



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

<b>Case Reference</b>	<b>:</b>	<b>LON/ooAY/HMB/2021/0005</b>
<b>HMCTS code</b>	<b>:</b>	<b>Video VHS</b>
<b>Property</b>	<b>:</b>	<b>4 Woodgate Drive, London, SW16 5YP</b>
<b>Applicant</b>	<b>:</b>	<b>Ms L Collins</b>
<b>Representative</b>	<b>:</b>	<b>Mr J-L Bolton, of Cambridge House Safer Renting</b>
<b>Respondent</b>	<b>:</b>	<b>Mr M Z Uddin</b>
<b>Representative</b>	<b>:</b>	<b>In person</b>
<b>Type of Application</b>	<b>:</b>	<b>Application for a rent repayment order by a tenant</b>
<b>Tribunal Members</b>	<b>:</b>	<b>Tribunal Judge Prof R Percival Mr P Roberts DipArch RIBA</b>
<b>Date and venue of Hearing</b>	<b>:</b>	<b>Remote 16 September 2021</b>
<b>Date of Decision</b>	<b>:</b>	<b>26 November 2021</b>

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video using VHS. A face-to-face hearing was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in electronic bundles, the contents of which we have noted.

### **Decision**

- (1) The Tribunal makes a rent repayment order against the Respondent and in favour of the Applicant in the sum of £3,404.
- (2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2), that the Respondent reimburse the Applicant her application and hearing fees (£300).

### **The application**

1. On 4 May 2021, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a Rent Repayment Order (“RRO”) under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 28 May 2021.
2. In accordance with the directions, we were provided with an Applicant’s bundle of 103 pages plus a short video recording, and a Respondent’s bundle of 23 pages. In addition, the Respondent provided three short documents as witness statements.

### **Introduction**

3. The Applicant lived at 4 Woodgate Drive from 17 July 2020 to 17 February 2021. She rented what is described as a studio flat. This comprised one room used, and furnished and equipped for use, as bedroom, sitting room, kitchen and shower room. There was in addition a separate WC.
4. The case was originally listed on 8 September 2021. However, the Applicant was unable to join the hearing, and we adjourned to 16 September.

## **The hearing**

### *The alleged criminal offences: the legislation*

5. The Applicant relies on an allegation that the Respondent has committed the offences in Protection from Eviction Act 1977, section 1(3) and/or 1(3A). We reproduce the relevant parts of section 1 below. Although the offences alleged included that in section 1(3), both parties directed their submissions primarily at that in section 1(3A).

1.— Unlawful eviction and harassment of occupier.

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

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

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

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withdraws services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

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

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

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

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

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

6. The Applicant alleges that the offence took place on, and after, 14 January 2021.

*The alleged criminal offences: the evidence*

7. In her witness statement, the Applicant said that she moved into the property on 17 July 2020, having seen it advertised for £650 per month. In fact, she agreed a rent of £675, the additional sum being in lieu of a deposit. She signed a tenancy agreement, but was not given a copy.
8. On 14 January, 2021, the Applicant woke to see the Respondent in her bedroom. In oral evidence, she timed his arrival by reference to WhatsApp messages (see below) at between 22.37 and 22.59. In oral evidence, she also said that her boyfriend was in bed with her when the Respondent entered the room. The boyfriend took no part in the events that followed.
9. He shouted at her, saying that he had not received the rent for December, and that she should also pay him January's rent. Her account was that the Respondent said that unless she paid the rent by 6.00 pm the following day, he would force her out the property. She described him as acting aggressively, and said that she was scared and upset. After some time, he left the property. She then checked her phone, and found that about 30 minutes earlier, he had messaged her on WhatsApp, the group messaging service that he generally used to communicate with her. In that message, he said he was "popping over". The Applicant exhibited a series of screen shots of WhatsApp communications between herself and the Respondent, from the night of 14 January 2021 until she left on 17 February 2021. We have reproduced these exchanges as an appendix to this decision.
10. The Respondent contests the genuineness of a number of the WhatsApp messages produced by the Respondent, an issue we consider below. In setting out the Applicant's evidence, we will not repeatedly refer to the contested nature of some of the messages, but that should be understood.
11. The Applicant called the police. Officers arrived. After about five minutes, the Respondent reappeared. He left, she said, some 30 minutes later, after having been spoken to by the police. The short video recording that was produced apparently related to this period.

12. The Applicant's account in her witness statement was that later that night, she told the Respondent by telephone that she had paid the rent for December and January, but he persisted in saying that she had not paid him, but rather had fraudulently paid the rent money into another account, but using his name as the reference for the payment.
13. Effectively the same exchange took place on WhatsApp, but the timing there suggests that it took place before the Applicant called the police (screenshots 1 to 4). In her oral evidence, she did refer to at least one brief telephone call between them on the night, but also said the exchanges took place on WhatsApp.
14. The Applicant gave the Respondent four weeks' notice of ending the tenancy on WhatsApp. It appears that both parties understood that that was the correct notice period (it appears from the copy of the agreement provided to the Tribunal by the Respondent that that is not correct, but neither party put it to us that this was relevant).
15. The message in which the Applicant initially gives him notice is one of those contested by the Respondent. It is part of the exchanges immediately following the Respondent's visit to the Applicant's room on 14 January 2021, and clearly (if it is genuine) was a direct response by the Applicant to those events.
16. From early in the sequence of WhatsApp messages, the Respondent insisted that she had not paid the rent and that she was committing fraud. He threatened to report her for fraud unless she paid the rent. Throughout, she insisted she had paid.
17. Subsequently, the Applicant said, the Respondent said he would have to check the boiler (it appears the boiler for the property as a whole was in the Applicant's room), and to check the property every day. Again, this appears in the WhatsApp sequence on 15 January (screen shot 9 and following). In the messages, he insists that there is an emergency in connection with the boiler and he was not required to give her 24 hours' notice (it appears that both parties understood that 24 hours was required for an inspection in the normal course of events).
18. The WhatsApp messages show the Respondent offering "a deal" to her, if she admitted she had not paid the rent. She again insisted that she had indeed paid, and, after insisting she had not, he messaged "Deal is off. I will be coming as per 24hrs notice tomorrow in that case." (screen shots 11 to 13).
19. In the WhatsApp messages, the Respondent raises the issue of the Applicant's boyfriend staying at the property. The Applicant responds that he rents a property elsewhere, but stays with her sometimes.

20. Again in the WhatsApp messages on 15 January, the Applicant apologises for his conduct on 14 January and offers to provide a positive reference (screen shots 16 to 18).
21. The Applicant's evidence was that on 5 February 2021, the Respondent messaged that he had found someone to rent the property, and she wanted to move in earlier. The Respondent refused to move out early. In a WhatsApp message, the Respondent sets out that her tenancy should come to an end on 16th, but nonetheless agrees 8pm on 17 February as the time she must move out.
22. The Applicant's evidence was that on 16 February, the locks on the front door were changed. She nonetheless gained access. It appears from the WhatsApp messages that he warned her about the front door. At some point, he messaged her to the effect that she might have to break into the flat through the window (screen shots 21 to 30).
23. By way of background to the offence, the effect of the Respondent's evidence was that the Applicant created nuisance to other tenants during 2020, and he was preparing to start proceedings to evict her. The nuisance consisted of loud arguments with her boyfriend and the smell of cannabis. The account he provides in his witness statement indicates a general misunderstanding of the possession process in relation to assured shorthold tenancies. In his witness statement, he says that he served a "section 8 notice" on 15 December 2020. He exhibits an ineffective notice served under Housing Act 1988, section 8.
24. In respect of events on 14 January 2020, he said in his witness statement that he visited the property as a result of complaints of loud music, shouting and the smell of cannabis. He knocked on the door, and heard noises in the room, but no answer. He went into the unlocked room. The Applicant shouted at him, and her boyfriend went into the lavatory. The Applicant "became aggressive towards me slamming the door". She stated she would call the police and he said he would wait, which he did in his car.
25. He refers to the defence in section 1(3B) (see above), saying that "his sole intention to visit the property on 14<sup>th</sup> January 2021 was to ensure the safety of Ms Collins and the rest of the residence".
26. In respect of the Applicant's assertion that he messaged her to say that she should break in via the window, he exhibited a screen shot of a WhatsApp message from her saying, after other messages about securing access "Its ok i can enter through the window if i need to", followed by emojis of an OK finger sign and a laughing face.
27. In his witness statement, the Respondent confirms that the Applicant had not been in arrears of rent.

28. In respect of the WhatsApp screen shots presented by the Applicant, the Respondent said in his witness statement that he had “spoken to professionals in IT and they have advised me that messages have been spoofed to show that I have sent the messages.” He went on to explain how that could be done:

“Spoofed messaged or creation of spoof messages are when a whatsapp profile picture is taken from a genuine account. This picture is uploaded on to a different account. The account number is renamed on the contacts list as the spoofed number. Then messages are sent from this phone to the other phone. When screen prints are taken then it will show that the messages have come from the account that have been spoofed. This will also show the displayed profile picture and a conversation can be sent back and forth.”

In cross examination, it appeared that the Respondent had only spoken to one IT professional. He added that WhatsApp messages could also be falsified by photoshopping.

29. He did not think it was necessary to obtain evidence from the IT professional. He consulted the professional because the sequence as exhibited did not appear on his phone. He did not provide alternative screen shots because he was short of time.
30. The Respondent gave evidence of which of the WhatsApp messages he said were false and which genuine. The following paragraph sets out that evidence, and should be read by reference to the sequence appended to this decision.
31. The Respondent’s evidence was to the following effect. The first false message was the last message on screen shot 1 (his message), and the Applicant’s immediately following on screen shot 2, although he suggested there was some other message at this point. On screen shot 3, the first message, his “pay me my money” was false, as were the first, third and fourth of the Applicant’s in reply. His next replies were all false, except “Thats a criminal offence”, which related to his allegation that the Applicant was smoking cannabis. The next two, one his and one hers, were false. On screen shot 4, the only genuine messages were his, starting “Also about you smoking weed ...”, the next but one and his last on that screen shot. All of the messages on screen shots 5 to 9 were false except his saying “Your door was unlocked” on screen shot 5. All of the messages on screen shot 10 were genuine. His on screen shot 11 was false, as were all of those until his at 13.19 (“Lets talk I have apologised”) in screen shot 17. In screen shot 18, those at the top from him were genuine, the other two on 15 January were false. We think he indicated that all of the remainder were genuine (ie from 19 January, on screen shot 19).
32. The Respondent also sought to explain certain passages in the sequence of WhatsApp messages.

33. When he said he was apologising on screen shot 17, he meant that he was expressing sympathy because, as he understood it, she had broken up with her boyfriend.
34. When he said he would give her a good reference (screen shot 18), he was not telling the truth, as he would not have done that. He was just trying to smooth things over.
35. When he referred to being clean, and not having touching anything for six months (screen shot 25), he was referring to cigarettes, not drugs.
36. When he referred to having a bad tempter (screen shot 25), he just meant that he, in common with most people, had found lockdown difficult.
37. We note that the Respondent was not reading from notes or looking at his own phone when going through his evidence as to which messages were genuine and which not. In cross examination, Mr Bolton asked how he could be so precise about what was and what was not true. He said that he had gone through all the messages very carefully, and that he spent a week doing so.
38. Mr Bolton read the terms of section 1(3A) of the 1977 Act, and put it to the Respondent that if someone had behaved as was indicated in the WhatsApp messages, they would be committing the offence. The Respondent answered that he did not believe that the WhatsApp messages were true.
39. Ms Zuzanne Vasickova lives at the address, on the floor above the room occupied by the Applicant. She provided a very brief witness statement, and attended to give evidence. Despite the rudimentary nature of the witness statement and its lack of formalities, we allowed her to give more extensive oral evidence in chief. Her evidence goes chiefly to the conduct of the parties, but she did give some factual evidence as to events on 14 January 2021.
40. Ms Vasickova said that she had called the Respondent on 14 January, because she heard a man screaming and slamming doors downstairs, which made her afraid. The Respondent had arrived at sometime after 11.00pm (it appeared from her evidence, probably at about 11.20). She let him in the front door, and went back to her room. She then heard the Applicant shouting at the Respondent. She thought that the Applicant's boyfriend left when the Respondent left (we think she meant when he left for the first time, before the police arrived).
41. It is appropriate to record our impression of the witnesses. The Applicant came across as a robust, assertive, and at time aggressive person. However, we also considered her a broadly honest witness. It is

clear that at times she failed to mention matters that she thought might disadvantage her – a particularly relevant example is that she does not mention the presence of her boyfriend in the room on 14 January in her witness statement. Nonetheless, she did not tell a direct untruth about his presence when cross examined. Rather, she admitted he was, indeed, there.

