FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/HMK/2021/0040**
HMCTS	**:**	**FVP**
Property	**:**	**Room 4, 41 Sladefield Road, Birmingham B8 3PF**
Applicant (Tenant)	**:**	**Adam Christopher Nolan**
Respondent (Landlord):		**Mihai Chivu**
Representative	**:**	**Ms Rebecca Farrell of Counsel instructed by Green & Olive, Solicitors**
Type of Application	**:**	**1) Application by a tenant for a Rent Repayment Order (RRO) (Sections 40, 41, 43 & 44 Housing and Planning Act 2016)** **2) Reimbursement of Tribunal fees pursuant to Rule 13 (2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal	**:**	**Judge JR Morris** **Mr R Chumley-Roberts MCIEH JP**
Date of Application	**:**	**3rd December 2021**
Date of Hearing	**:**	**6th April 2022**
Date of Decision	**:**	**27th May 2022**

DECISION

Decision

1. The Tribunal decided that the case be struck out under the Tribunal Procedure (First-tier Tribunal) Property Chamber Rules 2013 because:

   1) Under Rule 9(b) the Applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly in that:

The Applicant knew there was a requirement for him and/or his representative to attend and such attendance was necessary in order for the evidence regarding the alleged offences to be tested.

2) Under Rule 9(e) the Tribunal considers there is no reasonable prospect of the Applicant's proceedings or case succeeding in that:
   a) For the period from 24th December 2020 to 31st July 2021 the Respondent was the superior and not the immediate landlord and therefore Mr Aurelian Nitescu and Mr Georghe Frunzeanu should have been joined as Respondents.
   b) The Applicant had paid rent from 24th December 2020 to 31st July 2021 but had not paid rent from 1st August 2021 when the Respondent became the immediate landlord of the oral tenancy held by the Applicant.
   c) The Tribunal having examined the Applicant's Statement of Case and applied the evidence and submissions he made to the definitions of the alleged offences it determined that the case could not be dealt with exceptionally on written representations alone and an oral hearing was required.

2. The Tribunal determined not to make an order for costs against the Applicant under Rule 13 of the Tribunal Procedure (First tier Tribunal) Property Chamber Rules 2013.

3. The Tribunal makes no order for reimbursement of the Applicant's Application and Hearing Fees under Rule 13(2) of the Tribunal Procedure (First tier Tribunal) Property Chamber Rules 2013.

Reasons

Application

4. On 3rd December 2021, the Tribunal received an application under section 41 of the Housing Act 2004 ("the 2004 Act") as amended by the Housing and Planning Act 2016 (the "2016 Act") from the Applicant Tenant for a Rent Repayment Order (RRO).

5. For a valid application there must be:
   1) A tenancy agreement, oral or written
   2) under which the applicant is the tenant and the respondent is the immediate landlord
   3) of premises in respect of which the offences were committed while the tenant was in occupation and
   4) the offence was committed in the period of 12 months ending with the day on which the application is made.

6. The Applicant alleges that the Respondent Landlord committed the following offences:
   The Applicant had alleged three types of Offence as follows:
   1. That the Respondent controlled or managed an unlicensed House in Multiple Occupation ("HMO");

2. That the Respondent had committed one or more of the specified offences under section 6 of the Criminal Law Act 1977 (violence for securing entry),
3. That the Respondent had committed one or more of the specified offences under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (eviction or harassment of occupiers),

during the period from 24th December 2020 to 3rd December 2021. The relevant provisions are attached to this decision at Annex 2.

7. Directions were issued on 6th December 2021. Following an Application and Request for a Case Management Order Further Directions were issued on 13th January 2021. It was made clear to the Applicant that the nature of the allegations (i.e., reference to conduct by the Respondent which may amount to a criminal offence) meant that an oral hearing was required. Such hearing enables the parties and the Tribunal to test their respective cases.

8. In written representations, the Applicant referred to his deposit not being secured in an appropriate scheme and his not receiving:
   - a written tenancy agreement,
   - a how to rent booklet,
   - a gas safety certificate,
   - an Electrical Installation Condition Report (EICR) and
   - an Energy Performance Certificate (EPC) Certificate dated 10th May 2017 at grade E valid until 9th May 2027.

   Whereas this information is relevant when considering the landlord's conduct when making a RRO, enforcement is a matter for other bodies and is not within the Tribunal's jurisdiction.

9. A video hearing was held on 6th April 2022 which was attended by Ms Rebecca Farrell, Counsel for the Respondent and Mr Chivu, the Respondent. Mr Nolan, the Applicant, did not attend.

Description of the Property and House

10. The Tribunal did not make an inspection. A brief description was obtained from the Statements of Case and the Internet which was confirmed and details added by the Respondent at the commencement of the hearing as follows:

11. The Applicant occupied the middle room on the first floor, which for identification purposes is referred to hereafter as "Room 4". The occupation included rights over the communal parts which are the communal bathroom and toilet facilities, the living room and the kitchen ("the Property").

12. The Property is in a two-storey semi-detached house ("the House").

13. Externally the House has faced brick elevations under a concrete tile roof with double glazed upvc windows and doors and rainwater goods. Parking for two vehicles on the front. There is a large garden to the rear.

14. Internally the House comprises a common hallway from which rise stairs to a landing on the first floor. Off the hallway is a common living room and kitchen. There are two rooms, one with ensuite, on the ground floor (Rooms 1 and 2), there are three rooms off the first-floor landing at the front middle and rear (Rooms 3, 4 and 5). There are stairs to a loft room used for storage or as an office it is not a bedroom. There is a communal shower room with w.c. and wash hand on the ground floor, a communal bathroom with w.c. and wash hand basin and a communal w.c. with a wash hand basin on the first floor.

Preliminary Issues

15. Three Preliminary Issues arose to be dealt with before the evidence adduced and submissions made by the parties, in respect of the main issues raised in the Application, could be considered. The first was at the instigation of Counsel for the Respondent and the second and third was at the instigation of the Tribunal.

16. Initially on considering the Preliminary Issues the Tribunal was minded to strike out the case. Therefore, it set out the Respondent's submissions and the Tribunal's view in respect of the Preliminary Issues in a letter to the Applicant with the direction to make representations in relation to the proposed striking out, in writing by 29th April 2022 after which date the Tribunal would make a Decision whether or not to strike out. The Applicant in compliance with the direction made representations

Preliminary Issue 1 – Application by Respondent to Strike Out

Respondent's Case

17. On finding that the Applicant was not to attend the hearing, Counsel for the Respondent made an application for the case to be struck out for the following reasons.

