



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

<b>Case Reference</b>	: HAV/00HB/HMF/2025/0604
<b>Property</b>	: 11 Carters Buildings, Portland Street, Clifton, Bristol, BS8 4JD
<b>Applicants</b>	: Saxon Cook, Anthony Clough, Cameron Curtis.
<b>Representative</b>	: Saxon Cook.
<b>Respondent</b>	: Park Asset Management Limited
<b>Representative</b>	: William Golightly - Counsel
<b>Type of Application</b>	: Application for a Rent Repayment Order, Section 41 of the Housing & Planning Act 2016
<b>Tribunal Members</b>	: Judge N Jutton, Ms T Wong, Ms C Barton MRICS.
<b>Date and Venue of Hearing</b>	: 26 June 2025 Havant Justice Centre, The Court House, Elmleigh Road, Havant, Hampshire, PO9 2AL
<b>Date of Decision</b>	: 30 June 2025

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DECISION

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## 1. Background

2. The Applicants were formerly tenants of a residential property known as 11 Carters Building, Portland Street, Clifton, Bristol, BS8 4JD (the Property). The Respondent is the owner of the Property and was at the material time the Applicants' landlord. The Applicants occupied the Property under the terms of a written assured short hold tenancy agreement dated 4 November 2021 which was for a term of 12 months starting on 4 November 2021 and ending on 3 November 2022. The rent was payable monthly on the 4<sup>th</sup> day of each month in advance in the sum of £1700.00. Upon the expiry of the fixed term the Applicants continued to occupy the Property on a statutory periodic basis. Following the service of a notice under Section 21 of the Housing Act 1988 the Applicants vacated the Property on 20 January 2024.
3. By an application dated 13 January 2025 the Applicants seek a Rent Repayment Order in respect of rent paid by them to the Respondent during the last 12 months of their tenancy totalling £20,400.00.
4. There was before the Tribunal a paginated bundle of documents prepared by the Applicants that included the application, Directions made by the Tribunal, witness statement on behalf of both parties, evidence of rent payments made, an HMO licence, the section 21 notice and other documents. References to page numbers in this decision, e.g. [10], are references to the digital page numbers in the bundle of documents.

## 5. The Law

6. Chapter 4 of the Housing and Planning Act 2016 (the 2016 Act) enables the Tribunal to make a Rent Repayment Order in favour of a tenant if it is satisfied beyond reasonable doubt that the landlord has committed one or more of certain specified offences during the tenancy. Those offences are set out in a table at section 40(3) of the 2016 Act. There are seven offences listed. Those include:
  - Section 72(1) of the Housing Act 2004, which provides: '*A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part.... but is not so licensed*'. Section 72(4) provides that it is a defence if an application for a licence has been duly made under section 63 and that application is still effective. Section 72(5) provides that it is a defence that the defendant had a reasonable excuse for having control of or managing a house which is required to be licensed but is not so licensed.
  - Section 1(2), 1(3) and 1(3A) of the Protection from Eviction Act 1977, which provides as follows:

1. Unlawful eviction and harassment of occupier

(1) .....

(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 has 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.*

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

7. Section 41(2) of the 2016 Act provides:

(2) *A tenant may apply for a rent repayment order only if-*

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

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

8. Accordingly, it is for the tenant(s) to prove, to the criminal standard of proof, that the offence or offences alleged had been committed on a date or over a period within the 12 months ending on the date of the application to the Tribunal.

9. If the Tribunal decides to make a Rent Repayment Order in favour of a tenant the amount is determined in accordance with the provisions of section 44. In

determining the amount the Tribunal must in particular take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has any time been convicted of an offence to which Chapter 4 of the 2016 Act applies.

#### **10. The Hearing**

11. The first Applicant, Mr Saxon Cook, represented all three Applicants and counsel, William Golightly, represented the Respondent. Mr Stephen Teasdale, the sole Director of the Respondent company, also attended. All parties attended remotely.

