



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

**Case Reference** : HAV/00MR/HMF/2025/0606

**Property** : 212 Haslemere Road, Portsmouth,  
Hampshire, PO4 9AS

**Applicant** : Mariela Kemp

**Representative** :

**Respondent** : Ines Oliveria Maia

**Representative** :

**Type of Application** : Application for a rent repayment order by  
Tenant  
Sections 40, 41, 42, 43, 44 & 45 of the  
Housing and Planning Act 2016

**Tribunal Members** : Regional Surveyor A. Clist MRICS  
Mr J. Reichel MRICS

**Date of Hearing &  
Venue of the Hearing** : 7 October 2025 at Havant Justice Centre

**Date of Decision** : 22<sup>nd</sup> December 2025

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**DECISION**

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## **Decision**

**The Applicant's application for a rent repayment order is dismissed.**

## **Background**

1. On 1 March 2025 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord.
2. The grounds for the application is that the Respondent was controlling and/or managing an unlicensed property which was required to be licenced under Part 2 of the Housing Act 2004 ("the 2004 Act") at a time when it was let to the Applicants but was not so licensed and that she was therefore committing an offence under sections 72(1) and 95(1) of the 2004 Act, in addition to the offence of unlawful eviction or harassment of occupiers under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.
3. Various sets of directions have been issued prior to the hearing.
4. The Respondent currently resides in Portugal and as such had requested that she give evidence by a remote video hearing. The Tribunal was satisfied that she could do so if she obtains the necessary consents and produces the same to the Tribunal in advance of the hearing.
5. The Respondent experienced difficulty in obtaining the necessary consent with the Tribunal advising that it does not "seal" orders but our directions contain the King's cypher as set out within the heading.
6. The Tribunal was provided with a hearing bundle comprising 88 electronic pages. References in this determination to page numbers in the bundle are indicated as [ ].
7. These reasons address in summary form the key issues raised by the parties. The reasons do not recite each point referred to in submissions but concentrate on those issues which, in the Tribunal's view, are critical to this decision. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.
8. The hearing was audio recorded, and the recording serves as the official record of the proceeding.

## Law

9. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal.
10. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that a tenant may apply for a rent repayment order only if:
  - a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
  - b) the offence was committed in the period of 12 months ending with the day on which the application is made.
11. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).
12. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If an order is made, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:
  - a) the rent paid in respect of the period in question, less
  - b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
13. In certain circumstances the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:
  - a) the conduct of the landlord and the tenant,
  - b) the financial circumstances of the landlord, and

c) whether the landlord has at any time been convicted of any of the specified offences.

### **The Hearing**

14. The hearing was attended by the Applicant, Ms Mariela Kemp who was accompanied by a friend observing and the Respondent Ms Ines Oliviera Maia. Both parties were representing themselves.
15. In her opening statement, Ms Kemp explained that she had lived at the property a year when the Respondent sought to evict her. Miss Kemp had obtained advice from Portsmouth City Council as to her rights as she had felt as though the Respondent's actions amounted to harassment and blackmail. The Private Rented Sector team had visited her at the Property.
16. It was said that Ms Maia had never lived at the property during the course of her tenancy which commenced 6<sup>th</sup> February 2024. The Respondent sought to evict her on the 31<sup>st</sup> December 2024. Ms Kemp vacated the property on 12 April 2025. Miss Kemp had lived with three other men whilst at the property.
17. Ms Kemp confirmed that the relevant period of the application was one year from 6 February 2024.
18. Ms Maia questioned Ms Kemp.
19. Ms Kemp stated that she believed Ms Maia had asked her to leave the property due to breaking the house rules on 26<sup>th</sup> December 2024 when her family had visited the property.
20. Ms Kemp had had no complaints regarding the property prior to Ms Maia requesting that she leave, although there were some issues that had created her stress during her occupation. This related to the heating and doors which did not have locks. Ms Kemp had not felt safe or completely at home there as it felt as though someone could enter her room at anytime or there may be an unannounced visit by the landlord.
21. Prior to taking occupation, Ms Kemp was shown round the property by her former housemate. She then agreed to move into the property.
22. Ms Kemp stated that she had not personally fitted any locks whilst in the property. It was said that no bedrooms or bathrooms had any locks. As such, a housemate named 'Jake' had used a padlock to secure the larger bedrooms. When asked whether she knew about the lack of locks prior to moving in, Ms Kemp had said she had only realised there were none once she took occupation. The shower room did have a lock but the bathroom Ms Kemp had used did not. Ms Maia disputed the same.
23. Ms Kemp said that she had previously asked for permission for friends and family to stay in the property. Her partner Gavin had assisted Ms

Maia in the maintenance of the property and offering use of a trade account for the supply of the kitchen so she had assumed that Ms Maia would be comfortable with him staying over occasionally. She had felt that the other tenants were happy with the same and had not been aware until the end of her occupation that they were not. All tenants had accepted his help around the property as well as accepting that each would have friends and family stay on occasions. There had been an agreement with tenants that they would notify each other in advance if they were to have guests. There had been an occasion when a fellow housemate named Luke had given prior notification but there was no issue as it was accepted as part of living in a house-share arrangement.

