FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/43UE/HMF/2019/0016**
Property	**:**	**6 Hereford Close, Crawley West Sussex RH10 5JB**
Applicant	**:**	**David Soanes**
Representative	**:**	**None**
Respondents	**:**	**Jun He**
Representative	**:**	**None**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge HD Lederman** **R Wilkey FRICS JP** **Tat Wong**
Date and Venue of Hearing	**:**	**3rd February 2020 at Havant Justice Centre Elmleigh Road Havant**
Date of Decision	**:**	**12th March 2020**

DECISION

Decision of the Tribunal

The Tribunal:

a. refuses the Applicant permission to review a decision dated 23rd December 2019 which refused permission to amend his application for a rent repayment order ("RRO") to include an allegation that the Respondent had committed an offence under section 6(1) of the Criminal Law Act 1977 on 7th September 2019 as alleged in paragraph 15(i) of the application dated 6th November 2019;

b. dismisses this application for a Rent Repayment Order ("RRO"). The Applicant has failed to adduce sufficient evidence to satisfy the Tribunal beyond reasonable doubt that the Respondent committed any of the offences alleged in the application dated 6th November 2019.

c. refuses the Applicant's request for reimbursement of application and hearing fees.

The Application

1. The Tribunal is required to determine an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for an RRO in respect of 6 Hereford Close, Crawley, West Sussex RH10 5JB ("the premises"). The premises were a mid-terrace house with 3 bedrooms upstairs (one double and two single) and according to the Applicant another double bedroom downstairs which had been converted into a bedroom on the ground floor. There was a toilet on the ground floor and a toilet with shower over bath on the first floor.

2. On 8 November 2019, the Applicant issued the application. Mr Jun He (also known as "Tim Ho" or "Tim Tilgate" in some of the documents in the bundle) was named as Respondent. The application also made allegations against Miss Wei, apparently the other registered proprietor of the premises, but she was not named as a Respondent. No request was made to join her as a party to the proceedings.

3. The RRO is claimed in the sum of £1080 rent paid for the period 7th June 2019 to 10 September 2019. The application form included a statement of truth which was attested by the Applicant. There was also a claim for loss of earnings and software expenses which (as the Tribunal explained) was not within the jurisdiction of the Tribunal.

4. The Tribunal explained that a pre-condition for making an RRO is that the Applicant is able to show that an offence to which the relevant chapter of the 2016 Act applied. A list of the relevant offences was given in the Tribunal's directions issued on 5th December 2019 and 23rd December 2019.

The Applicant

5. The Applicant described himself as a self-employed online marketing consultant earning £300.00 per day in the statement of 06 November 2019 incorporated into his application. At the hearing he informed the Tribunal that he had had some (unspecified) legal experience. The Applicant was an articulate and intelligent man who was able to present his case at the hearing without representation. He professed knowledge of the legislation governing Houses in Multiple Occupation ("HMO's") and the Protection from Eviction Act 1977 ("the PFE"). He had also provided the Tribunal with an extensive bundle of evidence (23 pages) (including a statement and 18 exhibits).

6. The Applicant made a number of applications to the Tribunal before the hearing, including an application dated 19th December 2019 (amendments and third party disclosure), a request to appeal the decision of 19th December 2019 and an application for permission to appeal to the Upper Tribunal dated 28th January 2020. He applied to Brighton County Court for an order against the Respondent in July 2019. According to his statement of 19th December 2019 he "lodged" a claim with Brighton County Court (Claim no F01BN032) for "breach of duty, negligence, fraud, breach of contract and breaches of sections 213(3) and 216 of the 2004 Act, Schedule 1 to The Housing Health and Safety Rating System (England) Regulations 2005, unlawful eviction, harassment, breach" of the PFE and section 6 of the Criminal Law Act 1977 ("the CLA"). The Tribunal was not shown this claim which on its face appeared to contain allegations similar to some of those made in this application.

7. It is usually difficult for a litigant to present their own case and give evidence. In this case the Applicant's enthusiasm for presenting his case clearly impacted upon his oral evidence about the documents which he presented to the Tribunal. In particular the Tribunal gained the distinct impression that documentary evidence and copies of text messages presented by the Applicant were an incomplete account of events.

8. On 5 December 2019, the Tribunal gave Directions. These are given to enable the Tribunal to determine such applications fairly by indicating to the parties how they should present their cases. Many parties appearing before this Tribunal are unrepresented. The Applicant was directed to send the Tribunal and the Respondent (among other things) by 20 December 2019:

> A copy of the tenancy agreement
>
> Written evidence from the local authority
>
> Any other documents to be relied upon at the hearing.

9. Directions were given to the Respondent to file evidence by 16th January 2020. The Applicant was given permission to make a statement in reply to the Respondent's case. The Applicant filed the extensive Bundle of Documents with the 18 exhibits (and 23 pages) on 20 December 2019.

The Respondent

10. The Respondent filed a statement dated 19th January 2020 (5 pages 54 paragraphs) on 20 January 2020 which exhibited an unsigned tenancy agreement and correspondence from the Applicant's solicitors. This also contained a request for payment of his expenses and losses which were outside the jurisdiction of this Tribunal.

11. The Respondent was accompanied by a friend to the hearing. He did not appear to have taken legal advice about the hearing, although he had consulted solicitors previously. The Tribunal was informed that he needed to have a break at lunch time for reasons connected to a medical condition. He had a good understanding of English but it was clear that English was not his first language. Some of his sentences were not formed in the way in which a person with English as a mother tongue would have expressed themselves. This is not to criticise the Respondent, but is something the Tribunal took into account when assessing his responses to texts and other communications from the Applicant which were put into evidence.