#### **12. The Applicants' Case**

13. Mr Cook said that the Applicant's case was set out in the papers before the Tribunal. That was the application form [3-9], Mr Cook's witness statement dated 4 May 2025 [21-22] and supporting documents.
14. The Applicants say that they had established with the Local Council that there had not been an HMO licence in place for the Property prior to July 2022. That although a licence had been granted in July 2022 planning permission was required for the use of the Property as an HMO in order to 'validate' the licence. That the HMO licence was subject to planning approval being granted. The effect was that the Property did not enjoy the benefit of an HMO licence because planning permission for the use of the Property as an HMO was not in place. Mr Cook referred the Tribunal to a letter dated 20 July 2022 from the Private Housing Team at Bristol City Council [58-60] which enclosed the HMO licence. At the end of that letter under the heading of '*Planning*' he referred to a statement that provided that in certain areas of the city (including in this case Clifton) there was a requirement to submit a planning application for the change of use between a dwelling house and a small house in multiple occupation. He also referred the Tribunal to an extract from the planning portal for the Property that he had downloaded [114] which indicated that no such application had been made.
15. The Applicants say that in October 2023 following an inspection of the Property the Local Council sent to the Respondent a list of works that it required to be made to the property. That an email was received by the Applicants from Jamie Dutoit of the Respondents' letting agents dated 27 October 2023 [119] which stated '*Following the recent council visit for the HMO licence, it was determined that in order to get the licence your landlord would need to make a lot of changes to the property-some of which are structural changes-this includes building a wall between the kitchen and the lounge, and installing fire doors etc. Due to the scope of work required, your landlord has decided not to proceed with the HMO licence and to let the property to a family instead, which means there would be no structural changes required*'. The letter went on to indicate that the Respondent intended to give the Applicants 2 months' notice to vacate the Property. Mr Cook says in his statement [21 paragraph 6] that he was '*....alarmed by Jamie's email because it confirmed to me in writing that the landlord was not willing to make the necessary changes to comply*

*with the HMO licence, even though we have been living in the property under the impression it was a HMO since the start of our tenancy’.*

16. The Applicants subsequently received a notice requiring possession of the Property pursuant to Section 21 of the Housing Act 1988 [119 – 120] dated 17 November 2023 requiring them to leave the Property after 20 January 2024. The notice was served, the Applicants say because the Respondent was not prepared to comply with the HMO licence conditions imposed by the Local Council in October 2023. The Respondent’s failure to comply, including a failure to carry out a fire risk assessment amounted said Mr Cook to a risk to life.
17. The Respondents’ refusal to comply with the Local Councils requirements was, the Applicants say, a breach of the HMO licence conditions which had the effect of invalidating the Section 21 notice. Nonetheless they did vacate the Property on 20 January 2024. Mr Cook said that the Applicants had no choice but to surrender their tenancy at that time otherwise they would have been evicted. The Respondent’s conduct the Applicants say amounted to an unlawful eviction of them from the Property.

#### **18. The Respondent’s Case**

19. In or about February 2022 the Respondent became aware of the need to apply for an HMO licence for the Property from Bristol City Council. Mr Teasdale of the Respondent company made an application on its behalf for a licence on 11 February 2022 [48-57]. The licence was granted on 20 July 2022 for a term of five years [64]. The licence stated that no schedule of works to be Property were required. There is reference to 5 ‘condition pages’ although there appeared to be only 4, 2 of which two were blank. Those pages included what appears to be standard information in relation to fire safety. They provided: *‘If there is a schedule attached to the licensing conditions this will detail what work is needed, if any, to comply with the HMO licensing standards in respect of fire safety’* [66]. There was no schedule attached.
20. It is not the Respondent says a condition or requirement of the HMO licence for the Property to have any necessary planning consent. The letter from Bristol City Council dated 20 July 2022 referred to by the Applicants simply provides in general terms that an application for planning permission ‘*may*’ be required. The language used, Mr Golightly said, was general permissive language. There was no requirement for the purposes of the HMO licence application for planning permission to be in place. The reality is, the Respondent says, that the Property was licensed for the relevant period (the 12 months ending on the date of the application to the Tribunal) and even if there was a planning requirement no offence is made out.
21. Following an inspection of the property by Bristol City Council on 5 October 2023 it wrote to the Respondent on 25 October 2023 [69-70] with a schedule of works [71-75] required to be carried out to the Property. The works were required to be completed by 25 January 2024. The letter stated that a failure to comply ‘*...could constitute a breach of licence conditions, for which further action will be considered*’. The letter also enclosed ‘Informal Improvement

Notices’ and stated that *‘Failure to comply with the Informal Improvement Notices will result in formal Notices being served for which there will be a charge’*.

