FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON'00BJ/HMB/2023/0008**
Property	**:**	**102 Buckhold Road, London SW18 4AR**
Applicant	**:**	**Miss R Griffiths**
Representative	**:**	**In person**
Respondent	**:**	**GAMA Holdings Ltd (in substitution for Mr A Mahdavi)**
Representative	**:**	**Ms Rakhimjonova of counsel**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Steve Wheeler MCIEH, CEnvH**
Date and venue of Hearing	**:**	**29 November 2023** **10 Alfred Place**
Date of Decision	**:**	**25 March 2024**

DECISION

Orders

(1) The Tribunal makes a rent repayment orders against the Respondent to the Applicant in the sum of £7,010 to be paid within 28 days.

(2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £300.

The application

1. The Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016, dated 31 May 2023. Directions were given on 30 June 2023.

2. In accordance with the directions, we were provided with bundles by both the Applicant and the Respondent.

The hearing

Introductory

3. The Applicant represented herself, and gave evidence. She was supported by her friend, Mr Baker. The Respondent was represented by Ms Rakhimjonova of counsel. Mr Mahdavi appeared and gave evidence. Mr A Gharaaty also attended (and had submitted a witness statement).

4. The property is a house in multiple occupation comprising five units licensed by the London Borough of Wandsworth.

Preliminary issues: Strike out/barring applications

5. The Applicant had identified the Respondent as Amir Mahdavi. In its response to the application, the Respondent's solicitors, OTS, submitted that the immediate landlord of the Applicant was GAMA Management Ltd (and the superior landlord GAMA Holdings Ltd), not Mr Mahdavi. Accordingly, it was argued that the application should be struck out under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules"), rule 9(3)(e) as having no reasonable prospect of success.

6. However, at the hearing, Ms Rakhimjonova told us that the proper landlord was GAMA Holdings Ltd. GAMA Management Ltd were identified as the landlord on the Applicant's assured shorthold tenancy

agreement, but they did so as agents of GAMA Holdings Ltd, their (undisclosed) principal. GAMA Management Ltd did not hold any interest in the property. Mr Rakhimjonova submitted that, given the misidentification of the Respondent, we should strike out the application under rule 9(3)(e) of the 2013 Rules. She agreed, however, that there would be no prejudice were we to substitute GAMA Holdings Ltd. Mr Mahdavi and Mr Gharaaty are the only directors of both companies.

7. The Applicant applied for an order that the Respondent be barred from taking any further part in the proceedings (Rule 9(3)(a), 9(3)(e) and 9(7). She argued that the Respondent had failed to adhere to directions in relation to listing questionnaires and the time period specified for the service of a skeleton argument, and that in the light of the materials provided by her, there was no reasonable prospect of the Respondent being successful.

8. Following an adjournment, we refused both applications. The misidentification of Mr Mahdavi as the Respondent could be cured by the substitution of GAMA Holdings Ltd without prejudice to the Respondent. We made the substitution under rule 10 of the 2013 Rules.

9. The two breaches of directions cited by Miss Griffiths were trivial. Barring the Respondent would be a disproportionate sanction. Indeed, no sanction was required. As to Miss Griffiths' argument under rule 9(3)(e), there were clearly real issues to be determined by the Tribunal.

10. We noted, however, that the substitution meant that we could only consider offences which had taken place, or the last day of which occurred, within 12 months of today's date (*Gurusinghe and ors v Drumblin Ltd* [2021] UKUT 268 (LC) and section 41(2) of the Housing and Planning Act 2016). Insofar as Miss Griffiths alleged an offence under Protection from Eviction Act 1977, section 1(2) on the basis of an attempted unlawful deprivation of her occupation of her room in the property before 28 November 2022, it would be time barred.

The alleged criminal offences

11. The Applicant alleges offences under section 1 of the Protection from Eviction Act 1977. Our understanding is that the Applicant alleged two offences under section 1(2) of the Act, and an offence under either section 1(3) or section 1(3A).

The alleged offences contrary to section 1(2)

12. Section 1(2) reads as follows:

> (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.

13. It is possible to deal with the offences under section 1(2) briefly. The first related to the service on Miss Griffiths by Mr Mahdavi of a notice to vacate the property within one month on 12 August 2022. Miss Griffiths accepted that this was time barred as a result of the substitution of the Respondent.

