



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

Case reference: MAN/00CX/HMF/2023/0004

Property: Bridge End House, Park Mount Avenue,
Baildon, Shipley, Bradford BD17 6DS

Applicant: Anita Patel

Respondent: Paul Spivey

Type of Application: Application for a rent repayment order
under Section 41 of the Housing and Planning
Act 2016

Tribunal Members: Judge J.M. Going
N. Swain MRICS

Date of Hearing: 9 November 2023

Date of Decision: 27 November 2023

DECISION

The Decision and Order

Mr Spivey is ordered to repay rent of £2600 to Ms Patel together with the application fee of £100 and hearing fee of £200 (being a total of £2900) within 28 days of the issue of this decision.

Background

1. By an Application (“the Application”) dated 29 January 2023 the Applicant (“Ms Patel”) applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order in respect of rents paid to the Respondent (“Mr Spivey”) as the landlord and in respect of her occupation of the property.

2. The Tribunal offered the parties the opportunity to take part in a mediation session. Ms Patel confirmed her willingness, but there was no response from Mr Spivey.

3. The Tribunal thereafter issued Directions to both parties on 9 May 2023 setting out the issues for it to consider, confirming how they should prepare for the hearing, and timetables for the provision of relevant documents.

4. The bundle of documents supplied by Ms Patel included statements, copies of an unsigned letting agreement, bank statements, various emails, including from the police constable who attended the property on 1 February 2022, screenshots, photographs, adverts on SpareRoom and a letter from Bradford Council’s Housing Standards Team.

5. Mr Spivey has not provided any response to the Directions, and the Tribunal has not received any communication from him.

6. A Full Video Hearing was held on 9 November 2023. Ms Patel attended. Mr Spivey did not.

The Property

7. Bridge End House is a large, detached, period property occupying an elevated corner plot. It has a large garden and offstreet car parking. A recent listing on Right Move, with 45 photographs, refers to it having (inter alia) 4/5 large reception rooms, 5/6 bedrooms, and 3 ensuite’s. The listings on SpareRoom refers (inter alia) to shared facilities including elevated deck, lawns and large garden, large lounge, large dining room, large family bathroom with shower, and a well-equipped kitchen.

Facts and chronology

8. None of the following matters, which are evident from the papers, have been disputed.

9. The letting agreement headed “Lodger Agreement for letting a room in a furnished property” referred to Mr Spivey as “the Householder”, Ms Patel as “the Lodger” and “the Term” as “a minimum term of three calendar months from 19 September 2021. This agreement will run indefinitely beyond this period, unless either party ends this agreement giving the other written notice of at least: 1 Calendar month”. “The room” was defined as “meaning the room at the property which it has been agreed between the Householder and the Lodger will be used by the Lodger” and “the Shared areas” as “referring to the rooms in the Property which the Householder has agreed can be used by the Lodger on a shared basis with the Householder (and all other people living at the property), including: Kitchen, dining room/lounge, loo, upstairs bathroom, the flagged/paved areas of the upper garden, the deck.”. The Agreement referred to services “which the Householder hereby agrees to provide to the Lodger which shall include: Gas, electricity, water, council tax, shared wireless broadband, TV licence for the shared dining room/lounge”. The deposit “is the sum equal to 1 calendar month’s rent”... and “the rent payable by the Lodger which shall be £495 per calendar month payable in advance on before the 18th day of each month and will constitute payment to the Householder for the room and the services...” One of the Lodger’s obligations was to “make a reasonable and proportionate contribution to all charges for shared items, including janitorial items during the term of this agreement. This presently is assessed at £25 per calendar month.”

10. Ms Patel’s occupation of parts of the property extended from 19 September 2021 until 1 February 2022.

11. Within that period, she made payments from her bank totalling £3095 (being the deposit of £495- and 5 months’ rental payments of £495 and £25).

12. On New Year’s Eve Mr Spivey sent an email to Ms Patel which concluded with the words “So please take this as formal notice, effective today, of 1 month’s notice to leave on or before 31 January 2022. Sorry we weren’t able to speak.”