42. By contrast, we found the Respondent thoroughly evasive and untruthful. He frequently sought to avoid answering direct questions from Mr Bolton in cross examination (we note one pertinent evasion at paragraph 38). For the reasons that follow, we do not believe him in relation to the falsity of the WhatsApp messages exhibited by the Applicant. In what he agrees are genuine WhatsApp messages, he offered to give the Applicant a false reference; and then before us he admits that he was lying when he told her that. We do not believe him when he says a WhatsApp message saying he is “clean” relates to cigarettes.
43. Ms Vasickova impressed us as an honest and straightforward witness, although nervous, and possibly, we thought, under the influence of the Respondent (whose tenant she remains).

*The alleged criminal offences: conclusions*

44. We find the offence contrary to section 1(3A) of the 1977 Act proved beyond reasonable doubt. It is not necessary for us to come to a conclusion in respect of the offence contrary to section 1(3), and we do not do so.
45. If the WhatsApp sequences provided by the Applicant are genuine, we have no doubt that the offence was committed. The offence is a continuing one, and we take into account the whole of the exchanges.
46. The exchanges show, first, that the only motive for the Applicant’s visit on 14 January 2021 was to secure payment of the rent, which he thought, erroneously, as he accepted in his evidence, had not been paid. Aside from the WhatsApp evidence, we accept the Applicant’s evidence that she was asleep when he arrived and entered her room through the unlocked door. The messages show that he was prepared to threaten to report the Applicant to the police for fraud (which, for the same reason, was wholly misconceived) and for drug use so as to obtain what he thought was the rent due. He threatened to report her supposed fraud to her employer. He then threatens to “check” her room every day, again using this transparently as a threat to secure payment (see particular the “deal” offered at screen shot 11 and the assertion that he will start the visits once the “deal is off” (screen shot 13)).
47. All of this conduct amounts, in our view, to “acts likely to interfere with the peace or comfort” of the Applicant. We also find as a fact that the

Respondent knew that this conduct was likely to cause her to give up occupation of the room. Indeed, she did, as a result, give up occupation. Even if that were not the case, any reasonable landlord would believe that such conduct would be likely to have that effect.

48. We are entirely confident that the exhibited WhatsApp messages are all genuine. The Respondent's assertions to the contrary are absurd. In particular, he says that he spent a whole week analysing the exchanges to determine which were genuine and which were not; but when asked why he did not provide alternative screen shots from his own phone, he said that he did not have time. It would take no more than a few minutes to produce the relevant screen shots, and a little more time to present them in a Word or pdf document to exhibit. He did in fact produce at least two screen shots in his evidence of other matters (the Applicant's original approach to him, and her text about gaining access via the window on 17 February 2021). There is no plausible reason why he would provide those, but not the far more important and telling alternative screen shots from his phone. He did not provide any expert evidence, despite apparently relying on his conversation with an expert for his assertion.
49. The exchanges, in any event, read entirely realistically. That they were invented, with all their repetitions, quote messages of other messages, sometimes irrelevant material and material adverse to the Applicant, and surprising turns (the "deal", the occasional touches of affection from the Respondent) is wholly implausible.
50. We reject the Respondent's assertion that he had reasonable grounds for behaving as he did on 14 January 2021 (the defence in section 1(3B) of the 1977 Act). In the first place, we are satisfied beyond a reasonable doubt that he did not, as he asserted, attend solely out of concern for the safety of the Applicant or other residents, but rather, as the WhatsApp exchanges show, to secure what he thought was unpaid rent. Secondly, entering a sleeping woman's room uninvited cannot possibly be justified as he suggests. Thirdly, neither can the making of threats as set out above, including threats of harassment by repeated visits.

#### *The Rent Repayment Order: the maximum*

51. By section 44 of the 2016 Act, the maximum RRO that we can order is limited to the sum of the rent paid by the Applicant during the 12 months ending with the date of the offence.
52. The offence contrary to section 1(3A) of the 1977 Act is by its nature one committed by, or capable of being committed by, a series of acts over an extended period of time. It is not an offence committed by a single act on a single occasion. This is inherent in the way in which the offence is drafted. The basic definition of the actus reus of the offence is described in the plural ("acts"), and one form of the offence requires withdrawal/withholding of services to occur "persistently". The

Applicant argued the case on the basis of a continuing course of conduct starting on 14 January 2021 and continuing until 17 February 2021.

53. The question therefore arises as to when, for the purposes of the cut off provision in section 44, is the “date of the offence”, as the offence was in fact being continuously committed for a period of over a month. We did not hear legal argument on this question, as at the hearing we assumed that “the date” was the commencement of the offending, on 14 January 2021. But it is at least arguable that the correct date would be that of the termination of the relevant conduct.
54. We have now considered the matter in more detail. We concluded that, while the contrary may be arguable, we were right in the hearing and the better view is that the correct date is indeed the date on which the continuing series of acts commenced. The drafter of the 2016 Act made a clear distinction between rows 1 and 2 in section 40(3) – the offence of violence for securing entry contrary to Criminal Law Act 1977, section 6(1), and the instant offence – and the more regulatory offences in rows 3 to 7. In respect of the latter, section 44(2) specifies that the relevant maximum is a period of 12 months “during which the landlord was committing the offence”. Had the drafter intended rows 1 and 2 (realistically, only row 2) to include in the maximum the period during which a continuing offence was being committed, it would have said so, as it did for the offences in the other rows.
55. Accordingly, the relevant period for determining the maximum RRO is 17 July 2020 to 14 January 2021, the latter being the first day during which the offence was committed. Working on the basis of that date, it was agreed at the hearing that the maximum RRO was therefore £4,005.

#### *The Rent Repayment Order: exercise of discretion*

56. We are required by section 44(4) of the 2016 Act to take account in particular of the conduct of parties, the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence. We heard no evidence as to the latter two matters, so only the conduct of the parties, in the section 44(4) list, are relevant.
57. As for the Respondent, we have set out above at length the evidence relating to the offence, which counts as part of the “conduct of the landlord” for the purposes of section 44(4)(a) (*Williams v Parmar and Others [2021] UKUT 244 (LC)*). Clearly, he acted deplorably.
58. The Applicant had secured an order in the directions that her personal address should not be revealed to the landlord. The Applicant gave evidence that the Respondent had visited her mother in order to find out where she was living, and that he had telephoned her. It appears

that the Respondent's case was that her mother was listed as a previous landlord, which is why he had contacted her.

59. In her witness statement, the Applicant states that the Respondent told her that he had just ingested a line of cocaine when he showed her the room, and there were indications that he had done so in the room. We add that we consider that the references to being "clean" etc in the WhatsApp exchanges relate to drugs, not cigarettes. However, hypocrisy aside, we do not think that any drug taking that the Respondent may have indulged in at an earlier period has any relevance to the balance of conduct between the parties in the exercise of our discretion as to the value of the RRO.
60. We also heard evidence as to the conduct of the Applicant. The Respondent's evidence was that he received repeated complaints from the other residents as to her behaviour.
61. We heard the evidence of Ms Vasickova. She had lived at the property since February 2020. She complained about the smell of cannabis, and about loud arguments between the Applicant and her boyfriend. Her initial complaints were about the smell, which she made within about a month of the Applicant moving in. The arguments started later, and reached a particular intensity in February 2021. The cannabis smell affected her own room, not just the communal areas, and the arguments took place late at night, up to about 2.00 am.
62. It was clear from the evidence that the residents did not really know one another, and Ms Vasickova was cross-examined on the basis that she could not be sure that the smell of cannabis was coming from the Applicant's room rather than someone else's. She denied this, claiming that the location of the smell was clear and that she had to pass the Applicant's room to get to her own.
63. The Applicant responded to Ms Vasickova's evidence. She said she had never met Ms Vasickova. She referred to others who lived in the property, with the implication that Ms Vasickova could not be sure that either arguments or cannabis smell emanated from her room.
64. The Applicant denied being aggressive in the context of her relationship. That relationship only started in November 2020. She now lived with that boyfriend at her new address.
65. The Respondent's evidence included a copy of a letter he said was sent to the Applicant in September 2020, and the (defective) section 8 notice referred to above. The Applicant responded that she had never received either. Her written communication with the Respondent was limited to WhatsApp.

66. We accept the Applicant's evidence as to the non-receipt of the warning letter and the section 8 notice.
67. Our conclusion as to the conduct of the Applicant is that we accept the evidence that she did engage in some nuisance behaviour during her occupation. Although we accept that there was some indeterminacy in Ms Vasickova's attribution of the smell of cannabis as coming from her room, we think it likely that there was cannabis use. We note that, in the WhatsApp exchanges, the Applicant did not deny references to cannabis use by her. Rather, she implied that the Respondent was not in a position to make such accusations. We find it difficult to come to a determinate conclusion as to the regularity or intensity of cannabis use, but accept there was some.
68. More serious were the accusations of noise nuisance as a result of arguments with her boyfriend. We accept the Applicant's evidence that her relationship started in November 2020, which limits the temporal extent of such behaviour. We also accept Ms Vasickova's evidence that disturbance was caused to the residents by loud arguments between the Applicant and her boyfriend.
69. In assessing the exercise of our discretion, we reject Mr Bolton's submission that the proper "starting point" is the maximum, and that that is what we should award. We direct ourselves according to the approach now set out in *Williams v Parmar*, an authority not available at the hearing. Our conclusion is that there was, indeed, some poor conduct by the Applicant, in terms of nuisance to other occupants. On the other hand (and in contrast with the landlord's conduct in *Williams v Parmar*), we consider that the conduct of the Respondent was towards the upper end of the scale of seriousness. The offence itself in this case implies a higher level of injurious conduct than, for instance, an offence of failing to secure a licence. And the conduct actually engaged in by the Respondent was deplorable. While this is very much a secondary feature, we also consider it right that we should take into account his conduct following the offence, in particular his attempts to contact the Applicant. While his conduct of his case before us has, we have found, been fundamentally dishonest, we do not consider that we should take that into account in coming to our conclusion.
70. Taking into account the conduct of both parties, we consider it appropriate that the RRO should comprise 85% of the maximum.

#### *Application for reimbursement of fees*

71. The Applicant applies for the reimbursement of her application and hearing fees under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2). The application was properly made and successful, and we so order. The Respondent must pay the Applicant £300, in addition to the RRO.

## **Rights of appeal**

72. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.
73. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
74. If the application is not made within the 28 day time limit, the application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
75. The application for permission to appeal must identify the decision of the Tribunal to which it relates, give the date, the property and the case number; state the grounds of appeal; and state the result the party making the application is seeking.

**Name:** Tribunal Judge Professor Richard Percival   **Date:** 26 November 2021

## **Appendix of Relevant Legislation**

### **Housing Act 2004**

#### **72 Offences in relation to licensing of HMOs**

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

### **Housing and Planning Act 2016**

#### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –
  - (a) repay an amount of rent paid by a tenant, or
  - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
7	This Act	section 21	breach of banning order

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

#### **41 Application for rent repayment order**

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if –
  - (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
  - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if –
  - (a) the offence relates to housing in the authority's area, and
  - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

#### **42 Notice of intended proceedings**

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
  - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
  - (b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

#### **43 Making of a rent repayment order**

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined with –
  - (a) section 44 (where the application is made by a tenant);
  - (b) section 45 (where the application is made by a local housing authority);
  - (c) section 46 (in certain cases where the landlord has been convicted etc).