14. The second possible offence was the service of a similar notice on 18 January 2023, which is in time.

15. By the close of the proceedings, Miss Griffiths, if she had not strictly speaking withdrawn this application, certainly put all of her emphasis on the alleged breach of section 1(3) or 1(3A). Nonetheless, it is incumbent upon us to determine the issue.

16. The complete offence under section 1(2) of the 1977 Act requires an act resulting in physical deprivation of occupation. In *Wu v Chelmsford City Council* [2023] EWCA Crim 338, [2023] H.L.R. 32, the Court of Appeal, Criminal Division said:

> "that part of the actus reus of section 1(2) which requires that the resident occupier has been deprived of occupation of the premises does require actual physical deprivation of occupation, namely that the occupier has by the defendant's conduct been put and/or kept out of physical occupation of the property".

17. In this case, the Applicant relied on that part of section 1(2) which criminalises the attempt to achieve that objective.

18. Section 1(2) adopts the comparatively unusual approach of specifying that an attempt to commit the substantive offence also constitutes the offence. The Criminal Attempts Act 1981, section 3, applies the general rule as to the meaning of "attempts" to offences so drafted, provided no contrary Parliamentary intention appears (*Mason v DPP* [2009] EWHC 2198 (Admin), [2010] R.T.R. 11). We do not consider that any such contrary intention appears in this section, and the Applicant has not submitted that there is. As a result, section 3(3) of the 1981 Act applies:

> "A person is guilty of an attempt under a special statutory provision if, with intent to commit the relevant full offence, he does an act which is more than merely preparatory to the commission of that offence".

19. In *Wu*, the Court suggested in an aside that the reason why an attempt was specified in section 1(1) of the 1977 Act may have been to avoid the debate over nice points of land law that disfigured proceedings at first instance in that case.

20. The question, therefore, is whether the sending of the email on 18 January 2023 amounted to an act that was more than merely preparatory to the actual physical deprivation of occupation by the Respondent (we quote the email below at #). By way of illustration, in *Wu* the Court found that the landlord changing the locks and removing some water piping, albeit that one of the joint tenants remained in the property throughout, did constitute such an attempt. In *Mason v DPP*, where a driver started to open the door of his car, he had not committed an act that was more than merely preparatory to driving the car (when over the blood alcohol limit).

21. Mason usefully discusses the case law in relation to criminal attempts, including the well known cases of *R v Campbell (Tony)* (1991) 93 Cr App R 350 and *R v Gullefer [1990] 1 WLR 1063*. The Court noted that the line between an act that was merely preparatory, and one that amounted to embarking on the substantive crime, could be a fine one. But if the door-opening was not an attempt in *Mason*, and nor was the lurking with a gun and threating note in *Campbell*, nor the disruption of the race in *Gullifer*, then we do not think the sending of the email in this case was at all close to the line. It was an act merely preparatory to the commission of the full offence, and thus not an attempt.

22. We reject the submission that the emailing of the notice to vacate on 18 January 2023 amounted to an offence under section 1(2) of the 1977 Act.

<u>The alleged offences under sections 1(3) and 1(3A)</u>

23. Section 1(3) reads, relevantly, as follows:

> 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 …
>
> 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.

24. Section 1(3A) reads

> 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 …
>
> and … 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.

25. Section 1(3B) provides a defence in respect of the section 1(3A) offence, and provides

> 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.

26. The offences under section 1(3) and 1(3A) of the 1977 Act are thus similar. Relevantly, in both cases the actus reus of the offence is the doing of acts "likely to interfere with the peace or comfort of the residential occupier…". In the case of the offence under section 1(3), the mens rea is (relevantly) with intent to cause the residential occupier to give up occupation of the premises". The (partly objective) mens rea in section 1(3A) is that 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 premises".

27. We are satisfied that both offences are continuing offences. The Act specifies that it is "acts" in the plural that constitute the offence. Although that does not preclude the offence being committed by a single act (*Wu*, paragraph [70]), the use of the plural makes it clear that a single instance of the offence may comprise a number of distinct acts which, together, have the effect specified.

