FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMF/2019/0089 & 0091**
Property	**:**	**28 Malden Crescent, London NW1 8HD**
Applicants	**:**	**Valentina Po** **Marilena Balistreri** **Valentina Patermo** **Rosa Ficcara**
Representative	**:**	**Flat Justice**
Respondent	**:**	**Hannah James**
Type of Application	**:**	**Rent Repayment Order**
Tribunal	**:**	**Judge Nicol**
Date and Venue of Hearing	**:**	**17th June 2020;** **By telephone conference**
Date of Decision	**:**	**25th June 2020**

DECISION

The Respondent shall pay to the Applicants Rent Repayment Orders in the following amounts:

1. **Valentina Po** **£9,400**
2. **Marilena Balistreri and Valentina Patermo** **£10,800**
3. **Rosa Ficcara** **£8,520**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons

The parties

1. The subject property at 28 Malden Crescent, London NW1 8HD is a 3-bedroom ex-council flat. The Respondent became the legal owner of the property in accordance with a consent order made on 15th March 2018 in county court proceedings between the Respondent and her predecessor-in-title, Mr Kuldeep Singh Suri, the transfer being completed on 3rd May 2018. There were four sitting tenants. The order provided that all rental income after 15th December 2017 was to be held on trust for the Respondent or transferred to her and all tenants' deposits would be transferred to her.

2. The Applicants were tenants at the property and paid the following monthly rents in respect of the following periods:

• Valentina Po	25th July 2017 – 31st March 2019	£800*
• Marilena Balistreri }	1st March 2018 – 31st July 2019	£900
• Valentina Patermo }		
• Rosa Ficcara	25th July 2018 – 24th August 2019	£710

(* Ms Po paid only £400 in the last month to settle a dispute with the Respondent about her deposit)

3. Mr Suri originally granted tenancies to Ms Po on 25th July 2017 and to Ms Balistreri and Ms Patermo on 1st March 2018. Under the consent order, the Respondent was supposed to renew the tenancy contracts and enter into new tenancy deposit schemes with all the tenants on the date the property was transferred to her. There was a delay which the Respondent and Mr Suri blamed on each other and while the Respondent and the Applicants disputed how the deposits were to be dealt with (as considered later in this decision). Eventually, Ms Po, Ms Balistreri and Ms Patermo together signed a tenancy agreement commencing 7th August 2018 for a fixed term of 6 months. Ms Ficcara entered into her own tenancy agreement with the Respondent when she moved in on 25th July 2018. The Respondent registered the deposits with the Tenancy Deposit Scheme on 6th August 2018.

4. Ms Po left the property on 31st March 2019. The other three were excluded from the property by the Respondent on 28th July 2019 in circumstances which they claim amount to unlawful eviction and which are dealt with further below.

5. The Respondent's experience as a landlord is not clear. Her litigation against Mr Suri involved an unspecified number of properties to which the Respondent relinquished her rights as part of the consent order. Mr Suri claimed in an email dated 18th December 2019 that he used to be friends with the Respondent and that they had an arrangement whereby they bought the property together with her getting the rent and the two of them sharing the capital value.

6. The Applicants found out from the Land Registry and Companies House that the Respondent is the registered owner of 50 Aegon House, 13 Lanark Square, London E14 9QD and is the sole director of two companies, Twix Ltd and 51Aegon Ltd, which are registered at 50 Aegon House and own the neighbouring properties, numbers 49 and 51 respectively. Her address is given in these records as 50 Aegon House and the Respondent said that was where she lived (save when she moved into 28 Malden Crescent on 27th July 2019 in the circumstances described later in this decision). The Applicants produced an email dated 2nd April 2020 from a Mr Barry Waterman who claimed that the Respondent had bought 51 Aegon House from his sister-in-law, Yvonne and her husband, David, and was now seeking to evict them – Flat Justice say they confirmed these facts with Yvonne's solicitor, Mr Martin Phillips of Howard Kennedy Solicitors LLP.

7. The information from Companies House also showed that the Respondent holds appointments as a director of 7 more companies (including one which has been dissolved and one which is in administration) which appear to be involved in property. The Respondent told the Tribunal her directorships were all as nominee for someone else and that she was not involved with managing any properties.

8. For 5 of her directorships, the Respondent described herself to Companies House as a "Lawyer". The Respondent told the Tribunal she has a law degree and describes herself as a "Lawyer" due to her work for a small law firm called Business & Commercial. Despite her knowledge and experience with this firm and the fact that all the information obtained by the Applicants is a matter of public record, she expressed considerable surprise and concern that they had obtained it.

The proceedings

9. Ms Ficarra applied for a rent repayment order against the Respondent on 12th November 2019 and Ms Po did the same two days later. The Tribunal issued directions on 9th December 2019. By letter dated 11th December 2019 the Tribunal notified the parties that the cases would not be determined on the papers but would be heard together.

10. Flat Justice issued a separate application on 12th November 2019 on behalf of Ms Balistreri and Ms Patermo. When they also became the representatives for Ms Ficarra and Ms Po, they asked that all four applications be heard together and the Tribunal made arrangements accordingly.

11. The Applicants raised the possibility of adding Mr Suri as a respondent to their applications but then decided they didn't want that. The Respondent claimed that this meant that the Applicants were deliberately and in bad faith depriving the Tribunal of a witness who could answer relevant questions. However, by letter dated 8th January 2020, it was the Tribunal who refused to make Mr Suri a party, not the

Applicants, and it was pointed out that the Respondent could call him as a witness if she wished to do so – she did not.

12. In accordance with the directions, the Applicants provided a statement of case and other documents in a single bundle. The Respondent provided a bundle but, contrary to the directions, it was disorganised and unpaginated – this is surprising given that the Respondent claims to have paid an invoice for £4,750 to Asraf Bocktor and Associates of 49 Aegon House for "Compiling Case Bundle and Documentation for Hearing". Flat Justice re-organised the Respondent's bundle into a fit state and provided a further bundle with a reply and additional evidence. Flat Justice also provided a skeleton argument for the hearing.

