



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

Case reference : **BIR/00CQ/HMB/2021/0001**

Property : **22 Tutbury Avenue, Coventry, CV4 7BJ**

Applicant : **Hugo Cabral (Tenant)**

Respondent(s) : **(1)Jaswant Singh Mahli and Sukhjit
Kaur Mahli (Landlord)
(2) Muzar Zaffar trading as Premier
Lettings Solutions (previous Landlord)**

Representative : **(1)Mr Sajid of counsel instructed by
Nexa Law**

Type of application : **Application for a rent repayment order
by tenant**
Sections 40, 41, 43, & 44 of the Housing and
Planning Act 2016

Tribunal : **Judge D Barlow
Mr A. McMurdo**

Date of Decision : **9 August 2022**

DECISION

DECISION

- A. Mr Muzar Zaffar, the 2nd Respondent, is ordered to repay rent to the Applicant. The amount of rent which must be repaid is £2,800.00.
- B. No order is made against the 1st Respondent.

REASONS

Background

1. The Applicant is the tenant of Room 6 on the second floor of the Property pursuant to a tenancy agreement (“the tenancy agreement”) dated 13 December 2019 between (1) Premier Lettings Solutions and (2) Hugo Cabral, which was granted for a fixed term of 1 month at a monthly rent of £350.00. The Applicant continues to hold under the statutory continuance of the tenancy agreement.
2. On 6 August 2021 the Tribunal received an application under section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order against various respondents’ named in box 4 of the application as: (1) Jaswant Singh Mahli (landlord); (2) Muzar Zaffar/Premier Lettings Solutions Ltd; (3) Russell John Dyble/Rent a Room (National) Limited.
3. On 16 August 2021 the Tribunal directed the parties to confirm the identity of the freeholder (or leaseholder in receipt of the rents) and the status and relationship of Premier Lettings Solutions Limited and Rent a Room (National) Limited to the freeholder. The Applicant was also directed to provide dates for alleged offences.
4. On 24 August 2021, the 1st Respondents’ then acting solicitor confirmed, in terms, that:
 - a. the 1st Respondents are the freehold owners of 22 Tutbury Avenue under title number WM170579.
 - b. the 1st Respondents have been in receipt of the rent payable under the tenancy agreement, as landlords, since expiry of a rent to rent agreement (“the Rent to Rent agreement”) with Premier Lettings Solutions Limited on 31 August 2020 and have been the immediate landlords of the Applicant from 1 September 2020 to the date of this application (“the Second Period of the tenancy”).
 - c. Premier Lettings Solutions Limited (Premier) was not and has never been the 1st Respondents’ agent. The property was demised to Premier on a Rent to Rent agreement and thereafter let out by Premier on a room by room basis to individual tenants. Premier was in receipt of the rents as the immediate landlord from commencement of the tenancy agreement on 13 December 2019

until 31 August 2020 (“the First Period of the tenancy”) when it surrendered the tenancy created by the Rent to Rent agreement.

- d. Rent a Room (National) Limited (“Rent a Room”) are property letting agents appointed by the 1st Respondents from 1 September 2020 following surrender of the Rent to Rent agreement. Rent a Room continue to manage the property for the 1st Respondent.
5. On 26 August 2021 the Applicant filed his bundle (“the Applicant’s Bundle”). His statement of case confirms that Mr Muzar Zaffar granted the tenancy agreement to the Applicant.
6. On 10 September 2021 directions were issued which extended the 1st Respondents’ time for providing their bundle and warned the 2nd Respondent that the Tribunal was considering a barring order for non-compliance with directions. Zarina Hussain of muzar@premierlettingsolutions.co.uk responded to say that Premier would respond the next day.
7. On 27 September 2021 the 1st Respondents filed their bundle (“the Respondents’ Bundle”) which included a statement of case and three witness statements from Mr Jaswant S Mahli, Mr John Dyble and Mr Andie McCorrie.
8. On 7 April 2022, a supplemental witness statement was filed by Mr Jaswant Singh Mahli in response to additional audio/video evidence disclosed by the Applicant on 27 January 2022 (“Mr Mahli’s second statement”). A third witness statement was filed by Mr Mahli on 26 May 2022, in response to late disclosure of further evidence by the Applicant on 10 May 2022 (“Mr Mahli’s third statement”).
9. The 2nd Respondent’s failure to comply with directions continued. His only participation was to provide an exchange of emails that took place in September 2021 with the energy supplier Huddle UK. On 12 November 2021 the Tribunal considered making a barring order against the 2nd Respondent, but on checking alternative addresses for service at Companies House noticed that the company had been dissolved prior to the date of commencement of the tenancy agreement. The 2nd Respondent’s details were therefore amended by the Tribunal on its own motion to Muzar Zaffar trading as Premier Lettings Solutions (“Premier”), on the basis that an effective application had been made against Muzar Zaffar by the Applicant on 6 August 2021. The 2nd Respondent continued to fail to comply with directions, which eventually led to a barring order being made on 13 December 2021.
10. The Applicant filed a Reply to the 1st Respondent’s bundle (“the Applicant’s Reply”) on 3 February 2022.
11. Permission was subsequently granted to the Applicant to provide further evidence in the form of video recordings. The recordings were made by the

Applicant on five dates using his mobile phone. He recorded three visits to the premises by the 2nd Respondent on 14, 15 and 18 August 2020, and two visits by Rent a Room on 25 February 2021 and 18 May 2021, the second of which was in the company of police officers from West Midlands Police. The Applicant made a further request on 10 May 2022, for late evidence to be admitted. Permission was granted on the 1 June 2022, for three further audio/video files to be admitted. Two were of telephone calls between the Applicant and Mr Mahli on 10 and 11 December 2019, the third recording was of a meeting between the Applicant and the 2nd Respondent on 11 December 2019. An exchange of emails between the Applicant and the 1st Respondent between 21 and 29 August 2020 was also admitted.

12. The Tribunal inspected the premises on 6 June 2022. A video hearing took place on 8 June 2022 using HMCTS/Video Hearings Service. The Applicant represented himself. The 1st Respondents were represented by Mr Ahmer Sajid of counsel, instructed by NexaLaw. The Applicant and Mr Mahli gave sworn evidence. Unfortunately, Mr Mahli's witnesses were unable to attend to give oral evidence, in the case of Mr Dyble, the Tribunal were told that he was attending a family funeral.

The Allegations

13. The Applicant claims that offences were committed on various dates by his landlords under:
 - a. S6(1) of the Criminal Law Act 1977; and/or
 - b. S1(2)(3) or (3A) of the Protection from Eviction Act 1977
14. During the First Period of the tenancy it is alleged that offences were committed by the 2nd Respondent on:
 - a. 10.08.2020
 - b. 14.08.2020
 - c. 15.08.2020
 - d. 18.08.2020
15. During the Second Period of the tenancy it is alleged offences were committed by the 1st Respondent:
 - a. During October 2020
 - b. In January 2021
 - c. On 25.02.2021
 - d. On 14.05.2021
 - e. On 18.05.2021
 - f. On 28.05.2021
16. The Applicant made submissions at the hearing concerning the identity of his immediate landlord during the First Period of the tenancy. He said that although the tenancy agreement was between the 2nd Respondent and himself and the rent had been paid to the 2nd Respondent until the end of

August 2020, it had always been his understanding that the 2nd Respondent had entered into the agreement as agent of the 1st Respondent and the rent had been received by him as the 1st Respondent's agent. The Applicant referred the Tribunal to the late evidence provided on 10 May 2022 in the form of audio files of conversations with Mr Mahli and Mr Zaffar on the 10 and 11 December 2019, when he was enquiring about the tenancy. Such was the fervour of the Applicant's conviction, he almost went as far as withdrawing his claim for a rent repayment order against the 2nd Respondent, but pulled back from this and asked the Tribunal to make an order against the 2nd Respondent if it was satisfied that the 2nd Respondent was his immediate landlord for the First Period of the tenancy.

17. The Tribunal considered the Applicant's evidence along with Mr Mahli's statements and oral evidence and found that the 2nd Respondent was the immediate landlord during the First Period of the tenancy. The reasons for that determination are set out in paragraphs 44-47 below.