28. Section 44 of the Housing and Planning Act 2016 provides that, in respect of these offences, the amount of an RRO is the "rent paid by the tenant in respect of … the period of 12 months ending with the day of the offence."

29. We conclude that, in the case of a continuing offence, that means that the period may end on the last day on which the offence is committed. A continuing offence is one committed on every day of the relevant period. The offence is, therefore committed (inter alia) on the last day, and so it is from that day backwards that the 12 month period may be calculated. The alternative – that "the day" is the first day – would lead to absurdity. It would mean that, the longer the offence were committed, and so (on the face of it) the more serious the offence, the lower would be the sum

the tribunal could order in an RRO. Indeed, if the offending continued long enough, no order could be made. We did not, however, hear developed argument, as both parties agreed that this was the correct interpretation.

30. The Applicant signed the tenancy agreement and moved into the property on 8 January 2022. The terms of the agreement have some significance in relation to the exchanges upon which the Applicant relies in respect of the offences, so we consider those here.

31. The agreement is made using a standard agreement for single-room lets produced by the Residential Landlords Association, which works by setting out a number of standard terms, leaving boxes to be filled in by the parties where specific terms are required.

32. The first potential issue relates to the cost of utilities. Paragraph 14 of the agreement refers to the shared areas that the Applicant could use, and in the box for filling in appears this text "Lounge, garden, kitchen, utility area, corridors (all utility charges included)".

33. Paragraph 4 of the agreement, one of the standard terms, specifies that it is for the tenant to pay "all electricity, gas, phone, water, communication services and council-tax bills relating to the property that apply during the tenancy, including an appropriate share of the bills for the shared areas (if this applies)."

34. It was clear as a matter of fact that there was only one bill for each of the relevant utilities for the property as a whole (and thus the separation of individual room consumption from that for the shared areas was impossible), and that at no time was a separate charge made to any of the tenants in relation to utilities.

35. The Applicant's perception was that utilities were included in the rent. That appears to have been a shared perception with the landlord, at least at one point. The Respondent's response to the application, prepared by the solicitors, states, in summarising the facts, that "the agreed rent was the sum of £920 per calendar month, inclusive of utility bills, cleaning fees, broadband and Netflix subscription."

36. The second issue relates to the existence of a break clause. The fill-in box in the agreement to specify the term contains these words: "12 months (Notice after 6 months)". Both of the parties considered that this specified that there was a break clause at six months. As was to become clear in the exchanges, Mr Mahlavi assumed that it created a break clause which could be exercised by both parties. The Applicant was to assert that, as the clause did not specify which party could take advantage of it, it could only be exercised by the tenant. She did so in reliance on a statement on the website of the housing charity Shelter. The reference

for this proposition on the website is *Dann v Spurrier* (1803) 3 B & P 399. The same authority is cited for the same proposition by the learned editors in *Woodfall Landlord and Tenant*, at 17.286.

37. For our part, we doubt whether the words used did in fact create a break clause at all. "Notice after 6 months" is a vague and ambiguous phrase which could mean a number of things, and the creation of a break clause would not be the most obvious natural meaning. However, it is not the correct construction of the tenancy agreement that is of the first importance, but rather how their understandings of it affected the conduct or approach of the parties. Nonetheless, in this context, it is of significance that *if* the words did create a break clause, the Applicant is right in the interpretation of its use that she put to Mr Mahlavi in due course.

38. Finally, at paragraph 16, the agreement says "We may increase the rent by serving a rent review notice on you. The rent may not increase by more than a maximum of 3% through any single review. … the initial rent increase may take effect no earlier than the first anniversary of the start of the tenancy …". The clause thus relates the provisions governing rent rises during the course of the statutory periodic tenancy following the expiry of the term of a fixed-term assured shorthold tenancy, with the figure of 3% having been inserted into the agreement by the parties.

39. The Applicant relies on communications, largely by email and WhatsApp, between the parties over the period from 20 April 2022 onwards. We therefore summarise hereunder the exchanges between the parties upon which the Applicant relies to establish the offences, in chronological order.

