FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MG/HMK/2025/0600**
Property	**:**	**27 Walbrook Avenue, Springfield, Milton Keynes MK6 3JB**
Applicant	**:**	**Beata Ogieniewska**
Representative	**:**	**In person**
Respondent	**:**	**Marcin Bogdan and Magdalena Bogdan**
Representative	**:**	**In person**
Type of application	**:**	**Application for a rent repayment order by a tenant under Sections 40, 41, 43 and 44 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge A. Arul** **Dr. Jan Wilcox FRICS**
Hearing date	**:**	**27 August 2025**
Date of decision	**:**	**8 September 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal is not satisfied that a relevant offence has been committed and will not therefore make a Rent Repayment Order.

(2) The Tribunal makes the determinations as set out in the decision below.

Reasons

The Application

1. The Applicant sought determinations pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order ("RRO"). The Applicant alleges that the Respondent landlords have committed the offence of control or management of an unlicensed house, contrary to section 72(1) Housing Act 2004 ("the 2004 Act"). This relates to an alleged failure to obtain a licence for a house in multiple application under Part 2 of the 2004 Act. There is a further allegation of offences under sections 1 and/or 3 of the Protection from Eviction Act 1977 ("the 1977 Act").

2. The sum sought in the application form is £6,475, relating to the period of 12 months between 18 July 2023 and 18 July 2024 during which it is said that a relevant offence was committed; the latter being the date of the application. This sum is based on the rent, inclusive of all utility costs, paid over that same 12-month period.

Procedural history and documents

3. The application, dated 8 July 2024, was received at the office for the Eastern region (where the Property is situated) on 18 July 2024.

4. On 13 March 2025, a case officer from the Tribunal office wrote to the Applicant indicating that a Procedural Judge had considered the application and wished to remind the Applicant of the burden of proving a HMO licencing offence and observing that the Applicant may be relying upon the 1977 Act (as well or in addition to the 2004 Act).

5. On 6 May 2025, a Procedural Judge gave case management directions which required that the Applicant send a bundle of relevant documents to the Tribunal and to the Respondent; and thereafter the Respondent sent a bundle of relevant documents to the Applicant and the Tribunal. The Applicant then had permission to send a brief reply to the issues raised by the Respondent.

6. The Applicant filed an 86-page bundle, including an undated and unsigned extended statement of reasons as to why a RRO should be

made, which was repeated with some additional content in an email to the Tribunal dated 31 March 2025. This was effectively a witness statement of the Applicant, save for a statement of truth and signature. The bundle also included two letters dated 4 June 2025 and 23 June 2025 from a former tenant, Hubert Bulski, and two letters both dated 3 June 2025 from the Applicant's partner during the material events, Michal Lewandowski. There were other documents, such as copies of text messages. The bundle included several messages which were in the Polish language and translations into English were not provided.

7. The Respondents filed a 226-page bundle, including a joint witness statement of response to the Applicant's application, further statements in response to the evidence of each of the Applicant's witnesses together with a statement from four friends or associates of theirs. These were Marcin Knap (a friend and their handyman) who produced two signed statements dated 15 June 2025 and 13 June 2025, Anna Bartnikiewicz (a friend) who produced two signed statements dated 15 June 2025 and 29 June 2025, Weronika Barabasz who produced one signed statement dated 23 June 2025, Marcin Gniewosz who produced one signed statement dated 28 June 2025 and Magdalena Kwiecien who produced one signed statement dated 30 June 2025. The statements were broadly verified by statements of truth, although not always complete and in varying forms. Further, the Respondents included in their bundle a joint statement dated 21 October 2024 used in previous County Court proceedings. They confirmed at the hearing that they wished to rely on the contents of that statement, along with the others, in these proceedings. Their bundle included a number of messages which were in the Polish language and translations were provided, but not always by an official service.

8. The Applicant filed a second 'supplemental' bundle of 4 pages under the cover of a two-page letter addressed to the Tribunal.

9. The Tribunal has based its decision on these documents and the evidence heard and submissions made at the hearing; no site visit having been deemed necessary. All those documents have been read by the Tribunal, but it is not necessary in this decision to set out each and every one of them. They all contributed to the reasoning of the decision.

The Hearing

10. The hearing was conducted via CVP. The parties were all present. The Applicant was assisted throughout the hearing by a Tribunal appointed interpreter with proficiency in the Polish language.

11. The Applicant attended the hearing and represented herself. She was supported by Pawel Majka, who provided some initial assistance with interpreting whilst technical difficulties were resolved and the official interpreter arrived. The Applicant gave evidence and answered questions

from the Tribunal and from the Respondents. Her witnesses did not attend, and she was reminded that the Tribunal may attach less weight to the evidence of a witness who was not present for their evidence to be tested by questions. Mr Lewandowski entered the online room for a brief period of time, during which the Applicant was giving her evidence, but posted a message saying he had to leave due to work commitments. He did not give live evidence, therefore.

12. The Respondents also attended the hearing and represented themselves. Their witnesses did not attend, and they were reminded that the Tribunal may attach less weight to the evidence of a witness who was not present for their evidence to be tested by questions.