Facts

18. The Applicant moved to the premises at the commencement of his tenancy on 13 December 2019 and remains in occupation. He provided undisputed evidence of having paid rent to the 2nd Respondent of the following amounts during the First Period of the tenancy:

a. 13 December 2019	£350.00
b. 13 January 2020	£350.00
c. 13 February 2020	£350.00
d. 13 March 2020	£350.00
e. 1 May 2020	£350.00
f. 13 May 2020	£350.00
g. 13 June 2020	£350.00
h. 13 July 2020	<u>£350.00</u>
Total =	£2,800.00

19. The Applicant provided undisputed evidence of having paid the following amounts of rent to the 1st Respondent during the Second Period of the tenancy:

a. 6 July 2021	£1,750.00
b. 21 August 2021	<u>£1,750.00</u>
Total =	£3,500.00

20. There are proceedings in the County Court at Coventry issued by Mr Mahli for possession of the premises for arrears of rent following service of notice under section 8 of the Housing Act 1988 on 21 October 2021. The Applicant filed a defence to the claim and a counterclaim for damages for breach of contract, nuisance, trespass and unlawful harassment a copy of which is appended to Mr Mahli's second statement. The proceedings ("the court proceedings") are ongoing.

21. The Applicant stated in his defence and counterclaim to the court proceedings (dated 6 July 2021) that he had paid the rent promptly and in full until April 2020 when his financial circumstances changed due to the national coronavirus lockdown. He stated that he is currently without income but had enquired about making a claim for universal credit to help with housing costs.

Evidence

Applicant's evidence

22. The Applicant relies on his Statement of Case dated 26 August 2021, his Reply dated 3 February 2022, the video/audio evidence referred to in paragraph 11 and 12 above and his oral testimony.

First Period of tenancy

23. His relevant evidence against the 2nd Respondent is that:

- a. On 10 August 2020, Mr Zaffar (2nd Respondent) attended at the premises and told him he needed him to vacate on 13 August 2020. No prior written notice terminating the tenancy had been served on the Applicant.
- b. On 14 August 2020 Mr Zaffar called at the premises again and tried to gain entry using his keys but the Applicant had by then changed the locks. The Applicant states that Mr Zaffar harassed him through the door for about 20 minutes. His tone became less respectful and threatening. Audio evidence was provided from a recording the Applicant had made on his mobile phone. What sounded like an attempt to unlock the door could be heard followed by an exchange between the Applicant and another person who the Applicant stated was Mr Zaffar. The Applicant told Mr Zaffar that he intended calling the police if the door was forced. Mr Zaffar said that he was not there to force entry, he said that he just wanted to speak to the Applicant because he was in the room unlawfully. The Applicant stated several times that he preferred all communication to be in writing and that he didn't discuss consumer issues at the door. Mr Zaffar said that he had sent emails to him and had told everyone that the rooms were only available until the end of the month. The others had all moved out except for the Applicant. Mr Zaffar then appeared to lose patience with the Applicant's refusal to come out and speak with him. He said; *"can you not be stupid with me, I've had enough of this bullshit"* and *"you have 2 choices, either move out or I will take over the room myself tomorrow" ... "don't try my patience, you can call whoever you want you can't stop it".... "I promise you will be out tomorrow"*.

- c. On 15 August 2020 Mr Zaffar returned to the premises. The Applicant states that further threats were made by Mr Zaffar to forcibly enter the premises and move the Applicant's possessions. Video evidence was provided from a recording made by the Applicant on his mobile phone. The Applicant recorded the video by sliding his phone under the door. The view is therefore looking up from floor level. The video bundle comprises 10 short files of this incident (due to the Applicant's lack of technical competence to provide the evidence in a single file). The total length of the incident (as filmed) is 5 minutes 27 seconds. It shows Mr Zaffar knocking on the door and trying the door handle. The Applicant doesn't speak at first but after a few seconds asks; "*who's there?*". Voices can then be heard albeit indistinctly. What sounds like two people can be heard discussing spare keys and coming back later that evening. Mr Zaffar then knocked on the door and said; "*Hugo can you please talk with me?*" to which the Applicant replied; "*leave me alone please*". Mr Zaffar then repeated his earlier threats and said; "*you either talk with me or I start moving your stuff out*". The Applicant made no further response. Further knocking on the door can be heard and a very indistinct conversation between Mr Zaffar and another person (neither of whom are 'in shot') about never having had to do this and giving it another chance.
- d. On 18 August 2020 the internet, gas and electricity were disconnected to the property. Mr Zaffar paid a further visit to the premises with another person and attempted to gain entry by drilling the lock. Video evidence was provided, recorded in the same way by the Applicant and stored on 3 files totalling 8 minutes 32 seconds. The files show Mr Zaffar rattling the door and asking the Applicant to speak with him. The Applicant does not respond but can be seen moving the wardrobe inside the room. Mr Zaffar continued to knock on the door and asked if the Applicant was in. Mr Zaffar can be seen with another person; they have a conversation about drilling the lock. They then hear a noise and Mr Zaffar knocked again asking; "*Hugo are you in there?*". The Applicant remained silent. The second person can then be seen attempting to drill the lock, at this point the Applicant said, "*you are breaking the law*". Mr Zaffar said that he wasn't there to have a fight he just wanted to talk but if the Applicant refused to open the door, he had no choice. He can be heard saying "*if you stay quiet, we will have to force our way in, I don't want to do that*". The Applicant responded to say that he was going to call the police. The video ended at that point.
- e. The Applicant said in evidence that this was because he did indeed call the police and needed his phone to make the call. The police later attended the premises to take make a report although nothing came of it. Mr Zaffar and the other person left as soon as they heard the Applicant talking to the police.

- f. In relation to landlord's conduct the Applicant states that the 2nd Respondent failed to:
 - i. follow government guidance of social distancing and mask wearing.
 - ii. provide the Applicant with the Prescribed Information Deposit Protection Scheme, the Gas Safety Record, the Energy Performance Certificate or the Tenant's Information Leaflet and there was no display of the property licence details.

Second Period of the tenancy

24. The Applicant's relevant evidence against the 1st Respondent is that:

- a. In October 2020 the 1st Respondents' served a s8 Notice seeking possession and a s21 Notice terminating the tenancy. This followed an exchange of emails between Mr Mahli and the Applicant between 21 and 29 August 2020 in which the Applicant was offered inducements to move out. The Applicant's case is that taken together these actions amount to unlawful harassment.

The exchange of emails can be summarised as follows:

- i. On 21 August 2020 Mr Mahli wrote to confirm that he heard about some issues with Premier Lettings and had taken the keys back from them. He said that he had been a landlord for 20 years and had always looked after his tenants and his properties. He asked the Applicant to call him to let him know what had happened so that he could understand it and help the Applicant.
- ii. On 22 August 2020 having not heard from the Applicant, Mr Mahli send a further email saying that as he wasn't sure if the Applicant had received his email, he had posted a letter to him at 3.25pm and would be visiting the premises on 24 August with his new letting agent who was dealing with the new student letting starting on 1 September 2020.
- iii. On 23 August 2020 the Applicant responded to say "*Hi Jas, hope you are well. Yes, I'm trying to figure it out myself. Why did Muzar do what he did?*"
- iv. On 24 August 2020 Mr Mahli replied thanking him for his email. He writes "*I will be coming to the property today at 5.00pm and I am happy to discuss with you and understand what has happened. Perhaps we can have a coffee and let me see how I can help you?*"
- v. The Applicant replied the same day thanking him for the offer but saying that he was very busy and preferred not to be disturbed at the room. "*Email is the most convenient contact and I'm sure you will understand an explanation on Muzar's actions would be appreciated*" He also asked that internet

access be re-established and said they have been without it for weeks.

