FIRST-TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/HMF/2024/0610**
Property	**:**	**Room 2, 5 Niagara Avenue, London, W5 4UD**
Applicant	**:**	**Maya Re Yanagi Jagger**
Representative	**:**	**In person**
Respondent	**:**	**(1) Ms. Barbara Safia-Rad** **(2) Colin Bibra Estate Agents Ltd** **(3) Rolfe East Letting & Management Ltd**
Representative	**:**	**(1) Mr. Stewart – solicitor** **(2) Mr. Levy and Ms. Szreter (representatives)** **(3) N/A**
Type of application	**:**	**Application for a rent repayment order by tenant – sections 40, 41, 43, & 44 Housing and Planning Act 2016**
Tribunal members	**:**	**Judge Sarah McKeown** **Mr. S. Wheeler MCIEH, CEnvH**
Date and Venue of hearing	**:**	**2 May 2025 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**12 May 2025**

DECISION

Decision of the Tribunal

(1) The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under section 1(3) and s.1(3)and s.1(3A) Protection from Eviction Act 1977.

(2) The Tribunal has determined that it is appropriate to make a rent repayment order.

(3) The Tribunal makes a rent repayment order in favour of the Applicants against the Respondent, in the total sum of £3,250, to be paid within 28 days of the date of this decision.

(a) The Tribunal determines that the Respondent shall pay the Applicants an additional £165 as reimbursement of Tribunal fees to be paid within 28 days of the date of this decision.

Introduction

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").

Application and Background

2. By an application (A1) dated 13 August 2024 the Applicant applies for a Rent Repayment Order ("RRO").

3. The application was brought on the ground that the Respondents have committed the following offences in respect of **Room 2, 5 Niagara Avenue, London, W5 4UD** ("the Property"):

   (a) an offence of having control or management of an unlicensed House in Multiple Occupation ("HMO") for failing to have an HMO licence ("licence") - section 72(1) of the Housing Act 2004 ("the 2004 Act");
   (b) an offence of using violence to secure entry contrary to s.6(1) Criminal Law Act 1977;
   (c) an offence under s.1(2), (3) or (3A) Protection from Eviction Act 1977.

4. The application states, in summary:

5. 5 Niagara Avenue, London, W5 4UD ("the House") is a house. The House was an unlicensed HMO for a long period before and during the time the Applicant lived there. There was "poor control and poor management". The Applicant moved in to the Property in June 2021 and she moved out in March 2024. The Applicant was let a room below regulation size which was not fit for an adult to live in. The Applicant did not receive a contract when she moved in and did not receive one until about the time that there was an attempt to illegally evict the

tenants in January 2023 and that was a joint tenancy agreement. After the attempted eviction, the Applicant received a contract for a sole tenancy at the Property. The Respondents knew the House was an unlicensed HMO and the First Respondent did not wish to pay a licence fee. During the Applicant's time at the Property, agents acting on behalf of the landlord would attend unannounced; maintenance work such as redoing the front driveway compromised access to the House and parking, making it a dangerous constructions site, and would take place without warning or a schedule. When the Applicant requested a schedule, she was issued an eviction notice on the same day (23 September 2023). The Applicant was evicted "by the back door" as the rent soared and she received emails every day full of abusive language, threats and unfounded accusations. The Applicant paid £390 inclusive of bills when she first moved in, to the tenant Rebecca Corlett, then another tenant called Felicity Hillen. Rent was paid to one of the tenants when she first moved in and that did not change until the sole tenancy agreements were issued. The rent for the entire House at that time was £2,400pcm. When she was given a new sole tenancy agreement in May 2023, the tenancies became separate and she paid £352pcm. Due to the size of the bedroom, this was not legal. She wishes to claim 10 months of rent from May 2023 to March 2024 (£3,520).

6. In the Applicant's bundle (A57) there is "An Expanded Statement on the reasons for my application". This states, in summary:

(a) The allegations made in the application are repeated;
(b) Allegations of multiple illegal and retaliatory evictions, unauthorised visits and trespass by the landlord and agents acting on her behalf, no HMO licence, threats of violence to personal property, lack of management, charging for disposal of her personal property, harassment, renting of a room below HMO regulation size;
(c) The House was run by the First and Second Respondents. The First Respondent had an agent, Nabeel Khan;
(d) Rent was initially paid to Ms. Corlett Wood, then Ms. Hillen (until March 2023) and then the Second Respondent;
(e) After the sole tenancy agreement, in May 2023, the Applicant paid £352pcm and it was paid into a Monzo account managed by the Applicant;
(f) The Second Respondent stopped acting for the landlord;
(g) The Applicant learned that the bedroom size was not legal during a Regulatory Services visit from Ealing Council;
(h) The First Respondent threatened to dispose of the Applicant's belongings unless they were all put in her bedroom. Over time, items were broken or disappeared – she was billed for removal of items. When she did not pay, interest was added on top;

(i) The Applicant was accused of vandalism and anti-social behaviour, threatened with a s.8 notice for moving a fire extinguisher and a threat to call the police for moving a trimmer.

7. At A59, the Applicant makes various allegations, including the following:

(a) 6 September 2023 – destruction of garden and parling space;
(b) Drilling at weekends;
(c) No warning as to works;
(d) Not acting in workman-like manner;
(e) 12 September 2023 – back gate removed and not replaced for weeks;
(f) 13 September 2023 – threat to remove facilities such as bike storage;
(g) 6 October 2023 – breaking of picture frame, removing sign in bedroom, mirror and chairs;
(h) 16 October 2023 – destruction of back garden;
(i) 22 November 2023 – billed for removal of belongings (A65);
(j) Excessive emails making demands and at unreasonable times;
(k) Cousin of the First Respondent visited unannounced;
(l) 12 September 2023 – Applicant told would need to pay extra to access the shed;
(m) Interference with the back garden;
(n) Landlord began to demand the Applicant not use parts of the Property and if not, threat to remove belongings;
(o) Emails contained accusations;
(p) 23 September 2023, s.21 notice issued as retaliatory measure (A235);
(q) 8 October 2023 locks were changed (A66), Applicant forced to sign document stating that she would have to pay money if lost keys (A67);
(r) Landlord began to ask when she was leaving;
(s) 14 January 2023 issued with s.8 notice;
(t) 28 November 2023 by Ms Willis-Hodgins from Ealing Council Property Retaliatory Services – series of issues identified, such as installation of fire doors, garden gate to be used as fire exit, balcony rail and a new solution for bannisters on the stairs;
(u) There were five people living at the Property and always more than 2 separate households. From April 2023, the Applicant had a sole tenancy agreement;
(v) The landlord applied for a licence in August 2023;
(w) Copy of the licence was not displayed.

8. There is a witness statement from the Applicant at A115, which states, in summary:

(a) She contacted Mr. Ribiero in June 2021 after seeing an advertisement for a room on Spareroom;
(b) She contacted Mr. Sandhu, a letting agent at Colin Bibra Services Limited about an application to move in to a bedroom;
(c) On 9 June 2021, she received a message from the Second Respondent stating that the landlord was happy for her to take Mr. Ericson's place at the Property, and to pay Mr. Ericson his share of the deposit directly – A135;
(d) On 10 June 2021, the Second Respondent confirmed that the First Respondent was not prepared to sign a tenancy agreement;
(e) On 10 June 2021, the Applicant paid the deposit to Mr. Ribiero;
(f) The Applicant decided to go ahead, despite there not being a tenancy agreement;
(g) She paid her rent to Ms. Corlett Wood;
(h) She believed the First Respondent was aware of her tenancy;
(i) Later, she paid her rent to Ms. Hillen;
(j) On 18 August 2021, she contacted Dalvir (of the Second Respondent) to ask about various matters concerning fire safety;
(k) The director of the agency conducted an inspection on 15 January 2022;
(l) On 5 March 2022, she contacted the Second Respondent about a list of repairs;
(m) Maintenance issues were reported to the Second Respondent's new property manager, Ms. Campbell;
(n) There was a house inspection on 23 September 2022 with Nabeel Khan from the Second Respondent and during that inspection, it was said that there was no licence for the Property;
(o) On 6 October 2022, the Applicant requested the First Respondent's email address to contact her directly;
(p) On 13 October 2022 a deposit certificate was sent showing that the deposit was protected – A140;
(q) A tenancy agreement was sent in November 2022 but it had a random date and some of the names were wrong;
(r) On 22 February 2023, the Applicant was informed that in Ealing, houses with three or more occupants required a licence and an advisor could not find a licence for the house in the system;
(s) There was another property inspection on 16 March 2023;

(t) From 21 April 2023 to 21 May 2023, the Applicant collected rent and paid it to the agency;

(u) She signed a new sole tenancy agreement on 25 May 2023 – the rent was first paid to the Second Respondent, then the Third Respondent;

(v) She received an email on 28 July 2023 from the First Respondent directly (A146). She later received emails authorising Ms. Ballinghall (the First Respondent's cousin) to act as agent on her behalf;

(w) On 11 August 2023, the First Respondent said that the smoke alarms would be tested on a monthly basis by her cousin;

(x) On 12 September 2023, Ms. Ballinghall entered the House with a key;

(y) On 19 September 2023, the Applicant was informed that the Second Respondent was no longer acting for the landlady (A155);

(z) Ealing Council said that an application for a HMO licence was made on 21 August 2023;

(aa) The locks were changed on 16 October 2023 and the Applicant had to sign a document concerning loss of keys;

(bb) On 12 December 2023, the Third Respondent visited the House and entered the Applicant's bedroom, when they were meant to visit on 14 December 2023;

9. There is a further witness statement from the Applicant at A132 setting out various allegations. There is a further document at A167 going through the conduct relevant to the amount of any RRO.

