



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

Case Reference : LON/00BB/HMB/2021/0008

Property : 375 Green Street, London E13 9AU

Applicant : Farooq Raza

Representative : Freeman Chambers Solicitors

Respondents : Nadeem Anwar
Sheroz Nadeem

Representative : Blake Morgan LLP

Type of Application : Application for a rent repayment order
by tenant

Tribunal : Judge Nicol
Mr SF Mason BSc FRICS
Mr JE Francis

**Date and Venue of
Hearing** : 3rd & 4th February, 28th June and 5th
October 2022;
By remote video conference

Date of Decision : 21st December 2022

DECISION

- 1) The Respondents shall pay a Rent Repayment Order to the Applicant in the sum of £3,600.
- 2) The Respondents shall further reimburse the Applicant his Tribunal fees totalling £300.

Directions for determination of costs under rule 13(1)(b)

- 3) Each party shall, by ?? January 2023, notify the other party and the Tribunal whether they wish to make an application

for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

- 4) Any party which has given such notification that they do wish to make such an application shall, by ?? January 2023, email to the Tribunal and to the other party any submissions as to why the Tribunal should make an order for costs by particular reference to the criteria under rule 13(1)(b).**
- 5) Any party which has received such written submissions shall, by ?? February 2023, email to the Tribunal and to the other party any submissions in response.**
- 6) The Tribunal will as soon as possible thereafter determine the issue of costs on the documents provided.**

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The subject property at 375 Green Street, London E13 9AU, consists of commercial premises on the ground floor and residential accommodation on the upper two floors. The commercial premises on the corner of Green Street and Kings Road are occupied by a currency exchange together with a business providing mobile phone services. There is a separate door on Kings Road to a staircase leading up to the residential accommodation. Above that door, there is a sign for the hairdressing business occupying the one-storey extension to the rear.
2. The Second Respondent holds a lease for the whole property. He runs the currency exchange in the commercial premises. While the lease is principally a commercial lease, residential use is permitted, subject to conditions, for the accommodation in the upper two floors (*see* clause 1 Definitions of “Permitted Part” and “Residential Accommodation” and clause 18.3).
3. The First Respondent is the Second Respondent’s father and, amongst other joint enterprises, runs a construction/building business.
4. The Applicant said he lived in a room at the property from November 2019 to April 2021, at a rent of £300 per month. He seeks a rent repayment order against the Respondents in accordance with the Housing and Planning Act 2016.
5. There was a remote video hearing of the application at the Tribunal on 3rd and 4th February 2022, which was then adjourned, part-heard, and re-listed on 28th June 2022. The witness evidence was completed on that date but the hearing had to be further adjourned to 5th October 2022 to hear both counsel’s closing arguments. The attendees were:
 - The Applicant;

- Mr Muhammad Majeed, the Applicant's uncle and solicitor, who shared a screen with the Applicant from his office;
 - An interpreter in Urdu for the Applicant – Mr Mahmoud on the first and third days and Mr Mursalin on the second day;
 - Ms Hilda Adejumo, counsel for the Applicant;
 - Witnesses for the Applicant:
 - Ms Diane Sarkodie Addo (on the second day only), the proprietor of the hair salon immediately next to the entrance to the residential premises;
 - Mr Ilyas Muhammad Begum (on the third day only);
 - The Respondents, who shared a screen;
 - Ms Annette Cafferkey, counsel for the Respondents;
 - Mr Michael Woonton from the Respondents' solicitors; and
 - Mr Muhammad Riaz Bhatti, witness for the Respondents (on the third day only), who runs a mobile phone business from the same premises as the currency exchange.
6. The documents available to the Tribunal consisted of the following in electronic form:
- A bundle of 258 pages compiled by the Applicants' solicitor;
 - An additional witness statement from Mr Iftikhar Hussain Lal Begum;
 - A bundle of 74 pages compiled by the Respondents' solicitor;
 - A number of videos shot by the Applicant on his smart phone;
 - A Schedule of each party's legal costs;
 - A Skeleton Argument compiled by Ms Adejumo's predecessor, Miss Sugun Praisoody, for a previous hearing;
 - Some authorities from Ms Adejumo; and
 - A Skeleton Argument and a bundle of authorities from Ms Cafferkey.