#### **44 Amount of order: tenants**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in this table.

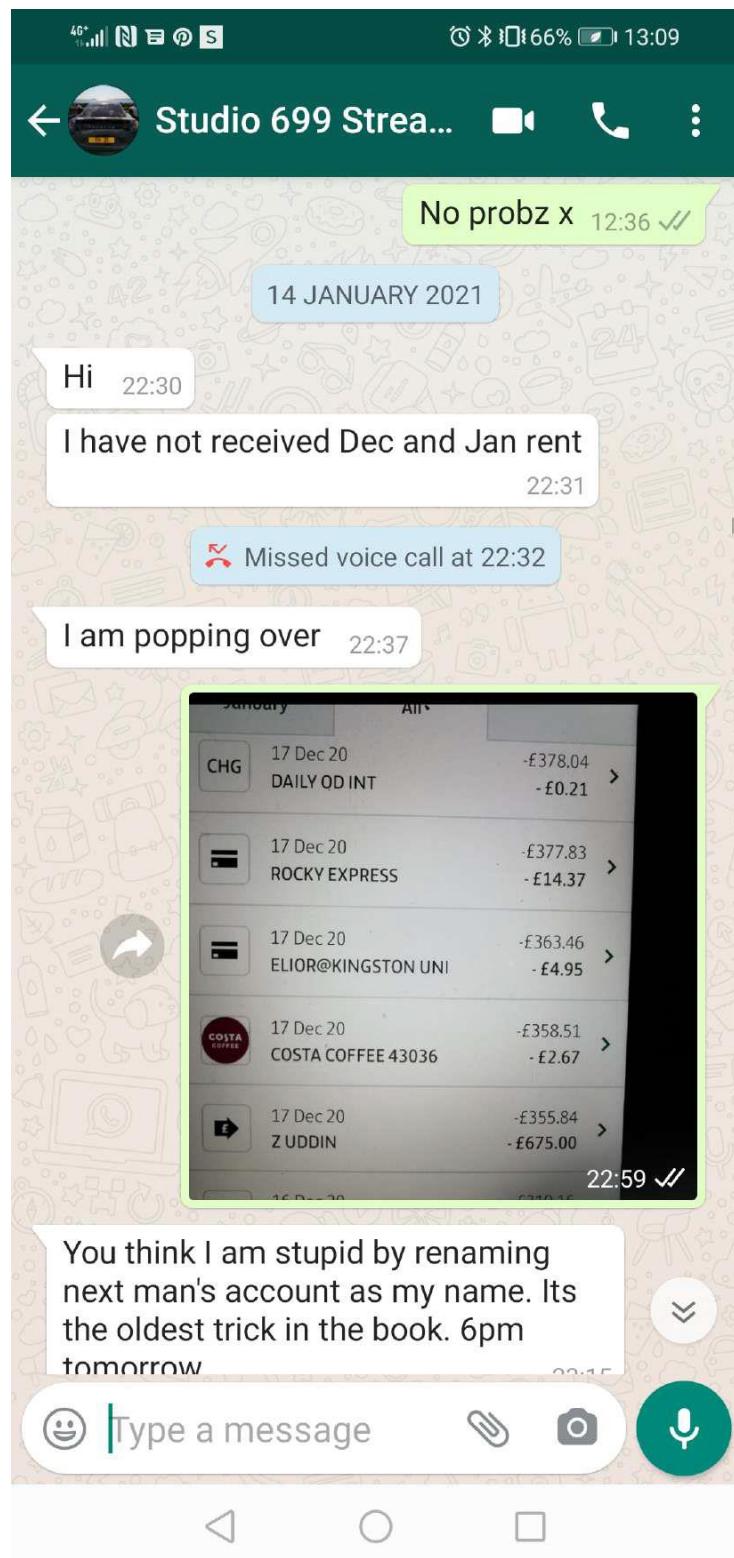
<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3,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

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed –
  - (a) the rent in respect of that period, less
  - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

- (4) In determining the amount the tribunal must, in particular, take into account –
- (a) the conduct of the landlord and the tenant,
  - (b) the financial circumstances of the landlord,
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

## Appendix of alleged WhatsApp messages

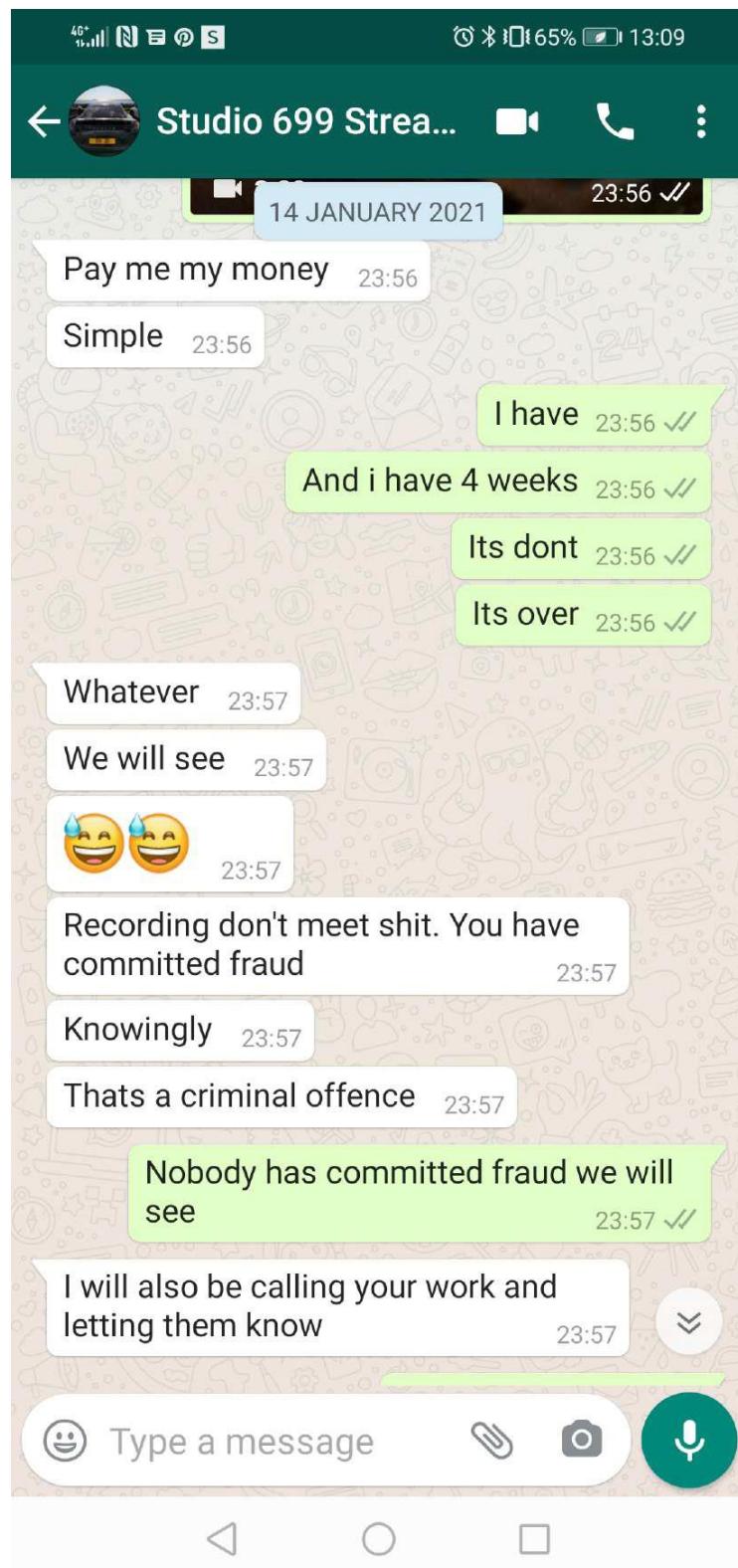
Screen shot 1



Screen shot 2



Screen shot 3



Screen shot 4



Screen shot 5



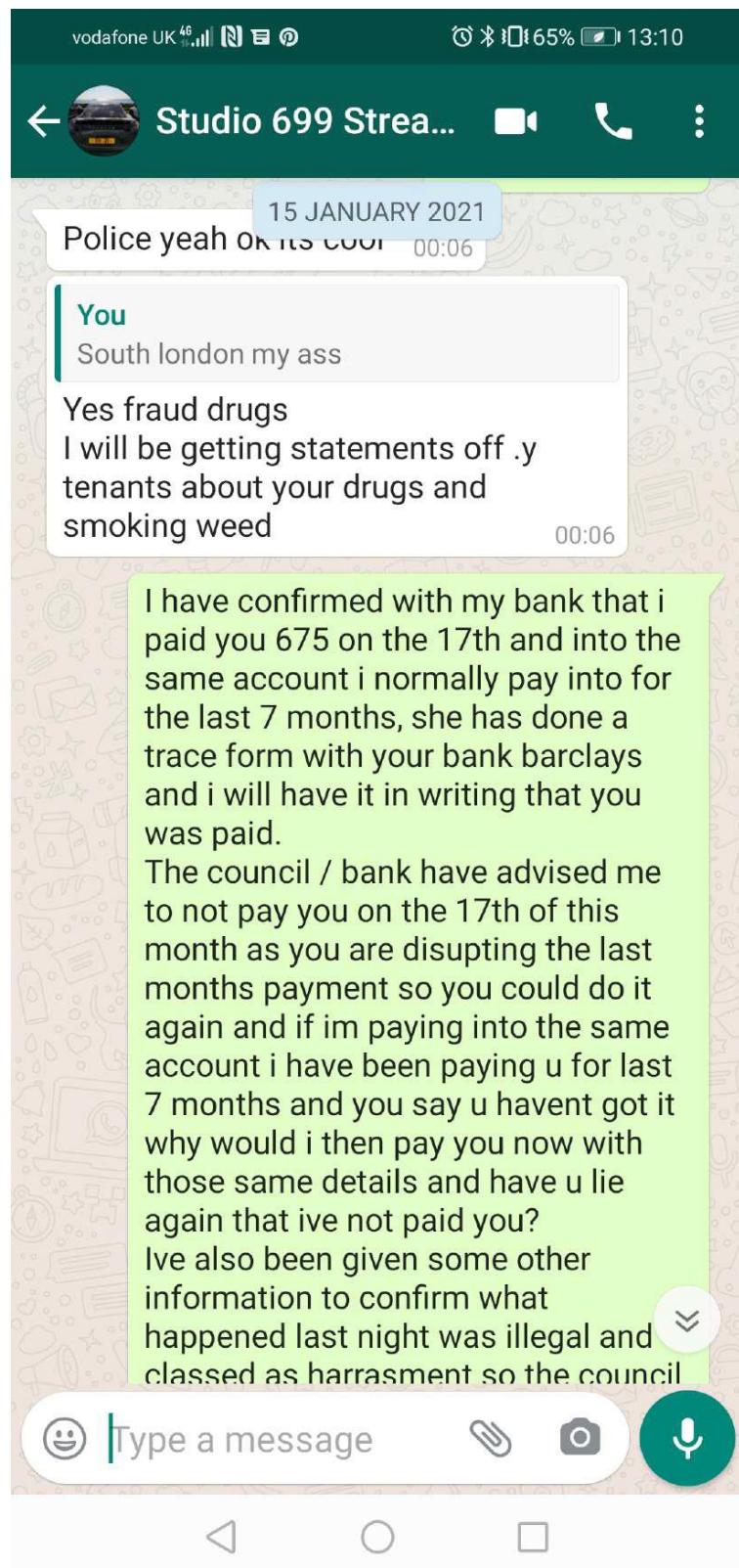
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Screen shot 7



