FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HA/HMF/2020/0025
Property	:	105 Bradford Road, Combe Down, Bath BA2 5BR
Applicants	:	Ms Rosalie Stafford-Langan Ms Annabelle Ray Ms Anania Lippi
Representative	:	
Respondent	:	Mr Lee Curle and Mrs Trudi Curle
Representative	:	
Type of Application	:	Application for a rent repayment order by tenant Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016
Tribunal Member(s)	:	Judge Tildesley OBE Judge A Lock Mr M Jenkinson
Date and venue of the Hearing	:	18 December 2020 Havant Justice Centre Video Hearing on Cloud Video Platform
Date of Decision	:	12 February 2021

DECISION

Summary of Decision

1. The Tribunal orders Mr Curle to pay the Applicants the sum of £7,618 by way of a rent repayment order ("RRO") and to reimburse the Applicants with the application and hearing fee in the sum of £300 making a total of £7,918 within 28 days from the date of this decision.

Background

2. On 3 September 2020 the Applicants applied under section 41 of the Housing and Planning Act 2016 (2016 Act) for a rent repayment order (RRO) in the sum of £9,482.00 comprising "rent" of £8,125.00 and "bills" of £1,357.00 plus reimbursement of application and hearing fees[1].

3. The Claim was apportioned between the Applicants as follows: Ms Rosalie Stafford-Langan: £120.00 per week (plus £20.00 bills) from 14 September 2019 to 8 February 2020 total £2,640.00 plus £440.00 for bills. Ms Annabelle Ray: £100.00.00 per week (plus £20.00 for bills) from 1 September 2019 to 21 February 2020 total £2,485.00 plus £477.00 for bills[2]. Ms Anania Lippi: £120.00.00 per week (plus £20.00 for bills) from 2 September 2019 to 21 February 2020 total £3,000.00 plus £440 for bills.

4. The property is a three-storey town house located close to Bath University. On the ground floor there is shower room, open plan kitchen and dining area and lounge which had been used as a bedroom. There were two double bedrooms on the first floor and likewise on the second floor which also had a fully tiled bathroom with bath and shower over.

5. Ms Stafford-Langan occupied the first floor bedroom overlooking the road and had use of the ground floor shower room. Ms Ray and Ms Lippi occupied the bedrooms on the second floor and shared the bathroom on that floor. All the occupants shared the kitchen and dining facilities on the ground floor.

6. The Applicants were students at Bath University. They were not given formal written agreements in respect of their occupation at the property. The Applicants asserted that their occupation of the property amounted to a tenancy. The Applicants alleged that the Respondents had committed the offences of unlawful eviction and or harassment under the Protection from Eviction Act 1977 (1977 Act) and of controlling or managing an HMO without a licence contrary to section 72(1) of the Housing Act 2004 (2004 Act).

[1] The Applicants applied for £8,025 which was an underestimate see fn2, and £1,387 for bills which was a miscalculation.

[2] Ms Ray did not include the £100 rent payment made on 12 January 2020 in her calculation. Hence the Tribunal has increased the Claim by £100.

7. Mr Curle was the registered owner of the freehold of the property under title number ST193545. His wife, Mrs Curle, managed the lettings of the rooms in the property and was the primary contact for the Applicants when they lived at the property. The Respondents advertised the rooms for let on the "SpareRoom" website which included details of the rent, deposit, and minimum and maximum terms. Mrs Curle confirmed the lettings either by messaging and or email, and gave details of a bank account in the name of Mr Curle for the payment of rent.

8. The Respondents maintained that the Applicants were lodgers in their family home, and that the Applicants held "excluded" licence agreements. The Respondents accepted that they had inadvertently committed the offence of controlling and managing an HMO without a licence. The Respondents pointed out that Bath & North East Somerset Council ("The Council") had dealt with the offence by means of a "simple" caution which had been accepted by Mr Curle. The Respondents vehemently denied that they had committed offences under the Protection from Eviction Act 1977. The Respondents invited the Tribunal to make a RRO for the lowest sum possible.

9. The principal issues of dispute were (1) The legal status of the Applicants' occupation of the property (2) The identity of the Landlord (3) Whether offences under the Protection from Eviction Act 1977 had been committed by the Landlord (4) The amount of the RRO.

The Proceedings

10. On 30 September 2020 Judge Morrison directed the Application would be heard by video in the week commencing 14 December 2020 and required the parties to exchange statements of case.

11. On 20 November 2020 Judge Tildesley made an unless direction for the Respondents to provide their statement of case in the prescribed format by 27 November 2020, and the Applicants were given a right of reply by 4 December 2020.

12. On 7 December 2020 Judge Tildesley granted leave for the Respondent to provide a brief response to the Applicants' reply and supply copies of bank statements (sensitive information redacted).

13. The Application was heard on 18 December 2020 at which the Applicants and the Respondents attended. Ms Stafford-Langan and Mrs Curle acted as spokespersons for the Applicants and Respondents respectively.

14. Mr Jonathan and Mrs Helen Ray, the parents of Annabelle Ray, Mr Nicholas Ward and Mr Simon Ward, the father and uncle of Ms Stafford-Langan, and Mr Anthony Brown, a colleague of Ms Stafford-Langan had all provided witness statements for the

Applicants and were also in attendance. A Mr Dylan Thomas who originally was going to take the letting of the room occupied by Ms Stafford-Langan gave a witness statement but did not attend the hearing.

The Legal Context

15. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the 2016 Act Parliament extended the powers to make RRO's to a wider range of "housing offences". The rationale for the expansion was that Government wished to support good landlords who provided decent well-maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation and disregarded the law.

16. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making a RRO.

17. The Tribunal is satisfied that the Applicants met the requirements for making an application under section 41 of the 2016 Act. The Applicants alleged that the Respondents had committed an offence of control or management of an HMO without a licence contrary to section 72(1) of the 2004 Act and offences under sections 1(2) and 3A of the 1977 Act whilst the property was let to them. An offence under section 72(1) of the 2004 Act and the offences under the 1977 Act fall within the description of offences for which a RRO can be made under section 40 of the 2016 Act.

18. The Applicants stated that the alleged offence under 2004 Act was committed from 2 September 2019 to 17 February 2020 and the alleged offences under the 1977 Act were committed on or around 17 February 2020 which was in the period of 12 months ending on the day in which the Applicants made their application on 3 September 2020.

19. The Tribunal turns now to those issues that it must be satisfied about before making a RRO.

Have the Respondents committed a specified offence?

20. The Tribunal must first be satisfied beyond reasonable doubt that the Respondents have committed one or more of seven specified housing offences. The relevant offences in this case are under section 72(1) of the 2004 Act, "control or management of an HMO without a licence" and under sections 1(2) and 3A of the 1977 Act, unlawful eviction and harassment.

21. Before considering whether the Respondents have committed a housing offence it is necessary for the Tribunal to establish the facts of the alleged offending. The Tribunal intends to analyse the

evidence under the headings of "occupation"; "the nature of the agreement"; "termination of the agreement", and the actions of The Council.

Occupation of the Property from 1 September 2019

22. The Tribunal prepared a "Timeline of Events" from the evidence presented which identified the occupation of the property from 1 September 2019 to 17 February 2020. The Tribunal asked questions of each party on the "Timeline". The Tribunal analyses the occupation starting with the ground floor and progressing through the various floors of the property.

23. The evidence indicated that the Respondent's son occupied the ground floor living room as a bedroom from 1 September 2019. The Applicants stated that by end of November 2020 the Respondents' son was rarely seen at the property.

24. The Respondents accepted that they let the ground floor living room to a Ms Valeria Ciaffaglione[3] on 3 January 2020 to 28 January 2020 after which Ms Ciaffaglione moved to one of the bedrooms on the first floor. Ms Ciaffaglione was charged rent of £140 per week inclusive of all bills, and the agreement was described as a "short term agreement" and as an excluded occupier lodger" [A1 213].

25. The Respondents stated that they gave the ground floor room to Ms Ciaffaglione as a favour because they knew that the first room bedroom would become free at the end of January 2020, and their son wanted to be with his girlfriend whom he had not seen for five weeks as she lived overseas when not at University.

26. The Applicants produced an entry on the SpareRoom website dated 11 February 2020 [A1 232] which they said indicated that the Respondents were advertising the ground floor bedroom for let. The Tribunal notes that the advert mentioned a room becoming vacant because of the departure of a current tenant. In the Tribunal's view this refers to Ms Lippi who originally was leaving on 28 February 2020.

27. Ms Stafford-Langan occupied one of the bedrooms on the first floor, and on 7 September 2019 paid a deposit of £600 and the weekly rent of £120 on 14 and 21 September 2019 respectively. Ms Stafford-Langan took up occupation on 27 September 2019, and paid rent up to the week ending 15 February 2020. On 14 February 2020 the Respondents gave the Applicant notice to vacate the property by 21 February 2020 which was then changed to 20 February 2020. Ms Stafford Langan collected her personal belongings on 20 February 2020.

[3] Ms Ciaffaglione was not a party to these proceedings, but the entry in respect of her is included to assist in understanding what rooms were in occupation and when.

28. The Applicants' second bundle included a witness statement of A Dylan Jones [A2 26] who said that he had paid a deposit and one weeks rent for the room occupied by Ms Stafford-Langan which he was due to occupy on 3 September 2019. When he moved in the Respondents gave him an undated rule sheet which prohibited guests stopping overnight. Mr Jones decided to leave the following day and was reimbursed with the rent and deposit paid.

29. Different persons occupied the other room on the first floor at various periods from 1 September 2019. The first occupant was a person named Asha who ended the agreement in mid October. Ms Camilla Lunardelli[4] occupied the room from the end of the October to the end of January when Ms Ciaffaglione assumed occupation of the room and remained there after the Applicants had left the property.

30. On 24 June 2019 Ms Ray paid a deposit of £300. Ms Ray started paying rent of £100 per week from 1 September 2019 for one of the second floor rooms but did not take up occupation until 15 September 2019. On 14 February 2020 the Respondents gave Ms Ray notice to vacate the property by 21 February 2020 which was then changed to 20 February 2020. Ms Ray paid up her rent until 21 February 2020 but left the property on 17 February 2020 and collected her belongings with her parents on 18 February 2020.