- vi. Mr Mahli replied to say that he really wanted to meet with him to understand what had happened and was making a special effort despite having only stopped using crutches that week following a hip operation. Mr Mahli said that Premier were not returning his calls or emails. He wanted to discuss the Applicant's plans for leaving following expiry of the tenancy on 13 August and confirmed that the house had been let to students from 1 September who were travelling from all over the country with their parents. Mr Mahli said that he needed to know when the Applicant was moving out and offered to assist with transport arrangements and pay compensation for any inconvenience. Mr Mahli also wanted to introduce his new letting agent who could assist in finding the Applicant a new room in the area if he wished. Mr Mahli said that he just needed confirmation of the Applicant's plans so that he could make necessary arrangements. He confirmed that all the other tenants were honouring the arrangement and moving out that week so that the new students could move in and said that the Applicant's assistance with this would be appreciated.
- vii. The Applicant responded briefly to this offer the next day. His email says "*Hi Jas, that's alright, you can write to this address at any time. Are the new students on a joint contract?*"
- viii. Mr Mahli responded with two emails the same day to confirm the students were all friends from Warwick University on a joint contract for the whole house and to ask the Applicant to confirm that he would be moving out before 1st September saying that he really appreciated the Applicant's time and assistance in this.
- ix. On 26 August 2020 Mr Mahli followed up with a further email explaining in more detail the predicament that he and his wife would be in if the Applicant remained at the property. Mr Mahli said that he wished to mediate, and he made an offer to pay Applicant compensation totalling £550.00 for the inconvenience of moving.
- x. The Applicant replied briefly to say, "*If we are serious in getting a solution before the 1st September can you tell me what inconvenience are you referring to?*"
- xi. Mr Mahli responded to confirm that the inconvenience was "*someone from the council called me last week and explained to me that the gas and electricity had been cut off and you mentioned in your email that you had no internet.*" Mr Mahli confirmed he was serious about finding a resolution and asked if there was anything else that he could offer to resolve the situation.
- xii. The Applicant replied with "*Ok. What did Muzar tell you regarding how the tenants were being dealt with?*"
- xiii. Mr Mahli then wrote, confidentially, that the council's call had made him so angry that he had shouted at Muzar and was no

longer on speaking terms with him, and that Muzar had not returned his calls or emails. That was why he was personally reaching out to try to resolve the issue and find a solution.

xiv. The Applicant replied, *“You weren’t aware of any issues with this property before you were contacted by the council.”*

xv. The next day (27 August 2020 at 07:23) Mr Mahli confirmed that he was not aware of any issues until the council contacted him. He then wrote:

“I have always been a Landlord that would sort any issues out with one of my properties within 24 hours. However, on this occasion Premier Lettings took the property off me and paid me a set minimum rent a month and they agreed to deal with all utility bills and maintenance issues with the property because they kept the majority of the rent. This is why I was not aware of any issues.

I only came aware of any issue when the council called me and I am sorry when I heard of the issues that the council told me about.

This is why, it is now left to me to resolve this and this is why I made you the offer yesterday because I am serious about resolving this before the 1 September 2020?”

xvi. At 16:18 the same day Mr Mahli emailed again seeking a response about the Applicant’s plans to move out. There was no response.

xvii. At 06:18 the next day (28 August 2020) Mr Mahli emailed again to say that he needed to get back to the students and parents that morning and was disappointed not to have heard from him. Mr Mahli again explained his arrangements with Premier and his lack of knowledge about the utilities being disconnected. He said that he had respectfully answered all the Applicant’s emails but every request for confirmation of the Applicant’s plans to move out had been ignored and he now needed to get back to the students and their parents. Mr Mahli said that he had personally apologised for any inconvenience and just needed an answer from the Applicant.

xviii. At 10:46 on 28 August what appears to be a group email was sent to the tenants of the house thanking them for co-operating with vacation of the property and confirming that a final inspection would take place on 29-31 August.

xix. On 29 August at 12:56 the Applicant replied to say; *“Hi Jas, I’ve been ill in the last few days and I’ll look into this as [soon as] possible. Broadband is still not working.”*

xx. At 13:00 Mr Mahli responded with *“Hi Hugo, Your contract expired on 14 August 2020, there will be no broadband. I am expecting you to leave tomorrow because the students are arriving on Monday! Failure to leave my property, I will*

contact my solicitor and take the necessary steps to remove you from the property.”

- xxi. At 13:56 Mr Mahli followed this with *“Just to inform you, my Solicitor will be serving you with a Section 21 and I will also be looking to recover my legal costs.”*
- b. In January 2021 the court proceedings were issued by the 1st Respondent for rent arrears and possession.
- c. On 25 February 2021 an employee of Rent a Room knocked on the Applicant’s door and asked to speak to him. The Applicant alleges that the comments made by the employee amounted to threat to forcibly enter his room. Video evidence was provided by the Applicant, which was recorded on his mobile phone. The video evidence shows the Applicant’s door filmed from inside his room, through which could be heard knocking and a woman’s voice. The incident shown on the 3 files lasted a total 1 minute 52 seconds. The video shows:
- i. Knocking and a woman’s voice saying; *“hello this is rent a room”* followed by silence.
 - ii. Knocking and the same voice saying; *“hello it’s rent a room, can you come out Hugo we just need to have a chat with you”*. The Applicant did not respond. A muffled conversation can be heard through the door, too indistinct to make out what is being said.
 - iii. The woman then said; *“Hello Hugo we just want a chat - can you come out”*. The Applicant remained silent. The woman then said; *“we are starting to really worry about you Hugo, if you won’t contact us, we will give you 24 hours to access and then we will have to access your room.”* The Applicant remained silent, after waiting a few seconds the woman then said; *“I will leave a sticker on your door please call me as soon as you get this”*. Footsteps could then be heard receding from the door.
- d. On 14 May 2021 Rent a Room sent an email threatening to enter the Applicant’s room if they didn’t receive a response.
- e. On 18 May 2021 a further visit was made by Mr Dyble of Rent a Room in the company of officers from West Midland Police. The Applicant states that the police acting as agents for Rent a Room, under the instruction of Mr Dyble, who in turn was acting as agent of the 1st Respondent, forcibly and unlawfully entered his room

Video evidence was provided showing part of the incident in 5 files totalling 12 minutes 13 seconds in length. The incident was again

filmed by the Applicant from inside his room using his mobile phone. The videos show :

- i. Knocking on the door followed by a man's voice saying; *"it's the police Hugo can you open the door please"*. The Applicant asked the officer to identify himself, which he did confirming that he was PC Vince from West Midlands police, he gave his collar number and said that concerns had been expressed about the Applicant's welfare he therefore needed the Applicant to open the door so that he could check that he was safe and well. The Applicant said; *"I am safe and well thank you"*. PC Vince explained that to assure himself that was the case, he needed to see him. PC Vince asked the Applicant to open the door several times and warned that he would, if necessary, have to forcibly enter. The Applicant continued to argue that he was perfectly fine and said the only threats he was getting were from PC Vince who was threatening to forcibly and unlawfully enter his room. PC Vince explained that under s17 of PACE he was authorised to make a forcible entry, if necessary, to ensure safety and well-being. The Applicant asked if he was under arrest, PC Vince confirmed that he was not, that he just needed him to open the door so that he could check that he was safe and well, which meant he needed to see him physically in person. This could only be accomplished if the Applicant opened the door. PC Vince made repeated requests for the door to be opened to avoid the need to force it.
- ii. The Applicant then said he would call the police himself, PC Vince said that was fine – he would inform them over his radio to expect a call.
- iii. The next file picks up the incident after the Applicant had called West Midland police and been told that the police officer outside his door was indeed PC Vince. PC Vince can be heard requesting once again that the Applicant open the door now that he had satisfied himself that he was a legitimate police officer. The Applicant said that he was happy to talk through the window, and that PC Vince could go outside and speak to him. PC Vince was not prepared to do that and gave the Applicant 30 seconds to open the door. The Applicant did not open the door despite the officer counting down the time. The video then shows PC Vince force the door open and enter the room.
- iv. PC Vince then explained why he had forced the door and asked the Applicant to show some photo id which he did. He asked the Applicant why he had refused to open the door. His response was; *"no comment"*. PC Vince asked again why he had refused to open the door, he said; *"am I under arrest?"*. PC Vince said; *"you're not under arrest, no"* to which the Applicant responded; *"then no comment"*.
- v. PC Vince then confirmed that a person from the renting company was present, who wanted to speak to him, and had

- given the police access to the building and authority to force entry if necessary. The Applicant disputed that Rent a Room had any authority to involve the police and a fairly rancorous argument ensued between PC Vince and the Applicant about the tenancy, the Applicant's failure to correspond with the agents, pay rent, or leave on expiry of the tenancy. PC Vince remained civil throughout but was clearly getting quite exasperated by the exchange.
- vi. Mr Dyble remained on the landing outside the room throughout but could be heard confirming that a section 8 notice had been issued because no rent had been paid for 9 months, which had now expired. He confirmed that a money claim for the rent had been issued, which had been defended, but as there had been no response to any correspondence they were concerned that the Applicant may not be in occupation. The tenancy had ended, and the other tenants' had told him that some called "Mickey" was in occupation of the room. Mr Dyble had therefore become concerned that the Applicant might be missing and that someone else was living in the room who wasn't him, possibly accessing his mail. He said that concern for the Applicant's welfare had prompted him to contact the police, and that having now established that the Applicant was still in occupation of the room he would continue with the eviction process. There was then a discussion between the police and Mr Dyble about who should fix the door. Mr Dyble agreed to replace the door.
 - vii. After delivering a lecture to the Applicant about his behaviour and the consequences of failing to comply with any eviction order that might be made, PC Vince left.
- f. On 28 May 2021 Rent a Room sent technicians to replace the damaged door while the Applicant was not present, having to force the door which caused damage to the new lock the Applicant had fitted to the damaged door. The Applicant alleges that the failure of Rent a Room to replace the door immediately after the police visit on 18 May 2021, with a secure lockable door was a further incident of harassment and that failure to make good the damage to the door surround caused to the wall of his room and the door surround was also harassment.
 - g. The Applicant wanted the agents to take a door from an empty room in the property and fit it rather than replace the door with a new one that had a different, and in the Applicant's view, less satisfactory lock (of the punch code type). The door was allegedly, poorly installed, and the Applicant was not given the manual for operation of the lock, just a pre-set combination to use. The Applicant submits that overall, this caused a deterioration in the security of the Applicant's room which was also designed to harass him.

