FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AP/HMF/2022/0280**
Property	**:**	**215 Sirdar Road, London N22 6QU**
Applicant	**:**	**Rebekah Irving**
Representative	**:**	**Cameron Neilson of Justice for Tenants**
Respondent	**:**	**Marianna Eren**
Representative	**:**	**Karol Hart of Freemans Solicitors**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Mr A Lewicki FRICS**
Date of Hearing	**:**	**22 November 2023**
Date of Decision	**:**	**3 January 2024**

DECISION

Description of hearing

This was a face-to-face hearing.

Decisions of the tribunal

(1) The tribunal makes no rent repayment order.

(2) The tribunal makes no cost orders.

Introduction

1. The Applicant has applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**").

2. The basis for the application is that the Respondent committed an offence of having control of and/or managing a house in multiple occupation ("**HMO**") which was required to be licensed but was not licensed, contrary to section 72(1) of the Housing Act 2004 ("**the 2004 Act**").

3. The Applicant seeks a rent repayment order in the sum of £20,698.42 in respect of rent paid for the period 14 March 2021 to 13 March 2022 ("**the Relevant Period**").

Applicant's initial written submissions

4. In initial written submissions the Applicant stated that the Property was a 3-storey terraced house with a shared kitchen and bathrooms and was occupied by at least 4 people at all points during the Relevant Period. Each occupier occupied their own room on a permanent basis with a single tenancy agreement having been granted to one of the occupiers, Rebekah Irving. It was a standard HMO arrangement in that there were communal cooking and toilet and washing facilities, with separate, unrelated individuals each paying rent and occupying their rooms as their only place to live.

5. Room 1 was occupied by Samuel Humble, Room 2 was occupied by Olivia Neller, Room 3 was occupied by Sara Honrado, and Room 4 was occupied by Rebekah Irving.

6. No HMO licence was held during the Relevant Period, but the Respondent later applied for a licence on 20 May 2022. Marianna Eren is believed by the Applicant to be an appropriate Respondent for this application as she was named as the landlord in the tenancy agreement and is the beneficial owner of the Property as shown in the land registry title deed. She was also a "person having control" of and a "person managing" the Property for the purposes of section 263 of the 2004 Act.

Respondent's written submissions in response

7. In written submissions in response, the Respondent accepted that during the relevant period she was a person "having control" of the Property as owner and as landlord and being a person in receipt of rent from the Applicant. She also accepted that the Property required an HMO licence during the whole of the Relevant Period and that it was unlicensed for the whole of the Relevant Period.

8. However, whilst the Respondent accepted that the Property required an HMO licence she argued that she had a "reasonable excuse" for the purposes of the defence set out in section 72(5) of the 2004 Act in that she was not aware of the requirement to licence the Property and had believed that the Property was let to Ms Rebekah Irving alone who herself then subsequently sub-let rooms within the Property to Samuel Humble, Olivia Neller and Sara Honrado ("**the Other Occupiers**"), and therefore it was the Applicant who was responsible for creating the HMO.

9. In furtherance of her contention that she had a reasonable excuse for the purposes of the defence set out in section 72(5), the Respondent also stated that she was not a professional landlord, she only let out one property, she believed that the Property was only required to be licensed if it had 5 or more tenants, and the law on licensing was complicated. She also submitted an HMO licence application very promptly on becoming aware of the requirement to license, and the local housing authority took no action against her in this case which in her submission meant that the local housing authority accepted that this had been a one-off mistake.

Applicant's follow-up written submissions

10. The original application was made jointly by Ms Irving, Mr Humble, Ms Neller and Ms Honrado. However, in response to the Respondent's written submissions it was conceded on behalf of the Applicant that the Other Occupiers were actually tenants of the Applicant and not of the Respondent. The application was therefore, with the permission of the tribunal, converted into an application in Ms Irving's sole name.

11. As regards the legal relationship between the Applicant and the Other Occupiers, the Applicant characterised herself as being a "landlord of circumstance", her evidence being that she had only granted the Other Occupiers tenancies in order to enable them to claim Universal Credit *"due to the Respondent's failure to grant tenancy [sic] to those other Applicants as previously promised"*.

Respondent's follow-up written submissions

12. In response, the Respondent submitted that the amended application – now with Ms Irving as the sole Applicant – constituted an abuse of process under paragraph 9(3)(d) of the Tribunal Procedure (First-tier Tibunal) (Property Chamber) Rules 2013. This was because the Applicant was receiving rental income from all three of the Other Occupiers, and she had provided them with separate tenancy agreements and therefore was the person immediately responsible for creating the HMO. She was also a person in control of/managing the HMO as per section 263 of the 2004 Act.

