



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BB/HMF/2019/0108**

HMCTS : **V: CVPREMOTE**

Property : **63 Bolton Road, London E15 4JY**

Applicants : **Mr Guiseppe Ciullo**

Representative : **Mr Simons (a friend)**

Respondent : **Ms Monowara Talukder**

Representative : **Ms Lily Talukder (daughter)**

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 Robert Latham
Ms Susan Coughlin MCIEH**

**Date and Venue of
Hearing** : **11 September 2020 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15 October 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we were referred are specified at [4-] to [5] below.

Decision of the Tribunal

The Tribunal does not make a rent repayment order.

The Application

1. On 18 December 2020, Mr Guiseppe Ciullo issued an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order (“RRO”) in respect of 63 Bolton Road, London E15 4JY (“the Property”).
2. On 6 February, the Tribunal gave Directions at a Case Management Hearing at which both parties attended. Mr Simons appeared on behalf of Mr Ciullo. Despite what had been pleaded in his application form, the Applicant stated that a RRO was being sought on the basis of offences of (i) harassment (and not eviction) and (ii) failure to obtain a valid HMO licence. A RRO was sought for the period December 2018 to December 2019. Mr Ciullo had vacated the Property on 12 January 2020.
3. The matter was initially listed to be heard on 21 April. However, this was adjourned due to Covid-19. On 22 June, the Tribunal gave further Directions giving the Applicant permission to amend the period for which a RRO is sought.
4. The Applicant relies upon the following material in support of its claim:
 - (i) A Bundle extending to 393 pages (references to which will be prefixed by “A1.____”);
 - (ii) A Police Report (11 pages);
 - (iii) An Additional Bundle (91 pages and pre-fixed by “A2.____”);
 - (iv) Eight video and audio tapes;
 - (v) Witness statements from Mr Guiseppe Ciullo; Mr Hugh Simons; and Ms Emily Newton.
5. The Respondent relies upon the following material:
 - (i) Defence Statement (49 pages and pre-fixed by “R.____”);
 - (ii) Bundle 1 (64 pages and pre-fixed by “R1.____”);
 - (iii) Bundle 2 (108 pages and pre-fixed by “R2.____”);
 - (iv) Bundle 3 (102 pages and pre-fixed by “R3.____”);

(v) Witness statements from Mrs Monowara Talukder; Ms Dolly Talukder; Ms Husna Talukder; Mr Abdullah Talukder; Ms Stacy Stroud and Mr George Kirby; and Peter Delov.

6. The relevant legislation is annexed to this decision.

The Hearing

7. Mr Hugh Simons appeared on behalf of the Applicant. He has known Mr Ciullo for some ten years in the capacity of his manager in a number of hospitality venues around London. He is now a trainee accountant. He also gave evidence.
8. Ms Lily Talukder appeared on behalf of the Respondent, her mother. She is a trainee solicitor. She did not provide a witness statement, albeit that she was present at a number of the incidents. She did not give evidence.
9. Mr Simons accepted that the property has an HMO licence (see R1.40). He conceded that the Applicant could only seek a RRO on the basis of the offence of harassment (see section 40(3) of the 1996 Act). In his witness statement (at R1.23), Mr Ciullo specified 16 incidents of harassment which the Tribunal is required to consider.
10. In his statement of case (at A1.11), Mr Ciullo seeks a RRO in the sum of £3,600 computed over 12 months at £300 per month. He invited the Tribunal to select the twelve month period over which the RRO should be computed over the period December 2017 and December 2019.
11. Mr Simons gave evidence. His demeanour was assertive and somewhat aggressive. This is consistent with his behaviour as evidenced in the videos and audio tapes. Mr Ciullo also gave evidence. He is Italian and his English is not perfect. He works for a catering agency. He is known informally as “Peppe”. In his evidence, he came across as being evasive. There were a number of times during his cross-examination when he looked towards Mr Simons who nodded or shook his head to indicate the answer that Mr Ciullo should give. Ms Emily Newton was present, but was not cross-examined on her statement. She is Mr Ciullo’s partner, and has stayed at the property some 2-4 times a week.
12. Mrs Monowara Talukder gave her evidence. Her husband died in October 2015. Her witness statement is hand written and she stated that she had drafted it herself. Her English was poor and it was not always entirely clear what she intended to say. She was evasive about the rent which she was collecting from Ms Stroud, Mr Kirby, Mr Delov and Ms Gonzalez.
13. Ms Husna Talukder, a daughter, and Mr Abdullah, a son, also gave evidence. Husna is a trainee architect. She stated that she had prepared her statement, albeit that she had not been present at a number of the

incidents which she described. Since 6 January 2019, Abdullah has been in Saudi Arabia from where he gave his evidence. He has worked for an oil and gas company, but has recently been made redundant. He gave his evidence with care and did not seem to be aggressive. However, it was apparent that he would become upset were he to feel that his mother or sister were being treated unfairly. This is apparent from the incident on 18 December 2018. The Tribunal had a witness statement from Ms Dolly Talukder who is another daughter. She was not available to give evidence.