18. Counsel for the Respondent referred the Tribunal to the Directions dated 6th December 2021 in which it was stated in the Background Section at paragraph (6) Important Note: Tribunal Cases and Criminal Proceedings "If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings."

19. Also, at paragraph 6 of the Directions themselves it was stated: "This matter is not suitable for paper determination and will be listed for a remote video hearing".

20. Counsel for the Respondent referred the Tribunal to *Raza & Others v Bradford Metropolitan District Council & Others* [2021] UKUTOO39 (LC) in which the Upper Tribunal considered three appeals against tribunal decisions which had been made upon consideration of the papers alone. Judge Cooke commented that:

"The difficulty with the procedure adopted by the FTT in these three cases was that these landlords were at risk of being found to have committed a criminal offence, there were factual issues in dispute, and the FTT made findings of fact on the basis of evidence that had not been tested in cross-examination. That made the procedure unreliable. It was also unfair because it resulted in a finding that a criminal offence had been committed without giving the landlord the opportunity to cross-examine the witnesses who gave evidence against him or to respond, under cross-examination, to the case against him." [42]

21. Judge Cooke acknowledged that there might be cases where written evidence about disputed facts is sufficiently clear and consistent for a tribunal to make findings of fact on the balance of probabilities. However, she considered that "... it is difficult to imagine cases where the FTT could be so sure of contested facts, on the basis of written evidence only, that it could find them proved to the criminal standard, beyond reasonable doubt." [43]

22. It was stated that in the present case the Application is based on the allegation that the Respondent has committed criminal offences under section 6 of the Criminal Law Act 1977 (violence for securing entry), and section 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (eviction or harassment of occupiers).

23. In her skeleton argument Counsel referred to *R v Phekoo* [1981] 1 WLR 1117 where the defendant was charged with doing acts calculated to interfere with the peace and comfort of a residential occupier of premises with intent to cause the residential occupier to give up occupation of the premises, contrary to section 1(3)(a) of the Protection from Eviction Act 1977. In that case it was recognised that the substantial penal consequences provided by section 1(4) for an offence under section 1(3) and the stigma and social obloquy attaching to a person convicted of an offence under subsection (3) indicated that it was a truly criminal offence which must be proved beyond a reasonable doubt. Therefore, in accordance with *Raza & Others v Bradford Metropolitan District Council & Others* contested facts in such cases must be tested in cross examination.

24. Counsel for the Respondent acknowledged that under Rule 34 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 the Tribunal had authority to hear a case in a party's absence if it is in the interests of justice to proceed. However, in the present case taking into account the above cases, it was said that it was not in the interests of justice to proceed as the Applicant was not available to be questioned over disputed facts.

25. It was noted that the Tribunal had stated in its preamble that the Applicant had said he had been diagnosed with Autism. The Tribunal, aware that the Applicant would find the hearing challenging, had encouraged him to attend on the assurance that reasonable adjustments would be made, and in addition he might obtain representations and referred him to agencies that would advise him. Nevertheless, the Applicant had not attended. In the light of this Counsel for the Respondent submitted that the Tribunal should apply Rule 9(3)(b) of the 2013 Rules which states that "the Tribunal may strike out the

whole or a part of the proceedings or case if the applicant has failed to co-operate with the Tribunal such that the tribunal cannot deal with the proceedings fairly and justly" …

26. Counsel submitted that it would not be in the interests of justice to proceed for the following reasons:

    a) The Applicant had been given every encouragement to attend.

    b) The Tribunal was able to make reasonable adjustments to enable the Applicant to present his case and to ask and answer questions of the Respondent or his representatives.

    c) The Application was based upon allegations of criminal conduct by the Respondent.

    d) The allegations of criminal conduct had to be proved beyond a reasonable doubt.

    e) The facts were contested and their veracity could not be relied upon, on the basis of written evidence alone so needed to be tested in cross examination.

    f) A finding of criminal conduct would result in stigma and social obloquy attaching to the Respondent and potentially far-reaching consequences as a landlord.

27. Counsel for the Respondent therefore submitted that the Tribunal should strike out the case under Rule 9(3)(b) of the 2013 Rules.

Applicant's Case

28. The Applicant made representations following the Tribunal's letter stating that it was considering striking out the case.

Non-attendance at the hearing

29. The Applicant submitted that an application for a RRO can be decided solely on the submission of written bundles and that as a person with autism, who cannot afford legal representation he felt more confident to apply for an RRO by himself without support using the "bundle based system".

30. The Tribunal unilaterally decided that a hearing should take place although neither side had requested a hearing and as a result the Applicant said he was forced to pay for a hearing. If he had known that there was bound to be a hearing he would not have applied or would have sought legal representation free or paid. He said it is now apparent that a hearing is required where there are any disputed facts.

31. The Applicant said that when he questioned the need for him to attend the Tribunal responded, saying that if he did not attend the hearing his case will

"certainly be considered". The Tribunal said that attending the hearing is not mandatory but that the Tribunal would "very much like" the Applicant to attend, which is not a mandatory instruction. The Applicant said that he thought that the Tribunal would thoroughly examine the bundles notwithstanding that the Applicant did not attend. He did not know that his failure to attend would mean the case would be automatically struck out.

32. The Applicant noted that the provision in the 2013 Rules for striking out states that "the applicant has failed to co-operate with the tribunal such that the tribunal cannot deal with the proceedings fairly and justly". The Applicant stated that he had cooperated with every instruction from the Tribunal where it was clear it was mandatory to do so. He said he confirmed with the Tribunal before the hearing that attending the hearing would not be mandatory, that if he could not attend the hearing his written bundles could be used as opposed to him narrating them live over the internet.

No adequate adjustments were made for autism

33. The Applicant said that the Tribunal claimed that adequate adjustments would be made to take account of his autism. He said he had informed the Tribunal that he had a processing delay, meaning it can take him a long time to understand the context of spoken words (sometimes only realising some days later), that he can get confused with verbal information, that he had no representation and could not afford representation and that he had social anxiety. The Tribunal only offered:
    1) To give the Applicant adequate time to respond. Which he considered insufficient as it can take him days to respond.
    2) Links to free legal advice. He said he had tried Citizen's Advice, Shelter, the local authority, and numerous links on the Internet, all to no avail as he could not get through to people who can really help.

34. The Applicant did not consider it fair or in the interests of justice for an autistic person, who struggles with communication and processing speech, who cannot afford legal representation, to be forced alone into a live online debate against some of the country's top solicitors paid for by a landlord with multiple properties and a lot of wealth.