10. There is a witness statement from Ms. Brighid Jagger (A165), the Applicant's mother.

11. On 25 October 2024 (A46) the Tribunal issued Directions for the determination of the application, providing for the parties to provide details of their cases and the preparation of a hearing bundle. It is noted in the directions that it was asserted that the landlords committed an offence of having control of or managing a house in multiple occupation that was required to be licenced but was not so licensed and was below the legal minimum size for letting. The Applicant also asserts that the landlord committed the offence of harassment and seeks an RRO for the period May 2023 to March 2023 in the sum of £3,520. The issues identified were:

- Whether the tribunal is satisfied beyond 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

- Whether, on the balance of probabilities, the landlord has a 'reasonable excuse' for having committed the relevant housing offence on which the financial penalty is based, such that they have a defence to it.
- Whether the conduct relied upon in that defence, even if not enough to establish a reasonable excuse, nevertheless justifies a reduction in the amount of the penalty to be imposed.
- Did the offence relate to housing that, at the time of the offence, was let to the tenant?
- Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
- What is the applicable 12-month period?[1]
- What is the maximum amount that can be ordered under section 44(3) of the Act?
- What account must be taken of:
  (a) The conduct of the landlord?
  (b) The financial circumstances of the landlord?
  (c) Whether the landlord has at any time been convicted of an offence shown above?
  (d) The conduct of the tenant?
  (e) Any other factors?

Documentation

[1] s.44(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.

12. The Applicant has provided a bundle of 314 pages (referred to as "A…") as well as a "Brief Response to Respondents for Determination" of 88 pages (referred to as "AR…"). The Applicant also provided a Skeleton Argument.

13. The First Respondent has provided a bundle of 132 pages (referred to as "1R…").

14. The Second Respondent has provided a bundle of 100 pages (referred to as "2R…"). The Second Respondent has provided a short, email response to the Applicant's Skeleton Argument.

15. The Tribunal has primarily had regard to the documents to which it was referred to during the hearing.

The Position of the Respondents

16. The First Respondent's Statement of Reasons (1R1) states, in summary:

(a) There were no threats of violence, or actual violence – the First Respondent was entitled to enter the common areas without notice, but she made efforts to give 24 hours' notice: 24 hours' notice was always given in respect of the bedrooms, except for emergencies;
(b) There was no unlawful eviction or harassment;
(c) The Applicant has failed to prove that the Property was a HMO and that a licence was required from 13 August 2023-13 August 2024;
(d) If one was required, the First Respondent had a reasonable excuse and the same applies in respect of control and management of the house under s.95(1) HA 2004. She was living abroad, her husband was ill and she placed the matter in the hands of the Second Respondent.

17. The First Respondent has compiled a document setting out the Applicant's alleged outstanding liabilities (1R5).

18. The First Respondent's witness statement (1R7) states (in summary):

(a) From 2009-April 2023, the House was let as a single-family household and was managed by the Second Respondent;
(b) The occupants changed without her knowledge or permission. During that process, the front sitting room was turned into a fifth bedroom. The tenancy

agreement at A84 (the joint tenancy agreement) was not sent to her for approval by the Second Respondent. Until November 2022 she was receiving rent from one main tenant;

(c) The Second Respondent started the process of applying for a HMO licence in October 2022. It was her understanding that from May 2023, the licence was in process;

(d) She deals with the works to the front garden at para. 9-26;

(e) It is not harassment to send emails;

(f) The Second Respondent terminated the management contract in September 2023;

(g) The garden shed was always off-limits to the Applicant for personal storage;

(h) Garden maintenance was always part of the Applicant's responsibility;

(i) The Applicant occupied all common elements storage areas and a notice was sent out for personal items to be removed from common areas and for the kitchen to be tidy;

(j) An email was sent about vandalism for the reasons set out at para. 34;

(k) An invalid s.21 notice was served on 22 September 2023 and so a valid one was served in October 2023;

(l) The Applicant was not coerced into leaving the Property;

(m) No improvement notice, prohibition order or banning order has ever been served;

(n) The licence application was initiated between October 2022-January 2023 but there was an issued with it, once the fee was paid, the submitted application would count towards her having a licence and the fee was paid on 18 August 2023. The Second Respondent was paid and delegated to apply for the licence;

(o) The Applicant caused damaged to the Property and a schedule of damages is attached.

19. The Second Respondent has written a letter stating, among other things, that RRO's can only be applied for against landlords, referring to *Jepson v Rakusen* [2023] UKSC 9.

20. The Second Respondent states (2R1) that it was the managing agent for the House when the Applicant moved in. Due to frequent changes in tenants, without the knowledge or approval of the First or Second Respondents, it was challenging to establish who was actually living at the House. If Mr. Ericson advertised the room to find a replacement for himself, that was without the Second Respondent's consent. The Second Respondent has a lettings department and if they had been notified of the replacement, it would have taken the necessary steps. If Mr. Ericson requested a tenancy swap, the tenancy

assignment should have been signed. The Second Respondent was not aware of which room the Applicant moved into, as at the time the House was let as a whole, under a joint tenancy. It was understood that the Applicant paid her portion of the deposit directly to Mr. Ericson. It acknowledges the First Respondent's statement that the tenants who replaced each other during this period did so without the First Respondent's authorisation. The rent was paid by a lead tenant, not separately. The Applicant was included in the joint tenancy agreement from 21 March 2022-20 March 2023. The Second Respondent was advising the First Respondent on many occasions that a licence was required, and one was submitted. During the application process, it was discovered that the room rented by the Applicant was too small to meet HMO requirements. The Applicant refused to move to a bigger room due to the different in rent.

21. In respect of allegations about unannounced property visits, the Second Respondent did not receive any complaints from other tenants or evidence to support this. There was an incident of trespass by the First Respondent's relatives. The Second Respondent refused to serve a s.21 notice and then terminated the management services (2R59). In respect of the works, they were organised by the First Respondent and it was outside the Second Respondent's control to schedule works.

22. There has been no documentation or response from the third Respondent.

The Hearing

23. The Applicant (acting in person) attended the hearing with her mother. The First Respondent attended and was represented by Mr. Stewart (solicitor). Mr. Levy and Ms. Szreter attended from the Second Respondent. The Third Respondent confirmed that they would not be attending the hearing.

24. At the start of the hearing, the First Respondent was asked if she accepted that the House needed to be licensed. Mr. Stewart said that the Applicant had only produced a list of names of people said to live there, and it was accepted that there were 4 individuals living there, but the First Respondent had no knowledge of their relationship. It was accepted that they were all on separate tenancy agreements.

25. The Tribunal asked whether it needed to listen to the recordings, and the Applicant and First Respondent stated that the Tribunal could work off the transcript at AR46. The Second Respondent objected to the recordings saying that they only related to the allegation of trespass and there was no consent to being recorded and no legal basis had been presented as to why they should be considered.

26. The Applicant had relied on a case in her Skeleton Argument as to why she said the Tribunal should have regard to the recordings (at least in so far as it should

consider the transcript): *Vaughan v LB of Lewisham* (no citation given). The Tribunal pointed out that in the case it had found, it appeared that the EAT had not had regard to the covert recordings. When asked on what basis she said that the Tribunal should have regard to them, she relies on the "Housing Act" and the right to quiet enjoyment. She said that they went to show that there were a number of people living in the House, they talked about the harassment and illegal eviction, trespass and change of locks.

27. Mr. Stewart said that the Tribunal's Procedural Rules (The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) said that whether a document would be admissible in the County Court did not matter and so case law was going to be of limited assistance. It was said that the transcript records a conversation which demonstrates a belief by the Applicant and the Second Respondent that the First Respondent was not entitled to access common parts of the House and the fact of that belief was going to be relevant.

28. The Applicant accepted that the Tribunal could not made a RRO as against the Second and Third Respondents, as agents.

29. The parties were asked what "type" of licence was relevant here. The Applicant said that she believed it was a mandatory licence. Mr. Stewart conceded that if there were at least 3 people (in separate households) living in the House, the additional licensing scheme would apply.

30. The Tribunal then heard from the Applicant. She relied on her witness evidence in the bundles. She confirmed that the document at AR66 set out the occupants of the House and that none of them were related. She said that she had never met any of them before she moved in and they were all living in separate households. She also confirmed that they all lived at the House "full-time". When asked about how well she knew the other occupants, she said that it varied depending on who they were, she did not know them until she moved, some were already there, and they all had different moving in dates. She confirmed that they all paid their rent separately until April 2023. That she signed a sole tenancy agreement in May 2023 and before that, they had a joint tenancy.

31. Mr. Stewart then asked her some questions.

32. She agreed that a large part of the wider dispute was about her belief that the First Respondent had to give notice to access common parts of the House. It was put to her that it was her understanding that, even after they had all signed sole tenancy agreements, the First Respondent had to get their permission to enter the common parts of the House and she agreed with this. It was put to her that it came through from the transcript that this was something which the Second Respondent seem to think that as well, she said that it said the same thing in her contract. It was put to her that there was a change when they moved to "room lets", but she said that 24 hours' notice was required for access to the House. She said that they had had a meeting with the Second Respondent after the First Respondent's cousin had come to the House, and accessed a bedroom

after making an excuse to check up on them (saying she needed to check the gutters) whereas the real reason was set out in emails, that the First Respondent thought there was something going on in the House, and it was not an emergency and could have waited. The cousin let herself in and the Applicant was the only one in and she felt like she had no control. Mr. Stewart said that her housemate whose bedroom had been entered was not here, and the Applicant said that it was talked about in the transcript. It was put to her that it was not relevant as it was not her, she said it could have been her.

33. The Applicant was asked about the shed and it was put to her that she had had "plans" for it. She said that it would have been nice to do something nice about it rather than it just storing stuff, and the First Respondent had wanted it cleared out. It was put to her that she did not have a contractual right to make the shed her own, she said that she was not planning on that. It was put to her that she could use the material in the shed but it was not part of her tenancy, she said that it was not specified in the agreement. It was put to her that a reasonable tenant would have reached out to the First Respondent and started a conversation rather than just do what they wanted to do and complain when the First Respondent objected, she said that the First Respondent had asked the tenants to clear the shed over years, and eventually she did. She said that she waited until some people had moved out as she wanted to make sure she was not throwing their belongings away.

34. It was put to her that the First Respondent was entitled to tell her not to use the shed. The Applicant said that she did not see how creating an office space was illegal. It was put to her that it was not illegal for the First Respondent to say that she could not use it. The Applicant said that for a long period of time, she had no contact with the First Respondent and she tried for months. The First Respondent replied after 6 months and it was difficult to get hold of her and this was not most pressing issue. The Applicant said that she could have gone to the First Respondent.

