



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

**Case reference:** MAN/30UN/HMB/2023/0003

**Property:** 28 Manor House Close, Leyland PR26 7TX

**Applicants:** Daniel Wright and Emma Ashcroft

**Respondent:** Norman Rees

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

**Tribunal Members:** Judge J.M. Going  
J. Gallagher MRICS

**Date of Hearing:** 15 April 2024

**Date of Decision:** 22 April 2024

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**DECISION**

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## **The Decision and Order**

**Mr Rees is ordered to repay rent of £7150 to Mr Wright and Ms Ashcroft within 28 days of the issue of this decision.**

## **Background**

1. By an Application (“the Application”) dated 10 June 2023 the Applicants ("Mr Wright and Ms Ashcroft") applied to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under Section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order in respect of rents paid to the Respondent (“Mr Rees”) as the landlord and in respect of their occupation of the property.
2. The Tribunal issued Directions to the parties on 29 November 2023 setting out the issues for it to consider, confirming how they should prepare for the hearing, and timetables for the provision of relevant documents.
3. The documents supplied by Mr Wright and Ms Ashcroft included copies of the Application, the Tenancy Agreement, bank statements, various emails, letters, notices, screenshots, photographs, a joint witness statement, and responses.
4. The documents supplied by Mr Rees included copies of various emails, letters, notices, screenshots, photographs, a reference from a previous tenant, and statements of case.

## **The Property**

5. 28 Manor House Close is described in the Application as a three bedroomed end terraced house. The Tribunal has not inspected it but has been assisted by the photographs from within the papers and external photographs that can be seen on Google’s Street View.

## **Facts and chronology**

6. Because of the extent of the paperwork, which is on record and which the individual parties have access to, it would be superfluous and, in the Tribunal’s opinion, counter-productive to attempt to set out its full detail or every submission and response in this decision.
7. The Tribunal has instead highlighted those issues which it found particularly relevant to, or that help explain, its decision-making.
8. The following matters are evident from the papers. The existence and contents of the documents that are referred to has not been disputed. What is in dispute is how events should be interpreted.

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| 1 July 2021 | A written Shorthold Tenancy Agreement was completed referring to |
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|                              | Mr Rees as the landlord, Mr Wright and Ms Ashcroft as the tenants, “an initial fixed term of six months followed by rolling contract monthly from 1.7.21” and rent of £650 per calendar month “payable in advance on: 1st monthly with the first payment to be made on 1/7/21”. The notes at the end of clause 5 stated “... The Landlord cannot recover possession without an order of the court under the Housing Act 1988.... If the Landlord wishes to recover possession under section 21 of the Housing Act 1988, the Landlord must give the Tenant notice before the right to recover possession can be exercised. The Landlord should check what statutory requirements, if any, apply to the form of notice and when it can be served... This clause does not affect the Tenant's rights under the Protection from Eviction Act 1977.” |
|                              | Screenshots and bank statements show bank transfers by Mr Wright and Ms Ashcroft of £2600 (representing 3 months' rent plus a deposit of £650) and a further payment of £202.28 in respect of estate maintenance charges charged to the owners of the property by Accent, a Housing Association, for the period 1 April 2021 to 31 March 2022.  |
| 22 July 2021                 | A screenshot of text messages between the parties refers to appointment arrangements for “another EPC cert inspection”.   |
| 23 July 2021                 | Text messages refer to the provision of a gas safety certificate, after an inspection by an engineer on 19 July 2021.   |
| 26 July 2021                 | The energy performance certificate (“EPC”) was completed ( <i>The date is confirmed on the government's website</i> ).  |
| Fairly soon afterwards       | Mr Wright and Ms Ashcroft made a report to the police alleging inappropriate behaviour amounting to harassment by Mrs Rees, which she denied.   |
| 1 November 2021              | Mr Rees wrote to Mr Wright and Ms Ashcroft stating “I wish to advise you that the above monthly tenancy agreement will expire on 31 12 2021... will not be renewed or extended in anyway... the required notices are attached ...   |
| 11 November 2021             | A screenshot shows Mrs Rees advertising the property for rent on Facebook, referring to its availability and details on Rightmove stating “anyone interested please DM Me not Farrell Hayworth! May negotiate price for a private let...”   |
| Sometime later               | It is understood that the possession proceedings brought by Mr Rees were rejected by the court on procedural grounds.   |
| January 2022 – February 2023 | Screenshots from Mr Wright and Ms Ashcroft show consecutive monthly payments of £650 for each month from January 2022 up to and including February 2023. These are corroborated by a bank statement provided by Mr Rees showing the same payments having been received into an account for “Jonathan Rees and Olivia Rees” and then being transferred onto an account of Coral Rees.  |
| 9 March 2022                 | An email from Mr Rees to Mr Wright and Ms Ashcroft referred, inter alia, to Mrs Rees as his nominated agent and asks for “your suggestions regarding the shortfall in rent now £750 PCM with effect from 1/2/22 and arrears of £200 to date.”   |
| 9 March 2022                 | A letter to Mr Rees from South Ribble Borough Council referred to an intention to visit the property to assess its housing conditions and   |