31. On 24 April 2019 Ms Lippi paid a deposit of £300 for the other room on the second floor. On 2 September 2019 Ms Lippi paid rent of £120 for the week commencing 30 August 2019 to 5 September 2019. Ms Lippi took up occupation of the room on 5 September 2019. On 6 February 2020 Ms Lippi informed Mrs Curle that she had decided to finish her PHD, and had to return overseas. Mrs Curle replied that she was very sorry but that Ms Lippi must do what was right. Mrs Curle went on to say "we are talking four weeks notice which we agreed which will take it to 9 March 2020" [A1 94]. On 14 February 2020 Mrs Curle gave notice that Ms Lippi was to leave one week from today (Thursday 20 February 2020) as she had been previously advised verbally on the afternoon of 14 February. Ms Lippi left the property on 17 February 2020 and collected her belongings on 18 February 2020.

32. The Applicants each paid £20 a week in cash to the Respondents for the "bills".

33. The Respondents asserted that the property had always been their main and principal home during the time that the Applicants occupied the property. The Respondents denied the Applicants' statement that the Respondents had only sporadically resided at the property. The Tribunal assess the Respondents' assertion against the following evidence:

[4] Asha and Ms Lunardelli were not parties to the proceedings.

a) The Respondents had purchased another property which they said they were renovating. The Tribunal understands that the property was purchased in November 2018 for £190,000 with fees. The Respondents were not prepared to disclose the address of the property at the hearing because they feared that the information may be misused by the Applicants.

b) "SpareRoom" Advert dated 3 September 2019 [A2 34] where the Respondents stated that "We don't live here but our son does and he is a chilled, friendly 23 year old who works in Bath". "Please note, the bed and bedside tables in the photos will be replaced with other nice furniture as we are moving this furniture to our other house". Mrs Curle in answer to questions by the Tribunal accepted that she had placed the advert, acknowledged that it was not possible for the Respondents to occupy the same room as their son and stated that the furniture had been moved to their other property but then changed her answer to the shed when prompted by her husband.

c) Whats App conversations with the Applicants (details are in the Applicants' first bundle: **27.8.2019** Mrs Curle to Ms Lippi: "My son is on the ground floor and we will be visiting weekly or thereabouts as we have bought another house we are renovating": Ms Lippi to Mrs Curle: "I see I thought you were living in the house with your partner". Mrs Curle to Ms Lippi: "We were but we have to renovate another house. My son is there and he's lovely". **29.10.2019** with Ms Ray: Mrs Curle: "Hi there, Lee and I are coming up tomorrow. We are going away as you may know with Will". **16.1.2020** Mrs Curle to Ms Ray: " Thanks Annabelle. Lee will be there in under an hour as he was coming to check the meters If you see him could you give him your additional £20 outstanding. From Sunday forwards another £20 will be due". "Thanks again for keeping an eye and topping up" **23/01/2020,** Mrs Curle to the Applicants: "Hi there, Will will be popping by Saturday morning to collect the billing and do the meter. If you could leave the amount owing in an envelope marked with your name and seal it and place it in the wooden desk in the kitchen that will be great thank you".

d) Ms Stafford-Langan's evidence that she only saw the Respondents sleep at the property twice. Mrs Curle on the night of 27 September 2019, and Mr and Mrs Curle in the downstairs living room/bedroom when they were catching a flight from Gatwick the following day.

The Agreements

34. The Respondents did not give the Applicants written agreements in respect of their occupation of the property. Mrs Curle explained that she had been slack about putting the agreements in writing because of Mr Curle's illness. The basic terms of their occupation were set out in exchanges of "Whats App" messages, texts, and emails [A1 208-212].

35. The terms agreed with Ms Stafford-Langan were a deposit of £600 to secure the double room which would be refunded when she left. Mrs Curle specified a rent at £120 per week and £20 per week for bills payable from 14 September 2019 until end of July 2020. The rent and deposit were paid into a bank account in the name of Mr L S Curle [208].

36. The terms agreed with Ms Ray were a deposit of £300 to secure the single room from 1 September 2019 to August 2020. Mrs Curle stated that the £300 deposit was non-refundable if Ms Ray decided not to stay the term until August 2020. Ms Ray was required to pay rent of £100 per week and to pay it into the account of Mr L S Curle [209]. Ms Ray confirmed on 6 February 2020 that she would be leaving the tenancy at the end of August.

37. The messages between Ms Lippi and Mrs Curle regarding the occupation of the second floor bedroom had disappeared off the SpareRoom web page. On 8 July 2019 Mrs Curle sent a WhatsApp message to Ms Lippi stating "as we agreed the lodger agreement starts from 1 September 2019. Ms Lippi responded stating that she still wanted the room and would pay the first month of rent on the 1 September 2019. On 27 August 2019 Ms Curle messaged Ms Lippi stating that her first payment was due on the 1 September which was £120 and that she would also take the cash monies of £20 when Ms Lippi arrived for the first week as it fed the billing meters. The Whats App message on 18 December 2019 indicated that the agreement was until the end of August 2020.

38. Ms Lippi also on 27 August 2019 mentioned to Mrs Curle that she thought Mrs Curle was living in the house with her partner. To which Mrs Curle responded that they were but now have another house to renovate [A1 83].

39. On 13 October 2019 Ms Lippi enquired about whether she had to pay the £20 a week for bills when she was away from the property on a training course. Mrs Curle responded that "the way we work in the UK is that billing stands as it is whether you are there or not. In fact, because I ask you to pay cash towards the bills out of the rental total means we make no profit from it at all because it aggregates over the entire period you are there for rent and Lee and I still contribute more to balance the outgoings"[A1 87].

40. On or before 6 February 2020 Ms Lippi indicated that she had to terminate her agreement early. Mrs Curle expressed sorrow at her news and stated that Ms Lippi must do what is right for her. Mrs Curle referred to the agreement with Ms Lippi of four weeks notice to end the agreement which would take it to the 9 March 2020 [A1 94]. Mrs Curle enquired whether Ms Lippi could leave earlier which Ms Lippi agreed to do by the end of February 2020. Mrs Curle, however, insisted that Ms Lippi pay the rent until 9 March 2020 even though Ms Lippi would not be living there.

41. The Applicant's hearing bundle included a copy of the agreement with Ms Ciaffaglione [A1 213]. Mrs Curle explained that she normally had to provide a more detailed wording to overseas students. The terms of the agreement were as follows:

> "Regarding your intended short term lodging arrangement at:
> 105, Bradford Rd, Combe Down, Bath, BA2 5BR
> Due to start Friday 3rd of January 2020, until Friday 8th May 2020 (18 weeks) but with the potential to extend until July 2020. To be confirmed later.
> A) This is a short term agreement and you are an 'excluded occupier lodger' in our family home which you agree to on the basis of having read the advert in full.
> B) On this basis, the £600 deposit (made via bank transfer) will be held by us in our bank account and returned upon your departure. Providing there are no damages, apart from usual wear and tear, which we make allowances for, we made no deductions. To be clear, we have never kept a deposit apart from someone breaking the term of the agreement.
> C) Therefore, we will only keep your deposit if you decided to break the agreed term and leave within say, a week, two months, three days…etc.
> D) As we agreeing an approximate 'four month term' and we operate the rental payments on a weekly basis only, I would like to suggest we will accept your leave date around the 8th of May possibly extending to July 2020.
> E) We will also require four weeks notice should to decide to break your contract earlier than agreed. Kindly also note C) as stated above.
> There are no hidden bills or taxes to pay. You do not need to contact the Council office regarding council tax omission as we pay the full council tax in any instance. The weekly rent will be £140 pw inclusive of all bills and paid in advance every Friday. There is a £600 deposit payable now to secure the double room as advertised to,
> Account name: Mr L S Curle
> Account Number: XXXX
> Sort Code: XXXX
> Reference: BALODG4
> Rent payable at £140 pw (£20 of which is paid in cash for billing). After you vacate the property, your deposit will be returned to you within 48 hours".

42. The Respondents said they provided "each student" with a copy of the "House Notes" when they moved in. The Respondents supplied a handwritten copy of the Notes in their bundle at [R1 62]. The

Notes advised them amongst other matters to keep everything clean and tidy, that they were able to eat in their own rooms, to put out bins and rubbish on a Tuesday, feel free to hoover and dust, prohibited smoking and third parties staying over, and supplied contact mobile numbers for Mr and Mrs Curle.

43. The Applicants were provided with keys to the property. The Applicants had exclusive possession of their individual rooms which did not have locks on the doors. The Applicants shared the kitchen and dining area. The Applicants on the second floor shared the bathroom on that floor. Ms Stafford-Langan shared the shower room on the ground floor.

44. The Applicants were expected to pay rent and the £20 bills when they returned to their homes during vacations. The Respondents said that they did not go into the Applicants' rooms whilst they rented them out. Mr Curle had entered the rooms to check that the radiators were working. The Applicants reported faults with the property to the Respondents

45. Mrs Curle offered the Applicants bed sheets, a duvet and towels when the Applicants took up occupation. Ms Lippi and Ms Stafford Langan accepted the offer of bed sheets and a duvet. Mrs Curle accepted that the Respondents supplied no services to the Applicants who were responsible for keeping their rooms and shared areas clean and in good tenant's condition. The Respondents stated that the deposit would be applied for the cost of damage to the property beyond normal wear and tear.

46. Ms Stafford-Langan said that the property was furnished and the Respondents had kept small ornaments, some books and wall art in the property.

47. Mrs Curle initially said that the property housed their furniture and beds, and that her clothes and toiletries were kept in draws and in the bathroom at the property which were then moved to the loft and the shed when Ms Ciaffaglione moved into the downstairs room. Mrs Curle was then later asked to explain her statement in the SpareRoom Advert about moving furniture from the property to the home that they were renovating. Mrs Curle started off by describing the furniture as really expensive, mirrored and beautiful, the bed alone cost £3,000 and she was worried that it might be broken by the lodgers if left in the house. Mrs Curle then confirmed that it had been moved to their other property only to be interrupted by Mr Curle who prompted her to say "the shed".