13. On 3rd June 2020 Mr James Hinton, on behalf of the Respondent, applied to the Tribunal to strike out the Applicants' case. The Tribunal replied on 4th June 2020 with Judge Vance's decision, with reasons, for refusing the strike-out application. Judge Vance also gave further directions on the Respondent's bundle and the form of the hearing.

14. The hearing of this matter was delayed by the restrictions on the Tribunal's work arising from the COVID-19 pandemic. Eventually, the matter was heard on 17th June 2020 by remote telephone conference. Video was originally proposed but the Respondent has an eye condition said to cause pain, discomfort and an inability to manage artificial light for longer than 30 minutes at a time. All parties consented to using telephone facilities instead.

15. The attendees at the hearing were:

- All 4 Applicants
- Ms Francesca Nicholls, a non-legal caseworker from Flat Justice who spoke on behalf of the Applicants
- The Respondent who spoke on her own behalf
- Mr Paul Spibey, a solicitor and witness of fact on behalf of the Respondent (he also assisted the Respondent occasionally with legal points, apparently communicating by text, and made a couple of interventions during the hearing to ask questions on her behalf)
- Mr James Noble, a witness of fact on behalf of the Respondent
- Two observers, Mr Blue Weiss of Flat Justice and a woman who identified herself as Lucy.

16. All four Applicants, Mr Spibey and Mr Noble gave witness statements and were made available for cross-examination. Flat Justice provided two "joint" witness statements from all four Applicants. While the Tribunal was content to proceed in this case, a joint witness statement is not good practice and should not be repeated. The principal danger

with a joint statement is that witnesses may end up attesting to matters of which they have no knowledge. If a witness is just confirming what another witness has said, then they may give their own separate statement to that effect.

17. The Tribunal explained the process and purpose of cross-examination but, apart from a few questions to Ms Balistreri, both Ms Nicholls and Ms James decided not to ask further questions of the witnesses. The Respondent answered questions from the Tribunal and Ms Nicholls as well as adding to her witness statement and making her own submissions. The Tribunal gave the Respondent the opportunity to address all the issues considered in this decision, including by putting relevant arguments or points to her.

18. Witness statements were also provided from:

- on behalf of the Applicants
    - Ms Ruby Shiroya, a friend of Ms Ficarra's who attended the property on 1st August 2019,
    - Ms Beverleigh Lawrence, a Homeless Prevention Manager/Tenancy Relations Adviser with the London Borough of Camden, and
    - Ms Alessia Serra, another friend who attended the property on 25th July 2019;
- on behalf of the Respondent
    - Mr Kevin Seegan, a friend of the Respondent who gave evidence as to what he saw at the property on the evening of 27th July 2019; and
    - Mr Tom Miller, a friend of the Respondent who attended the property on 28th July 2019.

19. The Tribunal took these additional witness statements into account but warned the parties that less weight may be attached to hearsay in accordance with section 4 of the Civil Evidence Act 1995.

20. The day before the hearing, the Respondent provided a short report dated 16th June 2020 from a psychiatrist, Dr Ali Ajaz. During the hearing, the Respondent gave consent for the Applicants to be aware of the contents. The report says that the Respondent was diagnosed with Post-Traumatic Stress Disorder in 2018 and is receiving ongoing treatment. A significant ongoing contributory factor has been her problems with Mr Suri, including the court case. The only adjustment sought from the Tribunal was that this decision should be issued as soon as possible so that she does not have to wait too long. The Tribunal has therefore done its best to get this decision out quickly while keeping in mind the Tribunal's overriding objective of dealing with the case fairly and justly.

21. The day after the hearing, the Respondent sought to submit further evidence from the police but it was far too late to admit new evidence. The Respondent gave no explanation as to why the evidence could not have been obtained in good time and it would be unfair for the Tribunal to take into account evidence on which the Applicants had not had an opportunity to comment.

The offences

22. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The Applicants alleged that the Respondent was guilty of three such offences:

(a) Having control or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004;

(b) Harrassment contrary to section 1(3) or (3A) of the Protection from Eviction Act 1977; and

(c) Unlawful eviction contrary to section 1(2) of the Protection from Eviction Act 1977.

23. The Respondent denies having committed any offences. Each is dealt with in turn below.

Having control or managing an HMO

24. The local authority responsible for the district in which the property is located is the London Borough of Camden. On 15th June 2015 Camden designated its entire district as an area for additional licensing of HMOs. The designation came into force on 8th December 2015. Annex B of the designation stated:

> The designation applies to all HMOs as defined by section 254 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households, …

25. By letter dated 29th August 2019, Camden provided the following information:

a. The subject property at 28 Malden Crescent has never had an HMO licence from Camden.

b. The landlord (which term includes both Mr Suri and the Respondent) has never applied or sent in an application to licence the property since the additional HMO licensing scheme came into force.

c. A letter was written to the Respondent on 10th July 2019 asking her to submit an HMO licence application for 28 Malden Crescent.

26. The Respondent claims never to have received the letter of 10th July 2019 and blames the Applicants for this although she had no evidence

to support the allegation. While she admits there was no license or an application for one, she asserts that she did not need one. At first blush, the Respondent's assertion is surprising. There were four people at the property, who had arrived at different times, separately occupying three rooms. Although Ms Po, Ms Balistreri and Ms Patermo signed the same tenancy agreement when they renewed with the Respondent, the rent for Ms Po on the one hand and for the other two on the other was separately quoted and Ms Ficcara had her own separate tenancy agreement.

27. The Respondent relies on a document entitled "Confirmation of Family Status" which purports to be dated 25th July 2018 and reads,

> This document confirms that Marilena Sonia Balistreri, Valentina Patermo and Rosa Ficarra and Valentina Po accept and define themselves as family. They accept they are either blood relatives or cohabiting in a relationship. No further investigations will be required by the landlord or managing agents in due course. Please keep attached to your tenancy contract.

