FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AL/HMK/2022/0007**
Property	**:**	**57 Miles Drive, Thamesmead, London, SE28 0NE**
Applicant	**:**	**Chizoba Lilian Enwerem**
First Respondent	**:**	**Montague & Delucter Ltd**
Second Respondent	**:**	**Mamaka Bility (formerly Gberety)**
Representative of Second Respondent	**:**	**Toltops Solicitors**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Mr SF Mason BSc FRICS**
Date and Venue of Hearing	**:**	**30th October 2023** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**6th November 2023**

DECISION

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1) **The application for a Rent Repayment Order against the First Respondent is dismissed.**

2) **The Second Respondent shall pay the Applicant a Rent Repayment Order in the sum of £5,400.**

3) **The Second Respondent shall further reimburse the Applicant her Tribunal fees totalling £300.**

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

Reasons

1. The Applicant was a tenant from 1st January to 16th December 2022 at 57 Miles Drive, Thamesmead, London SE28 0NE where she lived with her husband and her children. The First Respondent is a property management agency which managed the property for the majority of that time. The Second Respondent is the freehold owner of the property and has been so since 25th October 2004.

2. The Applicant seeks a rent repayment order ("RRO") against the Respondents in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

3. The Tribunal issued directions on 21st April 2023 which were further amended on 23rd May and 13th June 2023. There was a face-to-face hearing of the application at the Tribunal on 30th October 2023, attended by:

   - The Applicant, who represented herself
   - The Applicant's witnesses:
     - Mr Stanley Ukonu, fellow tenant at the property
     - Mr Solomon Tanyi, Environmental Health Officer with the Royal Borough of Greenwich
   - The Respondent
   - Mr Sente Masemola, counsel for the Respondent
   - The Respondent's sister, Aisha (for the last part of the hearing)

4. The First Respondent has not participated in these proceedings, did not attend and was not represented. The Tribunal was satisfied that the First Respondent had received sufficient notice of the hearing and decided to proceed in their absence.

5. The documents available to the Tribunal consisted of:

   - A bundle of 121 pages from the Applicant which included a witness statement from herself, one from Mr Okonu and two from Mr Tanyi;
   - A bundle of 43 pages from the Respondent;
   - A 5-page Reply from the Applicant; and
   - A copy of the Tribunal's Further Amended Directions dated 13th June 2023 which also had the full text of the previous Directions made on 21st April and 23rd May 2023.

The First Respondent

6. In accordance with the Supreme Court's judgment in *Rakusen v Jepson* [2023] UKSC 9, a RRO may only be made against a tenant's immediate landlord. While it is possible for both Respondents to commit the offences referred to below, only one of them may be liable for a RRO. The First Respondent was either the Applicant's landlord, as the Second Respondent alleged, or the Second Respondent's agent.

7. The Second Respondent produced an agreement she made with the First Respondent, signed by her on 8th December 2021. The agreement is patently not a tenancy agreement. It is only feasible to interpret it as a management agreement. For example, it is stated on page 7, "The Tenancy Agreement/Short Let Agreement will normally be signed by MONTAGUE as managing agent for the landlord."

8. The Second Respondent pointed to the fact that her name is not on the Applicant's tenancy agreement and, instead, the First Respondent is specifically stated to be the landlord. She further pointed to the Applicant's evidence that she dealt with a Mr Michael Akinbiyi from the First Respondent when being granted the tenancy. However, it is a not uncommon arrangement that agents act for property owners as undisclosed principals. Acting in this way cannot, by itself, change the fundamental arrangements and status of the respective parties.

9. The Second Respondent had provided a witness statement and gave evidence at the hearing. She asserted that she had handed over the management of the property completely to the First Respondent so that it was as if they became the landlord. However, such extensive delegation of authority remains consistent with an agency arrangement. More significantly, the Second Respondent intervened in the management of the property, through her sister, Aisha, and increasingly towards the end of the Applicant's tenancy, on her own behalf. Aisha visited the property on a number of occasions and liaised with the First Respondent and the tenants at her behest. Also, tellingly, the Second Respondent talked in her evidence about the First Respondent as her agents, not as her tenants.

10. The evidence of Mr Tanyi was also that rent was paid by the Applicant to the First Respondent which then passed it on to the Second Respondent. This is only consistent with an agency arrangement.