35. She was asked if her complaint was a lack of response from the First Respondent to her requests. She said not about the shed specifically, but about what happened if certain households stayed, but when it would have come to actually asking the First Respondent to do something with the shed then she would have approached her or the Second Respondent. She said that she understood the personal reasons why the First Respondent was busy, but that she (the Applicant) would not have just done what she wanted without speaking to anyone.

36. It was put to her that she had cleared the shed of things which did not belong to her. She said that the First Respondent told them that the items belonged to a previous tenant.

37. It was put to her that she was served with a s.21 notice, proceedings were started in County Court and in the end she moved out voluntarily rather than by eviction by bailiffs. She said that it was not really voluntary. She had her lost key to the property. The First Respondent talked about finding the key through

a housemate, but rather than contact her and say the key had been found, that Roxanne thought it was her (she was the only other housemate at that point),) she was locked out of her house, and she knew something had happened with her key. The First Respondent talked about deciding to keep hold of the key and she wanted the Applicant to pay for another key.

38. It was put to her that her evidence talked about her decision to leave in financial terms, and that the reason she no longer lived there was that it was unaffordable. She said that it was in court and she was going to wait for decision. She said that if one looked when the key was found, it was about 5-6 days before she ended up moving out. She said that she could not have paid rent for whole house as that would have been £2,800 pcm plus bills.

39. The Applicant was asked if there was an email in which the Applicant was asked to pay the rent for the House, rather than just the utilities, but the only email referred to was the one that referred to utilities (AR58).

40. The Applicant admitted that she began packing up her things in February 2024. She denied that in February she changed the utilities into the First Respondent's name without her authorisation and she denied that she changed how the utilities were registered at that time. She denied that she had moved out as the Property was not affordable any more.

41. She admitted that she had not called any of her old housemates as witnesses. She accepted that she relied on allegations that she said they witnessed and events she said took place where her old housemates would have seen or heard things. It was put to her that it was her task to prove events happened and that she should have called witnesses to support her case. She said that she could have, but did not think they would want to relive the experience. She said that one of them had panic attack in House, when the First Respondent's cousin took photographs of the outside of house as they did not know if she was coming inside house. Another one was psychiatrist and worked with children and he became unwell and moved out before he needed to. The Applicant did not want to force them to come and talk about it.

42. It was put to her that the Tribunal did not know what her ex-housemates thought. She said that the First Respondent was aware that Mr. Lynch was moving out and that he and Ms. Beissert had written joint complaint to the Second Respondent about the First Respondent. She said that if they were there, they would back her up. She denied that she had not called them as witnesses as they had fallen out.

43. It was put to her that, in terms of when she first moved into the House, she had referred to a person who used to work at the Second Respondent and that it looked as though he was acting rogue and independent. She said that she could not say that, she did not work for the Second Respondent, but she believed that they were aware of him, he worked with them and she was sure he spoke to the First Respondent. It was put to her that it appeared that his colleagues did not

know what he was up to and she said that she could no say and she was no sure what had happened.

44. It was put to her that in her Reply, it came across that she was sceptical about the evidence from the Second Respondent. She said that they had a very high turnover in the company, and she felt like might have been miscommunication, and she felt they were not being entirely honest. She said that it could be case that he was working from home but she knew she had sent stuff to them.

45. She agreed that she had complained in February 2023. She said that the essence of it was that she wanted to speak to someone as they had been told to move out and she had gone to Ealing Advice Centre, who told her that there was no licence and 5 people living at the House so they did not need to move out. She spoke to her housemates and but no one from the council would put the advice in writing and she could not convince her housemates to stay. She contacted the Second Respondent to say 3 of them wanted to stay.

46. It was put to her that an allegation was that the dates in various documents produced by the Second Respondent were inaccurate. She said that she could remember why, it might have been when she going to apply for Universal Credit, she received a contract from the Second Respondent and it had a person's name on there which was wrong, which she told them.

47. It was put to her that she was living in the House before she had a sole tenancy agreement and that her evidence was that she thought that she was on joint tenancy with everyone else. She said that she was sent a contract, he said that contracts could be verbal but she had paperwork and as far as she was concerned, she was a joint tenant and they were all paying rent through one tenant.

48. It was put to her that when the sole tenancies were signed, something changed and what she was renting changed from the whole house to a room. She said probably. It was put to her that the core problem was that she and her housemates did not understand that this meant that she no longer had the right to refuse access to the common parts. She said that she never saw the licence and this was not explained.

49. It was put to her that the Tribunal had not heard from the other occupiers and so did not know about the permission that might have given to enter by the First Respondent. She said that in the transcript, Mr. Lynch spoke about how the works went on.

50. It was put to her that there was nothing in the evidence to suggest an attempt by the First Respondent to drive her out of the Property, that she was given lawful notice and the Property became unaffordable, and this was why she left. She said that before the notice they were asked to leave (she clarified that this was before they had signed the sole tenancy agreements).

51. It was put to her that she did not have direct evidence about the licence application and what went on with the Second Respondent. She said that she had seen that the Second Respondent had put in an application on 21 August 2024. She was asked if she was aware that there was a long history behind that and that there was a draft application earlier which had not been submitted. She said that it was a strict liability offence. It was put to her that she was not involved in that process, and she could not give evidence on it. She said that she spoke to Ealing Advice Service the year before, when there were already 5 people living there and they told her the House did not have a licence and it should.

52. Mr. Levy then asked the Applicant some questions as follows:

53. She was asked when she recalled being "unofficially" requested to leave. She said it was on 23 January 2023 (before she signed the sole tenancy agreement). She was asked what she meant by "unofficially" and she said that she had an email saying that either they all signed a joint tenancy or they all had to leave. She said that she was not aware that the First Respondent would not agree to having the HMO licence in her name. She said that she was not in a position to understand the relationship between the First and Second Respondents.

54. She was asked if she believed that Dalvir's conduct was questionable in terms of how he conducted himself generally. She said that a week before she found the House, she had paid a deposit for a different house and was then told someone else had come along and taken the room she had already paid for. She said that at the time she found him more professional than that but her standards for agents was low, but looking back she felt that something was not quite right about it but she could not put her finger on it. She said that he worked for the Second Respondent so she did not question it. She said that she did not like that she did not receive a tenancy agreement. She said that Dalvir said that the First Respondent did not want her to be on the tenancy agreement, but did not say that he did not want her to be, but she did not question it as she did not want to lose the room.

55. She was asked why she thought she was asked to sign a joint tenancy in 2023. She said that she did not know, the condition was that they all had to sign or leave, and that being on joint tenancy did not suit everyone.

56. She was asked why she had listed the Second Respondent as a Respondent. She said that she had read a lot about it, she did not know the relationship the Second Respondent and with the First, she was not sure where the rent was going or how it worked, if they were tied in to it.

57. The Tribunal asked the Applicant if she had always paid her rent. She said that it was shown in the bank statements and she was never pressed for the rent by the agents. She confirmed that the rent did not include utilities and that she was not in receipt of Universal Credit. She could not say when or whether she got a gas safety certificate. She thought she had received prescribed information about the deposit around the time of the joint tenancy agreement

but it was changed and updated and she got further information after signing the sole tenancy agreement. She thought she did receive an Energy Performance Certificate with the second s.21 notice. She received the How to Rent booklet when the court process was ongoing but not when she first moved in. She confirmed that she had filed a Defence to the possession claim (which appeared to be on the Accelerated Procedure).

58. She confirmed that there were locks on the bedroom doors, but only when she put them on. After the First Respondent had changed the locks, she was given a new one. Before she had put them on, there were no locks.

59. It was confirmed that the First Respondent did not wish to cross-examine the Applicant's mother as there was nothing in her witness statement that would go to the material issues. The Tribunal confirmed that it would not proceed on the basis that the Applicant's mother's evidence was agreed by the First Respondent and that if necessary, she could be called to answer questions at a later time during the day.

60. The First Respondent then adopted her witness statement and she was asked questions by the Applicant as follows:

61. Referring to 2R2, the penultimate paragraph, that they say the First Respondent was advised to get a licence on several occasions, and she was asked why. She said that she thought that they were why referring to the fact that she visited the House on 23 September 2022 and there were multiple people living there and a HMO licence was required so she asked them to proceed and on 6 October 2022 they put in an application. She thought it was December 2022 or January 2023 where she was sent a HMO application document that they were asking her to fill it in, and she was not able to as she did not know, the House was under management for about 20 years. She told them she was not able to answer the questions as to who was living there, the sizes of rooms. Also in January 2023, she got an email from the Second Respondent saying that LB of Ealing suggested that she had her name on the licence and in January her husband had a health issue (details were given, but we will not set them out). The First Respondent was unable to deal with it. She told the Second Respondent that she did not want to deal with anything so she told them that she did not want her name on the licence but to proceed. She was told the tenants were moving out and a licence may not be required and so it was put on hold. In March she was told some of tenants had moved out and some were staying so they needed to re-process the application. On 30 March 2023 she spoke to an agent, Ben, and confirmed that via email. She agreed to pay for the licence. In April the Second Respondent ordered floor mapping, and the council came back. On 30 March 2023 she agreed to single contracts.

62. She was asked why the Second Respondent had told her that she needed a licence at that time. She said it was because in September there were multiple people living in the House.

63. She confirmed that the Second Respondent did not approach every time a new tenant was vetted.

64. The First Respondent was asked if there were multiple people in the House before the Applicant moved in. She said that she could not remember, that the House was rented to one person and the rent was from one person and she was not aware that there were multiple people. She confirmed that she had not seen the joint tenancy agreement, it was not sent to her, she questioned what documentation was sent out. She was asked if it could be miscommunication, if she you wanted the Second Respondent to handle everything. She agreed and said that she paid for full management.

65. It was put to her that as people moved out, the Second Respondent did not contact her about every single person every single time. She said that she asked the Second Respondent to give her documents and references and getting multiple times and she was told that they did not know. She said that tenants would move in and out.

66. The Tribunal asked her where the emails were to this effect and she said that she did not know if they were in the bundle, but she had sent them to her solicitors. She was asked about what period she was talking about and she said from September 2022, that this was the first visit post-Covid, she was concerned about the management and that was why she insisted on seeing the house. From then on, May-August 2023 I asked the Second Respondent to confirm the position. She was asked if she had asked about tenancies before this, if she knew the names of the tenants and she said she did not. She said that she received statements from the Second Respondent showing the rent was paid from one person, she had no reason to question it, it did not cross her mind there were multiple people. She said that if she had known, she would have applied for a licence.