40. On 20 April 2022, Mr Mahdavi emailed the Applicant. He adverted to the increases in energy prices taking place at the time, "a big increase that no one anticipated" and went on:

> "We have no choice but to do a rent review and an increase of £35 from June. This means that we are still absorbing the majority of the increase ourselves, but a contribution from tenants will help us to keep our costs within budget, and maintain the property.
>
> …
>
> We would have never requested this in normal circumstances. The impact of this increase, and the potential of subsequent further rise in Oct, will give us no choice but to raise the rent."

41. The Applicant emailed back the same day, refusing the pay more rent. She correctly summarises the effect of paragraph 16 of the tenancy agreement, adding, further (and irrelevantly) that the proposed increase was more than 3%.

42. In his witness statement, Mr Mahdavi quotes his response (also sent the same day) as follows:

> "This wasn't a formal request for a rent increase. This was simply a call out for contributions in such unprecedented circumstances. I am well aware of the law and contractual agreements and obligations. You are welcome to refuse, no harm done."

43. The Applicant responded by noting that the first email appeared to be a formal demand for higher rent, in response to which Mr Mahdavi said he could understand how it could "misinterpreted", and apologised for that, while also setting out how energy prices were increasing the landlord's costs.

44. In his evidence, Mr Mahlavi first appeared to suggest that the initial email related to the utilities element of the rent, which he was entitled to increase. He agreed that there had never been a practice of charging utilities separately or identifying the proportion of "rent" that constituted the charge for utilities. The utilities, he said, were lumped in with the rent. He then – apparently inconsistently – repeated the argument that it was a voluntary contribution, not a rent increase. He could not point to any indication that the additional payment was voluntary in the email. The other tenants had agreed to pay the extra.

45. The next relevant communication was on 8 August 2022, when Mr Mahdavi emailed the Applicant, saying that, as "we are beyond your 6 months break clause, we have no choice but to increase the rent to £970 p/m from September rent." He again attributed the rise to higher costs.

46. The Applicant replied, following a chase email, on 11 August 2022. She again rejected his right to increase the rent, referring to the terms of the tenancy agreement. She concluded by saying "[p]lease note that this is now the third email that I have received regarding a proposed rental increase that is in clear breach of contract, and I feel harassed by this behaviour."

47. Mr Mahdavi responded by saying "That's absolutely fine. Please don't feel harassed. We'll serve a notice to vacate as we are beyond the contractual break clause." The following day, a further email was sent, signed "Management team", reading

> "We are hereby serving you 1 month notice to vacate from 13th of September, as per clause A(2) of the tenancy agreement.
>
> Kindly acknowledge receipt of this email. Please advise of days and times when we can show the property, which will be from 21st of August onwards …"

48. The Applicant responded by saying that the notice was unenforceable, to which Mr Mahdavi responded that it was enforceable. The Applicant persisted with her objection.

49. In cross examination, he said first that he accepted that the notice was unenforceable now, but this was because he had a made a mistake, in not making it two months.

50. Eventually, he did accept that repossession could not be accomplished without a notice under Housing Act 1988, section 21, but then said that he did not care to use section 21 notices. In his witness statement, he said that the company "tend to avoid issuing section 21 as we felt that some tenants may feel pressured receiving such documents triggering court proceedings."

51. In cross-examination and questions from the Tribunal, he said that he did not use section 21 notices, because of the cost. He said he used a solicitor to fill out section 21 notices. Then he said it was because they could trigger counter-claims from a tenant. His final position appeared to be that (presumably, prior to these events) he had, in 18 years' experience of rental property management, served a section 21 notice twice. On one of those occasions, the result had been counter claims, which had led him to discontinue the practice. He had, he said, used section 8 notices in cases of arrears.

52. On 15 August 2022, in a further email, Mr Mahdavi sent the Applicant a link to a government website (which, incidentally, makes it clear that a landlord is required to serve a section 21 notice), and said that "[y]our emails generally come across very defensive." It went on to say that of the 24 tenants they manage, "[o]ne of them served a notice upon our request, and you are the only other person who rejected any increase. As such, you left us with no choice but to serve notice…". The email continues to object to the Applicant sending them "clauses and refer to the law", whereas they prefer to "approach it from a friendly side". Finally, "if you can't see what we are going through at the moment and want to keep challenging us, you leave us with no choice to ask you to vacate".