14. The Respondent had also provided a joint statement from Ms Stacy Stroud and Mr George Kirby, dated 31 October 2019, and from Mr Peter Delov, dated 19 July 2020. These were tenants who had been admitted into occupation by Mr Ciullo. They subsequently paid their rent to Mrs Talukder. They were not available to give evidence. At the beginning of the hearing, the Tribunal indicated that we would have regard to their evidence, but that the weight that we attached to it would reflect the fact that their evidence had not been tested by cross-examination. As the hearing progressed, it became apparent that neither side disputed the substance of their evidence. Indeed, Mr Simons referred us to a diary kept by Mr Kirby which corroborated his account in his statement. Ms Stroud is a trainee barrister; Mr Delov a postgraduate law student and Mr Kirby a primary school teaching assistant. They compiled their own statements.
15. On 7 September 2020, Mrs Talukder issued proceedings in the County Court (Claim No.160MC800) against Mr Ciullo seeking a money judgment in the sum of £4,445.63. The following sums are claimed: (i) rent for November, December 2019 and January in the sum of £900 (£300 per month); (ii) 20% of utility bills for January to August 2019; (iii) broadband charges in the sum of £107.76; (iv) appropriation of the landlord's furniture on vacating the property assessed in the sum of £2,000; and (v) £1,010 for the cost of rubbish clearance. This determination will not address any of the issues claimed in these proceedings.
16. During the course of the hearing, the parties referred the Tribunal to a number of documents. At the end of the hearing, the Tribunal invited the parties to submit a list of references to the essential documents on which they relied. Both parties have done this. The Tribunal also asked the Respondent to provide an unredacted copy of the tenancy agreement at R3.80. She has failed to do so. We infer that the Respondent is reluctant for the Tribunal to know the rent that she was charging the tenants. The Respondent has also sought to make further written representations. The Tribunal has not had regard to these. Any representations should have been made at the hearing.
17. Landlord and Tenant law is complex, particularly where statute has sought to add additional rights to those agreed between the parties. There is a central issue at the core of this dispute. Mr Ciullo contends that he was the sole tenant of the property and that when Ms Stroud, Mr Delov, Mr Kirby and Ms Gonzalez were admitted into occupation of the property, they were

his sub-tenants. Mrs Talukder rather contends that there had always been a joint tenancy. On her authority, Mr Ciullo had substituted Ms Stroud, Mr Delov, Mr Kirby and Ms Gonzalez for joint tenants who had left. The dispute arose because Mr Ciullo was making a secret profit from the joint tenants, charging them more than their 20% share under the joint tenancy. It is apparent that Mr Ciullo has been unaware of the complexities of the law, but has rather acted on the advice of Mr Simons.

The Background

18. The property at 63 Bolton Road is a two storey terraced house. On the ground floor, there is a sitting room, bedroom, kitchen/diner, toilet and conservatory. On the first floor, there are three bedrooms and a bathroom. The master bedroom is at the front of the property. Prior to the grant of the first tenancy, the property was refurbished and furniture was provided.
19. The Tribunal has been provided with eight written tenancy agreements. The first (at A1.81-8) is dated 1 February 2008. Mrs Talukder is named as the landlord. The tenants are: Mr Ciullo, Daniela Ciullo (his sister), Gabriela Zywcok, Krzysztof Owczarz, and Rocco Mastropieri. The tenancy is for a term of twelve months from 1 February 2008 at a rent of £1,400 pm. A deposit of £1,400 was paid. This was not put in a rent deposit scheme. This was a joint tenancy, the effect of which is that each tenant was jointly and severally liable for the full rent of £1,400 pm. In practice, each paid their share of the rent. It was an “assured tenancy” under Part I of the Housing Act 1988.
20. At some stage, the ground floor living room was converted into a fifth bedroom. Mrs Talukder did not object to this. Thereafter, each occupant paid 20% of the rent.
21. There are subsequent tenancy agreements dated 1 November 2009 (at A1.38); 1 December 2010 (at A46); 1 May 2011 (at A1.49); 1 November 2011 (at A1.57); 6 February 2112 (at A1.65); and 1 October 2012 (at A1.73). On occasions, names were crossed out on the written agreements and new names were added. This occurred as one joint tenant left and was replaced by another.
22. The final written agreement is dated 1 July 2013 (at A1.81). Mrs Talukder is named as the landlord. The tenants are: Mr Ciullo, Paulina Jusinskaite, Lucas Rodriguez Jimenez, Lina Bekesiute and Alejandro Fernandez Bueno. Mr Ciullo is the only tenant who was named in the original agreement. The tenancy was for a term of 12 months from 1 July 2013. The rent was still £1,400 per month. The tenancy agreement specified a deposit of £1,400. No additional deposit was paid. The arrangement was for each incoming tenant to refund the deposit which had been paid by the outgoing tenant. Clause 3 required the tenants to pay the utility bills and council tax. Clause 3.25 prohibited the tenants from underletting or parting with possession of the property or any part thereof.