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|                                     | requesting various documentation.  |
| 15 April 2022                       | An electrician inspected the property, and it is believed that he then completed an Electrical Installation Condition Report ("EICR").   |
| At around this time                 | Mr Rees served a second section 21 notice, and marketed the property for sale. Mr Wright and Ms Ashcroft responded to the notice by confirming that they "will not be vacating the property by the required date...the.... notice you have served us is invalid... due to ....an improvement notice due to the property not having a valid EICR certificate....We do not agree to the proposed rent increase..... Now fortunately we have a very amicable solution.... The reason you are trying to evict us is to sell the property. We would like to buy it. We put an offer in last week to which you refused. We will make a new offer via the negotiator... next week".   |
| 23 January 2023                     | Tenancy Eviction Specialist ("TES"), acting on behalf of Mr Rees, sent a section 21 notice to Mr Wright and Ms Ashcroft referring to possession being required after 26 March 2023 confirming that "if you do not leave your home by the date given... your landlord may apply to the court for an order... requiring you to give up possession".  |
| Saturday 18 March – Monday 20 March | Events are disputed. Both parties based some of their beliefs on reports from neighbours.  |
| 21 March 2023                       | Mr Rees and Mrs Rees entered the property without Mr Wright or Ms Ashcroft being there. Various photographs timed at or around 6.30am were taken.  |
| 21 March 2023 at 8.46               | Mrs Rees sent an email to Ms Ashcroft, and to a separate email address which she understood to be Mr Wright's, stating, inter alia, "Please be advised you have abandoned the property... You have left rent unpaid. You have left ground rent 18m unpaid<br>You are now being perused by my legal team via the courts for payment and costs....<br>Thank you so much for leaving the bin full of info.... and best of all family names and addresses on cards who will be advised of your underhand lying fantasy life...<br>The locks have all now been changed to brand new ones all around to secure MY PROPERTY"<br><i>(The Tribunal has deliberately decided not to repeat various, in some instances more extreme, threatening, abusive and vexatious comments which are contained in the email).</i> |
| 21 March 2023                       | Mr Wright and Ms Ashcroft posted a letter to Mr Rees in the afternoon stating "28 Manor House Close is now vacant. As the tenancy agreement has been broken by yourself we were under no obligation to give you any notice.... we are willing to settle in return for March's rent to be waived. The property has been left in the same condition as when we moved in and will be applying to the TDS for our deposit back....<br>The original door lock barrel is at the property as this broke.<br>Enclosed are both sets of keys with additional also at the property".<br>The letter was received in the post the next day.  |

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| 22 March 2023     | There were various emails between the parties:-<br>In the first at 1.07 Mr Rees stated “..... we regret it came to this..... we thank you most sincerely for leaving the property in the condition we found it in it is ...immaculate and we can see how well you have looked after it during your tenancy....<br>Emails continued throughout the course of the day without an agreement as to settlement proposals. |
| 22 March 2023     | A county court claim by Mr Rees for £650 March rent plus court fees of £70 was issued against Ms Ashcroft.   |
|                   | Mr Rees in a concurrent claim relating to the deposit stated to the Dispute Service that in addition to unpaid rent “there are other expenses of replacing locks as they changed locks without my agreement or notice plus cleaning expenses and one payment £179 for ground works which they paid then refused to pay following year...”.   |
| Some months later | The Dispute Service adjudication allocated £555.62 of the £650 deposit to Mr Rees and £94.38 to Mr Wright and Ms Ashcroft. This was based on a finding that the tenancy subsisted until 26 March 2023 and that the amount allocated to Mr Rees represented the rent due from 1 March 2023 up to and including 26 March 2023.   |