Late witness statements

7. The Respondents' bundle contained a witness statement from the First Respondent dated 31st January 2022. The Applicant did not see it until the bundle was served at 4:24pm on 1st February 2022. In his witness statement, amongst other matters, the First Respondent claimed that Mr Iftikhar Hussain Lal Begum, with whom the Applicant had claimed to have shared his room at the property, was a personal friend of his who has never resided at the property. In very quick time, the Applicant was able to get Mr Begum to sign a short witness statement on 2nd February 2022 refuting the First Respondent's claims.
8. Both witness statements were considerably out-of-time. The Applicant has an excuse, since Mr Begum's statement only responds to something in the First Respondent's late statement. Ms Cafferkey did not proffer an explanation or apology for the lateness of this statement but pointed out that, as a Respondent, it was important for the Tribunal to hear from the First Respondent. In hindsight, the Tribunal has gained a considerable insight from these statements into the First Respondent's willingness to attempt to mislead the Tribunal. On that basis, they are

of significant probative value and the Tribunal allowed each party to rely on them.

Witness evidence

9. The Tribunal heard from 3 witnesses from each side, as listed in paragraph 5 above, as well as reading Mr Begum's witness statement. As also mentioned in paragraph 5, there was an interpreter, arranged for the benefit of the Applicant at his request. The Respondents questioned his need for an interpreter at the outset of the hearing but, when the First Respondent and Mr Bhatti gave evidence, they also made use of the interpreter.
10. The Tribunal found the Applicant and his witnesses to be consistent, credible and straightforward, able to provide details when asked. Ms Cafferkey sought to identify inconsistencies and lack of clarity but the imperfections in the Applicant's evidence were no more than you would find with an honest witness operating through an interpreter – perfect evidence tends to come only from dishonest witnesses.
11. On the other hand, the Respondents and Mr Bhatti gave evidence which was not inherently credible or internally consistent – further details are given below. The parties' respective evidence differed on many key aspects but, where it conflicted, the Tribunal preferred the evidence of the Applicant and his witnesses.

The offence

12. The Tribunal may make a rent repayment order when 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 Applicant alleged that the Respondents were guilty of three such offences:
 - (a) Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977;
 - (b) Unlawful eviction or harassment contrary to section 1 of the Protection from Eviction Act 1977; and
 - (c) Having control of or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004.
13. The Respondents not only deny having committed any offences, both deny having been the Applicant's landlord.

Landlord

14. According to the Applicant, he entered the UK on 15th October 2019 with a few basic belongings. He came from Romania with the intention of setting up a business as a self-employed builder and electrician. After staying with relatives for a few days, he rented a double room on the second floor of the property in November 2019 for £300 per month,

with a £300 deposit. The agreement was oral only and was made with the First Respondent.

15. Mr Begum shared the room, moving in at the same time as the Applicant and also paying £300 per month. The room next door was initially occupied by a student called Haider and then, in about August 2020, by Mr Laeeq Ahmad Chishti. The room on the first floor was occupied by a couple, Mr Iqbal Bhatti and Mrs Sushma, and their daughter, Mehak. There were communal kitchen facilities, including a washing machine, a fridge/freezer and a microwave oven, and a shower room and toilet on the first floor.
16. The Applicant said he paid the rent in cash by going into the shop premises and leaving the money with the Second Respondent. He asked for receipts for his payments but none were ever provided. In an attempt to create a paper trail, in December 2019 he tried to pay by bank transfer to the First Respondent but this failed and so he carried on paying by cash. On 4th May 2020, he successfully paid by bank transfer to the First Respondent although he made it clear he did not like being paid that way. From June 2020, the Applicant worked for the First Respondent's construction business and, while doing so, the rent was deducted from the Applicant's earnings – Ms Cafferkey's skeleton argument suggested that there was no evidence of this but the First Respondent said in his oral evidence that that is what happened.
17. The Respondents admitted that the Applicant entered into an agreement in November 2019 to use the room, which came to an end in April 2021, but asserted it was only a licence for him to store his work tools. The Tribunal did not find the Respondent's account credible and accepted the Applicant's for a number of reasons:
 - (a) Mr Bhatti said in evidence that he introduced the Applicant to the Respondents because he was looking for a place to rent. There was no suggestion that the Applicant meant or Mr Bhatti understood him to mean that he wanted to rent storage space for his tools.
 - (b) The agreed payment of £300 per month was significantly more than could be justified by such an arrangement. It is true that it is also below the market for a residential letting of this type and size but that is consistent with the informal and potentially unlawful nature of the letting.
 - (c) On the Respondents' case, they had 3 empty rooms for the Applicant to use for his minor storage needs but, instead of giving him the smaller single room on the second floor or the more convenient room on the first floor, they gave him a large double bedroom on the second floor.
 - (d) It is not in dispute that the Applicant had no other connection with either Respondent at the time when he entered into the agreement. It was only 7 months later, in June 2020, that the Applicant began working for the First Respondent in his construction business. As could be seen from the photos provided in the Applicant's bundle, the tools took up a relatively small part of the room and there was no reason to