67. It was put to her that there was one tenant paying rent but there were 3-4 people on the tenancy agreement when the Applicant first moved in. The First Respondent said that she had never seen that tenancy agreement, the first joint tenancy she saw was sent to her by Ms. Maltby and then she saw it in the Applicant's bundle. She said that she had not given authorisation for the Second Respondent to release my address in the USA, they were supposed to use their own address.

68. The First Respondent confirmed that she had paid 30% of the licence fee, which was the initial payment.

69. The First Respondent was asked if she had watched a training video the Second Respondent had sent her. She said that she did not remember, that she probably did, but that March-July 2023 was the most difficult time of life (for the reasons she gave, which we will not set out).

70. She was asked if there were occasions when the Second Respondent contacted her when the tenants raised concerns about the repetitiveness of emails, how many emails she was sending, when they advised her of the rules about trespass and everything else, and why she did not listen. She said that it was not trespass, the alleged trespassing was 11 September 2023 when one of roommates moved out unexpectedly and a neighbour sent her disturbing messages and she talked to them on 12 September. She got a message at midnight which said the exterior door to a bedroom was open, the tenant had moved out during the day. She tried to call police, and to get in touch with the Second Respondent after hours, and she did not want to wake the tenants up to check. Since she could not get in touch with the police or the tenants or the Second Respondent, she sent an email to the Second Respondent to inform them that in the morning there would be emergency access performed to the room.

71. She was asked if she was aware that emergency access was only for gas and fire safety checks but the First Applicant did not accept this.

72. The Tribunal clarified which room/door was being discussed. We were referred to the plan at 1R18 and the photographs at 1R47.

73. The Applicant asked the First Respondent why she had written to her cousin telling her to tell the tenants that she was there to check for gas. The First Respondent said that her cousin was afraid of the Applicant as on occasions she had been hostile to her. She was asked if it was a welfare check, why did her cousin said it was gas rather than this. The First Respondent said that she told her cousin to say she was checking on the gutters as her cousin was afraid of the Applicant. The Applicant said that she did not understand why her cousin needed an excuse to come into the House. The First Respondent said that it was to protect her. The Applicant asked her why she could not have said it was a welfare check. The First Respondent said that she did, she put it as the subject on the email line. The First Respondent was asked how saying it was gutters protected her cousin. She said that the only way to access the gutters was from that room.

74. The Applicant asked why if the First Respondent was concerned about welfare, why send her cousin and not wait for the agency. She said that she asked her cousin to go and check from the outside and assess the situation. Her cousin did at 9am, the whole night door was open the whole night, her cousin checked the backdoor, and there was no gate, then she checked the shed, and there were no activities. She then rang the front doorbell and asked if she could go in to see the room. When asked if there was any proof the Applicant spoke to her in a particular, way, the First Respondent said that she had email confirmation (but no page reference was given).

75. The First Respondent was asked why she felt there were suspicious activities. She said that at 1R47 there were pictures and messages she received from the neighbour to initiate emergency access and on the next page she is saying in May 2023 that she overheard a tenant saying she wanted to rent shed out.

76. Turning to the key, the First Respondent was asked why she did not find a way to return it to the Applicant. She said that she did not know it was the Applicant's key as she had denied she had lost her key. She was given an opportunity by the Third Respondent and by the Applicant to say she had lost her key, but she denied it.

77. The First Respondent was asked why she did not come to the Applicant and ask her if the keys found were hers. The First Respondent said that it was not for her to be asking anyone what happened when a key was found under a bin. She got an email from Ms. Maltby saying the Applicant had moved out and the house was empty. When Ms. Maltby was taking her stuff out and she moved the bin, key was placed under bin. She said that she did not know who the key belonged to and the Applicant tried to get access to the House and contacted the Third Respondent. She was asked where the email from Ms. Maltby was, and she referred to 1R107.

78. It was put to her by the Tribunal that at 1R106, she was saying that it was obvious the Applicant had lost her key. She said that when Ms. Maltby sent the email about the Applicant moving out prior to finding the key under the bin, the First Respondent did not know who the keys belonged to. Between 14-15 March she though the Applicant contacted the Third Respondent telling them she was locked out and she had left her key inside the House. It was put to her that to her it was obvious that the Applicant had lost her key, she agreed and said that the Applicant was trying to break into the House but would not admit that she had lost her key. The First Respondent assumed the key was hers. It was put to her that it appeared as though someone had found a key, it was obvious the Applicant had lost it and she was told the only way to get it back was to pay £250. She said that when the keys were changed to high security keys in October 2023, the Applicant signed a receipt for a key and that she understood a high security replacement was £250. She was asked that, as the key had been found, why the Applicant had to pay for it. She said that she did not know the key belonged to the Applicant as she denied she had lost it.

79. The Applicant asked her if it was cruel to lock someone out. The First Respondent said that the Applicant had locked herself out by giving out the key, and that it was only in the bundle that she admitted left key on purpose for someone else to let them in. Her cousin was afraid of the Applicant and had instructions not to let anyone in. The Applicant was banging on the door and trying to get in whereas she needed to get to the Third Respondent and explain and she would be given a spare key. The Tribunal confirmed that when the Applicant was trying to get into the House, the First Respondent's cousin was in the House. It was confirmed that she was.

80. The First Respondent confirmed that she did not know who kept the key but she said that she had not kept it, that the Applicant was given the opportunity to get the key from the Third Respondent, the First Respondent had sent her a message and an email asking her to go to the Third Respondent before the office closed.

81. The Applicant asked the First Respondent if she had received the full rent from 2021-2024. She said that she the rent to November 2022 of £2,400 from one tenant. After that, for a period of 3 months, she received a rent of £2,800pcm.

82. The First Respondent said that she did not know if the Applicant had rent arrears, but she said that there was one month she did not get the rent (1R111 – compiled from the First Respondent's bank statements) and she did not know if either the Applicant did not pay or the First Respondent did not receive it from the Second Respondent.

83. It was put to First Respondent that it appears that under the terms of the management agreement (1R69) the Second Respondent was not obliged to apply for a HMO licence, but that it was agreed with them that they would make the application. She said that they did agree to this, and, as she lived abroad, she was not allowed to have a licence on her own, she had to put an agent down.

84. The First Respondent confirmed that possession was sought under the Accelerated Procedure.

85. The Tribunal asked her (AR58) why she thought that a tenant of one room should be responsible for utilities for the whole building and Council Tax. She said that she was corresponding with Ealing, from December 2023 and after July 2024, notified them what was happening in the House. She said that it was under understanding that the Applicant was the last person in the House. It was put to her that the Applicant only had one room, and she said that she understood that as she was the only one there, it would be her responsibility. It was put to her that, as it had been put to the Applicant that she had had a change in status and only had one room, this worked both ways. The First Respondent said that she agreed and that was what she was thinking. She was asked whether this act, which would result in a significant increase in the Applicant's overheard, a way of "twisting her arm" to get her to leave the Property. The First Respondent said that she was not thinking about this.

86. In re-examination she said that she said that she had not previously let the House out on a room-by-room basis. She was asked if she had received any guidance from the Second Respondent as to how deal with Council Tax and utilities. She said that she had not been informed that she would be responsible for Council Tax until she received an email and summons from LB of Ealing that I have not paid it. She asked if there were prior emails and documents and the Second Respondent said there were not. She investigated with LB of Ealing, and she found out the Applicant was collecting money for Council Tax from other tenants but she did not inform anyone that she knew of the change of payment responsibility. The First Respondent did not know how the Applicant's rent was established. The tenants back the First Respondent back for the Council Tax but the Applicant did not pay the full amount.

87. The Tribunal asked the First Respondent what she was hoping to achieve with the welfare visit. She said she wanted to check everyone was okay in the House, her cousin confirmed door was open throughout the night, the tenant had

moved out, her cousin closed the door and left, and then went to the Second Respondent.

88. The Tribunal asked her about the correspondence at 1R106-108 and what she was thinking. She said that in September 2022, she was told by one of the tenants that an Applicant had brought a person to the House and given him a key, the Second Respondent did not know about the person, had not vetted or checked him. There was a second time, she brought another person, in September 2023, and the reason she changed the lock to that person's room was that she was renting that room. She was asked what this had to do with whether the key was given to the Applicant on 15 March 2024, the First Respondent said that she was asking the Applicant to go to the Third Respondent to get the key back. It was put to her that it may seem that she was being difficult about handing back the key. She said that she could not understand why anyone would leave a key under a bin.

89. Mr. Levy gave evidence on behalf of the Second Respondent and adopted the evidence as set out at 2R1. He confirmed that as far as he was aware, when the Applicant left the Property, she had no rent arrears.

90. Mr. Stewart asked him some questions. He asked him if the Second Respondent was to apply for the licence. Mr. Levy said yes, but they were acting as a post box or conduit, but he said that they did agree to make the application in their own name.

91. The Tribunal told him to 2R27 which was an application for an additional licence. He was asked by the Tribunal if that was consistent with the Applicant's schedule (AR66). Mr. Levy said that at the time the application was made, there were four separate lettings, but he said that there were changing tenants and there could have been 5 people. He confirmed that if that was the case, the licence would have been mandatory. The Tribunal pointed out that the application did not refer to the Applicant's room and he was asked if there was a reason. Mr. Levy said that he had seen in the papers a question mark over the size of the room. He was asked if there were any concerns about a letting of a room of that size. He said that employees raised it as an issue when it became an issue.

92. Mr. Stewart said that the Second Respondent's documents did not have any reference to "Ben" or what was meant to be happening with the licence application after January 2023. Mr. Levy confirmed he had not prepared the bundle. It was put to him that the First Respondent had not refused to have the licence in her name. Mr. Levy referred to 2R11 and did not agree.

93. It was put to Mr. Levy that the Second Respondent agreed to proceed with the application for the licence in its own name. He said he believed so, but he had not seen specific instructions.

94. He was taken to 1R82 and asked if he accepted Ben had made a mistake. Mr. levy admitted the licence was not submitted, but said that there was probably a reason for it, perhaps he did not have the right information, and there was correspondence to that effect in January 2023.