35. He submitted that the Tribunal had not made adequate adjustments.

36. In addition, the Applicant objected to the Respondent being informed that he had autism.

Cross examination of written vs spoken words

37. The Applicant said that the Respondent's Counsel submitted that oral cross examination is necessary. However, he said he was assured prior to the hearing that if he did not attend, his written bundle would be considered. He felt that there seemed little point in submitting bundles if they are not to be considered without oral cross examination.

38. The Applicant said that he had in effect been questioned by replying to the Respondent's Bundle. In the event, the Applicant said that his reply to the matters raised in the Respondent's Bundle was the same as his representations in the Applicant's own Bundle which he submitted at the beginning of the proceedings.

39. The Applicant said he was of the opinion that written evidence alone could amount to cross examination. He referred the Tribunal to a Home Office Policy Paper *Cross-examination in family proceedings factsheet relating to victims of abuse* which states that there are cases where in person cross examination can cause a party to become harmed, distressed, and can cause the quality of their evidence to be diminished due to the format of the cross examination, and suggests that in such cases an alternative form of cross examination, or cross examination by a third party representative only should occur. By extension the Applicant submitted that this should apply to all cases and all forms of cross examination; a party should never be under distress or placed at a disadvantage.

40. The Applicant stated that the Tribunal should have:
    - more appropriately considered the effect a live, verbal, cross examination would have on him and on the fairness and integrity of the case and information gained during such a hearing;
    - first contacted him to ask what kind of problems a live hearing would present for him before deciding whether a hearing should take place or not;
    - given him much more time to find legal representation for a hearing and provided more help regarding this.

41. The Tribunal found that the Applicant's submissions amounted to an application to the Tribunal to have the proceedings considered exceptionally by paper submissions alone. This is dealt with below under the heading "Exceptionality of the Case".

Preliminary Issue 2 - Tenancy Agreement

42. On examining the written Statements of Case provided by both parties the Tribunal had stated that it appeared that the Application had been brought against the wrong Respondents and that therefore it did not have jurisdiction to make the order the Applicant sought.

43. Under section 41 of the Housing Act 2004 a tenant may apply to the First-tier Tribunal for a RRO against a person who has committed a specified offence only if the offence relates to housing that, at the time of the offence, was let to the tenant, and the offence was committed in the period of 12 months ending with the day on which the application is made.

44. Section 40(2) of the 2004 Act states that the RRO can only be made against the landlord. In the case of *Rakusen v Jepson* [2021] EWCA Civ 1150 it was held that this meant the immediate landlord and that a RRO cannot be made against a superior landlord.

Respondent's Case

45. In written representations the Respondent said that, whereas he was the sole registered proprietor of the House and had been since 2017, on 1st August 2019 he had let it to Mr Aurelian Nitescu and Mr Georghe Frunzeanu under an Assured Shorthold Tenancy Agreement witnessed by Mr Emmanuel Ion (copy provided) for a period of 24 months until 31st July 2021 ("the Head Tenancy"). Under clause 1.5.2 Mr Nitescu and Mr Frunzeanu had permission to sublet the House which he said is what they did. They have since left the United Kingdom and their whereabouts are unknown.

46. It appeared from the WhatsApp messages provided that the Respondent granted a monthly periodic assured shorthold tenancy to the Applicant of the Property from 24th December 2021 ("the Sub-Tenancy"). It had been admitted in the Respondent's statement of case that the Respondent was a person managing or in control of the premises. The Respondent therefore granted the tenancy as the agent for Mr Aurelian Nitescu and Mr Georghe Frunzeanu and evidenced this by stating that he informed the Applicant to pay the rent into Mr Georghe Frunzeanu's Nationwide Building Society account.

Applicant's Case

47. The Applicant had made written representations in his statement of case prior to the hearing and reaffirmed and added to those in representations following the Tribunal's letter stating that it was considering striking out the case.

48. The Applicant submitted that he did not believe that Mr Aurelian Nitescu and Mr Georghe Frunzeanu existed as separate persons and that they were aliases of the Respondent.

The Respondent was always the immediate landlord

49. The Applicant submitted that the full transcript of WhatsApp messages between the Applicant and the Respondent showed the Respondent to be the immediate landlord. In particular when the Applicant asked for the landlord's name and address the respondent provided his own and did not provide any details of Mr Aurelian Nitescu and Mr Georghe Frunzeanu and does not say he is an agent or superior landlord and that Mr Aurelian Nitescu and Mr Georghe Frunzeanu are the immediate landlords.

50. The Applicant said that neither he nor his housemates had ever met Mr Aurelian Nitescu and Mr Georghe Frunzeanu or made an agreement with them.

51. With regard to the payment of rent the Applicant said that he was never told who the money was being paid to only that it was to be paid into an account, the details of which were provided by the Respondent. There was no mention that it was to be paid to a person other than the Respondent or that the Respondent was acting for any other person.

52. The Applicant submitted that irrespective of to whom the rent was paid the tenancy agreement was an oral agreement with the Respondent and not Mr Aurelian Nitescu and Mr Georghe Frunzeanu. His lack of knowledge about them meant that he would not be able to seek a RRO against them.

53. The Applicant questioned the existence of Mr Aurelian Nitescu and Mr Georghe Frunzeanu stating that merely because there is a bank account in a person's name does not mean that they exist. The Applicant stated that he believed that the assured shorthold tenancy agreement between the Respondent and Mr Aurelian Nitescu and Mr Georghe Frunzeanu was a device to enable the respondent to escape liabilities and responsibilities as a landlord.

A Rent Repayment Order can be brought against a Superior Landlord

54. The Applicant submitted that even if the claim that Mr Aurelian Nitescu and Mr Georghe Frunzeanu were his immediate landlords was correct, a RRO can be made against a superior landlord.

55. The Applicant sought to distinguish the case of *Rakusen v Jepson* [2021] EWCA Civ 1150. He stated that the tenant in the case applied for a RRO against a landlord who was not named in the same tenancy agreement as the tenant. Here was a direct relationship between the applicant and his immediate landlord. In contrast in the present case there was no tenancy agreement between the Applicant and Mr Aurelian Nitescu and Mr Georghe Frunzeanu. He said he had never met them and so had no direct relationship with them. The only tenancy agreement was a verbal one between the Respondent and the Applicant. Therefore, the Respondent is not the superior landlord but the immediate landlord.

56. The Applicant said that the Upper Tribunal case of *Goldsbrough v CA Property Management Ltd [2019] UKUT 311 (LC)* held that a RRO could be made against a superior landlord.