24. Ms Kemp stated that she felt she had been respectful of the other tenants during the course of her occupation.
25. The Tribunal questioned Ms Kemp.
26. Ms Kemp confirmed that Ms Maia had never occupied the property during the course of her occupation.
27. The rent payment date had initially been agreed as the 6<sup>th</sup> of each month as she was an agency worker at that point. Once she became employed full time she requested by text message to Ms Maia that she could change her payment date to the 25<sup>th</sup> of each month which was agreed.
28. The rent included all bills which was said to be electricity, water, wifi, council tax etc.
29. Ms Kemp had never been in receipt of Universal Credit. She had made an application for the same but Ms Maia did not allow the claim as she had not been declaring the rent.
30. Ms Kemp had paid the rent every month with the exception of March 2025.
31. In elaboration of her statement [7], Ms Kemp explained that she had received advice to stay in the property until she was evicted by the S.21 process. She had however decided to leave the property voluntarily. She had never received a S.8 Notice at all.
32. It was said that Ms Kemp had received a tenancy agreement after she had moved in but it appeared as a draft as was missing information and the date was wrong. Ms Kemp did not complete it, nor did she sign and return it to Ms Maia. It was never mentioned again by Ms Maia. There was no terms given for the occupation. She understood the rental figure and that she was to occupy the property with three other men.
33. It was said that Ms Kemp's reason for vacating the property was due to the stress of the situation. She did not know when Ms Maia would visit

the property unannounced and so she found alternative accommodation.

34. Ms Maia gave her opening statement.
35. It was said that she had previously occupied the property prior to Ms Kemp's occupation with lodgers. She had renovated the property previously.
36. Ms Maia had met Ms Kemp playing volleyball. She had discounted the rent owing to their friendship and had been flexible on the rent payment date. Ms Kemp had been asked to complete the assured shorthold tenancy agreement with the required information upon taking occupation but she had not returned the same.
37. It was said the rules surrounding HMO licensing had changed. She was not aware of when they had changed but believed it was less than a year before she had made her licence application which she had done as soon as she became aware of the requirement. The licence was granted in April 2025.
38. Prior to the application, there had been a smoke alarm and carbon monoxide alarm in place. A second smoke alarm was installed within 24 hours of learning of the requirement for the same.
39. The application for a rent repayment order was said to be retaliatory because of the situation that had evolved with Ms Kemp.
40. A Section 8 Notice had been sent to Ms Kemp on 28<sup>th</sup> March 2025. Evidence of service had not been included in the bundle. It was said that a Solicitor had prepared the grounds following multiple complaints received about Ms Kemp in relation to holding parties and having guests stay. Ms Kemp was said to have been confrontational to other tenants. Complaints had been informally received by telephone at the beginning and as such, Ms Maia had no concerns as to Ms Kemp initially. However, complaints from other tenants had become frequent. Ms Maia could not issue a Section 21 notice as there had been no formal contract in place with Ms Kemp. As such she gave notice for her to vacate on the basis of advice provided by the Portsmouth Advice team.
41. Ms Maia had attempted mediation with Ms Kemp so the request for her to leave the property was of no surprise to Ms Kemp.
42. With regards to Ms Kemp's complaints as to having to take time off work to deal with this application, it was said that the same was a result of Ms Kemp's own actions. Ms Maia had also needed to take time off work and has incurred costs having come from abroad to attend the hearing.
43. It was said that 212 Haslemere Road was Ms Maia's primary residence as she had previously left her job in the NHS to travel. Ms Kemp had

known there was a chance that she would return to the property however she never did as it was remained rented out.