28. The document purports to have been signed by each of the Applicants, although none of the signatures resemble any of their signatures on any of the other documents in the bundles before the Tribunal, including the tenancy agreements and the witness statements.

29. Despite the reference to keeping the document attached to the tenancy contract, the Respondent told the Tribunal she did not provide a copy to any of the Applicants, together with their tenancy agreement or at all. The Tribunal questioned her about this and she insisted that, despite her working in a law firm, she had no access to a scanner or photocopier for this purpose.

30. Despite a number of opportunities to bring it up, for example to Ms Lawrence when she phoned the Respondent on 29th July 2019 (see further below in relation to the alleged unlawful eviction), the Respondent did not mention this document until she provided her statement of case in these proceedings.

31. Most crucially, the Applicants deny they are related (although it is accepted that Ms Balistreri and Ms Patermo are a couple), to have seen this document until it was disclosed in these proceedings or to have signed it. They call the allegation that they are related "preposterous".

32. Under section 254(2)(b) of the Housing Act 2004 part of the definition of an HMO is that the living accommodation is occupied by persons who do not form a single household. Under section 258(2)(a), persons are to be regarded as not forming a single household unless they are all members of the same family.

33. The Tribunal understands the Respondent to be arguing that, because her four tenants defined themselves as a family, she did not require an

HMO licence. However, it is not a matter of self-definition. The definition is only satisfied if the tenants or occupiers are related in fact.

34. The Respondent and Mr Spibey gave evidence that they met Ms Po, Ms Balistreri and Ms Patermo at the property in March 2018 and were told that the latter two were a couple and Ms Po was Ms Balistreri's first cousin. If that were true, under section 258(3) and (4) of the Housing Act 2004, they would be regarded as members of the same family for the purposes of the definition of an HMO.

35. That still leaves Ms Ficarra. When pressed by the Tribunal, the Respondent first pointed out that one of the other Applicants had introduced Ms Ficarra but then, for the first time, claimed she was also a cousin. To make her case, it would be necessary for the Respondent to show that all four tenants were related – if three formed one household and one tenant formed another, that would be sufficient to satisfy the test for an HMO in Annex B of Camden's additional licensing designation.

36. The Respondent did not address the position of Ms Alice Patillo who moved into Ms Po's former room on 1st April 2019 and stayed until 27th July 2019, other than Mr Hinton claiming in the Respondent's strike-out application that her presence was irrelevant to whether there was an HMO due to her being "an excluded occupier under the Act". No basis has been put forward as to how she could be an "excluded occupier" or how this is relevant to HMO licensing (the Applicants said that she was an assured shorthold tenant with an agreement similar to theirs). There is no suggestion that she was related in any way to the three remaining Applicants.

37. The Applicants all firmly denied they were related. There was no evidence that they were related. The Tribunal does not believe that the Respondent thinks they were all related. Quite apart from the lateness of her revelation that she thought Ms Ficarra was a cousin, on 27th July 2019 she moved into Ms Po/Ms Patillo's former room. Her case is that she had let the whole of the property to tenants who were living as a single household because they were a family. It is beyond credibility that a landlord would think it appropriate to take a room in the flat in those circumstances, in the same way as a landlord would not think to occupy a vacant room in a property let to a family when an adult child moves out. The Respondent said that the remaining Applicants consented to her moving in (which is denied) but that is to miss the point. The only way in which she would have considered it appropriate to use Ms Po/Patillo's former room is if she believed the residents to be living not as a family in a single household but as separate households, of which she would just be one more in the same way as Ms Patillo had been.

38. Further, the "Confirmation of Family Status" document is not credible. With its reference to self-definition, the document reads as if its purpose is to avoid the HMO regime rather than to acknowledge an

existing fact (for example, it could have just said Ms Balistreri and Ms Patermo were a couple and that the other two were cousins rather than using non-specific legalistic language). If it had been presented to the Applicants for their signature, they would have been under no obligation to sign it since they were already tenants and the grant of the tenancies was not conditional on their signing it. The only benefit arising from the document would be to the Respondent since its purpose was to avoid the requirements for an HMO licence. Not only would the Applicants not benefit, the intention of the document was to deprive them of the protection of the HMO regime.

39. Yet further, the evidence before the Tribunal is that the Applicants did not live as a single household. Ms Balistreri and Ms Patermo had a lock on their door. Although Ms Ficarra was introduced by one of the other Applicants, she was in competition with a number of other potential tenants and it is clear from the email correspondence between the parties that the final choice was the Respondent's – the implication is that she could have imposed on them someone else who no-one had suggested was a relative. The Respondent claimed that the Applicants ate together and discussed personal matters with each other but this doesn't indicate any special intimacy if they were able to behave that way in front of the Respondent and such behaviour is as consistent with friendship as with a single family household.

40. In the circumstances, the Tribunal is satisfied that the "Confirmation of Family Status" document does not reflect the truth. The Applicants were not related and did not live as a single household. Therefore, the property was a House in Multiple Occupation during their time there. It was required to be licensed but was not so licensed. Therefore, the Tribunal is satisfied so that it is sure that the Respondent committed the offence under section 72(1) of the Housing Act 2004.

41. It is a defence under section 72(3) that the person being charged with the offence had a reasonable excuse. If the Respondent had genuinely believed that the "Confirmation of Family Status" document stated the truth, then it could be argued that this would be sufficient to constitute a reasonable excuse. However, as already referred to above, the Tribunal is satisfied that the document neither reflects the truth nor did the Respondent believe that it did.

42. The Tribunal is further satisfied that the document is not what it purports to be. The signatures are not genuinely those of the Applicants. Given the circumstances in which the document was created and used, as described above, the Tribunal accepts the Applicants' assertion that they had not seen the document at or around the date it bears and did not see it until it was disclosed during these proceedings. The Respondent told the Tribunal that she created the document – the Tribunal believes she made it up with the sole intention of getting the Tribunal to decide in her favour.