- h. On 28 May 2021 Rent a Room sent an email to the Applicant concerning ongoing rent arrears which was headed “Eviction”. This, he said was designed to cause him anguish and worry which constitutes unlawful harassment contrary to s1(3A) of the 1977 Act.
- i. In paragraph 7 and 8 of his Reply the Applicant raises new allegations of harassment concerning incidents that post-date the application (which was received on 6 August 2021). As the period under consideration is the 12-month period immediately prior to the date of the application the new allegations have not been considered.

1st Respondents’ evidence

25. The 1st Respondents rely on their Statement of case dated 23 September 2021, Mr Mahli’s three witness statements dated 23 September 2021, 7 April 2022 and 26 May 2022, Mr Mahli’s oral testimony and the following witness statements:
 - a. Mr Russell John Dyble a director of Rent a Room dated 23 September 2021.
 - b. Mr Andy McCorrie a maintenance engineer employed by Rent a Room dated 23 September 2021.

Neither witness gave oral evidence at the hearing, and the Tribunal therefore had to consider what weight, if any, should be given to their evidence.

Second Period of the tenancy

26. Mr Mahli gave evidence on oath at the hearing, which commenced with a general description of his property letting business, the arrangements with Mr Zaffar regarding this property and the events that led to the Applicant’s tenancy reverting to him on 1 September 2020.
27. Mr Mahli owns and manages some 20 let properties. He has an ongoing relationship with Mr Zaffar who also owns and manages several let properties. Most of Mr Mahli’s properties are HMO student accommodation. Historically the returns on student accommodation have been very good and he could have expected a rental return of about £2,800 per month for this property if all 7 rooms were let. However, in December 2019 the student letting market was quite difficult. He and his wife decided to market and manage the property themselves to save money, but they have young children with busy lives, and it became clear that they didn’t have the time to properly manage it.
28. Initially he considered an agency agreement with Mr Zaffar but during negotiations with the Applicant, Mr Zaffar suggested a rent to rent agreement might be preferable because he would receive a guaranteed fixed

rent regardless of the number of rooms actually let. Mr Mahli acknowledged a discrepancy in his evidence concerning the date on which he agreed to the Rent to Rent agreement. The exchange of emails between Mr Zaffar and himself on 19 August 2021 states that the agreement ran from 1st November 2019 to 31 August 2020. There is also an email from a utility provider which suggests Mr Zaffar may have been liable for utilities in October 2019. Mr Mahli said in evidence that this was the first time he had entered into a rent to rent agreement. He hadn't heard of this type of arrangement before and at first had not fully appreciated what it meant contractually. He didn't understand the email from the utility company and assumed there was just a mistake on the date.

29. Mr Mahli's concern was to cover his mortgage repayments. Although Mr Zaffar was only paying £900.00 per month under the Rent to Rent agreement, it would provide a guaranteed net income from which he could meet the mortgage repayments of £600.00 per month.
30. Mr Mahli had already secured interest from students for a tenancy of the whole property from the start of the following student year (September 2020). He therefore agreed to let the whole property to Mr Zaffar until the end of August 2020 on a Rent to Rent agreement, under which he would receive a fixed monthly rent of £900.00 and Mr Zaffar would be responsible for all outgoings on the property.
31. Having agreed terms for the Rent to Rent agreement with Mr Zaffar (which was not put in writing), he had no further involvement in the lettings until August 2020, apart from one telephone call from the Applicant concerning noise nuisance. The Applicant having been unable to contact Mr Zaffar had called him. He said in evidence that he told the Applicant he would need to contact Muzar about it.
32. Mr Mahli provided copies of an email exchange with Mr Zaffar of Premier dated 19 August 2021, which confirmed that the basic terms of the Rent to Rent agreement were as he had stated. He also provided copy extracts of his bank statements showing the transfer of the agreed rental for April, May, July and August 2020. One payment was £100.00 short, but Mr Mahli confirmed in evidence, this was subsequently paid in full.
33. At the start of August 2020 Mr Mahli contacted Mr Zaffar to check that he would be surrendering the Rent to Rent tenancy with vacant possession so that he could make the Property ready for re-letting to the students who were due to arrive in September/October that year. Mr Zaffar told him that all the tenants save for the Applicant, would be vacating.
34. He later discovered that Mr Zaffar had stopped the prepayments due to the utility providers which caused the Property to be disconnected and had failed to lawfully terminate the Applicant's tenancy. Mr Mahli said that he was furious because he is a responsible landlord that would never have behaved in the way Mr Zaffar had. He offered to compensate the Applicant for Mr Zaffar's behaviour if the Applicant was willing to move to alternative

accommodation so that he could honour the arrangements agreed with the students and their families. However, despite his well-intentioned efforts, the Applicant did not want to negotiate, so Mr Mahli instructed his agents to serve notices formally terminating the tenancy in October 2020 by which time the Applicant was 4 months in arrears. He failed to either vacate or pay any rent. Mr Mahli states that all attempts to contact the Applicant were ignored for about 7 months by which time there were arrears of about £3,850.00. Proceedings were consequently issued for the accrued arrears and for possession, in January 2021. Those proceedings are ongoing.

35. Mr Mahli said in his statements and in evidence that the fact he issued possession proceedings and had been engaged with the proceedings at considerable expense ever since, is evidence that he has not tried to remove the Applicant from the property unlawfully.
36. In relation to the specific allegations of harassment Mr Mahli's relevant evidence is:
 - a. The allegation that in August 2020, 3 days verbal notice was given by Premier who then cut off the utilities. Mr Mahli's response is that he had no knowledge of this because he was not the relevant landlord at the time. However, the utility company explained in an email (disclosed in evidence) that it is only the utility company that can disconnect a property. He understands that Mr Zaffar had failed to make the pre-payments which resulted in the entire property being disconnected by the utility company. The council contacted him about this as the freeholder, and the power was restored the next day.
 - b. The Property was managed by his agent Rent a Room from 1 September 2020, not Mr Mahli. His evidence is therefore based on his understanding gleaned from conversations with Rent a Room and not from personal involvement. He understands that on 25 February 2021 the agent attended the property because they had not received any response to their correspondence concerning the rent arrears for 6 months. They therefore attended to see if the Applicant was still in occupation and to undertake a welfare check. He disputes that asking the Applicant to contact them could be construed as harassment or an attempt to unlawfully evict the Applicant.
 - c. Mr Mahli states that on 14 May 2021, Rent a Room emailed the Applicant to say that due to concerns about his welfare the agents would enter the room to carry out a welfare check if he did not respond by 17 May 2021. This was, he was told, because they had not had any contact for some time and the other tenants were unsure if he was still residing in the room.
 - d. Mr Mahli's statements about the events that took place on 14 and 18 May 2021 are based entirely on what he was told by the agents and from watching the Applicant's video evidence. He was not present and essentially just provides his personal submissions on the events.