think that the Applicant could not have stored them where he was living. According to paragraph 10 of the Second Respondent's witness statement, the Applicant only stayed near to the property on a few occasions. It does not make sense that he would spend a disproportionately large sum of money storing his tools at a property he otherwise had no reason to go anywhere near.

- (e) The Respondents denied any residential use of the upper floors of the property. If accepted, this would be consistent with their explanation for the agreement with the Applicant. If it were found not to be true, it would undermine the Respondents' credibility generally, as well as their credibility in relation to their explanation of their agreement with the Applicant. The evidence of Mr Begum, albeit only provided in writing, was that he lived at the property. The Applicant's photos and videos clearly showed other people were using the communal areas as residential space – the Applicant pointed to shoes laid out in the first floor corridor which he said belonged to the family living there but the videos also showed utensils drying in the kitchen and bed linen hung over the communal staircase bannister, presumably to dry. It is noteworthy that the Respondents' witness, Mr Bhatti, claimed not to have seen any furnishings in the residential rooms, despite claiming to have visited them in 2021, at a time when it is not in dispute that the Applicant was living there. The Tribunal is satisfied that the Respondents were permitting rooms to be used for residential use.
- (f) Mr Ilyas Muhammad Begum gave evidence that, at least before the COVID pandemic, he visited the Applicant at the property where they had breakfast and dinner together several times and also watched films together on his laptop.
- (g) Ms Addo saw the Applicant regularly. He helped in her shop a few times as a handyman. Her interactions were more than consistent with the Applicant living at the property.
- (h) The Applicant produced examples of post delivered in his name and that of Mr Begum at the property between November 2019 and December 2020. Not only is this indicative that they were living there but it also supports the claim that the Respondents knew of their residence. The post had to be delivered. There was no letter box on the door into the residential part of the building. The only place such post could have gone would have been the commercial premises where the Second Respondent and his staff would have seen it. The only alternative place for the delivery of post would have been Ms Addo's hairdressing shop but she confirmed in evidence that no post for the occupants of the residential accommodation ever went there. In his witness statement, the Second Respondent said he had agreed with the Applicant that his post could come to the shop but, when asked in cross-examination, he said that he had not seen any post and made no reference to any such agreement.
- (i) When the Applicant remitted money to his parents in November 2019, the receipt shows that this was done from the Second Respondent's currency exchange and that the Applicant's given address was the

property. This is consistent with the Applicant's case, not the Respondent's.

- (j) Mr Begum's driving licence listed the property as his address. This is not conclusive but it weighs in the balance in favour of the Applicant's account.
- (k) The Respondents did seek to provide an alternative account of how the residential premises were used. They said that the second floor was used for storage of construction materials and tools and, outside the time of the pandemic, the First Respondent's construction workers would use the premises as a staff amenity. They could have breakfast there, sometimes lunch, and use it as a changing room, including having a shower. However, it would have been simple enough to provide some evidence of this, possibly from just one of the workers in question. There would also have been utility bills to pay and possibly other expenses such as cleaning materials as a result of this use. In contrast to the Applicant's photos and other documentary and witness evidence, the Respondents provided no evidence at all other than their assertion.
- (l) In making that assertion, the Second Respondent claimed that the Applicant saw the storage use and asked if he could do the same. This begs the question of how he saw this since he had no reason to have seen the property unless he were looking for a place to live. Also, it is not in dispute that the agreement was initially made between the Applicant and the First Respondent – the Second Respondent was not present and did not explain how he supposedly came to believe this.
- (m) The Respondents claim that they only became aware in or around February 2021 that the Applicant was sleeping in the property and had put in a bed and a wardrobe. The Tribunal accepts the Respondents' claim that they would use and/or visit the upper floors less often during the COVID pandemic but, even taking that into account, it is not credible that they would be entirely unaware of what was happening there between November 2019 and February 2021. The Second Respondent ran a business in the same building and said in his evidence that he would visit the first floor once or twice per week. He said he would not know from his view from the shop if passers-by were going to the side door but also said he saw the police going there in March 2021 from the same vantage point. The First Respondent claimed to make use of the upper floors for his business. The pandemic does not explain the 5 months prior to the implementation of any restrictions – photos taken in December 2019 show the Applicant's room with beds, wardrobes, a chest of drawers, a laundry basket, rugs, clothes, and other belongings.
- (n) The Second Respondent took on the lease of the whole building but then claimed to have used the larger part of it for activities which only cost money rather than making it. This is far less credible than that the Respondents let people stay there for whatever they could get in return without having to comply with all the requirements of being a residential landlord.