13. In a further emails, after they had spoken, dated 3 and 4 January 2022 Mr Spivey asked for replies to whether Ms Patel had agreed to the letting agreement and was going to keep to her side of the agreement concluding with the words “either way, the absence of an emailed clear unequivocal and irrevocable yes yes by noon tomorrow will mean that I will take action as necessary to protect my home and my position, without further warning.”

14. On 5 January 2022, Ms Patel replied, in an email, copied to her solicitors, “... As you are aware, I have fully paid rent to and including January 18, 2022. Based on legal advice, no action can be taken..”

15. In an email to Ms Patel dated 21 February 2022, the police officer who attended the property on 1 February confirmed (inter alia)... “I have recorded a crime of “Harassment of a person in their home” this relates to the way the landlord behaved in order to essentially force you to leave your home earlier than you were legally required to. The crime number is...”

16. The letter from Bradford Council’s Housing Standards Team dated 26 May 2023 includes the following confirmations “In January 2022 the Council's Housing Standards Team was contacted with concerns that the above property may be operating as an unlicensed House of Multiple Occupation (HMO). On the 11 January 2022 an inspection of the property at Bridge End was carried out, where multiple unrelated people were found to be residing including yourself (Anita Patel). Further evidence was gathered over the following months to conclude that on the 11 January 2022 the owner of Bridge End had committed the ... offence... (of)... having control of or managing an HMO which is required to be licensed ... but is not so licensed...On the 22 June 2022 the owner of Bridge End was served notice that the Council intended to impose a financial penalty The Council received representation from the owner within the following 28 days. This was considered but no changes were made to the level of culpability nor the level of fine. The Council believed that the owner had failed to comply with the law without credible mitigation. On the 19 August 2022 the owner of Bridge End was served with the Council's final notice of the imposition of a financial penalty (No 086365). To this date there has been no appeal submitted to the First-tier Tribunal.”

Ms Patel’s written submissions

17. Ms Patel submitted that Mr Spivey had “committed the following offences: 1. Violence for securing entry eviction or harassment of occupiers; and 2. Control or management of an unlicensed HMO.”

18. She referred to various matters in the timeline.

19. She described how on 1 February “a man claiming to be doing repairs and maintenance asked to gain entry to my room and tried to open the door. When I refused entry, he left and later returned and removed the lock. I later learned that this male was Edward Johnson. In the time between Edward Johnson attempting to gain unlawful entry and returning to remove the lock, I contacted another tenant,.. (*the other tenant*), who lived on the ground floor. The *other tenant* came up to my room to speak with me. While we were both inside my room, Edward Johnson removed the locks. We were both illegally confined against our will with no means of escape in the event of a fire or emergency. The *other tenant* called *Mr Spivey* from inside my room to tell him that we were locked inside and asked him to unlock the door. After a lapse of time, Edward Johnson returned and reinstalled the lock. As soon as *the other tenant* opened the door, Edward Johnson physically blocked the doorway so we still could not get out and removed the lock. I called the police while Edward Johnson was removing the lock. After the attending police officer left the property, *Mr Spivey* switched off the electricity supply to my room and parts of the second floor. I was unable to charge my phone or turn on heating or lighting in my room. I reported this to the police”. This description was supported by photographs and screenshots of texts to and from Ms Patel and *the other tenant*.

20. Ms Patel also stated “the attending police officer, who arrived after my call to the police, mediated an agreement....*and* also spoke on the phone with my lawyer. The agreement was that *Mr Spivey* would return my deposit and overpaid rent if I vacated the property the same day... Before he left, the attending police officer assured me that (*Mr Spivey*) had agreed to this arrangement. When I was ready to leave, ...*Mr Spivey* imposed a new set of terms and conditions and would not return my money. One of those conditions was that I had to provide a forwarding address. I believe this was a further threat from *Mr Spivey* to harass and intimidate me in the future. I told *Mr Spivey* that he could use my family home as my forwarding address, ... and that this address was on my tenancy application. The *other tenant* was a witness to this conversation and was present for the whole duration I was talking with *Mr Spivey*. *Mr Spivey* also refused to inspect the vacated room citing that his clothes were dirty. I was informed by both the police and my lawyer that a landlord has no right to use a lack of a forwarding address to withhold monies owed.... *Mr Spivey* has a history of using violence for securing entry, unlawful evictions and harassing occupiers. I witnessed that a tenant.... was locked out of his room late at night on or before December 3, 2021. I witnessed that the lock had been removed”.