The Hearing

12. The Tribunal checked that all parties had the same copies of the bundle before the hearing started.

13. The Tribunal Judge emphasised to the parties at the outset the following arose:

    i. It was a pre-condition of the Tribunal making an RRO that the Applicant could satisfy the Tribunal beyond reasonable doubt (so that the Tribunal was sure) that each or any of the following criminal offences alleged were committed by the Respondent:

        a. Was the Respondent in control or managing the premises which were a House in Multiple Occupation required to be licensed under section 61 of the Housing Act 2004 ("the 2004 Act") between 17 June 2019 and 10 September 2019 but was not so licensed, contrary to section 72(1) of the 2004 Act;
        b. Was the Respondent guilty of conduct colloquially described as harassment contrary to sections 1(3) or 1(3A) of the Protection from Eviction Act 1977 ("the PFE") as alleged in one or more of paragraphs 15(a) to 15(u) of the "grounds for making the application";
        c. Was the Respondent guilty of acts which amounted to conduct colloquially described as "wrongful eviction" or "attempted wrongful eviction" contrary to sections 1(2) as alleged in paragraph 15(j) of the "grounds for making the application"

    ii. If any of the above were established, should the Tribunal exercise its discretion to make an RRO.

    iii. If so what should the amount of the RRO be (by reference to the offence or offences found to have been committed) taking into

account:

(a)the conduct of the landlord and the tenant,

(b)the financial circumstances of the landlord, and

(c)whether the landlord has been convicted of an offence.

Preliminary applications

14. Before the main hearing started the Tribunal heard the Applicant's request to amend his application to allege that the incident alleged in paragraph 15(i) of the "grounds for making the application" was also a breach of section 6(1) of the Criminal Law Act 1977 ("the CLA").

15. Paragraph 15(i) of the "grounds for making the application" alleges that

> "On 7th September 2019 [the Respondent] **brandished portable electric drill** a pale green colour "De Walt" brand and lunged at the applicant. The Applicant defended himself with a spoon and subsequently with serrated knife with wooden handle, usually used at the table for cutting meat on the plate. The Respondent then made **malicious complaint** to the police on 7 September 2019 that the Applicant threatened to damage the side gate and threatened to stab him with a knife. The police arrested the Applicant at about 12.30 pm on 7 September 2019 and released him without charge about 10 pm the same day, with "take no further action", after interviewing the Applicant and seeing a video of the altercation recorded by the defendant, A copy of the police record is attached marked exhibit H." (Applicant's emphases)

Section 6(1) of the CLA provides in its material parts:

> "Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—
>
> (a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
> (b) the person using or threatening the violence knows that that is the case."

Sections 6(4) and 6(5) of the CLA provide

> "(4) It is immaterial for the purposes of this section—
>
> (a) whether the violence in question is directed against the person or against property; and

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding [level 5 on the standard scale] or to both"

16. The Applicant said he had not included an allegation of breach of section 6 of the CLA at the outset by "an oversight". He said the Respondent would not be "prejudiced" by introduction of such a ground of an RRO at this stage.

17. The Respondent contended he would be prejudiced by introduction of such a ground at this late stage.

18. After adjourning to consider the issue, the Tribunal refused the Applicant's application to amend for the following reasons:

a. The request had previously been the subject of decision by District Judge Whitney; there was no reason to believe that Judge's decision was made in ignorance of any relevant fact or matter; there was no reason to believe that decision was flawed.

b. The Applicant has made some 20 allegations of commission of a variety of criminal offences in relation to housing as defined in section 40(3) of 2016 Act over a period of some 3 months in 2019. He claims repayment of £1080.00 as an RRO. The addition of this ground would have required the Tribunal to commit considerable additional resources to the hearing and possibly required an adjournment or additional hearing time, when the amounts at stake were not proportionate to the possible benefit for the reasons given below.

c. If the Applicant's version of events (which was vehemently disputed) was proved to the criminal standard, it would have almost certainly have amounted to the commission of an offence under section 1(3) of the PFE which was going to be considered by the Tribunal in any event;

d. The Applicant was unable to show any significant benefit or prejudice to him if the amended allegation was not added as the substance of the allegation was due to be addressed.

19. The Respondent applied to introduce into evidence the statement of a Mr Farooq whose identity had been withheld and the substance of the evidence had been withheld from the Applicant before the hearing. The basis of withholding was concern about the witness's welfare as he was the current landlord of the Applicant. The substance of the evidence was said to be about the character of the Applicant, and to support the suggestion that the Applicant was someone who took the opportunity to obtain evidence of alleged commission of criminal offences by landlords in order to a secure a rent repayment order in bad faith.

20. The Tribunal rejected that application on two grounds. Firstly, the substance of thee evidence was of extremely limited value as it went to the character of the Applicant, rather than the facts alleged to be commission of criminal offence. Although his character might have had some bearing on the amount of the RRO (if that became relevant), the need for a possible adjournment occasioned by introduction of such evidence at such a late stage would outweigh the benefit. Character of the Applicant was an issue on the available evidence. However, by far the more important issue was the Applicant satisfied the tribunal that an offence was committed beyond reasonable doubt. Secondly, the statement was produced at the hearing and the Applicant had no prior notice of its contents. As a litigant without representation, an adjournment of the hearing might be required to enable him to address its contents. Introduction of the statement at this late stage was not consistent with the overriding objective of managing cases efficiently and justly to all parties with the best use of resources.

