FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

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| Case Reference | : | CHI/00ML/HMB/2024/0001 |
| Property | : | Flat 3, 24 Albert Road, Brighton BN1 3RN |
| Applicant | : | Mr Courtney Phillips and Mr Ato Phillips |
| Representative | : | |
| Respondent | : | Mr Stuart Chalk and Ms Katherine Sanders |
| Representative | : | Mr McLean, counsel, instructed by ODT Solicitors |
| Type of Application | : | Application for a rent repayment order by Tenant |
| Tribunal Members | : | Regional Judge Whitney<br>Mr M J F Donaldson FRICS<br>Ms T Wong |
| Date of Hearing | : | 22 August 2024 |
| Date of Decision | : | 10 December 2024 |

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DECISION

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## Background

1. At 18.56 on 3 January 2024 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenants for a rent repayment order (RRO) against the Respondent landlords.

2. The Applicants sent in a large amount of detailed documentation. By directions dated the 2nd July 2024 the Tribunal referred the Applicant to section 41(2)(b) Housing and Planning Act 2016 and directed that he should submit a brief statement specifying which offences he was relying upon for the granting of an RRO. Directions for the matter to come to the hearing were given.

3. The bundle supplied by the Applicant did not comply with the directions or the Bundle Guidance issued by this Tribunal. Prior to the hearing the Respondent had sought an order that, as a result, the application was struck out. The Regional Judge declined to make such an order.

4. The hearing proceeded to take place on 22nd August 2024 in accordance with the directions. The Tribunal had a bundle provided by the Applicant (consisting of 2 pdf documents) and a bundle from the Respondents. References in [ ] are to pdf pages in those volumes preceded by V1, V2 or Resp. to identify the bundle in question.

5. The Tribunal re-convened on 21st October 2024 to consider further submissions re costs as directed at the hearing.

## The Law

6. The relevant law for this matter principally relates to the offences. In Annex A to this decision is a table setting out the Tribunal's jurisdiction which was provided at the end of the original directions. We considered the full wording of Section 6(1) of the Criminal Law Act 1977 and Sections 1(2), (3) and (3A) of the Protection from Eviction Act 1977. We also considered The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 but do not set these out in the annex.

## Hearing

7. The hearing was recorded. Below is a precis only of the hearing. Both witnesses were reminded that whilst they were not giving evidence on oath they were required to answer all questions truthfully.

8. Mr Courtney Phillips attended in person. Mr Ato Phillips (his son) was not in attendance. Mr Courtney Phillips indicated he was here to represent his son but had no written authority. References to "the Applicant" unless it is clear we are referring to Mr Ato Phillips are to Mr Courtney Phillips. The Tribunal explained it would record Mr Ato

Phillips was not in attendance and not represented given his father had provided no written authority authorising him to act on behalf of his son.

9. Mr McLean of counsel represented the Respondents. Ms Edwards of ODT Solicitors attended together with Mr Chalk. Written authority had been received for ODT Solicitors to represent both Respondents.

10. Within the bundle was a document said to be the Applicant's skeleton argument (beginning at Vol1 [28]). The Respondent's counsel had also supplied a separate skeleton argument.

11. Within the Respondent's skeleton argument was a renewal of the application to strike out the application on the basis that the application had been automatically struck out for the failure to provide a bundle in compliance with the directions. At the start of the hearing the Tribunal confirmed it had considered the application and refused to strike out the claim. Brief oral reasons were given and the Tribunal Chair confirmed full reasons would be provided as part of this written decision.

12. The Tribunal questioned the Applicant as to the offences being relied upon for the making of an RRO. The Applicant confirmed he was seeking an RRO pursuant to the Criminal Law Act 1977 and the Protection of Eviction Act 1977. Other matters he had referred to within his skeleton argument Vol1[28-36] were for context.

13. The Tribunal explained it would be for Mr Courtney Phillips to present his case first. The Tribunal reminded him he must prove the criminal offences to the criminal standard of beyond reasonable doubt.

14. At paragraph F of the Applicant's skeleton Vol1[30] he referred to Unlawful entry. He suggests that Mr Chalk accessing the Property on 7th October 2023 without his consent was unlawful entry. He suggests this was also harassment.

