**IN THE SUPREME COURT OF GIBRALTAR**

Neutral Citation Number 2026/GSC/046

2026/MISC/028

**BETWEEN:**

**PATRICIA MONICA DENISE BROWN HENDERSON**

**Claimant**

-and-

**(1) STEVEN BRADY**
**(2) NICOLA LOUISE IBELL**
**(3) CHARLES DOUGLAS BRADY**

**Defendants**

**Samuel Marrache** (instructed by **Hassans**) for the **Claimants**

The **First and Second Defendants (**the **Counterclaimants)** appeared in person

Judgment date: 14 October 2026

**JUDGMENT**

**Introduction**

1. The first and second defendants, Mr Steven Brady and Ms Nicola Ibell, counterclaim £3,000 in damages from the claimant, Mrs Patricia Brown Henderson, arising out of their tenancy of Apartment 7, 11 Giro's Passage, Gibraltar. I shall refer to Mrs Brown Henderson as the landlord and to Mr Brady and Ms Ibell as the tenants. The third defendant is a party to the tenancy agreement but is not a counterclaimant.

2. The counterclaim is put on two bases: that the premises suffered from damp and mould which the landlord failed to remedy, and that the tenants were disturbed by noise from an outdoor area belonging to the adjoining Primary School, the use of which they say had been represented to them before the tenancy as limited to about 15 minutes a day. The landlord denies that she owed any obligation to repair the premises and says that, even if she did, she was not in breach of it. She denies responsibility for noise from a neighbouring school, and says the counterclaim is an attempt to reduce the judgment debt she has already obtained.

**Procedural background**

3. By a tenancy agreement dated 16 July 2025, made by BMI Property Matters Limited as the landlord's estate agent, the premises were let to the three defendants for 12 months from 25 July 2025 at £1,650 per month. They were let furnished, an Inventory being scheduled to the agreement. Arrears began to accrue from 25 January 2026 and Mr Brady was made redundant on 26 February 2026. Proceedings for possession and arrears were issued on 22 June 2026 and the tenants filed a defence and counterclaim on 21 July 2026.

4. On 27 July 2026 Restano J ordered possession, suspended until midday on 10 August 2026, and gave judgment for £6,839.88 in arrears and interest, together with mesne profits and fixed costs. He allocated the counterclaim, valued at £3,000, to the small claims track. The tenants gave up possession on 10 August 2026.

**The amended counterclaim**

5. The tenants' hearing bundle contained a document headed "Counterclaim" signed on 28 September 2026. It is longer than the counterclaim filed on 22 July 2026 and adds heads of claim concerning the boiler, the washing machine, the oven, the plumbing, an electrical socket in the main bedroom, the loss of use of that bedroom for about two days, and the blinds. No application to amend had been made. Having heard both parties, I gave

partial permission. The blinds, the loss of use of the bedroom and the socket all arise from the damp or from the works done to remedy it, and are in substance further particulars of a head already pleaded which could fairly be met by the landlord at the hearing. I permitted those but the remaining items are new and unconnected with the pleaded case, and I refused permission in respect of them.

**The evidence**

6. The landlord did not give evidence. Her case rested on the witness statement of Mr Vikesh Chabaldas, property manager at BMI, dated 22 September 2026, and his exhibit VC1, which consists largely of the WhatsApp exchanges between BMI and the tenants. He was cross examined by the tenants. Mr Brady and Ms Ibell each adopted their statements and were cross examined by Mr Marrache.

7. Mr Brad Duncan of BMI, who conducted the pre tenancy viewing and is alleged to have made the representation about the school, was not called by either side, however, the tenants' account of what he said is not contradicted by anyone.

8. Mr Chabaldas gave his evidence fairly. He accepted the limits of his knowledge, in particular that he had no involvement in the letting and could not speak as to what Mr Duncan had said, and that he could not exclude something having been said to a colleague by the tenants about damp prior to 1 December 2025. Paragraph 10 of his statement, which asserts that the tenants did not complain again about the mould, does not appear accurate, as the landlord's own exhibit shows. I do not regard that as dishonesty but as the imperfect recollection he acknowledged in the witness box.