13. The hearing got off to a slow start. The Applicant could not log in and initially used telephone. The telephone discussion was difficult due to a poor connection. The interpreter was also late. Initially the Tribunal tried to establish the Applicant's level of proficiency in English. Notwithstanding Mr Majka's informal but helpful assistance, this proved difficult due to the poor sound quality from the Applicant's side. Once we got underway, about one hour after the start of the hearing, it took considerable further time to ascertain the statements which the Applicant relied upon. The Applicant was not well organised and did not have her statement to hand. It also transpired that the bundle she had sent to the Tribunal had some of the numbering amended and this did not correspond with the copy sent to the Respondent. After some discussion to get to the bottom of this, it transpired that the Respondents were missing a copy of one of the statements of Mr Bulski.

14. The missing statement from Mr Bulski was emailed to the Respondents during the hearing. The Respondents were informed of their right to object to its late service, although it was a short statement and they could have time to read it as required. They did not object and accepted the Tribunal's observation that they did not need to agree the contents and could make comment on it during their submissions.

15. The Applicant also referred to a recording which she said had been made of a conversation with Mrs Bogdan. This had not been filed with the Tribunal or served on the Respondents. It was not available at the hearing. The Applicant was informed that, if she wished to rely upon new evidence, she would need to apply for permission from the Tribunal and make sure a copy was provided to the Tribunal and the Respondents. This point was not pursued further during the hearing.

16. The parties were invited to explain to the Tribunal the content of any document referred to which was not in English and where no certified translation was available. If required, the official interpreter would then assist the Tribunal with translation. In the event, this did not prove necessary as very few documents in either bundle were referred to during the hearing.

17. The Applicant gave evidence. Mr Bulski did not attend. Mr Lewandowski attended part way through the hearing but then sent a message stating he had to return to work. He did not, therefore, give evidence. The Applicant's evidence overran into the afternoon. As live evidence did not get underway until the middle of the day, the parties were told that, in the interests of fairness, the Tribunal might need to exercise its case management powers to give each an hour of evidence. In the event, the Respondents' evidence was short, which made up for lost time to a degree. Their witnesses did not attend. Both confirmed their own statements. The Applicant indicated she had no questions. She was reminded of the opportunity to challenge anything she disagreed with. She then asked some brief questions. There was little further that Mrs Bogdan could add to Mr Bogdan's evidence (and her own statement) so she did not give formal evidence. For the avoidance of doubt, she confirmed her statement and did make herself available for cross examination.

The Background Facts

18. 27 Walbrook Avenue, Springfield, Milton Keynes MK6 3JB ("the Property") was purchased by the Respondents in around 2017.

19. Mr Bogdan lived in the Property initially because, very shortly after purchase, Mrs Bogdan returned to their native country, Poland, and resided there.

20. The Property is a house comprising three bedrooms and one living room which were, during the period 2018 onwards, available for let to paying occupants. Each bedroom had its own key access. The occupants used common kitchen, bathroom and garden facilities. We were not presented with evidence as the sizes of each room, or any plans or photographs. We were told that the living room is quite large and was at the material times used as a bedroom, and that one of the bedrooms is small. We have assumed that the remaining two bedrooms were of at least average size. Each has its own lockable door.

21. The Applicant first moved into the Property in 2018. There was no written tenancy agreement. Mr Bogdan was occupying one of the rooms at this time. He says that he regarded the Applicant as a lodger. The Applicant says that she regarded herself as a tenant notwithstanding the absence of any written agreement or the shared use of common areas. All four rooms used as bedrooms were occupied at this time, one by her, one by the Respondent and two by others, who were paying occupants. We were given the names of some of the occupants between 2018 and 2023 and these included some of the witnesses, Ms Barabas (and her partner Marcin Niebosz who occupied the same room), Mr Bulski and Mr Lewandowski. We were told that Mr Lewandowski's stepson also occupied for a period of time but no further details were provided.

22. We specifically sought clarification of occupation between July 2023 and July 2024. The Applicant confirmed that she occupied one room with Mr Lewandowski and he also rented the living room. There were other tenants in the remaining two rooms. In August 2023 one of them left and in November 2023 the other left. From November 2023 the Applicant and Mr Lewandowski rented the smaller bedroom, which they used as a living room. In other words, they had three out of the four rooms used as bedrooms. Mr Bulski had the remaining room from November 2023. There was a suggestion, by the Applicant, that one room would be used for commercial purposes (a massage room) but this did not happen. It appeared that the Respondents used a spare room or the smaller bedroom whenever they stayed overnight at the Property. The Applicant confirmed that, after July 2023, the highest number of people staying overnight at any one time was four people including her and Mr Lewandowski. On the evidence we heard, that in fact appears to have been the highest number throughout the period 2018 to 2024.

23. The rent paid by the Applicant was £455 per month, which included utility bills paid for by the Respondents. These comprised gas, electricity, water, broadband and council tax. In around November 2023, the Applicant and her partner, Mr Lewandowski (who rented the living room) rented the smaller bedroom for a further, approximately £300 per month. The Applicant started paying £600 per month, being £455 together with £145 toward the additional room. We were told that Mr Lewandowski paid a similar supplement. We were told that the Applicant and Mr Lewandowski used the additional room as a living room.