48. Ms Stafford-Langan described the property as a typical student let. All the Applicants were full-time students at Bath University. The other occupants of the property except for the Respondents' son were full-time students. The SpareRoom web page exhibited in the bundle [A2 34] described the property as "a fab student house".

The Events in February 2020: Termination of the Agreements

49. On 6 February 2020 Ms Stafford-Langan contacted Mrs Curle about missing kitchen wall art. Mrs Curle confirmed that Mr Curle had removed it. Ms Stafford-Langan responded asking for notice to be given before they entered the property. Ms Stafford-Langan believed that 24 hours notice was customary. Mrs Curle tried to contact Ms Stafford-Langan and left a message stating that "I think you are quoting the wrong law. The house is ours and not yours under a SAT. You are a lodger in a family home not a shorthold assured tenant. We actually have the right to enter your room without permission not that we do. Will is back this weekend, too" Ms Stafford-Langan responded "Ah okay I didn't realise that, no worries" [A1 28].

50. On 11 February 2020 the Applicants agreed to make contact with the Council to clarify their rights and the matter at hand. They spoke to Mr Tim Hill, Housing and Standards Officer at the Council. Mr. Hill decided to write a letter to Mr and Mrs Curle advising that he would be inspecting the property to investigate whether an offence had been committed in relation to an unlicensed HMO.

51. On 14 February 2020 Mr and Mrs Curle attended the property and discovered the letter from Mr Hill. On the afternoon of 14 February 2020 Mr and Mrs Curle gave Ms Ray and Ms Lippi 7 days notice to leave the property. This was later changed on WhatsApp to Thursday 20 February 2020: "this departure date is one week from today (Thursday 20th February 2020 as you were previously advised today)". In respect of Ms Stafford-Langan Mrs Curl sent a WhatsApp at 18:26 on 14 February 2020, "I believe you are away currently. I am giving you 7 days notice from today as you pay weekly in order that you leave Friday 21 February 2020 to find alternative accommodation". At 18:28 Mrs Curl sent another "WhatsApp message stating: "You will receive your deposit upon leaving the property on the day". At 18:33 Mrs Curle sent another "WhatsApp message to all three Applicants stating: this departure date is one week from today (Thursday 20 February 2020) as you were previously advised verbally this afternoon. At 20:39 Mrs Curle sent another WhatsApp message stating:, According to gov.uk; as you are fully aware of the departure date, I must stress that according to the UK government I only need to give you 'reasonable notice' to quit… which I have already advised. (According to the UK government, 'this means the length of the rental payment period (so if your lodger pays rent weekly, you need to give 1 week's notice)). Kindly note, the notice doesn't have to be in writing. According to the UK law, I, the landlord, can then change the locks on your room, even if you've left your belongings there… of course, I must give your belongings back to you. *By locks on the room

(which do not exist) it means front door in this instance.* This will be happening next Friday at the latest. I am advising you of the law so you are fully aware of this situation over the coming days" [A1 14-15 and the WhatsApp for each Applicant].

52. Ms Lippi queried the departure on the Thursday stating: "A week from Today will be Friday. You have told me today at 17.30 when I got back home from groceries". Mrs Curle responded: "Ok, the Govt advised 7 days from the same day but make it Friday".

53. Mrs Curle said that she was horrified to discover what it meant by running a HMO without a licence. Mrs Curle stated that she Googled it and realised that she could only have two lodgers. Mrs Curle said that she told Ms Lippi and Ms Ray that they had to leave because of the requirement to get the numbers down to two lodgers. Mrs Curle intended to give Ms Ciaffeglione notice to quit but decided that she could stay.

54. Ms Lippi and Ms Ray stayed at the property over the weekend of 15 and 16 February 2020. Mrs Curle also remained at the property. Mr Curle left later on the Saturday. Mrs Curle alleged that Ms Lippi squared up to her in the kitchen and that Ms Lippi and Ms Ray harassed Ms Ciaffeglione. Ms Lippi and Ms Ray denied the allegations. Mrs Curle said that she entered Ms Stafford-Langan's room and was horrified as to what she saw. Ms Stafford-Langan had not returned to the property.

55. On 17 February 2020 Ms Lippi and Ms Ray said they returned to the property at 1800 hours to find all the lights off in the building. When they unlocked the door and attempted to enter the hallway Mrs Curle turned on the light and asked them to step back into the entrance and to sign a letter asserting that they were going to leave by Thursday 20 February 2020. They say that Mrs Curle would not allow them to continue into the property unless they signed the letter, and suggested they go to the local Post Office. Ms Lippi and Ms Ray refused to sign the letter and called the Police as they were denied access to their rooms. The Police advised that they were unable to help because it was a civil matter. Ms Lippi and Ms Ray decided to stop with friends that evening. In the morning they went to the University Housing team which provided them with emergency accommodation. The Housing Team also advised Ms Lippi and Ms Ray against returning to the property because of the potential risk to their safety .

56. Mrs Curle said she recorded the incident on 17 February 2020 on video. Mrs Curle denied that she had refused them entry into the house and stated that the video shows them in the house. Mrs Curle, however, accepted that she asked them to sign a note to state that they would leave on 20 February 2020 as she had already given them seven days notice. Mrs Curle also accepted that she would not let them sign the letter in the kitchen because she said

she feared for her safety, and asked them to go to the local Post Office to complete the signing of the letter.

57. Mr and Mrs Ray, the parents of Ms Ray, provided witness statements [A2 19-23]. Mr and Mrs Ray accompanied their daughter and Ms Lippi to the property on 18 February 2020 to collect their belongings. Immediately prior to visiting the property Mr and Mrs Ray met up with their daughter and Ms Lippi at Bath Police Station where they reported their intention to go to the property to collect the belongings of their daughter and Ms Lippi. They did this as a precaution if in the event there were problems with the Respondents at the property.

58. Mr and Mrs Ray stated that they had received a phone call from their daughter on 17 February 2020 who was in a very distressed condition, and decided to go to Bath the following day to help her with the collection of her belongings. When they were at the property on 18 February 2020 Mr and Mrs Ray made as little communication as possible with the Respondents. They said that Mrs Curle adopted an apologetic tone claiming that she had no issue with either Ms Lippi and Ms Ray but that she had no choice because of the actions of Ms Stafford-Langan. Mr and Mrs Ray stated that the Respondents then began to share with them details of Ms Stafford-Langan's conduct which they said had nothing to do with them and which made them feel very uncomfortable. Mrs Ray stated that prior to leaving the property, Mrs Curle indicated that there was a stain outside Ms Lippi's bedroom which would cost her £200 to clean professionally. Mrs Ray said that seeing the distress that this caused Ms Lippi Mrs Ray offered to clean the carpet herself. Ms Ray asked what cleaning products were under the sink to which Mrs Curle replied she did not know. Mrs Ray said she found something and proceeded to remove the mark within five minutes.

59. Ms Stafford-Langan did not return to the property to stay after she received Notice to quit on 14 February 2020. Ms Stafford-Langan agreed with the Respondents to collect her belongings on 20 February 2020.

60. Mrs Curle stated that as Mr Stafford-Langan had not paid her rent on the 15 February 2020 and was not responding to messages the Respondents went into her room.

61. The Respondents said that Ms Stafford-Langan had left her room in a filthy and damaged condition. Mrs Curle asserted that it took her more than five hours to clean the room which she hoovered, and washed everything with hot water and disinfectant to get the smell of smoke out of the room. Mrs Curle said the rug was damaged by ink splatters, the mattress and the quilt had to be taken to the tip, and that repairs had to be done to the curtain pole and table.

62. Mrs Curle said she found evidence of smoking in the room, used sanitary towels and a sex toy which apparently could only be used by a man. Mrs Curle also said that when cleaning Ms Stafford-Langan's room she found a rail card in the name of Rosie Ward. Mrs Curle Googled "Rosie Ward" and discovered that in 2014 she had been the youngest Chair of a UKIP Branch at the age of 17. Mrs Curle also found information about Rosie Ward allegedly holding a party where party-goers were smoking drugs.

63. On 20 February 2020 Mrs Curle contacted both Ms Ray and Ms Lippi stating: "Please type into Google 'Rosie Ward UKIP' (also known as Rosalie Stafford Langan). There is a Daily Mail link and other links regarding her past affiliation to the BNP, and an embarrassing drug party she attended. There is so much more besides. Also click on images. These findings will be raised at any such public RRO tribunal with press in attendance. As landlords we are duty bound to build a picture of a tenant who we actually did not know was hiding a past she did not want discovered. I thought you should be made aware as you are potentially making an RRO together. If you would like to call then I will be happy to speak with you" [A1 57].

64. The Respondents had bagged Ms Stafford-Langan's belongings. One bag had a note on the outside which read:

> '18th of FEB 2020'
> "EVIDENCE – ROSALIE STAFFORD-LANGAN'
> Male masturbator found in drawer with handcuffs, oral sex spray (for throat), and 'LUBE'. The
> advert stated 'no overnight guests'
> ROSALIE STAFFORD-LANGAN
> FIRST FLOOR ROOM
> CLEARED AFTER 3 DAYS NON-RENT PAYMENT + NO COMMUNICATIONS.
> EVIDENCE – ROSALIE STAFFORD-LANGAN 18th of FEB 2020
> HANDCUFFS FOUND I DRAWER WITH 'MALE MASUTRBATOR' USED BY MEN NOT SEX FOR SEXUAL ACTIVITY [pencil] IN HER BEDROOM [A1 240 -241].

65. Ms Stafford-Langan said the Respondents showed this bag and note to Ms Ray, Ms Lippi and Mr Ray on the 18 February 2020.