95. It was put to him that the First Respondent was told the application had been submitted and Mr. Levy admitted that it was reasonable for her to rely on what she was told. Mr. Levy said that Ben failed to attend work mysteriously one day, and he was not seen again, and there was probably an inadequate handover.

96. Mr. Levy was taken to 1R83 and it was put to him that the First Respondent should not have to chase this up, it was for the Second Respondent to sort it. He said that the terms of arrangement and submission were not set out in detail.

97. He was taken to 1R99 and it was put to him that this showed the Second Respondent was dealing with the licence application and the First Respondent was being told to leave it to them. Mr. Levy said that the "we" included the First Respondent and it was not solely down to the Second Respondent. It was put to him that further down, it showed the Second Respondent as being in control of the licence application process but Mr. Levy did not agree and said that it looked like correspondence keeping the client informed and he assumed payment was made directly so the Second Respondent was not in funds to make payment on behalf of the First Respondent.

98. It was put to him that there was no suggestion that the Second Respondent was waiting on anything from the First Respondent. Mr. Levy said that he was not sure he understood what Leilani meant by couple of queries, from whom?

99. It was put to him that the essence of an agency is to represent the party they were acting for. Mr. Levy said that there were limits to an agent's ability to act on instructions which did not comply with regulations.

100. It was put to him that in the transcript of the conversation, the Second Respondent was coaching the tenants on how to complain, and he was asked if he accepted the Second Respondent put the idea in the Applicant's head or encouraged the idea that the First Respondent did not have a right of access to common parts. He said that the recordings were not done with their consent, and they would never encourage parties to make false claims against anyone.

101. Mr. Levy confirmed that he did not know what Dalvir was "up to" as he was not his line manager. It was put to him that the evidence suggested that he was dealing with the House without the consent or approval from the First Respondent, but he said that that was not his reading of it, and the Applicant said he was professional.

102. The Applicant asked Mr. Levy why the Second Respondent had dropped the First Respondent as a client. He said that on the information given to him, the relationship became untenable to manage. Employees and the CEO decided

that the two parties could not make managing the House a palatable relationship. He was unaware of any formal notice given but it should be in the documents. He confirmed that he did not know how many HMO's the Second Respondent ran. He said that they had dropped clients before but admitted it was an extreme thing and was a last resort when they felt they were no longer able to function. He said I had happened on fewer than 10 occasions in the last 3-5 years and they have over 100 clients. He said that Dalvir left as he got another job.

103. He was asked if he felt that the Second Respondent was respected when working with the First Respondent in terms of the law. He said that, having spoken to people who gone through this, their views were that it became untenable for them to continue to manage the House. Their views, subjectively, were that there was resistance from the First Respondent and they had to deal with a number of issues raised by tenants or a tenant, they were not verified at the time, and the Second Respondent acted to establish a middle ground, and there was an impasse.

104. In submissions, the First Respondent relied on her Skeleton Argument. It was said that an application for a HMO licence was made on 21 August 2023 and she therefore had a full defence from that date onwards in respect of the alleged licensing offence. In respect of the earlier periods, there was an issue of a "reasonable excuse" defence.

105. In respect of that, Mr. Stewart said that this was not a case where a landlord was relying on the failure of an agent to advise, in this case, the agent (Second Respondent), had agreed to make the application since at least January 2023 that year, the First Respondent was given the impression that the application was done, the Second Respondent was in full control of process. The First Respondent lives abroad and was told that she could not make the application herself. In light of that, she had a "reasonable excuse" all the way through – what else could a landlord do other than rely on advice from an agent that the matter was dealt with, and was being resolved.

106. There was also a limitation point: the application for a RRO was made on 13 August 2024, so if the First Respondent had a "reasonable excuse" defence for the period 13 August 2023-21 Aug 2023 then the application was out of time. In respect of that period, the First Respondent had emails between the Second Respondent and the First Respondent which demonstrated the First Respondent following up, being in contact with the local authority the previous month, the Second Respondent was saying that the application was almost there, they were just checking things. Mr. Stewart asked what the First Respondent could do differently – she was abroad and had local agents.

107. It was said that if the Tribunal was not persuaded by the limitation point, the First Respondent had a "reasonable excuse" defence from May to 12 August 2023. He referred to correspondence the First Respondent had with the Second Respondent from January 2023 onwards, in which the Second Respondent

assumed responsibility for making the application. Further, at the time, the First Respondent had very difficult personal circumstances.

108. In respect of s.6 Criminal Law Act 1977, there was no evidence of violence against persons or against objects nor threats of violence. All there was ordinary correspondence about tidying up the shed and dealing with abandoned possessions. The way the case was put by the Applicant was not on the basis of literal threats of violence, but in terms of duress, which would not constitute a s.6 offence.

109. In respect of s.1 Protection from Eviction Act 1977 there are three offences:

110. Section 1(2) and, it was said, for this offences, the Tribunal would have to look for actions in the nature of eviction, and it did not have those. It had disputes/disagreements, in all directions, and allegations of breaches of contract but it did not have anything in the nature of eviction. Mr. Stewart referred to the way the case was put by the Applicant in her pleadings: she characterises her position as Property becoming financially unaffordable. She uses the word eviction when she means constructively evicted by circumstances. There was no attempt at eviction, the First Respondent went through the court process.

111. The Tribunal asked about the ability of the First Respondent to serve a s.21 notice in terms of the tenancy agreement. Mr. Stewart referred to a break clause at A80.

112. Section 1(3), it was said, required intent by the First Respondent that the acts cause the occupier to give up occupation – this was parts of the element of the offence and need to be proved to the criminal standard. There was no evidence of that intent and the Tribunal had heard evidence to the contrary. It was said that this was a high bar. For the offence to be made out there needed to be by acts by the First Respondent likely to interference with the peace or comfort of the Applicant and the First Respondent had to know this or have reasonable cause to believe this. In addition, there was a defence, which First Respondent would rely on:

113. In terms of the visit to the Property by the First Respondent's cousin, the First Respondent's evidence was clear, that she was worried and she panicked. The text message from her neighbour showed a degree of panic by the neighbour. It does not matter if the neighbour was over-reacting as it is the First Respondent's state of mind that is the concern, based on the message. There is no evidence of an intention to harass by sending her cousin – her intention was to investigate, and it is not very significant that there is a cover story, and it assists the First Respondent's credibility that an explanation is given. In the context of this tenant and how things had gone with Applicant, it is reasonable for the First Respondent to think a simpler explanation about gutters might avoid an incident. Her intention was to investigate. What took place was a visit by her cousin which may have been perceived as unwelcome, but it is not a

harassing event. There was no intention to harass. The First Respondent had reasonable cause for her actions – sending her cousin to take a look.

114. In terms of the demands for money, throughout the history of the Applicant's occupation, there was a question over how the tenants are going to pay the rent, there are times they have felt financial duress, one joint tenant was going to leave which put a strain on the others. It did no good to the tenants to hide from reality – unless an alternative tenant was found, the House was unaffordable. Financial duress is a fact of life. It is not disputed that the Applicant was asked to pay the Council Tax and utility charges – the arrangements in the tenancy agreement are unusual for a room let as normally it would have bills included. The First Respondent believed the effect of the contract was that the tenants in occupation were responsible for paying the full utilities and full Council Tax and having had a tenancy agreement produced by her agents which did not say different, it was a reasonable thing for her to think. We can ask academic questions as to whether it would be enforceable but that is not relevant to this.

115. In respect of the key, the First Respondent relies on L103-109. The emails on 15 May 2024 are confused. The First Respondent expresses herself poorly but in the two emails, she says one thing is obvious and then the opposite is obvious. Further, this allegation does not form part of the case in the Applicant's bundle (it was acknowledged that the Applicant's mother mentions it, but it was said it was mentioned as part of the moving out process). There was more detail in the Applicant's Reply (AR12). The First Respondent could only speculate about what was going on as at the time she had incomplete information. She knew the Applicant in the process of moving out as she had an email from Ms. Maltby (1R103) saying that a key had been found. After that, her cousin sent an email (1R105) saying that the Applicant was trying to get in and appeared to have lost her key. At 1R108 there is an email from the Applicant and it was reasonable for First Respondent to be confused and concerned, as the explanation did not fit with the key being left outside. In that context, the First Respondent insisting that the Applicant go through the process and deal with the agent and confirm what is going on and whether she had lost her key was reasonable. It was in the context of historic concern about unauthorised occupiers and her concern that the Applicant had introduced unauthorised sub-tenants. The First Respondent was trying to direct the Applicant to her agent to do things more formally, but not to evict – her instructions to the agent are not to refuse the Applicant the key and the Applicant does get in to remove her remaining possessions.

116. As a result of the date of the RRO application, the Tribunal can dispense with events taking place earlier than 21 August 2023. Mr. Wheeler pointed out that earlier events could show a pattern of behaviour. Mr. Stewart acknowledged this and that they may be relevant to conduct, but the index offence could not be an earlier date.

117. In terms of quantum, there was an uncertainty about the amount paid (Mr. Wheeler pointed out that there were bank statements showing payments). Mr. Stewart referred to *Kowalek v Hassanein Ltd* [2022] EWCA Civ 1041. In that case, the tenants' application for a RRO included a claim for the repayment of

rent in the sum of £2,000 which had been paid the day after the landlord applied for its licence. The First-tier Tribunal made a RRO but held, among other things, that the £2,000 was outwith the scope of that order, since it was not "rent paid during the period mentioned in the table" contained in s.44(2) 2016 Act, namely "a period, not exceeding 12 months, during which the landlord was committing the offence". The Upper Tribunal dismissed the tenants' appeal and the matter was the subject of a second appeal. The Court of Appeal held, among other things that, on a true construction of s.44(2) of the 2016 Act, in order to be recoverable under a RRO, the rent in question had both to have been paid to discharge indebtedness which had arisen during the relevant period of offending by the landlord and in fact paid during that period.

118. The First Respondent relied on the correspondence at 1R110-111. Mr. Stewart said that, for a licensing offence, any award should be in the region of 25%. For a offence under s.6 Criminal Law Act 1977, this was not a not minor offence but there was a wider scope of culpability possible for this section. None of the parties involved coped with the transfer to room tenancies and the First Respondent could have been served better by her agent, the tenancy agreement could have said something about the allocation of responsibilities and how to deal with the common areas. If the First Respondent's conduct crossed line, the Tribunal needed to consider the harm to the Applicant and the culpability of the First Respondent.