21. The Respondent asked for an order that the statement be returned to him. The Tribunal declined to make such an order as in the event of an appeal by the Respondent, the Applicant would not have had access to the evidence upon which such appeal might be based. Secondly, as the statement had been deployed in the proceedings, there was no ground for ordering its return to the Respondent.

Request by the Applicant to introduce additional evidence of a transcript of conversation with the police

22. At about 12.30 pm (some 2 hours into the hearing) in the course of presenting his case, without prior warning or indication, the Applicant asked the Tribunal to admit into evidence what he said was a copy of a transcript of his conversation with the police when he called them on 7th July 2019. The transcript was said to refer to the Applicant's complaint that the Respondent and "Miss Wei" came to the premises and threatened to put his belongings in the street and evict him: paragraph 2 of the Grounds for making application. The Applicant said he had only been provided with the transcript on 27th January 2020. He did not explain why he had not notified the Tribunal or the Respondent that he intended to rely upon the transcript. The Respondent objected to introduction of the transcript, partly on the ground that it was a selection and not the whole of the conversation with police officers.

23. After adjourning for some 10 minutes to consider the issue, the Tribunal rejected the request to admit the transcript for the following reasons:

a. Admission of the transcript at such a late stage would have severely prejudiced the Respondent, who with no formal legal training or experience of such hearings would have been required to address its contents, perhaps after a short adjournment or seek an adjournment of hearing.

b. The allegations of commission of a criminal offence made against the Respondent were of a moderate level of seriousness to an individual who (to the Tribunal's knowledge) was of previous good character. They could have a serious impact upon his ability to be a landlord and upon other

aspects of his work and life; it was not in the interests of justice that he might be faced with the dilemma whether to seek an adjournment of the hearing to deal with the transcript properly when it should have been provided to him (and the Tribunal) much earlier;

c. The transcript (as described by the Applicant to the Tribunal) was of no real probative value as he sought to rely upon them as corroborating his complaint to the police that the Respondent and Miss Wei had threatened to place his belongings on to the street. At best this would amount to self-serving hearsay statements. Although these statements would be admissible, they would be of no real weight in establishing that such a threat was in fact made, given the Respondent's contention that the Applicant acted in bad faith and attempted to construct allegations to support a request for an RRO or other means of extracting funds from landlords.

Allegations of offences in relation to housing

24. The Tribunal does not consider these allegations in the same order as the Applicant but attempts to consider them in chronological sequence.

25. The first offence alleged by the Applicant was under section 72(1) of the 2004 Act, namely the control or management by the Respondent of an unlicensed HMO between 17 June 2019 and 10 September 2019. (Item 1 "grounds for making the application". The Applicant alleges that between these dates there were 4 households and 5 persons resident. These were Mr Ross Lambert, Jen Lambert in the living room downstairs converted to bedroom and 3 bedrooms upstairs – Mr Peter Cox, Mr Damian P Stracek and the Applicant. The Applicant also alleges there were 6 people living at the premises between 14 August 2019 and 20 August 2019 as "Damian had a lady living in his room".

26. To evaluate this contention the Tribunal turns to the relevant statutory provisions. Section 72 of the 2004 Act requires that the person who has control or manages the HMO which is required to be licensed under section 61 of the 2004 Act.

27. Section 61(1) of the 2004 Act provides that "Every HMO to which this Part applies must be licensed under this Part unless–

> (a) a temporary exemption notice is in force in relation to it under section 62, or
> (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4."

The relevant part of the 2004 Act is Part 2. Section 55 of the 2004 Act is entitled "Licensing of HMOs to which this Part applies". Sections 55(1) and 55(2) provide:

> "(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and
(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority–

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and
(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation."

28. No evidence was led to suggest that the area in which the premises were situated had been the subject of designation by the local authority. Nor did the Applicant so contend. The Tribunal leaves that possibility out of consideration.

29. Article 4 of Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221 provides that "An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;
(b) is occupied by persons living in two or more separate households; and
(c) meets—

(i) the standard test under section 254(2) of the Act;
(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
(iii) the converted building test under section 254(4) of the Act."

References to the Act in that Order are to the 2004 Act: article 3.

30. The Tribunal turns to the definition in section 254(2) of the 2004 Act. This sets out what constitutes an HMO, falling within the "standard test":

"(a) it consists of one or more units of living accommodation not consisting of self-contained flats;
(b) the living accommodation is occupied by persons who do not form a single household;
(c) the living accommodation is occupied by the tenants as their only or main residence;
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable in respect of the living accommodation; and
(f) two or more of the households who occupy the living

accommodation share one or more basic amenities, namely the kitchen, a bathroom and a toilet. "

31. Section 260 of the 2004 Act enacts a presumption that the occupation of living accommodation constitutes the only use of that accommodation where that issue arises in proceedings. There is no presumption (evidential or otherwise) in respect of any of the other elements of the standard test. The burden remains upon the Applicant to establish each element of the offences so the Tribunal is satisfied so that it is sure an offence was committed.

32. The Applicant approached this part of his case on the basis that the main point he had to establish was whether 5 people were living in the premises between 7th June 2019 and 10th September 2019.