15. The Applicant relied upon a letter sent by email from the Respondent's solicitor Mr Barnes on 15th November 2023 Vol1[85-94]. He referred to the following paragraph:

*"In the early hours of 07 October 2023 you and your son, Ato Philips, had a physically violent altercation. During the course of this altercation either you or your son (or both) smashed the toilet from its fixings on the bathroom wall causing water to gush into the flat at full mains pressure. Given the volume of water, this immediatley (sic) started to flood the flat and the property below."*

16. The Applicant suggested the wording of this paragraph was a threat of violence and caused him to fear harm.

17. The Applicant explained two persons had been in his flat unattended and without his consent for at least 2.5 hours. He also believed a malicious prosecution had been undertaken against him.

18. Mr Courtney Phillips then confirmed his witness statement was at Vol1[42-46]. He confirmed his name and gave his address as the Property address. He confirmed the same was true.

19. Mr McLean cross examined Mr Phillips.

20. Mr Phillips explained he produced the statement jointly with his son. It was a joint statement as they experienced everything together.

21. Mr Phillips agreed the fire brigade entered the flat on 7th October 2023 due to a flood. He further agreed that the police attended although he did not know who called them.

22. Mr Phillips agreed the Notification of No Further Action Vol1[138] recorded he was arrested at 5.50am and released at 9.54pm on 7th October 2023.

23. Mr Phillips stated as he was being taken away from the flat he saw the flat door being pulled to. He was adamant the police would have locked the door.

24. Mr McLean wished to refer Mr Phillips to documents within the bundle. Mr Phillips declined to turn to them stating he knew what was in all the documents within the bundle.

25. Mr McLean referred to the tenancy agreement and clause 2.36 vol1[211]. Mr Phillips agreed this provided that access was allowed in an emergency without notice. Mr Phillips did not believe this was an emergency. The water had been shut off by the fire brigade to the whole of the building so there was no longer a flood. He did not believe the lack of water for the other flats in the building was an emergency.

26. Mr Phillips stated he was asleep when the fire brigade knocked on the door. Mr Phillips was referred to the photographs in the bundle including Vol1[70]. He believed the trainers had been placed in the doorway for the photograph as the scene in the flat had been chaotic. The fire brigade would have cleared these out of the way in his opinion. He explained he had been asleep and had not been drinking.

27. On pressing he agreed his son had consumed alcohol.

28. He agreed upon being released by the police he was able to access the flat.

29. Mr Phillips was shown an email from the police confirming he was not being charged with criminal damage due to lack of evidence Vol1[126]. Mr Phillips stated his landlord was pursuing a retaliatory eviction. He

stated the Gas Safe certificate was defective and The Smartlet Inventory was fraudulent.

30. We record at this point it became apparent within the proceedings that whilst Mr Phillips had paper copies of the bundle he filed he did not have an electronic copy. The paper copies he had did not have the pagination which was included on the electronic copies. The Tribunal adjourned to see if he could access an electronic copy.

31. Upon resumption Mr Phillips had not obtained a copy. The Tribunal tried to forward electronically the bundle to Mr Phillips but was unable to do so. At points counsel for the Respondents shared his screen with Mr Phillips.

32. At Vol1[143] was the Smartlet Inventory. Mr Phillips explained he signed this version before the commencement of the Tenancy. Subsequently hand written additions were made and he also made entries and emailed these electronically to Pembertons the agents for the Respondent's.

33. Mr Phillips explained when he first moved in the boiler was not working. He accepted after the visit by the Vaillant engineer the boiler was functioning.

34. Mr Phillips was shown the Gas Safe Register report Vol1[107] conducted after he raised a complaint with them as to the boiler installation. He agreed nothing was found to be "Immediately Dangerous" or "At Risk". He accepted the contents of the report.

35. Mr Phillips was referred to a letter from Brighton and Hove Council Vol1[104] dated 7th December 2023 listing issues with the Property. He accepted what was said in the letter which listed the items which required attention.