43. For these reasons, there can be no reasonable excuse based on this document.

Harassment

44. The Applicants claimed that the Respondent had harassed them, contrary to sub-sections (3) and (3A) of section 1 of the Protection from Eviction Act 1977, in that there were acts likely to interfere with their peace or comfort or the persistent withdrawal or withholding of services reasonably required for the occupation of the premises as a residence with the intent or belief that those acts would cause the Applicants to give up their occupation or to refrain from exercising any right or pursuing any remedy.

45. A number of the Applicants' complaints related to an argument they had, mostly by email, over the tenancy deposits. Ms Po, Ms Balistreri and Ms Patermo had paid deposits to Mr Suri which he was supposed to transfer to the Respondent under the consent order of 15th March 2018. It appears that he purported to do so by adding up all the liabilities between him and the Respondent, including the deposits, and paying what he calculated to be the balance whereas the Respondent disputed his calculation.

46. The Respondent's interpretation of the deposit arrangements was that it was for Ms Po, Ms Balistreri and Ms Patermo to retrieve their deposits from Mr Suri and, whether or not they managed to do so, for them to pay a new deposit to her of £2,550 (£900 from Ms Balistreri and Ms Patermo, £900 from Ms Po and £750 in relation to Ms Grasser, a former tenant who had already left). She was clearly in the wrong. Ms Po, Ms Balistreri and Ms Patermo had paid their deposits to their landlord. The Respondent had the enforceable right to call on those funds from Mr Suri and any dispute about whether Mr Suri had paid the right amount was between him and the Respondent.

47. Having said that, the Tribunal accepts that the Respondent did not believe she was wrong on the deposit issue. She put forward her case vigorously and, at times, over-zealously, but she also offered to help Ms Po, Ms Balistreri and Ms Patermo retrieve the amount of the deposits from Mr Suri through legal action and recommended they seek legal advice.

48. The Applicants claimed that the Respondent said she was a solicitor to try to get the Applicants to do what she wanted. The Tribunal is not sure that the Respondent ever used the word "solicitor" to describe herself, although she admitted using the word "lawyer". Many, perhaps even most, non-lawyers do not know the difference between the words "solicitor" and "lawyer" and the Tribunal is in no doubt that the Respondent was relying on this in the hope that others, including the Applicants, would mistakenly assume she had professional qualifications and experience which she did not have. The Tribunal

accepts that she used this to try to bolster her credentials in any arguments she had with the Applicants.

49. In an email dated 11th March 2019 the Respondent threatened to hire bailiffs to follow Ms Po and trace her to her new address. She also threatened to charge interest. This was in response to Ms Po trying to retrieve her deposit by setting it off against her final month's rent. They eventually settled on Ms Po paying only half of the last month's rent. The Respondent's email was unpleasant and she apologised for her intemperate language during the hearing.

50. In an email dated 17th July 2019 the Respondent used intemperate language again, this time to Ms Balistreri and Ms Patermo, suggesting they were lying and digging themselves a hole.

51. By another email dated 17th July 2019 the Respondent purported to increase the rent with effect from August. The three Applicants objected to the rent increase, including on the basis that the Respondent had not followed a rent review procedure included in the tenancy agreement, and the Respondent did not pursue it.

52. The Respondent objected to the Applicants' inclusion of some of these emails in the document bundle before the Tribunal on the basis that she had headed them "Without Prejudice". However the emails were not written during or in contemplation of legal proceedings and there is no basis for claiming legal privilege for them.

53. As a landlord, the Respondent was subject to various legal requirements to provide the Applicants with gas safety certificates, an energy performance certificate and a copy of the 'How to rent: the checklist for renting in England' booklet. The Applicants asked for them. The Respondent claimed to have them but, even by the date of the hearing, had failed to provide any copies. This is inexplicable given that the issue was clearly raised in paragraph 17.3.3 of the Applicants' statement of case and strongly suggests that she never had them. The Applicants also claimed that the Respondent had said she had an HMO licence, although she denies this.

54. By email dated 23rd July 2019 the Respondent purported to give the Applicants one month's notice to leave. As she herself insisted, she knew that the tenancy agreement required two months' notice (let alone section 21 of the Housing Act 1988). She told the Tribunal that she sent the email because she understood the Applicants to be saying they were leaving in about one month's time. This is not an excuse. If a tenant is leaving earlier than the law requires, they are doing so voluntarily and an email of this type is irrelevant. They are entitled to change their minds and stay in the absence of any valid notice given by them or received from the landlord. The Respondent clearly intended that her email should somehow tie the Applicants to an early leaving date, obliging them to leave when she wanted them to.

55. In a meeting between Ms Ficarra, Ms Balistreri and the Respondent (who was accompanied by a friend), the Respondent said she would start living in the property with a guest as of the 1st September 2019. She confirmed this in an email dated 17th July 2019 in which she also said the Applicants could "stay as friends but not as tenants. August is will be the last month you pay rent."

56. Ms Balistreri and Ms Serra gave evidence in their witness statements of a meeting on 25th July 2019 when the Respondent was aggressive, shouting and threatening either to kick the Applicants out or to move into the house with "her friends" (Ms Patermo and a male friend of the Respondent were also present). When this did not secure any agreement for the Applicants to move out, the Respondent offered cash, £900, for them to leave. The Respondent did not comment on whether any of this was true or not.

57. The Respondent messaged Ms Ficarra on the 26th July 2019 to announce she was moving into the property with friends the next day. The Applicants alleged that this was a deliberate breach of the covenant for quiet enjoyment, designed to harass them. The Respondent complained bitterly to the Tribunal that the Applicants kept changing the dates they said they would leave the property and the Tribunal has no doubt that the Respondent was hoping that her actions would prompt them to move earlier rather than later.