### **Mr Wright and Ms Ashcroft’s written submissions**

9. Mr Wright and Ms Ashcroft referred to various matters in the timeline, stating in their witness statement “Upon moving in to the property on 1 July 2021 the relationship between ourselves and Mr and Mrs Rees started off friendly and as normal. We made Mr Rees aware we planned to stay in the property for one or two years until we were able to purchase our own which he welcomed. However very shortly after moving in we were becoming increasingly worried due to strange and excessive requests being made by Mrs Coral Rees via phone calls, text messages and turning up at the house unannounced. This included asking us to spy on the neighbours for her and requesting copies of our personal bills to prove to her we were paying them’. We refused these requests and Mrs Rees behaviour towards us grew increasingly worse to the point our lives became so stressful that we made a complaint to the police for harassment. The police contacted us regarding the complaint to tell us they had contacted Mrs Rees and told her to stop any further contact with us, to which we were happy with. After that incident the relationship broke down between ourselves and the landlord and we had very limited contact except several attempts by Mr Rees to evict us from the property. In the meantime we were trying our hardest to find a suitable house in the area to purchase however two properties we attempted to purchase fell through....

On ..23 January 2023 we received a section 21 notice from Tenant Eviction Specialists acting on behalf of Mr Rees requiring possession of the property after the 26 March 2023....We believed that Mr Rees was prohibited from evicting us via section 21... However, as we were in the process of completing a purchase of a property, we were planning to move out of 28 Manor House Close on the 26/03/23 in compliance with the notice. We had made arrangements to stay with family for a couple of weeks commencing the 26/03/23 until our new house was ready to move into...

On.... 17/03/23 we had started to move some furniture from the property to put into storage. That weekend we stayed with friends and on Sunday the 19 of March we were informed by a neighbour that they had seen Mr Rees enter the property through the back gate. We returned Monday the 20th to find nothing missing except it appeared someone had rooted through our bin and it was clear Mr and Mrs Rees had entered the house. We made the decision the same day to clear the rest of our belongings and vacate the property to go and stay with family. On... 21/03/23 we received an email from Coral Rees containing a string of abuse and several threats made towards us which we found extremely concerning. Mrs Rees also states in the email that they had changed all the locks to secure their property. We believe this shows it was Mr and Mrs Rees' intention to repossess the property from us when they entered. Shortly after this we received a county court claim form dated 22/03/23..where Mr Rees decides to pursue us in court for unpaid rent for the month of March 2023..”.

### **Mr Rees's written submissions**

10. Mr Rees stated “ I do not believe I have committed an offence prohibited by Protection from Eviction act 1977 Section 1 (2) or (3a) as I acted in accordance with subsection 2 which reads “if any person unlawfully deprives the residential occupier of any premises of his occupation of the premises, or any part of or attempts to do so, he shall be guilty of an offence, unless he proves that he believed, and has reasonable cause to believe that the residential occupier had ceased to reside in the premises. It is my belief that I did have reasonable cause my actions were justified, necessary, timely and correct. I dispute the dates quoted as I have proof I was not even in Lancashire until 21/3/23 after returning from a holiday. I have used a highly respected specialist to serve a section 21 notice as previous attempts had been derailed. I did believe that the tenants had vacated the property and had ceased to reside in the premises. They state on the 18/3 they were ‘informed’ that I had entered the house when they give no evidence as again I was in Harrogate. I have evidence of me visiting the property on 21/3/23 after I was alerted that the occupants had been spotted emptying the house of all their belongings days prior and had purchased a property on the same estate. Zoopla search confirms the purchase was concluded in March 23 which disproved their statement they had to 'put belongings in storage and stay with friends and family ' I did not subsequently send threatening emails as stated by them. My wife is not as claimed an 'acting agent ' on my behalf and her signature on the Tenancy Agreement was solely as a witness to signatures as required by law.

### **The Hearing**

11. The hearing was a full video hearing. Mr Wright and Miss Ashcroft were, with the Tribunal's prior consent, together at one computer, and Mr and Mrs Rees were together at another.

12. Following a brief outline of the relevant statutory provisions and the matters that Tribunal needed to address, the events referred to in the timeline and written submissions were discussed and amplified.

13. Mrs Rees confirmed that she had taken the bureaucratic lead when the tenancy had been agreed. She was asked about the documents then given to Mr Wright and Ms Ashcroft. She said that certificates had been provided and the government's "How to Rent" guidance had then been explicitly referred to but not printed off because of there being too many pages.