36. Mr Phillips explained he buys and sells houses. His son lives in Brighton and he rented the Property principally for his son. He initially said he was not resident in Brighton stating London is his home but clarified to say currently he was living in the Property.

37. Mr Phillips explained he was receiving medical treatment in London. He stated he asked Mr Chalk to undertake repairs. He did not accept he had refused access.

38. He was referred to various emails and in particular his reply to the Respondent's solicitor on 7th March 2024 Vol2[186]. He stated his health took precedence. He was in hospital although he accepted there was someone present at the Property but he refused access.

39. At this point the Tribunal adjourned for lunch. The Tribunal reminded Mr Phillips he may wish to look at the wording of the two offences he relied upon to assist with any final submissions he wished to make. He

was also urged to try and see if he could obtain an electronic copy of his bundle.

40. Upon resumption Mr Phillips was asked re various emails (see Vol1[99-105]). Mr Phillips denied sending these emails. He admitted the account was his but suggested other people had access such as his son or his girlfriend. Mr Phillips stated he took responsibility for these emails.

41. Mr Phillips was questioned by the Tribunal.

42. He confirmed when he was arrested and left the Property with the police on morning of 7th October 2023 the door was not damaged. He does not know how the fire brigade entered, he assumed they slipped the lock. He confirmed upon his return he called a locksmith to let him back in to the flat. The door was not damaged.

43. He confirmed the possession proceedings in respect of the section 21 notice were ongoing and no final order has been made. He suggested this was part of the campaign of harassment. He also relies on the disrepair at the Property.

44. He confirmed he was seeking the return of all the rent paid. He explained he paid 12 months rent up front on 4th November 2022 and then paid 1 months rent in November 2023. No further payments have been made. He accepted the Tribunal could not make any other awards.

45. Mr McLean then presented the case for the Respondents. He relied upon his skeleton argument which the Tribunal confirmed it had seen and read.

46. Mr McLean suggested that no offence under the Criminal Law Act 1977 was made out. When Mr Chalk arrived there was no one at the flat and so no one to oppose entry.

47. Turning to the Protection from Eviction Act 1977 there has been no eviction. Mr Phillips accepts there was a flood and that the water for the whole Property was turned off. Mr McLean suggests this was an emergency and that the entry was not unlawful.

48. He stated that his client was properly pursuing possession proceedings and currently had a valid possession order on the basis of rent arrears. Mr Phillips confirmed whilst his appeal had been refused on paper he was seeking an oral hearing.

49. On the question of disrepair Mr McLean suggests given Mr Phillips took the tenancy knowing what was said in the Smartlet Inventory Mr Phillips is not able to raise these matters as elements of disrepair. Further Mr McLean suggests that it is the Applicant who has frustrated attempts to undertake repairs by refusing access.

50. Mr McLean called Mr Chalk. He confirmed his witness statement Vol1[236-240] was true.

51. Mr Phillips proceeded to cross examine Mr Chalk.

52. Mr Chalk accepted the Smartlet Inventory identified certain items of disrepair. Mr Chalk denied having ever received a copy of the Smartlet Inventory with the additional comments.

53. Mr Chalk agreed the boiler was not working. He arranged for a plumber to attend who advised him a Vaillant engineer was required to fit a new part. Mr Chalk arranged for a Vaillant engineer to attend and effect the necessary repair.

54. Mr Chalk stated that Mr Phillips had not drawn to his attention the items of disrepair in the Smartlet Inventory. He stated he did have conversations with Mr Phillips during the first year including negotiations over Mr Phillips potentially purchasing the flat. Mr Chalk stated that until notice was given no issues over disrepair were raised verbally or in writing.

55. Mr Chalk accepted he paid for the Smartlet Inventory and this was organised by his agent Pembertons.

56. Mr Chalk stated he did not call the police on the morning of 7th October 2023 and he personally does not know who did. He received messages from the landlord of the flat below. He also spoke on the Saturday morning with the tenants of the flat below.

57. Mr Chalk explained he found the toilet broken off the wall. Together with his plumber they cut out part of the floor, accessed the cistern pipe which was fractured, repaired this, put back the floor and the toilet. Once this was done the water for the building was turned back on. He vacuumed up the water and whilst he was doing this his plumber undertook the Gas Safety Certificate.