33. The Applicant drew attention to the following documentary evidence about other occupants of the premises in that period which he relied upon to corroborate his evidence that there were 4 households and 5 persons resident. In particular he pointed to a print out of a text message exchange with the Respondent on 19 August 2019 (found on page 5 accompanying his letter of 30 11 2019 to the Tribunal and also recorded as paragraph 15(p) of his "ground for making application") which read as follows:

"Applicant: Tim. Good Evening There are now 6 persons living in the house. Is this temporary? Thanks again Dave
Respondent: Who is the 6 person
Applicant: Damian has lady living in his room for about 5 days now
Respondent: I knew it a few weeks ago. He has my permission
Applicant: How many days more is she going to be here please"

(Tribunal's insertion of description of participants)

34. The Applicant relied upon a photograph or photocopy of part of an address label bearing the name Damian Stracek at the premises apparently from a sender with an address in China (found on page 6 accompanying his letter of 30 11 2019 to the tribunal). As the Tribunal mentioned, this label was undated and so by itself provided little evidence of residence or occupation at any particular date.

35. The Respondent submitted statements signed by "Ross Lambert and Jen Slade dated 6th July 2019 and by Jen Slade Ross Lambert and Peter Cox dated 10th July 2019 which were consistent with Jen Slade Ross Lambert having occupied a room and Peter Cox occupying a separate room from a point in late June 2019 and sharing the kitchen and toilet facilities with the Applicant in the premises.

36. There was very little evidence about Damian Stracek and the lady who occupied with him in August 2019, and whether he shared facilities and if so what facilities at the premises. When the local authority inspector visited on 8th November 2019 he found one couple living in the downstairs bedroom/lounge, an empty single room and an empty double room. The third bedroom upstairs was stated to have been for the Respondent's own

use: see the letter from Crawley Borough Council of 11th November 2019 (first page only included), the principal parts of which were also addressed by notes from the local authority officer annexed to pages 8-9 of the letter from the Applicant to the Tribunal described as HHSRS Dwelling Assessment. The evidence from the Respondent (who was given the opportunity not to give evidence), was to the effect that some of the occupants occupied upon an intermittent and temporary basis.

37. The Applicant's evidence was that Mr Stracek was an occupant who resided at the premises "for many years" and used them as his only or main residence. The Tribunal cannot be satisfied so that it is sure about the occupation of Mr Stracek and whether he or the lady who accompanied him used the room at the premises as their main or only residence for any part of the period complained of.

38. The Tribunal was troubled by the Applicant's evidence and very far from being sure that his recollection or account of what occurred was accurate or complete for the following among other reasons. The Applicant had a very strong sense of grievance following the events he described in the grounds for his application. He only drew attention to those facts which he said supported his account. The incident complained of on 7th September 2019 described in paragraph 15(i) of the grounds for making the application was on any view a serious and unpleasant altercation. The photograph produced by the Respondent of the Applicant holding a knife in his right hand on that occasion on one view presents him as a volatile person. The Applicant has made a number of very serious allegations against the Respondent including the assault with the drill (7th September 2019), the "malicious complaint" to the police, perverting the course of justice wrongful eviction and "extorting" £260 for rent owed. Very few of these allegations are supported by independent evidence of any kind. Such of the written or documentary evidence as has been produced to support these allegations (such as the address label to Mr Stracek) is undated, of insufficient detail to confirm whether or not individuals used the premises as their main or only residence.

39. The Tribunal is also troubled by a possibility suggested in the Respondent's evidence and statements. That is - the Applicant might have been the aggressor or person who initiated a confrontation or continued it and was advancing some parts of his case in these proceeding as a means of asserting his account of events and exculpating himself from a serious allegation of using a knife – see for example the witness statement of Mr Ron Granger dated 10 02 2020. The Tribunal cannot reach a definitive finding on this issue and bears in mind that none of the Respondent's witnesses attended or were the subject of cross examination. However, the Tribunal has had very little background or character evidence about the Applicant and cannot dismiss that possibility as fanciful or impossible.

40. The Tribunal does not reach a final conclusion about whether the Applicant's assertions about the occupation of various individuals during the relevant period were made falsely or in bad faith. It is sufficient that the evidence produced does not enable the Tribunal to be sure that his account about whether Mr Stracek's occupation is accurate.

41. The Tribunal does not find the exchange between the Respondent and the

Applicant on 19 August 2019 in which the Respondent appeared to have accepted there were 6 people in occupation of assistance in determining whether there were 5 or more persons in occupation living in two or more separate households for the purposes of the standard test under section 254(2) of the 2004 Act and regulation 4 of the 2018 Regulations. That exchange does not begin to address whether Mr Stracek and the lady who stayed with him were occupying as their only or main residence.

42. No evidence other than the Applicant's assertion was led to support the finding which the Tribunal was required to make that Peter Cox's occupation of one of the rooms at the premises was as his main or only residence. The Applicant in effect invited the Tribunal to infer this conclusion from the evidence submitted by him and the witness statement signed by Mr Cox (and Jen Slade and Ross Lambert) dated 10th July 2019, submitted as part of the Respondent's evidence. The Tribunal is unable to draw that inference in the circumstances of this case. The location of the premises is such that it was in close proximity to main bus service to Gatwick airport: see copy of the Gumtree advertisement (page 15) annexed to statement of Applicant dated 18th December 2019. The possibility cannot be excluded that individuals might use the premises on a temporary basis whilst working or visiting locally. The use of rooms in the premises by temporary visitors was canvased explicitly by the Respondent in his oral evidence to the Tribunal.