14. It was noted both that the bank statements showed the rental payments having been made to an account of Jonathan and Olivia Rees and that the letter from Accent which had referred to service charge costs of £202.28 had also been addressed to them. Mrs Rees explained that the property was legally owned by and registered at the Land Registry in the names of their 2 children, but that the rents were then routed back to she and her husband. It was abundantly clear from the papers and from all that was said by Mr and Mrs Rees at the hearing that they had managed the property throughout, referring to it as their own.

15. Mrs Rees confirmed that personally prepared section 21 notices had been served on 2 separate occasions before any involvement with TES. The first had been followed by an application to the court which it had rejected. The second had not been followed up by an application to the court said to be because of personal reasons.

16. Mrs Rees was asked about the attempts to increase the rent. She confirmed that the increases proposed were in line with market rents which had been confirmed by estate agents. She acknowledged that there had been no attempts to serve any notice of increase in the statutory form and appeared not to understand how or when an increase could be legitimately proposed.

17. The involvement of the Council was discussed. It was not clear that an Improvement Notice had been served. Mr Wright and Miss Ashcroft confirmed that they had made two separate complaints to the Council, one because of questions as to the requisite gas and electrical safety checks and certificates, and another following a breakdown of the boiler which had not repaired following two requests. They confirmed that when an electrician subsequently inspected the property works were required before he was able to issue an appropriate and satisfactory EICR. It appeared from the papers that this was issued some 8 months into the tenancy. Mrs Rees seemed to assume that the requirement for an EICR was newly introduced, notwithstanding, as confirmed in the "How to rent" guidance, that it has been a statutory requirement since 1 July 2020.

18. Mrs Rees described Mr Wright and Ms Ashcroft's offer to buy the property as tantamount to blackmail, confirming that it had been rejected out of hand, on the basis that she "would have sold it to the Devil rather than to you".

19. Mrs Rees confirmed that following the failure of their own two previous section 21 notices, it had been decided to employ TES.

20. There then followed a detailed discussion of the events from 18 March onwards. Mr Rees was asked to speak for himself. He was adamant that he did not, as had apparently been reported to Mr Wright and Ms Ashcroft, enter the property before the morning of Monday 21 March.

21. Mrs Rees said that on 21 March, being unable to sleep, she had gone to the property at 4am and had subsequently telephoned and summoned Mr Rees at approximately 6am before then entering it.

22. Mrs Rees confirmed sending the email to Ms Ashcroft and Mr Wright timed at 8.46. She expressed shame for having sent it, and was visibly contrite and upset when asked about it, although still appeared to feel that some of its contents were justified. She said that the reference to having changed “all of the locks” was wrong, and that only the front door lock had been changed.

23. Mr Rees confirmed that he personally changed the lock after having gone that morning to a local shop to purchase the new lock. He said that he could not remember the exact time of the purchase, but that it might have been when Mrs Rees was sending the email (he said he wasn’t present when the email sent).

24. Mr Rees confirmed that Mr Wright and Miss Ashcroft’s letter of later that day was received in the post the next day, Tuesday 22 March. It was agreed that the exhibited emails later that day showed that the offer made in that letter had been rejected and no agreement reached.

25. Mr Rees confirmed pursuing rent for all of March both through the county court claim which he had begun earlier in that month, and later through the Tenancy Deposit Scheme. He said that the county court claim had been orally withdrawn following the deposit adjudication. Ms Ashcroft confirmed that records indicate there still is a live claim showing at the court.

## **The Law**

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

27. The list, repeated in the Directions, includes the offences under Section 1 (2), (3) or (3A) of the Protection from Eviction Act 1977 (“the 1977 Act”) of eviction or harassment of occupiers.

For ease of reference, the wording of Section 1 been set out in the Schedule to this Decision.

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

29. Section 41(2) provides that a tenant may apply for a rent repayment order only if: –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

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



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

32. If the order is made on the ground that the landlord has committed the offences of eviction or harassment of occupiers, the amount must relate to rent paid during a period of 12 months ending with the date of the offence.

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

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

34. In cases such as this the Tribunal has a discretion in determining the amount, but Section 44(4) states that it must, in particular, take into account

- (a) the conduct of the landlord and the tenant,
- (b) the financial circumstances of the landlord, and
- (c) whether the landlord has at any time been convicted of any of the specified offences.