58. Mr Chalk stated he arrived at the flat at about 9am. He found the door open with keys in the lock. The landlord of the flat below had texted him at about 8am.

59. Mr Chalk denied tampering with anything in the flat. He explained the photo at Vol1[70] showed how things were when he arrived. The trainers were as shown in the photo. He moved them to one side. He had to move things to carry out repairs. Mr Chalk did not know what the fire brigade had moved.

60. He explained he had a reference number from the fire brigade and understood they had attended and turned the water off for the whole building although he himself was not there. He stated the tenants downstairs had told him the police had been called. Mr Chalk had no contact with the police.

61. Mr Chalk confirmed he was happy with the letter sent by Mr Barnes to Mr Phillips on 15th November 2023 (Vol1[85]). Some of the information Mr Chalk provided and other information came from elsewhere.

62. Mr Chalk stated he tried to get access but Mr Phillips would not give him access to undertake works. He accepted no works had been undertaken as a result.

63. Mr McLean submitted that the Tribunal had to be satisfied to the criminal standard of proof that an offence was committed and it was for Mr Phillips to satisfy that burden. He submitted even on Mr Phillips' best case this was not made out.

64. Mr McLean suggests that when Mr Chalk has been made aware of disrepair he has taken action. He suggests even the Council accepted that it was Mr Phillips denying access which prevented works (see Vol1[128]).

65. The Tribunal provided Mr Phillips an opportunity to reply.

66. He suggests the letter from Mr Barnes, the Respondents solicitor of 15th November 2023 speaks for itself. He suggests there was disrepair pre commencement of the tenancy. He invited the Tribunal to not accept Mr Chalks version of events.

67. The Tribunal checked and both parties confirmed they had made all submissions they wished to make.

68. The Tribunal noted both parties had made requests for costs orders to be made pursuant to Rule 13. The Tribunal adjourned to allow each side to prepare their submissions. At this point it was identified that the Applicants costs submissions (said to be at Appendices 6 of Volume 1 of the bundle were not included) were not in the bundle before the Tribunal. Mr Phillips had copies and copies were taken by the Tribunal.

69. Upon resumption Mr Phillips added to his written submission. He suggests that the Tribunal has a discretion and the Respondent has behaved unreasonably. He suggests the case began on the 3rd October 2022 when Mr Chalk was told of repairs in the inventory and took no action.

70. He explained he had undertaken a large amount of work and produced his calculation within his statement on the basis of £19 per hour being the Litigant in Person rate allowed in County Court proceedings. He reckoned the time spent was for 2 people (him and his son) working 8 hours a day, 5 days a week for 16 weeks giving a figure of about £12,000. This was the sum he was seeking.

71. Mr McLean then made submissions relying upon his written submissions within his skeleton.

72. He suggested even the Tribunal found the initial application unclear and hence Mr Phillips was directed to provide a short statement in reply. In response Mr Phillips had submitted some 99 pages of statement and attachments. He suggested Mr Phillips had adopted a scattergun approach to the application raising many matters which were irrelevant. This had caused the Respondent to unreasonably incur expenses in dealing with the same.

73. Further the bundle was not in accordance with the directions.

74. Mr McLean highlighted the Second Applicant had not attended. Further Mr Phillips did not have a copy of the paginated bundle and he had not prepared for the hearing.

75. Mr McLean relied upon the various emails which Mr Phillips accepted he was responsible for which were voluminous and not becoming of litigation.

76. Mr McLean did not have a costs schedule and so the Tribunal directed that the Respondents must send to the Applicant and the Tribunal by the 5th September 2024 the Schedule and any representations as to the Quantum. The Applicant must then respond by 13th September 2024.

77. The Tribunal directed it would then determine all the applications and issue a single decision thereafter once the panel had reconvened to consider the additional submissions.

78. The Tribunal then concluded.

## Decision

### General

79. The Tribunal in making this decision has had regard to the papers filed. These are the two electronic bundles, the Applicants costs submissions copies of which were provided at the hearing and the Respondents skeleton argument. Subsequently we have received additional submissions as to costs and an application from the Applicant to strike out the Respondent's claim for costs. We have considered all carefully but only refer to those documents which we consider relevant to the issues before us.