24. Between 2018 and 2024, the Respondents largely lived in Poland, but Mr Bogdan would travel back to the UK. Mr Bogdan was asked by the Tribunal to summarise the occasions when he stayed at the Property for more than one or two nights. He said he lived there from 2017 until close to the end of 2018, then again for one month when he came for a holiday in the middle of 2019. He then stayed from the middle of 2021 until mid-January 2023. He was mainly in Poland from then onwards with only occasional stays.

25. The Applicant told us that, after July 2023, Mr Bogdan did not 'stay', he only visited. We took that to mean that he was only at the Property temporarily. On clarification, she told us that he did stay overnight and this was a few times, sometimes with Mrs Bogdan. The Applicant initially said there were only a few times but later in her evidence said this was approximately every month and, from 2024, every two weeks. He stayed in empty rooms where available. The Applicant confirmed that the longest that the Respondents stayed was three nights and, if Mr Bogdan was alone, it was usually only one night. The Applicant stated that some personal effects were left by them at the Property, such as towels or clothes and some cosmetics in the bathroom. He did not lock rooms when he left.

26. Prior to 2024, when relations appear to have deteriorated, all parties accepted that relations between them were good. The Applicant confirmed that small payments to Mr Bogdan of £45 in November 2023 and March 2024 appearing on her bank statement related to Mr Bogdan bringing cigarettes back from Poland for her (presumably cheaper than her purchasing them in the UK). This supported the fact that relations were at least reasonable around those times. There was, however, some difference of evidence on the relationship. In her statement, the Applicant had made some criticisms of Mr Bogdan, for example of consuming her food without permission and coming and going as he pleased. She criticised both Respondents of using the Property as their own. She also made serious allegations to the effect that Mr Bogdan had harassed her when he was more regularly at the Property. The detail was limited however these alleged events appeared to date back to 2018. The Applicant accepted under cross examination that relations were good but suggested that they deteriorated from 23 August 2023 when she was told that one room might be used for commercial purposes. There was then an incident when the handyman was found in the garage and the Applicant changed the locks in response. The Respondents pointed to many text messages broadly spanning the period 2018 to 2024 with examples of a friendlier relationship and the parties engaging in communal living, such as inviting the other to share food, and extending birthday wishes. The Respondents in their evidence maintained that relations only deteriorated in June 2024 (as explained below) and firmly denied any impropriety such as harassment. Indeed, they pointed to the absence of prior complaints, or reports to the police as suggesting lack of credibility in these allegations.

27. The Applicant was invited to give examples of her allegations of harassment occurring between July 2023 to July 2024. The examples given were limited, for example, Mr Bogdan not cooperating in getting rooms ready or bedding washed for tenants. The Applicant was asked if she felt threatened in any way and said there were no threats as such but pointed to the incident of 22 June 2024 with Mrs Bogdan (as explained below). She was asked if there were incidents of shouting or raised voices. She gave an example where Mr Bogdan expressed his views on politics and religion and stated that he yelled at her but then later followed her upstairs and apologised. This was before June 2023.

28. The Respondents informed the Applicant in April 2024 that they were intending to sell the Property. They then gave written notice by letter. On 22 June 2024, Mrs Bogdan visited the Property for the purposes of an estate agents visit (linked with the sale of the Property) and could not gain access as the locks to the external front door had been changed. There was allegedly a heated exchange between the Applicant and the Second Respondent, the extent of which is disputed. The Applicant alleges that this was one of many acts of harassment. The Respondents say that the trigger for the heated exchange was a unilateral change of locks by the Applicant which had not been authorised or notified, thus causing inconvenience and embarrassment when Mrs Bogdan arrived

with estate agents to view the Property. The Applicant alleges that the Second Respondent told her she needed to move out by the next day and that she needed to remove her dog from the Property (which it was said was unauthorised). The Applicant was asked if there was any consequence attached to this but confirmed there was not. In other words, she was not told, for example, that if she did not comply any sanction or action would be taken by the Respondents.

29. In cross examination, it was put to the Applicant that her email to the Tribunal on 31 March 2025 and letter of 12 July 2025 were contradictory in that one referred to a confrontation with Mrs Bogdan upstairs and one referred to it taking place downstairs. Her answer was that it was both, the conversation started upstairs, she then put her clothes on and went downstairs where it continued. She suggested her statements were merely incomplete. The Applicant was also challenged about her assertion that she was not given proper notice of the Respondents intention to sell the Property. She was referred to text messages on 20 April 2024 where she had said that she had found a house in the same area and was applying for properties. On 16 April 2024 she was told by Mr Bogdan of the plans to sell i.e., four days prior.