9. I do not doubt that the tenants are genuinely aggrieved or that they were inconvenienced. But I cannot treat their evidence as a wholly reliable account. In several respects it was overstated and contradicted by their own messages. The pleaded case that the damp "progressively worsened during the tenancy" cannot stand: Ms Ibell accepted that the condition would have

improved as the weather grew warmer. The tenants attributed illness to the mould, yet Ms Ibell's message of 1 December 2025 records that she was "not entirely sure if it's COVID or the virus that's been going around", and no medical evidence was adduced. She accepted that the exceptional rainfall of that winter may have contributed to the humidity, as her own message of 10 March 2026 had said. And Mr Brady's evidence that he telephoned BMI regularly about damp in the hallway finds no trace in an otherwise detailed contemporaneous record, nor in his own witness statement.

10. There is also the email of 17 April 2026, in which Mr Brady wrote "We are very happy in the property and would like to renew the lease when it comes up in May/June." In fairness it must be read whole. It answered a final warning about arrears, and an earlier paragraph refers to "ongoing issues within the apartment, including the damp and mould, as well as disruption from the building works and nearby school noise". It is not an admission that there were no problems, and Mr Marrache's reliance on it perhaps went further than the document bears. But the explanations offered by the tenants were unconvincing. Mr Brady said "we" meant him "taking control" and the sentence "figurative speech"; Ms Ibell said she had not been happy, though she was copied in and did not correct it. I find that in April 2026, after everything of which they now complain, the tenants wished to renew, and that conditions were not such as to make occupation intolerable.

**Findings of fact**

*Damp and mould*

11. The premises were free from damp and mould when the tenancy began; the tenants' own evidence was that the first traces appeared in October or November 2025. They say damp was mentioned to BMI by telephone before 1 December. Mr Chabaldas could not exclude it and Mr Duncan was not called, but no particulars were given of when, to whom or what was said, and the messages of that autumn, which deal in detail with a boiler, a water bill, a shower and an oven, say nothing of damp. The burden is on the tenants and I find that the first notification was on 1 December 2025.

12. BMI acted that day. A workman attended in the afternoon and a dehumidifier was supplied through the landlord's brother in the evening. The cause was identified as a crack in the external wall adjoining the school playground. Work was delayed by heavy rainfall, as the messages record at the time, and was carried out on 21 and 22 December 2025, anti mould treatment being applied in the main bedroom and the wall repainted.

13. Those works were effective there. On 8 January 2026 Ms Ibell wrote that there was "still noticeable dampness on the walls in the main bedroom, although no mould is currently present". The mould did not return, and she accepted in cross examination that the crack had been remedied.

14. The second bedroom was not treated. In the same message Ms Ibell explained why: "the workmen were unable to access that room", their son being unwell and occupying it, and she added that works in both bedrooms at once would not have been feasible with family visiting. Both tenants confirmed that account.

15. On 9 March 2026 Ms Ibell sent a message principally about the washing machine and the blinds which included the words "And regards to the bedroom the second bedroom can we have someone come in". Her oral evidence had been that she did not contact BMI about that room after January, and neither party referred to the message, so before submissions I drew it to both sides and invited them to address it. A handyman, Omar, attended the next day and refixed a fallen blind. Whether he was asked to look at the bedroom is not in evidence. The request was not repeated before the tenants left five months later.

16. The messages also record continuing complaints of humidity generally, damp in the hallway and mould on the blinds. No evidence was called as to the cause. Ms Ibell accepted that the rainfall may have contributed and that the windows were kept ajar daily.

*The school and the outdoor area*

17. Before the tenancy Mr Duncan asked the landlord by WhatsApp about the playground below the kitchen and living area, observing that it "may put some clients off with potential noise". She replied: "It belongs to the … school. We have an arrangement that they only use it for 15 minutes in the morning break time." That exchange took place before 6 May 2025. At the video viewing Mr Duncan passed the information to the tenants. I accept that he did so, that they had raised the school as a concern, and that the answer mattered to them.

18. The representation concerned the raised area immediately outside the kitchen and living room windows. Both tenants accepted that nothing was said about the school's larger playground on the other side of the building, that they made no enquiries of their own, and that their complaint was directed principally at the raised area.

19. On 4 December 2025 they complained to Mr Chabaldas that the area was in use for far longer than 15 minutes a day and that a man was using it as an office. He checked with Mr Duncan, confirmed that the restriction applied to that area, and said he would report it. He did, and the landlord acted. By email the same day, produced for the first time at the hearing, she wrote to the head teacher saying the playground was "being used far more than the 15 minutes they're supposed to be using it", that "the constant noise is really not acceptable", and asking her to look into it. On 5 December BMI forwarded the landlord's message confirming that she had written to the school.

