



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

Case Reference : HAV/29UL/HMC/2024/0601

Property : 99A Sandgate High Street, Sandgate,
Folkestone, Kent, CT20 3BY

Applicant : Ms Donna-Marie Anne Ireland

Representative : Mr Bryan Rylands

First Respondent : Ms Alyssa Fitch

Representative : In person

Second Respondent : Mr Michael Fitch

Representative : Mr Barry Keating
Robson & Co, Solicitors, Hythe

Type of Application : Application for a rent repayment order by
tenant
Sections 40, 41, 42, 43 & 45 of the Housing
and Planning Act 2016

Tribunal Member : Mr C Norman FRICS
Valuer Chairman
Mr J G G Wilson MRICS FCI Arb
Mr E Shaylor MCIEH

Venue : Havant Justice Centre, Elmleigh Road,
Havant, Hampshire PO9 2AL

Date of Hearing : 18 July 2025

Date of Decision : 17 October 2025

DECISION

Decision

- (1) The correct Respondent is The First Respondent
- (2) The Second Respondent is removed as a party
- (3) The First Respondent **HAS NOT COMMITTED AN OFFENCE** contrary to section 30 of the Housing Act 2004
- (4) The application for a rent repayment order is **DISMISSED**.
- (5) The application for costs by the Second Respondent is **DISMISSED**.

Reasons

Background

1. The subject property is 99A Sandgate High Street Folkestone Kent CT 20 3BY ("The property"). By an application dated 9 October 2024, the Applicant, Ms Ireland, applied for a rent repayment order in respect of alleged offences of breach of a prohibition order [contrary to section 32(1) of the Housing Act 2004] and failing to comply with an improvement notice [contrary to s 30(1) of the Housing Act 2004] and alleged harassment [contrary to s.1 of the Protection of Eviction Act 1977, although the precise subsection was not specified]. The application was made under section 41 of the Housing and Planning Act 2016. The claim was for £6,750 for the period February to October 2024 inclusive. In the Applicant's statement of case dated 25 April 2025 the only Ground of Application relied upon was breach of an improvement notice. A Prohibition Order was served on 21 December 2023 prohibiting use of the balcony. A section 21 notice dated 14 July 2022 was previously served on the Applicant.
2. The First and Second Respondent are divorced. From title documents in the First Respondent's bundle and the Second Respondent's witness statement (see below) property redistribution was ordered in the Family Court at Canterbury on 20 July 2018. The Second Respondent was ordered to transfer all the legal estate and beneficial interest in the subject property from the joint names of First and Second Respondents to that of the First Respondent. Registration of transfer of the legal title has not yet taken place.
3. The Applicant has resided in the property since 2009. In August 2021 the First Respondent let the Property to the Applicant.

Procedural Matters

4. At a CMH on 23 May 2025 the First Respondent asserted that the Second Respondent was the correct Respondent as he was the superior landlord and the improvement notice had been served on both of them. The Tribunal directed that the Second Respondent should be joined. As this was a central issue, the Tribunal by further directions on 14 July 2025 referred the parties to the doctrine of tenancy by estoppel as set out in *Megarry & Wade: The Law of Real Property 10th Ed.* and referred to paragraphs 16-125, 16-126 and 16-127. It invited representations which the Applicant and Second Respondent both provided.
5. The First Respondent was directed to prepare the hearing bundle as she had previously been represented by Kingsfords Solicitors, Ashford, the Applicant lacking legal representation. However, prior to the hearing date it appears that the First Respondent was no longer represented legally in this case. She was unable to prepare a hearing bundle, and the Tribunal has therefore had to consider some 18 different pdf bundles which has caused practical difficulties and a waste of the Tribunal's resources. Having checked with the parties at the start of the hearing whether all relevant documents were before it, it now appears that the First Respondent's statement of case of 22 May 2025 was not in fact included¹. However, the Tribunal has considered this in arriving at its decision.