44. It was said that any help received by Ms Kemp or her partner was in relation to their friendship.
45. In relation to the assured shorthold tenancy agreement, Ms Kemp needed to complete the same with her contact details. Matters had been informal owing to their friendship.
46. The agreement to change to rent payment date had been verbal and considered to have been a one-off. Acceptance had been given in good faith on the basis of their friendship.
47. With regards to the bathroom situation, both had been shared with males initially but Ms Kemp had requested that she had her own bathroom which was not to be used by the men.
48. It was said that the tenants had not been previously notified of Ms. Kemp's visitors nor were they quiet when visiting her. Ms Maia had received plenty of messages from the tenants reporting the same. Although evidence of such had not been included within the hearing bundle the Section 8 Notice summarised the same within the grounds.
49. Ms Maia suggested that Ms Kemp had caused further damage to her room that was different from what she had previously been notified of.
50. Ms Kemp's claims of general disrepair was disputed. A cleaner visited the property every few weeks and any issues were reported directly to Ms Maia to resolve such as mould.
51. Ms Maia confirmed that she had control of the heating via an app, but she would ask the tenants when they wanted it switched on. There was an issue with the heating when the boiler was upgraded but this was quickly resolved.
52. Regarding the Ms Kemp's comments regarding her claim for Universal Credit, it was said that Ms Maia had yet to have declared the rental income for tax assessment.
53. Ms Maia would always announce her visits. If she had failed to do so it was due to an urgent issue that needed to be resolved.
54. Ms Maia stated that the arrangement was informal. She did not have a licence when she should have had one but this did not have an impact on providing a good service. The arrangement broke down owing to Ms Kemp's behaviour and conduct within the house.
55. Ms. Kemp questioned Ms. Maia.

56. In response to Ms Kemp's question regarding the extent of their friendship, Ms Maia confirmed that she was not aware that her mother had passed just before Ms Kemp moved into the property. Ms Maia stated that had previously shared drinks together to which Ms Kemp disputed.
57. The Tribunal questioned Ms Maia.
58. Ms Maia says at the time she was not sure if she would return to live in the property during the relevant period. When she had returned to visit the UK she would stay at friend's house.
59. Ms Maia stated that she owned three other properties that she has owned over the last 2-3 years. All are professionally managed with this the only one that she managed herself as she had been living there.
60. It was said that the bundle did not include any evidence that legal advice was obtained in relation to the eviction process although the Section 8 Notice contained the solicitor's details. She had been advised that she could not issue a section 21 notice as there was no tenancy agreement which there should have been. The advice to provide notice to leave was received from Portsmouth Advice as there was no tenancy agreement.
61. The Section 8 Notice was under grounds 10 (unpaid rent), 11 (delayed rent) and 14 (breaking house rules).
62. Ms Maia confirmed that there was no evidence within the bundle as to the initial instruction provided to the solicitor.
63. It was agreed that all utility bills were included within the rent.
64. Ms Maia confirmed that she had received a financial penalty from the local authority for not having a HMO License.
65. Ms Maia made her closing statement.
66. Ms Maia admitted that she had not held a HMO license but that was unintentional as there had been a change in policy. The tenants were never at risk, the accommodation was to a high standard with no negative impact to anyone. The only impact to Ms Kemp was as a consequence of her own actions.
67. Ms Maia stated that she is a good landlord and requests that the application is dismissed or at least proportionate to the situation and reflect her own conduct. She was a mindful and responsible landlord who replied promptly to tenants and rectified problems.
68. Ms Kemp referred to page 11 of the hearing bundle for her closing statement.

69. It was said that it was of no defence that Ms Maia was not a professional landlord.
70. Her own conduct had no bearing upon the landlord. There had been a breach of landlord responsibility which was not minor and undermined housing law. There had been a failure to protect the tenancy deposit, there had been no tenancy agreement, no guide for tenants and no valid Section 21 or Section 8 notice. There had further been an interference with her accessing housing support. There had been no quiet enjoyment of the property.
71. A rent repayment order should reflect the seriousness of the situation and there should be no mitigation or allowance for hardship.
72. Ms Kemp requested that the Tribunal order repayment of the application and hearing fee from the Respondent.

### **Consideration and Decision**

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

73. The Tribunal has before it a copy of a draft tenancy agreement between the parties, evidence of correspondence between the parties relating to the Applicant's occupation and evidence of the Applicant's rent payments. Furthermore, the Respondent accepts that she was the Applicant's landlord throughout her occupation. Accordingly, the Tribunal is satisfied that the Respondent was the Applicant's landlord at the time of the alleged offence.

Applying the criminal standard of proof, is the Tribunal satisfied beyond reasonable doubt that the alleged offence has been committed?

74. The alleged offence of which the Respondent is being accused has to be proved to the criminal standard, meaning that the Tribunal must be satisfied beyond all reasonable doubt that the offence has occurred.
  - 1) Control or Management of an unlicensed HMO
75. The offence in question is that controlling and/or managing an HMO which was required to be licensed under Part 2 of the Housing Act 2004 ("the 2004 Act") but was not so licensed contrary to section 72(1) of the 2004 Act.
76. The Tribunal reminds itself that the burden of proof is on the Applicant to show that the offence was committed beyond any reasonable doubt.
77. The Tribunal gave careful consideration to the evidence provided to it and the submissions made by the Applicant in the assessment of whether the Applicant had shown beyond all reasonable doubt that

there were three additional households in occupation at the Property during the relevant period between 6th February 2024 – 5<sup>th</sup> February 2025.