11. In the circumstances, the Tribunal is satisfied that the First Respondent was at all times acting as the Second Respondent's agent, not as the Applicant's landlord. This further means that the Tribunal has no power to make a RRO against the First Respondent and the application against them must be dismissed.

The offences

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 the following offences:

    (a) 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 ("the 2004 Act"); and

    (b) Unlawful eviction and harassment contrary to section 1 of the Protection from Eviction Act 1977.

13. There was a dispute about whether the Applicant had properly raised all these offences in her application but the Tribunal made it clear at the hearing on 23rd May 2023 that they were all in issue and the Second Respondent was given a full opportunity to respond and put in her evidence in respect of all of them.

House in Multiple Occupation

14. An HMO is defined in section 254 of the 2004 Act. Under sub-section (1)(d), a building is an HMO if an HMO declaration is in force. The local authority, the Royal Borough of Greenwich issued an HMO Declaration on 11th May 2022. It was not appealed and so came into force on 9th June 2022. It has not been withdrawn or further challenged and so remained in force through and beyond the end of the Applicant's tenancy.

15. For the period prior to the HMO Declaration, the Tribunal considered the standard definition, also under section 254 of the same Act, which comprises 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 is a house. The First Respondent let two rooms at the top of the house to two tenants, one of whom was Mr Ukonu, a room on the first floor to the Applicant, and two rooms on the ground floor to two other tenants.

(b) *The living accommodation is occupied by persons who do not form a single household*. The occupants clearly did not form a single household. The Applicant knew none of the other tenants before moving in.

(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*. There is no suggestion that the occupants were using the property other than as their only or main residence.

(d) *Their occupation of the living accommodation constitutes the only use of that accommodation*. The Second Respondent herself asserted that the property was only used as residential 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*. The Applicant and Mr Okonu each paid rent. The evidence suggests that all residents paid for their occupation.

(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*. There was a kitchen on the first floor shared by the Applicant with the tenants on the top floor, one of whom was Mr Okonu. The ground floor tenants used what the Applicant, Mr Tanyi and Mr Okonu described as a "kitchenette" (the Second Respondent asserted that it was a utility room adapted for her elderly mother when they lived at the property together). The Applicant

shared the bathroom/WC on the ground floor with other tenants, the top floor tenants benefiting from en suite facilities.

16. The Tribunal is satisfied that the property was an HMO and that the Second Respondent managed it and/or was in control of it at all relevant times. Mr Tanyi's unchallenged evidence was that it was licensable but never licensed.

17. There are two defences under section 72 of the 2004 Act. Firstly, under sub-section (4)(b), it is a defence that an application had been duly made for a licence. On 26th October 2023, the First Respondent submitted what purported to be an application for a licence. It was defective but, rather than resolve the defects, the Second Respondent withdrew it. For that reason, Greenwich never regarded any application as having ever been "duly made". The Tribunal is not satisfied that this defence is made out.

18. Secondly, under sub-section (5), it is a defence if the accused "had a reasonable excuse for having control of or managing the property" when it was unlicensed. The Second Respondent sought to rely on the abortive licence application. However, it is not clear how committed the Second Respondent was to that application. If she had genuinely wanted a licence, she would have made efforts to pursue it rather than just withdrawing.

19. The Second Respondent also claimed ignorance of the First Respondent's activities in letting the property as an HMO. However, even if she is right that she did not know in advance that the property would be let as an HMO, she knew it had been by February 2022 or, if not, by April 2022 at the latest because Aisha knew through text messages from the tenants and visits to the property. Aisha was at all times acting on the Second Respondent's behalf. Mr Tanyi also gave unchallenged evidence that the Second Respondent emailed his department herself in June 2022 in response to his letters to her in May (see further below).

20. There is no evidence that the Second Respondent objected to what the First Respondent had done at any time. In her evidence, she forcefully pointed out that she tried to re-sign all the tenants on her own terms so that they could continue to reside and the property would remain an HMO. The allegation that the First Respondent acted outside their authority has no basis in evidence and appears to be a recent invention by the Second Respondent. The Tribunal is not satisfied that the Second Respondent had any excuse, let alone a reasonable one.