The Issues

6. The issues to be determined were
 - i. Whether the First or Second Respondents were the correct Respondent(s)
 - ii. Whether the Tribunal is satisfied beyond reasonable doubt that an offence had been committed by the Respondent(s) for failure to have complied with an improvement notice contrary to s. 30(1) of the Housing Act 2004.
 - iii. Whether the Tribunal should exercise its discretion to make a RRO and if so the amount.
 - iv. Whether the First Respondent has acted unreasonably within rule 13 and if so whether the Tribunal should make a costs order against her in favour of the Second Respondent.

Hearing

7. The hearing was a hybrid hearing with all parties attending remotely and the Tribunal sitting at the Havant Civil Justice Centre. The Applicant attended and was represented by Mr Bryan Rylands. The First

¹ Two Members of the Tribunal had previously received this in connection with the CMH of 23 May 2025. This was served subsequent to the First Respondent's witness statement.

Respondent represented herself. The Second Respondent attended and was represented by Mr Barry Keating, Solicitor.

Tenancy Agreement

8. The property was let under a tenancy agreement dated 1 August 2021 between the Applicant and First Respondent alone. The terms were not disputed. The landlord is required to keep the property in repair. By clause 16 the tenant covenanted “at all reasonable times during the Term and any renewal of this Agreement the Landlord and its Agents may enter the property to make inspections or repairs...in compliance with the Act. The Act is not a defined term but is clearly a reference to the Housing Act 1988 (“the 1988 Act”). Section 16 of that Act states that “It shall be an implied term of every assured tenancy that the tenant shall afford to the landlord access to the dwelling-house let on the tenancy and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.”

The Improvement Notice

9. The improvement notice was dated 19 April 2023 and gave a deadline of 20 August 2023 by which the works should be completed. In summary the works required were as follows:

Category 1 Hazards

Falling between levels

Hazard: Balcony balustrade in disrepair

Remedial works: replace missing baluster or replace balcony and balustrade.

Electrical Hazards

Hazard: Electrics - No EICR report

Remedial works: supply EICR report

Uncommuted Fuel Gas

Hazard: Boiler - No Gas Safety Certificate provided

Remedy: Supply gas safety certificate

Category 2 Hazards

Damp and Mould Growth

Hazard:

Roof: some slates are damaged or slipped causing damp to internal rooms.

Curved corner of Property: There is a large crack in the external curved corner of the property allowing damp penetration.

Internal walls: damp

Remedy: repair roof so it is watertight

Falling on Level Services

Hazard:

Dining room floor: repair linoleum floor

Domestic Hygiene Pests & Refuse

Hazard:

Small bedroom/ Cupboard on stairs: investigate water ingress from hole in ceiling and remedy

Kitchen/dining room/porch: remove damaged plaster and redecorate

Falling on Stairs etc

External staircase: replace broken back riser to lower step

Collision and Entrapment

Living room: ease window handle.

The Applicant's Case

10. The Applicant prepared a statement of case dated 25 April 2025 which may be summarised follows. The Applicant holds an assured shorthold tenancy from 1 August 2021 which became periodic after 31 July 2022. The monthly rent was £750 which was paid to the Respondent via her daughter's bank account. There were no arrears in the period in question. The amount claimed was for 9 months' rent from 3 February 2024 to 1 October 2024.
11. In the statement of case the ground relied on was failing to comply with an improvement notice contrary to section 30(1) of the Housing Act 2004. The Applicant submitted that this breach was egregious and

persistent resulting in serious hazards at the property that continued throughout the claim period. The Respondents had received a financial penalty from the local authority for failing to comply with the improvement notice.

