11 claim to succeed, the presence of damp is not sufficient. The tenant must establish that the damp arises from the breach of covenant or that the damp caused physical damage and that damage has caused the damp of which the complaint is made. There was no evidence of water penetration and no physical damage to the wall and ceiling. Destruction testing was not undertaken. Mr O'Neil also accepted that the use of an electric clothes dryer would affect the management of humidity levels in the property.
23. Mr Ward gave evidence for the defendant. He is a legal officer and his written evidence is at page 365 of the bundle. I shall summarise his evidence. He had not had any personal dealings with the claimant during her tenancy but can verify the contacts that other colleagues had had by reference to the computer systems of the defendant. He confirmed the assured tenancy agreement in relation to the property and he described the way a repair could be reported by a tenant.
24. He said there were a number of different ways: they could telephone the call centre between 8.00am and 5.300pm, Monday to Friday, or 8.00am to 12 noon on a Saturday. Outside of those times, the out-of-hours team would deal with emergencies. The tenant could also request a repair online and if the tenant chose to report in that way, there was an easy online repair tool which took them through a series of questions. Anything logged outside of the normal working hours would be picked up the following working day. Alternatively, tenants could send a text to the service centre, they can webchat directly to an advisor and they were encouraged to create an account online. They can visit their local area office and use the free phone in reception or use the customer information point and they were provided with all relevant contact numbers at the time of sign-up.
25. The customer service centre, if the repair is the responsibility of the defendant, would raise the repair on the IT system using the relevant priority codes. He had listed those priority codes "E", "T", "R", "L" and "I" in his statement, E being 24 hours and I, 100 working days, T, R and L being three, 10 and 21 working days. Emergency repairs were completed within 24 hours and did not require any written approval. For non-emergency work, an initial visit to inspect, make safe or temporarily repair the issues would be carried out. When an operative

attends on-site for a pre-arranged appointment and no access to the property is given, then the operative will post a "No access" card through the tenant's letterbox which contains details of who the tenant should contact to rearrange the appointment. 10% of the repairs that are carried out are post-inspected to monitor the quality of the repair. In relation to the disrepair claims, 100% of the repairs are post-inspected and if the customer is unhappy with the repair, a supervisor will attend at the property to ascertain what the issue is.

26. The defendant's computer system was able to gather information to produce documentation setting up the repairs history of the specific property including information recorded by the contractor via a PVA at the time of attendance at the property. He does not accept the systems would systematically fail to record numerous complaints made by a tenant or fail to record multiple complaints about the same defect and he relied on the defendant's records for the property. That contains property history report and tenancy contact information. He accepted that notice was received from the claimant of alleged defects set out in her letter of claim; [ ??]

27. The only written correspondence received in respect of disrepair was from the claimant's solicitors. The claimant, he said, had never sent any written correspondence nor lodged a written complaint to the defendant in respect of alleged disrepair at the property. In relation to the leak above the daughter's bedroom reported on 2 January, he accepted that a leak was reported by the claimant on that date. The defendant arranged an emergency job on 3 January following notice of the repair being received out of hours. The job was completed on 3 January 2020 and he attaches to his statement a copy of the job sheet which the claimant had signed, and that is marked at "CW14" to his statement. That shows the operative's signature and, apparently, the customer's signature.

28. A further leak reported on 21 May. The defendant disputes, he says, that the claimant reported a leak because there was a report of a repair required on 21 May made by the claimant's neighbour in the flat below because the claimant's kitchen sink was leaking causing the damage to the defendant's property. The cause of the leak was the consequence of two holes in the sink which, he says, is a result of the claimant not using the property in a tenant-like manner. He disputes the claimant reported damp on 24 August. He said there was a report of damp raised by the claimant on 30 May. Following receipt of that, an inspection took place on 24 August. The claimant denied access to the damp inspector and he left a calling card requesting that the claimant contact the defendant and rearrange the appointment. The claimant failed to respond to the card and failed to rearrange until 25 October 2020. Following that further report, the defendant's contractor attended the property on 3 November to inspect the roof space and noted that there were no signs of any leaks [ ??].

29. The claimant signed the contractor's hand-held PVA to say the job was complete and, on the attached "DW16" are copies of the job sheets in question. On cross-examination, the contractor said that the contractor noted the need for information and the information was carried out. That was done on 3 November which is already dealt with earlier in his statement. The defendant's records confirm that repairs relating to this claim were reported to the defendant. They were completed in a reasonable period of being put on notice subject to the government restrictions and where access was given by the claimant. I found him, I have to say, a credible, straightforward witness.