- (o) The First Respondent sought to support his account by saying he had known Mr Begum since 2019 as a personal friend and reporting a conversation they had had in which he allegedly denied having ever resided at the property. As referred to above, the Applicant was able, at very short notice, to obtain a sworn statement from Mr Begum confirming the Applicant's account. While both accounts are hearsay, the Tribunal puts significantly more weight on the signed statement from the source and rejects the First Respondent's evidence due to his general lack of credibility.
- (p) The last page of the Respondent's bundle was a "Rent Statement" for the Applicant. It purported to show that he did not pay rent for 10 months from June 2020 to March 2021 inclusive. There is no evidence that the Respondents sought to raise this alleged non-payment once during that 10-month period, not even when the Respondents sought to explain to the police why they were trying to evict the Applicant (see further below). It is not credible that the Respondents would have failed to mention them in all that time if they were real. Moreover, in his oral evidence, the First Respondent said it was the Second Respondent's error that deductions for rent were not shown on the documents showing payments of the Applicant's wages and that, although the Applicant was sometimes late with his rent, "he always paid eventually".
- (q) The Respondents sought to rely on the local authority's inspection, as a result of which the local authority accepted that there was no current residential use. However, that inspection took place in June 2021, months after the Applicant had left and so this evidence is not relevant.
18. The Tribunal is satisfied that the Applicant resided at the property under an agreement for the payment of £300 per month. Ms Cafferkey sought to argue that there was no tenancy, even on the Applicant's case, which appeared to be that he and Mr Begum had separate agreements for the same room. She pointed to authority for the proposition that there cannot be a tenancy without identifiable property of which the tenant may have exclusive possession. However, this is irrelevant. Under section 56 of the 2016 Act, "tenancy" includes a licence which means that the RRO provisions apply equally to licences and licensees as they do to tenancies and tenants.
19. Ms Cafferkey also questioned who was the landlord. The Second Respondent was the lessee of the property while the First Respondent made the agreement and received those payments for which there is a paper trail, either from bank transfers or by deductions from wages. However, from the start of the Respondents' participation in these proceedings, they have barely distinguished between each other. The Second Respondent sought to give a witness statement on the First Respondent's behalf and both of them assert matters of which only the other could have knowledge. It is clear that the agreement with the Applicant was a joint enterprise, as was much of their commercial activity. When either Respondent interacted with the Applicant in relation to the property, they were acting not only on their own behalf

but also that of the other Respondent. Therefore, the Respondents were the Applicant's joint landlords.

Having control of or managing an unlicensed HMO

20. Under section 72(1) of the Housing Act 2004, a person commits an offence if they are a person having control of or managing an HMO which is required to be licensed but is not so licensed.
21. Ms Cafferkey challenged whether it could be proved to the requisite standard that the property was an HMO. An HMO is defined in section 254 of the same Act. Under the standard test, the property must satisfy the following criteria:
 - (a) *The property consists of one or more units of living accommodation not consisting of a self-contained flat or flats.* The subject property consisted of 3 units of living accommodation on the two upper floors, none of which were self-contained.
 - (b) *The living accommodation is occupied by persons who do not form a single household.* For reasons already set out, the Tribunal accepts the Applicant's account of the occupants of the property as referred to in paragraph 12 above.
 - (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.* The Tribunal is satisfied that the Applicant occupied the property as his only residence. Mr Begum visited Pakistan for a period at the end of 2019 but the Tribunal is satisfied that the property was his main residence. There is no suggestion that the other occupants lived elsewhere at any time. The nature of the accommodation, being relatively cheap and low quality, would suggest it was occupied by people, such as the Applicant, who would not have the resources to run another property elsewhere as their main residence. In the circumstances, the Tribunal is satisfied that the occupants were using the property as their only or main residence.
 - (d) *Their occupation of the living accommodation constitutes the only use of that accommodation.* For reasons already set out, the Tribunal does not believe that the First Respondent used the property as a staff amenity. The Tribunal is satisfied that the occupation of those specified by the Applicant constituted 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.* It is not in dispute that the Applicant provided consideration for his use of the property. There was no suggestion that the other occupants were there for free. The Tribunal has inferred from all the circumstances, beyond a reasonable doubt, that the other occupants also would have provided consideration to the Respondents for their occupation of the property, even if the exact amount is unknown.