58. As already mentioned in this decision, if the Respondent had genuinely believed that she had let the property to the Applicants as a single family household, then she would have known that she could not unilaterally decide to move herself into the flat in this way. She said the Applicants consented but they deny it and the Tribunal believes the Applicants on this point – it is inherently unlikely that the Applicants would have been happy to have their landlord move in at a time when their email correspondence predominantly shows that their relationship was often antagonistic. The fact that the Applicants tried to maintain a friendly tone in other texts or emails is only to be expected from tenants trying to appease a landlord increasingly prone to objectionable behaviour.

59. The Respondent sought to make much of what was happening "in her own home", meaning the property which she moved into for the first time on 27th July 2019. She even did this in relation to the alleged assault by Ms Balistreri when she had yet even to sleep at the property. In her witness statement she said she still lives there and will not let it out again. However, the Applicants were able to produce an online advert dated 29th August 2019 offering the property for rent.

60. It is clear to the Tribunal that, whilst the parties had been able for much of their relationship to converse on friendly terms, they had reached the point, by July 2019 at the latest, where the remaining tenants wanted to find somewhere else to live and the Respondent wanted to find other tenants. The Applicants were dissatisfied with the

Respondent due to the deposit dispute and the way she seemed happy to resort to inappropriate actions, such as trying to raise the rent by email rather than using the mechanism laid down in the tenancy agreement, claiming to have documents but not providing them, giving short notice to quit and unilaterally deciding to move in.

61. For her part, the Respondent was suffering from a significant mental illness exacerbated by her ongoing dispute with Mr Suri. She was frustrated by the Applicants' unwillingness to co-operate with her approach to the deposit dispute or to give a firm date for their departure. The Tribunal is satisfied that the Respondent allowed her frustration to spill over into inappropriate acts which she would have known were likely to interfere with the Applicant's peace and comfort and which she intended and expected would encourage them to leave the property.

62. The Tribunal is satisfied that, at the start of her disagreements with the Applicants, the Respondent had no intention other than to resolve the deposit issue and was genuinely trying to seek a way forward on her terms. Therefore, not all of the matters of which the Applicants complain could constitute harassment within the meaning of sub-sections (3) and (3A) of section 1 of the Protection from Eviction Act 1977. However, the Tribunal is satisfied so that it is sure that, at the very least, the short notice to quit and moving into the property constituted harassment within the meaning of both sub-sections (3) and (3A) so that the Respondent committed an offence under each.

Eviction

63. On 27th July 2019 the Respondent was at the property with Mr Seegan, having moved into Ms Po/Ms Patillo's old room that day. In their witness statements the Respondent and Mr Seegan say that Ms Balistreri and a friend of hers were also present. The Respondent was cooking a meal for herself and Mr Seegan. The Respondent said in her witness statement that she had invited Mr Seegan to keep her company because she "felt so frightened in my own home". Mr Seegan said in his witness statement that the Respondent wanted to discuss her dissertation thesis.

64. The Respondent claims that, unseen by anyone else and entirely without any precipitating event, Ms Balistreri held a knife to her throat and threatened to kill her unless the Respondent allowed her to live rent-free at the property in September. The Respondent went to Mr Seegan who comforted her and encouraged her to report the incident to the police, which she did by phone. After that, she went out, returned late and slept the night in the room next to Ms Balistreri. She says it was this incident which was a principal motivation for her actions the following day when she excluded the Applicants from the property.

65. Ms Balistreri stated in her witness statement that she got home with a friend at around 9pm on 27th July 2019 and confirmed that the

Respondent was there with a friend. She then went out again and returned late with Ms Patermo, when she went straight to bed. Apart from saying, "Hi, how are you?" when she first got home, she denied any interaction with the Respondent. She denied threatening her with a knife and pointed out that, as far as she was concerned, matters had been sorted out on 17th July 2019 when the Respondent had stated in an email that the remaining Applicants could stay into September and no rent would be payable beyond August.

66. The Tribunal has no doubt that the Respondent has made this incident up. It is inherently incredible that Ms Balistreri would threaten to murder the Respondent, entirely unprovoked, while one of the Respondent's friends was nearby, all in order to save herself one month's rent which the Respondent had already stated in an email dated 17th July 2019 would not be payable. While there is evidence of a poor relationship between the parties, the seriousness of this allegation makes it entirely inconsistent with the parties' previous behaviour so that it appears to come out of the blue. There is no evidence that Ms Balistreri is aggressive, let alone has a propensity to violence, or that she was somehow in need of money, let alone desperate enough to do this.

67. Having supposedly been subjected to such a harrowing event, the Respondent then went back to stay the night in the property with her attacker, unprotected by so much as a lock on the door. The next morning she had a meeting with Ms Balistreri and the other two remaining Applicants at which she did not mention this incident. She made no effort to follow up her complaint with the police for the next 11 months. The evidence which the Respondent emailed the Tribunal after the hearing purportedly showed that the police had just apologised for not following up her complaint but this is to miss the point, namely that she would have been expected to chase a lack of response from the police.

68. This is not the kind of domestic violence incident where the victim is tied to a long-term relationship with the perpetrator. It is notable that she only complained to the police because Mr Seegan encouraged her. Her passive acceptance of the situation is inconsistent with the seriousness of the allegation and the opportunities she had to mention or address it. Similarly, Mr Seegan said he did no more than encourage her to report it to the police and then just left her to stay at the property with a potential murderer. It is also suspiciously convenient for the narrative she has attempted to present to explain why she excluded the Applicants the following day.

69. There is no dispute that the Respondent had a house meeting with the remaining Applicants on the morning of 28th July 2019, starting at around 10am. According to those Applicants it was solely for the purpose of discussing how the flat was to be managed between the four of them. Following the meeting all three Applicants left the property for various things they were doing that Sunday. There is no dispute that

they did not undertake any activities preparatory to leaving, such as packing belongings, tidying up or making alternative living arrangements for that night or beyond. The only exception is that the Respondent claimed in her witness statement that Ms Ficarra packed an overnight bag – assuming this to have any truth, it was likely just a bag for a towel or other items for her yoga class.