23. Over the subsequent months, Mr Jimenez left and was replaced by Gabriele Halinenskaik and Mr Bueno was replaced by Fabio Pouebeli (see A1.89-90). The joint tenancy agreement was amended accordingly and they signed the amended agreement.
24. On 30 June 2014, the fixed term expired, and the joint tenants remained in occupation pursuant to a monthly assured tenancy at a rent of £1,400 pm (see section 5 of the Housing Act 1988). At this stage, the arrangement became more informal. On 8 December 2014 (at A1.362), Mr Ciullo texted Mrs Talukder with the substitution of two tenants, but the new names were not added to the tenancy agreement. Mrs Talukder's husband died in October 2015, and this may explain why the written documentation did not keep pace with the change in tenants. On 31 March 2016 (see R1.35), the parties agreed to increase the rent to £1,500 pm.
25. By this time, Mr Ciullo was occupying the first floor front bedroom, the best room in the house. He was collecting the rent from the other joint tenants and was paying £1,500 pm to the landlady. He also took it upon himself to pay the outgoings and recoup this from the other tenants.
26. On 20 June 2016, Mr Ciullo admitted Mr Delov into occupation of the Property at a rent of £480 pm inclusive of outgoings. Mr Delov is a post graduate law student. He also paid Mr Ciullo a deposit of £480. Mr Ciullo did not pay this to Mrs Talukder; neither did he place this in a rent deposit scheme. This deposit was not repaid to Mr Delov when he left in July 2019.
27. On 28 July 2016, Mr Ciullo admitted Ms Stroud into occupation of the Property at a rent of £580 pm inclusive of outgoings. Ms Stroud is a trainee barrister. She also paid Mr Ciullo a deposit of £580. Mr Ciullo did not pay this to Mrs Talukder; neither did he place this in a rent deposit scheme. This deposit was not repaid to Ms Stroud when she left on 31 August 2019.
28. Mr Delov and Ms Stroud state that their rooms were advertised on the Spareroom.co.uk website. The advert to which Ms Stroud responded read as follows (at R1.56):

“We are looking for a nice girl/guy, friendly and clean like us, to replace our flat mate who is leaving to come back to France. The Room (Available from the 28/07/2016). Immaculate, amazing, bright, very big size, excellent conditions, full furnished double room with double bed at £145 per week (£580.00 per month) for 1 person (ALL BILLS INCLUSIVE)”
29. Mr Delov and Ms Stroud state that Mr Ciullo categorised himself as a current tenant and not a live-in landlord. He stated that he had a good relationship with his landlady as he had lived in the property for many years. The tenants understood that their deposits would be paid to the

landlady. Mr Ciullo maintained that the landlady preferred for the rent to be paid by a single tenant.

30. On 25 January 2017 (at A1.362), Mr Ciullo texted Mrs Talukder to inform her of the current tenants, namely Mr Ciullo, Mr Delov, Ms Stroud, Fablo Pandolfi and Charlene Anguille. Mrs Talukder did not formalise the position by issuing a new tenancy agreement.
31. On 12 February 2018, Mr Ciullo admitted Mr Kirby into occupation of the Property at a rent of £500 pm inclusive of outgoings. Mr Kirby is a primary school teaching assistant. He also paid Mr Ciullo a deposit of £500. Mr Anguilla Ciullo did not pay this to Mrs Talukder; neither did he place this in a rent deposit scheme. This deposit was not repaid to Mr Kirby when he left on 31 August 2019. His room had also been advertised on the Sparerroom.co.uk website in similar terms to the advert to which Ms Stroud had responded.
32. In February 2018, Mr Ciullo admitted Ms Laura Vacuero Gonzalez into occupation of the Property at a rent of £500 pm inclusive of outgoings. She also paid Mr Ciullo a deposit of £500. Mr Vaquero Ciullo did not pay this to Mrs Talukder; neither did he place this in a rent deposit scheme. This deposit was not repaid to Ms Gonzalez when she left on 31 August 2019.
33. There is an undated text from Mr Ciullo to Mrs Talukder (at A1.362) which reads: "Here are all the tenants in the house at the moment with their mobile numbers". The names of Laura Gonzalez, Peter Delov, George Kirby and Stacy Stroud are listed. The text continues: "Although I think the best thing to do in this case is to put my name in print on the last page to sign as the lead tenant and leave the space after for the rest of the tenants to write and sign their names in pen only IF they want to stay for the said period otherwise I can find someone else in about week or two and make the substitute sign instead".
34. On 6 February 2018 (at R1.10), Mr Ciullo texts Mr Kirby in these terms:

"About the contract...As soon as the Landlady have the time to come over, all of us we will sign a new contract with you and her as well".
35. It is unclear why Mrs Talukder did not formalise the position by issuing a new tenancy agreement. We are satisfied that there was oral joint tenancy which was referable to the last written agreement. The landlady was Mrs Talukder. The five joint tenants were Mr Ciullo, Mr Delov, Ms Stroud, Mr Kirby, and Ms Gonzalez. It was a monthly periodic tenancy at a rent of £1,500 pm. Under this tenancy, each tenant could reasonably be expected to contribute 20% of the rent, namely £300 pm. In law, each tenant was jointly and severally liable for the full rent. It was an "assured tenancy" under Part I of the Housing Act 1988.

36. In this application, Mr Ciullo has sought to argue that Mr Delov, Ms Stroud, Mr Kirby, and Ms Gonzalez were his subtenants. This argument is not sustainable. In his communications with Mrs Talukder, he informed her of the replacement tenants and expected the landlady to formalise the position by issuing a new written agreement. In his dealings with his joint tenants, he did not hold himself out as their landlord, but as a flat share.
37. However, it is apparent that Mr Ciullo had recognised the opportunity to make a secret profit at the expense of his joint tenants:
- (i) He had collected deposits of £2,060, even though only £1,200 (Namely 80% of £1,500) was due under the tenancy. He should have repaid the deposit to each departing tenant. He did not do so. He rather retained the money, making an unlawful profit of £2,060.
 - (ii) He was collecting rent totalling £2,060 per month, albeit that their 80% share of the rent was only £1,200. He was thus making a profit of £860 per month.
38. Mr Ciullo sought to justify his secret profit on the basis that he was paying for all the outgoings and these amounted to £1,100 pm (see A2.11). We cannot accept this evidence. The maximum monthly payments which we consider might be payable would be: (i) Gas and Electricity: £200; (ii) Water: £30; (iii) Internet: £45; (iv) TV: £12.30; (v) Council Tax: £111.20 (see bill for 7 months at R2.87); and (vi) sundry expenses: £30. Total: £428.50. We suspect that the sums paid were probably less than this, say £300 to £350 per month.
39. In late 2018, Mr Delov, Ms Stroud, Mr Kirby, and Ms Gonzalez (“the four tenants”) started to suspect that Mr Ciullo was overcharging them for the rent. On 29 September. Mr Kirby, Mr Delov and Ms Gonzalez spoke to Mr Ciullo and asked him what was the total rent for the house. He refused to tell them. He added that they did not need to concern themselves with this. On 30 September, Ms Stroud repeated this request. Mr Ciullo was evasive. He denied collecting more than was due, saying “No, that would be illegal”.
40. On 24 November, Mr Kirby informed Mrs Talukder that the four tenants were paying Mr Ciullo £2,060 pm. She said that she was “surprised” by the amount, but would not tell him the total until she had spoken to Mr Ciullo. She telephoned Mr Kirby a few days later to inform him that Mr Ciullo was paying her £1,500 pm. When the tenants confronted Mr Ciullo, he gave four contradictory responses: (i) they could move out if they didn’t like the arrangement; (ii) he had “earned” the extra money by fixing the house; (iii) the utility bills were £500 pm; (iv) he had been there the longest, so he was entitled to live there without paying.