21. Miss Patel confirmed her belief that Mr Spivey had been discriminatory in the way that she had been treated when compared to other tenants. He had not properly protected tenants’ deposits, nor returned hers when he should have done and when he had agreed to.

22. She confirmed her “understanding that *Mr Spivey* was operating an unlicensed HMO for over a decade, was aware that the property did not meet minimum health and safety standards for the number of occupiers of the property, was aware of fire and safety hazards which would have prevented the grant of an HMO licence, and had been contacted by Bradford Council in 2019 that a licence was needed but chose not to apply for one”.

Mr Spivey’s written submissions

23. Despite reminders, and the warnings as the consequences of non-compliance contained in the Directions, Mr Spivey has not provided any evidence, submissions, or response to the Application.

The Hearing

24. The Hearing was initially delayed because of connectivity issues, and Ms Patel gave her evidence via a telephone connection.

25. The events referred to in the written submissions were discussed and amplified.

26. The Tribunal found Ms Patel to be measured in her responses, honest and credible.

27. She confirmed that the description of the property as set out above was accurate, albeit thought that some of the rooms described in the Right Move listing as reception rooms had been used as bedrooms. Her own had been on the second floor, within the eaves, and contained ensuite facilities including a shower, sink and wc. She had had exclusive use of that room which had a locked door. She shared in the use of the kitchen. The doors in the property were traditional and thought to be original- hers had a glass panel. She was clear that they were not fire doors and did not have any self-closing mechanisms or intumescent strips. There was no obvious central fire alarm panel or signage to advise occupiers of protocols in the event of a fire. She described the smoke alarms as being of the type one might expect in a house occupied by a single household.

28. She confirmed that there were never less than 5 other occupants throughout her own occupation. She described Mr Spivey as having exclusive occupation of the cellar and some other parts of the property, but that he lived and was resident elsewhere in Baildon.

29. She described how, after seeing the property advertised on the internet, she had received from him a copy of the letting document, and they had agreed a relaxation as regards the condition relating to working from home. She was surprised but accepted the additional £25 per month which had been explained as being for shared items. She had asked about an HMO licence and Mr Spivey replied that he had been told that he did not require one. She also asked about the £495 deposit being lodged with a protection scheme, but again he said it wasn't necessary saying that it went into his bank account and joking "I decide if you get it back".

30. Ms Patel described how she had been open with Mr Spivey as to her own circumstances, seeing her occupation as a "stopgap" whilst trying to buy her own property. She was somewhat surprised when her room was on occasions shown fleetingly to others, but it came "out of the blue" when she received the email at 16.52 on New Year's Eve giving one month's notice.

31. She had replied asking if the matter could be discussed, and also sought legal advice, which confirmed her belief that a minimum of two months' notice was required. She described sending an email to Mr Spivey, after help from her lawyer, setting out her position and the email from him in which it was said he would "take action as necessary to protect my home and position, without further warning".

32. The events of 1 February 2022 were then discussed in detail. Ms Patel confirmed and expanded upon what had been said in her statement of case. She related how she had asked *the other tenant* to come up from his room to assist, having become scared, after an unknown man at the door had asked to come in for purposes he was not prepared to explain and who had refused to answer her questions as to whether he had the landlord's permission. They had then both been trapped in her room on the second floor, after the sound of works on the other side of the door. They were unable to open the door. They could not call for assistance from the remaining tenants who were understood to be out. *The other tenant* had not brought his phone with him. Ms Patel decided that she must, and did then, call the police. *The other tenant* then used her phone, setting it to speakerphone, and called Mr Spivey who he knew to be on site. Mr Spivey expressed surprise that *the other tenant* was in the room and a few minutes later the door was released by the man

who had originally asked to enter. He then removed the lock in its entirety, before allowing *the other tenant* to leave, explaining “I am doing what I am told”.