21. Therefore, the Tribunal is satisfied so that it is sure that the Respondent committed the offence of managing and/or having control of the property when it was let as an HMO despite not being licensed. Neither of the statutory defences has been made out.

Unlawful eviction and harassment

22. The Applicant complained that, from early on in her tenancy, there were numerous problems with the lighting, heating, leaking from the roof, blocked drainage, mould and a sinking kitchen floor and with a fellow tenant who was repeatedly drunk and anti-social. In their evidence to the Tribunal, the Applicant, Mr Ukonu and the Second Respondent all said that the First Respondent was unresponsive to communications from them about these and any other issues. Some repairs were attempted or carried out but only after significant delay. When she visited the property, the Applicant also raised issues with Aisha who promised action but appeared not to take any.

23. On 8th February 2022, the Applicant's husband texted Lake, an employee of the First Respondent, to complain about a woman who frequently entered the property at will and kept items apparently belonging to her in various places within the property. The Applicant identified her as the woman later introduced by the Second Respondent as her sister, Aisha. The Applicant complains that this behaviour by Aisha continued throughout the tenancy and included barging into her room unannounced and interfering with the tenants' belongings, including their post. She and her husband raised objections with the First Respondent but there appeared to be no change in Aisha's behaviour. It is notable that, at paragraph 17 of her witness statement, the Second Respondent eschewed any knowledge of or responsibility for Aisha or her actions but did not maintain this at the hearing.

24. Mr Tanyi inspected the property on 10th May 2022 and, at the same time as serving the HMO declaration, he wrote to the Second Respondent at her Bromley home address on 11th May 2022 pointing out that it is an offence to fail to licence the property and requiring her to submit an application forthwith. By email dated 30th May 2022, the First Respondent informed the tenants that Greenwich had told them the HMO was unlawful and that they needed everyone to find alternative accommodation. They also suggested that they should stop paying rent but, when they did not respond to the Applicant's queries about this, she carried on paying her rent.

25. By email dated 14th June 2022, the First Respondent said that they needed to carry out works to comply with Greenwich's requirements and that the rent would increase by £300 per month to enable this. The supposed rent increase was not sought either by a proper notice under section 13 of the Housing Act 1988 nor in the grant of a renewed tenancy. In the event, neither the works nor the rent increase were implemented.

26. The Applicant was pregnant at this time and found these issues stressful. She says she had anxiety, sleep disorders and high blood pressure. She eventually gave birth by emergency caesarean on 13th October 2022.

27. The heating went off on 21st October 2022. The First Respondent took no effective action in response to complaints but did email on 24th

October 2022 to demand an extra £100 monthly to cover the increasing cost of utilities, despite the fact that clause 2.1 of the tenancy agreement included them within the rent. The Applicant paid the additional amount for the last two months of her tenancy.

28. On 9th November 2022, the Second Respondent visited the property, introduced herself as the landlady and distributed mobile heaters to the tenants. Until that point, the Applicant had been under the impression that the Second Respondent's sister, Aisha, was the landlady following her various visits to the property.

29. On 11th November 2022, the Second Respondent attended with Aisha who she introduced as her sister. The occasion of the visit was that Mr Tanyi was carrying out a further inspection. After he left, the Second Respondent talked to the tenants together, saying that she had relieved the First Respondent of their duties and she would be taking over the management of the property. She asked for the rent to be paid into her account rather than the one provided by the First Respondent. She also asked for the tenants' contact details and a spare key to each room.

30. The Applicant queried what was happening with the First Respondent and they confirmed that the Second Respondent was taking over management. November's rent would be the last they would collect.

31. By email dated 16th November 2022, the Second Respondent asked the tenants for identification, a copy of the tenancy agreement and any information in respect of the deposit each had paid. She did not explain why she could not get this information from the First Respondent.

32. On the same day, the electricity went out. When the Applicant emailed them to try to get this fixed, the First Respondent stated that because other tenants had not paid the additional £100 towards the utilities, supply would be switched to pay-as-you-go. Essentially, the First Respondent sought to vary the tenancy agreements unilaterally by having the tenants pay for utilities when they were supposed to be included within the rent.

33. On 20th November 2022 the Second Respondent visited the property again with Aisha, providing hard copies of a pre-tenancy information request form which she wanted each tenant to complete.