Witness evidence

Rebekah Irving's (the Applicant's) evidence

13. In her witness statement, the Applicant (Ms Irving) states that she became aware of the Property on about 13 January 2021 through a listing on the property rental website www.spareroom.com and adds that in both the body text and the "suggested rent split" the Property was being advertised for 4 people. On 17 January 2021 she, Mr Humble and Ms Neller viewed the Property with the Respondent present and then later, on 11 February 2021, Ms Honrado came with Ms Irving to view the Property. On that date terms were agreed with the Respondent, and the Applicant signed a tenancy agreement. All 4 occupiers had moved into the Property by 27 February 2021 and they then all lived in the Property for the duration of that tenancy agreement.

14. The Applicant also states that on 14 February 2022 she (or possibly someone on her behalf) emailed the Council who *"responded with confirmation that the landlord did not have a valid HMO licence"*.

15. In cross-examination at the hearing, she confirmed that she had signed a tenancy agreement in her sole name as tenant at a rent of £1,900 per month and she accepted that the Other Occupiers had made rental payments to her. For example, Ms Neller made payments to the Applicant of £425 per month and the Applicant accepted that these were rental payments.

16. The Applicant also confirmed that there was a tenancy agreement between her and Ms Neller, although she added that Ms Neller had only entered into a formal tenancy agreement to enable her to claim Universal Credit. It was also established during cross-examination that although Ms Neller paid the Applicant £425 per month she was claiming Universal Credit at a rate of £500 per month.

17. The Applicant confirmed that there was also a tenancy agreement between her and Mr Humble, but again she added that Mr Humble had only entered into a formal tenancy agreement to enable him to claim Universal Credit. As regards Ms Honrado, the Applicant was asked whether there was a verbal agreement for Ms Honrado to pay her rent, to which she replied *"not in quite that way"*, adding that all of the occupiers felt that they were renting from the Respondent.

18. The tribunal was also referred to an exchange of messages between the Applicant and the Respondent's son-in-law (Guney Gultekin). In those messages (on page 676 of the Applicant's hearing bundle) the Applicant stated on 14 January 2021 that the Other Occupiers were renting from her at their last property, to which Mr Gultekin replied *"So you was subletting to the others?"*. Her reply to that question (one minute later) was *"I would want everyone that is moving in to the property to be on the tenancy agreement"*. Then on 10 February 2021 the Applicant asked Mr Gultekin, in the context of the signing of the tenancy agreement, *"will everyone need to be there tomorrow to sign?"* to which Mr Gultekin replied *"Hi Becky, nope just yourself will be fine"*. She then proceeded to sign the tenancy agreement in her sole name.

Samuel Humble's evidence

19. Mr Humble's witness statement is effectively identical to that of the Applicant on those elements of the Applicant's evidence referred to above.

20. In cross-examination he disagreed that he had a tenancy agreement with the Applicant. He just needed a signed document for his Universal Credit application and he did not get one from the Respondent.

Olivia Neller's evidence

21. Ms Neller's witness statement is also effectively identical to that of the Applicant on those elements of the Applicant's evidence referred to above.

22. In cross-examination she said that she did not know about the Applicant's tenancy agreement when she moved in but that she knew that she needed a tenancy agreement of her own in order to apply for Universal Credit and this is why she signed one provided by the Applicant. Regarding the amount of the claim for Universal Credit, she said that she thought that the rent was going to be £500 per month. She did not notify the Council that she was only paying £425 per month because she was "really" paying £500 per month; she was just temporarily being subsidised by the Applicant.

Sara Honrado's evidence

23. Ms Honrado's witness statement is also effectively identical to that of the Applicant on those elements of the Applicant's evidence referred to above. Ms Honrado was not present at the hearing.

Marianna Eren's (the Respondent's) evidence

24. In her witness statement she states that she let the Property to the Applicant in February 2021, at which time the Respondent's partner was going through the early stages of cancer, and that this was a difficult period for her personally and professionally. She was aware that the Applicant would be living with others and that they did not form a single household, but she was not fully aware of the HMO licencing requirements and believed that a licence would only be needed if the Property had 5 or more people living there. She states that it was the Applicant's decision to take on the Property as the lead tenant.

25. At the hearing it was put to her that her advert for the Property being available for rentals suggested that people "buddy up" to live in the Property, but she said that the intention was for a family to live there. She had been renting the Property out to families since 2006 and this was the first time that she had rented to individuals not forming part of a family.