119. Mr. Levy on behalf of the Second Respondent did not wish to make submissions (having been reminded that the Applicant conceded that an order could not be made against the Second Respondent).

120. The Applicant made submissions as follows:

121. She made the application as she did not think there was a HMO licence. She knew there was not she when first moved in. The First Respondent's conduct constituted harassment and illegal eviction. The application made on 21 August 2023 for a licence but it should have been licensed before. She understood that there were circumstances which made things difficult but it is a strict liability offence. She had heard the First Respondent say that the other two Respondents were responsible and that she relied on them, but the case law (*Mohamed v London Borough of Waltham Forest*) meant that the Tribunal should be careful about placing the blame on the agency. She said that 30% of the application fee seemed to have been paid.

122. In terms of trespass, there were a few instances where people came into the House and the occupants did not know, were not given enough notice. There were times it would just happen, and she had not put down every single incident. She changed the keys because it felt like it was getting out of control, and people coming when they wanted to.

123. In terms of harassment, in the First Respondent's bundle (1R5) is a demand of a significant amount of money. The Applicant was given that demand, to pay back by today. It was conceded that this was given to her after she had left the

Property but she said that she had demands through quite frequently, there were demands for replacing the doorbell when it was just a maintenance issue. The Applicant could not say where the demands were in the bundle. She referred to her witness statement (para. 128) when on 12 September 2023, the First Respondent wrote to everyone saying she wanted to dispose of the belongings. In her Skeleton Argument, she referred to how, when things got worse, more people left. She said that she received two eviction notices and before it went to court, the First Respondent had been telling the tenants that the Applicant was moving out, asking her when and that she wanted someone else in house to take over the utilities, and it felt as though she being pressed to leave before it went to court. Because people were coming in and out, it was starting to feel that she would not know who was in the house when she came home. They all felt very distressed.

124. The Applicant said that she had not seen any evidence as to how she (the Applicant) acted in an intimidating way.

125. In terms of the Council Tax, when Ms. Hillen moved out, all the bills went back to the start and they could not transfer accounts.

126. The Applicant said that she was still within the term of her tenancy agreement when her key was found and withheld and not returned to her. Although she was making preparation to move out at some point, she had no choice when key had gone. She saw the Applicant's cousin's car in the driveway, and the Applicant did not want to accuse anyone, so she did not bring it up, but she was sure she had left it under bin. She wanted to check inside the House but as the key was gone, she could not get into the House.

127. In terms of quantum, the Applicant asked for 100%.

128. She said that she did not have anything to say on costs. The First Respondent said that she thought the Applicant had not paid all the fees and had used Help with Fees.

Statutory regime

129. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rouge landlords and agents and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are set out in sections 40-46 Housing and Planning Act 2016 ("the 2016") Act, not all of which relate to the circumstances of this case.

130. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. Licensing is mandatory for all HMO's which have three or more storeys and are occupied by five or more persons forming two or more households.

"House in Multiple Occupation" is defined by s.254 Housing Act 2004. The Licensing of Houses in Multiple Occupation Order 2006 details the criteria under which HMOs must be licensed. The criteria were adjusted and renewed by the Licensing of Houses in Multiple Occupation Order 2018 which came in force on 1 October 2018 and since 1 October 2018 the requirements that the property must have three or more storeys no longer applies. The Local Authority may designate an area to be subject to additional licencing where other categories of HMO's occupied by three or more persons forming two or more households are required to be licenced.

131. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. The Local Authority may designate an area to be subject to additional licencing where other categories of HMO's occupied by three or more persons forming two or more households are required to be licenced.

132. In respect of LB of Ealing, an additional licensing scheme was adopted from 1 April 2022, to ensure that landlords who own and manage HMO's occupied by unrelated households comprising 3 or 4 unrelated individuals are licensed.

133. Section 40 of the 2016 Act gives the Tribunal power to make a RRO where a landlord has committed a relevant offence. Section 40(2) explains that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority). A relevant offence is an offence, of a description specified in a table in the section and that is committed by a landlord in relation to housing in England let by that landlord. The table includes: s.6(1) Criminal Law Act 1977; s.1(2), (3), (3A) Protection from Eviction Act 1977; s.72(1) Housing Act 2004.

134. Section 6(1) Criminal Law Act 1977 states:

Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that:

(a) There is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure;
(b) The person using or threatening to use the violence knows that that is the case.

135. Section 1 of the Protection From Eviction Act 1977 provides that:-

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in

occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably

required for the occupation of the premises in question as a residence, and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

136. Section 72(1) Housing Act 2004 states:

(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.

137. Section 61(1) provides:

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

138. Section 55, among other things, provides:

(1) This Part provides for HMOs to be licensed by local housing authorities where—

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

139. Under section 41 (2) (a) and (b) of the 2016 Act 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.

140. Under section 43 of the 2016 Act, the Tribunal may only make a RRO if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter in relation to the commission of an offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

43 Making of rent repayment order

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

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

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

141. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, s.44 applies in relation to the amount of a RRO, setting out the maximum amount that may be ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the Respondents were committing the offence. This aspect is discussed rather more fully below.

44 Amount of order: tenants
(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	The amount must relate to rent repaid 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 repaid in respect of that period, less
(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
(4) In determining the amount the tribunal must, in particular, take into account-
(a) the conduct of the landlord and the tenant,
(b) the financial circumstances of the landlord, and
(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

142. Because cases have to be proved to the criminal standard of proof, the burden is on the tenant to establish that an offence has been committed. The landlord has the right to silence. There is no provision for judgment by default. Where a tenant has established a *prima facie* case, it may be appropriate in some cases to draw an inference from the landlord's failure to adduce evidence, but this cannot reverse the burden of proof. It has been confirmed by case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received

and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.

Determination of the Tribunal

143. The Tribunal did have regard to the transcript (AR46) but has not found it material to any of the decisions it had to make.

144. The Tribunal has considered the application in four stages-

(i) whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed:

(a) an offence under section 72(1) of the 2004 Act in that at the relevant time the Respondent was a person who controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed; and/or

(b) an offence contrary to s.6(1) Criminal Law Act 1977; and/or

(c) an offence under s.1(2), (3) or (3A) Protection from Eviction Act 1977.

(ii) whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.

(iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.

(iv) Determination of the amount of any order.

Was the Respondent the Applicant's landlord at the time of the alleged offence?

145. Section 43 HA 2004 refers to RRO's being made against a landlord. In *Jepson v Rakussen* [2023] UKSC 9 it was said [25] that the landlord will either be the freehold owner of the housing or a tenant of it under a superior tenancy. Paragraph [28] states that it is artificial and unnatural to construe the opening words of s.40(2) as referring to any landlord other than the landlord under the tenancy which generates the relevant rent. Paragraph [38] states that there is no suggestion that RRO's can be made against property agents, and they can only be made against landlords.

146. The Tribunal therefore finds that no RRO can be made against the Second or Third Respondent – they were not the landlord of the Applicant.

147. In respect of the First Respondent, there is a dispute as to whether, when she first moved in to the Property, the First Respondent was the Applicant's landlords. The RRO is, however, sought from May 2023 to March 2024. The First Respondent's Skeleton Argument states that she accepts that, for the

period which is the subject of the application, there was a direct relationship of landlord and tenant between her and the Applicant.

148. On 25 May 2023, the Applicant was subject to a tenancy agreement (A69). The tenancy agreement was provided by the Second Respondent, who was acting as the First Respondent's agent at the time. The agreement states that the landlord is as follows: "Ms. Barbara Safai-Rad C/o Colin Bibra, Colin Bibra Estate Agents Ltd…". The tenant is said to be the Applicant. The term was for 12 months from 21 April 2023 with a rent of £352 per month.

149. At A11 there is a letter from Rolfe East addressed to "Dear Tenant" stating that they had been instructed by the landlord "Mrs. Barbara Safai-Rad" to manage the House as of 19 October 2023. The letter asks that rent is paid to the account number in the name of Rolfe East.

150. The Tribunal has seen an Office Copy Entry (A97) showing that the First Respondent has title absolute.

151. The Tribunal finds as a fact, that the Respondent was the landlord of the Applicant and that the Respondent let the Property to the Applicant during the period 21 April 2023 until 20 March 2024 (when she left the Property (2R109).

Was a relevant offence committed during the period May 2023 to 20 March 2024 and by whom?

152. The Tribunal applies, as it must, the criminal standard of proof (s.43(1)).

153. The licensing offence under s.72(1) of the 2004 Act can only be committed in respect of a property which is an HMO to which Part 2 of that Act applies and which is required to be licensed under it.

154. Section 56 HA 2004 enables a local authority to designate areas subject to additional licensing. In the London Borough of Ealing, if tenants share some facilities (kitchen/bathroom/WC) and there are 3 or 4 occupants, there is a need for an additional HMO licence.

155. The Tribunal is satisfied that, as at May 2023 there were four people living in the House, with a fifth joining on 21 May 2023. There remained five people there until October 2023. This is borne out by some of the documentation evidencing that the following people were living the House:

(a) A108 – April 2023 - Applicant, Mr. Lynch, Ms. Mr. Edwards, Ms. Maltby.
(b) A109 – May 2023 - Applicant, Mr. Lynch, Ms. Beissert, Mr. Edwards, Ms. Maltby;

(c) A109 – June 2023 - Applicant, Mr. Lynch, Ms. Beissert, Mr. Edwards, Ms. Maltby;
(d) A108 – July 2023 - Applicant, Ms. Beissert, Mr. Lynch, Mr. Edwards, Ms. Maltby;
(e) A146 – 28 July 2023 - Applicant, Mr. Edwards, Ms. Maltby;
(f) A147 – 31 July 2023 – Applicant, Mr.Lynch, Ms. Maltby, Ms. Beissert and Mr. Edwards;
(g) A108 - August 2023 – Applicant, Ms. Beissert, Mr. Lynch, Mr. Edwards, Ms. Maltby;
(h) A207 – 3 August 2023 – Ms. Beissert, Applicant, Mr. Lynch, Mr. Maltby, Mr. Ewards
(i) A202 – 31 August 2023 – Mr. Edwards, Ms. Maltby, Applicant, Ms. Beissert, Mr. Lynch.

