



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

Case Reference : **MAN/00CY/HMF/2024/0605**

Property : **Flat 8 above Desi Spice, Huddersfield Road,
Halifax HX3 0NS**

Applicants : **HANNAH FOSTER and VLADIMIR DEVITT**

Respondent : **FARID EASTESSAMI**

Type of Application : **Rent Repayment: Housing and Planning Act
2016 – Section 41(1)**

Tribunal members : **Judge A Davies
H Lewis, FRICS**

Date of Decision : **16 March 2026**

DECISION

The application for a rent repayment order is refused.

REASONS

BACKGROUND

1. From the summer of 2019 to the end of August 2025 the Applicants lived in Flat 8 (“the Flat”) above the restaurant Desi Spice on Huddersfield Road, Halifax. The flat is on the second floor of the building. On the first and the remaining part of the second floor are rooms let as an HMO. Rooms 6 and 7 are on the second floor. From 2017 to June 2025 Room 7 was occupied by Mr Vladimir Devitt’s mother. The shared kitchen and bathroom of the HMO are on the first

floor. Access to the HMO and the Flat is via a shared entrance and staircase. The Flat has had at all material times a separate gas supply and a separate electricity supply.

2. The Respondent let the Flat under a single page “rental contract” which gave the names of the parties, described the let premises as “unit 8” and set out the amount of the rent, which was said to be inclusive of the cost of utilities and rates. The copy contract produced to the Tribunal created a tenancy of 6 months from 1 July 2019 at a rent of £535 per month, and it was common ground that the rent was increased to £550 per month with effect from 1 August 2024.
3. On 1 December 2024 the Applicants applied to the Tribunal for a Rent Repayment Order on the grounds that the Respondent was in breach of section 1(3) of the Protection from Eviction Act 1977 (harassment of occupiers), section 30(1) of the Housing Act 2004 (failure to comply with an improvement notice), section 32(1) of the same Act (failure to comply with a prohibition order) and section 72(1) of the same Act (management of an unlicensed HMO). These are all housing offences listed at section 40(3) of the Housing and Planning Act 2016 (“the 2016 Act”).

THE PROCEEDINGS

4. The Tribunal issued directions on 6 November 2025 and listed the matter for inspection and hearing on 16 March 2026. The parties supplied informal statements of case which stood as their witness statements, and supporting documentation. By letter to the Tribunal dated 22 August 2025 Mr Devitt confirmed the grounds of his application and authorised Ms Foster to represent him. He did not attend the inspection or hearing.
5. The Tribunal inspected the Flat and the common parts of the property prior to the hearing, in the presence of Ms Foster and Mr Eastessami. The kitchen and bathroom shared by the occupants of the HMO were also briefly inspected.
6. The Flat has its own lockable front door. It consists of a kitchen/dining room, a double bedroom, a sitting room and a bathroom. All the rooms are of a good size. Off the bedroom is a store or dressing room. During the Applicants’

occupation the room furnished as a bedroom could be accessed only via the room which was used as a sitting room. Following their departure from the property the Flat has been slightly reconfigured to allow access to the bedroom from the Flat's internal corridor.

7. The hearing took place at Huddersfield Magistrates Court. Mr Eastessami represented himself and Ms Foster represented the Applicants.

THE LAW

8. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that the landlord has committed one of the housing offences listed at section 40. Where the application is made by a tenant, the amount of the rent to be repaid must relate the rent paid by the tenant (a) in the case of an offence under the Protection from Eviction Act 1977, during a period of 12 months ending with the date of an offence and (b) in other cases, a period not exceeding 12 months during which the landlord was committing the offence.
9. Section 43(4) provides that when determining the amount the Tribunal must, in particular, take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of a housing offence listed in section 40.
10. Guidance for the Tribunal as to calculation of any rent to be repaid is contained in the Hon Mr Justice Fancourt's judgement in *Williams v Parmar and others* [2021] UKUT 244 (LC) and in the judgement of Judge Cooke in *Acheamong v Roman* [2022] UKUT 239 (LC) at paragraph 20. In her judgement Judge Cooke confirmed that the repayable rent is the occupation rent, ie the rent excluding payments in respect of utilities and services supplied by third parties, which have not benefitted the landlord.
11. Section 1(3) of the Protection from Eviction Act 1977 creates an offence where a 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 persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence”.

Section 1(3A) of the same Act states:

“Subject to subsection 3B below [ie a reasonable excuse defence] the landlordshall be guilty of an offence if –

(a) he does acts likely to interfere with the peace or comfort of the residential occupier...., 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 the 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.”

12. An offence is committed under section 30(1) of the Housing Act 2004 if a person on whom an improvement notice has been served fails to comply with it.

Compliance means completing any remedial work which is specified in the improvement notice.

13. An offence under section 32(1) of the Housing Act 2004 is committed if a person uses premises in contravention of a prohibition order or permits premises to be so used.