12. The statement of case also referred to a Prohibition Order having been served on 21 December 2023 which prohibited use of the balcony. However, it was not relied upon as a Ground of Application. In the applicant's legal submissions made on 15 July 2025 an attempt was made to rely on this as an additional basis for the RRO, although no application had been made to amend the statement of case. The tribunal addresses this below.
13. The property is a three-bedroom first and second floor maisonette above a shop, accessed by an external wooden staircase of the rear. The Applicant has lived at the property since 2009 and has occupied it under an AST with the First Respondent from 2021. The First Respondent is the named landlord on the tenancy agreement. The freehold of the building is owned by Mr Michael Fitch. However, it is only the immediate landlord who is subject to rent repayment orders. Ms Alyssa Fitch is the correct Respondent being the immediate landlord.
14. From 2021 onwards the Applicant repeatedly raised concerns about water ingress, damp and mould disrepair. The local authority, Folkestone & Hythe District Council (FHDC) became involved. In April 2023 the Council served an improvement notice requiring the Respondents to remedy multiple safety defects. The Respondents failed to comply by the deadline date in the notice. Consequently, on 21 December 2023 FHDC issued an order prohibiting use of the dangerous balcony attached to the property. That order remained in force throughout claim period. As the necessary works were not completed, on 12 August 2024 an inspection by the council's private sector housing team identified numerous continuing problems.
15. These may be summarised follows. There was penetrating dampness in multiple rooms. A large crack in the external render windowsill was noted as the likely source of rainwater ingress. There was cracked render to the bathroom external wall with high moisture readings. Another bedroom had a damp patch on an internal wall. The living room wall was damp, and inspection could not confirm if leaks were fully resolved, but there was an absence of moisture.
16. The external wooden staircase was found to be in disrepair. The internal staircase light was not working and there was no second handrail. French doors to the kitchen open to a flat roof area where a balcony deck had previously been but by August 2024 that area was unguarded and unusable with only a temporary barrier in place. The balcony area was subject to a prohibition order in December 2023.

17. Internally the kitchen/ diner floor covering was torn stretched and lifting, and the ceiling light in the dining area disconnected. A hazard awareness notice had also been served on 4 April 2024.
18. The Council officers re-inspected again on 5 September 2024. By an email dated 13 September 2024 they found that there was a loss of power owing to water ingress into the electrical installation, although the Applicant accepted that power was restored on 5 September once the wiring dried out. There were extreme damp readings and damp was detected in numerous locations including the kitchen, the bathroom, the front spare room, the lounge, the master bedroom, the landing and the front bedrooms. The council officer Mr Hammond observed that from ground level he could detect only a patchwork of repairs to the existing roof.
19. The disrepair hazards have had a profound effect on the Applicant who suffers from asthma and chronic obstructive pulmonary disease. The Applicant had to increase medication and use a breathing machine due to the poor living environment. At times the heating was not usable. The tenant's son has disabilities and stays there part-time. He could not use the balcony or possibly other rooms owing to the conditions. The Housing Ombudsman ordered the council to pay £500 to the Applicant for the distress caused by the delays progressing enforcement.
20. The Applicant then referred to written representations previously made by Ms Fitch who had asserted that she had undertaken works to address the problems and that the property was habitable during the period in question. The Applicant accepted that what she described as minor works were carried out installing smoke and heat detectors by August 2024 and superficial patchwork roof repairs, but the core hazards identified in the improvement notice remained unresolved.
21. The statement of case then set out propositions of law. It alleged that other legal obligations had been breached under the Landlord and Tenant Act 1985 and the Homes (Fitness for Human Habitation) Act 2018 and The Defective Premises Act 1972. It referred to section 44 of the Housing and Planning Act 2016 which sets out the factors the Tribunal must consider when making a rent repayment order. It referred to *Vadamalayan v Stewart* [2020] UKUT 183 (LC) and *Tonkinson v FML Estates Ltd* [2021] UKUT 324 (LC)). It submitted that the conduct of the landlord was extremely poor, and the tenant was that of a responsible tenant faced with difficult circumstances. It pointed out that the Respondent did not provide specific evidence of her financial circumstances. The Applicant accepted that the Respondent did not have any previous convictions for housing offences. Therefore, the Tribunal should make a maximum 12 month rent repayment order. The Applicant did not receive housing benefit.
22. In addition, the Applicant made legal submissions in response to the Tribunal raising the matter of tenancy by estoppel. The Applicant submitted that the person can be a landlord in law without holding the

legal estate. She referred to *Bruton v London and Quadrant Housing Trust* [2000] 1AC 406 which supported this. Therefore, the First Respondent was the Applicant's landlord for the purpose of this application.