(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.* It is clear that the kitchen facilities and the shower/toilet were communal to all the occupants.

22. It is clear that the Respondents between them both controlled and managed the property. Under section 263(1), a “person having control” means 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. Under section 263(3), “person managing” means the lessee who receives the rent or their agent or trustee who receives the rent on their behalf. Both Respondents received rent from the Applicant, both on their own account and as trustee for the other.
23. Ms Cafferkey asserted that it is not possible to determine a “rack-rent” without valuation evidence. This is not correct. The Tribunal is an expert tribunal and is able to work in some circumstances without the assistance of further expert knowledge or assessment, not least when full precision is not required. Further, the Tribunal has evidence of the value of the premises in the rent for which the Respondents let the premises to the Applicant and Mr Begum. It is true that they let the property for less than similar properties may be obtaining in the local market but this is consistent with its informal and unlicensed nature. A properly administered and licensed tenancy would command a significantly higher rent than one which was not.
24. Therefore, whether under the mandatory statutory scheme or the additional licensing scheme of the local authority, the London Borough of Newham, the Tribunal is satisfied so that it is sure that the property constituted a HMO throughout the Applicant’s occupation, that the Respondents themselves not only knew of this but arranged it, and that, therefore, the Respondents should have sought a licence. There is no dispute that the property was not so licensed and the Respondents did not apply for one. Therefore, the Respondents committed the offence.

Using violence to secure entry

25. In November 2020, the Applicant stopped working for the First Respondent. The Applicant said he did not want to work for the First Respondent any more due to how low the wages were. The Respondents alleged that they parted ways because the Applicant left the worksite too early. Although, on both parties’ cases, the Applicant’s use of the property had nothing to do with this work, the First Respondent said in his oral evidence that he told the Applicant to take his belongings from the property and leave. He also said that he said this to the Applicant quite harshly and that the Applicant was upset as a result.

26. On 24th November 2020 the Applicant returned home to find that the Respondents had changed the locks. The Applicant called the police and the Respondents were persuaded to allow him back in. Mr Majeed also played a role in persuading the Respondents – in particular, he asserted that the Applicant’s occupation could only be terminated on notice of at least one month. It is noteworthy that the Respondents did not claim at that time that the Applicant was only paying for storage of his tools or that he was in arrears with his rent.
27. The Respondents both asserted that they understood Mr Majeed to be saying that the Applicant would leave in one month. However, they also asserted that they did not check on the premises until February 2021, some 3 months later. Since the Respondents wanted the Applicant gone, it is not credible that they would have waited that long to check if they had genuinely believed he was going. The First Respondent said that he phoned Mr Majeed to say that the Applicant had not left. The Tribunal is satisfied that they knew he was staying and would not leave unless they required him to do so.
28. The following account is taken variously from the videos and photos, the witness evidence, and police records. The Second Respondent stated in his witness statement that, on 30th March 2021, he went to the property and told the Applicant that he would be terminating the agreement immediately.
29. Later the same day, the Applicant was in his room with the door locked and the key inserted on his side of the lock. Several men, including the First Respondent and a Mr Asim Mohammed, came up to the second floor and tried to open the door. Although the Second Respondent was not present, the Tribunal is satisfied beyond a reasonable doubt that the men were there because the Second Respondent had arranged for them to do so to try to get the Applicant out of the property – he had said that he wanted the Applicant out immediately and his disregard for legal procedures is a feature of his and his father’s behaviour.
30. The Applicant was worried as to what they wanted with him or might do to him and so he stayed quiet, in the hope that they would go away. Instead, Mr Mohammed tried to unlock the door using keys he had been given by the Respondents. Since the Applicant’s key was already in the door, the door could not be unlocked from the outside. From this information, the First Respondent and his men would have known that there was someone inside the room. They had no reason to think it was anyone other than the Applicant.
31. At no point was it suggested by either Respondent or on their behalf that they needed to see or speak with the Applicant urgently. If the First Respondent’s intentions had been entirely benign, as well as attending by himself, he would simply have gone away in the hope of seeing the Applicant later. Instead, he and the other men tried to get into the room by hitting the door to try to break the lock.