30. On 22 June 2024, following her attendance at the Property, Mrs Bogdan issued a letter to the Applicant giving notice to vacate by 31 July 2024. This letter was also sent, with slight amendments, on 27 June 2024. Both letters referred to a 'tenancy' and alleged breaches including unilateral changing of the locks. The Applicant did not vacate as required. On 31 July 2024, the Respondents served a notice under section 8 of the Housing Act 1988 seeking possession of the Property and relying upon grounds including breach of tenancy by changing the locks. We had sight of those documents, and heard evidence, showing that accelerated possession proceedings were commenced in the County Court, but were dismissed by a judge on a paper sift. A later application to set aside that order was also dismissed. The Respondents had utilised the 'accelerated' possession process rather than the 'ordinary' process; seemingly on advice which may have been incorrect or incorrectly understood. In the event, the Applicant voluntarily vacated the Property on 16 February 2025. There was a dispute over whether she had paid a deposit (and, if regulations relating to registration of the same were applicable, potentially entitling the Applicant to compensation for any failure to so register). The Applicant also alleged breaches of landlord obligations such as relating to gas certification. A key aspect of the Applicant's refusal to vacate the Property even in the face of the County Court proceedings was her insistence that a notice was required under section 21 of the Housing Act 1988 giving not less than two months' notice to vacate. No such notice was served; the Respondents did not accept that one was necessary, either because the Applicant was not a tenant for Housing Act 1988 purposes or because there had been a breach of tenancy and section 8 was a permissible route. In other words, a fault-based eviction rather than a 'no-fault' process.

31. Mr Bogdan was asked some questions by the Tribunal about the management of the Property. He confirmed that a gas certificate was produced for 2017 and 2018 but there was a gap before the next one in 2024. He said a new boiler was installed in April 2021. He maintained that there was an Energy Performance Certificate, and a copy had been given to the Applicant. He maintained that he never collected a deposit. In his written evidence he stated that he had in any event returned a sum of money equivalent to the deposit claimed to avoid any dispute. Importantly, he maintained that the Applicant was a lodger and there was no requirement to have annual gas inspections, provide an EPC, or register a deposit.

32. The Respondents' position was that there was no written tenancy agreement or contract as such was not required in law. The arrangement was one of lodging only, with shared facilities. The rent included utilities, which the Respondents had paid throughout the seven-year period 2018 to 2025. They retained a key because the Applicant was only entitled to exclusive use of one room in the Property. They denied unlawful eviction or harassment connected with this. They pointed to the fact they gave ample notice from April 2024 and served a notice under section 8 of the Housing Act 1988 when advised by solicitors. The Applicant did not vacate so they started court proceedings; this may have been the wrong process, but they attempted to do everything lawfully, never used threats or force, and never sought possession the 'next day'. They stated that they did not enter the Property again after 22 June 2025 until the Applicant voluntarily vacated on 16 February 2025. They felt the Applicant had made up an allegation of unlawful eviction to seek an advantage in her council house application process. They pointed us to text messages where they had given notice, and had a dialogue with the Applicant, about their intended visits in advance of coming to the UK. For example, 8 March 2019, 15 May 2024, 6 June 2024 amongst others. They had never been approached by any authority about harassment or unlawful eviction, or HMO licencing. The Applicant confirmed in evidence that she had not made a report.

Issues

33. The Tribunal must determine the following issues, having regard to the legislation and the relevant authorities.

    a) Is the Tribunal satisfied beyond reasonable doubt that the Respondent has committed either or both alleged offences?

    b) Does the Respondent have a 'reasonable excuse' defence for any failure to obtain a HMO licence or any defence to any offences for harassment/unlawful eviction?

c) If a relevant offence has been committed during the 12-month period preceding the application, should the Tribunal make an RRO?

d) What amount of RRO, if any, should the Tribunal order?

i. What is the maximum amount that can be ordered under s.44(3) of the Act?

ii. What account must be taken of:

(1) The conduct of the Respondent

(2) The financial circumstances of the Respondent

(3) The conduct of the Applicant?

e) Should the Tribunal order the Respondent to reimburse the Applicant's application and/or hearing fees?

34. The Tribunal made clear to the parties that, whilst there was considerable evidence of events going back as far as 2018, which may well be relevant for context, the 12-month period, 18 July 2023 to 18 July 2024, was the key period to focus on. It is for this period that a relevant offence must have been committed.

35. The Applicant was also reminded that the burden of proof lay with her to satisfy the Tribunal beyond reasonable doubt that a relevant offence or offences had been committed. The burden remained on her to demonstrate that an RRO should be made, what rent had been paid and that it would be just to make an order in a particular sum. However, those matters would be determined on the balance of probabilities. Further, the Respondents had the burden of proving any defence relied upon to the same standard.

The Legal Framework

The Housing Act 2004 ("the 2004 Act")

36. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs").

37. Section 61(1) provides:

"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.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence."

38. Section 72 provides:

"(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.

…

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine."

39. Section 254 provides:

"(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

…

(a) it meets the conditions in subsection (2) ("the standard test");

…

(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

40. Section 259 provides:

"(1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.

(2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person—

(a) as the person's residence for the purpose of undertaking a full-time course of further or higher education;

(b) as a refuge, or

(c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority."

41. Section 263 provides:

"(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

The Protection from Eviction Act 1977 ("the 1977 Act")

42. Section 1 provides:

"(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.

(3C) In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier's right to remain in occupation of the premises, or

(b) a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings."