41. On 3 December, the four tenants started to pay £300 pm each directly to Mrs Talukder. On 6 December, Mr Ciullo made his last payment of £1,500 to Mrs Talukder. Thereafter, he paid no rent. Neither did he pay for the utilities.
42. The four tenants were entitled to pay their 20% share of the rent under the joint tenancy directly to their landlady. They were no longer willing for Mr Ciullo to make his secret profit. If Mr Ciullo had a legitimate demand for them to contribute to the outgoings, he had to justify this to them. Thereafter, Mr Ciullo should have paid his 20% share of £300 to his landlady. He failed to do so.
43. On 4 December, Mr Ciullo left a notice on the door requiring the four tenants to leave within 30 days. The notice (at R2.5) reads:

“This letter is official notice that I am terminating your agreement and that you must vacate the property by 4th January. 30 days from the date of this letter.

As the Mesne Tennant I am solely responsible for the rent of the property and up until now have had consent from the head landlord to sublet the other rooms. This has now been removed because the problem you have created. In order to comply with the terms of my tenancy agreement I have no choice but to serve the eviction notice on you.

Reasons for Termination:

- Rent arrears of £1500 as of 30/11/2018
- Landlord’s consent to sublet has been removed.

As per the Housing Act 1988 you have no legal right to remain in the property after the 30 day notice period has expired. You will be treated as trespassing if you remain in the property past this date and you risk your possessions being removed and the locks changed if you fail to comply with this notice to quit”.

44. Mr Ciullo sent this letter on the advice of Mr Simons. We are satisfied that it was of no legal effect. Mr Ciullo was not their landlord. He knew that he was not their landlord. Mr Ciullo and the four tenants were all joint tenants. Mr Ciullo was rather seeking to assert that he was their landlord in order to justify the secret profit which he had been extracting from the four tenants and which they were no longer willing to pay.
45. On 18 December, Mrs Talukder served Notices to Quit on Mr Ciullo and the four tenants. The letter to Mr Ciullo (at A1.91) read:

“Dear Giuseppe

Re: Notice to end tenancy at 63 Bolton Road, London E14 4JY

This letter is to give notice to end your tenancy at the above mentioned property.

As I have stated to you, a member of my family will be moving into the property, and as such I would like you to vacate by 28 February 2019.

The property is to be left in the condition as per the tenancy agreement.

Thank you for your cooperation.

Kind Regards

Mrs Monowara Talukder.”

46. Mr Ciullo asserts that the service of this notice was the 1st Incident of Harassment. We deal with the 16 allegations of harassment below in the Section headed “Our Determination”. We note that this Notice to Quit had no legal effect as it was not capable of determining the joint tenancy which was an assured tenancy. On 19 December (at A1.91), Mr Ciullo wrote to Mrs Talukder again seeking to assert that he was a mesne tenant and that Mrs Talukder had no contractual relationship with the other four tenants.
47. On 6 January 2019, Mr Ciullo changed the two locks to the front door while the other tenants were in the Property. He had no right to do so. He acted on the advice of Mr Simons. Both must have known that they had no right to do so. Mr Simons sought to argue that Mr Ciullo was entitled to do this as a resident landlord. This is unsustainable for two reasons. First, Mr Ciullo knew that he was no more than a joint tenant who had no right to sublet. Secondly, even had he been a resident landlord, this conduct would have been an offence of unlawful eviction under the Protection from Eviction Act 1977.
48. Ms Stroud describes how Mr Simons had attended the property and had asked for Mr Ciullo. Mr Ciullo and Mr Simons then had a conversation in the hallway about changing the locks. Ms Stroud overheard this conversation and came out of her bedroom to speak to Mr Ciullo. She told him that he had no right to change the locks. She then went to speak to Mr Simons. He would not give his name stating that it was none of her business. She describes his attitude as aggressive. He came up close to her and was loud and swearing. He repeatedly shouted “you’re homeless now” and that he was entitled to change the locks and kick her out. Mr Ciullo would not provide the tenant with a set of keys to the new locks and the tenants were unable to freely leave the house for two days. The locks were changed on the night before Mr Delov sat his final-year law school exams. For two days, at least one of the tenants had to be at home to admit the other tenants to the property. This behaviour by Mr Ciullo and Mr Simmons was outrageous.
49. Later that day, Mrs Talukder and members of her family attended the property. Mr Ciullo contends that it was he who was harassed (see Incidents 3-7).