156. It is noted that the application made (2R27) on 21 August 2023 was for an additional HMO licence.

157. During the material period the House was occupied by at least 3 occupants (in separate households) who shared some facilities. It therefore required an additional licence. In any event, from May 2023-October 2023, the House required a mandatory licence.

158. An application for a licence was made on 21 August 2023 (A232). Section 72(4)(b) HA 2004 states that in proceedings for a person for an offence under subsection (1), it is a defence that, at the material time an application for a licence had been duly made in respect of the house under s.63. The First Respondent therefore has a defence as from 21 August 2023. Any offence therefore ceased on his date.

159. On the evidence, the Tribunal would find (applying the criminal standard) that no licence was in place during the period 21 May 2024-21 August 2024 and that the Respondent did commit an offence under s.72(1) of the 2004 Act in relation to the Property, subject to any reasonable excuse defence, which it will go on to consider.

160. The Tribunal accepts the point made on behalf of the First Respondent that (see s.41 (2) (a) and (b) of the 2016 Act above) that the application for a RRO was made on 13 August 2024, and so if the First Respondent had a "reasonable excuse" defence for the period 13 August 2023-20 Aug 2023 then the application is out of time.

161. Where the Respondent would otherwise have committed an offence under section 72(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 72(5). The standard of proof in relation to that is the balance of probabilities.

162. The offence is strict liability (unless the Respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083. The intention or otherwise of the Respondent to commit the offence is not the question at this stage, albeit there is potential relevance to the amount of any award. In of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) it was held that the failure of the company, as it was in that case, to inform itself of its responsibilities did not amount to reasonable excuse. The point applies just the same to individuals.

163. The Upper Tribunal gave guidance on what amounts to reasonable excuse defence was given in *Marigold & Ors v Wells* [2023] UKUT 33 (LC), *D'Costa v D'Andrea & Ors* [2021] UKUT 144 (LC) and in *Aytan v Moore* [2022] UKUT 027 (LC) including the following:

(a) the Tribunal should consider whether the facts raised could give rise to a reasonable excuse defence, even if the defence has not been specifically raised by the Respondent;
(b) when considering reasonable excuse defences, the offence is managing or being in control of an HMO without a licence;
(c) it is for the Respondent to make out the defence of reasonable excuse to the civil standard of proof;
(d) a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least, the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition, there would generally be a need to show that there was a reason why the landlord could not inform him/herself of the licensing requirements without relying upon an agent (e.g. because the landlord lived abroad).

164. In respect of the period 13-20 August 2024), the Tribunal accepts that the First Respondence has a reasonable excuse defence for the following reasons:

(a) The First Respondent was informed on 20 and 25 July 2023 that the application had not been submitted (1R92 and 1R82). She contacted the local authority on 26 July 2023;
(b) On 9 August 2023 she was told it would be submitted (1R98) and she chased this with them (1R99-100);
(c) She paid the fee on 18 August 2023 (1R83);
(d) The First Respondent lived abroad and difficult personal circumstances at the time.

165. The Tribunal is therefore not satisfied that the licensing offence was committed from 13 August 2023 to 21 August 2023.

166. In any event, the Tribunal would have been satisfied that a reasonable excuse defence was established in the period May 2023-20 August 2024 for the reasons set out above and the following reasons:

(a) The Second Respondent, already employed by the First Respondent as her agent. Although there was no obligation in the management agreement (1R69) that they would make the application, it was subsequently agreed between them that they would;
(b) On 15 March 2023 (1R8) the First Respondent was told that it was "in hand" and "Ben" had told her the application had been submitted (1R94-95);
(c) On 24 March 2023 (1R89) the Second Respondent said that the application had been started in their name).

167. In respect of s.6 Criminal Law Act 1977 the Tribunal is not satisfied that the First Respondent had used or threatened violence for the purpose of securing entry into the Property for herself or for any other person. It therefore does not find any offence under this section was committed.

168. In terms of the Protection from Eviction Act 1977:

169. The Tribunal finds that no offence under s.1(2) was committed as the First Respondent did not deprive the Applicant of occupation of the Property nor did she attempt to do so.

170. The Tribunal finds that offences were committed under s.1(3) and s.1(3A) as:

171. The First Respondent did acts calculated to interfere with the peace or comfort of the Applicant, with the intent to cause her to give up occupation of the Property and the First Respondent did acts likely to inference with the peace or comfort of the Applicant and she had reasonable cause to believe that the conduct was likely to cause the Applicant to give up occupation of the Property. The acts are:

(a) Informing the utility companies and Council Tax in March 2024 (AR58) that the Applicant was solely responsible for the bills for the House, even though her tenancy was only for the Property and she was only liable for bills for the Property (not the House);
(b) On or about 15 March 2024, the Applicant, not having her key, knocked and rang on the doorbell and the First Respondent's cousin, who was in the House, watched her but did not let her in (AR13) and this was on the instructions of the First Respondent (1R105, 1R107-108). As a result, the Applicant asked to leave, which she did on 20 March 2024. The First

Respondent's position was then that the only way the Applicant would be allowed back in to the House was if she paid £250 upfront (1R106-107), i.e. if she did not pay the money, she would not be allowed back in;

(c) The Applicant had not got another key to the House (1R110) and she said at the time that she could not afford it (1R108).

172. As a result of the above, on 18 March 2024, the Applicant said that she would be moving out (1R109, 1R110).

173. In terms of the point that this allegation does not form part of the case in the Applicant's bundle, the allegation of "harassment" was made in the application (A5) along with accusations of "eviction by the back door". The "Expanded Statement on the reasons for my application" (A58) alleges that the First Respondent "went out of her way to isolate" the Applicant and "drive" her out of the Property, that her contract was due to end on 20 April 2024 but due to the "harassment" she was unable to remain and was "evicted by the back door as rent threatened to soar". It relies on s.1(3) and (3A) of the PA 1977 (A60) alleging, among other things: service of s.21, lock change in October 2023 and having to sign a document which said she would have to pay £250 if she lost her key(s); the First Respondent telling the others that the Applicant was leaving, threat of a s.8 notice; the utilities and the rent were about to go through the roof and she did not have the means to pay this. In a further statement (A183) the Applicant states that she felt the First Respondent was trying to push her out of the Property and make her give up her tenancy voluntarily. This was expanded upon later on (A218). Reference is then made to the incident on 12 March 2024 in the Applicant's Reply (AR8) along with "pressuring the tenant to move out before their tenancy ends" (AR9 and AR12). It was clear at the hearing that the First Respondent was aware of the allegation (in fact, she mentions is in her statement – 1R15) and she had an opportunity to answer the allegation and it was dealt with.

174. The intent or reasonable cause to believe (as appropriate) is evidence by:

(a) The application for the licence (A28) only refers to 4 people living in the House and 4 households, with no mention of the Property as a bedroom or room let out;

(b) After the First Respondent's cousin had access the House and issues about removal of belongings, the Applicant had emailed the First Respondent referring to PEA 1977 (A125) and had then met with the Second Respondent to discuss the issues;

(c) The First Respondent wanted to start the process to evict the Applicant in September 2023 (1R35) and the Second Respondent refused to serve a s.21 notice as in its view, such an eviction would be unlawful (2R3) but the First Respondent served notice(s) directly. Section 21 notices were issued in September 2023

(A128, A235, it appears two were served – 1R126) and October 2023 (A129, 1R59). Court proceedings were then issued in about January 2024 (1R14), to which the Applicant had filed a Defence;

(d) On 12 November 2023 the First Respondent was referring to the Applicant leaving the Property soon (A158) but she had not given notice and the s.21 notice served in October did not expire until 11 December 2023;

(e) The Applicant was sent a list of "unpaid expenses" said to be due by 30 November 2023 (A158) and ultimately the First Respondent sought to retain the deposit of £406 (A224) but was only awarded £163.07;

(f) On 12 December 2023 (A159) the First Respondent wrote to the Applicant noting that the Property did not meet the minimum size requirements for HMO occupancy, asking her when she was going to leave and if she did not agree to leave, she would seek a possession order

(g) On 1 March 2024 the First Respondent told Ms. Maltby she was going to remove the HMO classification (A170) even though rooms in the House were being advertised (A171-3);

(h) The other occupants did leave the house, with only the Applicant and Mr. Maltby left by March, and the latter left on 11-12 March 2024 (A132). The Applicant states that as she did not know what was going to happen next, she had no choice but to leave.

175. In respect of this subsection, the Tribunal does not consider that the First Respondent has a defence under subsection (3B). The email from Ms. Maltby on 12 March 2024 (1R103) does say it looks as though the Applicant had left, but she had not given notice, she still had a tenancy of the Property and then she made efforts to get back into the House (as witnessed by the First Respondent's cousin). On 14 March 2024 (1R104) the First Respondent was clearly aware that the Applicant remained a tenant.

176. The next question is by whom the offence was committed? The Tribunal determined that the offence was committed by the First Respondent.

Should the Tribunal make a RRO?

177. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondent committed an offence under section s.1(3) and s.1(3A) Protection from Eviction Act 1977, a ground for making a RRO has been made out.

178. A RRO "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in the *London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) as follows:

"I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order".

179. The very clear purpose of the 2016 Act is that the imposition of a RRO is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

180. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making an RRO. The Tribunal determines that it is entitled to therefore consider the nature and circumstances of the offence and any relevant conduct found of the parties, together with any other matters that the Tribunal finds to properly be relevant in answering the question of how its discretion ought to be exercised.

181. Taking account of all factors, including the purpose of the 2004 Act, the Tribunal exercises its discretion to make an RRO in favour of the Applicant.

The amount of rent to be repaid

182. Having exercised its discretion to make a RRO, the next decision is how much should the Tribunal order?

183. In *Acheampong v Roman* [2022] UKUT 239 (LC) at [20] the Upper Tribunal established a four-stage approach for the Tribunal to adopt when assessing the amount of any order:

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element that represents payment for utilities;
(c) consider the seriousness of the offence, both compared to other types of offences 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 is a fair reflection of the seriousness of this offence? That percentage of the total

amount applies for is the starting point; it is the default penalty in the absence of other factors, but it may be higher or lower in light of the final step;
(d) consider whether any deductions from, or addition to, that figure should be made in light of the other factors set out in section 44(4)".

184. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act. Therefore, the amount ordered to be repaid must "relate to" rent paid in the period identified as relevant in section 44(2), the subsection which deals with the period identified as relevant in section 44(2), the subsection which deals with the period of rent repayments relevant. The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.

185. At [31] of *Williams v Parmar* [2021] UKUT 244 (LC) it was said:

"… [the Tribunal] is not required to be satisfied to the criminal standard on the identity of the period specified in s.44(2). Identifying that period is an aspect of quantifying the amount of the RRO, even though the period is defined in relation to certain offences as being the period during which the landlord was committing the offence".

186. The Tribunal is mindful of the various decisions of the Upper Tribunal in relation to RRO cases. Section 44 of the 2016 Act does not, when referring to the amount, include the word "reasonable" in the way that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) that there is no longer a requirement of reasonableness. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on landlords and to operate as a fierce deterrent. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid and not simply any profit element which the landlord derives from the property, to which no reference is made in the 2016 Act. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. However, the Tribunal could take account of the rent including the utilities where it did so. In those instances, the rent should be adjusted for that reason.

187. In *Vadamalayan*, there were also comments about how much rent should be awarded and some confusion later arose. Given the apparent misunderstanding of the judgment in that case, on 6th October 2021, the judgment of The President of the Lands Chamber, Fancourt J, in *Williams v Parmar* [2021] UKUT 0244 (LC) was handed down. *Williams* has been applied in more recent decisions of the Upper Tribunal, as well as repeatedly by this Tribunal. The judgment explains at paragraph 50 that: "A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or

reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions."

188. The judgment goes on to state that the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal "must, in particular take into account". The Tribunal is compelled to consider those and to refer to them. The phrase "in particular" suggests those factors should be given greater weight than other factors. In *Williams*, they are described as "the main factors that may be expected to be relevant in the majority of cases"- and such other ones as it has determined to be relevant, giving them the weight that it considers each should receive. Fancourt J in *Williams* says this: "A tribunal must have particular regard to the conduct of both parties includes the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence, The Tribunal should also take into account any other factors that appear to be relevant."

189. The Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period, less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period (s.44(3) 2016 Act). That is entirely consistent with the order being one for repayment. The provision refers to the rent paid during the period rather than rent for the period.

190. It was said, in *Williams v Parmar*, by Sir Timothy Fancourt [43] that the *Rent Repayment Orders* under the Housing and Planning Act 2016: Guidance for Local Authorities identifies the factors that a local authority should take into account in deciding whether to seek a RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. It was indicated [51] that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent. It was also said that a full award of 100% of the rent should be reserved for the most serious of cases (see also *Hallett v Parker* [2022] UKUT 165).

191. The Tribunal has carefully considered the amount of the rent for the relevant period of the licencing offence that should be awarded.

<u>Ascertain the whole of the rent for the relevant period</u>

192. The relevant rent to consider is that paid during "the period of 12 months ending with the date of the offence".

193. As stated above, the Tribunal has found that the Respondent committed the offences in March 2024 with the offences culminating in the incident on 15 March 2024. The Tenancy Agreement confirms that the rent was £352 per month. The period of claim therefore runs back 12 months from 15 March 2024, but the Applicant is only claiming from May 2023. The total amount said to have been paid during this period is therefore £3,520.

194. The First Respondent takes the point that the Applicant must show that the rent fell due and was paid during the relevant period: *Kowalek v Hassanein Ltd* [2022] EWCA Civ 1041.

195. The Tribunal has seen evidence of payments as follows (A12-19) within the relevant period as follows:

21 May 2023	£1,576	Colin Bibra Estate Agents
21 June 2023	£352	Colin Bibra Estate Agents
25 July 2023	£352	Colin Bibra Estate Agents
22 August 2023	£352	Colin Bibra Estate Agents
21 September 2023	£352	Colin Bibra Estate Agents
21 November 2023	£352	Rolfe East
14 December 2023	£352	Rolfe East
19 January 2024	£352	Rolfe East
21 February 2024	£352	Rolfe East

196. Whilst there is nothing in the bank statement about a payment in October 2023, the Applicant has produced a rent schedule (A113), the First Respondent admits receipt of this payment in the documentation (1R111), her evidence was that she cannot say if the Applicant paid the Second Respondent or not and Mr. Levy of the Second Respondent confirmed that there were no arrears of rent when the Applicant left the Property.

197. The Applicant did not claim the Housing Element of Universal Credit or Housing Benefit.

198. The whole of the rent for the relevant period is therefore £3,520.

Deductions for utilities?

199. Utilities were not included in the rent so there is no deduction for utilities.

Seriousness of the offence

200. In *Williams v Parmar* [2021] UKUT 244 (LC) it was said that "the circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord', so the First Tier Tribunal may, in an appropriate case, order a lower than maximum amount of rent repayment, if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness of mitigating circumstances or otherwise".

201. As the Upper Tribunal has made clear, the conduct of the Respondent also embraces the culpability of the Respondent in relation to the offence that is the pre-condition for the making of the RRO. The offence under s.1(3) and/or s.1(3A) is one of the more serious offences listed in section 40(3).

202. In determining how serious the offence of managing or being in control of an unlicensed HMO is when compared to other types of offences in respect of which a RRO may be made, Judge Cooke stated that the relative seriousness of these offences can be seen by comparing the maximum sentences upon conviction for each offence (*Acheampong v Roman* at [20(c)]). Such an evaluation produces the following hierarchy of offences in descending order of seriousness:

Offence	Maximum sentence on conviction
Protection from Eviction Act 1977 sections 1(2), (3) or (3A) (unlawful eviction or harassment of occupier).	On summary conviction, a fine not exceeding the prescribed sum or imprisonment for a term not exceeding 6 months or both. On conviction by indictment, a fine or imprisonment for a term not exceeding 2 years or both. (Protection from Eviction Act 1977 section 4).
Housing and Planning Act 2016 section 21 (breach of banning order).	On summary conviction, imprisonment for a period not exceeding 51 weeks or a fine or both.

	(Housing and Planning Act 2016 section 21(2)).
Criminal Law Act 1977 section 6(1) (violence for securing entry).	On summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both. (Criminal Law Act 1977 section 5).
Housing Act 2004 section 72(1) (having control of or managing an unlicensed HMO). Housing Act 2004 section 95(1) (having control of or managing an unlicensed house). Housing Act 2004 section 32(1) (failure to comply with a prohibition order). Housing Act 2004 section 30(1) (failure to comply with improvement notice).	On summary conviction, a fine not exceeding level 5 on the standard scale/ an unlimited fine

203. The Tribunal determines that the offence committed by the Respondent should be reflected in a deduction from the maximum amount in respect of which a RRO could be made.

204. The starting point for the Tribunal, taking account of this, is that a RRO should be made, reflecting 80% of the total rent paid for the relevant period.

Conduct

205. The Tribunal had regard to the allegations made by the Applicants as to the conduct of the Respondent, what information it has about the financial circumstances of the Respondent and whether the Respondent has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies when considering the amount of such order. Whilst those listed factors must therefore be taken into account, and the Tribunal should have particular regard to them, they are not the entirety of the matters to be considered: other matters are not excluded from consideration. Any other relevant circumstances should also be considered, requiring the Tribunal to identify whether there are such circumstances and, if so, to give any appropriate weight to them.

206. The Tribunal notes the allegations and cross-allegations. The Tribunal take account of the fact that:

(a) The First Respondent's cousin did access the premises in September 2023 but the circumstances are noted;
(b) The First Respondent did have a right of access of the common parts;
(c) No fault is found by the Tribunal in terms of the works carried out;
(d) The How to Rent Booklet and EPC were provided, albeit late. The prescribed information was provided;
(e) There was no provision as to payment for lost keys in the tenancy agreement and the Applicant had to sign a document about this (A67), which specified fees in excess of £50, with no evidence as to the actual cost (Tenant Fees Act 2019);
(f) The First Respondent alleges that the First Respondent owes her over £12,000 but, as noted the deposit adjudication: no award was made in respect of the gardening; no award was made for replacement keys; £50 was awarded for keys; no award was made for rubbish removal; no award was made for missing items or for maintenance.

207. The Tribunal has also had regard to the fact that, had an application for a HMO licence been made, as it should have been, and granted, the Property (i.e. the room occupied by the Applicant) could not have been let out (save in breach of the terms of the licence) due to the room being smaller than the minimum that could be permitted. As stated above, it is noted that reference to the room is omitted from the licence application. Had an application been made, and the House properly licensed, the Property could not have lawfully been let out, and the First Respondent would not have had any income from that room.

208. Taking account of the above, the Tribunal makes an adjustment of the amount of the RRO in the amount of 20%, i.e. deciding that a RRO should be made, reflecting 100% of the total rent paid for the relevant period.

Whether the landlord has been convicted of an offence?

209. Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the Respondent has at any time been convicted of any of the offences listed in section 40(3). The First Respondent has no such convictions.

Financial circumstances of the First Respondent

210. There was nothing in the First Respondent's documentation about this and so the Tribunal asked her if there was anything she wished it to know. She said that the House was her only income as she had been unemployed since Covid, was relying on income, her taxes (which were not disclosed) showed loss. The Tribunal makes no adjustment to the RRO on this basis.

The amount of the repayment

211. The Tribunal determines that the maximum repayment amount should be the amount of the RRO. The Tribunal therefore orders under s.43(1) of the 2016 Act that the First Respondent repay the Applicant the sum of £3,250.

212. The Tribunal has had regard to all the circumstances in setting a time for payment, including the amount of the RRO. The Tribunal orders repayment in 28 days from the date of this decision.

Application for refund of fees

213. The Applicants asked the Tribunal to award the fees paid in respect of the application should they be successful. It has been established that she did not pay the application fee herself (it was through "Help with Fees") and for the same reason only paid £165 of the hearing fee. The Tribunal does order the Respondent to pay the fees paid by the Applicants, in the sum of £165.

Judge Sarah McKeown
12 May 2025

Rights of appeal

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

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

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

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

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

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