43. Section 2 provides:

"Where any premises are let as a dwelling on a lease which is subject to a right of re-entry or forfeiture it shall not be lawful to enforce that right otherwise than by proceedings in the court while any person is lawfully residing in the premises or part of them."

44. Section 3 provides:

"(1) Where any premises have been let as a dwelling under a tenancy which is neither a statutorily protected tenancy nor an excluded tenancy and—

(a) the tenancy (in this section referred to as the former tenancy) has come to an end, but

(b) the occupier continues to reside in the premises or part of them,

it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.

(2) In this section "the occupier", in relation to any premises, means any person lawfully residing in the premises or part of them at the termination of the former tenancy.

(2A)Subsections (1) and (2) above apply in relation to any restricted contract (within the meaning of the Rent Act 1977) which—

(a) creates a licence; and

(b) is entered into after the commencement of section 69 of the Housing Act 1980;

as they apply in relation to a restricted contract which creates a tenancy.

(2B) Subsections (1) and (2) above apply in relation to any premises occupied as a dwelling under a licence, other than an excluded licence, as they apply in relation to premises let as a dwelling under a tenancy, and in those subsections the expressions "let" and "tenancy" shall be construed accordingly.

(2C) References in the preceding provisions of this section and section 4(2A) below to an excluded tenancy do not apply to—

(a) a tenancy entered into before the date on which the Housing Act 1988 came into force, or

(b) a tenancy entered into on or after that date but pursuant to a contract made before that date,

but, subject to that, "excluded tenancy" and "excluded licence" shall be construed in accordance with section 3A below."

45. Section 3A provides:

"(1) Any reference in this Act to an excluded tenancy or an excluded licence is a reference to a tenancy or licence which is excluded by virtue of any of the following provisions of this section.

(2) A tenancy or licence is excluded if—

(a) under its terms the occupier shares any accommodation with the landlord or licensor; and

(b) immediately before the tenancy or licence was granted and also at the time it comes to an end, the landlord or licensor occupied as his only or principal home premises of which the whole or part of the shared accommodation formed part.

(3) A tenancy or licence is also excluded if—

(a)under its terms the occupier shares any accommodation with a member of the family of the landlord or licensor;

(b) immediately before the tenancy or licence was granted and also at the time it comes to an end, the member of the family of the landlord or licensor occupied as his only or principal home premises of which the whole or part of the shared accommodation formed part; and

(c) immediately before the tenancy or licence was granted and also at the time it comes to an end, the landlord or licensor occupied as his only or principal home premises in the same building as the shared accommodation and that building is not a purpose-built block of flats.

(4) For the purposes of subsections (2) and (3) above, an occupier shares accommodation with another person if he has the use of it in common with that person (whether or not also in common with others) and any reference in those subsections to shared accommodation shall be construed accordingly, and if, in relation to any tenancy or licence, there is at any time more than one person who is the landlord or licensor, any reference in those subsections to the landlord or licensor shall be construed as a reference to any one of those persons.

(5) In subsections (2) to (4) above—

(a) "accommodation" includes neither an area used for storage nor a staircase, passage, corridor or other means of access;

(b) "occupier" means, in relation to a tenancy, the tenant and, in relation to a licence, the licensee; and

(c) "purpose-built block of flats" has the same meaning as in Part III of Schedule 1 to the Housing Act 1988;

and section 113 of the Housing Act 1985 shall apply to determine whether a person who is for the purposes of subsection (3) above a member of another's family as it applies for the purposes of Part IV of that Act."

The Housing and Planning Act 2016 ("the 2016 Act")

46. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting local housing authorities to impose financial penalties of up to £30,000 for a number of offences as an alternative to prosecution.

47. Chapter 4 introduced a new set of provisions relating to RROs. An additional five offences were added, in respect of which a RRO may be

sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides That a tribunal must make the maximum award in specified circumstances.

48. The phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the 2016 Act provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

49. In the Upper Tribunal (in *Rakusen v Jepsen* [2020] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, considered the policy of Part 2 of the 2016. He noted (at [64]) that: *"… 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. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The main object of the provisions is deterrence rather than compensation."*

50. In the Court of Appeal, Arnold LJ endorsed these observations. At [36], he noted that Part 2 of the 2016 Act was the product of a series of reviews into the problems caused by rogue landlords in the private rented sector and methods of forcing landlords to either comply with their obligations or leave the sector. Part 2 is headed "Rogue landlords and property agents in England". At [38], he noted that the 2016 Act conferred tough new powers to address these problems. At [40], he added that the 2016 Act is aimed at *"combatting a significant social evil and that the courts should interpret the statute with that in mind"*. The policy is to require landlords to comply with their obligations or leave the sector.

51. In the subsequent decision of *Kowalek v Hassanien Limited* [2022] EWCA Civ 1041, Newey LJ summarised the legislative intent in these terms (at [23]):

> *"It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in Jepsen v Rakusen [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (Rakusen v Jepsen [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need*

not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in Rakusen v Jepsen, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

52. Section 40 provides:

> *"(1) This Chapter confers power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.*
>
> *(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—*
>
> > *(a) repay an amount of rent paid by a tenant, or*
> >
> > *(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."*

53. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". Those include "control or management of an unlicenced HMO", and "control or management of an unlicenced house". They also include offences under sections 1(2), (3) or (3A) of the 1977 Act.