70. At 12:04pm on 28th July 2019 the Respondent sent the following email to the three Applicants:

> I accept your proposal to leave today, in exchange for £200. And that there will be no further communication between us. It will be a clean break as agreed.
>
> Rosa, I will return your deposit and rent for the month par reasonable deductions for a clean (£50).
>
> I wish you the best for your future.
>
> Kind regards
> Hannah James

71. The three Applicants vehemently deny there was any such agreement. Ms Ficarra responded to the Respondent's email just 16 minutes later at 12:20pm:

> We never agreed about a proposal such that and we never talked about that.
>
> This never happened.
>
> This morning we discussed about house cleaning and rules. You and us never mentioned such thing and never even thought about it.
>
> We previously agreed to leave mid-Sep as per yours and ours email.
>
> Rosa Ficarra

72. Putting the Respondent's case at its highest, she thought she had reached an agreement on the morning of 28th July 2019 that the Applicants would leave that day in return for a payment each of £200. However, even if the Respondent were under some form of mistaken impression when she wrote her email that an agreement along those lines had been reached, she was disabused of this by Ms Ficarra's email. This was reinforced when Ms Ficarra, followed by the other two Applicants, turned up outside the door of the property demanding to be let back in. Whatever had been said earlier in the day, the three Applicants were clearly not giving up their tenancies.

73. In any event, the Tribunal has no doubt that, again, the Respondent made up this supposed agreement. It is not remotely credible that, having made such an agreement, the three Applicants would leave the property without making any arrangements necessary for moving

house and then, as soon as the terms of the agreement were put in an email, objecting so vehemently, in writing and by attendance. The idea that they would give up their tenancy rights and the certainty of existing accommodation for the relatively paltry sum of £200 also lacks credibility.

74. The Respondent provided photos of an online questionnaire on her phone in which she recorded her complaint to the police. It refers to the alleged knife assault by Ms Balestreri but gives an entirely different account of the morning meeting on 28th July 2019:

> … this morning we had a house meeting where [Ms Balistreri] had calmed down but there was still much tension. I was verbally abused by all three ladies (Rosa, Marilena and valentina). They were aggressive towards me. They said they wanted to live rent free until mid September, and I would not be able to stop them. I am being bullied and threatened in my own home. I do not wish them to lodge at my property any longer. I do not wish to live in fear. I never want to see them again. …

75. This account of the meeting was not subsequently repeated, including in either the Respondent's witness statement or her oral submissions to the Tribunal. The report, obviously made after but on the same day as the meeting, makes no mention of any agreement to leave, instead asserting that all three Applicants wanted to stay.

76. Ms Balistreri suffers from cancer and had left her medication at the property. The Respondent denied the Applicants' allegation that she knew of Ms Balistreri's illness but, even if that were true (which the Tribunal doubts given the Respondent's propensity to make things up), it is not credible that Ms Balistreri would have left her medication if she were moving out.

77. Further, the Applicants went out with only the clothes they were standing in and personal items such as their mobile phones – Ms Ficarra was in her yoga outfit. All their valuables such as passports and computers remained in the property.

78. The Tribunal is completely satisfied that the Respondent knew that what she was doing was wrong and was based on an assault that did not happen and an agreement which was not reached. She claimed that the fact that, after their eviction, the three Applicants did not want to come back and live at the property showed that they were leaving on that day and were content to do so. This is another twisting of the facts. It is entirely unsurprising that, having found out the lengths to which the Respondent was prepared to go to keep them out, knowing that moving back in would mean living in close proximity to her and having been able to sort out emergency accommodation overnight, the three Applicants decided they did not want to go back.

79. Between the time the three Applicants left the property on the morning of 28th July 2019 and sending her email, the Respondent had the locks

to the property changed so that the Applicants' keys would no longer work. In her witness statement, the Respondent said she had this done after she phoned family and friends after the meeting and they had encouraged her to do so. Therefore, her claim is that the meeting, her phone calls, the calling of the locksmith, the locksmith's attendance and the completion of the locksmith's work took place within 2 hours on a Sunday morning.

80. The Respondents informed the Applicants that she had changed the locks by text timed at 12:53pm when she also stated that her friends were present and the Applicants would need to arrange a police escort to pick up their belongings. She claims to have done this because she was scared for her life following Ms Balistreri's alleged assault the night before. The Tribunal has already determined that this assault did not happen.

81. According to the witness statement of Mr Tom Miller, the Respondent also called him in the late morning to say that she was worried by people circling her house. The implication is that those people were the three Applicants and her friends but that cannot be the case because the relevant emails were sent in the early afternoon and Ms Ficarra, the first to attend, did not go to the property until after that. It would appear that the Respondent called on Mr Miller's help in anticipation of the three Applicants' reaction to her pending email.

82. Ms Ficarra was viewing a flat, following which she had intended to go to her regular yoga class, when she received the Respondent's email. After sending her email in response, she took a taxi straight back but the locks had already been changed by the time she arrived. She called the police but they told her to wait for further instructions. Ms Balistreri was the next to arrive, followed by Mr Miller. Two neighbours who were friends of the Applicants also attended. Ms Ficarra and Ms Balistreri say that Mr Miller appeared drunk and made violent threats, including that he would kill them if they tried to enter the property. When Ms Ficarra reported this to the police, this time they attended.

83. What then followed is a story which is far too familiar. Rather than seeking to address a potentially unlawful eviction, the police proceeded to facilitate it by speaking to both the Respondent and the Applicants and then insisting that the Applicants should not go back into their home other than for around 10 minutes to collect a few basic items. It is understandable that the police may be concerned about a potential breach of the peace when an unlawful eviction is taking place but it is difficult for the Tribunal to understand why they should think that it is necessary to enable an actual crime in order to avoid a potential crime. The three Applicants were the ones with the right to occupy the property but the police decided that the Respondent should be the one to stay.