30. The claimant gives her statement at page 346 of the bundle. She confirms she is the tenant of the property. She is aged 49. She has a daughter who lives with her who is now aged 17. When she moved into the property, it was 20 August 2013. That was certainly the date of signatory to the tenancy agreement. She confirms that it is a two-bedroom first-floor flat. She said that if she needed to report any repair issues to the landlord, she would do it on the phone, and the phone number is saved to her phone. She confirmed receipt of the documents

disclosed to her solicitor. She said she had carefully reviewed the tenancy file and she does not agree that the records are an accurate representation of her reporting to the defendant. She said she has made many reports to the defendant over the last eight years, prior to her statement, despite that not being pleaded in her case. She does not understand why her reports do not appear within the tenancy file. She says she wished she kept her own record of reports but, of course, she did not.

31. The problem with her daughter's bedroom was damp and mould as well as a leak from the roof. Not long after they moved in, she started to notice black mould on the sloped ceiling of the room. It was on the sloped section of the ceiling. She rang the defendants to report it. An inspector did come round not long afterwards. She cannot remember his name. He told her it was due to condensation. It just needed to be treated. Within the week, two people came round to treat the mould. She described it as "painting the room", and it was "mould additive paint". She cannot remember the exact dates of these visits but she does remember it was right before her daughter's 10th birthday which was in October 2015. That is not pleaded.
32. Not long after the mould was treated, she was disappointed to see that it had returned to the same areas but mostly to the sloped sectioned ceiling. Once again, she makes her own phone calls to the defendant to report it but, each time, she was told it was condensation and that there was nothing she could do. They told her she should ensure all her windows were open and put the heating on which she did anyway. She said they did not even send anybody around to look at the damp following the first visit. Each time, the mould reappeared after a few weeks, she wiped it down with bleach. After a few years of the same routine, cleaning and it reappearing, she said it was met with a complete lack of help from the defendant, and when she did report it, she then just gave up. There was a complete lack of detail to her reports.
33. With regards the joint expert reports, reference to towels being over the radiators, she said the reason the towels were over the radiators during the expert's visit was because she had had a shower before they came and the tumble dryer was broken so the only place she could put the towels to dry was over the radiators. That was because the dryer had broken a week or so earlier and she was unable to fix it so she purchased a new one which had taken three weeks to come. Accordingly, she removed the dryer from the external landing into the living room so the delivery people could easily put the new dryer in place when it was delivered.
34. In January 2020, the daughter [?] as she was being rained on from her head, above her bed. When she went into the room to see what was going on, there was water dripping from the ceiling right above her bed which was dripping directly on her face, all over the bed. It appeared a leak had started. She called the defendant right away to report it and they said somebody would be out within three days. Taking three days to send somebody out, she was not happy with that. Somebody came round with a pair of ladders and told her that they had sorted it and they had put some expanding foam. She said the leak happened again in November 2020. Somebody came round to inspect and told her they could not see any issues with the roof but said there was no insulation in the roof so the dripping from the ceiling must be due to condensation, she said.
35. To this day, she says, when there is heavy rain, it still leaks, although, in cross-examination, she seemed resistant to the idea that there would have been heavy rain in Manchester in the autumn of 2020 when there were no reported leaks. Mr O'Neil, of course, confirms that there is no evidence of ongoing leaks at the property. In relation to her bedroom, the damp and mould, she started to notice that not long after moving into the property; again, not pleaded in her particulars of claim. At first, the mould growth was mainly an issue to the storage cupboard. The contractors painted over the mould in white paint again. The mould reappeared and, eventually, appeared on the walls and ceiling, the ceiling in her bedroom, also, the sloped

section and that is where the mould growth was most prominent. She reported this to the defendant over the phone several times. She does not give any date in her statement.