20. The tenants did not seek documentary proof of the agreement until July 2026, after proceedings had begun. Ms Ibell wrote to the head teacher on 21 July 2026 asking the school to confirm that no restriction was in place; no reply is in evidence. She also complained to the Department of Town Planning, which replied on 16 July 2026 that a canopy over the area required permission but that the use appeared to remain ancillary to the school's existing use. In cross examination Mr Brady accepted that there was no

evidence that the landlord had invented the agreement and, shown her email, said that he accepted it.

**Damp and mould: breach**

21. Mr Marrache's principal submission was that the landlord owed no repairing obligation at all, but he recognised that the court might prefer not to decide that question, there being no breach even if a duty existed. I take the course he suggested. I consider breach first, on the assumption, made for this purpose only, that the landlord was obliged to keep the structure and exterior in repair in terms similar to those implied in England and Wales by section 11 of the Landlord and Tenant Act 1985.

22. Such an obligation is not broken the moment a defect appears. It arises once the landlord has notice of the necessity of repair, and she is then allowed a reasonable time to put it right: *O'Brien v Robinson [1973] AC 912*. Notice was given on 1 December 2025. A workman attended that afternoon and the cause was repaired on 21 and 22 December. Having regard to the weather, which the tenants themselves recorded as preventing the external work, and to the time of year, that was a more than reasonable period. The mould in the main bedroom did not recur.

23. The second bedroom stands differently and is the strongest part of the tenants' case. It was not treated in December because they could not give access, their son being unwell and in the room while the family had visitors. That was no fault of theirs, but it was none of the landlord's either. Mr Chabaldas's evidence, which I accept, was that he would have sent the contractor back had he been asked for a date.

24. The request came once, on 9 March 2026, more than two months after and in a message dealing principally with other things. A handyman attended the next day. The second bedroom was never repeated, though the tenants remained until August 2026 and went on corresponding with BMI about other matters. I am not satisfied that the landlord, if she owed the obligation at all, failed to perform it within a reasonable time of being asked.

25. As to the residual dampness, the general humidity and the damp in the hallway, the tenants have not proved what caused any of it. The burden is theirs and no evidence of cause was called. Ms Ibell accepted that the exceptional rainfall may have contributed and that the windows were kept open daily. I cannot find that there was a want of repair for the landlord to remedy. Nor, had the cause been an inherent feature of the building, would putting it right necessarily have been repair rather than improvement, for which a repairing covenant does not provide: *Woodfall* at 13:59 referring to *Pembery v Lamdin [1940] 2 All ER 434*. Mr Brady pointed out that *Pembery* concerned a basement, which is so, but the principle is not confined to basements. The point does not have to be resolved, there being no evidence of cause either way.

26. I should record that the landlord did not leave matters alone. BMI arranged attendances for the boiler, the oven, the shower, the mould, the blinds and the washing machine, in most cases within a day or two. It follows that, even on the assumption most favourable to the tenants, no repairing obligation was broken, and this head of the counterclaim fails.

**Damp and mould: whether any obligation to repair was owed**

27. That makes it unnecessary to decide whether the landlord owed a repairing obligation in the first place. However, Mr Marrache argued the point fully and I state my conclusion upon it, conscious that the tenants made no submissions on the authorities and that my decision on breach stands independently.

28. Clause 4 sets out the landlord's covenants in full. She covenants to permit the tenants to use the premises without interruption (4(a)), to pay the ground rent, service charges and rates (4(b)), and to "repair and replace as necessary any appliances forming part of the Inventory" (4(c)). There is nothing about the structure or exterior, and nothing about fitness for habitation.

29. Nor does the general law supply it. At common law there is no implied warranty that a landlord will keep demised premises fit for habitation and no implied covenant that she will carry out repairs. That rule is stated in *Woodfall* and was Schofield CJ's starting point in *Goodman v Attorney General [2001-02 Gib LR 77]* at paragraph 9, quoting *Duke of Westminster v Guild*. In *Sleafer v Lambeth Borough Council [1960] 1 QB 43* the Court of Appeal declined to imply a repairing obligation from covenants closely similar to clauses 3(e) and 3(t) here.

30. A qualification arises. The rule is expressed to apply to unfurnished lettings, and the flat in Goodman was unfurnished, whereas these premises were let furnished. Mr Marrache raised the point himself and handed up *Woodfall* at 13:2, which collects the exceptions. The first is that a letting of furnished accommodation carries an implied covenant that it is fit for occupation at the beginning of the tenancy. That does not help the tenants. It is confined to the start of the term, and is not a warranty that the premises will remain fit. In any event there is no evidence that these premises were unfit in July 2025, when the tenants' own case is that the first traces of damp appeared three months later.