50. On 31 January (at A1.128), Landlords Lawyer, on behalf of Mrs Talukder, served a Notice Seeking Possession on Mr Ciullo pursuant to Section 8 of the Housing Act 1988. (at A1.91) Mr Ciullo asserts this as the 8th Incident of Harassment.
51. On 1 February, the four tenants each agreed to pay £340 pm to Mrs Talukder, accepting that the rent should be increased to £1,700 pm for the whole house (see R1.12). The four tenants paid a total of £1,360 pm. On 3 March, the four tenants signed a tenancy agreement (at R3.80). This was for a term of six months from 1 March 2019. They also paid deposits which were placed in a rent deposit scheme. Mrs Talukder redacted out the rent on the tenancy agreement and, despite a direction from the Tribunal, failed to supply an unredacted version. We are satisfied that the reason for this is that Mrs Talukder did not want Mr Ciullo to know that they were now each paying some £340, rather than £300 per month. They were only occupying four of the five bedrooms, and their rent reflected this. Mr Ciullo remained in occupation of the fifth bedroom, the master bedroom on the first floor front.
52. The legal situation which arose is somewhat unusual. The Tribunal is satisfied that the answer is to be found in the decision of *Hammersmith and Fulham LBC v Monk [1992] 1 AC 478*. A joint monthly periodic tenancy continues from month to month. It can only continue if it is the will of all the joint parties that it should continue. By their actions, the four tenants had signified that they no longer consented to the original joint tenancy continuing. The four tenants accepted a new joint tenancy. The original joint tenancy was thereby brought to an end. The Tribunal notes that section 5 of the Housing Act 1988 only restricts the circumstances in which a landlord may determine a joint tenancy.
53. The effect of this for Mr Ciullo was that he no longer occupied pursuant to the original joint tenancy. He remained in occupation of his room as a trespasser, liable to pay mesne profits in respect of his occupation. The landlord would require a court order in order to evict him. It seems to be common ground that he was liable to pay £300 pm in respect of his room (see [10] above). At no time has Mr Ciullo sought to argue that the original joint tenancy continued and that he was jointly and severally liable to pay the full rent of £1,500 pm. Mr Ciullo has sought to suggest that he was only liable to pay the shortfall between £1,500 and the £1,360 pm paid by the four tenants. There is no justification for such a contention.
54. On 31 August 2019 the four tenants left the Property on the expiry of their tenancy. Mrs Talukder returned to them the deposits which they had paid. Mr Ciullo did not return the deposits totalling £2,060 which the tenants had paid to him. After they had left, the landlady locked the doors to their rooms.
55. On 20 September 2019, Landlord Service UK, on behalf of Mrs Talukder, served a further Notice Seeking Possession pursuant to Section 8 of the

Housing Act 1988 (at R2.67-73). Mr Ciullo contends that this was the 14th Incident of harassment.

56. We understand that during this period, there were various proceedings in the County Court. We were referred to an order made by a Deputy District Judge on 31 October 2019 in F00EC605 (at A1.14). Mr Ciullo issued proceedings claiming three times the deposit which had been paid when the first tenancy was granted on 1 February 2008 (see A1.30). The Court joined the other joint tenants at that time, namely Daniela Ciullo, Gabriela Zywcok, Krzysztof Owczarz, and Rocco Mastropieri as claimants, albeit it seems that they played no active part in the proceedings. Although Mr Ciullo had only paid a deposit of £280, he was awarded a total of £4,200, namely three times the total deposit that has been paid. It seems most unlikely that Mr Ciullo has paid the sums due to Ms Zywcok, Mr Owczarz, or Mr Mastropieri; he has made no suggestion that he has done so. In any event, Mr Ciullo should have ensured that their deposits were repaid when the subsequent tenants moved into occupation. The Tribunal have not been provided with a copy of the judgment, so it would be inappropriate for us to comment further on the windfall which Mr Ciullo seems to have made. However, it is a matter to which we are entitled to have regard in considering the conduct of Mr Ciullo.

57. On 8 November 2019, Landlord Services UK served a Notice pursuant to Section 21 of the Housing Act 1988 (at R2.74). Mr Ciullo contends that this was the 15th Incident of harassment. On 12 January 2020, Mr Ciullo vacated the Property. He complains of the 16th Incident of Harassment. Mrs Talukder contends that when she unlocked the doors of the rooms occupied by the four tenants, she found that the furniture had been stolen. This is subject to the claim that Mrs Talukder has recently issued in the County Court (see [15] above). This is therefore not a matter which this Tribunal should consider.

Our Determination

58. Before the Tribunal can make a RRO, the applicant must satisfy the tribunal “beyond reasonable doubt” that the landlord has committed an offence under section 1(2), (3) or 3A of the Protection from Eviction Act 1977 (see section 40(3) of the 2016 Act). The relevant provisions are set out in the Appendix.

59. Mr Ciullo relies on 16 incidents of harassment. We consider these in the context of the background to this dispute. Both parties had difficulty in understanding the complexities of the law. However, whilst Mrs Talukder sought to regularise the position, we are satisfied that Mr Ciullo, on advice of Mr Simons, sought to assert a position which they knew was unsustainable.