53. In a full response on the same day, the Applicant insisted on her (broadly correct) interpretation of the agreement. Mr Mahlavi replied:

> "It is clear that you want to stick to your rules and have no compassion for anything that I have written. For the 3rd time, this was not an illegal rent increase. This was a gentle request, and clearly you have no understanding of the situation (which others do), therefore do what you like, and we'll continue the process."

54. There things lay, until 5 January 2023, when Mr Mahdavi (signing himself as "Management Team") sent an email to the Applicant:

> "We are hereby notifying you of a rent review as of 1 month after the end of your tenancy, from the 21st Feb 2023 payment. The new rent will be £995 per calendar month.
>
> The alternative is to take this as a serving of more than 1 month notice to vacate on 21st of February 2023, as per the clause A(2) of the tenancy agreement"

55. The email asked her to acknowledge receipt and provide times for viewings etc, "if you decide to vacate". A chase email was sent on 15 January 2023, and the Applicant replied on 18th, saying that the information in the email was a breach of term A16.

56. The reply stated "As per the notice, that was a suggestion if you do decide to stay." The alternative was to vacate. The email closed with emboldened statement "Please confirm that you will vacate at the agreed [sic] date."

57. The Applicant replied on 18 January 2023 that "only a tenant or a court can end a tenancy". In response, on the same day, the "Management Team" wrote

> No, as per clause A(2), if your read it carefully, it is very clear that a written notice to the other party is sufficient to end the tenancy.
>
> Please advise if this is unclear? As a respectable and responsible tenant, you will accept and move out.
>
> You can refuse in which case court proceedings will commence, you will be liable for legal fees and court fees, as well as our admin charges.
>
> If you wish to go down that route, please advise and I can give you a quote on costs."

58. In cross-examination, Mr Mahdavi said that when he asked the Applicant if what he said was unclear, that was an invitation to negotiate. What, he said, he wanted was to do was to talk with the Applicant to find a sensible solution.

59. Mr Mahdavi chased with a further email on 25 January, asking for a response to whether "we go down the legal route or are you OK to vacate as per the notice?"

60. Subsequently, there were WhatsApp message asking if she had received the emails (18 January), then "do you want a conversation. I don't seem to getting responses" (27 January), and "when is a good time to call you

please?"(30 January 2023). Thereafter, as shown on the screen shot provided by the Applicant, she blocked him on that platform.

61. The Applicant did not respond to Mr Mahdavi thereafter for some time. On 28 April 2023, he served a section 21 notice on her, asking her again to acknowledge receipt. The notice specified 30 June 2023 as the date after which she was required to leave. We did not invite representations as to whether the notice was effective.

62. The Applicant again declined to contact Mr Mahdavi. On the 2 and 3 May, Mr Mahdavi made a number of attempts to contact the Applicant by text and phone call, to which she declined to respond as, her evidence was, she felt harassed. On 3 May, Mr Mahdavi sent a WhatsApp message to all the tenants requesting that they contact the Applicant and ask her to contact him. Again, she felt this was harassing.

63. On 23 May, Mr Mahdavi emailed the Applicant, saying that "as we haven't heard from you, I am giving you 48 hrs notice to come and inspect the room".

64. The following day, the Applicant emailed Mr Mahdavi saying she refused permission to access her room, noted the number of communications, which she considered to be "attempts to threaten, intimidate, and harass", and referred to the 1977 Act. She said that she was not required to acknowledge receipt of the section 21 notice, but nonetheless did so.

65. It was the Applicant's evidence that she was concerned with what she saw as a threat to attend at the property. She understood that the landlord had the right to inspect the room on notice, but no inspection had ever taken place before. There had not even been an inventory check before she moved in. In those circumstances, she thought that the reference to an inspection was in reality a threat.

66. It was Mr Mahdavi's case that he sent the notice because he was concerned for the Applicant's wellbeing, given the period of silence since she had blocked him on the WhatsApp.

67. Mr Mahdavi responded with an email, making it clear that the section 21 notice was a response to her failure to make the "contribution" to increased costs, and to accept the rent increase. He went on to suggest that she had broken a provision in the lease requiring notice for an absence of more then seven days. The email goes on to say that she would face "court fees and legal costs" if she did not vacate by 27 June.