54. In *Acheampong v Roman* [2022] UKUT 239 (LC), the Upper Tribunal established that a Tribunal is obliged to assess the relative seriousness of seven categories of offence which "can be seen from the relevant maximum sentences on conviction" in assessing any RRO.

55. The failure to licence a property is one of the less serious offences of the seven offences for which a RRO may be made. The 1977 Act offences are of the more serious type.

56. Section 41 deals with applications for RROs. The material parts provide:

"(1) A tenant or a local housing authority may apply to the First-Tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

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

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

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

57. Section 43 provides for the making of RROs:

"(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)."

58. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned", in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides:

"(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid 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."

59. "Rent" is not defined in the Act. However, under the Rent Acts, "rent" has a clearly defined meaning, namely "the entire sum payable to the landlord in money" (see Megarry on the Rent Acts, 11th Ed at p.519 and the reference to *Hornsby v Maynard* [1925] 1 KB 514 and subsequent cases). The meaning is the same at common law as under the Rent Acts (see the current edition of Woodfall "Landlord and Tenant" at 7.015 and 23.150).

60. Section 44(2) includes a table which clarifies the period for which rent is considered by reference to the seven offences listed at section 40(3). As applicable to the current case, if an HMO offence is committed then this is a period not exceeding 12 months during which the Respondent was committing the offence. If a 1977 Act offence is committed, this is the

period of 12 months ending with the date of the offence i.e., the 12 months preceding each act of harassment which constitutes an offence. There are further provisions in the 2016 Act which apply where there is evidence of a conviction for an offence. This does not apply on the given facts.

61. Section 44(4) provides:

> *"(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."*

62. Section 46 specifies a number of situations in which a Tribunal is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the local housing authority has imposed a financial penalty.

63. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by Tribunals in applying section 44:

a. A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
b. Whilst a Tribunal may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
c. The factors that a Tribunal may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]);
d. A Tribunal may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]);
e. In determining the reduction that should be made, a Tribunal should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

64. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance on the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v*

Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a Tribunal should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

65. In *Acheampong*, Judge Cooke stated that Tribunals should adopt the following approach:

> *"20. The following approach will ensure consistency with the authorities:*
>
> *a. Ascertain the whole of the rent for the relevant period;*
>
> *b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.*
>
> *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).*
>
> *21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."*

66. In *Fashade v Albustin* [2023] UKUT 40 (LC), the Deputy President, Martin Rodger KC (at [21]) summarised the approach adopted by the Chamber President in *Williams v Palmer* in these terms:

> *"It was necessary in each case to consider the seriousness of the offence (a crucial element of the landlord's conduct) and to fix the amount of the order having regard to its seriousness and all other relevant considerations, including those particularly identified in subsection (4)."*

67. Most recently, the Deputy President, Martin Roger KC summarised a number of the decisions above in *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC).

68. In relation to the 1977 Act, the Tribunal must consider whether the exclusions under section 3A apply by virtue of any shared occupation with the Respondent or their family. If the exclusions do not apply, then the Tribunal must consider, absent evidence of a conviction, whether the Respondent has committed a criminal offence.

69. The questions are whether the Respondent unlawfully deprived the Applicant of her occupation of the Property, or any part of it, or attempted to do so. It would be a defence to have believed, and had reasonable cause to believe, that the Applicant had ceased to reside in the Property.

70. The Tribunal must also consider whether the Respondent has committed acts likely to interfere with the peace or comfort of the Applicant or any member of their household or persistently withdrawn or withhold services reasonably required for the occupation of the Property as a residence. Importantly, such acts must either have been committed with the intent to cause the Applicant to give up occupation or refrain from exercising any right or remedy, or where the Respondent knew, or had reasonable cause to believe, that the acts would have that effect. It is a defence to have reasonable grounds for doing the acts or withdrawing or withholding the services in question.

71. The combined effect of these provisions is that, unless an exception or defence applies, landlords must take (and enforce) proceedings through the courts to obtain possession from a residential tenant. To take steps to evict, or unduly pressurise a tenant to leave may fall foul of the 1977 Act.

72. The limited number of cases dealing specifically with these types of offences under the 1977 Act often have very specific facts. By way of examples, in *Opara v Olasemo* [2020] UKUT 96 (LC) evidence of the landlord changing locks and removing tenant's possessions was held to be sufficient for an offence to be made out. In *Salva v Singh-Potiwal* [2019] UKUT 307 (LC) the appeal failed in the absence of a physical eviction.

73. The Tribunal has applied the statutory provisions and the guidance in all the above cases to its decision.

Decisions on the Issues

74. It was common ground that the Property did not have a HMO licence at any material time nor does it presently have one. The Property has, since commencement of these proceedings, been sold.