33. The advice given to Ms Patel by her lawyer, when the police officer was still on hand, was that she should leave for her own safety.

34. Ms Patel explained that the agreed terms of her leaving the property that day, mediated by the police officer, included Mr Spivey repaying her deposit and overpaid prepaid rent before surrendering her room. In the event, he did not do so, and has not subsequently done so.

35. The electricity for Ms Patel’s room was shut off after the police officer left, leaving her in the dark and unable to charge even her phone.

36. Ms Patel confirmed her understanding that Mr Spivey had been notified in previous years by the Council that a HMO licence was needed but chose not to apply being aware of fire and safety hazards which would have prevented it being granted.

37. She was not aware as to whether the police had prosecuted or convicted him in respect of the harassment identified on 1 February.

38. For completeness, the Tribunal directed Ms Patel to send it full copies of the emails read out at the hearing, which she did. Mr Spivey was thereafter sent copies and directed to make any submissions that he might wish within 7 days, but he did not respond.

The Law

39. Since April 2006 it has been a national legal requirement for specified Houses in Multiple Occupation (“HMOs”) meeting certain designated tests to be licensed under part 2 of the Housing Act 2004 (“the 2004 Act”) with a mandatory HMO licence. These included houses with 3 storeys, occupied by 5 or more people, living as 2 or more households containing shared facilities such as a kitchen bathroom or toilet.

40. On 1 October 2018, the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 extended the types of buildings requiring a mandatory HMO licence to include those with less than 3 storeys, occupied by 5 or more people, living as more than 1 household, containing shared facilities.

41. Section 40(3) of the 2016 Act lists 7 individual offences which if committed by a landlord entitle the Tribunal to make a rent repayment order.

42. The list, repeated in the Directions, includes the offences: –

- under Section 6 (1) of the Criminal Law Act 1977 of violence for securing entry,
- under Section 1 (2), (3) or (3A) of the Protection from Eviction Act 1977 of eviction or harassment of occupiers, and
- the offence under Section 72 (1) of the 2004 Act of controlling or managing an unlicensed HMO.

Each of those sections has been set out in the Schedule to this Decision.

43. The relevant law concerning rent repayment orders is set out in Sections 40 – 52 of the 2016 Act.

44. Section 41(2) provides that 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.

45. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in Section 40(3).

46. When the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with Section 44.

47. If the order is made on the ground that the landlord has committed either the offence of violence for securing entry or of eviction or harassment of occupiers, the amount must relate to rent paid during a period of 12 months ending with the date of the offence. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period not exceeding 12 months, during which the landlord was committing the offence. (section 44(2)).

48. Section 44(3) confirms that the amount that the landlord may be required to repay must not exceed:

- (a) the rent paid in respect of the period in question, less
- (b) any relevant award of universal credit paid (to any person) in respect of rent and the tenancy during that period.

49. In cases such as this the Tribunal has a discretion in determining the amount, but Section 44(4) states that it 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 any of the specified offences.

The Tribunal's Reasons and Conclusions

50. The Tribunal has made the following findings which are relevant to its determination: –

- a rent repayment order can be made in respect of a tenancy or a licence,
- Ms Patel shared the premises with occupiers who were not members of the same household,
- she had use of certain shared facilities, but also a lock to and exclusive possession of her room,

- it was tolerably clear that notwithstanding the description of the legal arrangements as a “lodger agreement” what in fact had been created was a tenancy and an assured shorthold tenancy pursuant to sections 3 and 19A of the Housing Act 1988,
- consequently, the minimum notice required before bringing possession proceedings would be at least 2 months, and Ms Patel’s deposit should have been protected in one of the statutory schemes,
- even if the Tribunal is wrong in any parts of this analysis, neither a tenancy nor a licence automatically ends at the expiry of a notice,
- occupiers are protected by the provisions of Protection from Eviction Act 1977. A court order is necessary before they have to leave,
- there is a due process to be followed when seeking possession, which in this case was wantonly ignored by Mr Spivey, notwithstanding that there is every indication that he is an experienced landlord.