68. On 25 May 2023, the Applicant telephoned her friend, Mr Baker, as she was concerned for her physical safety, and feared she was at risk from, as we understood it, a visit from Mr Mahdavi (who she had not met in person at any time before the hearing). She was in an emotional state.

Mr Baker invited her to stay with him, which she did, as a direct result of her concern. She said that, in addition to personal items appropriate for a short stay away, she took with her her computers and personal documents, because, she said, she feared that Mr Mahdavi might enter her room and access or damage her property.

69. The Applicant responded on 31 May with what she described as a "comprehensive" email outlining what she said were the landlord's breaches of the agreement, and their harassing acts. In that email, she explained her concerns about an inspection, asked for clarification as to the purpose of the inspection, and gave two dates on which she would be prepared to accommodate an inspection. There was no response from Mr Mahdavi.

70. In June, the landlord emailed the Applicant that the section 21 notice which required her to vacate on 28 June. She objected, on the basis that the notice expired on 30th. However, she did move out on 28 June.

71. The Respondent exhibited a print out the WhatsApp exchanges between the Applicant and Mr Mahdavi during the course of the tenancy. As is common, a WhatsApp group was set up to facilitate communication between the tenants and the agent. The exchanges show that there had been significant communication of a mundane and friendly nature between the Applicant and Mr Mahdavi in relation to mostly minor issues with fixtures and so on throughout most of the period of her tenancy. There was an issue relating to the Applicant's complaints about another tenant who, she alleged, was using cannabis in her room, to which the Mr Mahdavi responded. We do not consider any of these exchanges are relevant to our conclusions.

72. Our general impression of the witnesses and conclusions on their evidence is as follows.

73. The Applicant was clear and articulate. She came over as fastidiously accurate, and somewhat driven. She had clearly acquired a broadly accurate understanding of her rights as a tenant (albeit in sometimes rather narrow terms), and, as the documentary evidence showed, she was robust in asserting those. We have no doubt at all that she was entirely honest in her factual evidence, both in her written submissions and orally.

74. We did not come to the same conclusion in relation to Mr Mahdavi, albeit not in relation to primary objective facts, but in terms of his motivations and attitudes.

75. Mr Mahdavi's insistence that the email of 20 April 2022 could properly be considered as a request for a voluntary contribution from the tenants to the landlord is absurd. The letter expressly refers to a rent review, and

states that rising prices "give us no choice but to raise the rent." It is true that when the Applicant insisted that there was no power to increase the rent in this way, the landlord resiled, and stated it was voluntary. But no-one reading the email itself would come to that conclusion. Mr Mahdavi's evidence was that the other tenants paid up. That, no doubt, was the intention. In the first place, we think that a landlord demanding completely unwarranted increases in the rent is capable of contributing to a course of harassing conduct. But it also speaks to Mr Mahdavi's dishonesty.

76. We reject Mr Mahdavi's explanation that, after late January 2023, his attempted communications with the Applicant, and his expressed intention to inspect her room, were motivated solely by a genuine concern for the Applicant's wellbeing. We accept that he may have had some concerns for the Applicant, but the clear impression we received from both the written and oral evidence was that his dominant motive was to pressurise the Applicant to engage with him.

77. We did not believe Mr Mahdavi when he said, initially, that he did not use section 21 notices generally out of consideration for the feelings of tenants. We think he did so first to avoid expense, and secondly to give himself more freedom of action in his dealings with tenants (as here, where he gave informal and ineffective notices for shorter periods than would have been the case had he complied with legal requirements, whether contractual or statutory).

78. There were other, more minor, examples of dishonest conduct. For instance, Mr Mahdavi told us during cross-examination that he had made a genuine mistake when he told the Applicant on 12 August 2022 that the one month's notice he had given her that day in purported exercise of a break clause was enforceable. We do not believe that. We think he sought to use mechanisms that he knew were unenforceable because it suited him, and was prepared to lie to tenants about it.

79. Our conclusion is that, acting through Mr Mahdavi, the Respondent is guilty of the offences under both section 1(3A) and 1(3) of the 1977 Act.