Preliminary Issue 3 – Rent Paid

57. The Tribunal found that the Parties agreed that the Applicant had paid rent up to the 31st July 2021. On that date the Head Tenancy granted to Mr Aurelian Nitescu and Mr Georghe Frunzeanu came to an end and the House reverted to the Respondent together with the reversion of the Sub-Tenancy granted by Mr Aurelian Nitescu and Mr Georghe Frunzeanu through the Respondent as their Agent at the time. From 1st August 2021 the Respondent is the correct party. However, according to the statements of both parties the Applicant has not paid any rent since 1st August 2021. However, the Applicant contended that as his deposit had not been paid into a Deposit Scheme, he was entitled to use it for the month of August. He therefore claimed that he had paid rent up to the 31st August 2021.

58. In his representations following the Tribunal's letter stating that it was considering striking out the case, the Applicant reaffirmed his position that he

had made 7 rent payments for the period from 1st January to 31st July. In addition, he had made one deposit payment which was the same amount as one monthly rent payment. Due to the fact the deposit was not put into a deposit protection scheme the deposit was later used as rent to pay for all of August.

Exceptionality of Case

59. The Tribunal examined all the Applicant's representations to determine whether exceptionally the case could be determined on written statements alone as the Applicant contended.

60. The Applicant provided a Statement of Case in which he referred to a series of WhatsApp messages which form a timeline making comments at intervals upon the exchanges. There was some dispute between the parties as to whether the Applicant had set out the complete versions in his initial statement but the following is understood to be a full account.

61. The messages are referred to by date and are summarised, précised and paraphrased as follows:

21/12/20 The Applicant introduces himself to the Respondent. The Respondent sates that there is a medium double room available at the House from 23rd December 2020. The Respondent states that there are 5 tenants 1 per room (including the Applicant). There is 1 w.c. with a wash hand basin, 1 shower room with w.c. and wash hand basin and 1 bathroom with w.c. and wash hand basin and 1 kitchen with two fridge freezers. The Applicant and Respondent agree and it is confirmed that the Applicant can move into the Property with his possessions on 24th December 2020. The Respondent said that one of the current tenants will meet the Applicant and show him the room and the Applicant can send the deposit and rent to the Respondent.

24/12/20 The Applicant and Respondent sort out the furniture and the Applicant confirmed he has keys to the House. The Respondent also asks the Applicant to send a copy of identification.

25/12/20 The Respondent asks the Applicant to transfer the deposit of £325.00 and a month's rent, also of £325.00 (total £650.00) to an account in the name of G Frunzeanu.

30/12/20 In response to the Applicant's request for the name and address of the Landlord the Respondent states: Mihai Chivu 6 Farraline Road, Watford WD18 0DQ. It is confirmed that there are three other tenants.

Comment 1:
The Applicant stated that he believed the Respondent was the Landlord. With regard to G Frunzeanu he feels he probably should have questioned the payments into the account but he had only just met the Respondent and was not clear about the name. He thought it was the same person. He since believes that the name is an alias of the Respondent.

Further messages are exchanged on:
07/01/21; 08/01/21; 21/01/21; 08/02/21; 14/02/21 which are not relevant.

28/02/21 The Respondent states that a prospective tenant came to view a room but was not happy with it. It appeared it was wanted for a family.

08/03/21 The Applicant informs the Respondent that another prospective tenant came to view a room and liked it although was concerned about the parking.

14/03/21 The Respondent asks the Applicant to show a prospective tenant Sorin's room. The Respondent acknowledges the Applicant works nights.

15/03/21 The Applicant informs the Respondent that the prospective tenant did not like the room on the ground floor next to the garden that was available and wanted one at the front. The Respondent said the two rooms at the front were occupied by Abraham (Ibrahim) and Emmanuel.

Comment 2:
The Applicant said that the house already had 5 or 6 people living there and the Respondent continued to advertise the empty rooms left. There were 7 rooms in all. The Applicant submitted that this goes to show that the House was a House in Multiple Occupation.

05/04/21 message not relevant

10/04/21 Respondent asked the Applicant if he will be in on Monday 11:00 to 14:00 as he needs access to all rooms for electricians and an inspection. The Applicant said that he will need to sleep from Monday morning to evening. The Respondent offers the Applicant a room in the house next door, number 39. An arrangement is made for the Applicant to stay in a room in Number 39 for the day while the electricians are at the House.

Comment 3:
The Applicant stated that in April/May the Respondent had contractors coming into the House to inspect or carry out work. On 11th April 2021 because he worked nights, as the Respondent knew, he had to sleep in the day when the contractors or inspectors would be in attendance. He was therefore left with two options either to stay in the Property and be woken or to sleep in a different room at the house next door (39 Sladefield Road). He submitted that this amounted to harassment.

12/04/21 The Respondent informed the Applicant that the House and Property were to be inspected again and that every room had to be empty except the attic and that the Applicant could sleep in Emmanuel's room in the attic. The Respondent said that Emmanuel was a friend. The Applicant said that he went to sleep in the attic presumably about 7.00 and found that when he awoke at about 8.00, he had been locked in. After 12:00 the Applicant noted a message from the Respondent and found a key had been put under the door and he was able to let himself out. The Applicant was then told to leave the key with another tenant.

14/05/21 The Respondent informed the Applicant that he required access to install smoke alarms. He said that work would be carried out over the next 2 days The Applicant said the message was not sent until 20:12 and so was not proper notice.

Comment 4: The Applicant said that he believed he was asked to sleep in the attic on 12th April 2020 in order that the House would not appear to be a HMO. The carrying out of works without proper notice the Applicant submitted also amounted to harassment.

15/05/20 The Applicant remonstrated with the Respondent for instructing contractors to carry out work when he knew the Applicant would be trying to sleep. The Respondent offered him the house next door. There follows a lengthy exchange in which the Applicant complains that there is no thumb-turn lock on the front door, there is no gas safety certificate, no rent agreement, no deposit protection scheme. The Respondent replied that there was a rent agreement with the person who rented the whole house, the occupiers were all lodgers and that he knew about the regulations but not even 60% are complying in full with regulations in 2021.

Comment 5:
The Applicant said that there were different numbers of tenants in the house at different times. The Applicant said that when he moved in there were five tenants. He and two others were there all the time but another two were only there occasionally (Ibrahim and Emmanuel). By 15th May 2021 Sorin had left, Maleka had been required to leave and another two tenants still had rooms but were currently not present in the House. The Applicant said that the House was incredibly noisy for the next 2 days and he missed days of work.

03/06/21 The Applicant asked the Respondent whether he needed to find a new place in July. The Respondent said that he did not.