84. Mr Miller claimed in his witness statement that there were about 10 people, including the Applicants and some Italian men, outside the

property and that he felt intimidated. However, the only evidence for this he came up with was that they did not "back off" when he told them to and they had their sleeves rolled up in the middle of a day in late July. The three Applicants said it was only them and two neighbours, neither of whom are Italian. Mr Miller was one of the witnesses who did not attend for cross-examination and the Tribunal accepts the evidence of the three Applicants that the only person being intimidating on that day was Mr Miller (irrespective of whether he was actually drunk).

85. The three Applicants were able to call on the generosity of friends to stay with that night. Ms Ficarra stayed with Ms Po and Ms Balistreri and Ms Patermo stayed with friends.

86. The following day, Monday 29th July 2019, the three Applicants went to see Ms Lawrence at Camden. She spoke to the Respondent on Ms Ficarra's phone. In her witness statement, Ms Lawrence says she introduced herself, saying her role was investigate allegations of unlawful eviction, harassment and other tenancy disputes. She explained that the Applicants were with her and had complained about their eviction. The Respondent stuck to her story that the Applicants had agreed to move out although she did not mention the alleged assault by Ms Balistreri or the alleged family relationship. Ms Lawrence explained if the Respondent had changed the locks with the Applicants' belongings in the property then they had not vacated and this would be an unlawful eviction. At this, the Respondent became angry and shouted and was being defensive and confrontational. Ms Lawrence could hear her calling to someone that she was being threatened.

87. In the Respondent's version of this call, it was Ms Lawrence who became aggressive and threatening, even to the point where the Respondent became so upset she cancelled a police visit which had been arranged to enable the Applicants to pick up their belongings. This is unlikely behaviour for a professional tenancy relations officer and, given the Respondent's lack of credibility, the Tribunal prefers Ms Lawrence's account despite her unavailability for cross-examination. It is noteworthy that in the same text where the Respondent informed the Applicants about the cancellation, she claimed to have served the Applicants with two months' notice and to have retained the paperwork – there is no evidence of this and the Respondent has not repeated the claim since.

88. After some delay, the Respondent permitted the three Applicants, escorted by the police, to attend to retrieve their belongings on 1st August 2019. According to the witness statement of Ruby Shiroya, this took just under two hours.

89. The Respondent complained that the Applicants had left the property in a mess and she spent over £14,000 fixing it up again. In the Tribunal's opinion, this exhibits quite extraordinary behaviour, albeit consistent with the Respondent's actions in this case. She did not provide any evidence of this alleged expenditure but, even if she had, it

appears at least some of it would have been to repair items which she had been obliged to deal with during the tenancy but had not. In any event, above all else, the three Applicants had no opportunity to comply with the term of the tenancy requiring them to leave the property in a fit state because the Respondent had unlawfully evicted them. The state the Respondent found the property in, about which she had not complained in the two days she had lived there (and which she priced at £50 in her email of 28th July 2019) was her own fault.

90. The Tribunal is satisfied beyond any reasonable doubt that the Respondent unlawfully deprived the three Applicants of their occupation of the property and had no reasonable cause to believe that they had ceased to reside there, contrary to section 1(2) of the Protection from Eviction Act 1977.

Rent Repayment Order

91. Therefore, the Tribunal is satisfied that the Respondent has committed three relevant criminal offences and it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on these applications. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation.

92. The law has changed since *Parker v Waller* and was recently considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 9. In *Parker v Waller* … the President (George Bartlett QC) had to consider the provisions of sections 73 and 74 of the 2004 Act, which gave the FTT jurisdiction to make rent repayment orders; but they have been repealed so far as England is concerned and now apply only in Wales.
>
> 10. Section 74(5) of the 2004 Act provided that a rent repayment order in favour of an occupier had to be "such amount as the tribunal considers reasonable in the circumstances". … With regard to orders made in favour of an occupier, therefore, he said at paragraph 26(iii):
>
> > "There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The RPT must take an overall view of the circumstances in determining what amount would be reasonable."
>
> 11. But the statutory wording on which that paragraph is based is absent from the 2016 Act. There is no requirement that a payment in favour of the tenant should be reasonable. …

12. That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.

13. In *Parker v Waller* the President set aside the decision of the FTT and re-made it. In doing so he considered a number of sums that the landlord wanted to be deducted from the rent in calculating the payment. The President said at paragraph 42:

> I consider that it would not be appropriate to impose upon [the landlord] an RRO amount that exceeded his profit in the relevant period.

14. It is not clear to me that the restriction of a rent repayment order to an account of profits was consistent with Parliament's intention in enacting sections 74 and 75 of the 2004 Act. The removal of the landlord's profits was – as the President acknowledged at his paragraph 26 – not the only purpose of a rent repayment order even under the provisions then in force. But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

15. That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order.

16. In cases where the landlord pays for utilities, as he did in *Parker v Waller,* there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.

> 17. Section 249A of the 2016 Act enables the local housing authority to impose a financial penalty for a number of offences including the HMO licence offence, as an alternative to prosecution. A landlord may therefore suffer either a criminal or a civil penalty in addition to a rent repayment order. …
>
> 18. The President deducted the fine from the rent in determining the amount of the rent repayment order; under the current statute, in the absence of the provision about reasonableness, it is difficult to see a reason for deducting either a fine or a financial penalty, given Parliament's obvious intention that the landlord should be liable both (1) to pay a fine or civil penalty, and (2) to make a repayment of rent.
>
> 19. The only basis for deduction is section 44 itself and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.
>
> 53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. …

93. On the basis of the decision in *Vadamalayan*, when the Tribunal has the power to make an RRO, it should be calculated by starting with the total rent paid by the tenant within time period allowed under section 44(2) of the Housing and Planning Act 2016, from which the only deductions should be those permitted under section 44(3)(a) and (4).

94. The person subject to an RRO is the "landlord". There is no complete definition of this word for the purposes of the RRO provisions but, at common law, the definition is usually the person entitled to the rent. The Respondent became the person entitled to the rent from the property on 15th March 2018 in accordance with the consent order, the later transfer merely passing the legal title to the property.