### **The Tribunal's Reasons and Conclusions**

35. Following careful consideration of all the evidence, before, during and after the hearing, the Tribunal has made the following findings which are relevant to its determination: –

- the tenancy was an assured shorthold tenancy;
- it continued beyond the initial 6 months term as set out in the Tenancy Agreement “on a rolling contract”;
- Mr Rees was consistently held out as, and was, the landlord to the property, whether or not he had a proprietary interest in it. The House of Lords in *Bruton v London & Quadrant Trust* [2000] 1 A.C.406 has made it clear that a lack of title is irrelevant, and that it is the nature of the agreement that is the determining factor in deciding whether a lease has been created;
- Mrs Rees was integrally involved with Mr Rees in the letting, management and decision-making relating to the property. He described her as his agent on various occasions and she acted as such in organising viewings and was in the forefront of setting up the tenancy. It also appears that by convoluted arrangements rental payments were routed to an account in her name;
- whether or not the Section 21 notice served on January 2023 was valid, it did not, and could not of itself, bring the tenancy to an end;
- it was abundantly clear to all parties, and explicitly referred to in the Tenancy Agreement, that tenants and occupiers are protected by the provisions of the 1977 Act;
- a court order is necessary before tenants must leave, and there is a due process to be followed by a landlord when seeking possession;
- Mr and Mrs Rees clearly, and of their own volition, decided not to follow that due process, notwithstanding that they are experienced landlords with more than one property;

- they entered the property on 21 March 2023, in breach of the terms of the Tenancy Agreement, without notice and without consent;
- the lock to the front door of property was deliberately changed, the bin was gone through, personal papers read, and Mrs Rees threatening and abusive email was sent before there was any indication from Mr Wright and Ms Ashcroft to Mr Rees that they wished to bring the tenancy to an end;
- the terms subsequently suggested by Mr Wright and Ms Ashcroft for a surrender of their tenancy were not agreed;
- consequently, the tenancy subsisted up to and including 26 March 2023 at the very least;
- from the time when they were informed by Mrs Rees that all the locks had been changed and without any new keys subsequently being supplied to them, Mr Wright and Ms Ashcroft were effectively deprived of their right to occupy the property until the expiry of the tenancy; and
- Mr Rees subsequently continued with his claim for rent for all of March both in the county court and through the TDS.

### **As to whether an offence has been committed;**

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

37. The Tribunal is satisfied, beyond reasonable, doubt that he committed offences of eviction and harassment under subsections (2), (3) and (3A) of section 1 of the 1977 Act by changing the lock to the front door following he and his wife's unauthorised entry to the property, without notice or due cause, whilst the tenancy was still current, and seemingly with no thought that consent might be required.

### **Subsection (2) of section 1 of the 1977 Act;**

38. The physical and deliberate actions taken by Mr Rees on 21 March 2023 in personally changing the lock were undoubtedly an attempt to unlawfully deprive Mr Wright and Ms Ashcroft of their future occupation of the premises. Mr Rees was asked whether he considered providing a set of the new keys to Mr Wright or Ms Ashcroft and he readily confirmed that he had given no thought to that as even a possibility.

39. The Tribunal considered carefully whether he might have a defence, due to a stated belief that Mr Wright and Ms Ashcroft had ceased to reside in the property. For such a defence to have been made out he would have needed to prove, beyond reasonable doubt, not just that he believed that they were no longer residential occupiers (which the Tribunal found to be plausible, but not proven), but also that he had reasonable grounds for that belief.

40. The Tribunal found that he did not have, and has not proved that he had, reasonable grounds for any such belief. Mr Rees confirmed that there had been no prior communication or intimation from Mr Wright and Ms Ashcroft of any intended surrender of the tenancy. Quite the contrary, he complained in an email after the event that "I received no communication agreeing to hand property back over... at

point from either party...”. The Tribunal found that Mr Rees either did not consider or simply rejected any notion that Mr Wright and Ms Ashcroft’s consent might be required before entering the property or to changing the lock. He confirmed he made no attempt to check with them the assumption that they had given up occupation, notwithstanding that he had their telephone numbers and had been in regular contact by text and email. Despite all this, he went on to reject their subsequent offer of a surrender of the tenancy, intent on pursuing two separate contemporaneous claims for rent to be paid up to and including 31 March.

### **Subsection (3);**

41. It is abundantly clear from all the evidence that Mr and Mrs Rees had for upwards of 16 months been intent on Mr Wright and Ms Ashcroft giving up occupation of the premises, during which time 3 separate section 21 notices were served.