43. The Applicant acknowledged in paragraph 1 of his grounds for making application that Miss Okelie moved out of her room downstairs on 15th June 2019, so her occupation is not relevant for the period during which the offence is alleged to have taken place.

44. Accordingly the Tribunal is very far from being sure that the occupation of the premises qualified as an HMO within the meaning of section 254 of the 2004 Act and the 2018 Regulations or that an offence under section 72 of the 2004 Act was committed during the period relied upon by the Applicant.

Tenant's deposit allegations allegation of offence number 2

45. The Applicant alleges deposits taken from occupants of the premises were not lodged with an approved deposit scheme contrary to section 214 of the 2004 Act: see paragraph 1 of the "Grounds for making the application". The Tribunal does not consider this, as it is not an offence within the relevant Chapter of the 2016 Act.

46. The Tribunal takes the same approach to the allegation of perverting the course of justice (falsely instructing the Respondent's solicitor) made in paragraph 15(u) of the "Grounds for making the application". This is not a relevant offence.

Allegation of offence numbers 3, 4 and 5 – Protection from Eviction Act offences

47. These allegations all involve the Applicant showing that one or more of the offences under the PFE were proved to the criminal standard of beyond reasonable doubt.

48. The Applicant alleges he was asked by the Respondent to vacate within 2 weeks by text message on 24 June 2019 "though the oral agreement was for 12 months": see paragraph 15(h) of the "Grounds for making the application".

49. The Applicant alleges he was asked by the Respondent to vacate within 2 weeks by further text message on 27 June 2019 in paragraph 15(l) of the "Grounds for making the application".

50. It is helpful to consider these text exchanges at the same time as the allegation that the text exchanges entitled "tried to increase the rent" on 04 July 2019 and 06 July 2019 complained of in paragraphs 15(m) and 15(n) of the "Grounds for making the application".

51. The Applicant is required to show that any of the texts (either alone or taken with other things) was an "act" done

> "with intent to cause [the Applicant] .....
>
> (a) to give up the occupation of the premises or any part thereof; or
> (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;
>
> and was an act done by the Respondent which was "[likely] to interfere with the peace or comfort" of the Applicant, or amounted to a persistent withdrawal or withholding of services "reasonably required for the occupation of the premises as a residence," (section 1(3) of PFE);

52. It was emphasised by Ormrod J. in *McCall v Abelesz* [1976] Q.B. 585 at 598 that a positive intent to cause the residential occupier to give up the premises has to be shown. In addition to intent, there must also be alleged and proved the element of calculated acts or of persistent withdrawal or withholding of services as appropriate.

53. Alternatively to make out an offence under section 1(3A) of PFE the Applicant must prove that any of the texts (either alone or taken with other things) was an "act" "likely to interfere with the peace or comfort" of the Applicant, or amounted to a persistent withdrawal or withholding services reasonably required for the occupation of the premises as a residence. In addition the Applicant must show (in either case) the Respondent knew, or had reasonable cause to believe, that his conduct was likely to cause the Applicant "to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises." (section 1(3A) of PFE).

54. It is a defence to an allegation under section 1(3A) of PFE that the accused "proves that he had reasonable grounds for doing the acts or withdrawing or withholding the service in question": see section 1(3B) of PFE. The Respondent cannot be required to make out this defence, but once the evidential basis is laid the Applicant would have to disprove or establish that it could not succeed beyond reasonable doubt: compare *Polychronakis v*

Richards & Jerrom [1998] Env LR 346.

55. Alternatively, the Applicant must show these texts (or any of them) constituted an act which was an attempt to "unlawfully deprive" him of his occupation of the premises within the meaning of section 1(2) of the PFE. "unlawful deprivation" of occupation must mean something more than conduct likely to cause the occupier to give up the occupation of the whole or part of the premises in section 1(3A) of PFE.

56. The texts relied upon on 24 June 2019 are in item 15(h) of the "Grounds for making the application" which in substance were as follows

Respondent:	"David I will have to give two weeks' notice to look for another room
Applicant:	Why what has happened
Respondent:	I have someone from my family around and I need the small room
Applicant:	Okay
Respondent:	Sorry about it
Respondent:	If you found a room early please let me know otherwise 6/7 would be your last day
Applicant:	This is unexpected. I have to put up with the inconvenience and cost of moving again
Applicant:	Please reply
Respondent:	I don't expect it happened either
Respondent:	Sorry nothing I can do
Applicant:	Okay"

(Tribunal's insertion of description of participants)

57. The texts relied upon on 27 June 2019 are in item 15(l) of the "Grounds for making the application" which in substance were as follows:

Respondent:	"I am sorry I can't confirm that! You have 2 weeks to find your alternative accommodation.
Applicant:	Sorry. Tim. I did not come here for 1 month. If I find a place I will move. If not I will stay until I find a place. You are costing me time and money looking for a place. I wont mention the inconvenience."

58. The texts relied upon on sent on 04 July 209 and 06 July 2019 in item 15(m) of the "Grounds for making the application" in substance were as follows:

Applicant:	Tim. Good afternoon. I still have not found a place. Request more time. Thanks again Dave.
Respondent:	Look! I will have to rent a room for my relative for £420. So your rent will be £420 from next Monday to cover my cost if you are unable to rent a room
Respondent:	You can stay as long as you pay the £420 for next month
Applicant:	Tim. Good afternoon. Do you know where the two dumb bells are please? Did you move them when mowing the

grass? Thanks again Dave.
Respondent: I do not know where are they. I did not move any stuff. You can check the side door.
Respondent: Your rent will be due to tomorrow. As I said before, you will have to pay £420 from now until you find another place to rent. I will come tomorrow afternoon to collect the rent. Thank you!
Applicant: I will transfer £360.00. Tim.
Applicant: Did not agree to rent rise"

59. The additional texts relied upon on sent on 06 July 2019 and 07 July 2019 in item 15(n) of the "Grounds for making the application" in substance were as follows:

Respondent: No! You have noticed to move out by today
As I have my room back for my personal in use!
I did not agree with you can stay over
I refuse to accept your transfer !
I just want you to move out!
Do you have rent agreement?