23. In evidence in chief, Ms Ireland said in the 2 months following service of the Notice contactors were in and out, but work was not started until December 2023. The roof needed fixing first. It was completed in May 2025 and took 6-8 weeks. Repair failed and a new roof was installed. A roofer pulled out of the job. The roof is still leaking. Three new windows have been installed as the previous ones would not lock. For the balcony new flooring and new railings were installed in September 2024 and this was now safe. There was no EICR since 2023. There have been 6 or 7 different electricians. Makeshift roof repairs were carried out in July 2023. The gas safety certificate was complied with. The hole in the lino flooring was not repaired. The small bedroom is no longer a problem as there is a new roof. The kitchen/diner plaster was not repaired, nor the porch. The stairs had been repaired twice. The living room window was rectified. There had been 17 attempts to repair the roof. The landlord only attempted to get quotes for the works from September 2024. Alyssa Fitch was trying to get Mr Fitch to do the work. Neither Mr Fitch nor Ms Fitch made attempts to comply until after the financial penalty in 2024. Major works were carried out in 2025. In April 2023 to July 2023 onwards Mr Fitch arranged for Dominic Snow [a contractor] to visit. Between July 2023 and October 2024 there were 7 different electricians.
24. Mr Keating cross examined Ms Ireland. The new balcony was installed in May 2024. The new roof was installed in 2025. Three windows were replaced, as some were not disrepair. Ms Ireland had no idea whether the external crack has been repaired. Mr Snow is a family friend of Mr Fitch, and he has been there multiple times. She denied having knowledge of damage caused to the roof. There were many roofers on the roof. There had never been "denial of access that has been lawful". She had taken a number of videos of contractors. She has not always been given 24 hours' notice of access.
25. Mr Rylands also referred to the Applicant's response to the First Respondent's statement of case. The First Respondent had submitted that she was not the legal owner of the property and had not received rent or exercised control over the tenancy. Ms Ireland submitted that this was inconsistent with the service of a section 8 notice under the Housing Act 1988 and that Ms Fitch had misled the Tribunal. The Applicant disputed that she had repeatedly and unreasonably denied access frustrating efforts to comply with repair duties. In particular the Applicant had 841 video recordings of workmen, Council officers and others including the first Respondent accessing the property both internally and externally to inspect.

The First Respondent's Case

26. The First Respondent provided a witness statement dated 5 March 2025 which may be summarised follows. Mr Fitch is the freeholder and superior landlord. Mr Fitch has not carried out his duties as superior landlord for several years effectively forcing her to take more responsibility acting in a de facto landlord capacity. As such Ms Fitch began communicating the Applicant regarding repairs on 1 August 2021. There are no rent arrears for the time in question. There have been ongoing issues with the property, but these do not result from a lack of trying to remedy them. Prior to the latest tenancy agreement, she instructed a structural engineer to inspect the property to advise on the damp problem. The advice was to provide extensive work to make it safe. Ms Fitch advised the Applicant to vacate whilst the repairs were ongoing for her own health and safety. The Applicant refused to leave, and Ms Fitch had scaffolding erected to carry out repairs.
27. Ms Fitch issued a section 21 notice in 2022 owing to the need to carry out the maintenance and repair work. Following the s. 21 notice the Applicant complained about the condition of the property to the council. An improvement notice was served on her and Mr Fitch. She arranged several tradesmen to quote for and undertake the work, but the dates were not convenient to the Applicant, or she cancelled appointments due to Covid, her health and/ or her son's health.
28. From December 2021 to February 2024 Ms Fitch had made a multitude of attempts to have the remedial works carried out. This included arranging tradesmen to attend the property to paint the steps, fixing lighting in the bathroom in January 2022 where the Applicant did not respond to emails and subsequently refused entry. In January 2022 the Respondent attempted to arrange an inspection but the Applicant did not respond. The Respondent attempted to have a window fitted in February 2022, but the Applicant did not respond to emails.
29. In February 2022 Ms Fitch arranged a roof inspection and for an electrician to carry out an EICR test, repair the hallway light and supply and fit two smoke detectors and one heat detector. In March 2022 she arranged for another electrician to attend. Despite her best efforts the work was not done owing to the Applicant either refusing access or ignoring her communications.
30. In July 2022 she contacted the structural engineer to inform him that the property remained in disrepair owing to the Applicant denying access. The communication was exhibited at AF2. She arranged a damp specialist to attend the property in July 2022, but the Applicant refused access. She tried again on 4 August 2022 giving the Applicant ample notice but again access was denied [AF3]. She arranged for tradesmen to come on 17 August 2022, and a damp specialist was rearranged for 24 July 2022, but both refused to do the repairs on the basis that the Applicant made it too difficult for them.