08/06/21 message not relevant

04/07/21 Applicant asked to meet Respondent in the garden where the Respondent tells him that the Tenants are to move next door to 39 Sladefield Road because the House is to be let to the Council.

15/07/21 The Respondent informs the Tenants that they can move in two weeks' time but that he will let them know.

02/08/21 There is an exchange regarding the move into 39 Sladefield Road.

Comment 6:
The Applicant said that the Respondent spoke to him in person about moving and the Applicant said he was very unhappy. The Applicant said that it was causing a disturbance to his life, that the Respondent had told him one month ago that he would not have to move. The Respondent replied that it was no longer an option to stay in the house, it was to move to 39 Sladefield Road or the street. The Respondent then sought to make the move appear attractive.

22/08/21 There was a verbal exchange between the Applicant and the Respondent which the Applicant recalled as follows:
The Applicant stated that he and another tenant (Lucian) were still living in the House. He said that the Respondent was very angry to find them still there and said they had no choice but to move into 39 Sladefield Road. He said that many things had not been finalised about the move to 39 Sladefield Road such as how much the rent would be. The Applicant said that he wanted a tenancy agreement for 39 Sladefield Road and was no longer prepared to pay his rent into the G Frunzeanu account. He also said that 39 Sladefield was not up to the standard of an HMO as there were 6 persons occupying it. The Applicant also said that the Respondent had burnt and threw away personal items belonging to the Applicant.

23/08/21 The Applicant said that he reported the whole matter to the Council who took no action.

22/09/21 The Applicant said that he continued to live in 39 Sladefield Road until he returned from work on 22nd September 2021 to find the locks had been changed.

62. The Applicant said that he returned to the Property (i.e., his room in 41 Sladefield Road) from which he said he had been unlawfully evicted and gained forceable entry. He said that he was entitled to gain forceable entry as he had been unlawfully evicted and was entitled to stay there until he was lawfully evicted.

Applicant's Submissions

63. Based upon the above timeline and commentary the Applicant made the following submissions:

Respondent is the Landlord

64. The Respondent was the landlord as evidenced by the email exchange of 21st, 24th, 25th and 30th December 2020, and that he had a room in the House from 24th December 2021 onwards. Therefore, he was entitled to apply for a RRO against the Respondent as the immediate landlord. This submission was developed further by representations in response to the Tribunal's letter stating it was considering striking out the case. The Applicant's argument is set out above.

Unlicensed House in Multiple Occupation

65. The Respondent was a person having control of or managing an HMO which is required to be licensed but is not so licensed under section 72 of the 2004 Act.

66. The Applicant alleged that the House was occupied as follows:

41 Sladefield Road						
Rooms	1	2	3	4	5	6
December 2020	Applicant	Ioan-Lucian Vasil	Maleka Musaji	Soren	Ibrahim	Emmanuel Christian Ion
January 2021	Applicant	Ioan-Lucian Vasil	Maleka Musaji	Soren	Ibrahim	Emmanuel Christian Ion
February 2021	Applicant	Ioan-Lucian Vasil	Maleka Musaji	Soren	Ibrahim	Emmanuel Christian Ion
March 2021	Applicant	Ioan-Lucian Vasil	Maleka Musaji	Soren	Ibrahim	Emmanuel Christian Ion
April 2021	Applicant	Ioan-Lucian Vasil	Maleka Musaji		Ibrahim	Emmanuel Christian Ion
May 2021	Applicant	Ioan-Lucian Vasil	Maleka Musaji		Ibrahim	Emmanuel Christian Ion
June	Applicant	Ioan-Lucian Vasil	Maleka Musaji		Ibrahim	Emmanuel Christian Ion
July	Applicant	Ioan-Lucian Vasil	Samuel Jonnah		Ibrahim	Emmanuel Christian Ion
August	Applicant	Ioan-Lucian Vasil			Ibrahim	
39 Sladefield Road						
September	Applicant	Ioan-Lucian Vasil	Samuel Jonnah	Alex	Alex's Friend	Unknown Male

67. Therefore, the Applicant submitted that the House was an HMO for which a licence was required but was not obtained.

68. The Respondent did not dispute the occupation except that the House was not the only or main residence of Ibrahim and Emmanuel Christian Ion within the meaning of section 254 of the Housing Act 2004.

Harassment & Illegal Eviction

69. Referring to the timeline and commentary, the Applicant alleged that he was illegally evicted by the Respondent from the Property in contravention of section 6(1) of the Criminal Law Act 1977 (violence for securing entry) and/or sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (eviction or harassment of occupiers).

70. The Applicant submitted that requiring him to give up the occupation of the Property amounted to unlawful eviction or harassment under section 1(3) of the Protection from Eviction Act 1977. The House in which the Property is situated was to be let to 10XRising with vacant possession and therefore the Applicant was forced to move. He contends that the letting to 10XRising is an act calculated to interfere with the peace or comfort of the Applicant as the residential occupier with intent to cause the Applicant to give up the occupation of the Property.

71. The Applicant says that the Respondent gave him no choice but to move because the Respondent had decided that the House was to be let to another person. The Applicant submitted that the Respondent had to serve notice in order to terminate the tenancy agreement with the Applicant.

72. The Applicant also submitted that since he has been living at the Property after 22nd September 2021 the Respondent has committed an offence under section 6(1) of the Criminal Law Act 1977 because, without lawful authority, he used or threatened violence for the purpose of securing entry into the House and Property when the Applicant was present on those premises at the time who was opposed to the entry which the violence is intended to secure and the Respondent knew that was the case.

73. The Applicant said that no attempt was made to accommodate the Applicant when the Respondent arranged inspections or carried out works.

Decision

74. The Tribunal considered each of the Preliminary Issues and then considered the Statement of Case provided by the Applicant to determine whether the facts of the case were such as to justify proceeding exceptionally in the absence of the Applicant and based on written statements alone.

Preliminary Issue 1 – Non-Attendance by the Applicant

75. The Tribunal noted the cases of *Raza & Others v Bradford Metropolitan District Council & Others* [2021] UKUTOO39 (LC) and *R v Phekoo* [1981] 1 WLR 1117 referred to it by Counsel for the Respondent. It considered whether taking into account those cases and that the allegations made by the Applicant were of criminal conduct, whether it was in the interests of justice to proceed in the absence of the Applicant. The Tribunal found that in the normal course of events it would not be.

76. The Applicant stated that it had not been made clear to him that his attendance was mandatory and that his written evidence would not be considered if he did not attend and he could not afford legal representation.