Applicant: Please do not harass me Tim
If you do, I will report you. Please note it is against the law harass tenants

Respondent: I am not harass you whatsoever. I have given you 2 weeks notice to rent alternative room! Don't use the law to harass me

Applicant: I am in a meeting
You did not rent the room for 1 month
Where are the dumb bells?
Respondent: I am not your house keeper!
Applicant: Could not have sprouted wings and flown away

and on 07 July 2019:

Applicant: www.gov.uk/evicting-tenants/section-21-and-section-8-notices
If you threaten violence or harass me I will inform the Police
.....
Applicant: Tim. Please get a Court order to remove me. The notice you have served is not valid as you have not lodged the deposit in an approved tenancy deposit scheme. Further you may only serve a notice after 4 months counting from 7 June 2019. If you abuse or threaten me the police will arrest you..... Thanks again Dave.
....."

60. The excerpts above are not a complete account of the texts in the specified parts of the "Grounds for making the application". The Tribunal is far from

satisfied that it has been provided with the full context and background to these text exchanges. Only selected parts have been provided in the Applicant's evidence. No explanation was provided for the selection or the omission to provide access to the full exchanges.

61. Having seen and heard from him, the Tribunal's view is that none of these texts came close to an act which was "[likely] to interfere with the peace or comfort" of the Applicant. The Applicant was a confident man with firm beliefs in his rights under the PFE and other legislation reflected in his text messages. He appears to have been familiar with tenancy disputes of this kind and well able to assert what he saw as his legal rights. The implicit protestation that he was likely to suffer discomfort or interference with his peace from these texts rings hollow in the light of his robust and repeated promises to contact the police and references to legislation which would not be familiar to many residential occupiers. The Applicant's case on most of these allegations came close to the proposition that every time he objected to what the Respondent said or the Respondent did (such as proffering a tenancy agreement with terms which he disagreed with), this amounted to harassment and a breach of the provisions of PFE.

62. Within a matter of days on 9th July 2019, the Applicant applied to Brighton County Court for what he described as "an ex parte injunction order in the following terms "Mrs Wei and Mr Jun He must not evict the claimant without an order of this Court" and an order preventing them "from disturbing the peaceful use of the bedroom rented by the Claimant, toilets, kitchens, rear garden, front garden and rear garden at [the premises] and "harassing him in any manner". This request and the letter rejecting the application from HMCTS were exhibit B attached to the Statement of the Applicant dated 18 December 2019. The Applicant's case is that this demonstrates that his peace and comfort were interfered with by the acts and texts complained of and that he felt threatened with eviction or other acts designed or likely to cause him to feel threatened or to give up occupation of the premises.

63. The Tribunal accepts the Applicant's perception of these text exchanges is that they interfered with his peace and discomfort is a possible interpretation, although it would be cautious about reaching a finding to that effect without sight of all of the other communications between the parties. Where the Applicant's case falls down, is that he is unable to demonstrate that the text exchanges either on their own or taken with the other evidence, show beyond reasonable doubt that they "an act done [by the Respondent] which was "[likely] to interfere with [his] peace or comfort" *with intent to cause [the Applicant] to give up the occupation of the premises"* within section 1(3) PFE (emphasis added). On one view the texts are exchanges between an amateur landlord and a tenant about availability of the room and rent in comparatively moderate terms which border upon negotiation and sometimes frustration.

64. Nor has the Applicant satisfied the Tribunal that the text exchanges were "acts likely to interfere with the Applicant's peace" and "likely to cause [the Applicant] to give up occupation. The text exchanges deployed by the Applicant above were at their highest attempts to persuade the Applicant to leave in moderate and clear terms.

65. The Applicant invites the Tribunal to infer that because text exchanges occurred shortly before the Applicant was (as he alleges) threatened with eviction by the Respondent on 7th July 2019 (paragraph numbered 2) and service of what is described as "Notice to Vacate" (a letter of 07 July 2019 from Mrs Wei addressed to the Applicant confirming 2 weeks' notice given on 24 June 2019 and giving additional "notice" (Exhibit A to Statement of Applicant dated 19 December 2019), this demonstrates the texts were designed to interfere with his peace or comfort. That may be a possible interpretation. Another is that the Respondent and Mrs Wei were asserting what they believed to be their rights in relation to the Applicant's occupation of the premises, but without any intent to interfere with his peace or comfort. The Applicant was able to robustly defend what he perceived to be his legal rights. Those exchanges were not "likely" to interfere with his peace and comfort. The Applicant has not come close to discharging the criminal standard of proof on this issue.

Allegation of offence number 6

66. Paragraph 15(a) of the Grounds for making the application alleges the Respondent disconnected "the broadband/wifi" on 08 August 2019.