14. Section 72(1) of the Housing Act 2004 provides that a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under Part 2 of the Act but is not so licensed.

FACTS NOT IN ISSUE

15. It was common ground between the parties that

(a) the Respondent had not been convicted of a housing offence;

- (b) the Flat was self contained, and did not form part of the HMO on the first and second floors of the building above Desi Spice;
- (c) the HMO was licensable under Part 2 of the Housing Act 2004; and
- (d) the Applicants had paid the rent. Due to a misunderstanding as to the terms of the rental contract, the Applicants paid the agreed rent and in addition paid for services each month. In or about September 2024 the Applicants applied to the County Court for repayment of the sums they had paid over and beyond the agreed rent, since the rent was stated in the rental contract to include services. The parties confirmed at the hearing that this County Court claim resulted in the Respondent repaying all such overpayments to the Applicants. The Applicants have supplied details of the rental payments made to the Respondent from December 2023 to November 2024 inclusive other than the payments for January, February and November 2024. This gives the Tribunal a reasonably accurate indication of the cost of services included in the rent in the 12 months prior to the date of the application. On average, from December 2023 to July 2024, the charge for services was £174 per month giving an occupation rent of £361 per month for that period. On average, from August 2024 to November 2024 the charge for services was £115 per month, giving an occupation rent of £435 for that period.

16. The Respondent did not raise any issue relating to his financial circumstances.

BASES OF THE DETERMINATION

17. The Tribunal made its determination on the basis that, the application having been made and lodged with the Tribunal on 1 December 2024, allegations based on the Respondent's acts and omissions after that date could not be relied upon by the Applicants to demonstrate that a housing offence had been committed. Further, rent paid after that date would be irrelevant to the calculation of a rent repayment order.
18. The Tribunal further determined that any offence relied upon by the Applicants must relate to the premises they occupied, ie the Flat. Although the Applicants

claimed to have to pass through the HMO in order to reach the Flat, they were only obliged to use the common entrance and staircase.

19. Thirdly, the Tribunal proceeded on the assumption that if the local housing authority which issued the improvement notice extended the time for compliance with that notice it had good reason for doing so and the decision to extend time was not to be revisited by the Tribunal.

THE APPLICATION

20. The Applicants based their claim that the Respondent was guilty of an offence under the Protection from Eviction Act on the following grounds:
 - (a) Non-emergency electricity and gas work was completed without warning the tenants that the utilities were to be switched off
 - (b) The Respondent verbally threatened the Applicants with eviction
 - (c) The tenants were forced sleep on a sofa in the sitting room because use of the bedroom for sleeping was prohibited
 - (d) The Respondent arranged for a builder to attend at the Flat to assess the work to be done but on Ms Foster taking time off work (leaving work early) no builder attended as expected.
21. The Applicants claimed that a section 30(1) offence had been committed because remedial work to the Flat as specified in the improvement notice had not been carried out or completed.
22. The section 32(1) offence allegation refers to the fact that remedial work, ie reconfiguration of partition walls and relocating the bedroom door to allow direct access from the corridor, had not been carried out by the time the application was made. Consequently the Applicants had been sleeping in the sitting room.
23. In 2016 the Respondent obtained an HMO licence for whole of the upper two floors of the building. However he subsequently divided the property into an HMO and the Flat without requesting an alteration to the HMO licence. The licence had in any event expired, creating a section 72(1) offence.

24. In addition the Applicants claimed in their application form that there had been rats in the kitchen of the HMO, which the Respondent had left the occupants to deal with by putting down poison.
25. In their written statements provided during the course of the proceedings the Applicants referred to an incident during the night of 29 December 2024 when the CO alarm in the HMO was triggered by a build-up of carbon monoxide in the restaurant. Emergency help was obtained by the Applicants and HMO occupiers, and it appears that no harm was suffered. The Applicants complained that they had not been able to obtain a response from the Respondent when they called and texted him during the incident.
26. Further allegations in the Applicants' written statements were that
- (a) two section 21 notices to quit were served on them between January and March 2025, and subsequently the Respondent served a section 8 notice;
 - (b) the tenancy agreement "lacked legal validity" due to missing information and failure to use a tenancy deposit scheme. The Applicants recovered their deposit via a small claims court claim on 17 March 2025; and
 - (c) Ms Foster had been harassed by the Respondent during a disagreement between them on or about 15 May 2025. She produced a document of that date recording the complaint she made to the police.

THE RESPONSE

27. The Respondent denied that he had threatened the Applicants with eviction. He served section 21 notices and a notice of possession proceedings early in 2025 after taking legal advice but had not pursued them on receiving further advice that he was unable to apply for a possession order while a prohibition order was outstanding in respect of the Flat.
28. The Respondent denied that utilities had been turned off unnecessarily and without warning.