80. Both parties referred to whether the acts of the Respondent, through Mr Mahdavi, amounted to harassment of the Applicant.

81. We consider section 1(3A) first. The relevant description of the acts required to constitute the offence in section 1(3A) is that are "likely to interfere with the peace or comfort of the residential occupier" (it was not suggested that the "withdraws or withholds" limb is relevant). We consider (and neither party submitted to the contrary) that the words "peace and comfort" are ordinary English words, not technical terms, and are to be given their normal meaning. That acts likely to interfere with peace or comfort can properly be described as harassment is clear

to us, and we note that the title of section 1 of the 1977 Act, "unlawful eviction and harassment of occupier", so suggests.

82. The corresponding mens rea, or mental element, is that the offender "knows, or has reasonable cause to believe, that that conduct [the harassment] is likely to cause the residential occupier to give up the occupation … or to refrain from exercising any right …". The first limb requires actual knowledge. The second imports an objective element, with the word "reasonable". If a reasonable person would have cause to believe in the likelihood of giving up occupation, the offender is guilty, even if he did not (unreasonably) know himself.

83. Mr Mahdavi conducted a campaign of harassment (that is, engaged in conduct likely to interfere with the Applicant's peace and comfort) from at least August 2022 onwards, when he first threatened the Applicant with the service of a notice. Of course, service, or the threat of service, of a notice to quit is not of itself harassing, even if the threat is an unjustified and unenforceable one, as this one was. However, the threat must be seen in the light of the immediately preceding context provided by the unjustified and unenforceable attempts to extort additional rent from the Applicant (both in April and August 2022). Thereafter, each of the communications we have referred to above was in pursuance of a campaign of harassment against the Applicant. We include in this assessment the attempts to coerce the Applicant into engaging with Mr Mahdavi after she blocked him on WhatsApp in January 2023. As we explain above, we reject his explanation that he was solely concerned for her welfare.

84. He knew that the conduct was harassing, or should have known, from at least the time that she told him so, which she did on a number of occasions on and after 11 August 2022. Further, he must have known or believed that engaging in the relevant conduct was likely to cause her to give up occupation. His spurious notices to quit in August 2022 and in January 2023, which are part of the campaign of harassment, were designed to accomplish that end.

85. We have so far put our conclusions in terms of section 1(3A). We consider that the same facts justify conviction in respect of section 1(3). One key difference between the offences is that the latter requires not knowledge, or reasonable cause to believe, that harassment will result in giving up occupation, but the doing of the acts with the intent to bring about that result. That that was Mr Mahdavi's intent may readily be inferred from the fact that at least two of the acts constituting the harassment – the spurious notices to quit – were directly aimed at achieving that result. For the reasons we have explained, the campaign of harassment also constitutes the actus reus of the section 1(3) offence.

86. There is no defence of reasonable grounds in relation to section 1(3). It is inherent in our description of the campaign of harassment that we find

Mr Mahdavi to have embarked upon that it cannot constitute the defence set out in section 1(3B) in relation to the section 1(3A) offence.

87. The offences in section 1(3) and 1(3A) are usually considered to be alternatives. In this case, they both rely on entirely the same facts, and should not be punished or taken account of cumulatively, either, if this were a criminal court, on sentence; or by us, in the form of the quantum of the RRO. We record our conclusions in respect of both offences out of completeness, and for the benefit of the Upper Tribunal in the event that we are wrong about one of them.

The amount of the RRO

88. In considering the amount of an RRO, the Tribunal will take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 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. …
> (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 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)."

89. We add that at stage (d), it is also appropriate to consider any other of the circumstances of the case that the Tribunal considers relevant.

90. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]

> "I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

91. We note that Acheampong has recently been endorsed in *LDC (Ferry Lane) GP3 Ltd v Garro and others* [2024] UKUT 40 (LC), particularly in relation to stage (b).

92. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.

93. There is no suggestion that the Applicant was in receipt of the relevant benefits.

94. It was not contested that the total rent paid over the relevant 12 month period was £11,040.

95. As to utilities, at stage (b), we were provided with an overall figure for the relevant utilities for the year of £1,262, which the Applicant did not contest.