75. It was not agreed between the parties whether the Property required a licence between 18 July 2023 and 18 July 2024 (i.e., the 12-month period immediately preceding the application to the Tribunal), or at any earlier time. To be satisfied beyond reasonable doubt that the Respondent committed an offence over the relevant period, the Tribunal needed to be satisfied that a licence was in fact required. This in turn required consideration of the requirements of the Housing Act 2004 so far as HMOs are concerned.

76. The Tribunal had before us only very limited evidence of the status of occupants who occupied from time to time and during the period for which a RRO is sought i.e., July 2023 to July 2024. The evidence was not complete, and we had to try and piece together who occupied over which periods of time and what each individual's status was. It would have been desirable to have heard evidence from some of the other occupants and former tenants.

77. There was no evidence from the local authority as to whether a HMO licence was required between July 2023 and July 2024 (or, indeed, at any other time). The Applicant's evidence was that she was told by the local authority that a HMO licence was required however all that were shown evidencing this was an email stating that a HMO is defined as a property with three or more persons in occupation comprising more than one household and sharing common facilities.

78. A significant issue is the status of the occupants. A house may be a HMO if three or more persons occupy and them comprise more than one household but licencing is only required either where there are five or more persons comprising more than household or the local authority has imposed a special scheme. We heard no evidence of such a scheme in Milton Keynes.

79. The First Respondent occupied a room in the Property from time to time. When the Applicant first moved in, Mr Bogdan also occupied as his main residence. It seems clear she was a lodger, hence the Housing Act 1988 assured shorthold tenancy rules would not have applied. The HMO licensing rules would also not have applied. We did not have sufficiently precise evidence to determine whether, once Mr Bogdan moved out, this was sufficient for the Property not to be his permanent residence. This

is further complicated by his return in 2021 for an extended period. However, we do not need to determine that issue because the evidence from both parties was that at no time, and certainly between July 2023 and July 2024, did more than four persons occupy. Likewise, whether the Applicant and Mr Lewandowski occupied as a single unit or were each individual occupants, the overall number still did not exceed four.

80. We were not satisfied beyond reasonable doubt that a HMO offence was committed during the relevant time frame of July 2023 to July 2024. We consider that the Applicant has therefore not proven her case.

81. In relation to the claim of harassment/unlawful eviction, we find that the parties enjoyed a good relationship from 2018 until at least March 2024. There was evidence of communal living, sharing meals and social activities. The First Respondent would bring back tobacco from Poland when he returned to the UK and sell it to the Applicant. There were messages between the parties about food arrangements and the like. These continued, as did the payments for tobacco until at least March 2024.

82. The Applicant says relations broke down from August 2023 when she was told one bedroom would be used for commercial purposes as a massage room. We saw messages between the parties postdating this, for example September 2023 suggesting that relations were still at least cordial. We also note that the Applicant and Mr Lewandowski took on another room in the Property in November 2023, which is inconsistent with unhappiness and strained relations at that time. We therefore did not accept that relations had deteriorated to any significant degree notwithstanding perhaps some tension over the proposed massage room for a brief period of time around August 2023.

83. The Applicant alleged harassment. This is dated before the relevant period of July 2023 to July 2024. The evidence was less than satisfactory. There was insufficient information about what happened and when. We were faced with opposite accounts from the Applicant and Mr Bogdan. Whilst the Applicant is not required to provide corroborative evidence, the absence of any contemporaneous complaints did suggest that the events either did not take place or might be embellished. Even if we had found that they had taken place beyond reasonable doubt (which we did not) and were sufficient to constitute an offence under the 1977, they were not carried out with intent to secure possession of the Property.

84. The Applicant alleged harassment by Mr Bogdan having eaten her food and generally treated the Property as his own. We have examined the messages between the parties which were made available. Whilst these may not present a full picture of the dialogue, and events over a six or seven year period, we are satisfied that there were communal living arrangements which were cordial. We do not find that any conduct

which might have been unwanted crosses the threshold into criminality, nor that it was carried out during the relevant period or with intent to secure possession of the Property.

85. The Applicant alleged harassment by tradesman visiting with notice or permission. We do not find that this was made out. It was common ground that a handyman visited and let himself into the garage. Whilst this may be conduct which might have been unwanted, we find that it does not cross the threshold into criminality, nor that it was carried out with intent to secure possession of the Property. The claim that the handyman visited also contradicts the Applicant's statement that herself or her partner 'had to deal with all the breakdowns or repairs in the house.'

86. Even if any of the aforementioned alleged conduct crossed the threshold into interfering with peace and comfort, there was no evidence that this was with a view to securing vacant possession or otherwise preventing use of the Property or other rights or obligations accruing to the Applicant, whether as a lodger/licensee or as a tenant.

87. The Applicant alleges harassment on 22 June 2024 by Mrs Bogdan. We find that a heated discussion did take place. We find that this was triggered by Mrs Bogdan discovering the locks changed, having not authorised this, been told beforehand or been offered or given a set of keys. It would be no surprise that she was upset, and we find on the balance of probabilities that she was likely to have been. However, we do not find that her upset interfered with peace and comfort in the circumstances. In any event, it was not aimed at securing vacant possession of the Property.