67. The evidence about how or why the wifi was disconnected is sparse and largely consists of text messages alleged to have been sent to the Respondent on 19 August 2019 and 30 August 2019 in item 15(q) of the "Grounds for making the application" was as follows:

19 08 2019

"Applicant: What is the new password for talk Wi Fi please?
"Applicant: Please reply
"Applicant: Are you going to reply?

30 08 2019

Applicant: Please get a licence from Crawley Council to run an HMO
Applicant: House in multiple occupation
Applicant: Please as (sic) TDS custodial to correct the date deposit received and tenancy received
Applicant: Please come to Court with clean hands "

(Tribunal's insertion of description of participants)

68. The Applicant produced a copy of an e-mail from him dated 09 August 2019 (14.24) in the following terms "Please restore broadband. Otherwise I will take action in the County Court and complain to police". There were then references to the PFE. The Applicant made no mention of this earlier exchange in his "grounds for making application". The Tribunal formed the impression that it had not been given the full picture about this issue.

69. The Applicant invites the Tribunal to infer that because the change of the password occurred within a short period of time of the Applicant being threatened with eviction by the Respondent on 7th July 2019 (paragraph numbered 2) and service of "Notice to Vacate", the change of password was

designed to interfere with or refrain from exercising any right or pursuing any remedy in respect of the premises.

70. The Tribunal is unable to be satisfied so that it is sure why the password to the wifi was changed. The Tribunal is very far from being satisfied that withdrawal of the wifi (if that is what occurred) was "[likely] to interfere with the peace or comfort of the residential occupier or members of his household", or the wifi was a service "reasonably required for the occupation of the premises as a residence".

71. Nor is the Tribunal satisfied the withdrawal of wifi was likely to cause the Applicant "to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises". Relationships had become strained very early on and there was disagreement about terms of the tenancy agreement. There were a number of possible reasons why the password might have been changed which did not give rise to breaches of sections 1(3) or 1(3A) of PFE. The Applicant has not discharged the criminal standard of proof on this issue.

Allegation of offence number 7

72. It is alleged the Respondent came to the premises on 07 July 2019 "to attend to property maintenance in the bathroom" without prior notice to the Applicant. This is said to be an example of harassment within one or more of the provisions of the PFE referred to above: see paragraph 15(f) of the "Grounds for making the application".

73. The Applicant gave very little additional evidence about this at the hearing. The Tribunal is far from satisfied that this incident happened in the way in which the Applicant describes to the criminal standard of proof. Unlike many of the incidents complained of, no text messages were relied upon to evidence the Applicant's concerns about this visit.

74. Even if the Applicant's version of this incident is accepted, this does not come close to satisfying the Tribunal that the visit was likely to interfere with his peace or comfort as a residential occupier or that other breaches of the PFE were established.

Allegation of offence number 8

75. The Applicant alleges the Respondent abused him on 07 July 2019 by accusing him of having sexual intercourse with his mother: see paragraph 15(g) of the "Grounds for making the application". This allegation is denied by the Respondent: see his statement.

76. The Tribunal is far from satisfied so that it is sure that this incident happened in the way in which the Applicant describes. Unlike many of the incidents complained of, no text messages were relied upon to evidence the Applicant's concerns.

77. There were a number of text messages passing between the Applicant and the Respondent which were said to have been exchanged on 07 July 2019

referred to in the "grounds for making application". None of them mentioned this incident. It was not mentioned in his statement in support of his application to the Brighton County Court of 9th July 2019. This omission is surprising if the Applicant believed that he was being harassed by this abuse in the sense required for the PFE. This allegation is not established to the criminal standard of proof.

Allegation of offence numbers 9 and 10

78. In the course of the hearing it became clear the Applicant contended that proffering a tenancy agreement for 6 months with what he described as false start date of 16th June 2019 and giving a "false date to TDS custodial" for the start of tenancy and for the date his deposit was received were acts of harassment within the PFE: see paragraphs 12 and 15(o) of the "Grounds for making the application".

79. The Tribunal does not follow the Applicant's logic. He disagreed with the Respondent's suggested dates for commencement of the tenancy and also objected to the same date given to the deposit scheme. He went further and suggested that the dates were given by the Respondent to TDS dishonestly. This does not establish any of the elements of a relevant criminal offence in section 1 of PFE.

Allegation of offence numbers 11 and 12

80. The Applicant alleges the removal of a fuse in the plug for the microwave on 31 August 2019 and removal of the microwave oven on 01 September 2019 were acts of harassment directed against him and offences under PFE in paragraphs 15(b) and 15(c) of the "Grounds for making the application". The evidence that these events, assuming they occurred on the dates alleged, were directed against the Applicant is no more than his suspicion. If these events occurred as he alleges, they would have impacted adversely upon all of the occupants and not just the Applicant.

81. The allegation that these events amounted to breaches of the PFE have not been established to the criminal standard of proof.

Allegation of offence number 13

82. The Applicant alleges that on 06 September 2019 the Respondent installed a lock on the side gate and did not provide a key to the Applicant. As a result, the Applicant says he was unable to hang his washed clothes in the rear yard of the premises: paragraph 15(d) of "Grounds for making the application".

83. The witness statement from Jen Slade, Ross Lambert and Peter Cox dated 10 July 2019 was that the Applicant had taken to leaving his clothes on the washing line in the rear yard for days on end. The clothes would then get blown around and left all over the garden. According to that statement the clothes would then be rewashed and left outside for another few days for the same thing to happen. Those occupiers complained that they had not been able to use the washing line for weeks because of this "endless cycle of washing and rewashing" clothes.