66. On 20 February 2020 Mr Nicholas Robert Ward attended the property with his daughter, Ms Stafford-Langan to collect her belongings. The Respondents said that they told Mr Ward that they knew the true identity of his daughter and that they were disappointed with her by having men back to their home in contravention of what had been agreed. The Respondents said that Mr Ward then launched into a tirade and said that he would see them in Court.

67. Mr Ward denied that he had torn into the Respondents. Mr Ward said he was surprised at the conduct of Mr Curle who conducted himself in an unprofessional manner as a Landlord. Mr Ward pointed out that the visit was merely to pick up items. Mr Ward said that Mr and Mrs. Curle expressed their disappointment in his daughter for unrelated and unspecified crimes in their eyes. Mr Ward then said that Mr Curle then produced various items that belonged to his daughter which Mr Curle had bagged up in evidence bags. Mr Ward considered that the whole process was confrontational and designed to humiliate and provoke [A2 16-18].

68. After Ms Stafford-Langan collected her belongings the Respondents sent her two emails: one with pictures of the state of her room, and the other complaining about the alleged damage that she had done to the room which ended with

> "We continued to ask ourselves the same question about you until we made further enquiries and established your real name - Rosalie Ward.
> What the internet has thrown up about your true past is making sense to us now and this will be raised in the tribunal regarding your conduct because it could have a significant part to play in all this.
> We have much to replace in terms of damage which will cost us money, as all evidence clearly justified, so will finalize this when the costings have been done and deducted from your deposit.
> We will also use all evidence of the room and witness statements, and this will be used at the tribunal regarding your conduct as a lodger in our home.
> I look forward to hearing from you".

The Council

69. The Council introduced an Additional Licensing scheme on the 1st January 2014 which was extended on the 1 of January 2019 City wide for another five years. Under the Scheme a landlord required an HMO licence if the property is in the boundary of the City of Bath, and is occupied by three or four people who form two or more households and share an amenity such as a kitchen, bathroom or toilet.

70. The Applicants' bundle included a letter from Mr Tim Hill, Environmental Health Officer for the Council, who confirmed that following the inspection of the property on 26 February 2020 the Council found that the landlord had failed to licence a house in multiple occupation as required under section 72 of the 2004 Act. Mr Hill stated that the Council had recently successfully prosecuted the landlord for the Offence and Mr Curle had accepted a simple caution [A1 231].

71. Mr Mordaunt, Housing Standards and Improvement Manager, stated that the Council offered a caution in line with its Enforcement Policy for the following reasons: (1)The Landlord had ceased operation as an HMO; (2) The Landlord had agreed to the works required; (3) There were no other offences; (4) The overall condition of the property was good; (5) There was no history of previous non-compliance; (6) The length of time the property remained unlicensed (5 months and 2 days); (7) The Landlord's response to the HMO letter promptly; (8) The Landlord had engaged throughout [R1 70].

72. Mr Mordaunt said that the Council had regard to the Respondent's mitigation which he recorded as

> "Mrs Curle, took full responsibility for not applying for a licence. At the time in September 2019 they did not know that they could not have more than two lodgers in their home. Other people told them they could have lodgers, as they do themselves, but they did not think to ask about numbers and did not realise that more than two lodgers in their home would mean they would be committing a criminal offence. This is not an excuse but it is the reason they did not think to apply. They are deeply remorseful about this, as Mrs Curle created the situation for which Mrs Curle is very sorry. As soon as they received a letter from Tim Hill dated 11th February 2020 they rectified the situation as quickly as possible as they were horrified they had committed an offence. The property is no longer defined as an HMO".

73. Mr Mordaunt summarised the Council's position that Mr and Mrs Curle expressed clearly their regret, admitted the offence and had fully co-operated.

74. Mr Hill supplied the Respondents with an email dated 24 November 2020 stating that he believed the owners, Mr and Mrs Curle, were resident at the property at the time of the inspection, battery fire detectors were located on the various floors of the property and that there were fire extinguishers (powder) on the first and second landings Mr Hill noted that battery fire detection did not meet the standard for fire detection in a HMO [R1 49].

75. The Applicants stated that the Respondents moved their belongings back into the house ready for the inspection. The Applicants produced a copy of the listing on RightMove dated 29 February 2020 which showed that there was no fire extinguisher in the kitchen [A2 38].

The Tribunal's Findings of Fact

76. The Applicants contended that they were tenants at the Property. The Respondents, on the other hand, argued that the Applicants were lodgers in their family home, and were excluded from the

protection given to tenants and licensees under the 1977 Act against unlawful eviction and harassment.

77. The Tribunal observes that the Respondents did not provide the Applicants with formal written agreements in respect of their terms of occupation at the property. The Respondents did not give a convincing explanation for why written agreements were not provided. The Respondents had been letting rooms in their property since 2017. Mrs Curle indicated that she would provide written agreements for overseas students if requested but not for other students.

78. The Tribunal relies on the contents of WhatsApp, text messages and emails exchanged between the parties which were not challenged by the parties to determine the substance of the agreement. In this regard the Tribunal finds that the Respondents agreed to let a specific bedroom in the property to each Applicant in return for a weekly rent of £100/£120 plus £20 for bills. The Applicants were required to share kitchen/dining and bathroom facilities. The length of the agreement was for a fixed term which coincided with the University's academic year from September to the end of July/August. The evidence showed that there was a break clause in favour of the occupier requiring the Applicant to give four weeks notice to terminate the agreement before the expiry of the fixed term. A deposit was payable initially to the Respondent to secure the room. The Respondents stated that the deposit would be returned to the Applicants at the end of the fixed term unless they left early and or to recompense the Respondents for any damage caused to the property by the Applicants beyond normal wear and tear. The Respondents directed the Applicants to pay the rent and deposit monies into a bank account in the name of Mr Curle.

79. The Tribunal finds in respect of the evidence heard and submitted that the Respondents provided each Applicant with keys to the property. There were no locks on the individual bedrooms. The property was furnished and the Respondents offered the Applicants the option of bed linen, a duvet and towels at the commencement of the agreement. Mrs Curle accepted that the Respondent did not provide the Applicants with services. The Applicants were required to cook for themselves, clean the property and do their own washing.

80. The Tribunal accepts that the Respondents informed the Applicants that they were lodgers at the property. The evidence also indicates that prior to the taking up of the occupation the Respondents misled Ms Lippi about the living arrangements at the property which is demonstrated by Ms Lippi's question to Mrs Curle about residing at the property with Mr Curle (her partner).

81. The Tribunal is satisfied that the Respondents did not live at the property and that the property was not their principal home

throughout the Applicants' occupation of it. The Respondents' assertions to the contrary had no foundation whatsoever in the facts of the case. In the Tribunal's view the evidence was overwhelming that the Respondents lived elsewhere at the property they were renovating and that this was their principal home. The Tribunal's view is substantiated by the SpareRoom Advert dated 3 September 2019, admissions made by Mrs Curle in various messages to the Applicants, the Applicants' evidence that Mr and Mrs Curle only stayed sporadically at the property and that the Respondents let the ground floor bedroom which supposedly was their room to Ms Ciaffaglione. During the Applicants' occupation of the property there was no spare room in the property which could be occupied by the Respondents.

82. The Tribunal was not impressed with Mrs Curle's evidence about keeping their possessions at the property. Mrs Curle's suggestion that they moved expensive furniture into the shed was in itself suspect. Moreover it was in direct contradiction of the statement in the SpareRoom advert about moving furniture to the house that they were renovating and her earlier statement until prompted to change it by Mr Curle. The Tribunal considers that Ms Stafford-Langan's statement that the Respondents had kept small ornaments, some books and wall art in the property an accurate description of the extent of the Respondents' personal possessions at the property. Further the existence of a pre-payment meter for utilities is more indicative of the house being let rather than being used as the principal home. Finally the Respondents' reluctance to disclose details of Mr Curle's other property which only came to light due to the Applicants' persistence added to the Tribunal's scepticism about the Respondents' assertion that 105 Bradford Road was their principal property and home.

83. The Tribunal finds that the Respondents' son had occupied the ground floor bedroom from September 2019 until the end of November 2019. The evidence showed that he did not return to the property to live in the ground floor bedroom, and was not in occupation when the Applicants were evicted from the property. The evidence also indicated that he lived with his girlfriend. The Respondents adduced no evidence that 105 Bradford Road was their son's principal home. The fact that the ground floor room was occupied by Ms Ciaffaglione throughout January 2020 suggested that the son's principal home was elsewhere.

84. The question now for the Tribunal to decide is the status of the Applicants' occupation of the property. In the leading case of *Street v Mountford* [1985] 2 All ER 289 HL the House of Lords determined that the issue of whether a tenancy existed is one of fact. In this respect the parties' subjective intentions or the fact that the agreement is called a licence are not determinative of the issue.

85. The Tribunal concludes on the facts found that each Applicant was granted exclusive possession of a specific room in the property for a defined period of time in return for the payment of rent. These are the three hallmarks of a tenancy. Further the Tribunal is satisfied that the parties intended to enter into legal relations the Applicants paid a market rent for exclusive use of their individual rooms, and the Respondents protected their position by requiring a deposit and notice to break the agreement.

86. The Tribunal decides that the Applicants held individual tenancies under an assured shorthold which gave them exclusive possession of their rooms and the use of shared facilities in the property. The landlord is Mr Curle who owned the freehold of the property and was in receipt of the rents paid by the Applicants.

87. The Tribunal deals later with the issue on whether the tenancies were excluded tenancies.

Has the Offence of No HMO Licence been Committed?

88. The offence of controlling or managing an HMO without a licence under section 72(1) of the 2004 is one of strict liability. In order to prove the offence the Applicants are required to establish beyond reasonable doubt that (1) the landlord had control of or managed the HMO as defined in section 263 of the 2004 Act; (2) that the property was an HMO that required to be licensed; and (3) the property was not so licensed (*Mohamed & Lahrie v Waltham Crescent* [2020] EWHC 1083).

89. Under section 72(5) of the 2004 Act in proceedings against a person for an offence under section 72(1) of the 2004 Act it is a defence that the person had a reasonable excuse.