80. Equally in reaching our decision we confine ourselves to considering relevant matters and only make findings on relevant matters. The bundles contained much information which was extraneous to these issues and to which we do not refer.

81. At the start of the hearing we considered an application made by the Applicant which suggested that the Respondent had not used the correct email addresses. The Tribunal was not clear as to what the Application referred to. We noted the Applicant sought a striking out of the Respondent's case. It was however clear all parties had received the bundles and were in attendance. We could identify no prejudice to the Applicant. We were satisfied the hearing should proceed and no order should be made.

Refusal of Respondents Strike Out Application

82. The Respondents renewed their application to strike out the case. It was suggested given the directions provided that if a bundle was not supplied in compliance with the directions the claim would be struck out, so the Tribunal had to strike out the Applicants case if it was satisfied the bundle was not in compliance.

83. The bundle was not strictly in compliance with the direction on the basis it consisted of two pdf bundles without complete pagination. It appeared that the copy sent to the Respondent was also late.

84. However the Tribunal refused to strike out the case and these are our reasons.

85. A claim is not struck out until a notice of strike out is given by the Tribunal. Such notice must notify the parties of the right to appeal or seek reinstatement as appropriate dependent upon the grounds upon which the application was struck out. In this particular instance the Applicant could have made an application to reinstate.

86. Under the Rules the Tribunal can manage its own procedures and case management cases including waiving requirements within directions. We are satisfied that on the facts of this instant case, principally given there was a bundle containing all material both parties relied upon and a hearing was fixed it was in the interests of justice to allow the matter to proceed to ensure a final determination was made. In so doing we considered whether or not we would have reinstated the case and are satisfied even if the case was struck out we would have reinstated the same. Taking account of all matters we were satisfied the Respondent's application that the claim was struck out should be refused.

87. For those reasons we refused the Respondent's application and proceeded to hear the substantive application for a rent repayment order.

Rent Repayment Order

88. We refuse to make a rent repayment order.

89. Mr Phillips raised many matters within his original application and also within his skeleton argument (Vol1 [28-36]). At the start of the hearing

the Tribunal agreed with the parties what were the two offences being alleged upon which a rent repayment order may be made.

90. Mr Phillips raised various other matters such as issues over the deposit. Whilst it may be these give rise to other claims before different forum we are satisfied that they are not offences which can lead to a rent repayment order being made under the relevant provisions of the Housing and Planning Act 2016. We have stood back and considered if there were any other offences but are satisfied the only offences of which there are allegations made by the Applicants are offences under the Criminal Law Act 1977 and the Protection from Eviction Act 1977.

91. We remind ourselves that the test is the criminal standard of beyond reasonable doubt. It is for the Applicant to satisfy us the offences are made out. It was unfortunate that the Applicant did not have a copy of the paginated bundle, the Applicant did not seem to understand that it would be for him to present the case he was advancing. We noted the Applicant seemed ill prepared for presenting his case and throughout the hearing declined to look at pages within the bundles he had supplied.

92. Turning firstly to the Criminal Law Act 1977 section 6(1). For the offence to be made out, a person without lawful authority must use or threaten violence to obtain entry.

93. Mr Phillips relied upon the events of the morning of 7th October 2023.

94. We find that both parties agreed that there was a flood from the Property effecting other parts of the building. Mr Phillips accepted he was woken by the fire brigade. We find that the fire brigade did turn off the water supply for the whole building when they attended.

95. Mr Phillips and his son were arrested and we find that the Property was left unoccupied. We find that Mr Chalk did access the Property. We are satisfied that his entry was not unlawful. Under the terms of the parties tenancy agreement (see Vol1[211]) the Landlord is entitled to access the flat in an emergency without giving notice. We find that the circumstances were an emergency. Other flats in the building did not have water and the water could not be turned back on until works had been undertaken to the Property. In our judgment on the findings of fact we have made this situation is an emergency.