34. On 22nd November 2022 the Applicant issued her Tribunal application against the Respondents for a RRO.

35. By letter dated 23rd November 2022 the Second Respondent informed all tenants:

    (a) If they failed to complete and return the pre-tenancy form, she would assume they no longer require the accommodation. (This was repeated in later "reminder" emails.)

    (b) She confirmed she would be taking over management with effect from 6th December 2022.

(c) Utilities would no longer be included within the rent.

(d) Cleaning would be the responsibility of the occupants.

(e) Rents would go up due to inflation and overcrowding.

(f) The Applicant would have to move to a different room because the first floor room had no window which was incompatible with an HMO licence application.

(g) Only one person would be allowed in each room save with her prior consent.

(h) Each tenant would have to pay a deposit (the letter did not mention what would happen to any deposit already paid).

36. On 24th November 2022, the Second Respondent texted the tenants to say she would be installing CCTV cameras in the common areas of the property in response to complaints of anti-social behaviour. The Applicant replied with concerns about the effect on privacy but the Second Respondent did not respond. The CCTV was installed that day.

37. The Applicant sent her and her husband's ID on 6th December 2022, being the day the Second Respondent took over management. At the same time, she asked for a copy of the pre-tenancy request form correctly dated for that date. The Second Respondent refused, telling her to complete the original form.

38. On Friday 16th December 2022, the Applicant saw the Second Respondent enter the property with Aisha and two other people. They were still there when she left to pick up her daughter from school and take her baby son for a vaccination. She was returning with her children at around 3:45pm when she saw two people enter the property ahead of her. When she got to the door, she tried her key but it would not work. After trying at least twice more, she knocked on the door on the assumption that one of the people she had seen entering could answer it. It was a cold day, with temperatures below freezing and, as could be seen in a video supplied by the Second Respondent, snow lying in patches on the ground, so the Applicant wanted to get her 7-year-old daughter and 9-week-old baby inside.

39. The woman the Applicant had seen entering just before answered the door. She said she had just moved in and wouldn't let the Applicant in because she did not know her. While the Tribunal would accept that this woman would be cautious in such circumstances, her behaviour beyond that is incomprehensible. If she had just moved in to an HMO and had yet to be introduced to the other tenants, of course there would be people wanting to come in who she would not know. The likelihood that a young mother with a baby and a young girl in tow wanted to come in for any reason other than that they lived there or that they would represent any physical danger would have been remote, to say the least. The woman could have asked some simple questions to establish her bona fides, such as who the landlord is, where her room is or to provide a description of the interior or its contents but she did

none of this. It later transpired that the Second Respondent was in the property at the time so the woman could simply have asked her to vouch for the Applicant. The woman's behaviour is only consistent with her knowing who the Applicant was and wanting to keep her out of the property.

40. In her evidence to the Tribunal, despite never having claimed this at any point previously in these proceedings, the Second Respondent said that she was the person who answered the door and that, before anyone had said anything, the Applicant, without any preamble, motivation or previous inclination to violence, pushed her so hard that she felt in physical danger and was determined thereafter not to let the Applicant in. The Tribunal put to her that this account was not credible but she insisted on it.

41. The Tribunal were able to assess the respective demeanours of the Applicant and the Second Respondent when giving their evidence. The Applicant was extremely level and calm throughout and her answers to cross-examination from counsel and the Tribunal were, like her written evidence, comprehensive, clear, thoughtful and precise. Her evidence was also corroborated by Mr Ukonu, Mr Tanyi and her documents.

42. In contrast, the Second Respondent raised allegations not mentioned any time before and her oral evidence, like her written evidence, lacked the kind of detail which would be expected from someone giving their best recollection rather than just making things up. Her new allegations had not been put to the Applicant when she gave evidence earlier and the Second Respondent's counsel admitted that he had been unaware of them. Whenever documentary evidence could be expected for the Second Respondent's claims, it was absent. Wherever there was a conflict between their respective evidence, the Tribunal had no hesitation in preferring that of the Applicant.

43. The Applicant tried to compromise with the woman at the door. She asked her to lock the door properly, such as by taking out any key that was in the door on the other side, so that she could try her key again. The woman closed the door and the Applicant tried her key again several times without success. The Second Respondent said that the Applicant's key did not work because there was a key in the door on the other side but she proffered no explanation as to why she did not simply remove that key so that the Applicant could enter unhindered.