As to whether an offence has been committed

51. The first issue for the Tribunal to address is whether it is satisfied, beyond reasonable doubt, that Mr Spivey has committed an offence mentioned in Section 40(3) of the 2016 Act.

52. The Tribunal has had no difficulty in concluding that Mr Spivey committed at least 2 of the offences alleged Ms Patel. Firstly, by managing or being in control of an HMO which was not licensed when it should have been, and secondly by then taking steps intended to cause Ms Patel to give up occupation of the premises and calculated to interfere with her peace and comfort.

The offence under Section 72 (1) of the 2004 Act relating to the control or management of an unlicensed HMO

53. The documentation provided by Bradford Council’s housing services department provides clear and obvious evidence of its contents. It has not been challenged and the Tribunal finds no reason to doubt the detail contained.

54. There is no dispute that the property did not have an HMO licence at any time during Ms Patel’s tenancy.

55. The Tribunal considered whether Mr Spivey might have either, the defence of having duly made a licence application (as set out in Section 72(4)(b)) or of a reasonable excuse (referred to in Section 72(5)) noting that the burden of proving that falls on him as explained in the case of *IR Management Services Ltd v Salford City Council (2020) UKUT 0081 (LC)*.

56. Mr Spivey has not provided any evidence of a defence. There is no evidence of any licence application having been made before the expiry of Ms Patel’s tenancy, or of any reasonable excuse for not complying with a nationwide requirement which must or should have been well known to an experienced landlord.

57. Consequently, the Tribunal is satisfied, beyond reasonable doubt, from the Council's written evidence and Ms Patel's oral evidence, that Mr Spivey committed the offence of controlling or managing the property without the necessary licence throughout the whole of her occupation from 19 September 2021 until 1 February 2022.

58. The importance of failure to obtain a licence should not be underestimated. An unlicensed property undermines the Housing Authority's regulatory role and poses a risk for harm. Mr Spivey as a landlord has a duty to ensure that relevant legislation is complied with, and the Tribunal particularly shares Ms Patel's concerns that fire prevention measures within the property may well be seriously lacking.

The offences under Section 1(2),(3) or (3A) of the Protection from Eviction act 1977 relating to eviction or harassment

59. The Tribunal is satisfied, beyond any reasonable doubt, that all 3 offences were committed by Mr Spivey.

Subsection (2)

60. The actions taken on 1 February 2022 were undoubtedly an attempt to unlawfully deprive Ms Patel of her occupation of the premises. Mr Spivey has not put forward any evidence, and certainly not proved, that he had reasonable cause to believe that she had by then ceased to reside in the premises.

Subsection (3)

61. The evidence (including the emails and Mr Spivey's words and actions before 1 February) shows, beyond reasonable doubt, that he wanted and intended Ms Patel to give up her occupation of the premises. The Tribunal found that the actions taken on 1 February, coupled with his continuing intent, were likely to interfere with Ms Patel's peace and comfort, and very clearly did so.

Subsection (3A)

62. The Tribunal is satisfied, beyond any reasonable doubt, that various acts were committed by Mr Spivey, as landlord, or by another as his agent, which were likely to interfere with Ms Patel's peace or comfort; and that he knew, or had reasonable cause to believe, that this conduct was likely to cause her to give up occupation of the premises, or to refrain from exercising any right in respect of the premises (for example her right to remain, her right to exercise quiet enjoyment and her right to insist on the receipt of a valid notice to quit as a precondition of being required to leave the premises).

63. Having made these findings, the Tribunal did not feel any need to dwell on an analysis of whether Mr Spivey's actions also constituted an offence under section 6 (1) of the Criminal Law Act 1977 relating to violence for securing entry.

Jurisdiction

64. Because some, if not all, of the offences found to have been committed, were committed within the period of 12 months before the Application, the Tribunal is clear that it has jurisdiction to be able to make a repayment order.