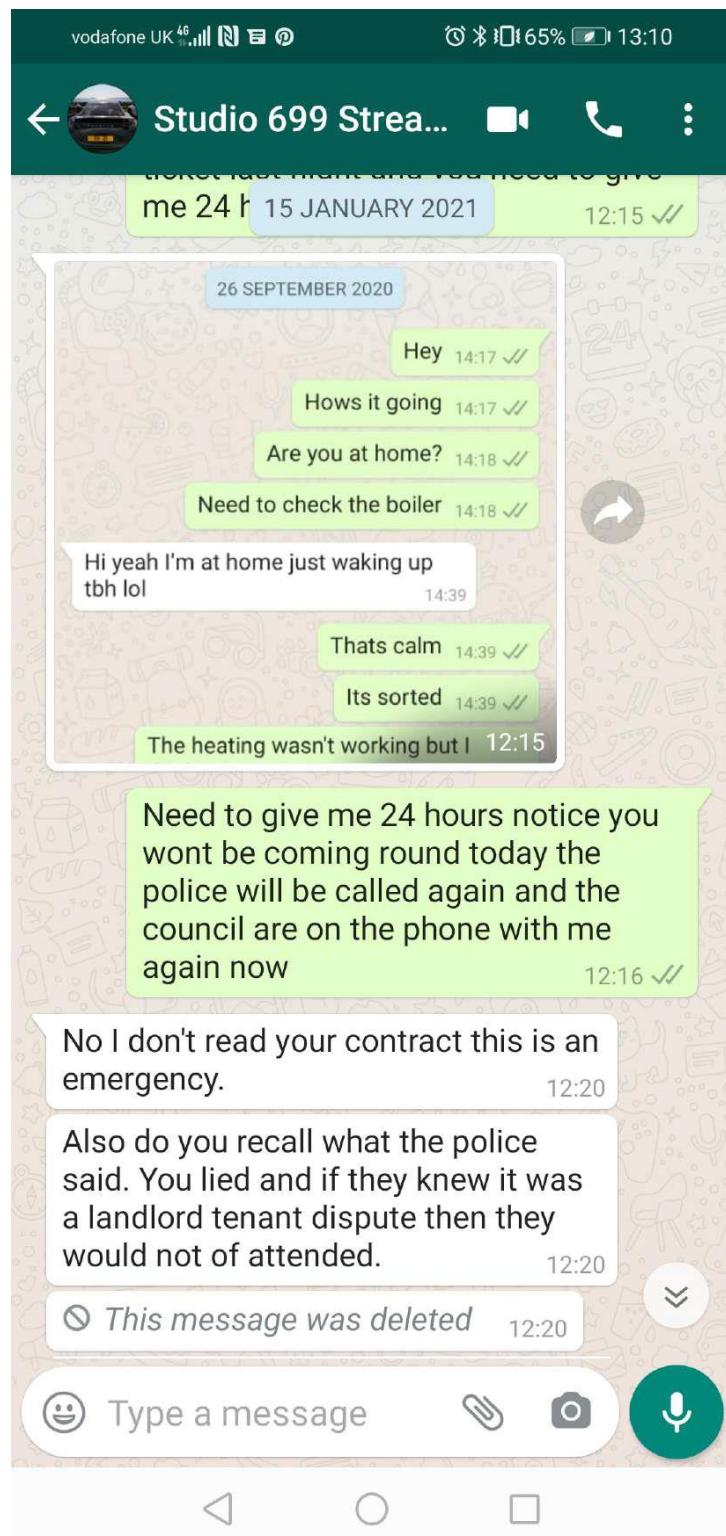
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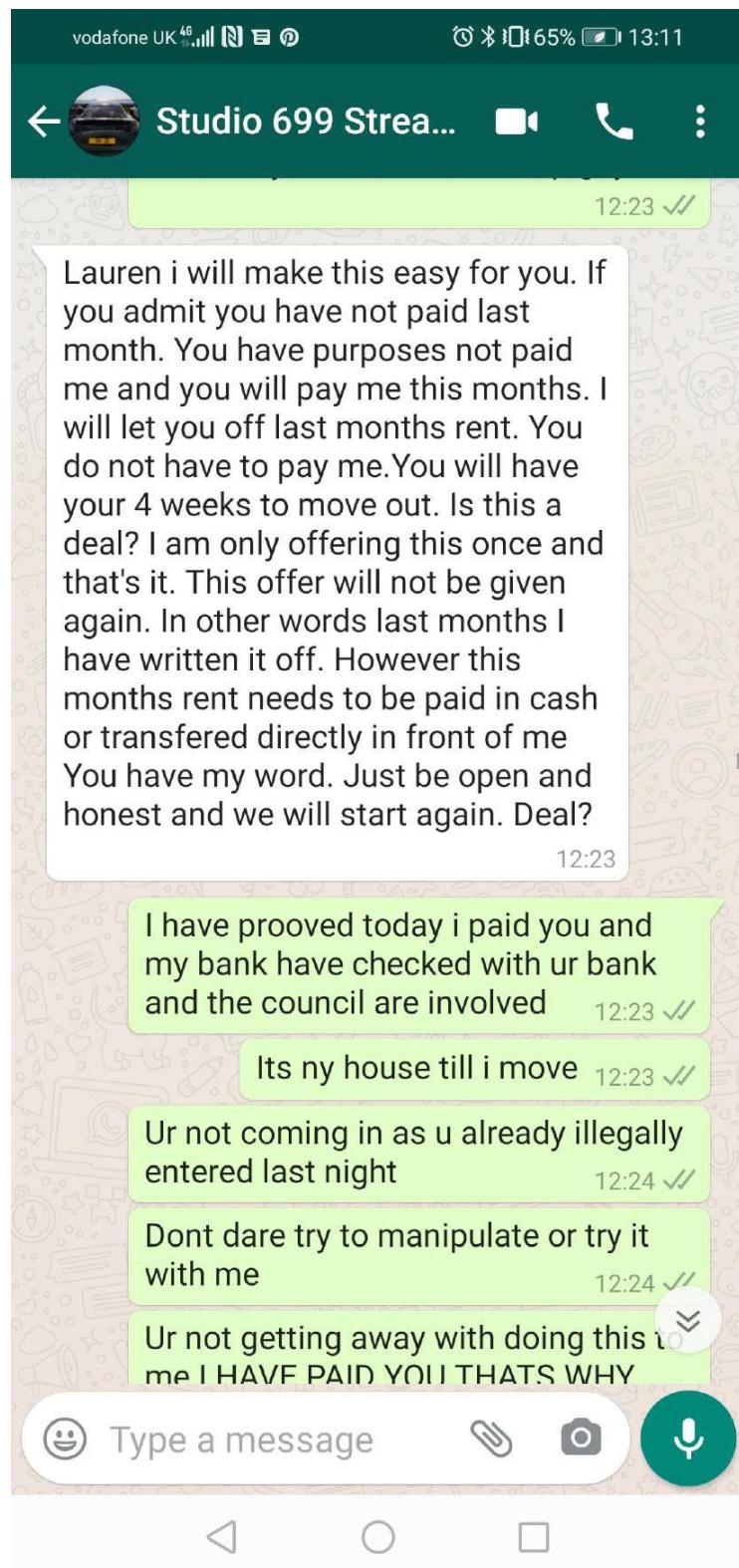
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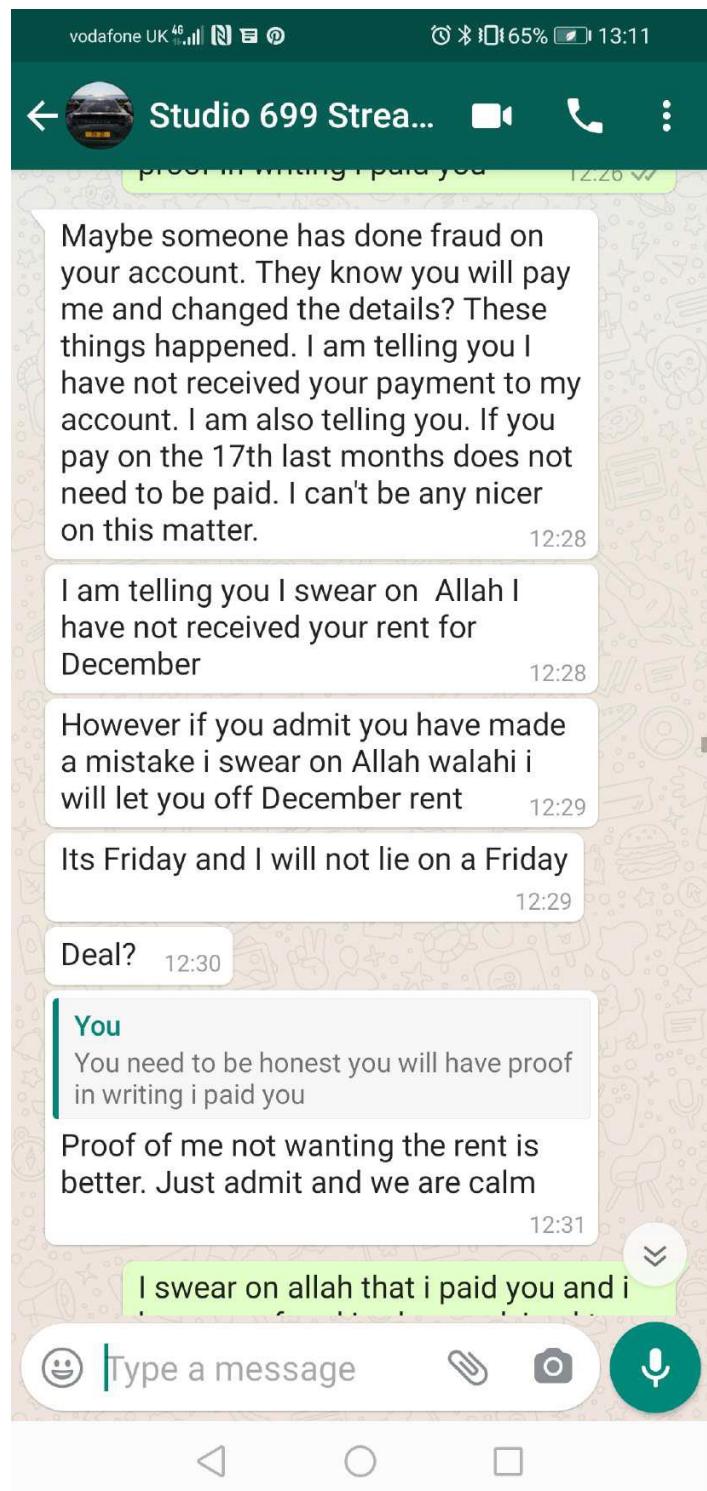
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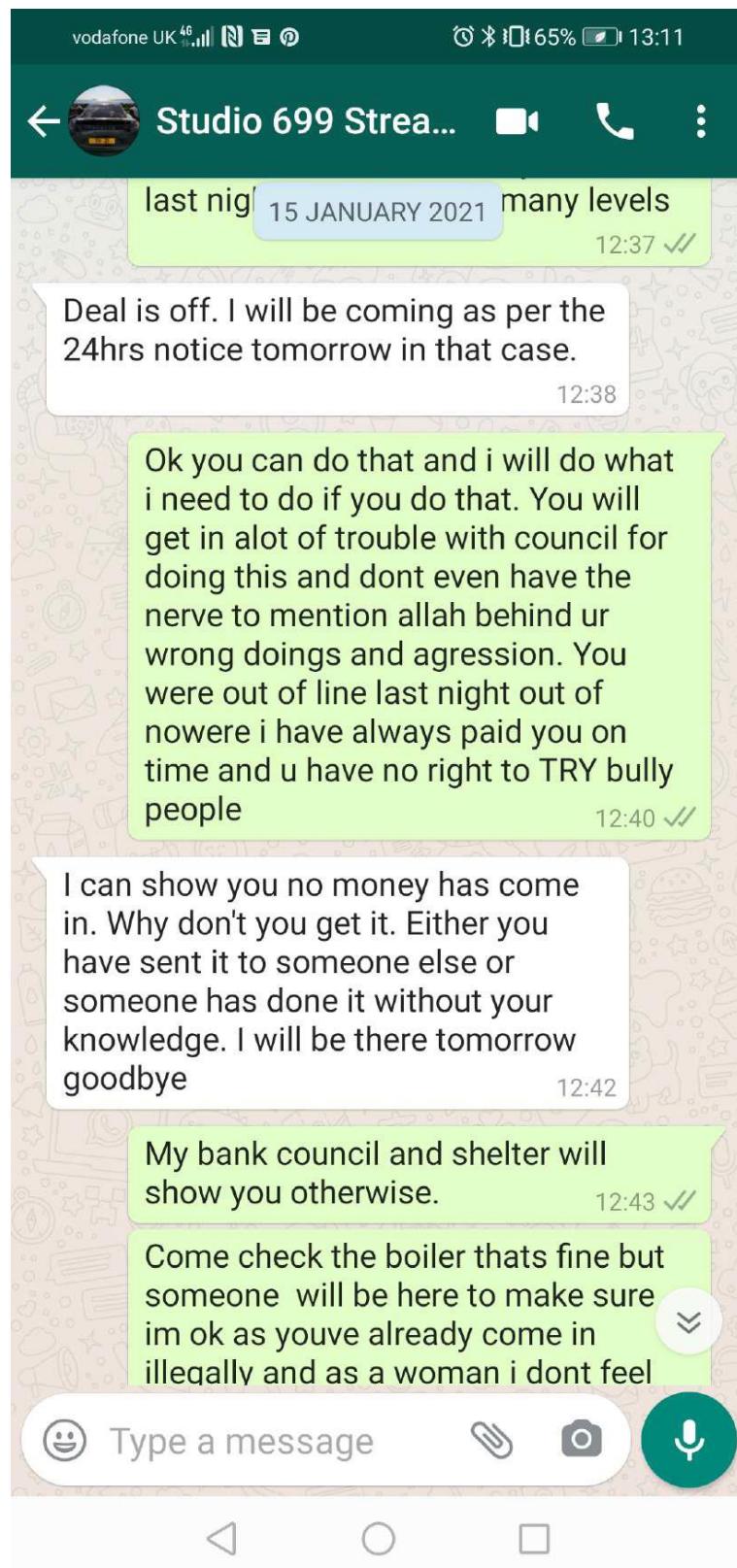