32. The Applicant was frightened at this point. He phoned the police who later attended. By the time they arrived, the handle on the inside of the door had become detached and so the Applicant could not open the door either. The police asked the Applicant if he needed the door broken in and he said that he did. The police broke the lock.
33. Under section 6(1) of the Criminal Law Act, 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 there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure and the person using or threatening the violence knows that that is the case.
34. The First Respondent, Mr Mohammed and at least one other man used violence to try to get into the Applicant's room. The Second Respondent had arranged for them to be there and to carry out those actions if required. None of them had legal authority to take such action. The Applicant was present and the First Respondent, Mr Mohammed and the other man or men would have known this. The Applicant's failure to open the door or to respond to what they were doing was a sufficient indication that he did not want them to come in. Therefore, the Tribunal is satisfied so that it is sure that both Respondents committed the offence.

Unlawful eviction or harassment

35. The events of 30th March 2021 continued. The Second Respondent had seen the police arriving from his shop and had followed them into the property. The police told him that he needed a possession order to evict the Applicant. He said he objected on the basis that the agreement was for commercial use only but decided to leave in order to defuse the situation.
36. In fact, the First Respondent and several of the men stayed in the Applicant's room and sought to "persuade" him that it would be best if he left. The Applicant's video of this meeting shows a conversation conducted in strained but moderate tones. In fact, there was no need for so many men to be there to conduct the conversation, nor was there any need to conduct the conversation immediately after the incident which would have been frightening and traumatic for the Applicant. The First Respondent would have known what the effect of all this was – he was blatantly trying to intimidate the Applicant to leave, with the unspoken threat of the further use of violent means. The Respondents tried to suggest that all the men were known to the Applicant and that they had had friendly relations in the past but that cannot change the nature of their interactions on 30th March 2021.
37. Mr Begum had left the property for good the day before. From the night of 30th March 2021, the Respondents installed Mr Asim Mohammed in the Applicant's room. They said this was because they were worried

what the Applicant would do to the property, despite the fact that the only thing they accused him of doing wrong in relation to the property over a period of 1½ years was to live in it. The Tribunal has no doubt that Mr Mohammed was put there in order to encourage the Applicant to leave.

38. On 5th April 2021 the Applicant travelled out of London for 2 days. On his return on 7th April 2021, he found his iMac was missing. His fellow residents and the Respondents professed not to know anything. The Applicant reported the theft to the police but they did not pursue it due to insufficient evidence.
39. On 12th April 2021 the Applicant went out for a while. The Respondents claimed that the Applicant surrendered his occupation rights at the property by voluntarily handing in his keys to Mr Bhatti, having cleared out his belongings. Whether or not the Applicant was or is correct about his right to occupy the property, it is clear he genuinely believed that he had such a right and that he intended to continue to exercise it. It is entirely inconsistent with everything else he did at and around this time and, therefore, not remotely credible that he would have done this.
40. Mr Bhatti said he saw the Applicant leaving with all his belongings in one bag but it is not in dispute that those belongings included all his tools, his bedding, his clothes and other personal items – it is not credible either that the Applicant had all his belongings in one bag or that Mr Bhatti would believe that he did.
41. When the Applicant returned to the property later on 12th April 2021, he could not get in. Ms Addo told him that she had seen the Respondents changing the locks. The Applicant encountered the First Respondent and another man outside the property. He asked them why the locks had been changed but they did not respond. If they had genuinely believed that he had voluntarily left earlier that day, their response would have been different, not least surprise at his behaviour.
42. The Applicant called the police. When they did not appear, Ms Addo called them up on his behalf and they asked him to come down to the station. Ms Addo dropped him at Forest Gate police station that evening. Having given his account to the police, he returned to the property. The police arrived. They called in to one of the other residents who let them in.
43. There were two people already in the Applicant's room. All of the Applicant's belongings, including his tools, were gone. The police persuaded the man now occupying the single room next to the Applicant's room to allow him to stay there overnight.
44. On 14th April 2021, the police attended again, this time at the Respondents' request. The Applicant explained what had happened on 12th April 2021. They advised him to call 999 again if he had any further issue with his landlord and left.