90. The Tribunal finds that Mr Curle had control and managed the property. Mr Curle is the owner of the freehold of the property and the rents from the Applicants were paid into his bank account. The rents paid were market rents.

91. The Tribunal is satisfied on the evidence that throughout period from 2 September 2019 to 21 February 2020 there were at least three students occupying individual units of accommodation within the property. In the period from 15 September to 30 November there were five persons in occupation, four of whom were students. In the periods from 30 November 2019 to 3 January 2020, and from 28 January 2020 to 18 February 2020 there were four students in occupation. In the period 3 January 2020 to 28 January 2020, there were five students in occupation.

92. The Tribunal finds that (1) all the students paid rent for their occupation; (2) None of the persons in occupation were related to each other which meant that at any one time there were at least three separate households; (3) The students in the property were

treated as occupying the individual units of accommodation as their only or main residence by virtue of section 259 of the 2004 Act; (4) the students occupation of the living accommodation constituted their only use of it; (5) the students shared bathrooms and the kitchen and dining area.

93. The Tribunal concludes from the findings in the above two paragraphs that the property was required to be licensed as an HMO under the additional licensing scheme operated by Bath and North Somerset District Council which applied to three or four people who form two or more households and share an amenity such as a kitchen, bathroom or toilet[5]. The Tribunal also notes when the property was occupied by five persons it met the standard test for mandatory HMO licensing under section 55(1)(b) of the 2004 Act.

94. The Respondents admitted they did not have an HMO licence for the property. The Respondents' reasons for not having a licence were that they were non-professional resident landlords who were naïve and inadvertently let out two rooms too many in their property. Mrs Curle acknowledged that they had been letting rooms on a commercial basis since 2017. Mrs Curle said that they had taken the advice of their accountant who referred them to the "Rent a Room Scheme". Mrs Curle produced an extract from the GovUK website on The Rent a Room Scheme dated "38 days before Brexit" which said that the Scheme allowed "persons to earn up to a threshold of £7,500 per year tax fee and that you can let out as much of your home as you want". Mrs Curle indicated that they did not seek advice from other sources when they started to let rooms commercially.

95. The Tribunal at this stage is considering whether the Respondents have a reasonable excuse for the Offence of having no HMO licence. Essentially their reason was that they did not know they were committing an offence by letting out more than two rooms in their property. The Tribunal points out that ignorance of the law cannot constitute a reasonable excuse. Mrs Curle suggested that they were misled by the Gov.UK advice on the "Rent a Room Scheme". The Tribunal observes that the "Rent A Room scheme" is concerned with the taxation of income from lettings, and does not purport to give advice to landlords on the legal requirements of letting. In the Tribunal's view a prudent person considering letting as a commercial enterprise would have taken steps to familiarise oneself with the basic legal requirements of letting. The Tribunal notes that the "SpareRoom" website which the Respondents used for advertising the rooms included basic advice to landlords including the definition of HMOs. The Tribunal is satisfied that the Respondents made no meaningful enquiries about their responsibilities as landlords and recklessly ignored their legal

[5] See [65] ante.

obligations. The Tribunal finds that the Respondents did not have reasonable excuse for committing the Offence of no HMO licence.

96. The Tribunal records that Mr Curle admitted the Offence of having no HMO licence by accepting the simple caution offered by the Council.

97. The Tribunal finds

a) Mr Curle controlled and managed the property.

b) The property was an HMO which required to be licensed from 2 September 2019.

c) There was no licence in force for the property from 2 September 2019 to 21 February 2020.

d) The offence is one of strict liability. The Respondent did not have a reasonable excuse for commission of the offence.

98. The Tribunal is, therefore, satisfied beyond reasonable doubt that Mr Curle committed the offence of a person having control of or managing a HMO which is required to be licensed but is not so licensed from 2 September 2019 to 21 February 2020 (inclusive) pursuant to section 72(1) of the 2004 Act.

Has an Offence under Protection for Eviction Act 1977 been committed?

99. The Applicants allege that they were unlawfully evicted from the premises, and that the Respondents had committed an offence under section 1(2) of the 1977 Act by depriving them of their right to occupy their rooms under a tenancy agreement.

100. The Respondents argued that the tenancies granted to the Applicants were excluded tenancies within the meaning of section 3A of the 1977 Act and, therefore, were not subject to the provisions of the 1977 Act.

101. The Tribunal decided that the Applicants held individual tenancies under an assured shorthold which gave them exclusive possession of their rooms and the use of shared facilities in the property.

102. The Tribunal found that the Respondents did not live at the property and that the property was not their principal home throughout the Applicants' occupation of it. Further the Tribunal found in relation to the Respondent's son that he was not in occupation of the property from end of November 2019 through to when the Applicants were evicted from the property, and that the Respondents adduced no evidence that the ground floor room was his principal or main residence. The evidence indicated that the son had a home elsewhere.

103. Given the above findings the tenancies held by the Applicants did not fulfil the definition of excluded tenancy as defined by section 3A subsections (2) and (3) of the 1977 Act. In the case of subsection (2) the Applicants did not share any accommodation with the Respondents, and the Respondents did not occupy the accommodation as their only principal home immediately before and at the end of the tenancy. In respect of subsection (3) the Respondent's son only shared the accommodation with the Applicants until the end of November 2019 but he did not occupy the accommodation as his only or principal home immediately before and at the end of the tenancy and likewise his parents did occupy the property as their only or principal home.

104. The Tribunal refers to the evidence of the events in February 2020, and makes the following findings[6]:

- On 14 February 2020 Mrs Curle gave Ms Ray and Ms Lippi verbal notice to quit the property in seven days which was later changed by a message on WhatsApp to Thursday 20 February 2020.

- On 14 February 2020 Mrs Curle gave Ms Stafford-Langan seven days notice to quit by means of a WhatsApp message.

- On 14 February 2020 at 18:33 Mrs Curle sent all three Applicants a WhatsApp message informing them that the departure date was Thursday 20 February 2020. Mrs Curle further stated that according to UK law the Applicants were not entitled to a written notice to quit, that the notice had to be for a reasonable period which in this case was seven days, and that the Respondents were entitled to change the locks on the property.

- The Respondents gave the Applicants notices to quit in direct response to the letter received on 14 February 2020 from Mr Hill investigating the potential offence of in charge or managing an HMO without a licence. Mrs Curle admitted that the Respondents decided to reduce the number of occupants living in the property in time for the inspection by Mr Hill. The Tribunal is satisfied that the Respondents blamed the Applicants especially Ms Stafford-Langan for their predicament. The Tribunal notes that Mrs Curle withdrew the notice to quit against Ms Ciaffeglione.

- At time of the issue of the notice to quit the Applicants were up to date with their payment of rent. The Respondents stated that Ms Stafford-Langan had not paid her rent which was not correct. Ms Stafford-Langan had made payment on the 8

[6] See [49-68] Ante

February 2020 for the week ending 15 February 2020 when the next payment was due.

- The notice to quit to Ms Lippi broke the Respondents' agreement with Ms Lippi that she would leave the property on 28 February 2020 provided she paid the rent until 9 March 2020.

- The Tribunal is satisfied that the Respondents issued the notices to quit to the Applicants in retaliation for them being reported to the Council for the potential offence of managing an HMO without a licence.

- On the 17 February 2020 Mrs Curle required Ms Lippi and Ms Ray on their return to the property in the evening at 18:00 to sign a note that they had agreed to leave the property on 20 February 2020. The Tribunal observes that Mrs Curle accepted that she asked them to sign a note about them agreeing to leave. Her dispute was about whether she asked them to include reference about them being lodgers. This dispute is not relevant to the central issue of whether she asked them to sign a letter that they were leaving.

- The Tribunal accepts the evidence of Ms Ray and Ms Lippi that Mrs Curle was preventing them from stopping at the property unless they signed the note that they were leaving on 20 February 2020. Mrs Curle denied this and referred to a transcript of a video which recorded Mrs Curle as stating "But I am not denying you entry into the house. You are in the house. I am not going to lock you out the house". In the Tribunal's view Mrs Curle's comment should be assessed in the context of the Respondents' conduct once they found out they were being investigated for an offence of no HMO licence. The Tribunal finds that the Respondents had embarked upon a calculated course of conduct designed to put the blame on the Applicants and to protect their position. Mrs Curle decided to video the exchange with Ms Ray and Ms Lippi. The Tribunal does not accept Mrs Curle's explanation for videoing the exchange that she was in fear of Ms Ray and Ms Lippi. The purposes of the video and the letter were to enable the Respondents to put forward a case that Ms Lippi and Ms Ray had surrendered their tenancy. The Tribunal observes that Mrs Curle's statement of not denying access to the property was made after Ms Lippi and Ms Ray had decided to leave because they were not prepared to sign the note.

- Ms Lippi and Ms Ray stopped with friends on the evening of 17 February 2020 and were placed in emergency accommodation by the University from the 18 February 2020. They collected their belongings on the 18 February 2020 from

the property in the presence of Ms Ray's parents. They ensured that their rent was paid up to 21 February 2020.

- Ms Stafford-Langan did not occupy the property from the 14 February 2020 when Notice to quit was given. Ms Stafford-Langan collected her belongings on 20 February 2020 in the presence of her father. The Tribunal is satisfied that Mr Curle's decision to highlight specific items of Ms Stafford-Langan's personal belongings in the presence of her father was confrontational and designed to humiliate and provoke Ms Stafford-Langan and her father.

- The Respondents did not specify the alleged breaches of house rules and the alleged damage to the landlord's property by Ms Stafford-Langan in the notice to quit. The Tribunal observes that the Respondents should have been aware of the alleged breaches earlier if as they maintain that they had lived at the property.

- The Respondents' decision to share personal information about Ms Langan-Stafford with Ms Ray and Ms Lippi and to show Mr Ray some of Ms Langan-Stafford's personal belongings was intended to slur the character of Ms Langan-Stafford and discourage the Applicants from bringing proceedings for a RRO.