31. An obligation may nonetheless be implied where that is necessary to make the agreement work. That was the basis of *Goodman*, applying *Barrett v Lounova (1982) Ltd [1990] 1 QB 348*. There the tenants had covenanted by clause 2(7) to keep the interior and its fixtures and fittings "*in tenantable repair*", and the Chief Justice held at paragraph 13 that someone had to maintain the exterior, that this was necessary to make the tenants' obligation possible, and that the only sensible answer was the landlord.

32. The covenants here are materially different. Clause 3(e) requires the tenants to "*keep the interior of the Premises clean and tidy and in as good and clean condition when found at the beginning of the Term and repair any damage to the Premises or contents forming part of the Inventory as a result of the negligent acts or omissions of the Tenant during the Term*". The distinction from Goodman is not merely formal. A covenant to keep premises in tenantable repair describes a condition which cannot be maintained if the

structure is failing, which is why Kerr LJ held in Barrett that someone must be obliged to repair the exterior if the tenant's covenant is to remain enforceable throughout the term. A covenant to keep the interior clean and tidy describes an activity, which the tenants could continue to perform whatever the state of the exterior, however unrewarding it became. The obligation to repair which clause 3(e) does impose is confined to damage the tenants themselves cause negligently, and nothing in the condition of the building prevented them from making that good. No correlative obligation on the landlord is needed to give clause 3(e) effect. Clause 3(t) is an access clause: it allows the landlord in to execute repairs but does not oblige her to execute any, and it imposes nothing on the tenants. Goodman is distinguishable.

33. The agreement appears to confirm it. Where these parties intended a correlative obligation they said so: the tenants covenant by clause 3(h) to keep the inventory contents in good repair and working order, and the landlord covenants by clause 4(c) to repair and replace inventory appliances. Nothing of the kind was provided for the fabric of the building. Nor might that be expected, since the landlord appears to hold under an underlease, clause 3(n) referring to covenants "contained in the Underlease", and pays the service charges under clause 4(b).

34. *Woodfall* at 13:2 records one further exception which might bear on the facts, that a landlord who retains ancillary property must take care that it does not damage the demised premises. There was no evidence that this landlord retained the external wall, and the contrary appears the more likely. In any event, once the crack was drawn to her attention she had it repaired within three weeks over Christmas. Any such duty was discharged.

35. Nor is there a statutory obligation. The common law position was altered in England and Wales by section 11 of the Landlord and Tenant Act 1985, and it was the want of any equivalent here that made implication necessary in Goodman.

36. I therefore conclude that the landlord owed no obligation, express, implied or statutory, to repair the premises or to keep them free from damp. Had the point been necessary, this head would have failed on that ground also.

**The noise from the school**

37. This head is pleaded as a breach of the covenant for quiet enjoyment. Clause 4(a) contains an express covenant, by which the landlord covenants to:

> *"permit the Tenant to use the Premises without any interruption by the Landlord or his/her agents or any person rightfully claiming under or in trust for it for the purpose of this Agreement save as provided in clauses 3(t) to 3(v) above so long as the Tenant pays the rent and performs his/her obligations under this Agreement during the Term".*

38. The noise came from the Primary School. The school is not the landlord, not her agent, and does not claim under her or in trust for her. It occupies its own land in its own right. The covenant is not engaged. The common law is to the same effect: *Megarry and Wade*, *The Law of Real Property*, 10th edition, at 18-007, explains that the covenant is broken where the landlord or someone claiming under her substantially interferes with the tenant's enjoyment, and that it is prospective, relating to the future conduct of the landlord and of those claiming under her.

39. The tenants' real complaint is of misrepresentation. It is not pleaded as such, but they appeared in person and Mr Marrache addressed it. I find that a representation was made. Mr Duncan told them before the tenancy that use of the raised area had been agreed with the school and was limited to about 15 minutes a day, on the basis of what the landlord had told him. It was a representation of fact and it was material to their decision to take the premises.

40. They must also prove that it was untrue when made, and they have not. The contemporaneous material points the other way. The landlord told Mr Duncan of the arrangement before 6 May 2025, when no tenancy with these tenants was in prospect and she had no reason to invent it. When the complaint reached her on 4 December 2025 she wrote to the head teacher

the same day on the footing that the agreement existed and was not being kept. Mr Brady accepted that there was no evidence she had made it up and, shown the email, he accepted it. Ms Ibell's letter of July 2026 invited the school to confirm that no restriction was in place and produced no reply. Whether the school in fact exceeded the arrangement is another question, on which the only evidence is the tenants' own account, the recordings they say exist not being sufficient, either in length or otherwise, to establish that the restriction had been breached. Even assuming that it did, that was the school's doing and not the landlord's, who had no control over it, as Ms Ibell accepted.