44. The Applicant tried knocking on the door again. No-one came to the door so she tried knocking harder and even kicking the door. The Second Respondent claimed that this caused the lock to break so that it had to be replaced. It is an inherently incredible claim that the Applicant could apply that much force to a standard front entrance door. The Respondent said she had a locksmith repair the lock but, despite plenty of opportunity to put in evidence of this, she had none.

45. In any event, the Tribunal can see no reason why the Second Respondent would have allowed the situation to reach this stage. She knew her tenant was outside with her children on a freezing cold day and was just trying to get in to the property she had properly rented and had been living in for more than 11 months. She was attended by her sister and a number of acquaintances and she had no reason to think she was in any real physical danger. She claimed that she had moved into the property around 5 days previously with her two children and she needed to keep them safe but, even on her own account, there was no reason to think that they were in any danger. The Tribunal also prefers the evidence of Mr Ukonu that the Second Respondent did not live at the property while he was a tenant there from 16th December 2021 until 16th December 2022. The Tribunal is satisfied that the Second Respondent had determined that she was evicting the Applicant there and then and no other circumstance was going to change her mind.

46. In her evidence to the Tribunal, the Second Respondent claimed that she was on anti-depressants at the time and suffered blackouts. Needless to say, she had not mentioned this before nor provided any evidence in support.

47. Since it was obvious that she was not getting in, the Applicant phoned her husband who was at work (she could not phone Mr Ukonu to let her in because he, too, was at work). He didn't answer so she tried an uncle who suggested she phone the police. Before doing so, she tried the Second Respondent as she didn't yet know she was inside the property, but she, too, didn't answer.

48. The Applicant told the police over the phone what had happened but they said it was a civil matter and that she should phone her landlady and/or the council. The Applicant phoned Mr Tanyi. He confirmed that she had the right to be in and to re-enter the property. He said he would speak to his manager and phone back.

49. The Applicant decided to phone the police again but again they insisted it was a civil matter and she should try the council. She could not get through to Mr Tanyi and it was then that she tried banging on and kicking the door. The woman who had answered the door earlier appeared on the balcony to the Applicant's room, meaning that someone had broken through the lock on the door to the room, and said she had called the police. Apparently, this was enough to cause the police to come.

50. Four police officers arrived in 2 cars. One officer came to speak to the Applicant while another went to the front door. Someone answered that the door wasn't working and eventually a number of people emerged from around the back. The Second Respondent was amongst them, the first time the Applicant had realised she was at the property.

51. After speaking to the Second Respondent, a police officer told the Applicant that the Second Respondent had said that, as she had failed to complete the pre-tenancy request form, the Second Respondent took it that she no longer wanted to be in the property. The police officer did not suggest that the Second Respondent had alleged any assault as a justification for excluding the Applicant.

52. At this point, the Applicant's baby was crying uncontrollably and her daughter was shivering. The Applicant asked the police to let her into the property so that at least they could be warm but they refused. They suggested she accompany them to the police station where she could wait for her husband. On the video supplied to the Tribunal, one policeman threatened that she would be arrested and her children would be taken into care if she tried to get in.

53. In the Tribunal's opinion and based on the Tribunal members' expertise and experience in such cases, the behaviour of the police was not untypical in the face of unlawful evictions but was also clearly wrong. Neither the police nor the Second Respondent had any lawful grounds to exclude the Applicant from the property. An unlawful eviction is a criminal offence, as discussed further below, but, rather than prevent it, the police facilitated it. The Second Respondent cannot have felt anything other than reinforced by the police in her determination not to let the Applicant in. The police may well have been concerned about a possible breach of the peace but it does not seem to have occurred to them that perhaps the Second Respondent should be the one asked to leave, not the Applicant.

54. Having said that, the Second Respondent is entirely responsible for the Applicant's eviction. She tried to suggest that it was, in fact, the police who evicted the Applicant but this is particularly disingenuous. The police were only acting on what the Second Respondent told them and on the basis that she was adamant that the Applicant should not be allowed back into the property.