77. The Applicant stated that no provision was made for his autism. He said that although the Tribunal had claimed that adequate adjustments would be made due to the time taken for him to process information and that he can get confused with verbal information the only reasonable provision was to allow him to provide a written statement of case. He added that his social anxiety

meant that any attendance would require legal representation which he could not afford and his attempts to obtain free assistance had been unsuccessful. He was also aggrieved that the Respondent had been told he had autism.

78. Lastly on this issue the Applicant said that his written statement was sufficient without the need for verbal cross examination. He referred the Tribunal to the Home Office Policy Paper *Cross-examination in family proceedings factsheet relating to victims of abuse*.

79. With regard to the need to attend the hearing the Tribunal found that the Case Officer on the instructions of the Procedural Judge had sent a number of communications regarding attendance. The Case Officer had sent an email to the Applicant dated 9th March 2022 which stated that the Applicant's attendance was mandatory saying: "the Upper Tribunal has ruled that all applications for RRO must be determined following an oral hearing". This was reiterated in an email from the Case Officer to the Applicant, dated 10th March 2022, in which it was stated: "Decisions from higher courts have led to oral hearings being required in nearly all cases of this type". It was also stated that "The Tribunal will make every endeavour to arrange a day that is convenient for you and you are encouraged to participate. Your written submission will be taken into account by the Tribunal in the hearing and when making its decision." The email did not say that the written submissions were an alternative to attendance.

80. It was further stated in the email that "The Tribunal notes your concerns about speaking in an oral hearing, however, the tribunal members will give you full opportunity to state your case, the environment is less formal than other courts. You can if you wish be represented by a solicitor or a friend/relative who can speak on your behalf."

81. The need for attendance was further confirmed in an email from the Case Officer to both parties dated 24th March 2022 in which it was stated; "The tribunal will hear oral representations from both parties on this application at the end of the hearing listed for 6th April 2022."

82. With regard to the provision in respect of autism the Applicant informed the Tribunal by email dated 25th March 2022 and 28th March 2022 that he found the proceedings and the hearing in particular very challenging and stressful as he was on the autistic spectrum. He therefore asked for the matter to be dealt with on paper submissions alone. In email correspondence the Tribunal explained on 28th March 2022 that although it was inevitable that the Applicant would be asked questions by the Respondent or his representative and that the Applicant could also ask questions of the Respondent, Tribunal hearings are less formal than Court hearings. In addition, the video hearing should be very much less stressful than attending a face-to-face hearing and the Tribunal is used to assisting parties with autism. For guidance the Tribunal attached a copy of the relevant extract from the Equal Treatment Bench Book and the leaflet "Do You Need Legal Advice?" The Tribunal therefore considered that it had made it clear to the Applicant that reasonable adjustment would be made to enable the Applicant to attend.

83. In the event the Tribunal Judge assigned to the case had many years of experience of supporting persons who have conditions such as Autism Spectrum.

84. The Applicant's condition was relevant to the case in explaining why he did not attend and his request for consideration of the papers alone in response to his additional needs.

85. With regard to the Applicant's written statement being sufficient the Tribunal found that there were a number of facts over which the parties were in conflict and which required discussion and examination. The written statement was not sufficient. Home Office Policy Paper *Cross-examination in family proceedings factsheet relating to victims of abuse* is specific to circumstances which are not applicable in the present case.

86. The Tribunal therefore found that the Applicant knew there was a requirement for him and, if he required, his representative to attend the hearing and this was necessary for the evidence regarding the alleged offences to be tested. The Tribunal also found that the need for him to attend and instruct a representative was referred on 9th March 2022, four weeks before the hearing. The Tribunal considered this to be sufficient time to obtain representation.

Preliminary Issue 2 - Tenancy Agreement

87. The Tribunal found that the Respondent was the sole registered proprietor of the House since 2017 (Official Copy of HM Land Registry title number WM55519). The Tribunal was provided with a copy of an Assured Shorthold Tenancy Agreement ("the Head Tenancy"), dated 1st August 2019, in which the Respondent granted a tenancy of 24 months until 31st July 2021 to Mr Aurelian Nitescu and Mr Georghe Frunzeanu. Under clause 1.5.2 Mr Nitescu and Mr Frunzeanu had permission to sublet the House ("Sub-tenancies").

88. The Applicant submitted that, based on the WhatsApp messages between him and the Respondent, the Head Tenancy and Sub-tenancies were a sham and the Respondent was the true and only landlord.

89. The Tribunal found that on the evidence of the Official Copy of HM Land Registry the Respondent was entitled to grant the Head Tenancy of the House and on the evidence of the copy provided the Head Tenancy was granted to Mr Aurelian Nitescu and Mr Georghe Frunzeanu until 31st July 2021. On the evidence of the Head Tenancy under clause 1.5.2 Mr Nitescu and Mr Frunzeanu had permission to sublet the House. The Tribunal found the WhatsApp messages were insufficient evidence to support the allegation that the Head Tenancy was a sham.

90. The WhatsApp messages did support there being an oral tenancy granted to the Applicant for the Property and that the Respondent was a person having control or managing the House and Property.

91. In the absence of evidence to the contrary the Tribunal found that the Respondent was entitled to grant such subtenancy on behalf of Mr Aurelian Nitescu and Mr Georghe Frunzeanu.

92. The Tribunal found from the evidence adduced by both parties that Mr Georghe Frunzeanu has a building society account with the Nationwide Building Society. From the knowledge and experience of its members the Tribunal found that he would under legislation have had to prove his identity to the Building Society for money laundering purposes. It was therefore found, in the absence of evidence to the contrary that he existed.

93. The Tribunal therefore found that Mr Aurelian Nitescu and Mr Georghe Frunzeanu were the immediate landlord and the Respondent was a superior landlord.

94. The Applicant sought to distinguish the case of *Rakusen v Jepson* [2021] EWCA Civ 1150 by stating that he only knew the Respondent's name and address and not that of Mr Aurelian Nitescu and Mr Georghe Frunzeanu. Therefore, he submitted that the oral tenancy was between the Respondent and the Applicant, which makes the Respondent the immediate landlord.

95. Taking into account the Head Tenancy in this case the Tribunal did not agree that this argument. Sections 46 and 47 of the Landlord and Tenant Act 1987 Section 1 of the Landlord and Tenant Act 1985 set out the occasions when and requirements for providing a tenant with the landlord's name and address. They also set out the effects of failing to provide that information. These effects do not include making an agent the landlord if the agent gives his or her own name and address instead of that of the landlord.

96. For the purposes of these proceedings, taking into account the case of *Rakusen v Jepson* [2021] EWCA Civ 1150 and the Head Tenancy, it appeared to the Tribunal that the Respondent was the person having control and management of the Property but was not the immediate landlord.