78. The evidence adduced by the Applicant as to the occupation of the other tenants over the relevant period was limited. There had been no timeline given for the occupation of tenants throughout the relevant period. Full names were not given. There had been no tenancy agreements provided or evidence as to the basis of their occupation, nor had any other tenants provided witness statements to corroborate the Applicant's submissions.
  79. The Tribunal noted that Ms Kemp's evidence had been that she had shared the property with three other males, yet there had been references to a female named Liliana in her written statement. The witness statement of Raquel Del Carmen Dimas De Bolanos related to a period of time from 8<sup>th</sup> April 2024, some two months after the beginning of the relevant period, no surnames were provided or any other detail relating to the occupation and the witness had not attended the oral hearing to give evidence. The Tribunal could therefore attach little weight to this evidence.
  80. With regards to the Respondent's admission that she had failed to hold a HMO license, the admission did not extend to stating that a license was required but not held for the Applicant's relevant period which was between 6 February 2024 – 6 February 2025. Ms Maia's had made reference to having received a financial penalty for failure to hold a HMO licence but stated that it related to an alleged offence period of only 9 days between 18-27 February 2025, a period of time outside of the Applicant's relevant period.
  81. The Tribunal was therefore unable to find, beyond reasonable doubt that the property was occupied by three or more people forming more than one household (as per the local authority's requirement [74] for the relevant period, nor could it be verified whether those occupants occupied the Property as their main or principal residence.
  82. The Tribunal would add that this finding by no means questions the credibility of the Applicant by whom the Tribunal found to be generally reliable. It is also not to say that the Application was not without merit. The Tribunal's findings relate to the adequacy of the evidence advanced which in this instance, fell short of the standard required for the Tribunal to have been satisfied beyond reasonable doubt that an offence had been committed within the relevant period.
- 2) Unlawful Eviction or harassment of occupiers
83. The Applicant's application was also made on the ground of an offence committed under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977

84. With regards to S1(2) of the Protection from Eviction Act 1977 (an alleged unlawful eviction), the Respondent had accepted that due process had not been initially followed with an informal text message request for Ms Maia to vacate the Property having been made [56]. Ms Kemp did not leave the property within the requested time frame following legal advice.
85. Ms Maia stated that she had sent a S.8 Notice to Ms Kemp although she had failed to include any proof of service within the hearing bundle. Further, Ms Maia's written evidence stated that the notice was served on 16<sup>th</sup> April 2025 [36] yet her oral evidence was that the notice was served on 28<sup>th</sup> March 2025. Ms Kemp states that she had never received the notice believing that she had vacated the Property prior to its service. Owing to Ms Maia's conflicting evidence and lack of proof of service, the Tribunal accepts the Applicant's evidence on this point.
86. The Applicant's evidence pertaining to her departure was that she had left voluntarily once alternative accommodation had been sought as living at the property had become stressful. Ms Kemp had obtained advice from Advice Portsmouth and understood that she could not be evicted without court proceedings [75].
87. The Tribunal finds that Ms Kemp was not deprived of her occupation by the Respondent as she had left the Property voluntarily. The offence of unlawful eviction is therefore not made out.
88. In relation to the alleged harassment pursuant to S1(3) and/or S1(3)(a) of the Protection from Eviction Act 1977, it was said by Ms Kemp that Ms Maia's messages relating to her leaving the Property felt like harassment [85-88].
89. The Tribunal finds that in the main, they were reminders and enquiries as to Ms Kemp vacating the property. It was clear to the Tribunal that communication between the parties was often carried out via text message on an informal basis. The Tribunal considers that Ms Maia's tone had generally been polite or civil, notwithstanding the last message [88] that Ms Maia had sent regarding legal action and the potential for a poor reference to which the Tribunal considers to have a mildly threatening undertone.
90. The Tribunal considers that the messages sent from Ms Maia to Ms Kemp reflect poor conduct and a lack of following due process with regards to the eviction process that ought to have been taken.
91. Whilst Ms Maia had clear intent for Ms Kemp to vacate the Property (as per S1(3)), the evidence related only to the exchange of text messages between the two parties [85-88] to which were undated and modest in number. Tribunal were not convinced that the same was extensive or sufficiently seriousness enough to fall within the envisaged acts outlined under S1(3) or S1(3)(a) the Protection from Eviction Act 1977.

92. The Tribunal is not therefore, satisfied that the offence of unlawful conviction or harassment has been committed beyond reasonable doubt.
93. As such, having found that no offence had been committed within the relevant period, the Tribunal dismisses the application.
94. In light of such findings, the Tribunal declines to order the Respondent to pay the Application and hearing fees.

## 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](mailto: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 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.