55. As two of the police officers left in one of the cars, Mr Tanyi's manager phoned the Applicant. At his request, she handed her phone to one of the remaining police officers. Following that conversation, the police officer apologised to the Applicant and informed the Second Respondent that she had no right to evict the Applicant. However, the police then suggested that the Applicant could go in to collect some of her things but then leave, at least until the following morning, for her safety. They escorted the Applicant through the back door where she saw Aisha and the woman from earlier at the front door.

56. There was also a locksmith – he must have been in the property the whole time which begs the question of why he was there before the Second Respondent alleges that the front door lock had been broken by the Applicant. The answer may lie in the fact that the Applicant found the lock to her room had been broken, with the door handle missing.

The Second Respondent has not sought at any time to explain these circumstances.

57. The Applicant then left with her children and the police. Later that day, Mr Ukonu and the Applicant's husband arrived back from work. Despite having been informed earlier of her tenants' rights of entry, the Second Respondent would not let either of them in.

58. The Second Respondent would not allow the Applicant back in during the following days. From 23rd December 2022 Greenwich provided the Applicant and her family with temporary accommodation. In January 2024, the Applicant successfully applied to the county court for an injunction. In the event, she decided not to return and collected the rest of her belongings in April 2023.

59. 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.

60. By reason of the matters set out above, the Tribunal is satisfied beyond a reasonable doubt that the Second Respondent committed the first offence of unlawful eviction.

61. As to harassment, there is no doubt that the conduct of both Respondents was poor throughout the tenancy, particularly in relation to unexpected visits and a poor repairs service, which is relevant to the quantum of the RRO as discussed further below. However, the Tribunal is not satisfied that the Second Respondent's actions prior to 16th December 2022 constitute harassment as defined in the 1977 Act in that they were not aimed at causing the Applicant to leave or to restrict the exercise of her rights.

Rent Repayment Order

62. 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.

63. 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. …

64. In *Williams v Parmar* [2021] UKUT 0244 (LC) Fancourt J held that there was no presumption in favour of awarding the maximum amount of an RRO and said in his judgment:

> 43. … "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017 … is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.
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> 50. I reject the argument … that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

65. In *Acheampong v Roman* [2022] UKUT 239 (LC) the Upper Tribunal sought to build on what was said in *Williams v Parmar*. At paragraph 15, Judge Cooke stated,

> it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it.

66. The current Tribunal finds it difficult to follow this reasoning. Although RROs are penal, rather than compensatory, they are not fines. Levels of fines for criminal offences are set relative to statutory maxima which define the limit of the due sanction and the fine for each offender is modulated on a spectrum of which that limit defines one end – effectively the maximum fine is reserved for the most serious cases. In this way, the courts ensure that there is consistency in the amount of any fine – each person convicted will receive a fine at around the same level as someone who committed the same offence in similar circumstances.

67. However, an RRO is not a fixed amount. The maximum RRO is set by the rent the tenant happened to pay. It is possible for a landlord who has conducted themselves appallingly to pay less than a landlord who has conducted themselves perfectly (other than failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.

68. For example, in *Raza v Anwar* (375 Green Street) LON/00BB/HMB/2021/0008 the Tribunal held that, as well as having control of and managing an HMO which was required to be licensed but was not so licensed, the landlord was guilty of using violence to secure entry to a property contrary to section 6 of the Criminal Law Act 1977 and unlawful eviction and harassment contrary to section 1 of the Protection from Eviction Act 1977. Nevertheless, the RRO was for only £3,600 because the rent was so low at £300 per month. The Tribunal commented at paragraph 57 of their decision:

> The maximum amount of the RRO is in no way commensurate with the seriousness of [the landlords'] behaviour. A larger penal sum would be justified, if the Tribunal had the power to make it.

69. In the Tribunal's opinion, there is nothing wrong with or inconsistent in the statutory regime for RROs if a particular RRO can't be increased due to a landlord's bad conduct. It is the result which inevitably follows from using the repayment of rent as the penalty rather than a fine. The maximum RRO, set by the amount of the rent, is a cap, not the maximum or other measure of the gravity of the parties' conduct. A landlord's good conduct or a tenant's bad conduct may lower the amount of the RRO and section 44(3) finds expression in that way. Further, the Tribunal cannot find anything in Fancourt J's judgment in *Williams v Parmar* to gainsay this approach.