Incident 1 (18 December 2018): “The Landlady and her son came in the property with a gas engineer to assess the first valid gas safety certificate

in 10 years in order to be able to serve me and all the other occupiers an eviction notice.”

60. Mrs Talukder and Abdullah attended the Property with a gas engineer. They served Mr Ciullo with a notice to quit. Mr Ciullo states that Abdullah shouted at him and intimidated him. Mrs Talukder states that Mr Ciullo asked to speak with her and Abdullah in the kitchen and that Mr Ciullo threatened her by stating that he had five lawyers and that she was going to jail. She accepts that Abdullah became angry and asked why Mr Ciullo was threatening his mother. Abdallah states that he sought to mediate between Mr Ciullo, Ms Cirilo Stroud and Mr Kirby over the deposits which they had paid to Mr Ciullo.
61. Mr Simons referred us to a diary entry by Mr Kirby (at A1.77) which we are satisfied fairly summarises the situation:

“Discouraging meeting with Mrs Talukdar and her son, Abdullah. Peppe refused to contribute anything useful, of course. The Talukders would rather continue to be slapdash and hope that things work out rather than do anything formally to give us guarantees regarding our deposits etc. Also, they served us with our notice to be moving out by 28 February”

62. Mr Ciullo has not satisfied us that any offence of harassment was committed on this occasion. The service of a notice to quit cannot constitute harassment. The Tribunal accept that voices were raised. However, there is no evidence that the landlady had any intention to harass the tenant.

Incident 2 (21 December 2018): “The Landlady turns up at the property late in the evening and unannounced”

63. Mrs Talukder states that she attended to collect a red shawl which she had left at the Property three days previously. She was admitted by Ms Stroud. This cannot amount to an offence of harassment.

Incident 3 (6 January 2019: 16.25): “The Landlady’s daughter engages in a conversation by phone with me, my friend Hugh Simons and the other occupiers in the house and tells me to ‘leave quietly’.”

64. The incidents on this day occurred after Mr Ciullo had changed the locks on the two front doors in an attempt to unlawfully evict the four tenants. This conduct can only be described as outrageous. The Tribunal has been provided with an audio of this conversation and a transcript at A99. Mr Ciullo, Mr Simons, Ms Stroud, Mr Delov were present. Lily correctly asserted that Mr Ciullo had no authority to change the locks. Mr Ciullo responded that he did. Mr Simons supported him in this contention. Mr Simons declined to give his name. His demeanour was aggressive. On a

number of occasions, Lily suggested that it would be better if Mr Ciullo went quietly. Against the background of what had occurred on this day, Mr Ciullo has not satisfied the Tribunal that such comments constituted an offence of harassment.

Incident 4 (6 January 2019: 18.03): “Later in the afternoon. the Landlady’s daughter turns up at the property completely unannounced ... and keeps asking me to ‘leave quietly’ on multiple occasions”.

65. The Tribunal have been provided with an audio of this conversation and a transcript at A110. Mr Ciullo, Mr Simons, Ms Stroud, Mr Delov and Lily were present. Mr Simons insisted on recording the conversation. Despite his own outrageous conduct, Mr Simons accused the landlady of breaking the law. He asserted that because Mr Ciullo was the only named tenant, he was entitled to change the locks and that the four tenants were at the property illegally. Lily described Mr Simons as “a thug” who was in danger of getting Mr Ciullo “into big trouble”. She suggested that it would be much better for everyone if Mr Ciullo left. Such comments were quite justified in the circumstances. Ms Stroud made it clear that Mr Ciullo was not her landlord and that he had been collecting more rent on behalf of Mrs Talukder than he was entitled. She asked Ms Simons to stop shouting. Tempers were raised. However, there was no conduct by Lily which constituted harassment by the landlady.

Incident 5 (6 January 2019: 18.35): “The Landlady also turns up unannounced at the property, joining her daughter who was already inside and they both keep trying to harass me from inside the house with phone calls and threatening voicemail messages.”

66. Mr Ciullo has not satisfied us that there was any conduct which could constitute harassment.

Incident 6 (6 January 2019: 19.01): “The Landlady’s daughter followed me and my girlfriend all the way up to my bedroom, to keep harassing me, shouting through my bedroom door, telling me ‘just leave’ the property and using her family’s ‘lawyer status’ as a threat”.

67. The Tribunal has been provided with a video of this encounter. Lily seeks to speak to Mr Ciullo. She asks him to provide the tenants with keys. He asks to be left alone and that anything is put in writing. There is no conduct by Lily that could amount to harassment.