- e. The same applies to the actions of Rent a Room after these incidents. The 1st Respondent believes the agents and the police acted reasonably on the 18 May 2021 and the altercation could have been avoided had the Applicant simply opened the door.
- f. Mr Mahli exhibited an exchange of WhatsApp messages on 17, 18 and 21 May 2021 between the tenants and the agent on their WhatsApp group. It starts with the agent asking if anyone had seen Hugo from room 6 recently. The responses indicate that there is someone living in the room but not called Hugo. The agent advises that they haven't had any contact from Hugo for some time and would therefore be calling with the police, so not to be alarmed, they just needed to check that Hugo is ok. This was met by a message saying that Room 6 is Mick, seen earlier that day and no idea who Hugo is. The agent confirms that he can't provide a picture of Hugo but asks if they can ask Mick to call him otherwise the police will still call. The last message dated 21 May 2021 is from Rent a Room confirming contractors would be calling that day to repair the door the Room 6.
- g. The replacement door was, Mr Mahli stated, dealt with in a reasonable time frame. It was not reasonable to expect the agent to remove a door from another room and the new door complies with local council standards. This was apparently confirmed after contact from the council's private tenancy team who after investigating the Applicant's allegation of harassment declined to take any action.
- h. Mr Mahli's second statement exhibits a copy letter sent to Mr Mahli's solicitor by Mr James Stringer, the Landlord and Tenant Liaison Officer at Coventry Council dated 12 January 2022 which confirms that on 30 November 2021 the Applicant made allegations of harassment. After investigating he found insufficient evidence to proceed with the complaint. The letter states that the crux of the matter centred on a dispute over access to the Applicant's room to complete a fire safety check. Mr Slinger offered to facilitate an inspection at a time convenient to the Applicant, it being necessary for the HMO licence conditions and the general safety of residents. Mr Slinger states that the landlord's agents were pragmatic offering to attend personally, or to just send the engineer on any afternoon convenient for the Applicant. Mr Slinger put this to the Applicant via email but found him unwilling to cooperate, despite knowing it was for the safety of the other residents.

37. In relation to the Applicant's conduct Mr Mahli states that the Applicant's conduct should be considered if the Tribunal finds that an offence has been committed and determines that an order should be made. The 1st Respondent says the following conduct is relevant:

- a. Failure to pay the rent regularly or on time, accruing substantial arrears.
- b. Failing to allow the agents access to the premises to carry out safety checks as confirmed by Mr James Slinger.

- c. Un-tenantlike behaviour. Mr Mahli exhibited an email complaint dated February 2022 from a tenant concerning the shower drain being filled with dirt and sand and left by the Applicant in an unusable condition. She complains about doors and windows being left open and not being able to use the fridge for fear of being accused of stealing his food. A tenant's meeting revealed concerns about the lack of fire safety checks due to the Applicant's refusal to allow an inspection of his room despite previous concerns about smoke emanating from the room. The letter goes on to make more general complaints about the lack of deep cleaning of the common areas and demands that the agent speaks to the Applicant about cleaning the drain and shower and provide evidence of a successful safety check.
- d. In January 2022, another tenant complained about a machine running all night long obliging her to sleep with ear plugs.
- e. Issuing injunction proceedings to prevent the landlord from accessing the premises which were based on numerous false allegations of harassment and a false claim that violence was used to obtain access. The application was dismissed by the county court judge because it "fails to disclose any cogent basis for injunctive relief". A copy of the order of the County Court at Coventry dated 13 January 2022, dismissing the application is exhibited to Mr Mahli's second statement.

1st Respondents' witnesses

38. Mr Dyble's relevant evidence is:

- a. He is a letting agent specialising in HMO's. He took over management of the property following instructions from Mr Mahli on 1 September 2020. The Applicant was at that date, the only tenant. Mr Mahli explained to him that he had lost a contract for letting the property to 7 students for the 2020/21 academic year because the Applicant had not left the property.
- b. On 4 September 2020 he attended at the property with Andy McCorrie to set up the house with standard items and at the same time took notices under section 3 and section 48 of the Landlord and Tenant Act 1985 addressed to the Applicant, formally notifying him of Rent a Room's appointment. Although Mr Dyble thought the Applicant was in his room, he didn't answer the door, so Mr Dyble put the notices under the door.
- c. Rent a Room attempted to communicate with the Applicant using the contact details provided but to no avail. On 24 September 2020 Ms Louise Sanders visited the property and knocked on the door. The Applicant did not answer but a mobile phone appeared under the door. She felt uncomfortable that an 'upskirting' photograph was being taken and contacted Mr Dyble. He told her to leave a note with their telephone number on the door and to leave the property.
- d. Later on the 24 September 2020 Mr McCorrie attended at the property and found Louise's note with another handwritten note

which provided an email address for correspondence. Later the same day Julie Du Toit emailed the Applicant using the address provided to introduce the company. The Applicant replied at 21:30 acknowledging receipt of the email.

- e. At various times Julie contacted the Applicant again about the rent arrears but with no acknowledgement or reply. A further visit was made to the premises by another staff member who experienced the same behaviour of a mobile phone appearing under the door, and so left.
- f. Over the following months' Rent a Room followed their standard debt recovery process serving notices under section 8 and section 21. No response was received.
- g. As all attempts to contact the Applicant had been unsuccessful Mr Dyble became concerned for the Applicant's welfare. Mr Dyble referred to the WhatsApp group message exchange which said the occupier of Room 6 was Mickey not Hugo. At that point Mr Dyble was concerned that the person in Room 6 was someone pretending to be the Applicant who was deliberately not meeting them in person to conceal their identity. Therefore, on the evening of 17 May 2021, he contacted the police with his concerns.
- h. At 7:40am on the 18 May 2021 the police called to say they were on their way to the property and asked Mr Dyble to meet them there. Mr Dyble arrived about 8:30am and found 4 officers had arrived. He again explained his concerns to one of them. He did not have a photograph of the Applicant but gave a rough description based on what Mr Mahli had told him of the Applicant's appearance.
- i. After the police officer had spent some 20 minutes trying to persuade the Applicant to open the door the police officer forced it open. The other three officers and Mr Dyble waited outside the room, (Mr Dyble was carrying his 18-month-old son). After photo id had been provided the police officer explained that they had attended due to welfare concerns raised by Mr Dyble and that it all could have been avoided had the Applicant responded by opening the door some 20-25 minutes earlier.
- j. The police officer invited Mr Dyble to speak from outside the door and he explained that Rent a Room had been trying to reach him regarding unpaid rent but that no response had been received to the notices and emails. Following a period of no acknowledgement or response, and considering the contents of the WhatsApp messages, Mr Dyble had decided to call the police to check on his welfare.
- k. Mr Dyble asked if the Applicant intended setting up a payment plan for the outstanding rent. There was no response and he concluded by saying that as they were already three weeks past expiry of the section 8 notice they would proceed with the legal process to obtain possession and recover the rent.
- l. Mr Dyble exhibited a copy of the notice of assignment to his statement and a copy of the WhatsApp message exchange. Also exhibited are copies of emails including those exchanged with the Applicant on 25 September 2020, the email of the 14 May 2021, follow up emails sent on the 18 May 2021 following the police visit,

further emails sent on 28 May 2021 confirming that as no response had been received to the section 8 notice they would be proceeding with an application to the court unless the Applicant set up a payment plan for the outstanding rent. A statement of outstanding rent totalling £3,150.00 was also attached together with details of how payment could be made.

39. Mr Andy McCorrie's relevant evidence is:

- a. He is a property maintenance contractor engaged by Rent a Room. He attended the Property during September 2020 with Mr Dyble who said he was serving some paperwork on a tenant called Hugo Cabral. Mr Dyble knocked the door and waited about 5 minutes but there was no answer. He therefore pushed the documents under the door.
- b. Later the same month Mr McCorrie was doing some work at the property when Louise Saunders was attempting to contact Hugo. They heard movement while downstairs. Ms Saunders then knocked a few times and tried to introduce herself through the door. A phone then appeared under the door which worried her, so they called Mr Dyble for instructions. Mr Dyble told Ms Saunders to leave a note under the door. She tried to put a post it note under the door but the person in the room moved the phone to block it. A few days later he was again at the property and noticed that Hugo had put a response on his door with his email address for contact on it. Mr McCorrie noticed that Ms Saunders had missed a 9 from her phone number and so corrected the note.