70. Judge Cooke went on in *Acheampong* to provide guidance on how to calculate the RRO:

> 20. The following approach will ensure consistency with the authorities:
>
> a. Ascertain the whole of the rent for the relevant period;
>
> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
>
> c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
>
> d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

71. The Applicant seeks a RRO for the full amount of rent she paid at the property which was £5,400.

72. Despite the Second Respondent having committed multiple offences, the Tribunal has no power to make separate awards for each or to award an amount higher than the maximum amount. Although the RRO is a penal sum, any penalty is capped by the amount of the rent actually paid.

73. In relation to utilities, the Tribunal again finds it difficult to understand Judge Cooke. It is common for a landlord to include the utility charges within the rent. However, this does not only benefit the tenant. Landlords do not include such services in the rent out of charitable goodwill but for sound commercial reasons such as increasing the chances of achieving a letting, attracting and retaining desirable tenants, and maintaining control of the identity of suppliers to the property. The same reasoning applies to the provision of furnishings, including white goods, but Judge Cooke did not extend her reasoning to such matters. Obviously, tenants control the rate of consumption of such services but this is necessarily built in to the landlord's calculations when offering them within the rent.

74. Further, the Tribunal cannot identify any support within the statute for this approach to utility charges. Nor does Judge Cooke. On the contrary, the legislation refers to "the rent" and not "the net rent".

"Rent" has a clearly defined meaning in the law of landlord and tenant, namely "the entire sum payable to the landlord in money" (see *Megarry on the Rent Acts*, 11th Ed at p.519 and *Hornsby v Maynard* [1925] 1 KB 514). It is also stated in *Woodfall: Landlord and Tenant* at paragraph 7.015 that, "At common law, the whole amount reserved as rent issues out of the realty and is distrainable as rent although the amount agreed to be paid may be an increased rent on account of the provision of furniture or services or the payment of rates by the landlord." Parliament would have had this in mind when enacting the legislation.

75. In this case, there was no evidence as to the cost of any of the utilities, save that it went up during the term of the tenancy. With all due respect to Judge Cooke, it is literally impossible for the Tribunal to make any calculation of its own based on an almost complete lack of relevant information. Moreover, when she took over management of the property, the Second Respondent unilaterally purported to place liability for the utilities on the Applicant and her fellow tenants. In the circumstances, the Tribunal declines to make any deduction in relation to utilities.

76. The next step is to consider the seriousness of the offence. Judge Cooke referred to the maximum fine for any relevant offences but more significant are the various matters set out above. The Second Respondent's behaviour has been appalling, having committed multiple offences, forcing the Applicant to take legal action to obtain her remedies and then making up stories and failing to back them up with any evidence. On 16th December 2022 she had numerous opportunities to back down and behave lawfully but she deliberately chose to continue with her criminal behaviour.

77. Under section 44(4) of the 2016 Act, 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.

78. As referred to above, the Second Respondent's conduct has been reprehensible. The Applicant, on the other hand, appears to have been nothing but forbearing, paying her rent and complying with everything that was asked of her. The Second Respondent alleged that she found the property in a poor state when she attended in November 2022 but she did not seek to place any particular blame for this on the Applicant.

79. The Second Respondent claimed to be on Universal Credit. If true, it would have been easy to present evidence of this but she did not do so and therefore the Tribunal has no basis even to consider an adjustment to the RRO in relation to her financial circumstances.

80. Therefore, the Tribunal has decided to award the Applicant a RRO in the maximum amount set out above.

Costs

81. The Applicant is also entitled to reimbursement of her Tribunal fees of £300 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.

Name: Judge Nicol **Date:** 6th November 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

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

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Protection from Eviction Act 1977

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 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.

(4) 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.

(5) 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.

(6) 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.

(d) 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.

(e) 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.

(f) 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–

(a) it meets the conditions in subsection (2) ("the standard test");
(b) it meets the conditions in subsection (3) ("the self-contained flat test");
(c) it meets the conditions in subsection (4) ("the converted building test");
(d) an HMO declaration is in force in respect of it under section 255; or
(e) it is a converted block of flats to which section 257 applies.

(1) 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.

(2) 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).

(3) 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.

(4) 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.

(5) 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.

(6) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(7) 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 —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

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