29. The Respondent said that he was unaware of any occasion when a builder failed to attend at the Flat as arranged. Instead, he said that builders had been denied access by the Applicants, and this was why he had not been able to carry out the work in the Flat which was specified in the improvement notice.
30. The prohibition order had been complied with, in that the room furnished as a bedroom had not been used for sleeping. Ms Foster said that she and Mr Devitt had not been able to move the bed into the sitting room in order to change over the function of the two rooms because it would not fit through the doors, but at the hearing the Respondent told the Tribunal that he had received no request from the Applicants for him to help with this, and his statement was not denied by Ms Foster.
31. The work required by the improvement notice could not be carried out, the Respondent said, because the Applicants would not allow access. In response to Ms Foster's statement that she was unable to take time off work to allow a builder into the Flat he pointed out that Mr Devitt might have been able to do so, or alternatively that Mr Devitt's mother, who lived in the adjacent room, could have been asked to meet the builder. Regarding the work to relocate the bedroom door so as to allow the room to be used for sleeping, he told the Tribunal that when the work took only one and a half days to complete.
32. The Respondent admitted that he had failed to renew the HMO licence, as he had not understood that the licence was not for an indefinite period but instead expired after 5 years.
33. The Respondent did not reply to the allegation regarding rats in the HMO kitchen. He said that on the night of 29 December 2024 he had been staying with a friend in Manchester and his phone was turned off for the night. He was therefore unaware of the carbon monoxide alarm having been triggered until the next day, when he established that a charcoal burner had not been turned off by kitchen staff, and took steps to ensure that this would not happen again.

FINDINGS

34. The Applicants have failed to show beyond reasonable doubt that the Respondent committed a crime, namely an offence under section 1(3) of the Protection from Eviction Act 1977. Specifically:

- (a) the Applicants did not produce evidence of verbal threats of eviction, which the Respondent denied. The Tribunal did not see correspondence from the Applicants recording or objecting to any such threats. The service of section 21 and section 8 notices which the Respondent did not pursue was not, in the opinion of the Tribunal, an act of harassment. There was no evidence that the notices were served as an act of retaliation. Further, these notices were served after 1 December 2024 and were therefore not capable of amounting to an offence on the basis of which the application for a rent repayment order had been made.
- (b) the Applicants did not produce evidence that the Respondent had allowed utilities to be switched off unnecessarily and without warning. The application did not include any date on which this event was said to have occurred, nor any information as to how long the utilities had been turned off, or at what time of day. The Respondent denied the allegation.
- (c) the incident of 29 December 2024 took place after the date of the application. In any event, the Respondent was under no obligation to attend the premises or to respond to telephone messages that night. His obligation, which he fulfilled, was to provide a working CO alarm system.
- (d) the allegation of harassment reported to the police has not been proved. A report to the police is not evidence that the event occurred. The allegation is dated after the date of the application for a rent repayment order. The Respondent denies the allegation.
- (e) The inadequacies of the rental contract do not amount to harassment under the 1977 Act, in that the contract was intended to introduce the Applicants to the Flat, and not to impinge on their right to occupation. The Applicants

were willing to sign the contract at the time and, over a period of some 5 years, to pay the sums both parties appear to have believed were due by way of rent. The Tribunal finds that the overpayments were due to a misunderstanding on the part of both parties, for which the Respondent has fully compensated the Applicants.

(f) The Applicants produced no evidence of Ms Foster having taken time off work to attend a builder who did not come to the Flat as arranged. In any event, such an incident would not amount to a criminal offence on the part of the Respondent under the Protection from Eviction Act 1977.

(g) The Applicants could, but failed to, adjust the furniture in the Flat so as to use the front room as a bedroom following issue of the Prohibition Order. They failed to ask the Respondent for help in moving the furniture. The Tribunal accepts the Respondent's evidence that he would have assisted them in this regard. The Respondent did not "force" the Applicants to sleep on a sofa.

35. The Respondent complied with the Prohibition Order in that he ensured, so far as he was able to, that the inner room was not used for sleeping. The Prohibition Order did not require the Respondent to carry out any remedial work.

36. The Respondent was not in breach of the improvement notice. On his application to the housing authority for extension of time in which to carry out the remedial work at the Flat, an extension was granted initially to 3 December 2024 and then to 30 April 2025, both dates being after the date of the application for a rent repayment order. While the extensions were in place, there was no breach of the terms of the improvement notice.

37. The Respondent's failure to renew his HMO licence was an offence, but did not affect the Flat. The Applicants may not recover rent on the basis of an offence unrelated to the premises they occupied. Neither their use of the entrance and staircase in the building in common with the occupants of the HMO nor their other criticisms of events in the HMO (for example the rodent problem, and work allegedly carried out by unqualified workmen – which the Respondent

denied) gave them the right to rely on this offence under section 72(1) of the Housing Act 2004 in support of their application for repayment of rent.

CONCLUSION

38. The Applicants having failed to prove to the satisfaction of the Tribunal that the Respondent was guilty of any of the housing offences listed at section 40 of the 2016 Act, it is unnecessary for the Tribunal to consider what rent might otherwise have been repayable in the light of the conduct of the parties.