22. The Respondent considered the necessary work advised by the Council and decided that it was not commercially viable to proceed to continue to use the Property as an HMO. Accordingly, it instructed its agents to serve the Applicants with the Section 21 notice seeking possession of the Property. That the Applicants obliged and surrendered their tenancy by vacating the Property on 20 January 2024 (being a date before that by which the works required by the Council were to be completed).
23. Even if the works required by the Council amounted to conditions of the HMO licence and if there were a breach of those conditions (which the Respondent denies not least because the works were not required to be completed until after the Applicants vacated the Property) that would if anything Mr Golightly submitted be an offence under Section 72(3) of the Housing Act 2004 not Section 72(1). That an offence under section 72(3) is not an offence to which Chapter 4 of the 2016 Act applies for the purpose of applications for rent repayment orders (see section 40 of that Act).
24. Having decided in the circumstances not to continue to use the Property as an HMO the Respondent applied to Bristol City Council on 22 November 2023 for the HMO licence to be revoked as the Property was to be converted to a single household. The Council revoked the HMO licence on 27 July 2024. There was with the papers before the Tribunal a witness statement of Kane Davis of the Private Housing Service at Bristol City Council dated 8 May 2025 outlining the history of the application for an HMO licence, the granting of the licence and its subsequent revocation [106–109].
25. No offence, the Respondent says, was committed under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (the 1977 Act). There was no attempt by the Respondent to recover possession of the Property outside of the relevant statutory regime. The 1977 Act, Mr Golightly said, addresses a situation where for example a landlord unlawfully changes the locks or obstructs entry. Having been served with the Section 21 notice the Applicants surrendered possession of the Property on 20 January 2024. Even if it were the case, which the Respondent denies, that the Section 21 notice was invalid, that would not amount to an unlawful eviction.
26. In all the circumstances, the Respondent says, the Applicant’s case is not made out. There was at all relevant times a valid HMO licence in place. There was no offence on the part of the Respondent under section 72(1) of the Housing Act 2004. Nor, if that is the Applicant’s case, was there an offence under section 1(2), (3) or (3A) of the 1977 Act. The Respondent says that the application should be dismissed.
27. Mr Teasdale of the Respondent company addressed the Tribunal. He said that he appreciated the Applicant’s position when they had been served with the Section 21 notice by the letting agent. That he understood that at the time that

they have been given the wrong information by the letting agent. He said that he emphasised with the position that the Applicants found themselves in. That he appreciated all the steps that the Applicants had taken. That had he been in their position; living in an HMO property which the letting agent had said was unlicensed, he would also have been shocked and would have wanted to investigate further as much as possible.