96. There were five rooms in the property. The Applicant did argue that the sum should be divided by six, to reflect that fact that one of the rooms had two occupants. We concluded that it would be fairer to divide the figure by five. Two occupants of one room are unlikely to consume twice as much of the utilities as one, and indeed their consumption is likely to be closer to the amount consumed by one occupant. We conclude that five is the appropriate divisor.

97. The result is a reduction of £252, giving a 100% figure of £10,788.

98. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offences under section 1 of the 1977 Act are significantly more serious than the pure licensing offences. On this axis, therefore, we must assess the percentage RRO that we should order at a higher level than we would for one of the less serious offences.

99. We turn to the seriousness of the offence compared with other offences against section 1 of the 1977 Act. We note here that the Tribunal sees this offence much less often than we see the section 72(1) and 95(1) offences, and that the key guideline Upper Tribunal cases (see below) do not feature 1977 Act offences.

100. However, applying our general knowledge of such offences, we consider this to be towards the lower end of the 1977 Act offences.

101. An example of the very worst sort of offence is provided by the recent Court of Appeal, Criminal Division case of *R v Tamiz and Tamiz* EWCA Crim 200, involving multiple, vulnerable victims and violent and physically threating conduct, in which the principal offender was sentenced to five years imprisonment in the Crown Court.

102. More frequently, applying our general knowledge of the run of cases, many involve the other limb of the offences, that is the withdrawal of services such as electricity or water. Others involve direct threats, or (as in the case of *Wu*, cited above), the changing of locks and disabling of white goods or the heating system.

103. At this stage, giving due weight to the seriousness of the offence on both axes, we assess the RRO at 65%.

104. At stage (d), the difficulty of overlap between the seriousness of the offence at stage (c) and the conduct of the landlord at stage (d) noted by Judge Cooke in *Acheampong* is particularly apparent, compared with pure licensing cases. We consider that we must effectively take as read at stage (d) the conduct of the landlord in undertaking the campaign of harassment we have identified. To do otherwise would amount to double counting.

105. So putting that to one side, we do not consider that there can properly be said to be any real additional complaint in relation to other conduct of the landlord. We have not received evidence of, for instance, persistent disrepair or fire safety issues. We do not think the issue relating to the cannabis smoking tenant adds anything.

106. The only complaint about the tenant made by the Respondent was that, on two occasions, she reported the landlord to the local authority as a "rogue landlord". In the context of the harassment she suffered, we do not think this can properly be held against her. She was never in arrears.

107. We did not receive the evidence of the means of the landlord that we would expect to see if the Respondent were claiming that their financial circumstances were relevant. We asked counsel if she made such an application. She said that she would have to take instructions, but we took the view that it was too late for counsel to find themselves uninstructed in respect of a matter which cannot have been a surprise to anyone. We do note that the asserted pre-condition for the initial bogus attempt to raise the rent was the increases, no doubt real, in the landlord's costs. But that is no different from the position that every landlord in London was facing, and we cannot properly take it into account without any substantiation of this landlord's particular circumstances.

108. The result is that we do not think any consideration at stage (d) affects our assessment of the appropriate RRO. Rounding slightly, we accordingly make an RRO in the sum of £7,010.

109. In assessing the quantum of the RROs at stages (c) and (d), we have taken account of the guidance in a number of Upper Tribunal cases, albeit with the caveat that 1977 Act offences do not figure. Those cases include *Acheampong* itself *Williams v Parmar and Others* [2021] UKUT 244 (UT), [2022] H.L.R. 8; *Aytan v Moore* [2022] UKUT 27 (LC); *Hallett v Parker* [2022] UKUT 239 (LC); *Hancher v David and Others* [2022] UKUT 277 (LC); *Dowd v Martins and Others* [2022] UKUT 249 (LC); and *Daff v Gyalui* [2023] UKUT 134 (LC).

Reimbursement of Tribunal fees

110. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

111. 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 London regional office.

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

113. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

114. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date**: 25 March 2024

Appendix of Relevant Legislation

Housing Act 2004

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.

Housing and Planning Act 2016

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to 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

	Act	*section*	*general description of offence*
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).

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.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a 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 had 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 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).

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 this 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 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 land the tenant,

(b) the financial circumstances of the landlord,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.