42. The Tribunal has no hesitation in finding that Mr Rees’ changing of the front door lock on 21 March was also done with the intent to deny Mr Wright and Ms Ashcroft the opportunity of exercising their right to enter the property. This, and rooting through, or allowing his wife to root through, their bin and personal papers were, beyond any doubt, both acts not just likely, but calculated, to interfere with Mr Wright and Ms Ashcroft’s peace and comfort, and very clearly did so.

### **Subsection (3A);**

43. The Tribunal found Mr Rees’ same acts, for which he has not proved he had reasonable grounds, also constituted an offence under subsection (3A). His conduct was clearly in breach of the Tenancy Agreement and infringed Mr Wright and Ms Ashcroft’s continuing rights to quiet enjoyment of the premises.

44. The Tribunal is also satisfied, beyond any doubt whatsoever, that Mrs Rees, by sending what can only be described as a threatening and abusive email at 8.36 on 21 March, was herself also separately guilty of the offence of harassment. No one reading that email, could construe it other than as deliberately crafted with the direct intent of interfering with Mr Wright and Ms Ashcroft’s peace and comfort, which it did.

45. Mr Rees in his written submissions sought to distance himself from Mrs Rees, saying that she was not his agent. Presumably he too with hindsight understood the offensive nature of the email. Nevertheless, because of the Tribunal’s previous findings that he had committed the offences of both eviction and harassment, it was not necessary for the Tribunal to dwell on an analysis of whether when sending the email Mrs Rees was then acting as his agent.

### **Jurisdiction;**

46. Because the offences were committed within the period of 12 months before the Application, the Tribunal is clear that it has jurisdiction to be able to make a repayment order.

### **As to whether rent repayments should be ordered;**

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

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

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

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

### **The amount of the order;**

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

“The following approach will ensure consistency with the authorities:

- a. Ascertain the whole of the rent for the relevant period;
- b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access....
- c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
- d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4)” .

52. Following this 4-stage approach: –

- a. the total rent paid by Mr Wright and Ms Ashcroft during the relevant period was £7150 (made up of the 11 successive monthly payments of £650 paid in the 12-month period immediately before 21 March 2023).
- b. there are no deductions to be made for utilities. Mr Wright and Ms Ashcroft were responsible for paying such charges directly to the service providers.
- c. clearly, and as has been explained, the offences that have been found to have been committed are at the top of the range of seriousness. The acts were not inadvertent or excusable.
- d. the Tribunal then specifically considered the other factors referred to in section 44 (4) being the conduct of the parties, the landlord’s financial

circumstances, and whether he has had any time been convicted of a specified offence.

### **The Conduct of the parties;**

53. There is no compelling evidence of any unreasonable or inappropriate conduct by Mr Wright and Ms Ashcroft. They paid the rent consistently and on time until the last two months of the tenancy. Mr Rees's first email on 22 March 2023 attests to having left the property in "immaculate condition". Exercising their rights in a reasonable manner was not unreasonable nor inappropriate.

54. In contrast, Mr Rees has acted as if, and seems to have assumed throughout, that the law, or due process, should not quite apply to either him or his wife. He or they were late in providing essential documentation at the outset of the tenancy, did not then have the necessary EICR, misread or misunderstood their own tenancy agreement, did not keep to its terms, and were clearly frustrated and affronted that they should not be able to repossess the property or increase the rent at a time of their choosing. Their conduct was particularly serious, criminal and inexcusable in the final week of the tenancy. Mr Rees ignored the law and the proper legal procedures for terminating a tenancy and regaining vacant possession.

### **Mr Rees' financial circumstances;**

55. Mr Rees has not provided any evidence of his financial circumstances, beyond confirming that he is of pensionable age, has an occupational pension following over 40 years' employment at British Aerospace and that he and his wife have an interest in another rental property as well as 28 Manor House Close.

### **Whether Mr Rees has any relevant convictions;**

56. The Tribunal has no evidence of any, and Mr Rees confirmed that he did not have any.

### **Any other relevant factors;**

57. None have been put before the Tribunal. Mr Wright and Ms Ashcroft confirmed that they were not in receipt of universal credit.

### **The Tribunal's determination and decision**

58. The Tribunal concluded that there was nothing to warrant any reduction from the maximum amount that it can order, and that Mr Rees should be ordered to repay the full £7150 within 28 days of the issue of this decision.

## **The Schedule**

### **The Relevant Statutory Provisions**

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

(1) In this section “*residential occupier*”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

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

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

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

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

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

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

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

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

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

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