## **28. The Tribunal's Decision**

29. The Applicants allege that at the relevant time the Respondent was in breach of Section 72(1) of the Housing Act 2004 by having control or management of an unlicensed HMO. They say that for two reasons. Firstly, that it was a condition or requirement of the HMO licence granted on 20 July 2022 that the Property had in place the requisite planning permission for use as an HMO. That it did not have such permission and therefore the HMO licence was of no effect. Secondly, that by failing to comply with the schedule of works required by Bristol City Council in October 2023 the Respondent broke the conditions of the HMO licence.
30. The application to this Tribunal is dated 13 January 2025. It was received by the Tribunal on 16 January 2025. The relevant period during which the Applicants must show that an offence is committed is the period of 12 months ending on the day that the application was made (Section 41(2)(b) of the 2016 Act). The relevant period is therefore in this case the period of 12 months ending on 16 January 2025. During that entire period the Property was subject to an HMO licence which was granted on 20 July 2022 for a period of five years and continued until it was revoked by the Local Council on the Respondent's application on 27 July 2024.
31. It was not a condition or requirement of the licence that the Property have in place any requisite planning permission. As the letter from Bristol City Council dated 20 July 2022 [58–60] stated: *'When determining a property licence application (Mandatory/Additional/Selective) under Part 2 and Part 3 Housing Act 2004 there is no requirement for the property to have planning consent'*. The letter went on to say that it may be necessary *'to comply with planning legislation'* for an application for planning permission to use the property as a small house in multiple occupation to be made.
32. The schedule of works enclosed with the letter from Bristol City Council dated 25 October 2023 [69–70] were works that the Council required the Respondent to carry out to the Property by 25 January 2024. The letter stated that failure to comply could constitute a breach of licence conditions. The fact is that there was no failure to comply on the part of the Respondent. Non-compliance would mean failing to complete the schedule of works by 25 January 2024. The Applicants had by that date already vacated the Property and the Respondent had applied to revoke the HMO licence on the basis that the Property was no longer being used as an HMO. Even if, which the Tribunal is satisfied is not the case, the Respondent had acted in breach of any condition of the HMO licence that would constitute an offence under section 72(3) of the Housing Act 2004 which is not an offence which may give rise to an application for a Rent

Repayment Order on behalf of the tenants or former tenants of the Property under Chapter 4 of the 2016 Act.

33. For those reasons the Tribunal is satisfied that the Respondent did not commit an offence during the relevant period under section 72(1) of the Housing Act 2004. The Applicant's application for a rent repayment order under this ground fails.
34. The Applicants also allege that the Section 21 notice served on them seeking possession of the Property was invalid and that in those circumstances they were unlawfully evicted from the Property in breach of the provisions of section 1(2), (3) and (3A) of the 1977 Act.
35. A notice seeking possession under section 21 of the Housing Act 1988 may be of no effect for a number of reasons. Those include a notice in respect of a tenancy which is part of an unlicensed HMO while the property remains an HMO (Section 75 Housing Act 2004). That is not the case here. The Property was at all material times licensed. Even if it were the case that the section 21 notice was invalid the Applicants surrendered their tenancy by vacating it on 20 January 2024. There was no evidence before the Tribunal of the Respondent seeking to take possession of the property by means outside of the statutory regime. There was no evidence of the Respondent taking steps to evict the Applicants from the Property by means which might be considered unlawful for the purposes of the provisions of the 1977 Act.
36. For those reasons the Tribunal is satisfied that the Respondent did not commit an offence during the relevant period pursuant to section 1(2),(3) or (3A) of the 1977 Act. The Applicants application for a rent repayment order under this ground fails.
37. The Applicants' application for a rent repayment order is dismissed.
38. Although the Tribunal has dismissed the Applicants' application it does have some sympathy with the position that they found themselves in when served with the section 21 notice in November 2023. It would appear from what Mr Teasdale told the Tribunal that the letting agents had incorrectly giving the impression that the Property was not properly licensed. That is consistent with the email that they received from the letting agents dated 27 October 2023 [119]. The impression may have been that the Respondent was not prepared to carry out certain works required by the local council which were seen as works required to make the Property safe for occupation as an HMO. The Tribunal agrees with Mr Teasdale that it is perhaps understandable that in those circumstances the Applicants might wish to investigate matters further. That is not a criticism of Mr Teasdale. He for commercial reasons when faced with a list of works that the Local Council required to be carried out to the Property decided not to continue to let the Property as an HMO but to revert to a single residential unit. For those reasons he sought possession of the Property by serving the Section 21 notice and applied to revoke the HMO licence. In the view of the Tribunal, he very reasonably took the opportunity to make the comments referred to at paragraph 27 above, to Mr Cook at the hearing.



**39. Summary of Tribunal's Decision.**

40. The application for a Rent Repayment Order is dismissed.

30 June 2024

Judge N Jutton

**RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) being the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