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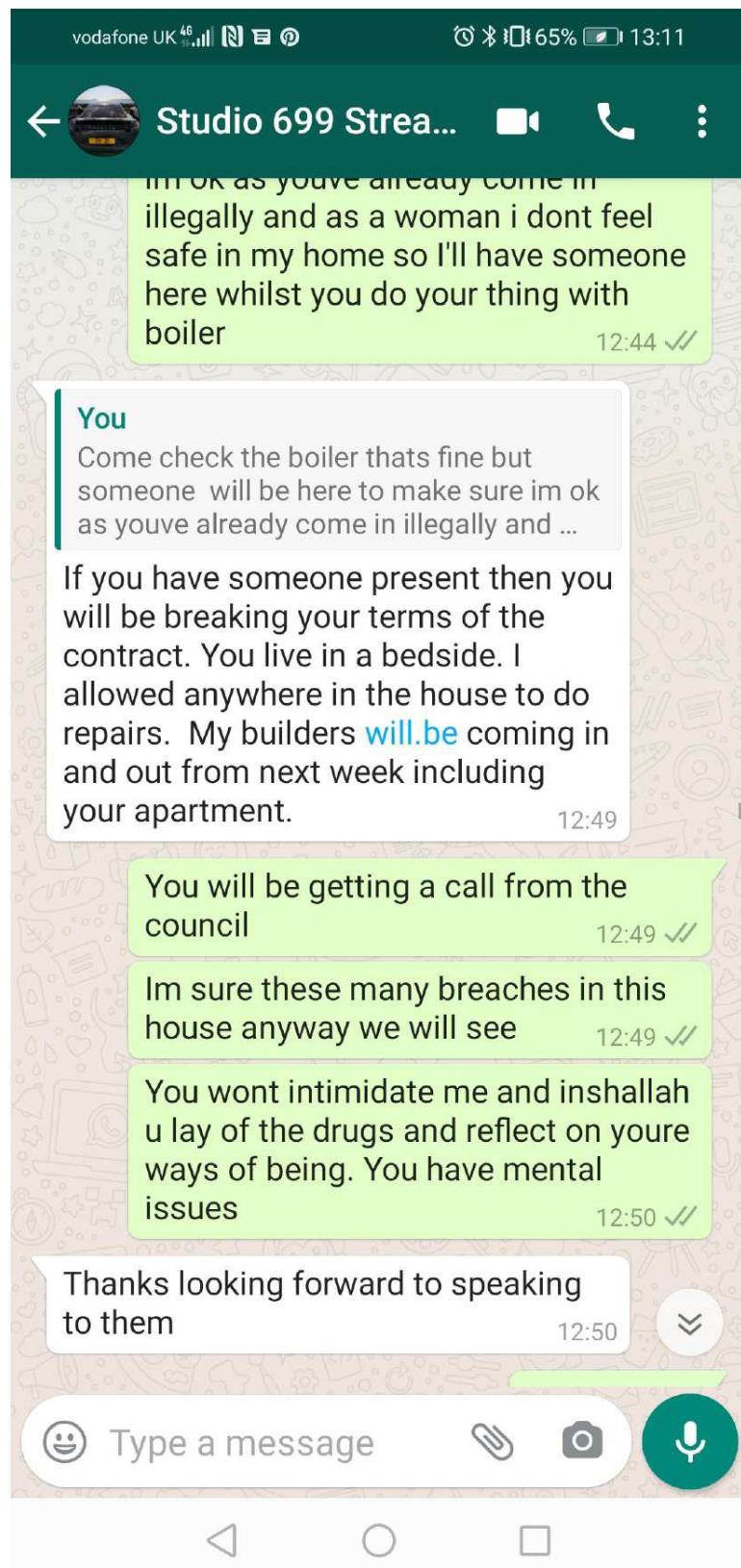
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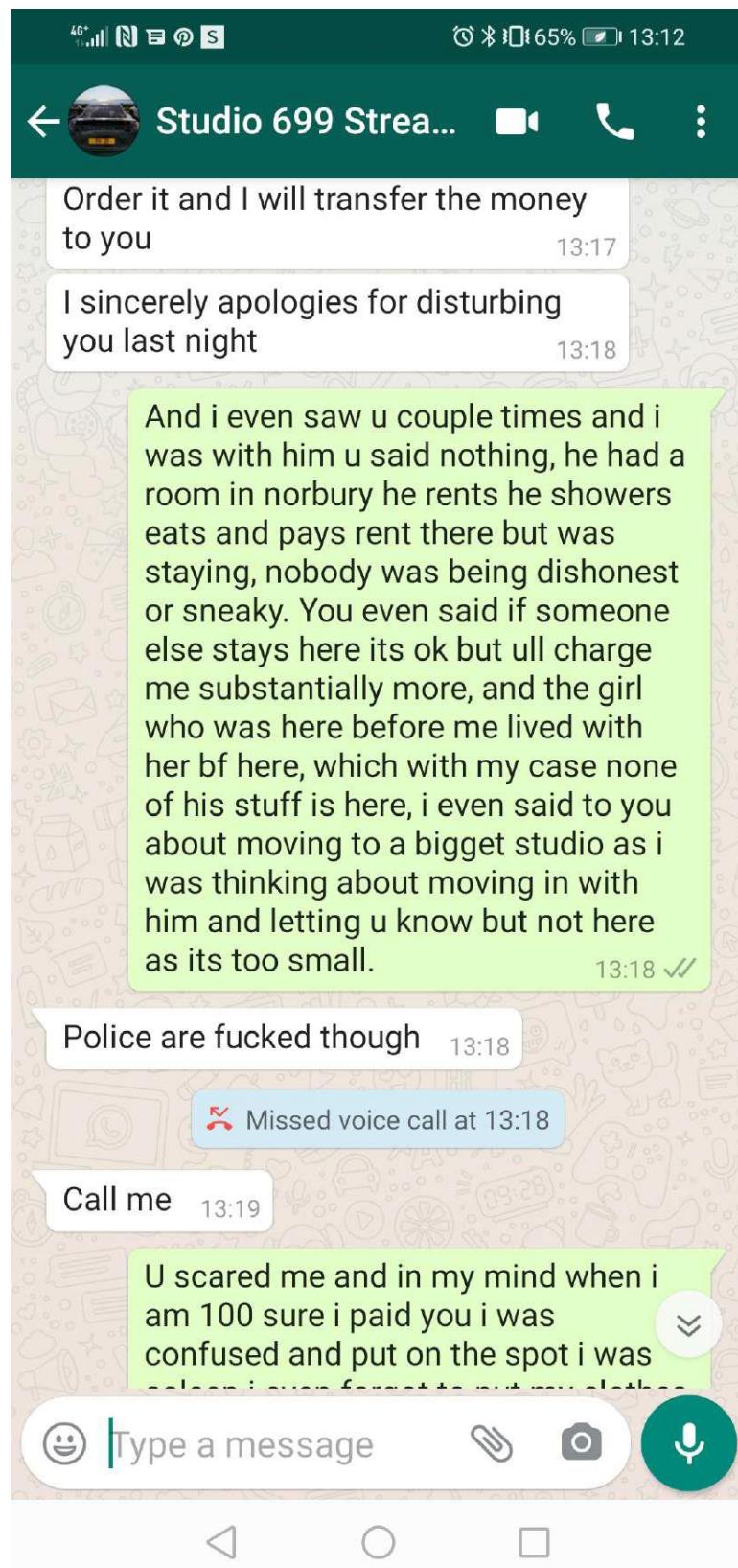
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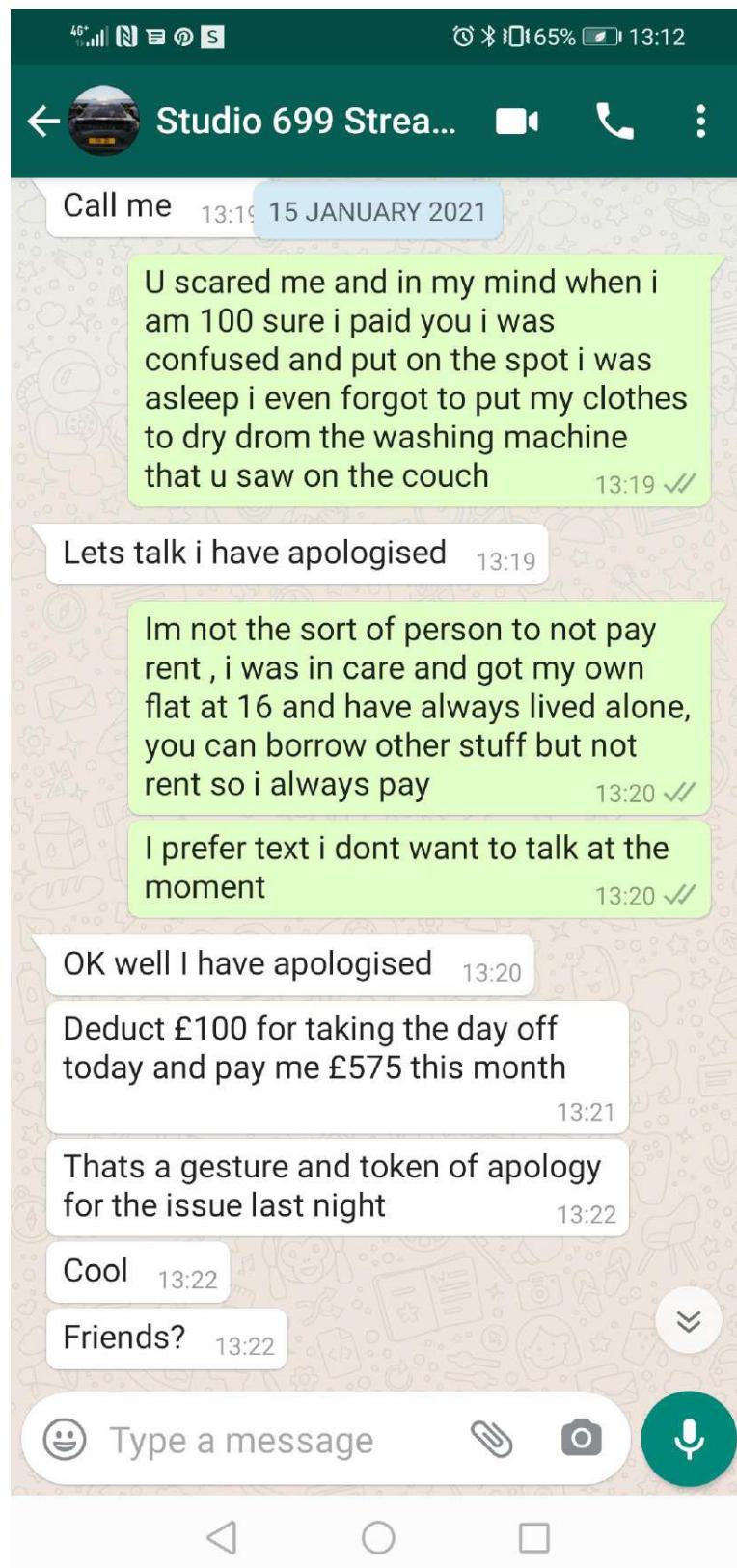
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Screen shot 16