88. We note that the Respondents spent money on lawyers to secure possession through lawful means. We have found that there was no unlawful interference with the Applicant's peace and comfort. We find that there was a relationship breakdown after the incident on 22 June 2024 but the Respondents did not seek to secure vacant possession or limit the Applicant's use of the Property contrary to the 1977 Act.

89. We were not satisfied beyond reasonable doubt that any 1977 Act offence was committed during the relevant time frame of July 2023 to July 2024. We consider that the Applicant has not proven her case, therefore.

Reasonable Excuse

90. If we had found that a relevant offence had been committed, we would have gone on to consider whether there was a relevant defence (principally, whether there was a reasonable excuse for non-compliance or reasonable grounds for the conduct) and the amount, if any, of a RRO.

91. The Respondents' primary position was that a HMO licence was not required. If one had been required, we consider it likely they would have taken steps to obtain this, given that they instructed lawyers for other purposes and were prepared to pay to ensure compliance with the law.

92. If we had found contraventions of the 1977 Act, we would have found that there were reasonable grounds for the conduct on 22 June 2024.

93. To the extent that, had we found an offence had been committed, there was no primary defence, the Respondents' arguments could still be relevant when considering quantum.

Quantum

94. The Applicant was seeking a RRO for £6,475. This sum does not give allowance for the utilities and bills paid by the Respondents.

95. The Respondents produced evidence of payments to third party utility companies and for council tax. These did not always cover the complete period of time but we were able to extrapolate the information to provide a reasonable estimate of the likely costs incurred over the entire period July 2023 to July 2024. We find that the amounts shown are consistent with what in our view would be the expected costs of the fuel, water and broadband supplies.

96. We found that an average of £115 per month was attributable to each room, assuming four lettable rooms and an equal division. As noted earlier in this decision, we were not presented with sufficient information about room sizes to allocate utilities according to such sizes. The utilities and council tax would therefore have amounted to £1,380 for the 12-month period in relation to the Applicant's primary room together with a further £402 for her half of the additional room which she let for 7 months in the 12-month period prior to her application to the Tribunal.

97. We concluded that the maximum amount that could be awarded for a RRO is £6,475 less £1,782 = £4,693. This sum is the total rent paid by the Applicant between July 2023 and July 2024 less the utilities paid by the Respondent per the calculations above. The maximum would apply for both alleged offences as they were alleged to have continued for the 12-month period in question.

98. As to the financial circumstances of the Respondents, there was very little documentary evidence provided. However, it is clear from the witness statements that at least one of them holds paid employment. Whilst any financial penalty may be unwanted, we were not made aware of any exceptional hardship that a RRO would cause.

99. We must also consider the conduct of the parties. If we had found any contravention of the HMO licencing regime, we would have found this at the lower end of culpability, given that occupancy levels changed and the landlord was in occupation for some of the period in question. Any breach would likely have been inadvertent. If we had found 1977 offences, we would have found these at the lower end and that the events of 22 June 2024 occurred in the heat of the moment after some provocation due to the unauthorised and unannounced lock change. We had no evidence of previous offending by the Respondents. In relation to the Applicant, we would have considered the unilateral changing of the locks without permission or notification to be poor conduct. This was indicative of general lack of cooperation. The Applicant complained of lack of maintenance but also about access by maintenance persons; including changing the locks seemingly to prevent their access. The insistence on a notice under section 21 of the Housing Act 1988 was also not entirely reasonable where a fault-based notice under section 8 had been served.

100. We noted that there was insufficient evidence by which to arrive at a firm view on whether the arrangement between the parties was a tenancy or a licence, under a lodging arrangement. It seems clear that it started as a lodging arrangement, but this is likely to have changed over time once Mr Bogdan was no longer occupying on more than a temporary and sporadic basis for short stays of one to three nights only. We consider that the Respondents would still have required gas certification because the Gas Safety (Installation and Use) Regulations 1998, SI 1998/2451 are applicable to part of a premises (see regulation 36). They also do not distinguish the age of an appliance so having a new boiler installed in 2021 was not an excuse or defence. Hence the failure to obtain this during 2019 to 2023 inclusive was an aggravating factor. We accept that the Energy Performance of Buildings (England and Wales) Regulations 2012, SI 2012/3118 did not apply as individual rooms are not covered (only buildings or units designed or altered for separate use under regulation 6). Further consideration of aggravating features for failure to comply with tenancy requirements would be needed as we had insufficient information. For example, provision of smoke alarms and electrical testing would also depend on the extent to which a landlord was in joint occupation.

101. In considering the seriousness of these hypothetical offences, we would therefore have determined any HMO licencing offences to be towards the less serious end of the scale, of a less serious offence and the 1977 Act offences at the lower end of the scale of a more serious offence.

102. If we had found that a relevant offence had been committed, we would have considered that an RRO somewhere around half of the rent less utilities paid would have been appropriate. As we are not satisfied to the required evidential standard that a relevant offence had been committed, we do not make any order for an RRO.

103. The Applicant has not succeeded in the application. No application has been made for a fee repayment order. We have also expressed some concerns as to how the Applicant conducted the proceedings including lost time during the hearing day itself. On this basis we decided not to make any order for fee repayment.

Name: Judge A. Arul **Date:** 8 September 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).