45. Later that evening, at around 10:30pm, Mr Mohammed took the keys from the door of the room the Applicant was now using and handed them over to the Respondents. One of the Applicant's videos show him asking Mr Mohammed to give them to him while they are standing on the second floor landing. Mr Mohammed said they were his and tried to move past to go downstairs. The Applicant said he had called the police and Mr Mohammed should not go until the police had arrived. It is not clear on the video but it seems that the Applicant placed a hand on Mr Mohammed to try to restrain him. This resulted in the police issuing the Applicant with a Community Resolution Disposal Record in which he took responsibility for an offence of common assault. While the Applicant should not have physically restrained Mr Mohammed, he did it while trying to prevent his ongoing unlawful eviction. His offence pales in comparison to what the Respondents had been doing and were continuing to do.
46. The police appear to have spent some time talking to both the Respondents and the Applicant. The outcome was that they persuaded the Applicant to leave the property for his own safety in return for the Respondents booking a hotel room for him. The Second Respondent also transferred £150 to the Applicant's bank account. He said this was a goodwill gesture but it was half the amount of the Applicant's rent, paid after the Applicant had occupied the property for half of the month of April. The Respondents do not appear to have suggested to the police at this time that the Applicant had already surrendered his tenancy or that he was in rent arrears.
47. The Applicant was now out of the property with no keys and no belongings left in the property. He understood the Respondents to have committed themselves to providing alternative accommodation for him until he found somewhere else to live but none materialised after his one night in the hotel. It wasn't until 18th May 2021 that he was able to secure his own alternative accommodation. He is apparently pursuing his legal remedies in respect of these events but there are no proceedings yet.
48. The Second Respondent claimed that the current RRO application was retaliation for what happened. However, on the Respondents' account, the Applicant had voluntarily left, meaning that not only was there nothing to retaliate for but the Applicant would have known that and could not possibly have mis-perceived the situation. The Applicant's behaviour is completely inconsistent with the Respondents' account while the Second Respondent's allegation makes no sense on any account.
49. Under section 1 of the Protection from Eviction Act 1977, it is an offence if:
 - (a) 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, unless he proves that he believed, and had

reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

- (b) Any person, with intent to cause the residential occupier of any premises to give up the occupation of the premises or any part thereof does acts likely to interfere with the peace or comfort of the residential occupier.
 - (c) The landlord of a residential occupier or an agent of the landlord does acts likely to interfere with the peace or comfort of the residential occupier or members of his household and 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.
50. By reason of the matters set out above, the Tribunal is satisfied beyond a reasonable doubt that both Respondents committed all 3 offences. Ms Cafferkey pointed out that a landlord cannot be vicariously liable under sub-section (3A) as referred to in sub-paragraph (c) above (*R v Quereshi* [2011] EWCA Crim 1584; [2011] HLR 34) but the Tribunal has no doubt that any acts not directly committed by the Respondents during the events set out above were aided, abetted, counselled and procured by them.
51. The Tribunal is satisfied that, on the various occasions when they changed the locks, the Respondents had no genuine belief that the Applicant had ceased to reside at the property. The last occasion succeeded but the previous occasions would also have succeeded without the intervention of the police. The Tribunal is further satisfied that the Respondents had let the property to the Applicant so he could live there, so that they knew he was a residential occupier. Their actions from and including 30th March 2021 were designed with one object in mind, namely to see the Applicant leave.