Incident 7 (8 January 2019:): “The Landlady ... entered the house with 2 police officers to further harass me, trying to intimidate me with police action”

68. Mrs Talukder attended the property with her two daughters and two police officers. They were admitted to the property by Ms Stroud. The police

officers spoke to Mr Ciullo. The Tribunal have been provided with a copy of the transcript of this conversation at A2.4-7. As a result of this visit, the four tenants were provided with keys to the property. There is no conduct that could amount to harassment.

Incident 8 (31 January 2019): “The Landlady served me a Section 8 eviction notice full of false accusations”

69. The service of a Notice Seeking Possession cannot constitute harassment.

Incident 9 (3 February 2019): “Landlady shows up at the property unannounced”

70. Mrs Talukder attended because the tenants had informed her that there was a leak from the bathroom into the kitchen. This did not amount to harassment.

Incident 10 (11 February 2019): “The Landlady enters the property with her own keys without the 24 hrs legal notice being applied.”

71. Mrs Talukder had arranged for builders to attend to deal with the leak from the bathroom. There are photographs of the damage to the kitchen ceiling (at R2.39-40). On 10 February (at R2.41), she emailed all the tenants stating that builders would be attending next day. Mr Ciullo texted back (at R2.45) to state that he could not be sure that he would be in to admit the builders. This conduct did not amount to harassment.

Incident 11 (11 February 2019): “The Landlady started some works in the property without my consent, then threw all my toiletries in a rubbish bin bag and left it in front of my bedroom door with complete disregard for my belongings and as a ‘threatening message’ “.

72. Mr Ciullo knew that builders were attending to deal with the leak in the bathroom. This conduct did not amount to harassment.

Incident 12 (19 February 2019): “The other occupants living in the house, in conspiracy with the Landlady, decided to tamper with some post that was in the kitchen while I was outside the house”

73. Mr Delov describes how the leak into the kitchen was wetting the areas where the letters were kept. He looked through the letters and found that some were addressed to him and some to other tenants. He put the rest of the letters in a Sainsbury’s bag. Mr Kirby was present at the time. This conduct did not amount to harassment.

Incident 13 (17 January to 18 September 2019): “The Landlady and other members of her family repeatedly use ‘maintenance’ and ‘construction

works' mainly as an excuse to freely access the property, cover their past illegal activities and failures to fulfil most of the landlord responsibilities , do as they please inside the property and harass me, trying to push me to leave the property causing me immense distress and discomfort inside my own home."

74. It may be that there were occasions that Mrs Talukder and her family let themselves into the property for legitimate reasons. They had retained a key. Strictly, they had no right to invade the privacy of the tenants and could only be admitted by one of the tenants. However, this conduct did not amount to harassment as this was not done with the intention of harassing the tenants.

Incident 14 (20 September 2019): "The Landlady served me another Section 8 eviction notice."

75. The service of a Notice Seeking Possession cannot constitute harassment.

Incident 15 (8 November 2019): "The Landlady served me another Section 8 eviction notice."

76. The service of a Notice Seeking Possession cannot constitute harassment.

Incident 16 (12 January 2020): "On the moving out day, the Landlady turned up... Husna Talukder asked my girlfriend Emily my new address and when she politely refused to give it to her, she then aggressively demanded it from her shouting "we are not thugs' too close to her face making her cry and run in horror upstairs in tears for safety".

77. Mr Ciullo had not paid any rent since 6 December 2018. On 18 December 2019, Mr Ciullo had informed Mrs Talukder that he was leaving on 12 January 2020. Mrs Talukder was justified in attending to collect the keys. She states that the house was dirty and that there was a lot of rubbish. Mr Ciullo has not satisfied us that there was any act of harassment.

78. Even had Mr Ciullo satisfied to the criminal standard that an offence of harassment had been committed, we would not have been minded to make a RRO. In determining the amount of any order, we are obliged to take into account the conduct of the landlord and the tenant (section 44(4)(a) of the 2016 Act). Having regard to our findings relating to the conduct of Mr Ciullo, it would not have been just to make any order. We have described aspects of his behaviour as outrageous. No joint tenant is entitled to make a secret profit at the expense of his co-tenants or to change the locks excluding them from their home.

Tribunal Fees

79. In the light of our findings, the Tribunal makes no order for the repayment of the application fees paid by the applicant.

Judge Robert Latham
15 October 2020

RIGHTS OF APPEAL

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.
2. 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.
3. 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.
4. 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.
5. 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.
6. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of Relevant Legislation

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

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.

43 Making of a 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 had 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 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).

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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Protection from Eviction Act 1977

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 or 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.