105. The Tribunal decided that the tenancy held by the Applicants was for a fixed term ending at the end of academic year: either end of July or end of August 2020. The Respondents were not entitled to give notice to terminate the tenancy early unless the Applicants had breached the conditions of the tenancy. The Tribunal noted that the agreement contained a break clause but the evidence indicated that the clause operated only in favour of the tenant who could give four weeks notice if the tenant decided to break the contract earlier than agreed.

106. It follows, therefore, that the Respondents were not entitled to terminate the agreements in the manner they did, and that the actions taken on 14 February 2020 were intended to evict the Applicants permanently from their individual rooms and property. The Tribunal is satisfied that the Respondents were acting in concert.

107. The Tribunal adds that if the break clause operated in the favour of the Landlord, the notice given by the Respondents did not comply with the requirements of section 5 of the 1977 Act. The notice to quit was not in writing, it did not contain the prescribed information such as the requirement to apply to the Court for a possession Order if the tenant did not leave the property, and it did not give less than 4 weeks notice.

108. The Tribunal is satisfied beyond reasonable doubt that the Respondents, Mr and Mrs Curle, had committed the offence of unlawfully depriving the Applicants of occupation of their rooms in the property contrary to section 1(2) of the 1977 Act.

109. The Applicants contended that the Respondents had committed an offence of unlawful harassment under section 1(3A) of the 1977 Act by doing Acts likely to interfere with the peace or comfort of the Applicants knowing or had reasonable cause to believe that the conduct is likely to cause the Applicants to give up the occupation of the whole or part of the premises.

110. The Applicants in support of their contention relied principally upon the events in February 2020 surrounding the unlawful eviction. The Tribunal takes the view that the facts of those events are relevant as aggravating features of the Offence under section 1(2) of the 1977 committed by the Respondents to which the Tribunal will have proper regard when it assesses the conduct of the landlord to determine the level of the RRO. In those circumstances the Tribunal considers it unnecessary to make a finding in the alternative about whether the Respondents have committed an offence under section 1(3A) of the 1977 Act.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act?

111. The Claim was apportioned between the Applicants as follows: Rosalie Stafford-Langan: £120.00 per week (plus £20.00 bills) from 14 September 2019 to 8 February 2020 total £2,640.00 plus £440.00 for bills. Annabelle Ray: £100.00.00 per week (plus £20.00 for bills) from 1 September 2019 to 21 February 2020 total £2,485.00 plus £477.00 for bills[7]. Anania Lippi: £120.00.00 per week (plus £20.00 for bills) from 2 September 2019 to 21 February 2020 total £3,000.00 plus £440 for bills.

112. Under section 44(3)(a) of the 2016 Act the Tribunal may order the landlord who has committed an offence under section 1(2) of the 1977 Act to repay rent in the period of 12 months ending with the date of the offence which was on the 18 February 2020 in the case of Ms Lippi and Ms Ray and on the 20 February 2020 for Ms Stafford-Langan. Likewise the Tribunal may order the landlord who has committed an offence under section 72(1) of the 2004 Act to repay rent in a period not exceeding 12 months during which the landlord was committing the offence which was from 2 September 2019 to 21 February 2020. The Tribunal takes the view that the combination of the two sets of time periods for the respective

[7] Ms Ray did not include the £100 rent payment made on 12 January 2020 in her calculation. Hence the Tribunal has increased the Claim by £100.

offences enables it to make an order for the total amount of rent paid by the Applicants.

113. The next issue is whether the weekly payment of £20 paid by the Applicants to the Respondents for "bills" should be treated as rent for the purposes of any potential rent repayment order.

114. Under section 52(1) of the 2016 Act rent includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit. Section 11 (1) states that the calculation of an award of universal credit is to include an amount in respect of any liability of a claimant to make payments in respect of the accommodation they occupy as their home.

115. The Tribunal finds that the Applicants were liable under the tenancy to pay £20 a week for bills, and in that respect it meets the definition of rent under section 52(1) of the 2017 Act. The Tribunal adds that the £20 was a fixed amount which did not vary with the costs to which it was applied, and was payable regardless of whether the Applicant was living in the accommodation. The Tribunal considers the payment of £20 has the hallmarks of a rental payment. The Tribunal decides to include the £20 payments in the maximum calculation for any potential RRO.

116. The Tribunal, therefore, finds that the maximum amount that the Respondent can be ordered to pay under a RRO is £3,080 (Ms Langan-Stafford); £2,962 (Ms Ray)[8] and £3,440 (Ms Lippi) which makes a total of £9,482.

117. Under the 2017 Act a RRO can only be made against the landlord. The Tribunal has decided that Mr Curle is the landlord in this case.

What is the Amount that the Landlord should pay under a RRO?

118. In determining the amount, the Tribunal must, in particular, take into account the conduct and financial circumstances of the Respondent in his capacity as landlord, whether at any time the Respondent had been convicted of a housing offence to which section 40 applies, and the conduct of the Applicants.

119. The Tribunal starts its consideration on the size of the RRO by considering the decision of the Upper Tribunal in *Mr Babu Rathinapandi Vadamalayan v Edward Stewart and others* [2020] UKUT 0183 (LC). Judge Cooke at [11] observed that there was no requirement that a payment in favour of Tenant in respect of RRO should be reasonable, and at [12] that this meant the starting point for determining the amount of rent is the maximum rent payable

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for the period in question. Judge Cooke went onto say at [14] and [15] that

> "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.
>
> "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".

120. Judge Cooke concluded at [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".

121. The 2016 Act extended the scope of rent repayments orders with an emphasis upon rogue landlords not benefiting from the letting of sub-standard accommodation and it also removed the requirement for the Tribunal to determine such amount as it considered reasonable for the eventual order.

122. The structure of the 2016 legislation requires the Tribunal to determine first the maximum amount payable under an RRO and then to decide the actual amount payable on the circumstances of the case. The Tribunal must in particular take into account the conduct of the landlord and tenant, the financial circumstances of

the landlord and whether the landlord has at any time been convicted of a "housing offence" (section 44(4).

Landlords' Conduct

123. The Applicants contended that the Respondents had taken advantage of their position of students away from home with limited experience of independent renting. The Applicants had queried why the Respondents were not living at the property after being told they were lodgers. The Applicants stated that they put up with the situation until it became apparent that the Respondents were operating illegally.

124. The Applicants believed that the Respondents knew what they were doing was questionable. The Applicants referred to various incidents where the Respondents attempted to discourage them from contact with the council. The Applicants cited Mrs Curl telling Ms Ray not to contact the Council about recycling bins, and Mrs Curl cautioning Ms Stafford-Langan and Ms Ray about their decision to register to vote saying that it goes against their credit rating if they have multiple addresses. The Applicants also relied on the Respondent's agreement with Ms Ciaffaglione which said that as she was a lodger there was no need for her to contact the Council regarding tax payments. Finally the Applicants mentioned Mrs Curl's WhatsApp and text messages with Ms Stafford-Langan on 6 February 2020 suggesting that Ms Stafford-Langan was confused about the law that she did not have a shorthold assured tenancy and that she was a lodger in the family home. Mrs Curl adding that "I just wanted to talk to you as I know how things can be lost in translation over text".

125. The Applicants argued that the Respondents' behaviour after they found out that they had been reported to the Council was intimidating, threatening and in some cases malicious. The Applicants pointed out that the Respondents immediately proceeded to evict them giving initially only one week to find alternative accommodation which was then followed by a second unlawful eviction three days later when Ms Lippi and Ms Ray were denied access to the property. As a result of the Respondents' actions Ms Lippi and Ms Ray experienced severe emotional upset and were effectively out on the street having to source emergency accommodation from friends and the University.

126. The Applicants submitted that the Respondents' attempts to smear the character of Ms Stafford-Langan in the eyes of her father, the other Applicants, and Ms Ray's parents by revealing details of her sexual life and inviting them to Google her previous name were inappropriate and extremely disturbing. The Applicants also asserted that the Respondents threatened to use the personal

information about Ms Stafford-Langan in order to persuade them not to bring the proceedings for a RRO.

127. The Respondents said they deeply regretted their naivety by inadvertently letting out two rooms too many in their home. The Respondents stressed they were not professional landlords and were not aware of the requirement to licence the property as an HMO.

128. The Respondents stated that at the time they were experiencing very difficult personal circumstances. Mrs Curle had been made redundant from her job in April 2019. Mr Curle had been suffering with a severe health condition and had been diagnosed with suspected fibromyalgia which was exacerbated by a serious fall in January 2020. As a result of his worsening health condition Mr Curle could no longer carry on with his business renovating properties and had to claim benefits.

129. The Respondents relied on the Council's reasons for dealing with the Offence by means of a simple caution. The Council found that the overall condition of the property was good, no history of previous non-compliance and the Respondents were remorseful, had responded promptly and engaged throughout. Mrs Curle quoted from a phone conversation with Mr Mordent who was recorded as saying:

> "You (Mrs Curle) were clearly not the rogue landlords the penal law seeks to penalise heavily, which is why we did not prosecute you. It was a new law only recently brought to Bath and, unfortunately, you have fallen between the cracks in this law".

130. The Respondents maintained that they had treated the Applicants with kindness and consideration and had a reasonable relationship with the Applicants until the events in February 2020. The Respondents asserted they did not smear Ms Stafford-Langan's character. The Respondents pointed out that her activities were already in the public domain, having been published on the Daily Mail website and that they had made the enquiries in order to find out with whom they were dealing. The Respondents insisted they had not told the Applicants not to vote and to stay away from the Council. Mrs Curle asserted that Ms Lippi and Ms Ray were aggressive with her on the evening of 17 February 2020.

131. The Respondents submitted that they had never acted out of greed but out of necessity and naivety. The Respondents asserted they had learned their lesson which had consumed them for most of the year. Mrs Curle said that she was now receiving counselling via Victim Support, CICA and NHS CBT, having reported historical abuse in May 2020, triggered by the Applicants' conduct in their family home.

Tenants' Conduct

132. The Respondents contended that Ms Stafford-Langan's behaviour in their home was unacceptable. They accused her of breaking house rules by having overnight visitors and by smoking in the property.