84. Jen Slade's witness statement of 01 September 2019 refers to the Respondent contemplating putting a yale lock on the back gate as a solution to this problem. She also complained and that she had been unable to use the washing line for weeks.

85. This evidence suggests that far from being a step likely to interfere with the Applicant's peace and comfort or designed to make him to give up a right, the placing of a lock on the gate to the rear yard may have been taken to improve relations between occupiers. It may well have a been reasonable step to take within section 1(3B) of the PFE. The Tribunal cannot resolve those issues on the evidence. This allegation is very far from being established to the criminal standard.

Allegation of offence number 14

86. The Applicant alleges that on 07 September 2019 the Respondent installed a lock with numerical access key to the toilet near the front door to deny him access to that toilet: paragraph 15(g) of the "Grounds for making the application". A photograph of that lock is exhibited. It is common ground there was another toilet at the premises that the Applicant could use upstairs.

87. The witness statements from Jen Slade dated 01 September 2019 and from Ross Lambert of 15 January 2020 say this step was contemplated by the Respondent to address concerns that the Applicant was leaving the downstairs toilet in an unhygienic state after use. The Applicant's use of that toilet had been the subject of complaint by other occupiers of the premises. Far from being a step likely to interfere with the Applicant's peace and comfort, or to require him to give up a right, the lock may have been installed to improve relations between occupiers. It may well have a been reasonable step to take within section 1(3B) of the PFE. The Tribunal cannot resolve those issues on the evidence. This allegation is very far from being established to the criminal standard.

Allegation of offence number 15

88. The Applicant alleges "On 7th September 2019 [the Respondent] brandished portable electric drill a pale green colour "De Walt" brand and lunged at the applicant. The Applicant defended himself with a spoon and subsequently with serrated knife with wooden handle, usually used at the table for cutting meat on the plate. The Respondent then made malicious complaint to the police on 7 September 2019 that the Applicant threatened to damage the side gate and threatened to stab him with a knife. The police arrested the Applicant at about 12.30 pm on 7 September 2019 and realised him without charge about 10 pm the same day, with "take no further action", after interviewing the Applicant and seeing a video of the altercation recorded by the defendant, A copy of the police record is attached marked exhibit H." (paragraph 15(i) of the grounds for making the application).

89. Having heard briefly from the Respondent about this incident at the hearing, it is clear the Applicant's version of events is hotly disputed. This much was also made clear in the Respondent's witness statement of 19 January 2020. The Tribunal cannot be satisfied so that it is sure that the version of events asserted by the Applicant is accurate. This allegation fails.

Allegation of offence numbers 16 and 17

90. This allegation concerns the events after 7th September 2019 when the Appellant was arrested by the police. He was released without charge according to the "Notification of no further action" produced by him as Exhibit H to his statement of 18 December 2019.

91. The Applicant asserts that he was evicted on 07 September 2019 and on 10 September 2019: (paragraphs 15(j) and 9 of the grounds for making the application). He asserts the Respondent would not allow him to return to the premises on 08 September 2019 to collect personal effects (paragraph 15(r) of the grounds for making the application).

92. The Respondent gave evidence that he was unable to return to the premises to facilitate the Applicant's entry on return from the police station because he had other work and personal commitments. The Respondent said that he did not prevent the Applicant from entering the premises but it was the other occupiers who would not open the front door to permit him entry, as they were concerned for their safety. The Applicant alleges the Respondent instructed them to prevent his entry. This evidence is unsubstantiated. The Tribunal cannot resolve this disputed issue of fact. There is a reasonable doubt. The Applicant has failed to prove his allegation of wrongful eviction or breach of any of the relevant provisions of PFE to the required standard.

Allegation of offence number 18

93. This allegation is that the Respondent's delay or changes of time in meeting him at the premises so he could collect his belongings on 09 September 2019 and 10 September 2019 amounted to harassment within the meaning of sections 1(3) or 1(3A) of the PFE (as set out above): (paragraph 15(r) of the grounds for making the application). The Respondent gave evidence that he had to change some of the times as one of his family members had a medical condition. He needed to attend hospital and that took priority. The Applicant was unable to disprove this explanation.

94. The Tribunal cannot be satisfied so that it is sure that the version of events asserted by the Applicant is accurate. This allegation fails.

Allegation of offence number 19

95. The Applicant alleges that on 09 September 2019 the Respondent "Extorted £360 from [him] for rent allegedly owed – as condition of collecting belongings (paragraph 15(r) of the grounds for making the application).

96. There was clearly a disagreement about whether or not the £360 demanded was monies due. The Applicant's case is that the imposition of a requirement to pay the rent before his belongings were collected amounted to an "act" "likely to interfere with the peace or comfort" of the Applicant, and the Respondent knew, or had reasonable cause to believe, that his conduct was likely to cause the Applicant "to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises."

97. However the Respondent's case is that he had been threatened with violence by the Applicant on 07 September 2019 as the latest in a long line of unpleasant and difficult exchanges with him. The Tribunal is not satisfied so that it is sure that such an act could be categorised as likely to cause the Applicant "to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises." Nor is the Tribunal satisfied to the same degree that the potential defence of reasonable grounds for making the requirement for payment would fail.

98. The issues of the direction to make an RRO and the amount of an RRO do not arise.

99. In the light of these findings, it is not appropriate to order the Respondent to refund to the Applicant any of the Tribunal fees which he has paid.

H Lederman

Tribunal Judge

12 03 2020

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.