26. It was also put to the Respondent that the current licensing designation (under which she needed an HMO licence for this number of unrelated occupiers) had been in place for 21 months before she took on these occupiers. She replied that she only knew that she needed a licence when she received a letter from the Council.

Guney Gultekin's evidence

27. As noted above, Mr Gultekin is the Respondent's son-in-law. He has also given a witness statement and was cross-examined on it at the hearing.

Dimitrios Hadjidemetriou's evidence

28. Mr Hadjidemetriou is the Respondent's partner. He was briefly cross-examined on his own witness statement at the hearing.

Further submissions at hearing

Respondent's submissions

29. Mr Hart repeated the Respondent's submission that the application constituted an abuse of process under paragraph 9(3)(d) of the Tribunal Procedure (First-tier Tibunal) (Property Chamber) Rules 2013, as 3 of the occupiers were in occupation pursuant to sub-tenancies granted to them by the Applicant. Whilst a question had initially been raised by the Applicant as to whether all occupiers should be tenants of the Respondent, there was no evidence that she had objected to being the sole tenant after 14 February 2021.

30. In Mr Hart's submission, the Applicant had herself committed an offence by creating the sub-tenancies without obtaining a licence, and therefore it would be unjust for her to be able to claim rent repayment from the Respondent.

31. Mr Hart said that the Respondent also wanted to continue to run the "reasonable excuse" defence in the alternative, but he conceded that the "reasonable excuse" defence was not a strong defence on the facts of the case.

Applicant's submissions

32. Mr Neilson argued that the decision of the Upper Tribunal in *Cobb and others v Jahanghir [2022] UKUT 201 (LC)*, in particular paragraph 42 of that decision, is authority for the proposition that a tribunal is not prevented from making a rent repayment order simply by virtue of the fact that the tenant is sub-letting. He submitted that the tribunal should not exercise its discretion to refuse to make a rent repayment order, because on the facts of this case the Respondent was fully aware that the Property would be occupied by 4 people. If it was indeed unjust to make a rent repayment order in circumstances such as those applying in the present case, then in Mr Neilson's submission that point would have come up in the *Cobb* case.

Relevant statutory provisions

33. Housing and Planning Act 2016

Section 40

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant …

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

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

Section 41

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

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

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

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) …

Section 44

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

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

If the order is made on the ground that the landlord has committed	***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.

Housing Act 2004

Section 72

(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 … but is not so licensed.

(5) In proceedings against a person for an offence under subsection (1) … it is a defence that he had a reasonable excuse … for having control of or managing the house in the circumstances mentioned in subsection (1) … .

Section 263

(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 … rents or other payments from … 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 … 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 …

Tribunal's analysis

Preliminary matters

34. The Applicant's uncontested evidence is that the Property was an HMO which was required to be licensed but was not licensed at any point during the period of the claim. Having considered that uncontested

evidence we are satisfied beyond reasonable doubt that for the whole period of claim the Property required a licence but was not licensed.

35. It is also clear that the Respondent was the Applicant's landlord for the purposes of section 43(1) of the 2016 Act, as she was named as landlord in the tenancy agreement and was the registered freehold owner of the Property. Again, she does not dispute this.

36. The next question is whether the Respondent was a "person having control of or managing" the Property within the meaning of section 263 of the 2004 Act. The Respondent does not deny that she was, and the evidence supports the proposition that she was a "person having control of or managing" the Property as it is common ground that the Respondent received rent from the Applicant. In principle, therefore, subject to any available defences, the Respondent was in breach of section 72(1) of the 2004 Act.

The reasonable excuse defence

37. Dealing first with the "reasonable excuse" defence, the Respondent submits that she had a reasonable excuse for not having obtained an HMO licence and therefore that she can take advantage of the defence set out in section 72(5) of the 2004 Act. In initial written submissions the Respondent stated that she believed that the Property was being let to the Applicant alone. It is unclear whether by that she meant that was not aware of the existence of the Other Occupiers or simply that technically she had only granted a tenancy to the Applicant, but either way it is clear from oral evidence and from other submissions at the hearing that she was aware of the existence of the Other Occupiers.