41. Mr Brady's remaining point was that the email of 4 December 2025 was not shown to them at the time, and that had it been they could have taken the matter up with the school. That does not assist. Its substance reached them the next day, when BMI forwarded the landlord's message confirming that she had written to the school. From 5 December 2025 they knew that her position was that an agreement existed and that she had raised it, and they were free to approach the school as they eventually did seven months later. In any event, failing to hand over correspondence with a third party is not a breach of any obligation under this tenancy.

**The remaining matters**

42. Three further matters were permitted as particulars of the damp claim. The first is the loss of use of the main bedroom for about two days in December 2025 after the anti mould treatment. That was a consequence of the very works the tenants had pressed for and asked to have done before Christmas. Work of that kind cannot be done without disturbance, and it was not a breach of any obligation.

43. The second is the electrical socket, and it is the one matter on which the landlord's side can fairly be criticised. The contractor apparently failed to mask the sockets before spraying, fluid entered one, and using it thereafter tripped the supply to the whole flat. Mr Chabaldas said an electrician would be sent and Mr Brady's evidence was that none came. But he never told Mr

Chabaldas that nobody had attended, taking the view that it was not for him to chase, and he solved the problem himself with an extension lead from another socket. On his own account the inconvenience was occasional and slight. Even if the landlord were responsible for damage done by her contractor, the matter is too trivial to attract an award of damages.

44. The third is the blinds, reported on 9 March 2026 as having fallen and as being affected by mould. Omar attended the next day and refixed the fallen blind. Mr Brady said that it later fell again and that they told Mr Chabaldas the blinds were rotten. Mr Chabaldas could not recall it and there is no contemporaneous record. I am not satisfied that the landlord was put on notice that anything further was needed.

**Damages**

45. Damages do not arise on my findings, but I deal with the matter shortly. Where a tenant remains in occupation the measure is the diminution in the value of the premises to him, with general damages for discomfort and inconvenience, and as a rule the award should not exceed the rent payable during the period of the breach: *Bullen and Leake and Jacob's Precedents of Pleadings*, 20th edition.

46. The figure of £3,000 was not arrived at in that way. The schedule served with the original counterclaim in July 2026 claimed general damages "to be assessed by the Court" and put no figure on them. The figure first appeared in September 2026, in a schedule which states that £3,000 is "*the maximum value of the Counterclaim for the applicable court fee paid*". Mr Brady submitted that it was not plucked from thin air, but no attempt has been made to relate it to any period, to any reduction in the letting value of the premises, or to any particular discomfort. There is no claim for expenditure, none for loss of earnings, and no medical evidence.

47. Had I found a breach, that is, had it been proved that nothing was done about the second bedroom following the request of 9 March 2026 and that the mould there persisted, I would have confined it to that room from March

2026 and assessed damages in the low hundreds of pounds, as a modest proportion of the rent for that period, to be set off against the judgment of 27 July 2026. In Goodman the award for distress, discomfort and embarrassment over several years of recurring damp was £4,000, the Chief Justice citing *Calabar Properties v Stitcher*, where £3,000 was awarded over five years, and the reminder in *Perry v Sidney Phillips and Son* that such awards should be modest. Those figures are old and their present day equivalents would be higher, but the comparison I draw is one of scale rather than of precise amount, and a few months affecting a single room falls well below them even allowing for that.

**Disposal**

48. The tenants spent part of a winter in a flat with mould in it, with building noise and school noise around them, and they dealt with BMI courteously and at length. I accept that they were genuinely inconvenienced. But inconvenience is not of itself actionable. To recover damages they had to show that the landlord owed them an obligation and broke it. Even assuming the obligation for which they contend, she did not break it: where she could act, she acted, and usually promptly. She was not answerable for the school next door. And on the agreement they signed, and on the law of Gibraltar as it stands, it appears to me that she owed no repairing obligation at all.

49. The counterclaim is dismissed.

**Costs**

50. The counterclaim having been allocated to the small claims track, costs fall to be dealt with accordingly. I will hear the parties if the matter is not agreed.

**KARL TONNA**
**Registrar**