As to whether rent repayments should be ordered

65. The Tribunal is entirely satisfied that it is appropriate to make a rent repayment order in the circumstances of this case.

66. As was confirmed in the case of *Rakusen v Jepsen (2020) UKUT 298 (LC)* "The policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties."

67. The offences under Section 1 of the Protection from Eviction Act 1977 are particularly serious. Subsection (4) confirms that in the Magistrates Court they are punishable by a fine and a term of imprisonment of up to 6 months (or up to 2 years in the Crown Court).

68. Having decided that an order should be made, the Tribunal then went on to consider carefully the amount of rent which had to be repaid.

The amount of the order

69. Various Upper Tribunal cases have given guidance as to how an appropriate figure should be calculated. In *Acheampong v Roman [2022] UKUT 239 (LC)* it was stated : –

“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)” .

70. Following this 4-stage approach: –

- a. the total rent paid by Ms Patel was £2600 (being the five months payments of £495 and £25). The Tribunal is not able to include the separate deposit of £495 in a rent repayment order because as confirmed in *Kowalek v Hassanein [2021] UKUT 143 (LC)* a deposit is not, unless later appropriated as such, “an amount of rent paid by a tenant”. (That is not to say that the deposit, or indeed a penalty for not properly securing it, should not be paid to Ms Patel, simply that such matters are not within the Tribunal’s jurisdiction and would need to be subject to a separate claim in the County Court).

- b. the next step is to consider if there are any elements to be deducted for utilities. Mr Spivey has not provided any evidence or information about amounts he paid, if any. Therefore, the Tribunal is unable to make any adjustment, and nor does it find it appropriate to attempt to do so.
- c. clearly the combination of offences that have been found put this at the top of the range of seriousness. The acts were not inadvertent or in any way excusable.
- d. the Tribunal then specifically considered the other factors referred to in section 44 (4) being the conduct of the parties, the landlord's financial circumstances, and whether he has had any time been convicted of a specified offence.

The Conduct of the parties

71. There is no evidence whatsoever of any unreasonable or inappropriate conduct by Ms Patel. In contrast, Mr Spivey's conduct was serious, criminal and inexcusable. He ignored the law and the proper legal procedures for terminating a tenancy and regaining vacant possession. He gave inadequate notice to quit to Ms Patel because he wanted to relet the room; and when she insisted on her rights, he resorted to unacceptable intimidation to try and make her leave.

The landlord's financial circumstances

72. Mr Spivey has not provided any evidence of his financial circumstances. He has however clearly profited from the rent paid.

Whether the landlord has any relevant convictions

73. The Tribunal has no evidence of any.

Any other relevant factors

74. None have been put before the Tribunal. Ms Patel confirmed in the papers that she was not in receipt of universal credit.

The Tribunal's determination

75. The Tribunal concluded that there was nothing that warrants any reduction from the maximum amount it can order, and that Mr Spivey should be ordered to repay the full £2600 within 28 days of the issue of this decision.

Reimbursement of the Tribunal application fees

76. Because Ms Patel has incurred application and hearing fees of £100 and £200, it is appropriate that the Mr Spivey should also reimburse those fees.

Rule 13 costs

77. Insofar as Ms Patel may have been seeking an award of legal costs (apart from reimbursement of fees paid), such a request is, and in some senses regretfully, refused. This is because the Tribunal is first and foremost a "no costs" jurisdiction; it has a very limited costs jurisdiction pursuant to rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, limited to where a person has acted unreasonably in bringing, defending or conducting proceedings. In this case,

Mr Spivey's wholly unreasonable behaviour was outside the proceedings themselves, which he has taken no part in.

The Schedule

The Relevant Statutory Provisions

Section 6 of the Criminal Law Act 1977 – 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.

(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.

Section 1 of the Protection from Eviction Act 1977 – unlawful eviction and harassment of occupiers

(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.

Section 72 of the Housing Act 2004– control or management of unlicensed HMO

(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)...

(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.

**Tribunal Judge J Going
27 November 2023**