Screen shot 17



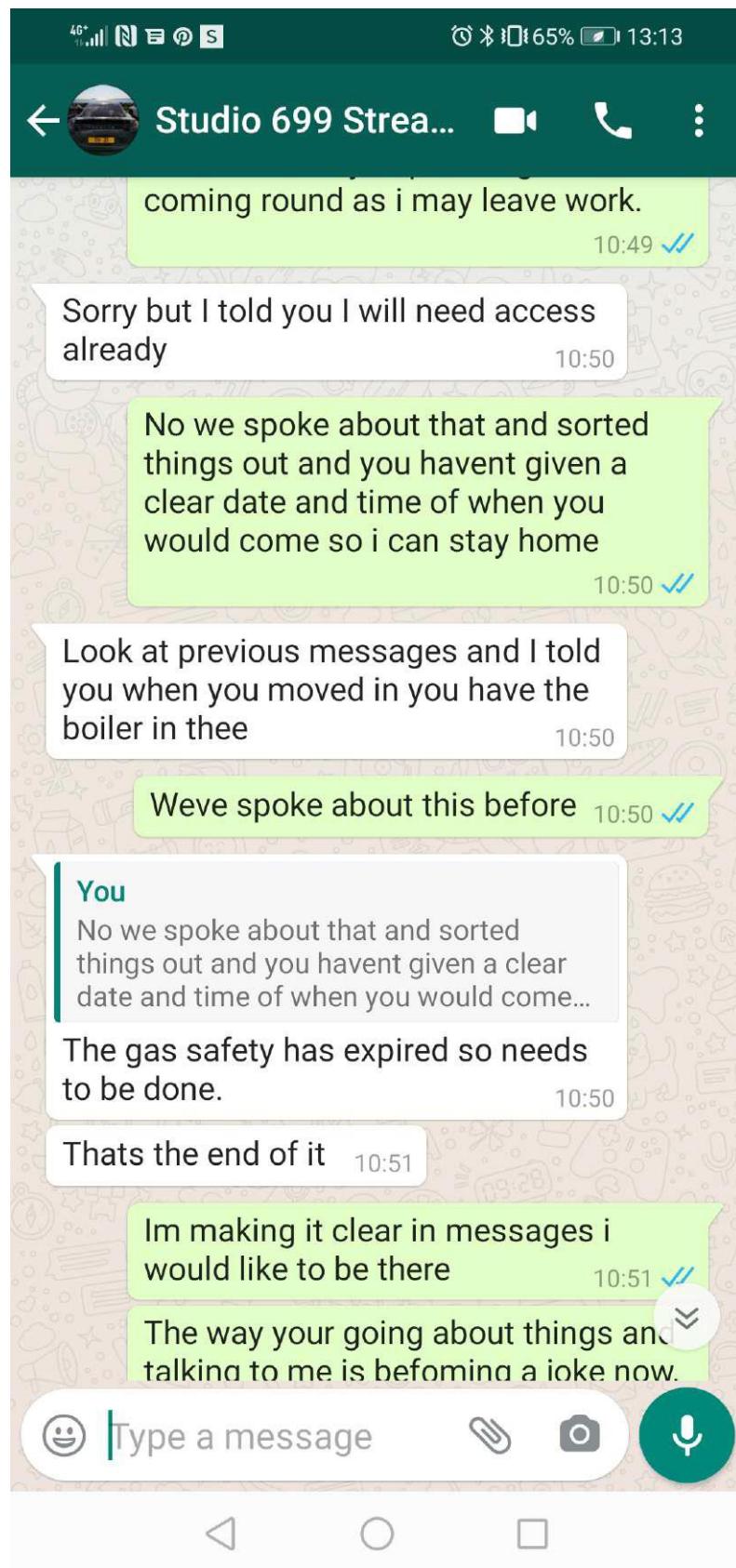
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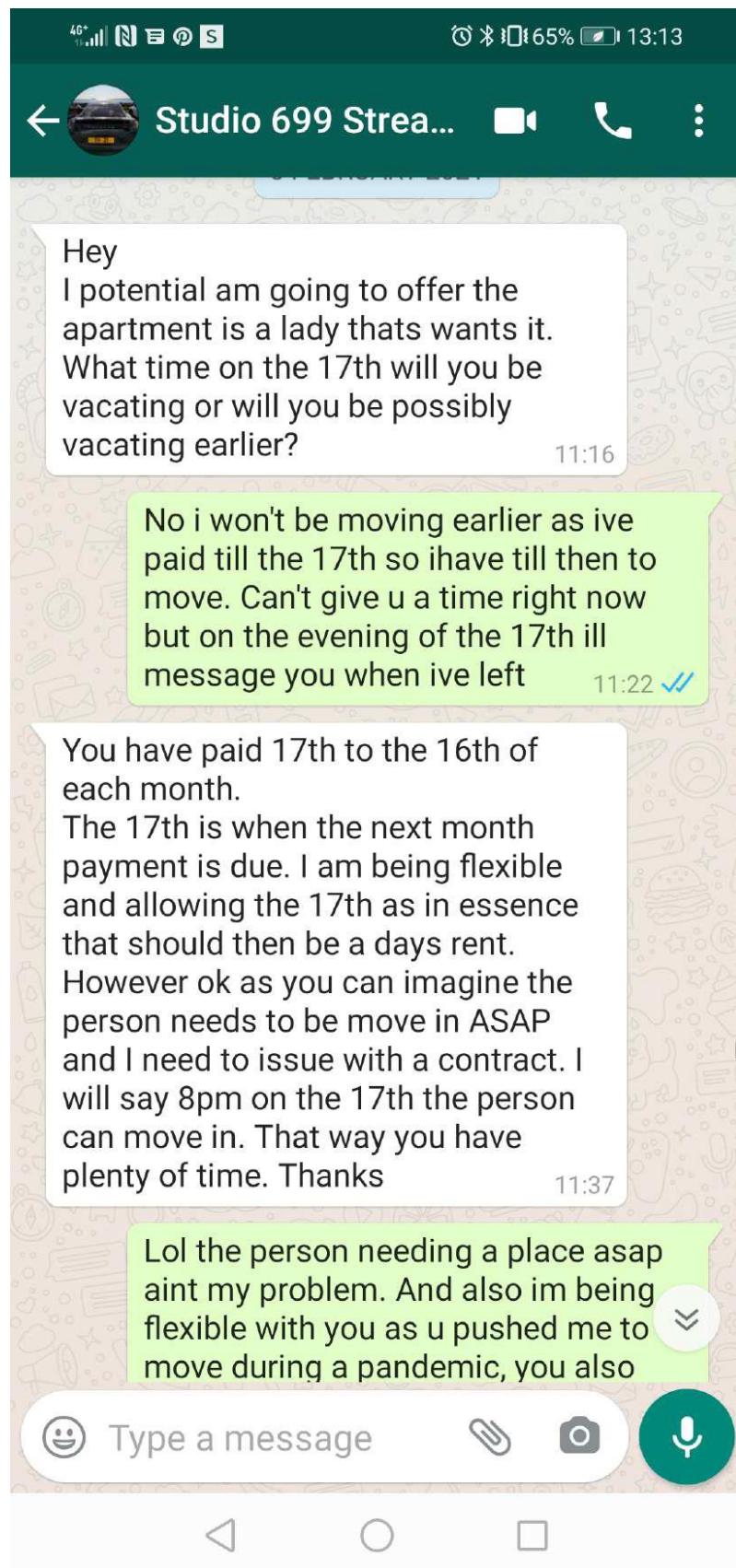
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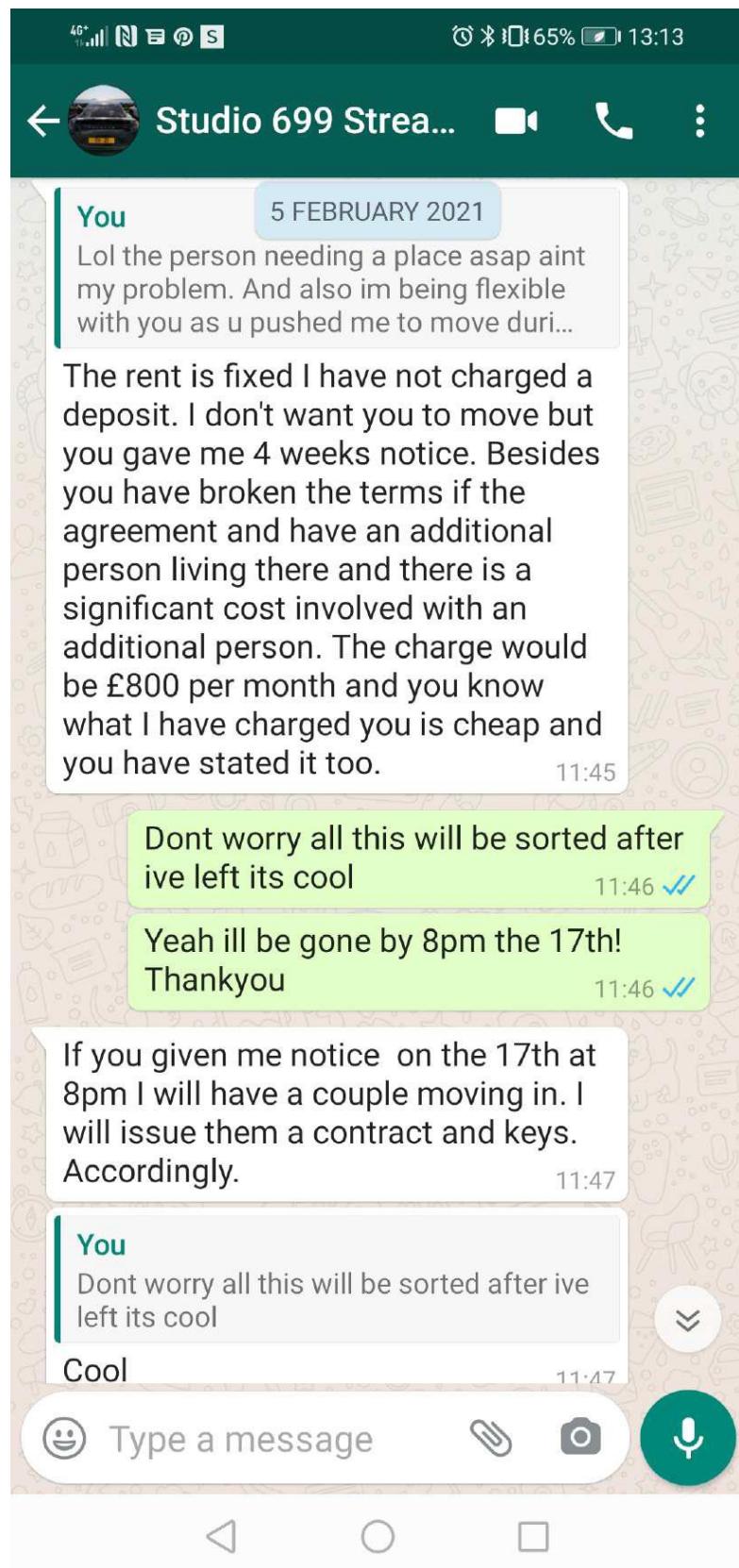
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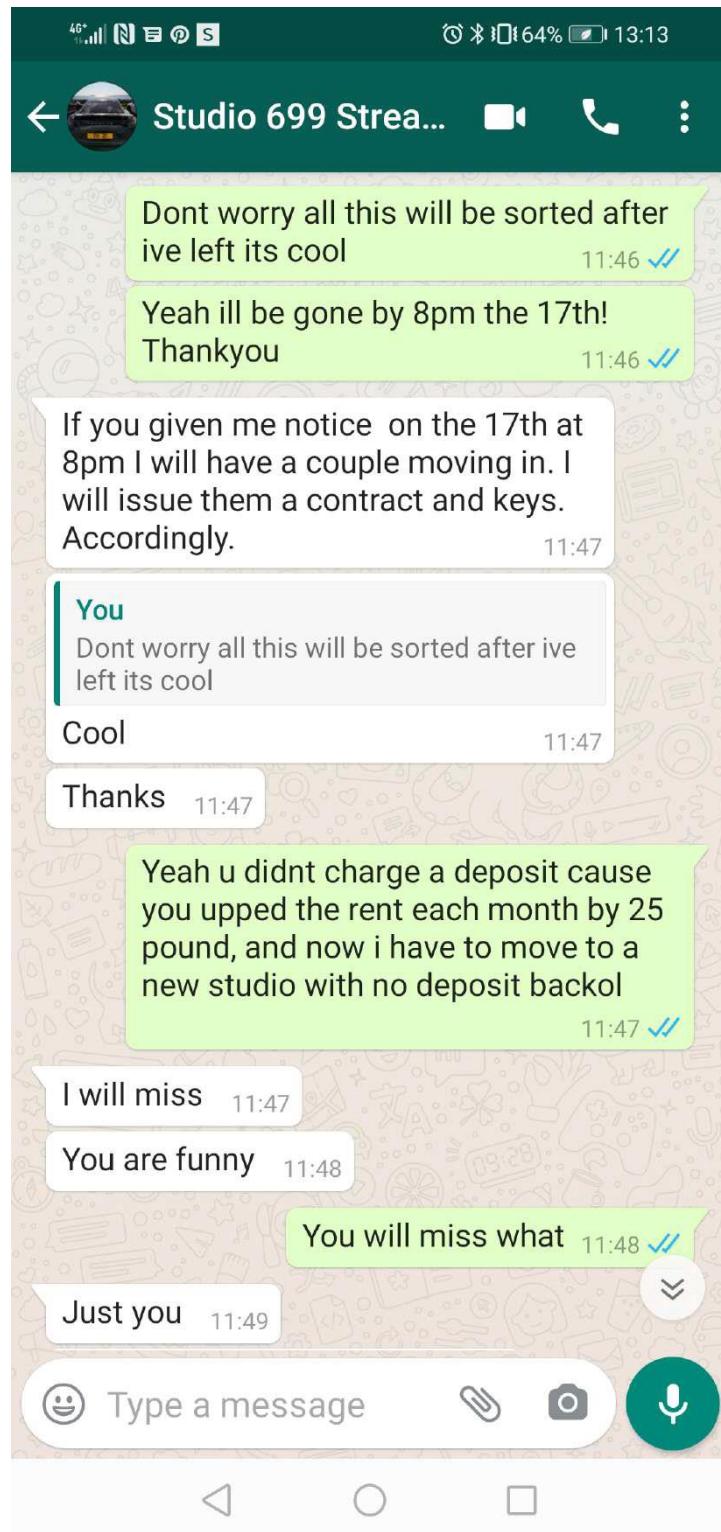