38. The Respondent has also stated that she was not a professional landlord, that she believed that the Property was only required to be licensed if it had 5 or more tenants, and that the law on licensing was complicated. However, it is clear from the case law that these factors are insufficient to constitute a "reasonable excuse" defence. In *Aytan v Moore and others [2022] UKUT 027 (LC)*, for example, the Upper Tribunal stated (at paragraph 40) that *"a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themself of the licensing requirements without relying upon an agent, for example because the landlord lived abroad".* In the present case the Respondent is not even arguing that she was relying on an agent to keep her informed; she is simply pleading ignorance, and that is insufficient by itself to amount to reasonable excuse for the purposes

of section 72(5) of the 2004 Act as it is incumbent on landlords to keep themselves informed in respect of any potential criminal liability arising out of breaches of health and safety legislation.

The Respondent's primary argument in defence

39. Turning now to the Respondent's primary argument, she argues essentially that a rent repayment order should not be made against her in favour of the Applicant as it is the Applicant herself who created the additional tenancies giving rise to the need for an HMO licence.

40. Having considered the written and oral evidence on which the key people involved have been cross-examined, our view is that it is clear that the Other Occupiers were sub-tenants of the Applicant. Whilst there was initially some unclear communication between the Applicant and Mr Gultekin on the question of whether all of the occupiers should be joint tenants under one tenancy agreement with the Respondent, the point was ultimately not pursued. It is not wholly clear from that exchange of messages what the Respondent's own preference was in this regard. As for the Applicant, her initial preference appears to have been for all of the occupiers (including herself) to be the Respondent's joint tenants, but the evidence indicates that the Other Occupiers had been sub-tenants of the Applicant at their previous property and that the point was ultimately not sufficiently important to the Applicant for her to pursue it. Indeed, at a stage prior to signing when relations with the Respondent and Mr Gultekin were clearly amicable, the Applicant asked simply whether the Other Occupiers needed to sign and was told that they did not and then she proceeded to sign as sole tenant. The evidence therefore indicates that the Applicant had no problem with being the sole tenant.

41. The Applicant then granted formal sub-tenancies to two of the Other Occupiers. She states that she only did this to enable them to claim Universal Credit, but the granting of the sub-tenancies is indicative of how she saw the relationship with the Other Occupiers and how she wanted it seen by the authorities. In any event, the creation of the sub-tenancies merely formalised the basis of those sub-tenancies, and in our view it is clear that all three of the Other Occupiers (including the one without a formal sub-tenancy agreement) were her sub-tenants. Her preference for a lack of formality does not affect the nature of the relationships, and the fact remains that she willingly took on a sole tenancy and brought the Other Occupiers with her as her sub-tenants in the same, or in a similar, manner as at their previous property and received rent from all of them.

42. It follows that the Applicant was the Other Occupiers' landlord for the purposes of section 43(1) of the 2016 Act. She was also a "person managing" the Property within the meaning of section 263 of the 2004 Act as she was a lessee of the Property who received rents from persons

who were in occupation as tenants or licensees of parts of the premises. It is possible that she was also a "person having control" of the Property if the rents received by her constituted the "rack-rent". As by her own admission the Property was an HMO which was required to be licensed but was not licensed at any point during the period of the claim, it follows that she herself was committing an offence under section 72(1) of the 2004 Act for the whole of that period, and it has not been argued on her behalf that she had a "reasonable excuse" for the purposes of section 72(5) of the 2004 Act.

43. The Applicant has referred us to the decision of the Upper Tribunal in *Cobb and others v Jahanghir [2022] UKUT 201 (LC)*, arguing that paragraph 42 of that decision is authority for the proposition that sub-letting does not prevent the tribunal from making a rent repayment order. However, paragraph 42 of *Cobb* is dealing with a wholly different point. In *Cobb*, Mr Jahanghir had granted a tenancy jointly to 5 people and therefore it was clear that he – and only he – had created the HMO and therefore the need for a licence. Paragraph 42 of *Cobb* merely deals with a point of detail, namely whether the amount of rent repayment could or should be reduced by a tenant sub-letting their room for a short period of time.

44. In *Rakusen v Jepsen and others [2023] UKSC 9*, a case to which we have been referred (albeit not in detail), the Supreme Court decided that a rent repayment order could not be made against a superior landlord (i.e. it can only be made in favour of a tenant against that tenant's immediate landlord). That specific point is not directly relevant to our case as the Respondent is the Applicant's immediate landlord. However, of more interest for our purposes is the fact that it was argued in front of the Supreme Court in *Rakusen* that there were no circumstances in which a tenant who had itself sub-let the property to an occupying sub-tenant could obtain a rent repayment order against the tenant's immediate landlord. In response to this proposition Lord Briggs and Lord Burrows (with whose joint judgment the other Law Lords were in agreement) stated as follows in paragraph 33 of *Rakusen*: *"We prefer not to decide whether this submission is correct in a case where nothing turns on it and where we are conscious that we have not had full submissions on all possible fact situations"*. This point was therefore expressly left open by the Supreme Court.