31. She has tried repeatedly to have remedial works done to the property throughout the following months and years but was met with resistance from the Applicant at every turn. One tradesman described the Applicant as a “nightmare” [AF4] and he said, “it is abundantly clear that she is using every means possible to keep you on the back foot”.
32. To this day the Applicant often cancels appointments due to holidays, her illness, her son’s illness or school holidays. Her son does not live permanently with her and has been diagnosed with autism which means work cannot be carried out when he is present. She is not aware of times the Applicant’s son is likely to be there. All these factors make it extremely difficult to arrange suitable appointments for tradesmen.
33. On 5 September 2024 Ms Fitch arranged for Mr Helliwell an electrician to attend the property. She informed Mr Brian Rylands who has assisted the Applicant about this. Also, in September 2024 she informed Mr Rylands that she arranged for Martin Shields Roofing to inspect the roof on 6 September 2024. However, Mr Rylands questioned whether she had the consent of the superior landlord [sic]. That email stated “Until such time as permission is granted, and preferably in writing, remembering it cannot be reasonably withheld, as your solicitor should inform you, then nothing should proceed...” AF5. Mr Rylands also wrote on 5 September 2024 “Dear Ms Fitch, Your solicitor is copied in. Once we have proof/evidence you have permission to go on to the roof, remembering it cannot reasonably be withheld. We would like the timetable of the team you’ve booked. Furthermore, my client will need a schedule of works for any roofing work which might take place in the future...”
34. The Applicant has previously arranged roofers herself, and damage was incurred during the investigation. However, on 5 September 2024 Alyssa Fitch emailed Mr Fitch to request permission for the roofing works. The Applicant has previously attempted to obtain a RRO against her. That matter was settled outside of the Tribunal.
35. The Applicant has refused to have a new boiler installed which appears counterproductive.
36. On 16 September 2024 the Applicant informed her that the Applicant had instructed a qualified surveyor, who produced a report. The survey made clear that the priority was to fix the roof and make the property watertight. Then the internal works could proceed [AF11].
37. On 23 September 2024 the First Respondent contacted the council to ask what should be done next in terms of repairs. She was concerned that further delays would make the property fall into disrepair. The surveyor’s report made clear that in order for the work to commence the Applicant would have to leave the property. The First Respondent referred the Tribunal to various communications with tradesmen in

which they express difficulty accessing the property to carry out their work and in arranging access [AF16].

38. Mr Snow refers to malicious damage of property on his visit on 23 January 2025 [AF17], but the origin is unclear.
39. The First Respondent subsequently provided a statement of case dated 21 May 2025 which may be summarised as follows. She denied committing the offence. She was not the legal owner of the property. She did not receive rent, exercise control or benefit from the arrangement. The legal owner was her former husband Mr Michael Fitch. He paid for repairs, liaised with the council, and took all substantive steps to achieve compliance. Mr Fitch had spent over £20,000 on the property. The Applicant hindered access for repairs. On 23 September 2024, the Respondent informed the Council that roofers had refused to attend due to the Applicant's filming them without consent and denying them entry. Other contractors had said that they did not wish to deal with the Applicant. In May 2024 a council officer advised the Applicant that failure to grant access would delay works. The First Respondent also asked that Mr Fitch be joined as a Respondent.
40. Ms Fitch also submitted a further bundle of emails on 14 July 2025, which contained additional correspondence. Page 4 of that bundle contains an email from Mr Rylands to Ms Fitch dated 20 June 2025 in these terms: "I write to formally notify you that if you or any person acting on your behalf continues to undertake works at 99A, I will, without further notice, seek an injunction from the court on Monday. You have asserted to the court-both in a signed statement truth through your legal representative at the May hearing-that you are not the landlord of the property. This position has been central to your defence. Accordingly, if you or your representative including Mr Williams continue to carry out any works at 99A, this would appear to contradict your stated position and may amount to unlawful interference with the property. Given your denial of any legal interest or authority as landlord, you have no lawful basis undertake such actions. Unless all works at 99A cease immediately, I would apply for an injunction on Monday to prevent further unlawful interference."
41. The bundle contained further emails prior to the improvement notice being served showing the First Respondent seeking to get contractors to the property.
42. On 4 September 2024 Mr Rylands wrote to Mr Fitch copied to Ms Fitch "after a brief reconsideration the occupant of flat 99A grants permission for you to attend as per the schedule listed below. What time do you workmen intend to begin? How and when will you compensate the occupant for the electricity and can Bertie Warren attend on Friday at 4 PM? Please let me know. I ask that neither you or the occupant's landlady attend the property on the 9th or any other date set out in the schedule works..."