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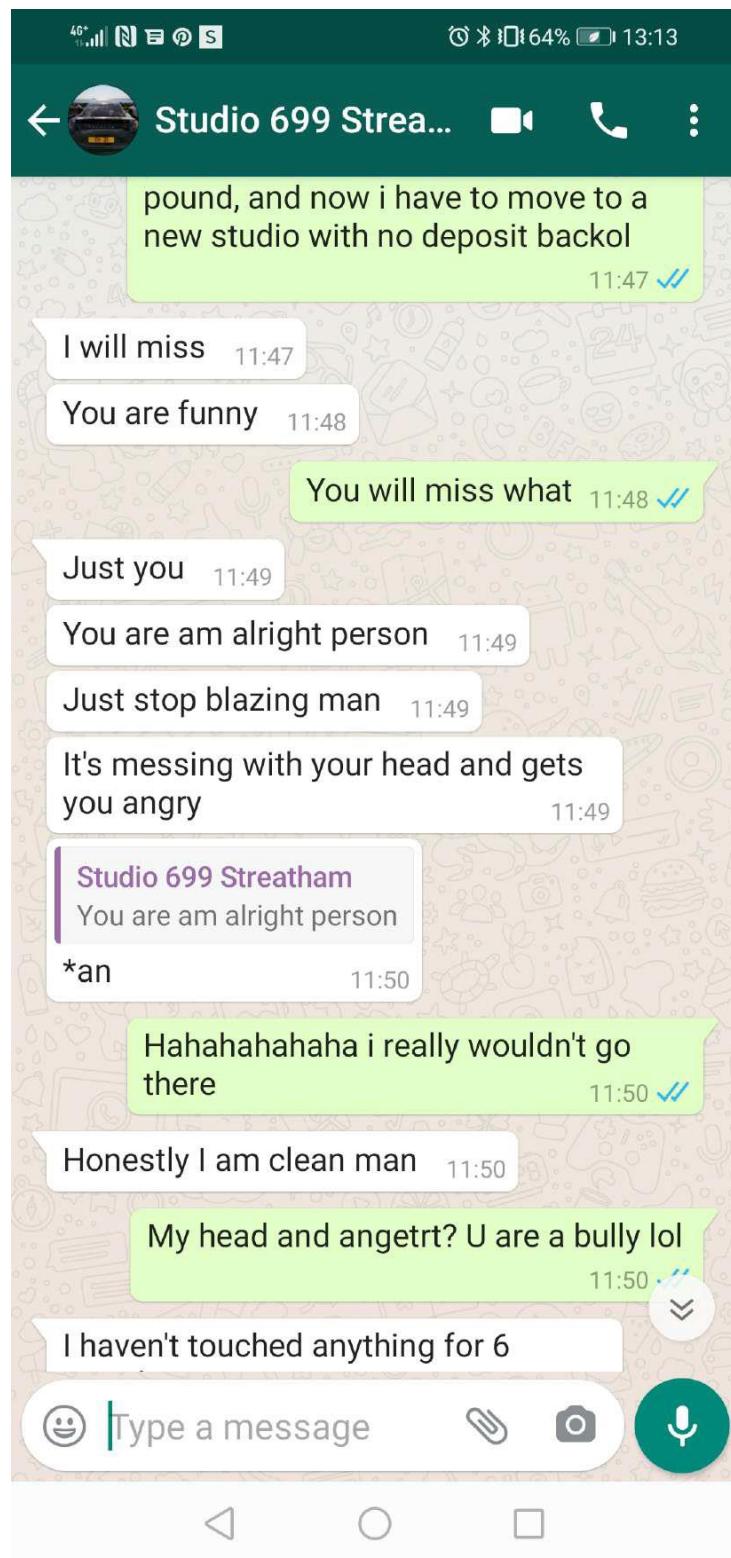
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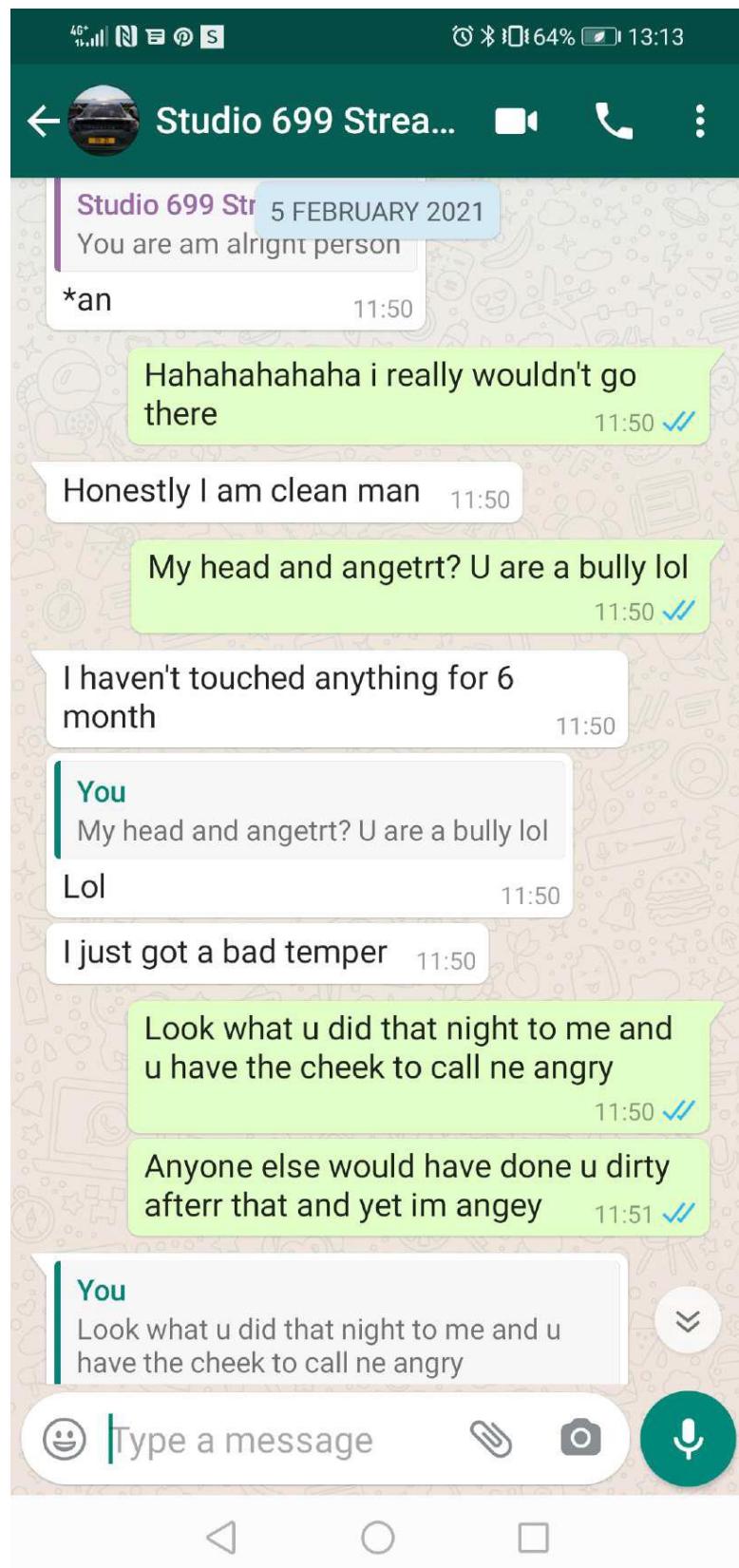
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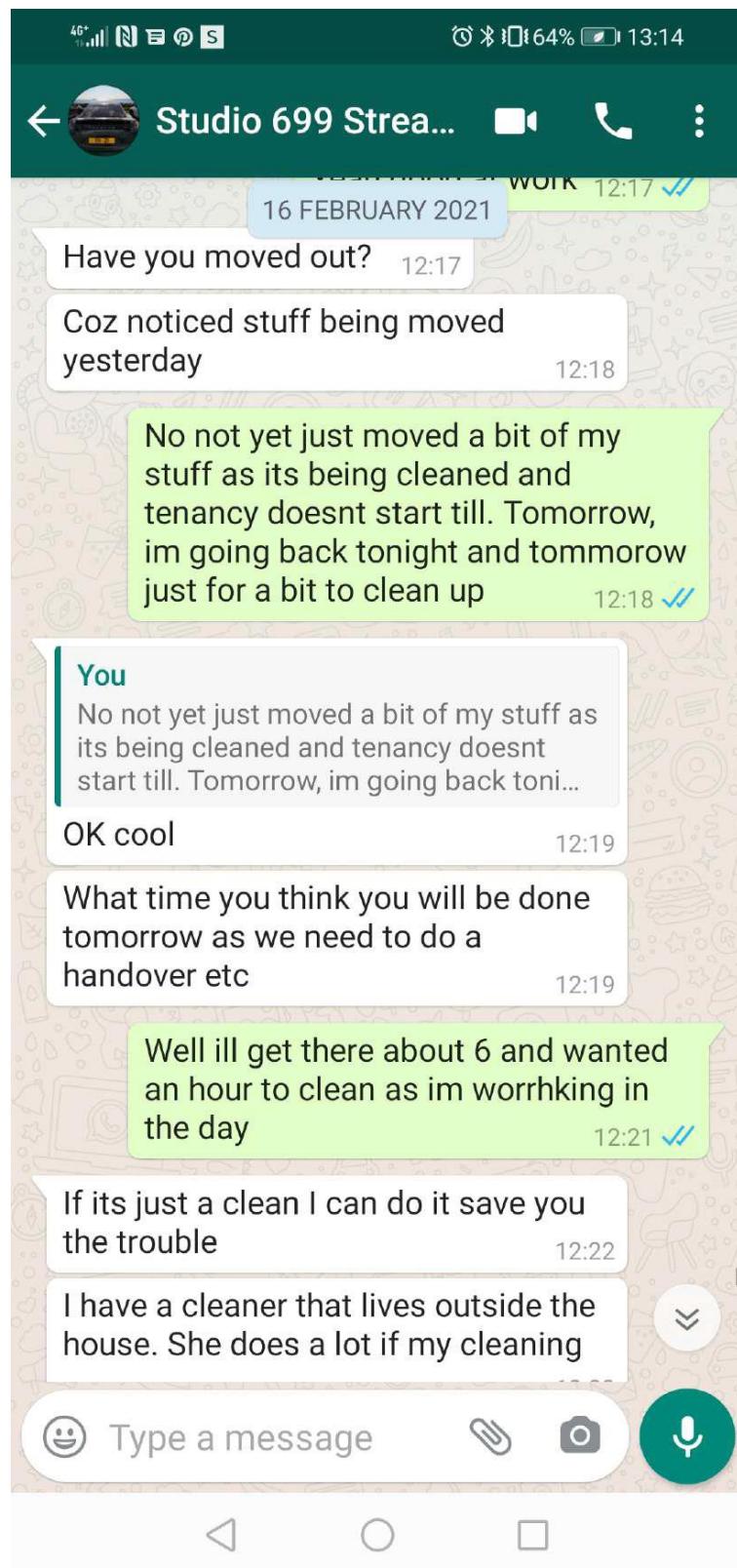