36. She also purchased storage boxes to put her belongings in a few years ago because she did not want any more things to become damaged. Some of them already had been. The problem with the kitchen was damp and mould. Not long after moving into the property, she started to notice mould growth in that room as well. She was concerned when she was preparing and cooking food in the space and, in the end, she dealt with it herself because the defendant failed to come and look at the kitchen despite her reports. The impression given in her statement is of reports being made of the mould since 2015 through to 2020 but it is not pleaded and there is a complete lack of any detail. In the bathroom, again, there was a problem with damp and mould. Again, it appeared not long after her moving in. Again, she tried to deal with it herself, and, again, it was treated with anti-mould paint in 2015 but she still experienced problems. She tried to get rid of it herself but nothing worked and phone calls to the defendant, she reported, went unheard. Again, no dates are given in her statement.
37. Millie, her daughter, who is 18 this year, did not provide any evidence in support of this claim brought by her mother. No reason was given for that; certainly, not a reason I found had any validity. The claimant was taken to her solicitor's letter of claim which is at page 283 of the bundle, which suggested that email reports of disrepair had been made but she accepted, in cross-examination, that no email complaints had been made. She was taken to the witness statement of Mr Ward, the legal officer for the defendant, and the apparent lack of engagement by the claimant with the proposal for a joint inspection by the experts for the purposes of the litigation. She was wholly unable to explain this, simply stating that she complained "loads of times that they…", namely, the defendants, "…don't have a record of".
38. She had no record of it either and would not accept that she was not engaging with her own surveyor, despite the clear evidence contained in the email from her solicitors at page 397. This negatively influenced my view of her credibility. She, again, had no reason for cancelling an appointment for work to be undertaken by the defendant on 23 February 2022. When it was suggested to her that this was similar to the issues with access that the defendant was experiencing to undertake works in connection with the claim, she simply disagreed and stated that there were "massive holes" in the defendant's records. That was despite her own witness statement lacking any real specifics regarding dates of complaints made by her. She was asked when her particulars of claim referring to four complaints: 2 January 2020, 21 May, 24 August and 3 November 2020, and if she was now saying that these were complaints for years, why there was no reference to these purported inaccuracies when the particulars of claim were signed by her.
39. Her response I found wholly unsatisfactory. There was a very long pause on cross-examination and she simply replied that she did not have an explanation. She appeared to accept that the complaint of a further leak, at paragraph 12 of the particulars of claim, actually related to a leak from her own sink into the flat below. She could not recall any failure by her to allow access to the property on 24 August despite the defendant's evidence, and, again, suggested that the defendant's records were inaccurate. She appeared to dispute the assertion that there was proper insulation laid on 2 December 2020 and, when taken to the work note signed by the customer, asserted that the contractor had forged her signature, despite having been in receipt of this document since June 2021 and never having raised this issue previously. I found this extraordinary and it seriously undermined her credibility; fatally so.
40. At page 429 of the bundle, there is an email from, I think, the contractor. It is dated 26 April 2022, possibly 2023. It says:

> "I have attended the above property on two occasions. The first time was a no access but the second time, the tenant attended at the door denying access but said she will ring up and arrange and appointment. I have since tried to contact the tenant but have heard nothing from her since my visit. Please can a letter to be sent to the tenant to arrange an appointment for 5 May 2022".

She said, in cross-examination, that on 18 April, she had tried to take her own life and this is the reason she refused access but she had no medical records to corroborate this assertion and contended her GP did not want to get involved and provide medical records.

41. I do not, of course, cast any doubt on her assertion that she attempted to take her own life. However, I am concerned as to the lack of availability of the medical records, particularly, when there is a significant question mark of whether this claimant did provide access to the defendant to carry out works, as I will find. She was aware of her obligations under the tenancy at paragraph 7.2.3 and 7.2.5 at page 151 of the bundle to keep vents free of obstruction and take reasonable steps to protect her home against damp. She accepted that her taping up of the vents, at page 114, was in breach of the tenancy agreement and that she covered a radiator with a towel, which she described as "a hair towel". She said that she only used radiators to dry clothes when she did not have the tumble dryer, which I found challenging, to say the least. It was, apparently, a coincidence that the towels were on the radiators when one of the experts happened to be there, and I did not find that a credible explanation. When she was taken to the photographs at page 99 of the bundle, she refused to accept there was clutter in the room, despite what was, to my mind, clear evidence of clutter in that photograph.
42. I found the claimant to be almost wholly lacking in credibility. She was evasive and failed to make any appropriate concessions in her evidence. For the reasons I have given, I find against the claimant in relation to the actionable defects. If I am wrong about actionable defects then I do not accept that the claimant has provided the notice to the landlord as she suggested in her evidence and I also accept that she failed to properly facilitate access to the property to the landlord. If I am wrong regarding both actionable defects and notice I also accept the picture painted by Mr Ward and that any work required to be done was done in a reasonable time.
43. Therefore, I do not need to consider the question of loss. For the reasons I have given the claimant has failed to establish her case on the balance of probabilities.

**End of Judgment.**

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291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiqus.com

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