Rent Repayment Order

52. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on this application. The Tribunal has a discretion not to exercise that power. However, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO.
53. The RRO provisions have been considered by the Upper Tribunal (Lands Chamber) in a number of cases and it is necessary to look at the guidance they gave there. In *Parker v Waller* [2012] UKUT 301 (LC), amongst other matters, it was held that an RRO is a penal sum, not compensation. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. ...
54. In *Williams v Parmar* [2021] UKUT 0244 (LC) the Upper Tribunal held that there was no presumption in favour of awarding the maximum amount of an RRO. The tribunal could, in an appropriate case, order a lower than maximum amount of rent repayment, if the landlord's offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise. In determining how much lower the RRO should be, the tribunal should take into account the purposes intended to be served by the jurisdiction to make an RRO, namely to punish offending landlords; deter landlords from further offences; dissuade other landlords from breaching the law; and removing from landlords the financial benefit of offending.
55. The maximum amount of the RRO in this case is £3,600. Despite the Respondents having committed multiple offences, the Tribunal has no power to make separate awards for each or to award an amount higher than the total paid in the maximum 12-month period. Although the RRO is a penal sum, any penalty is capped by the amount of the rent.
56. Under section 44(4) of the Housing and Planning Act 2016, in determining the amount of the RRO the Tribunal must, in particular, take into account the conduct of the respective parties, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of any of the relevant offences.
57. As described above, the Respondents' behaviour has been appalling, having committed multiple offences, deliberately seeking to mislead the Tribunal about their actions, and forcing the Applicant to take legal action to obtain his remedies. The fact that the Respondents have not been prosecuted or convicted for any of these matters is beside the point. The maximum amount of the RRO is in no way commensurate with the seriousness of their behaviour. A larger penal sum would be justified, if the Tribunal had the power to make it. The Applicant did nothing which could mitigate, let alone justify, the Respondents' actions or which should otherwise impact on the amount of the RRO in those circumstances.
58. The Respondents presented no evidence about their financial circumstances or the utility bills and so the Tribunal has no basis even to consider an adjustment to the RRO in relation to such matters.
59. Therefore, the Tribunal has decided to make a RRO in the maximum amount of £3,600.

Costs

60. The Applicant also sought reimbursement of his Tribunal fees, £100 for the application and £200 for the hearing, under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Given the fact that the application has been successful, and in the light of all the circumstances of this case, the Tribunal has concluded that it is appropriate to order reimbursement.
61. Both parties indicated that they may wish to seek an order for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Both counsel accepted that it would be better if written submissions could be made by both parties in the light of these reasons and, therefore, directions are set out above for the determination of this issue.

Name: Judge Nicol

Date: 21st December 2022

Appendix of relevant legislation

Criminal Law Act 1977

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) ...
- (4) It is immaterial for the purposes of this section—
 - (a) whether the violence in question is directed against the person or against property; and
 - (b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (6) ...
- (7) Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a displaced residential occupier of any premises or of any access to any premises and section 12A below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a protected intending occupier of any premises or of any access to any premises.

Protection from Eviction Act 1977

Section 1 **Unlawful eviction and harassment of occupier**

- (d) 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.

- (e) 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.
- (f) If any person with intent to cause the residential occupier of any premises—
 - (a) to give up the occupation of the premises or any part thereof; or
 - (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.
- (3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—
 - (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
 - (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.
- (3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.
- (3C) In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—
 - (a) the residential occupier's right to remain in occupation of the premises, or
 - (b) a restriction on the person's right to recover possession of the premises,would be entitled to occupation of the premises and any superior landlord under whom that person derives title.
- (g) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.
- (h) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.
- (i) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was

purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Housing Act 2004

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.
- (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

- (j) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either–
 - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (k) The conditions are–
 - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (l) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

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–
 - (g) it meets the conditions in subsection (2) (“the standard test”);
 - (h) it meets the conditions in subsection (3) (“the self-contained flat test”);
 - (i) it meets the conditions in subsection (4) (“the converted building test”);
 - (j) an HMO declaration is in force in respect of it under section 255; or
 - (k) it is a converted block of flats to which section 257 applies.
- (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.
- (3) A part of a building meets the self-contained flat test if–
 - (a) it consists of a self-contained flat; and
 - (b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).
- (4) A building or a part of a building meets the converted building test if–
 - (a) it is a converted building;

- (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
 - (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (d) 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);
 - (e) their occupation of the living accommodation constitutes the only use of that accommodation; and
 - (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.
- (5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.
- (6) The appropriate national authority may by regulations—
- (a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
 - (b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
 - (c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.
- (7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.
- (8) In this section—
- “basic amenities” means—
- (a) a toilet,
 - (b) personal washing facilities, or
 - (c) cooking facilities;
- “converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;
- “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
- “self-contained flat” means a separate set of premises (whether or not on the same floor)—
- (a) which forms part of a building;
 - (b) either the whole or a material part of which lies above or below some other part of the building; and
 - (c) in which all three basic amenities are available for the exclusive use of its occupants.

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.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

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 —
- 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.
- (3) A local housing authority may apply for a rent repayment order only if—
- the offence relates to housing in the authority's area, and
 - 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—
- section 44 (where the application is made by a tenant);
 - section 45 (where the application is made by a local housing authority);
 - 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

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.