95. The Respondent complained that Mr Suri acted so as to limit or even prevent her ability to act as landlord but that is irrelevant to whether she was entitled to the rent. Also, in her oral submissions she appeared to think she was not the landlord until she had signed formal

agreements with the tenants but she actually became the landlord when she took over from Mr Suri, irrespective of the fact that her predecessor's name was on the existing tenancy agreements.

96. The Applicants suggested that the Respondent was the beneficial owner of the property prior to the date of the order but, although the order refers to rent from 15th December 2017 being held on trust, it does not say that and cannot retrospectively grant the Respondent the status of landlord for an earlier time, at the very least for the purposes of any alleged offence under section 72 of the Housing Act 2004. It is likely that the consent order reflects a binding agreement completed some time prior to its incorporation into a sealed order but the Tribunal has no evidence as to when that was.

97. Therefore, the Respondent committed the offence of failing to license the property for the period from 15th March 2018 until 28th July 2020. Under section 44(2) of the Housing and Planning Act 2016, the maximum period in respect of which the RRO is calculated is 12 months. The total rent paid by each Applicant for that period was:

- Valentina Po — 12 months x £800 (-£200) — £9,400
- Marilena Balistreri } — 12 months x £900 — £10,800
- Valentina Patermo }
- Rosa Ficcara — 12 months x £710 — £8,520

98. In relation to Ms Po, the period is the 12 months from the date the Respondent became landlord but she only paid half of her rent in the final month and, therefore, £200 has been deducted for the period 1st-15th March 2019.

99. In relation to Ms Balistreri, Ms Patermo and Ms Ficcara, the Respondent also committed two further offences under the Protection from Eviction Act 1977. Flat Justice submitted that there should be a separate RRO, each up to the maximum of 12 months' rent, for each offence. The Tribunal agrees that the purpose of the statutory provisions is to punish rogue landlords and to deprive them of the income they received from the tenants who were the victims of their crimes. However, it is still an order for the repayment of rent. The repayment of rent is not merely a method of calculation which could be applied to multiple offences.

100. Ms Nicholls objected that limiting the RRO to one amount of 12 months' rent would fail to reflect properly the situation where a landlord had committed multiple offences and submitted that neither landlord nor tenant would get what they deserve. However, that is to give an RRO a wider role than intended. It is far from the only method by which a landlord may be punished or a tenant may be compensated. The magistrates' court may impose fines, the local authority may impose penalty sums and the tenants may sue for damages.

101. In the Tribunal's opinion, it only has the power to award one RRO per tenant, however many offences the landlord has committed. Having said that, in calculating the amount of the RRO, the Tribunal is required under section 44(4)(a) of the Housing and Planning Act 2016 to take into account the conduct of the landlord. The fact that the landlord has committed multiple offences is therefore highly relevant.

102. Immediately after the eviction, the Respondent transferred £1,570 into Ms Ficarra's account which Ms Ficarra understood to represent a repayment of one month's rent, her deposit and the £200 offered in the Respondent's email, less a deduction of £50 for "cleaning". While at least some of this sum might be offset against an award of damages in a court claim for unlawful eviction, the Tribunal is unable to deduct this from the RRO. Just because the Respondent labels some money she gave to Ms Ficarra as "rent" does not alter what Ms Ficarra actually paid under the tenancy agreement to meet her rental liability. Ms Ficarra lived at the property for 12 months and paid rent for those 12 months, even without August's rent.

103. Under section 44(4)(b), the Tribunal must take into account the landlord's financial circumstances. The Respondent provided no information on this subject. The Tribunal explained to the Respondent about its power to deduct the amount she paid for any utilities provided to the Applicants but she was unable to provide even a guess as to what such an amount may have been. Mr Suri had given some figures for bills from Thames Water, Virgin Media and Eon, as well as for Council Tax, which he had paid during his time as landlord but the Respondent rejected the statement in which these figures were set out. In these circumstances, the Tribunal is unable to make any deduction in relation to the Respondent's financial circumstances.

104. The Respondent has not been subject to any other legal proceedings in relation to the events set out in this decision. However, it is difficult to see how this is relevant in this case. In the Tribunal's opinion, she has behaved appallingly, lying to the Applicants, the local authority and the Tribunal (possibly even to those who called themselves her friends) and knowingly committing criminal acts without any apparent reluctance or remorse. It is even worse that her version of events was so lacking in credibility, suggesting she thought it would be easy to escape her liability and that the Tribunal would be credulous enough to swallow such flimsy excuses.

105. Of course, the Respondent's mental and physical condition should and does command the Tribunal's sympathy but provides no explanation to any degree for her behaviour and is not relevant to either the making of the RRO or the amount to be awarded. The Tribunal has been mindful of its duties under the Equality Act 2010, including making a reasonable adjustment of getting this decision out as quickly as possible, but they are not otherwise engaged.

106. In contrast, the Applicants said in their first witness statement that this experience was like an earthquake for them. They said they felt frightened by the Respondent's behaviour and their eviction turned their world upside down in a very short space of time.

107. The Tribunal sees no reason to reduce the amount of the RRO below the maximum amount and awards to the Applicants the full amount each.

Counterclaim

108. The Respondent's Statement of Case finishes with a brief Counterclaim for legal costs, damages for waste and unpaid rent. The Tribunal does not appear to have considered this when giving directions on several occasions. In any event, there is no basis for counterclaiming against a rent repayment order.

109. Moreover, the alleged damages are unevidenced and no basis has been put forward for the award of any costs. The alleged unpaid rent was also settled by Ms Po and the Respondent, as described earlier in this decision, and credit has been given for half of the unpaid amount in the calculation of the RRO payable to Ms Po.

Name: Judge Nicol **Date:** 25th June 2020

Appendix of relevant legislation

Protection from Eviction Act 1977

Section 1 Unlawful eviction and harassment of occupier

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(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;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds

services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier 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.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C) In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier's right to remain in occupation of the premises, or

(b) a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(2) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(3) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(4) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to *"an offence to which this Chapter applies"* is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	section	general description of offence
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

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

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.