43. On 11 May 2025 Tom William [project manager for the First Respondent] emailed her to say that the Applicant was “being extremely aggressive in her demands [...] We are being filmed, recorded, told when and how to work it really is unbelievable, and cannot be allowed....”

The Second Respondent

44. Mr Fitch gave evidence having given a witness statement verified by a statement of truth on 13 June 2025. His evidence was that he had not received income from the property since 2019. Financial Remedy Proceedings took place involving between himself and the First Respondent. At the Hearing in the Family Court at Canterbury on 20 July 2018 the Court ordered [amongst other matters] that on the sale of the matrimonial home, he was to transfer all the legal estate and beneficial interest in the Property, to the First Respondent. Sale of the former matrimonial home completed on 28 October 2019. The First Respondent had been extremely reluctant to conclude the transfer of the property, and has still not applied to the Land Registry for the registration of the Property into her sole name. He was aware that the Applicant complained about the condition of the Property and whilst he took the view, that the First Respondent was the Beneficial Owner of the property, in order to try and resolve matters and to appease the First Respondent, and for reasons of expediency he undertook to meet the costs of various matters that were required to comply with the Landlord’s obligations under the tenancy. He had initially granted a tenancy to the Applicant. He was aware that the First Respondent intends to vest the property in the name of their daughter in the future.
45. The Second Respondent also sought costs against the First Respondent for unreasonable conduct under rule 13.

The Law

46. Relevant legislation is set out in the Legal Annex.

Findings

The Correct Respondent

47. In light of the undisputed tenancy agreement between the Applicant and First Respondent alone, the Tribunal having considered submissions from Mr Keating, determined that the First Respondent was the correct Respondent. This was on the basis of tenancy by estoppel. It is also highly probable that the First Respondent is also the beneficial owner in equity of the property. However, the Tribunal have not seen the terms of the Court Order, and it is unnecessary for the Tribunal to make a finding on that. The Tribunal ordered that the Second Respondent be removed as a party. However, this did not affect Mr Fitch’s status as a witness, and he gave evidence.

Responsibility for Repairs

48. The Tribunal relies on tenancy by estoppel in finding that as between Ms Alyssa Fitch and Ms Ireland the tenancy agreement of 1 August 2021 was valid and binding on both parties. The effect of this is that it was Ms Alyssa Fitch who was alone responsible for carrying out repairs under the tenancy. Conversely, the Applicant was obliged to provide access to Ms Aylssa Fitch.