133. The Respondents said that Ms Stafford-Langan had left her room in a filthy and damaged condition. It took Mrs Curle more than five hours to clean the room which she hoovered, and washed everything with hot water and disinfectant to get the smell of smoke out of the room. Mrs Curle said the rug was damaged by ink splatters, the mattress and the quilt had to be taken to the tip, and that repairs had to be done to the curtain pole and table. The Respondents in their response to the Applicants reply quantified the damage at £785 which included £140 rent for the week of 15 to 21 February 2020 [R2 4]. The Respondents had withheld the deposit of £600 paid by Ms Stafford-Langan to recompense them for the damage. The Respondents warned Ms Stafford-Langan that they would bring this to the attention of the Tribunal if an application for a RRO was made.

134. The Respondents accepted that the conduct of Ms Lippi and Ms Ray was reasonable until the events in February 2020. The Respondents alleged that their attitude changed once the notice to quit was issued. The Respondents denied that Ms Ray was in distress and they accused Ms Lippi of aggression towards Mrs Curle on 17 February 2020. The Respondents accused Ms Ray of being in contempt of court because she knew that she was a lodger. The Respondents also said that the Applicants harassed the remaining tenant, Ms Ciaffaglione, and attempted to get her involved in the action for a RRO. The Respondents specified 14 examples of false statements by the Applicants at their end of their "Brief Response to the Applicants' reply" [R2 10].

135. Ms Stafford-Langan denied that she had admitted the damage. Ms Stafford-Langan stated that the curtain pole had fallen off when she pulled the curtain and was intending to report it to the Respondents but events got overtaken by the notice to quit. Ms Stafford-Langan stated that the Respondents had not provided her with a breakdown of the costs of the damage incurred[9].

136. Ms Ray asserted that she was under severe emotional stress due to her being prevented from entering the main body of the property on 17 February 2020. Ms Ray denied that she was in contempt. Ms Ray had accepted the Mrs Curle's statement that they were lodgers, and was unaware of her true status as a tenant in the property until advised to the contrary by the University Housing Team. Ms Lippi denied that she was aggressive to Mrs Curle. The Applicants considered Mrs Curle's decision to video their encounter as

[9] The breakdown of costs was subsequently supplied by the Respondents in their Brief response to the Applicant's reply.

unreasonable and contrary to Mrs Curle's assertion that she was attempting to de-escalate the situation.

137. The Applicants pointed out that no witness statement had been provided to confirm the accusations of harassment towards. Ms Ciaffaglione. The Applicants maintained that they had a good relationship with her, offering support when the eviction notice was served. When Ms Ciaffaglione told the Applicants that she did not want to be a part of the legal proceedings, the Applicants respected this, and made a new group chat without her. The 'not nice situation' alluded to in the Respondent's bundle was in reference to the difficult situation that Mrs Curle had constructed by asking Ms Ciaffaglione not to inform the Applicants that she could be a lodger in the property, not because of their conduct.

138. The Applicants had paid their rent and the additional bills regularly and there were no arrears except for the disputed rent payment of Ms Stafford-Langan from the 15 February 2020 which was after the purported notice to quit on 14 February 2020.

The Respondents' Financial Circumstances

139. The Respondents stated that Mrs Curle lost her job in April 2019 with a local children's charity, and that Mr Curle had to cease running his business as a property developer because of his deteriorating health. Mr Curle had been diagnosed with suspected fibromyalgia. The Respondents produced a letter from Dr Hinder of Combe Down Surgery dated 9 November 2020 stating that Mr Curle had been under ongoing investigation over the past year and that he had suffered a really nasty fall in January 2020 which had significantly impacted on his mobility. Dr Hinder said that the combination of the ongoing health condition and the nasty fall had curtailed Mr Curle's ability to work for some time. In view of Mr Curle's deteriorating health the Respondents had been struggling financially in 2019 which they said had been the trigger for letting more rooms in the property in order to cover their outgoings.

140. The Respondents stated that they received income of about £3,280 a month which comprised £1,300 rent, £500 (EBAY sales), £594 Universal Credit, £600 enhanced Personal Independence Payment, and £280 - £290 carers allowance. Their monthly outgoings totalled £2,936 which comprised £42 Wessex Water, £42.50 broadband, £120 gas and electricity, £50 phones, £49 credit cards, £137 Council Tax, £1094 mortgages, £42.28 life insurance, £89.86 car insurance and tax, £150 petrol, £30 AIL bank insurance, £11.95 bank fees, £7.99 Amazon Prime, £100 writing course, £450 food, £190 E BAY fees, £200 PAYPAL fees £10 Netflix and £160 business loan.

141. The Respondents produced bank statements for Mr Curle trading as LSC Enterprises which showed an overdrawn balance of

£5,302.40 for November 2020 and agreed overdraft limit for £8,000 and bank statements for an account held by Mrs Curle which showed a closing balance of £66.57 for February 2020.

142. The Respondents had put up the property for sale in February 2020 for offers in excess of £400,000. The mortgage owed on the property was £243,000. The Respondents said that the likely selling price was in the region of £360,000 which gave an equity of £120,000. The Respondents said they were liable to pay a bill of £1,450 to Purple Bricks if the property was not sold by the end of January 2021.

143. The Respondents were only prepared to divulge the address of the second property to the Tribunal in private. The Tribunal explained that this was not possible. The Tribunal asked the Respondents to describe the property and advise on value and the equity held. The Respondents said that Mr Curle owned the freehold of the property which was 220 years old with four bedrooms, two reception rooms, basement, kitchen and bathroom. The Respondents explained that a party wall suffered from severe bowing which would cost £25,000 to repair. The Respondents said that they had purchased the property in November 2018 for £190,000 with a mortgage of £152,000. The Respondents also said they borrowed £75,000 from a friend to renovate the property but which had been spent on general living expenses. The Respondents produced no documents to substantiate the borrowings on the property.

144. The Respondents said that the monthly outgoings for utility bills at the property were £180 gas and electricity; £31.50 WIFI, and £40 water making a total of £251.50 which equated to 58 per cent of the total amount of £433.33 paid towards the bills each month by five persons living at the property

Other Circumstances

145. There was no evidence that the Respondents had been convicted of a housing offence.

The Tribunal's Assessment of the Amount

The Respondents' Conduct

146. As explained previously the Tribunal starts with the maximum amount payable and decides whether it should be reduced after taking into consideration all the circumstances of case but in particular the conduct of the landlord and tenant, the landlord's financial circumstances and previous convictions if any for a housing offence.

147. In the preceding paragraphs the Tribunal has summarised the parties' evidence on the factors specified in section 44 (6) of 2017. The Tribunal's evaluation of the evidence has been guided by its

assessment of the parties' credibility and the reliability of the evidence presented. The Tribunal decided that Mr Curle was the landlord under the tenancy agreement with the Applicants. The Tribunal has also determined that Mr and Mrs Curle were engaged in a joint enterprise in the letting of the property. In this regard the Tribunal has taken into account the actions of both Mr and Mrs Curle in determining the landlord's culpability.

148. The Tribunal considers that the Respondents' credibility was severely tarnished by their insistence throughout the proceedings that they lived at the property and that it was their principal and only home. This was contradicted by Mrs Curle's statements that they were living at the home which was being renovated and the fact that it was physically impossible for Mr and Mrs Curle to live at 105 Bradford Road. Mrs Curle realised the hopelessness of her position when she mused about Mr and Mrs Curle sharing the only spare room in the house with their son in answer to a question about her statement on the website that they were living elsewhere. The fact is that there was no room in the house which Mr and Mrs Curle could have occupied during the period of the Applicants' tenancies. Mr and Mrs Curle knew that but then sought to obfuscate the position with the Tribunal by reference to their holiday overseas at the end of October 2019 with Mrs Curle's parents and also stopping with their son's godmother.

149. The Respondents' credibility was further undermined by their contradictory evidence on the location of their personal possessions. Mrs Curle initially said that the property housed their furniture and beds, and that her clothes and toiletries were kept in drawers and in the bathroom at the property which were then transferred to the loft and the shed when Ms Ciaffaglione moved into the downstairs room. Mrs Curle was then later asked to explain her statement in the SpareRoom Advert about moving furniture from the property to the home that they were renovating. Mrs Curle started off by describing the furniture as really expensive, mirrored and beautiful, the bed alone cost £3,000 and she was worried that it might be broken by the lodgers if left in the house. Mrs Curle then confirmed that it had been moved to their other property only to be interrupted by Mr Curle who prompted her to say "the shed".

150. It would have been better for the Respondents' case if they had been open and transparent with the Tribunal from the beginning about the existence of the other property and the time that they had stopped there. Instead it was left to the Applicants to highlight the existence of the other home which enabled the Tribunal to explore the issue but not in any detail because of the Tribunal's obligation to hold back from stepping into the arena.

151. The Tribunal's assessment of the Respondents' credibility on the central part of their case is material to its findings on the specific matters referred to in section 44(6) of the 2016 Act.

152. The Tribunal finds that the Respondents were letting rooms as a business, and had been doing so since 2017. They had targeted a specific sector of the market which was students including overseas students.

153. The Tribunal does not accept the Respondents' assertions that they were naïve and inexperienced landlords. Mr Curle was a property developer which would have given him insight of the rental market. Mrs Curle demonstrated an understanding of the legal requirements by referring to the Applicants as lodgers in her dealings with them, and her habit of explaining UK law to overseas students. The Tribunal considers that as they were running a business it was incumbent upon them to make enquiries about the legal requirements of letting rooms, and satisfy themselves they were meeting the various requirements. Mrs Curle used the SpareRoom website for advertising lettings at the property which held readily available information to landlords about tenancy agreements, taking in lodgers, and HMOs.

154. The Tribunal finds that the Respondents' failure to reduce their agreements with the Applicants into writing was intentional and not the action of a prudent landlord. The effect of this was that the Applicants had no certainty of their standing with the Respondents. Ms Lippi originally understood that Mrs Curle was living with her partner at the property until told otherwise by Mrs Curle. Ms Lippi was required to pay rent until 9 March 2020 (later amended to 7 March 2020) even though she had agreed to Mrs Curle's request to leave early on the 28 February 2020.