97. The Applicant referred the Tribunal to the Upper Tribunal decision of *Goldsbrough v CA Property Management Ltd* [2019] UKUT 311 (LC) where it was held that a RRO could be made against a superior landlord. This case was in 2019 and has in effect been overruled by the Court of Appeal decision in *Rakusen v Jepson* [2021] EWCA Civ 1150. An appeal has been lodged in *Rakusen v Jepson* with the Supreme Court but has yet to be heard and therefore the Court of Appeal's decision remains the decision to be followed.

98. The Tribunal therefore found that for the period from 24th December 2020 to 31st July 2021 the Respondent was the superior and not the immediate landlord and therefore Mr Aurelian Nitescu and Mr Georghe Frunzeanu should have been joined as Respondents.

Preliminary Issue 3 – Rent Paid

99. The Tribunal agreed that as from 1st August 2021 the Respondent became the immediate landlord of the oral tenancy held by the Applicant. The House

reverted to the Respondent as the registered freehold proprietor once the Head Tenancy between the Respondent and Mr Nitescu and Mr Frunzeanu expired.

100. The Applicant contended that as his deposit had not been paid into a Deposit Scheme, he was entitled to use it for the month of August. He therefore claimed that he had paid rent up to 31st August 2021. The Tribunal found that the parties agreed that the sum which the Applicant attributed to rent for August was a Deposit. The Tribunal is of the opinion that unless the parties agree that the deposit should be applied as rent the sum remains a deposit and all the requirements regarding it being held in a Deposit Scheme continue to apply to it. There was no agreement between the parties that the deposit should be treated as rent.

101. The Tribunal found that the Applicant had paid rent from 24th December 2020 to 31st July 2021 but had not paid rent from 1st August 2021 when the Respondent became the immediate landlord of the oral tenancy held by the Applicant.

Exceptionality of the Case

102. The Tribunal considered that, notwithstanding the Preliminary Issues, it should examine the Applicant's representations to determine whether as the Applicant contended, the case should be treated exceptionally on the basis of written representations alone and without the opportunity of oral cross examination.

Unlicensed House in Multiple Occupation

103. The Applicant alleged that the Respondent was a person having control of or managing an HMO which is required to be licensed but is not so licensed.

104. Under section 254 of the 2004 Act the House is an HMO. Section 55 requires local housing authorities to license HMOs if they come within a description prescribed by an Order. Article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (2018 /No.221) prescribes the description. Section 61 requires every HMO that comes within the prescribed description to be licensed. If they are not licensed section 72 states that a person having control of or managing an HMO is committing an offence. The Respondent admitted that he was a person having control of or managing the House and Property

105. The prescribed description applicable in this instance is an HMO occupied by five or more persons as their only or main residence or they are to be treated as so occupying it living in two or more separate households.

106. The Applicant set out a table which identified 6 rooms. However, two of the rooms were occupied by persons who the Applicant said in Comment 5 of his timeline, were not there all the time and the Respondent submitted that the House was not their only or main residence.

107. Based on the Applicant's and Respondent's submissions it appeared to the Tribunal that the House may not have been required to be licensed. Therefore, oral discussion and cross examination was necessary to determine whether an offence had been committed.

Harassment of the Occupier

108. The Applicant alleged that during his occupation of the House and Property the Respondent committed an offence under Section 1(3), (3A) and (3B) of the Protection from Eviction Act 1977.

109. Under section 1(3) of the Protection from Eviction Act 1977 an offence is committed if any person does acts, including persistently withdrawing or withholding services likely to interfere with the peace or comfort of the residential occupier with intent to cause the residential occupier of any premise to give up the occupation of the premises or, under section 1(3A) the landlord of a residential occupier or an agent of the landlord 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. The offence under section 1(3A) is subject to a defence if the landlord or agent proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

110. In *R v Phekoo (Harold)* [1981] 1 W.L.R 117 it was held that the offences under section 1(3), (3A) and (3B) required the prosecution to prove both the act of harassment (*actus reus*) and the intention to harass (*mens rea)* beyond a reasonable doubt.

111. The Applicant stated in the timeline and commentary that the Respondent had instructed contractors and inspectors to visit the House on 11th and 12th April and 14th May 2021. The Applicant said that the Respondent knew the Applicant was working at night and would be sleeping during the day and that therefore these visits amounted to harassment.

112. The Tribunal accepts that the visits referred to by the Applicant might in the circumstances be a disturbance but did not appear to amount to an offence under section 1 of the 1977 Act. The Applicant would need to show that the Respondent intended to cause the Applicant to give up occupation. To determine whether or not there was sufficient evidence to show an offence had been committed under section 1(3), (3A) and (3B) of the 1977 Act there would need to be oral discussion and cross examination.

Unlawful Eviction of the Occupier

113. The Applicant alleged that he had been evicted from the House and Property contrary to section 1(2) of the Protection from Eviction Act 1977. The section creates liability for unlawful eviction by any person who unlawfully deprives or attempts to deprive the residential occupier of occupation. The person must know the residential occupier is in the premises. A person who holds an honest belief that the premises are vacant does not commit an offence.

114. The Applicant alleges that the Respondent forced him to move from the House, i.e., 41 Sladefield Road, to the house next door, 39 Sladefield Road. It appears from the Applicant's Statement that initially he agreed to do so. The Applicant did actually move but then subsequently changed his mind.

115. It is not clear whether the locks were changed on 39 Sladefield Road, and thereby effectively evicting the Applicant or whether he merely returned to 41 Sladefield Road and found the locks changed.

116. The Tribunal found that to determine whether or not there was sufficient evidence to show an offence had been committed under section 1(2) of the 1977 Act there would need to be oral discussion and cross examination.

Violence for Securing Entry

117. The alleged offence under section 6(1) of the Criminal Law Act 1977 is of threatening violence towards a person or property for the purposes of gaining entry into premises without lawful excuse if, to the knowledge of the defendant, there is someone present on the premises at the time who is opposed to the entry.

118. It appeared that the Applicant alleged that the offence was committed after 22nd September 2021 when he returned to the House and Property from 39 Sladefield Road. The Respondent submitted that from this date the Applicant was a trespasser at the Property. The Tribunal found that there needed to be further explanation, oral discussion and cross examination, for it to make a determination.

Conclusion

119. The Tribunal took into account that any finding of criminality had to be beyond a reasonable doubt. The Tribunal was of the opinion that this was not one of the "difficult to imagine cases where the FTT could be so sure of contested facts, on the basis of written evidence only, that it could find them proved to the criminal standard, beyond reasonable doubt". The Tribunal found that following an examination of the Applicant's Statement of Case with regard to the alleged offences the matter could not be determined exceptionally on written representations alone, the facts were too contentious, and an oral hearing was required.