Applicant's response

40. The Applicant filed a brief response to the 1st Respondent's statement of case and witness evidence.

- a. He attached photographs of the gas and electricity meters on 18 August 2020 when disconnected.
- b. He stated that he would rely on his video recordings of the events between 10 and 18 August 2020 in relation to his interactions with Mr Zaffar.
- c. He provided copies of the post it notes dated 25 February 2021 and said that he would rely on his recording of the incident that took place that day.
- d. He also intended to rely on his recording on the incident on 18 February 2021.
- e. The Applicant submitted that the Mr Mahli's blatant disregard of coronavirus rules on mask wearing and observing social distancing were inconsistent with his claim to be a professional and experienced landlord. He also cited the 1st Respondents failure to restore his premises to the same condition as before the police forced entry, which left him with diminished security. This he submitted was also reprehensible conduct. The Applicant also alleged that further attempts were made to break into his room on

the 20 August and 25 November 2021. Both incidents post-date the application and no details were provided other than 2 photographs of unidentified persons outside the Applicant's door who appear to be pressing the combination lock on the door.

- f. The Applicant also refers to the email exchange with Mr James Slinger but alleges that his involvement was engineered by a fabricated report of a burning smell provided by the 1st Respondent. This, the Applicant states is reminiscent of the events of the 18 May 2021. On this occasion however his vigorous questioning of the alleged concerns with Mr Slinger, which the Applicant viewed as an attempt to abuse council and fire brigade services, forestalled any further action. The Applicant attached a copy of his email to Mr Slinger dated 10 December 2021 'vigorously' questioning the need for a fire safety check and Mr Slinger's response which confirms that Mr Slinger was just trying to facilitate a FSI of the room but if the Applicant wanted to conduct himself in a way which hindered or frustrated the manager in the performance of his duties that was his choice, but there may be consequences. Mr Slinger's involvement also post-dates the application.

41. The Applicant made further submissions concerning parts of the 1st Respondent's evidence at the hearing which he had not put forward either in his statement of case or his written Reply. He began by expressing his concern that Mr Dyble had not attended to give evidence because there were a number of questions that he wanted to ask him. The Tribunal explained that the Applicant could make submissions to the Tribunal concerning Mr Dyble's evidence and it would then be for the Tribunal to determine what weight to give to his and to Mr Dyble's disputed evidence.

42. The relevant additional submissions made by the Applicant at the hearing are:

- a. He had recorded his interactions with the Respondents and the agents (including those prior to his agreeing to take the tenancy) because previous dealings with a devious landlord had caused him to distrust people.
- b. He believed that 1st and 2nd Respondents had a close relationship, that the 2nd Respondent did not have the capabilities of a landlord, that the 1st Respondent had been receiving a share of the rent throughout and they were lying about the rent to rent agreement. He found it implausible that Mr Mahli would have agreed to accept a fixed rental of £900.00 per month when he believed the property capable of yielding a monthly rental of £2,800.00.
- c. Although put forward in rebuttal of Mr Mahli's evidence that he had taken over the tenancy from 1 September 2020, the Applicant made a new allegation that on 2 September 2020 there had been a further attempt by Mr Zaffar to force entry. He acknowledged this incident had not been mentioned in his statement of case or any evidence submitted prior to the hearing, despite the 1st Respondents' case having been clearly set out in their statement of case and Mr Mahli's

witness statements and despite the Applicant having provided detailed video evidence in support of all other incidents.

- d. To confirm that Mr Mahli had told him that he had taken back possession of the Property from Mr Zaffar on 1 September 2020 but to deny having received the notice of assignment that Mr Dyble said he had pushed under the door on 4 September 2020.
- e. To confirm that he was aware that Rent a Room had taken over management of the property from 1 September 2020 and that he hadn't responded when a representative knocked the door on 25 September 2020. The Applicant said that he didn't want to discuss issues at the door because he wanted everything in writing, also there was a national lockdown and that the threat to access the room when there was a national lockdown was harassment. The Applicant accepted that the landlord was contractually entitled to inspect the room for certain purposes on 24 hours' notice but said that as he had changed the lock the landlord would have to use force to enter the room which was not lawful.
- f. To state that he was not aware of any concerns about his welfare or who was in the room, prior to the police visit on 18 May 2021. That he was not in the WhatsApp group so hadn't seen the messages and rarely spoke with any of the other tenants. Also, to submit that there were no legitimate concerns about his welfare justifying police involvement.
- g. Asked why he had finally responded to Rent a Room's email of 14 May 2021 at 08:34 on the 18 May 2020, just after police turned up, the Applicant said that he had replied before the police arrived – because the first recording on his phone was 08:41.
- h. To assert that he had not received any emails from Rent a Room after November 2020 until 14 May 2021.
- i. Having confirmed that the 1st Respondent was not present at any of the incidents relied on, the Applicant was asked why he was saying that the 1st Respondent had committed the alleged offences. He said that the 1st Respondent was liable for the actions of their agent Rent a Room, who was present and had committed the offences.
- j. To say that as the s8 and s21 Notices had expired long since, the 1st Respondents' could have commenced possession proceedings in March 2021 but hadn't. Had proceedings been issued he could have obtained legal representation and had due process.
- k. In relation to conduct, to say that he didn't pay the rent for a period of time for several reasons. First, he thought he would be unlawfully evicted, secondly because he had a lot of concerns about the building and he didn't trust the 1st Respondent. Thirdly, he felt generally unsafe and was unable to procure legal advice due to the lockdown. When he eventually obtained legal representation, he paid all the arrears.

43. In closing submissions, the Applicant shifted his position from claiming that the 1st Respondent was vicariously liable for the offences which had been committed by the agents, to submitting that the 1st Respondent had planned

to make conditions so unpleasant that he would leave without being forced out. He alleged for the first time that the 1st Respondent had planned and incited the police to forcibly enter his room on the 18 May 2021.

Identity of the contractual landlord.

44. The evidence contained in the audio files of the Applicant's conversations with Mr Mahli and later Mr Zaffar on 11 and 12 December 2019 indicate that a prospective tenant acting reasonably, would have believed that their contractual landlord would be the owners Mr and Mrs Mahli and that Mr Zaffar would manage the Property as the owners' agent. Particularly as the Applicant made clear, his concern to establish the identity of his landlord as distinct to that of any person managing the Property for the landlord. The audio files and indeed Mr Mahli's own evidence is consistent with the impression having been given to the Applicant that the Mahlis' would be the contractual landlord and Mr Zaffar the manager, because that, Mr Mahli stated, is what he believed to be the case at that time.
45. However, that was not the case. Although there are discrepancies in the evidence concerning the date on which the 1st and 2nd Respondent agreed to the Rent to Rent arrangement, the evidence shows that:
- a. The tenancy agreement signed by the Applicant is between Mr Zaffar on behalf of Premier who is named as 'landlord' and the Applicant who is the named tenant. The Applicant didn't question this at the time, or it appears, until these proceedings were issued.
 - b. The Applicant paid his rent to the 2nd Respondent during the First Period of the tenancy.
 - c. The 1st Respondent had no direct involvement with the Property until contacted by the council about disconnection of the utilities late August 2020, save for one call from the Applicant concerning nuisance, which he said was referred on to the 2nd Respondent.
 - d. The 1st Respondent received £900.00 per month from the 2nd Respondent (and provided some bank statements in support).
 - e. The 2nd Respondent provided written confirmation by email that he "had the property on a rent to rent agreement" from 1 November 2019 until 31 August 2020 and was responsible for payment of all utilities and maintenance.
 - f. The Applicant did not contact Mr Mahli between 10 - 18 August 2020 when he was asked by Mr Zaffar to quit the premises on 3 days' notice. He only engaged with Mr Zaffar, the police and the local authority.
 - g. Mr Mahli confirmed details of the Rent to Rent arrangement to the Applicant in the exchange of emails between them on 21-29 August 2020. The Applicant didn't question the arrangement at that time.
46. The evidence is not inconsistent with the Applicant's belief that the 2nd Respondent was acting as an agent for Mr and Mrs Mahli, who he believed to have been his true landlord throughout. However, it also supports the contractual relationships being as described by Mr Mahli. This issue was raised quite late in the proceedings, in particular the audio files were not

disclosed by the Applicant until 10 May 2022 just 4 weeks before the hearing. As a consequence, Mr Mahli was permitted to give oral evidence on the issue at the start of the hearing which is summarised at paragraphs [26-35] above. The Tribunal found Mr Mahli to be a straightforward witness who appeared anxious to assist the Tribunal with its enquiries. His memory of precise dates was a little hazy and not always accurate. However, the Tribunal accepts that Mr Mahli did not, at first, appreciate the contractual distinction between a rent to rent agreement which devolves a legal estate to the other party, from that of an agency agreement which does not. The Tribunal therefore found the discrepancies to more likely stem from a genuine mistake rather than dishonesty.