96. In any event given no one was present we are not satisfied there was any person to oppose entry. Further Mr Phillips in his evidence accepted no damage had been caused to the doorway in securing entrance to the Property. Where the evidence of Mr Chalk and Mr Phillips was different we prefer the evidence of Mr Chalk. We find that there was no use or threat of violence to obtain entry to the flat by Mr Chalk on the morning of 7th October 2023.

97. Mr Phillips also seems to suggest the letter from Mr Barnes dated 15th November 2023 Vol1 [85-94] and in particular the following paragraph:

*"In the early hours of 07 October 2023 you and your son, Ato Philips, had a physically violent altercation. During the course of this altercation either you or your son (or both) smashed the toilet from its fixings on the bathroom wall causing water to gush into the flat at full mains pressure. Given the volume of water, this immediately started to flood the flat and the property below."*

is evidence of a threat of violence. We find that nothing within this letter is a threat of violence to either Applicant. It explains the events as the Respondents and their solicitor understood them at that time.

98. We note that Mr Phillips seems to suggest the photograph at Vol1 [71] does not show the toilet pulled off the floor and broken. Whilst we are not required to make any finding as to the cause of this damage we are satisfied that this photograph does show the toilet pulled away from the floor and wall and to be broken. We accept the evidence of Mr Chalk that this is how he found the toilet and the bathroom upon his arrival and as shown in the photos in the bundle. This is consistent with the need for the fire brigade to have attended and turned off the water supply. Again we are satisfied that such damage is of itself sufficient to justify emergency access to undertake a repair. We are satisfied that such damage would have led to flooding unless and until the water was turned off.

99. We find that there is no evidence of an offence under Section 6(1) of the Criminal Law Act 1977.

100. We look now at the alleged offences under the Protection from Eviction Act 1977.

101. We are satisfied there was no evidence of an attempt to unlawfully evict the Applicants. As Mr Phillips explained he was able to re-enter the Property once released from police custody on 7th October 2023. He told the Tribunal he continues to reside at the Property despite an Order for Possession having been made by the County Court in the landlords favour.

102. Mr Phillips suggests that he has been subject to a Retaliatory Eviction. We understand that this is subject to proceedings in the County Court as to the validity of the notice served pursuant to Section 21 of the Housing Act 1988. We find that the Respondents have begun court proceedings and in so doing have followed a lawful route. Whether they will be successful is a matter for the County Court but in pursuing such proceedings we find this does not amount to a breach of the Protection from Eviction Act and we are satisfied that no offence has been committed. It appeared at the date of the hearing the Respondent had a possession order although we were told by Mr

Phillips he was orally renewing his application for leave to appeal such order following his application for leave to appeal having been refused on the papers.

103. Mr Philips refers to disrepair at the Property and that the failure to conduct repairs amounts to harassment. He suggests the Property was in disrepair when he first moved in and relies upon the Smartlet Inventory and his subsequent comments upon the same. We accept Mr Phillip's evidence that he gave these comments to Pemberton's as the landlord's agent. Equally we accept Mr Chalk's evidence that these were not provided to him by Pemberton's. We accept the Applicant's submission that the Respondent is deemed to have notice, the documents having been given to his agent. However we find no evidence that Mr Phillips made any requests to have this work undertaken. We find that Mr Phillips reported matters which he did not believe tallied with the inventory supplied to him as is required when one is supplied with an inventory at the commencement of a tenancy. We are not satisfied that anything in connection with this issue, even taking Mr Phillips case at its highest amounts to a breach of the Protection from Eviction Act 1977.

104. Further when the council wrote to the Respondent's suggesting works were required, Mr Chalk endeavoured to obtain access. Access was refused by the Applicants. We accept the Applicant had health issues, however he is required to provide access and he explained his son and girlfriend were often resident at the Property so access could have been given. It was the Applicant who was unreasonable in refusing such requests. We are supported in this conclusion by the decision of the local authority to take no further action on the basis that they were satisfied that access was being denied.

105. We find that if there is any disrepair (and we do not make a finding) the landlords' actions in trying to deal with the same are reasonable and do not amount to harassment of the Applicants.