45. We are conscious that we have not received particularly detailed legal arguments from either party on this issue, and nor have the parties produced any legal authorities which are directly in point. Nevertheless, the point falls to be addressed.

46. There exists a line of cases which deal with the whole question of whether and – if so – in what circumstances a claimant can rely on its own illegal acts in order to make a claim, this sometimes being referred to as the doctrine of "*ex turpi causa*". In *Patel v Mirza [2016] UKSC 42*

the Supreme Court considered this doctrine in the context of whether a party to a contract tainted by illegality could be prevented from recovering money paid under the contract from the other party under the law of unjust enrichment. Giving the main statement of reasons for the Supreme Court's decision in that case, Lord Toulson stated (following a very wide-ranging analysis of previous decisions in this jurisdiction and in other jurisdictions and of the view of the Law Commission) that in assessing whether a court should refuse to enforce a claim which is tainted by illegality *"it is necessary a) to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, b) to consider any other relevant public policy on which the denial of the claim may have an impact and c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of the considerations identified, rather by than [sic] the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate"* (see paragraph 120 of *Patel v Mirza*).

47. In the present case the underlying purpose of the prohibition is essentially to maintain housing standards and to deter landlords from non-compliance, but in our view a key consideration here is that the Applicant is seeking to rely on her own illegal act in order to claim money from the Respondent for her share in the commission of the exact same illegal act. It is also not realistically the case here that the Applicant will herself suffer any other criminal penalty for having committed the criminal offence on which she now seeks to rely in her claim against the Respondent.

48. We recognise that the policy behind the 2016 Act is in principle to punish landlords for wrongdoing even if this might result in a windfall for tenants. However, the circumstances in which it is generally argued that the tenant might receive a windfall on being granted a rent repayment award are where the landlord has clearly committed an offence but where on the facts of the particular case the tenant has had the benefit of renting a property in an acceptable condition and has not experienced any specific problems. In those circumstances a rent repayment could lead to the tenant paying a much-reduced rent for satisfactory accommodation. That type of windfall is a direct consequence of the legislation being more about protecting tenants than about compensating them for any specified disadvantage suffered.

49. In the present case, though, the Applicant's claim is based on – and arises directly out of – her own illegality. Furthermore, the illegality is not merely one aspect of what has happened; the illegal act is the whole basis for her claim. And whilst the Respondent has herself committed

the same illegal act she has done so as a by-product of the actions of the Applicant.

50. We accept that the evidence in this case indicates that the Applicant's criminality was not necessarily deliberate, but equally the evidence indicates that the Respondent's was not necessarily deliberate either. Exchanges of messages between the parties (or between the Applicant and Mr Gultekin) indicate a mutual awareness of there being a **potential** issue, but no more than that. Both have committed the offence, and the circumstances of the commission of the offence almost amount to the parties acting jointly, with the Applicant leading the enterprise as she created the sub-tenancies and then the Respondent effectively adopted the consequences of the creation of those sub-tenancies.

51. In addition, the evidence shows that the Applicant was well aware of the concept of granting sub-tenancies, as this had been the arrangement at the previous property rented by her where she knew herself to be the sole tenant of her then landlord with the others being granted sub-tenancies by her.

52. Taking all of the circumstances together, our view is that whilst the rent repayment order provisions in the 2016 Act are primarily intended to punish landlords for criminal breaches of housing standards rather than to compensate tenants for loss directly suffered by them, there must come a point when making a rent repayment award amounts to a mockery of the legislation. On the facts of this particular case, the Applicant has committed a criminal act and seeks repayment of rent from the Respondent simply on the basis that the Respondent has adopted the Applicant's criminal act (and has done so without necessarily realising that the act was criminal). We therefore conclude that in these exceptional circumstances the Applicant should not be awarded a rent repayment.

Cost applications

53. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse her application fee of £100.00 and the hearing fee of £200.00.

54. As the Applicant's claim has been unsuccessful, we do not consider that it would be appropriate to require the Respondent to reimburse the application fee or the hearing fee, and accordingly this cost application is refused.

Name: Judge P Korn **Date:** 3 January 2024

RIGHTS OF APPEAL

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

B. 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.

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

D. 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.