Summary of Decision

120. The Tribunal Decided that the case be struck out under the Tribunal procedure (First tier Tribunal) Property Chamber Rules 2013 because:

1) Under Rule 9 (b) the Applicant has failed to co-operate with the tribunal such that the tribunal cannot deal with the proceedings fairly in that:
The Applicant knew there was a requirement for him and/or his representative to attend and such attendance was necessary in order for the evidence regarding the alleged offences to be tested.

2) Under Rule 9(e) the tribunal considers there is no reasonable prospect of the Applicant's proceedings or case succeeding in that:
   a) For the period from 24th December 2020 to 31st July 2021 the Respondent was the superior and not the immediate landlord and therefore Mr Aurelian Nitescu and Mr Georghe Frunzeanu should have been joined as Respondents.
   b) The Applicant had paid rent from 24th December 2020 to 31st July 2021 but had not paid rent from 1st August 2021 when the Respondent became the immediate landlord of the oral tenancy held by the Applicant.
   c) The Tribunal having examined the Applicant's Statement of Case and applied the evidence and submissions he made to the definitions of the alleged offences it determined that the case could not be dealt with exceptionally on written representations alone and an oral hearing was required.

Rule 13

Respondent's Application for Costs

121. The Respondent applied for an order for costs under Rule 13 of the Tribunal Procedure (First tier Tribunal) Property Chamber Rules 2013 on the ground that the Applicant had failed to prosecute his case by not attending the hearing.

122. The Tribunal starts from a position that its jurisdiction is one in which costs are generally not awarded. The only exception being where a party has acted unreasonably. The Civil Procedure Rules do not apply to tribunals including the provision relating to costs and "*there is no equivalent general rule that the unsuccessful party will be ordered to pay the costs of the successful party*" as per paragraph 28 of *Ridehalgh v Horsefield* [1994] Ch 2015.

123. In addition, paragraph 43 of *Ridehalgh v Horsefield* states that a costs application "*should not be regarded as routine, should not be abused to discourage access to the tribunal, and should not be allowed to become major disputes in their own right*".

124. The Tribunal applied the three-stage test in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 considering:
   (i) Whether the Applicant had acted unreasonably, applying an objective standard;
   (ii) If unreasonable conduct is found, whether an order for costs should be made or not;
   (iii) If so, what should the terms of the order be?

125. The Tribunal also took into account the meaning of "unreasonable" in *Ridehalgh v Horsefield* [1994] Ch. 205 which dealt with a wasted costs order, the principles of which we consider apply in this case:

"Unreasonable" means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable.

126. The Tribunal considered whether the Applicant *has acted unreasonably in bringing, defending or conducting proceedings*.

127. The Tribunal was of the opinion that it was not unreasonable for the Applicant:
1. To apply for an RRO in respect of the period 24th December 2020 to 31st July 2021.
2. To believe that he could apply for a RRO against the Respondent taking into account the evidence of the WhatsApp conversation.
3. Taking into account his condition, to seek to have the proceedings to be conducted exceptionally by paper submissions alone, notwithstanding that the Tribunal determined that they were too contentious to do so.

128. Therefore, the Tribunal determined not to make an order for costs under Rule 13(1) of the Tribunal Procedure (First tier Tribunal) Property Chamber Rules 2013.

Applicant's Application for Reimbursement of Fees

129. The Applicant made an application under Rule 13(2) for reimbursement of the Tribunal fees (i.e., £100 application fee and £200 hearing fee) to be paid by the Respondent.

130. Reimbursement of fees does not require the Applicant to prove unreasonable conduct on the part of an opponent. The main reason submitted for the Application was that the Tribunal unilaterally decided that a hearing was required and that the Applicant was impecunious.

131. The Tribunal found that it was obliged to list a hearing and, in the event, determined one was necessary for the case to proceed. There are provisions in place to assist those in financial need to be exempt from paying fees. It is understood that these did not apply in this case. The Tribunal saw no reason to require the Respondent to pay the Applicant's fees as the case did not proceed due to the Applicant's non-attendance at the hearing.

132. Therefore, the Tribunal makes no order for reimbursement of fees under Rule 13(2) of the 2013 Rules.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

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

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

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

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

ANNEX 2 – THE LAW

1. The relevant provisions regarding the Rent Repayment Orders are in Chapter 4 sections 40, 41, 43 and 44 of the Housing Act 2016 (2016 Act) as follows:

Section 40 Introduction and key definitions

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
(a) repay an amount of rent paid by a tenant, or
(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

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

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

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

Section 41 Application for rent repayment order

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

Section 43 Making of rent repayment order

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

Section 44 Amount of order: tenants

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

If the order is made on the ground that the landlord has committed	*the amount must relate to rent paid by the tenant in respect of*
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence

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

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

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

Section 263 Meaning of "person having control" and "person managing" etc.

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises—
  (a) receives (whether directly or through an agent or trustee) rents or other payments from—
    (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
    (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
  (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

2. The relevant provisions regarding the Criminal Law Act 1977 are as follows:

Section 6 Violence for securing entry.

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

(1A) Subsection (1) above does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the accused adduces sufficient evidence that he was, or was acting on behalf of, such an occupier he shall be presumed to be, or to be acting on behalf of, such an occupier unless the contrary is proved by the prosecution.

(2) Subject to subsection (1A) above, the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

3. The relevant provisions regarding the Protection from Eviction Act 1977 are as follows:

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

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—
(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,
and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

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

4. The relevant provisions regarding the Licensing of Houses in Multiple Occupation are in the following sections of the Housing Act 2004 Part 2 and 7:

Section 55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where—
(a) they are HMOs to which this Part applies (see subsection (2)), and
(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—
(a) any HMO in the authority's district which falls within any prescribed description of HMO, and
(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

The prescribed description is:

Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (2018 /No.221)

Interpretation
3. In this Order "the Act" means the Housing Act 2004.

Description of HMOs prescribed by the Secretary of State
4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—
   (a) is occupied by five or more persons;
   (b) is occupied by persons living in two or more separate households; and
   (c) meets—
      (i) the standard test under section 254(2) of the Act;
      (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
      (iii) the converted building test under section 254(4) of the Act.

Section 61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless—
   (a) a temporary exemption notice is in force in relation to it under section 62, or
   (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

Section 72 Offences in relation to licensing of HMOs

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

Section 254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

(a) it meets the conditions in subsection (2) ("the standard test");

(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.