155. The Tribunal accepts the Applicants' evidence that the Respondents discouraged them from contacting the Council and to deflect them from investigating their status as tenants at the property. In this respect the Tribunal relies on the Applicants' evidence on registering their vote, the recycling bins, Ms Ciaffaglione's agreement and Mrs Curle's messages and conversation with Ms Stafford-Langan on 6 February 2020. The Tribunal considers the evidence speaks for itself and when looked at together builds a picture of the Respondents being uncomfortable with the true arrangements at the property coming to light.

156. The Tribunal holds that the Respondents did not accept responsibility and were not contrite for the illegal act of controlling or managing an HMO without a licence. The Respondents instead decided to take it out on the Applicants who had reported them to the Council. Their actions in evicting the Applicants initially giving them seven days notice to find alternative accommodation and then preventing Ms Lippi and Ms Ray from entering their rooms just three days later on 17 February 2020 was not only illegal but vindictive and fitted the description of a retaliatory eviction. Their attempts to malign the character of Ms Stafford-Langan by reference to an entry on the Web over six years old when she was

17, and to embarrass her in front of her father with details of her sex life were unconscionable. The Tribunal was not impressed with the Respondents' explanations for their behaviour which were that they had to get the numbers down and that the attack on Ms Stafford-Langan's character was relevant to the issue of tenants conduct for a RRO. The Tribunal is satisfied that the Respondents took these actions to protect their position by attempting to dissuade the Applicants from bringing a RRO application and to obtain from Ms Lippi and Ms Ray their agreement in writing to leaving the property so that they would have a defence to a charge of unlawful eviction.

157. The Tribunal accepts the medical evidence produced by Mr Curle. This showed a deterioration in his health which prevented him from gainful employment and which placed the Respondents in a difficult financial position. The Tribunal also accepts the Respondents' evidence about that the standard of accommodation being good, although it was not totally compliant with HMO requirements for fire detection.

158. If the Respondents had accepted responsibility for their contravention of HMO licensing and had not resorted to unlawful means to resolve their difficulties the Tribunal may have taken a different view of their conduct particularly in light of Mr Curle's state of health. The Tribunal, however, is bound by its findings that (1)The Respondents knew or should have known their responsibilities as landlords; (2) They chose not to put the agreements in writing creating uncertainty for the Applicants about their legal status at the property; (3) They were uncomfortable with their arrangements at the property coming to the attention of the authorities: (4) They did not accept responsibility and were not contrite for their offending; (5) Their actions against the Applicants who reported them were unlawful and unconscionable. The Tribunal concludes that the Respondents fitted the description of rogue landlords who demonstrated a blatant disregard of the law for the letting of residential accommodation.

159. The Tribunal acknowledges that it has come a different conclusion from Mr Mordaunt, and the reasons he gave on behalf of the Council for dealing with the offence of no HMO licence by offering a "simple caution". As a rule the Tribunal gives weight to the view of the Council. The Tribunal has decided not to do so in this case because the Tribunal has had the benefit of hearing from both parties supported by their detailed written evidence of over 400 pages, and considered a wider set of circumstances than the Council including the contraventions under the 1977 Act. The Tribunal is confident that the Council's investigation did not go into the same depth as the Tribunal's deliberations.

The Respondents' Financial Circumstances

160. The Tribunal finds that on the evidence given by the Respondents that their income exceeded their outgoings including food by about £300 a month and that Mr Curle had sizeable equity in the property of at least £120,000. The Tribunal was unable to form a view on the equity held in the second property because the Respondents failed to substantiate their assertions with documentations.

161. The Tribunal accepts the Respondents' evidence the monthly expenditure for utility costs at the property which they said was £251.50 per month. This would have represented 58 per cent of the amount paid by five tenants which would include the applicants' son when he was at the property paying £20 per week for the bills.

The Tenants' Conduct

162. The Respondents had no complaints with Ms Ray and Ms Lippi prior to the 14 February 2020. The Respondents' complaints with them related to their responses after they were given notice to quit. The Respondents cited the behaviour of Ms Lippi and Ms Ray on 17 February 2020 when they were denied access to their rooms and Ms Ray's insistence that she was not a lodger which the Respondents said brought her in contempt of court. The Tribunal accepts the accounts of Ms Lippi and Ms Ray. The Tribunal finds that they were put under severe emotional pressure by Mrs Curle's attempt on the 17 February 2020 to get them to sign a document agreeing to leave. Ms Ray had not been untruthful. Ms Ray had accepted Mrs Curle's word that they were lodgers, until she found out after the unlawful eviction that her occupation constituted a tenancy in law.

163. The Tribunal's assessment of Ms Ray and Ms Lippi is that they were model tenants. They paid their rent and the £20 for bills regularly every week and even paid their rent up to 21 February 2020 despite having to leave on the 18 February 2020. In Ms Lippi's case she had previously agreed with Mrs Curle that she could terminate her agreement early and had accepted Mrs Curle's demand that she paid the rent up to 9 March 2020 even though she would have vacated the property on 28 February 2020. It was the Respondents who were in breach of that agreement with Ms Lippi as well as the tenancy agreement when they issued the notice to quit on 14 February 2020.

164. The Respondents directed their principal criticisms at Ms Stafford-Langan. They accused her of being in breach of house rules by smoking in the property and having overnight guests, of damaging their property and not paying the last weeks rent. The Tribunal finds that these allegations were only made after the Respondents found out that they had been reported to the Council for an alleged

offence in connection with HMO licensing. The Tribunal places weight on the fact that the Respondents had no quarrel with Ms Stafford-Langan's behaviour prior to the 14 February 2020. The evidence bundle contained a comprehensive set of text and WhatsApp messages between Ms Stafford-Langan and Mrs Curle, and there was no message from Mrs Curle before 14 February 2020 voicing concerns about Ms Stafford-Langan's conduct. Equally Mrs Curle did not state that Ms Stafford-Langan was in breach of her agreement when she gave Notice to quit.

165. Ms Stafford Langan had paid her rent up to the 15 February 2020, and owed no rent at the time of the notice to quit. The Respondents had accepted the payments of rent when offered.

166. The Respondents first provided a breakdown of the costs of the alleged damage to the property in the room occupied by Ms Stafford -Langan in their brief reply to the Applicants' case dated the 14 December 2020. They have supplied no invoices to substantiate the amounts claimed which included one weeks rent from the 15 February 2020. The Respondents had retained the deposit of £600 to compensate them for the alleged damage to their property. Ms Stafford-Langan denied that she damaged the property and pointed out that she had intended to report that the curtain pole had come away from the wall but was prevented from doing so by the precipitous notice to quit.

167. The Tribunal concludes that the Respondents had no qualms with Ms Stafford-Langan's conduct before they had been reported to the Council. The Tribunal is satisfied that Ms Stafford-Langan's conduct was not a contributory factor in the commission of the offences by Mr Curle. The Tribunal decides that the dispute about the alleged damage caused by Ms Stafford-Langan to the Respondents' property is not material to the amount of the RRO

168. The Tribunal's finds that the Applicants did not by their conduct contribute to the Respondents' offending and there were no grounds upon which to reduce the RRO on the account of the Applicants' conduct.

Other Circumstances

169. As previously noted there is no evidence that the Respondents had previous convictions for a housing offence.

170. The Tribunal does not consider as a mitigating factor the duration of just over five months for when the offence of no HMO licence was committed. The Tribunal is satisfied that the Respondents would have continued to commit the offence if they had not been reported to the Council. Mrs Curle in February 2020 was making arrangements to find replacements of the existing tenants when their agreements came to an end. Mrs Curle had already organised for persons to inspect Ms Lippi's room who was due to leave by

agreement at the end of February which was abruptly terminated by the notice to quit on 14 February 2020.

The Amount

171. The starting point is the maximum amount payable by Mr Curle under a RRO which the Tribunal determined as £9,482. The Tribunal then has to consider whether the findings on the Respondents' conduct and financial circumstances, and the Applicants' conduct merit a reduction in the maximum amount payable.

172. The Tribunal found that the Respondents fitted the description of rogue landlords who have demonstrated a blatant disregard of the law for the letting of residential accommodation. Bearing in mind that Parliament intended a harsh and fiercely deterrent regime of penalties for housing offences, the Tribunal's finding that Mr Curle was a rogue landlord would justify an Order of the maximum amount. This conclusion is supported by the Tribunal's finding that the Applicants did not by their conduct contribute to the Respondents' offending and that there were no grounds upon which to reduce the RRO on the account of the Applicants' conduct. The Tribunal considers that Mr Curle has the resources in particular the equity on the property with which to pay an Order in the maximum amount.

173. The Tribunal noted that there was no evidence that Mr Curle had been previously convicted of a housing offence. The Tribunal proceeds on the basis that Mr Curle is of previous good character. The Tribunal makes an allowance of £1,050 for Mr Curle's good character.

174. The Tribunal included in the maximum amount payable the sums paid by the Applicants termed as household bills. The Respondent supplied actual costs of the utility bills for the property which came out at about 60 per cent of the amount paid for bills by five tenants. The Tribunal considers it reasonable that the Applicants contribute towards those costs. The Tribunal, therefore, reduces the amount represented by bills by 60 per cent (£814).

175. The Tribunal determines the amount of the rent repayment order as £7,618 which is derived from (£8,125 - £1,050) + (£1,357 -£814).

176. As the Applicants have been successful with their Applications for a RRO, the Tribunal considers it just that the Respondent reimburses the Application fee and hearing fee totalling £300.00 to the Applicants.

Decision

177. The Tribunal orders Mr Curle to pay the Applicants the sum of £7,618 by way of a RRO and to reimburse the Applicants with the application and hearing fee in the sum of £300.00 making a total of £7,918 within 28 days from the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be sent by email to rpsouthern@justice.gov.uk

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.