106. Mr Phillips also appears to rely upon the letter of 15th November 2023 referred to above and the other correspondence from the solicitors. Mr Chalk in his evidence said some of the information for that letter came from him but not all. Mr Chalk suggested Mr Barnes may have made other enquiries and spoken to other people in preparing the same. Mr Phillips suggested that a solicitor would only include information provided by his client. We do not agree. Whilst it would be for Mr Chalk to provide the instruction to his solicitor as to what he required them to do it may be that part of that was to conduct investigations including talking to others and to include such information obtained in the letter prepared to go to Mr Phillips. In any event we are not clear what point Mr Phillips wished to make.

107. We have read all the correspondence and we are satisfied that this does not amount to harassment of the Applicants. It is clear the solicitors were instructed to write in respect of certain events and to

take action to secure possession. We are satisfied that this is a legitimate aim of the Respondents and the documents make clear they have followed appropriate procedures in issuing proceedings in the County Court which Mr Phillips has defended as is his right.

108. The Applicant refers to various other matters within his skeleton argument. We have considered each and every item. We are satisfied that none of these matters are relevant to the issues we have to determine and none amount to harassment.

109. We are satisfied that no offence pursuant to the Protection from Eviction Act 1977 has been committed by the Respondents.

110. Finally we have stood back and considered the totality of the evidence which we heard. We have considered if anything gives rise to an offence which may allow the Applicant to seek a rent repayment order. We are satisfied there is nothing within the evidence which does.

111. Given we have found that there is no evidence of a criminal offence which allows an RRO to be made we dismiss the application.

112. We record that even if there was evidence of either of the criminal offences alleged sufficient to satisfy us beyond reasonable doubt in the unusual circumstances of this case, including the ongoing County Court possession proceedings and the Applicants own evidence that no rent has been paid since November 2023 we would have exercised our discretion as to whether or not to have made an RRO and not made any order.

Costs

113. Both parties have made further submissions seeking costs orders pursuant to Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Mr Phillips also has made a case management application dated 6th September 2024 seeking to strike out the Respondent's application for costs.

114. Under Rule 13 we must be satisfied that a party has acted unreasonably in bringing, defending or conducting any proceedings. The test was further explained in the case of Willow Court Management Limited v Alexander [2016] UKUT 290 (LC) which the Respondent referred to within their submission. We have considered carefully the Rules and this case.

115. We turn to the Applicant's application for costs. We refuse to make any order. We are not satisfied that the Respondents have at any point acted in a manner that could be said to be unreasonable. We note they were wholly successful in defending the claim before this Tribunal. They engaged entirely properly with these proceedings.

116. The Applicant refers to what he says are three "key considerations". In respect of the first two he refers to damage being caused to personal property. We have made no such findings and we are satisfied in respect of matters raised in these proceedings and which we have been required to adjudicate upon the Respondents have acted reasonably and properly throughout. We have found no criticism of the Respondent's conduct.

117. The Applicant also refers to the interests of justice and an award being compensation. That is not the test. We are bound by the requirements of Rule 13 and only in those unusual circumstances does this Tribunal make awards of costs in cases such as this.

118. Again we are conscious that the Applicant is a self representing party. We have stood back and looked at the case in the round. We are not satisfied that the Respondents conduct can be criticised as referred to above and so we decline to make any order pursuant to Rule 13 in favour of the Applicant's.

119. We consider the Applicant's application to strike out the Respondents application for costs. It appears the Applicant suggests the Respondent's solicitors may not have strictly complied with the directions referred to above. We note the Respondent's solicitors did send all documents to the Tribunal in accordance with our directions. There may have been some short delay in supplying documents to the Applicants. However it is clear all have been received by the Applicant.

120. It is correct directions should be complied with and strike out is an option open to this Tribunal under our Rules. We must however weigh this up having particular regard to our overriding objective and the fact that our directions did not indicate we would strike out an application if there was any non compliance. We are satisfied that we should not strike out the application. We are satisfied there is no prejudice to the Applicants who have been able to respond to the application and if there is any failure to comply we waive the strict requirement.

121. We have considered the application for costs. We are satisfied that the Applicant Mr Courtney Phillips has acted unreasonably in bringing, pursuing and conducting this application.