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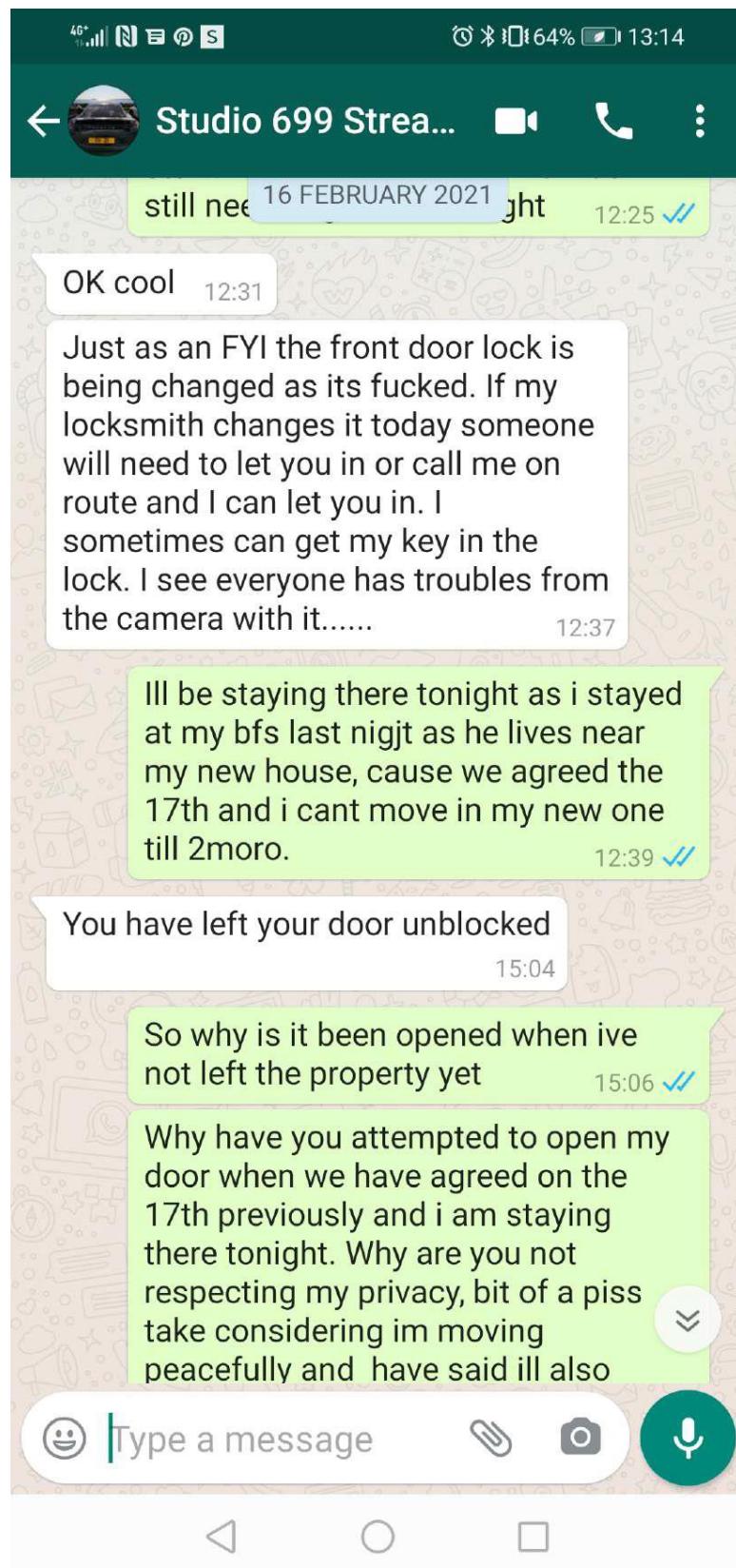
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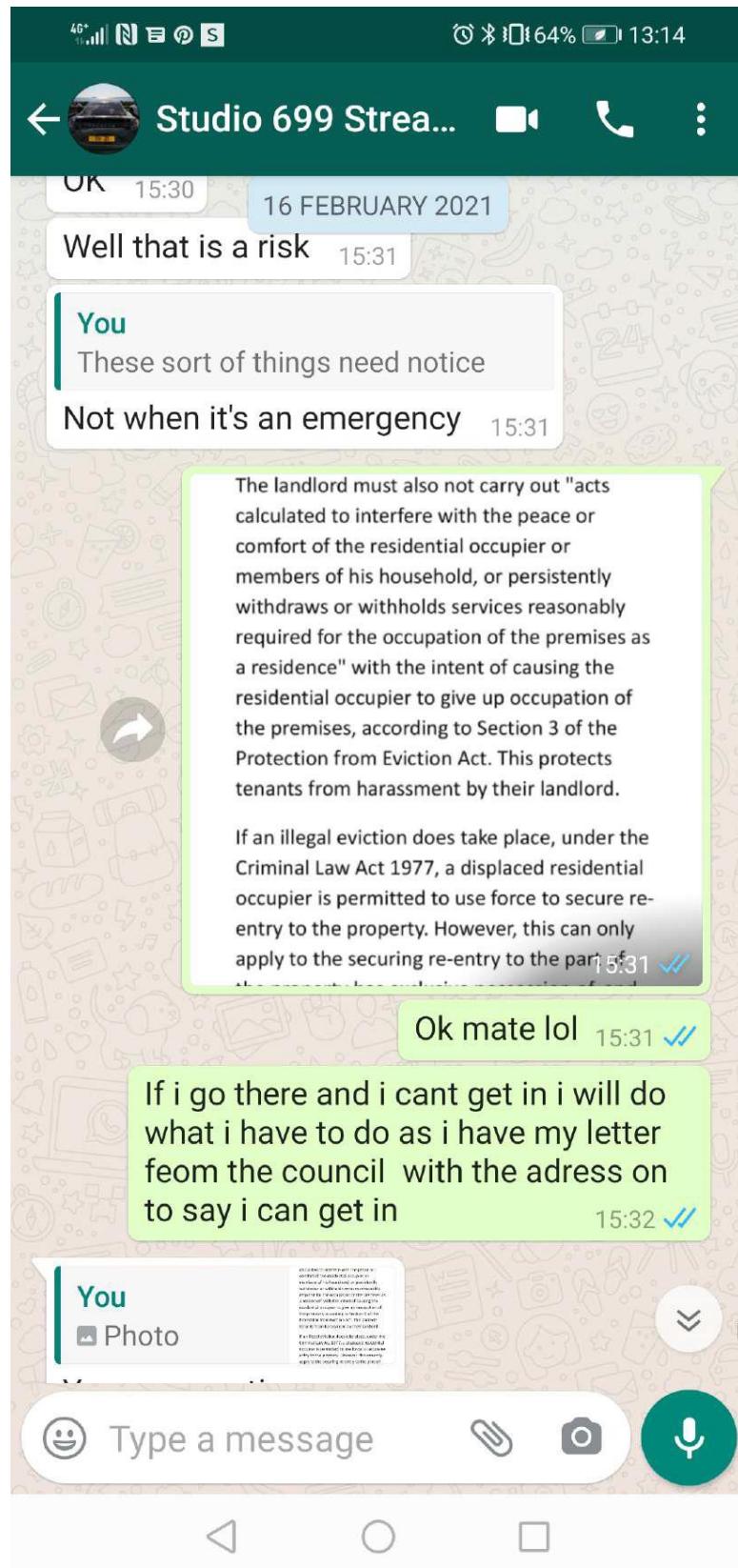
Screen shot 26



Screen shot 27



Screen shot 28



Screen shot 29



Screen shot 30