47. The Tribunal found Mr Mahli's evidence concerning his reasons for entering into the Rent to Rent agreement with Mr Zaffar to be entirely credible and that it was not a sham arrangement. While it is regrettable that there was no written agreement confirming the terms of the agreement (and also most regrettable that neither Mr Mahli nor Mr Zaffar took steps to explain the arrangement to the Applicant), this failure does not affect the reality of the contractual arrangement. The Applicant may have genuinely and for good reason believed Mr and Mrs Mahli to have been his contractual landlord, but the Tribunal finds this was not the case. The tenancy contract was with Mr Zaffar of Premier who was the Applicant's immediate landlord until surrender of the Rent to Rent agreement at the end of August 2020, when the freehold reversioners, Mr and Mrs Mahli, became the immediate landlords.

Jurisdiction to make a rent repayment order

48. The Tribunal may make a rent repayment order if the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The Tribunal's jurisdiction is contained in sections 40-46 of the Housing and Planning Act 2016. The relevant law is set out in the Appendix.

Have the alleged offences been committed?

49. The alleged offence under section 6(1) of the Criminal Law Act 1977 is of using or 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.
50. The alleged offence under section 1(3) and 1(3A), Protection from Eviction Act 1977 is of acts likely to interfere with the peace or comfort of the tenant or the persistent withdrawal or withholding of services reasonably required for the occupation of the premises which are either intended, or likely to

cause the tenant to give up the occupation of the premises or to refrain from exercising rights or pursuing remedies in respect of it.

51. The Tribunal must be satisfied beyond reasonable doubt that the alleged offences have been committed by the Applicant's immediate landlord.

The First Period

52. The Applicant relies on his evidence of the events that took place on the 4 dates specified in paragraph 14 and summarised in paragraph 23 above, in support of his allegation that the 2nd Respondent committed offences under both statutes of using or threatening violence to gain entry and of unlawful harassment.
53. The 2nd Respondent has not filed any evidence in this case. The Tribunal therefore accepts the evidence of the Applicant. Having considered the Applicant's statements and the video evidence of the incidents that took place, the Tribunal finds that while the 2nd Respondent may have genuinely thought that the Applicant would abide by an oral agreement to vacate the premises mid-August 2020, the Applicant was entitled to rest on his legal rights. The 2nd Respondent should have served a formal s21 notice of the required length but did not.
54. The short oral notice to quit given on the 10 August 2020 followed by oral threats made on the 14 and 15 August 2020 to move the Applicant from the premises the following day were, the Tribunal finds, acts which were intended to and likely to interfere with the peace or comfort of the Applicant and/or which were likely to, cause him to give up the occupation of the premises so that the 2nd Respondent committed an offence under both subsection 1(3) and 1(3A) of the Protection from Eviction Act 1977.
55. Furthermore, the 2nd Respondents actions on the 18 August 2020, in drilling the lock and attempting to force open the door, which persisted until the Applicant called the police, constituted the use of threatening and violent behaviour towards the Applicant and the property of the Applicant with intent to gain unlawful entry so that 2nd Respondent also committed an offence under s6(1) of the Criminal law Act 1977.
56. The Tribunal does not find that the disconnection of utilities to the Property for just over a day was part of a persistent withdrawing or withholding of services. It appears to have resulted from a singular oversight which was quickly remedied, and which affected the entire Property (i.e. not just the Applicant). There is no degree of persistence, or of disconnection for an extended period which would indicate that it was a deliberate act intended or likely to cause the Applicant to give up occupation of the premises.
57. Had the Tribunal found the Rent to Rent agreement to be a sham and that the 1st Respondent was in fact, the immediate landlord during the First Period of the tenancy it would not have assisted the Applicant. There is no evidence that 1st Respondent committed the offences, was aware of the

actions of the 2nd Respondent in committing the offences, or had sufficient (or any) control over the actions of the 2nd Respondent to justify a finding that the 1st Respondent had orchestrated the offences.

The Second Period

58. The Applicant relies on his evidence of events that took place on the six dates specified in paragraph 15 as summarised in paragraph 24 above, in support of his allegation that the 1st Respondent committed offences under both statutes of using or threatening violence to gain entry and of unlawful harassment.
59. The Tribunal does not find that the service of a section 8 notice in October 2020 or the exchange of emails between 21 - 29 August 2020, which led to service of the notice, amount to unlawful harassment. Mr Mahli was clearly concerned about his inability to honour an arrangement agreed with 7 students for the forthcoming academic year and attempted to negotiate a mutually satisfactory cessation of the Applicant's tenancy before 1 September 2020.
60. The Applicant is entitled to quiet enjoyment and badgering a tenant with inducements to vacate the premises can, in certain circumstances, amount to harassment. However, in this case the Applicant appeared quite willing to engage with Mr Mahli. In fact, his response on 26 August 2020; "*if we are serious in getting a solution before the 1st September.....*" was a positive encouragement to Mr Mahli to continue the exchange. At the hearing the Applicant said that his responses were intended to elicit a truthful response from Mr Mahli about what he knew, and if Mr Mahli had been truthful he would have left the premises. The Applicant's intentions were not however tested because when it appeared to Mr Mahli that the Applicant was not serious about negotiating terms to vacate by 1 September 2020, he disengaged saying that he would put the matter in the hands of his solicitor. Mr Mahli was perfectly entitled to seek lawful possession of the premises in this way and to communicate his intention of going about the process through lawyers. This email, which was soon followed by service of notice under section 8, should have reassured the Applicant that he was not about to be unlawfully evicted.
61. In what appears to be some irritation with the turn of events, Mr Mahli did state in his email of 29 August 2020 that the internet connection would not be restored. However, it clearly was restored soon afterwards, and the Tribunal does not therefore find that the threat not to restore the service, in the particular circumstances it was made, amounts to a persistent withdrawal or withholding of services.
62. The Tribunal does not find that the issue of proceedings in the county court for arrears of rent and possession of the premises in January 2021 constitute an offence under either statute. The 1st Respondent is entitled to pursue lawful remedies for non-payment of rent and for possession of the premises.

The Applicant is entitled to and has had due process, defending the proceedings with the benefit of legal assistance.

63. The Tribunal does not find that the events of the 25 February 2021 constitute an offence by the landlord of unlawful harassment or a threat to forcibly enter the premises. In the context of no rent having been paid for several months and what appears to have been a general lack of responsiveness, it was not unreasonable for the agents to attempt to speak to the Applicant through the door while at the Property.
64. The landlord has a contractual right under paragraph 1.46 of the tenancy agreement to inspect the room on 24 hours' notice, for various purposes including inspection of the premises, complying with the landlord's contractual obligations and valuing or viewing the premises with prospective purchasers. The Tribunal accepts that during the coronavirus lockdown an inspection would not have been advisable other than for urgent repairs or for an emergency, but there was nothing preventing the Applicant from communicating his concerns and his preferences about mode of contact and social distancing, through the door. Instead he chose to remain silent. The agent's tone was not threatening, she made no threat to forcibly enter the room and no attempt was made to forcibly enter. Furthermore, the 1st Respondent was not present and there is no evidence that Mr or Mrs Mahli knew of, facilitated, or orchestrated the agents attempt to speak to the Applicant that day.
65. The Tribunal does not find that the email sent to the Applicant by Rent a Room on 14 May 2021, constitutes an offence by the landlord of unlawful harassment or a threat to forcibly enter the premises. First, the email was sent by Rent a Room, not the 1st Respondent. Secondly, it merely expresses the agent's concern for the Applicant's welfare and then states: "*If we do not get a response from you by Monday 17 May, we will be entering your room to ensure you are ok.*" The Applicant could have contacted the agent straight away to reassure him but did not respond until around the time the police arrived at the Property on the 18 May 2022, and then just to say "*Hi, no message was received for the past month.*" The agent did not threaten to make a forcible entry, he relayed his concerns to the police who decided to make a check on the Applicant's safety and welfare.
66. The Tribunal does not find that the events of 18 May 2021 constitute an offence of unlawful harassment or forcible entry onto the premises by the landlord for the following reasons:
67. Mr Dyble's evidence, some of which is disputed by the Applicant, is that the Applicant was some 9 months in arrears of rent (not disputed) and was not responding to emails from Rent a Room concerning the arrears (disputed). The Applicant disputes having received emails prior to 14 May 2021. He said that he was communicating about the arrears through the county court proceedings. The Applicant does not however dispute having received the agents email of 14 May 2021, warning of their concerns and intention to enter the room the following week if he did not respond. Mr Dyble, having

then received worrying messages from the other tenants through their WhatsApp group, contacted the police because he was concerned that an imposter might be living in the room. The Applicant doesn't dispute the WhatsApp evidence, he just points out that he is not in the group.