122. Mr Phillips either for himself or by persons using his email address for which he accepted he was responsible entered into unreasonable correspondence with the Respondents. Numerous examples are included within the two hearing bundles including several youtube video links. At Resp[119] Mr Phillips states:

> "*...and my cases have only just begun."*

123. The Respondent's suggest that this and other emails are effectively threats from Mr Phillips that he intends to pursue extensive

litigation against the Respondent to procure a financial settlement. We are satisfied having regard to the correspondence that this was the aim of Mr Phillips. This on its own is in our judgment unreasonable conduct.

124. Turning to these proceedings themselves Mr Phillips has adopted a scattergun approach. We remind ourselves that he is a self represented party but it is plain he is familiar with the process of litigation. Further the original directions highlighted that it was unclear what offences the Applicants were relying upon in seeking a rent repayment order. Those directions dated 2 July 2024 included a list of the specified offences for which a rent repayment order may be made. The Applicants were invited to submit a brief statement clarifying the offences relied upon. The document supplied continued to refer to various matters which were not rent repayment order offences. With witness statements and attachments it ran for in excess of 110 pages and as set out above included mainly extraneous matters. All of which the Respondent and those advising was required to consider.

125. We also note that the Applicant failed to provide a bundle in accordance with the Tribunal Guidance. At the hearing he did not have a copy of that paginated bundle and repeatedly declined to look at documents when asked. This is a yet further example of Mr Phillips' unreasonable conduct.

126. Taking account of the above and generally we are satisfied that the bringing of these proceedings, pursuing them and the conduct of the same by the Applicants was unreasonable.

127. We are satisfied on the facts of this case that such conduct does merit us considering making an order for costs. In particular we are not satisfied that Mr Courtney Phillips had any legitimate expectation in these proceedings save to cause the Respondents to be involved in further inconvenience, litigation and to incur further legal costs. We are satisfied that Mr Phillips should pay the costs of the Respondent given that we find the whole proceedings suffered no purpose.

128. We have been provided with a statement of costs from the Respondent's totalling £16,206. The costs are high. However substantial work has been undertaken by those representing the Respondents including attendance at a hearing and subsequent submissions. The solicitors have confirmed that they have had separate files for this application separate from other litigation. We have considered the schedule and look to summarily assess the same. We find that the Applicant should pay to the Respondent within 28 days the sum of £16,206.

## RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

ANNEX A

## Explanation of the Tribunal's jurisdiction to make a Rent Repayment Order

1. The issues for the Tribunal to consider include:

Whether the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences:

| | *Act* | *Section* | *General description of offence* |
|---|---|---|---|
| 1 | Criminal Law Act 1977 | s.6(1) | violence for securing entry |
| 2 | Protection from Eviction Act 1977 | s.1(2), (3) or (3A) | unlawful eviction or harassment of occupiers |
| 3 | Housing Act 2004 | s.30(1) | failure to comply with improvement notice |
| 4 | Housing Act 2004 | s.32(1) | failure to comply with prohibition order etc. |
| 5 | Housing Act 2004 | s.72(1) | control or management of unlicensed HMO |
| 6 | Housing Act 2004 | s.95(1) | control or management of unlicensed house |
| 7 | Housing and Planning Act 2016 | s.21 | breach of banning order |

Or has a financial penalty[1] been imposed in respect of the offence?

(i) What was the date of the offence/financial penalty?

(ii) Was the offence committed in the period of 12 months ending with the day on which the application made?

(iii) What is the applicable twelve-month period?[2]

(iv) What is the maximum amount that can be ordered under section 44(3) of the Act?

[1] s.46 (2) (b): for which there is no prospect of appeal.
[2] s.45(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

(v) Should the tribunal reduce the maximum amount it could order, in particular because of:

(a) The conduct of the landlord?

(b) The conduct of the tenant?

(c) The financial circumstances of the landlord?

(d) Whether the landlord has been convicted of an offence listed above at any time?

(e) Any other factors?

2. The parties are referred to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

Important Note: Tribunal cases and criminal proceedings

If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.