Whether an Offence was committed by the First Respondent

49. The Tribunal must be satisfied beyond reasonable doubt that the offence of failing to comply with an improvement notice had been committed before making an RRO. The Tribunal must decide whether the improvement notice was breached. It was common ground that not all repairs specified were carried out before the specified deadline of 20 August 2023. It therefore finds that the improvement notice was breached.
50. The Tribunal ascertained from the First Respondent that she was relying on the defence of reasonable excuse under section 30(4) of the Act. The reasonable excuse being the applicant's failure to provide access for contractors to carry out works, having been given notice of the same. In considering this it has had regard to all events during the tenancy prior to the deadline of the improvement notice (20 August 2023), and the evidence of the parties. In determining the overall probabilities and plausibilities when addressing that question, it also took account of the totality of the evidence. The Tribunal found Ms Fitch to be a credible witness.
51. The Tribunal finds Ms Fitch to have been confused about her legal status. However, the Tribunal accepts Ms Fitch's evidence that she has done everything possible to have the works at the property carried out. The Tribunal accepts her evidence that access had been repeatedly denied prior to the deadline date imposed in the improvement notice.
52. The Tribunal accepts Ms Fitch's evidence that contractors had refused to undertake works at the property due to the Applicant's conduct. In addition, the Tribunal finds that any filming (videoing) of contractors by the applicant would likely to have been perceived by the contractors as intimidatory. These matters are significant as the improvement notice gave a period of four months for the works to have been carried out (19 April 2023 to 20 August 2023).
53. It is also clear to the Tribunal that the repairs to the roof stated in the improvement notice were insufficient to remedy the water ingress, and that a new roof would be required. The repairs to the roof specified in the improvement notice were to make it watertight and weatherproof. That is to say that a new roof was not required.

54. The Tribunal accepts that the applicant has very difficult personal circumstances and that the disrepair at the property was significant. However, the Tribunal has concluded that from Ms Ireland's replies to questions on whether requests for access to the property for contractors to inspect, with a view for them to give quotations and to carry out subsequent works with reasonable notice, had been denied by her, both her answers to the questions and her manner were evasive. The Tribunal finds Ms Ireland did not provide access to the property, having been given reasonable notice for the same, prior to the deadline date in the improvement notice, and in breach of clause 16 of her tenancy agreement.
55. The Tribunal finds that damage to the roof had been carried out but has insufficient evidence to make findings as to the cause.
56. It does not treat the civil penalty as evidence of guilt by the First Respondent.
57. For these reasons the Tribunal found that the defence of reasonable excuse was made out on the balance of probabilities. It therefore found that no offence had been committed.
58. In relation to the Prohibition Order, this was not relied on as a Ground of Application in the statement of case. It was too late to add it as a Ground of Application in legal submissions on 15 July 2025. In any event, whereas the Order prohibited use of the unsafe balcony, it did not prohibit the occupation of the flat as a whole. The Applicant said in evidence that being required to keep the balcony door locked had the effect to reduce ventilation to the kitchen. This, coupled with there being no evidence that the First Respondent had either used or encouraged the use of the balcony, leads the Tribunal to find that there has been no breach of the Order by the Respondent.
59. According to the application is dismissed.
60. The Tribunal has not been able to verify that *Tonkinson v FML Estates* cited by the Applicant in fact exists. It has been unable to identify it in legal searches. However, in all the circumstances of this case it is not taking any action against the Applicant.

Costs Application by the Second Respondent

61. The Second Respondent seeks a costs order under Rule 13(1)(b), based on the Respondent's unreasonable conduct. Rule 13(1)(b) is engaged where a party has acted "...unreasonably in bringing, defending or conducting proceedings...". The Tribunal's power to award costs is derived from section 29(1) of the Tribunals, Courts and Enforcement Act 2007.

62. *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC), outlined a three-stage test for deciding Rule 13 costs applications. The Tribunal must first decide if there has been unreasonable conduct. If this is made out, it must then decide whether to exercise its discretion and make an order for costs in the light of that conduct. The third and final stage is to decide the terms of the order. The threshold for making a rule 13(1)(b) costs order is a high one.
63. In the present case the Second Respondent was added as a party by order of the Tribunal on 23 May 2025. That implies that the Tribunal must have considered it at least plausible that the Second Respondent should be a party. It is also correct to say that the registered title remains vested in the Second Respondent. He had also expended money on the property. The request for him to be joined cannot therefore be categorised as unreasonable conduct within rule 13. Therefore, the second and third stages in *Willow Court* do not arise. For those reasons the application is refused.

17 October 2025

RIGHTS OF APPEAL

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

Legal Annex

30 Offence of failing to comply with improvement notice

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.(7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.