68. The Applicant's idiosyncratic reaction to the police visit clearly exasperated the officer. He did not assist the police in clarifying what appeared to be a perfectly reasonable concern, raised by the agent, that someone other than the Applicant was occupying the room. He could have simply opened the door so that the officer could assure himself that all was in order. Instead, he steadfastly refused, causing the officer to effect a forcible entry.
69. The Tribunal did not find Mr Dyble actions in contacting the police or in speaking to the Applicant from the landing after the police had forced the door, could amount to an offence by the landlord under either statute. The Applicant's reluctance to engage or respond to the agent's attempts to contact him have been unhelpful and largely responsible for matters escalating to police involvement.
70. The main difficulty with the Applicant's case is however that there is no evidence that puts the 1st Respondent at the scene. If the Tribunal made a finding of fact that Mr Dyble had committed an offence under s1(3A), or s6(1) (which it does not), it would not support an application for a rent repayment order against the 1st Respondent. A landlord must commit the offence for a rent repayment order to be made against it.
71. Although in his closing argument the Applicant suggested that Mr Mahli was behind all the incidents and had orchestrated all the offences there is no evidence of this. Mr Mahli's clear evidence is that he was unaware of the police involvement until after the event, his evidence in relation to this incident just reflects what he saw on the Applicant's video recording and what he was told about the incident by Mr Dyble. Mr Dyble does not suggest in his witness statement that he was acting under instruction from Mr Mahli or that he had contacted him about the actions he intended taking. S1(3) and (3A) do not create offences of strict liability. A section 1(3A) offence may be committed by a landlord or an agent, but if the acts are done by the agent it does not impugn the landlord absent some evidence of joint enterprise, incitement or orchestration. In this case there is no such evidence, just the Applicant's suspicion that it might be so.
72. An offence under s6(1) is committed if a person without lawful authority uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person. Neither Mr Dyble or the 1st Respondent used threats or violence to secure entry. The police used threats to force entry and forced the door acting on what the police officer believed was lawful authority. The officer's assessment appears, from the video recording, to have been based on factual information provided by Mr Dyble. That information is not challenged by the Applicant, he just challenges the agent's motivation. The facts do not in the Applicant's view, support any legitimate concerns about his welfare that were sufficient to justify police

involvement. The Tribunal disagrees, if a professional agent has reason to suspect that an imposter is in residence, which the WhatsApp messages could reasonably be interpreted as suggesting, it is reasonable for the agent to relay those concerns to the local police. It is then a matter for the police to assess what action they should take. The Applicant could have opened the door to the officer and clarified the position at any time during the 20-minute exchange but chose not to. When asked why, having satisfied himself that the police had lawful authority to be there, had he refused to open the door? The Applicant said that although he was satisfied that they were legitimate police, he was not satisfied the officer had a legitimate reason to enter his room. The Applicant denied that he had refused entry to PC Vince, he said that having decided PC Vince did not have a legitimate reason to enter his room he just carried on with his quiet enjoyment, as he was entitled to do. That idiosyncratic decision was the effective cause of the police threat to force the door and the cause of it ultimately being forced.

73. The Tribunal does not find that the agents' emails of 18 May 2021 headed *Reminder: Eviction Notice*, which enclosed copies of the s8 and s21 Notices that had expired on 25 April 2021, constitute unlawful harassment. The emails were sent later on the day of the police visit, during which the agent expressed concerns about whether that the Applicant was still in occupation. Once that doubt was resolved by the police visit, it was reasonable for the agent to promptly notify the Applicant that following expiry of the Notices, court proceedings would be issued if the rent arrears were not paid, proceedings which could clearly result in eviction, hence the heading "Eviction".
74. In relation to the replacement of the door to the premises:
 - a. The Tribunal does not find that replacing the Applicant's door with a new door with a different locking mechanism (which the Applicant believes to be less secure than his previous door), amounts to an offence by the landlord under either statute. The door needed to be replaced and was replaced with a lockable door. A period of 10 days to secure the replacement door is not unreasonable nor does it signify an intention to harass the Applicant by eroding his security. The locking mechanism does not need to be identical provided it works and the tenant knows how to operate it.
 - b. The Applicant complains that the new door was fitted while he was not present, and that the technician broke a new lock which he had fitted to the old door. Neither event supports the allegation that there was a steady erosion of his security that was intended to harass him. The new door was fitted to provide the Applicant with the security of a lockable replacement door. It was fitted by the agent's technician, not the 1st Respondent. It does have some slight gapping and the Applicant demonstrated to the Tribunal an issue with the internal catch for which he had fashioned a remedy, but the combination lock appeared to work satisfactorily. These are basically contractual issues which concern the landlord's obligation

to keep the Property in repair. Notably, the Applicant ignores the fact that the damage he complains of is a direct consequence of his refusal to admit a police officer exercising his lawful duties. Furthermore, it appears from the evidence that the council have inspected the Property since the damage occurred and have not communicated any finding of disrepair to the landlord.

Tribunal's determinations on the alleged offences

75. The Tribunal is satisfied beyond reasonable doubt, for the reasons set out in paragraphs 52 to 57 above, that the 2nd Respondent is a landlord under a housing tenancy, who committed offences under s6(1) of the Criminal Law Act 1977 and under sections 1(3) and (3A) of the Protection from Eviction Act on 10, 14, 15 and 18 August 2020.
76. The Tribunal is not satisfied beyond reasonable doubt, for the reasons set out in paragraphs 58 to 74 above, that the 1st Respondent has committed any of the alleged offences.

Was the offence committed by the landlord within the period of 12 months ending with the date of the application?

77. The Application was received by the Tribunal on the 6 August 2021 therefore all offences were committed by the 2nd Respondent within the relevant time period.

What is the applicable 12-month period?

78. Under s44(3) of the 2016 Act the amount the landlord can be required to pay cannot exceed the rent paid by the tenant in respect of the 12-month period ending with the date of the offence. The maximum period is therefore 12 months expiring on 18 August 2020.

The maximum amount that can be ordered under s44(3)

79. A rent repayment order can only be made in respect of the rent actually paid. There is no dispute that during the relevant 12-month period the Applicant paid rent totalling £2,800.00 to the 2nd Respondent. Only one order can be made in respect of the relevant period, no matter how many offences were committed. The maximum sum that can be ordered is therefore £2,800.00.

The s44(4) or any other factors

80. The Property appeared on inspection to be in reasonably good repair and decorated to a reasonable standard. The Applicant has made allegations concerning the failure of the landlord to provide him with required information, gas safety and energy performance certificates and deposit scheme information, which indicates a lack of professionalism on the part of the landlord. There is no suggestion that the 2nd Respondent was otherwise a bad landlord prior to the conduct amounting to the offences themselves.

The Tribunal finds however that the offending conduct of the landlord, which was intimidating and directly threatening, to be of the highest order of seriousness and should therefore attract the severest penalty.

81. The 2nd Respondent has failed to participate on the proceedings or provide any evidence of his financial position. He misled the Applicant in December 2019 about the true identity of his landlord and failed to correct the false impression given. He has offered no explanation or mitigation of his conduct; he has expressed no remorse and in short has behaved very badly indeed. There is no evidence of any relevant conduct on the part of the Applicant.

The Tribunal's determination

82. The Tribunal determines that a rent repayment order should be made against the 2nd Respondent and for the reasons set out above, finds no reason to reduce the amount of the order below the maximum amount. The Applicant is therefore awarded a rent repayment order of £2,800.00.

Name: Judge D Barlow

Date: 28 July 2022

Appendix 1

The relevant provisions of the Housing and Planning Act 2016 are:

Section 40

(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 ...

(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

Section 41

(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.

Section 43

(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 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) ...

Section 44

(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 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 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.

The relevant provisions regarding the Criminal Law Act 1977 are:

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.

The relevant provisions regarding the Protection from Eviction Act 1977 are:

Section 1 Unlawful eviction and harassment of occupier.

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

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall

be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—
(a) to give up the occupation of the premises or any part thereof; or
(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;
does acts 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.