



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

**Case Reference** : **MAN/30UH/HMK/2025/0600**

**Property** : **Flat 7, Mill Brow House, Mill Brow, Kirkby  
Lonsdale, Cumbria LA6 2AT**

**Applicant** : **Ms Sarah Jane Rooks**

**Respondents** : **Mrs Patricia Nicholson and Mr Robert James  
Nicholson**

**Type of Application** : **Application for a Rent Repayment Order –  
Housing and Planning Act 2016**

**Tribunal Members** : **Judge R Watkin  
Simon Wanderer MRICS**

**Date of Hearing** : **29 January 2026**

**Date of Decision** : **29 January 2026**

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**DECISION**

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## DECISION

The Application is dismissed.

## DOCUMENTS

1. The Tribunal received and has considered two bundles of documents, the Applicant's bundle of 99 pages and the Respondent's bundle of 47 pages.
2. Where page numbers are referred to within this decision, they are to the pages within the bundles. Documents from the Applicants bundle shall be referenced as "A(page number)" and documents from the Respondent's bundle shall be reference as "R(page number)".

## BACKGROUND

3. By application dated 31 December 2024 (the "Application"). The Applicant claims a repayment of rent pursuant to section 40 Housing and Planning Act 2016.
4. The Applicant was the tenant of the Property under an assured shorthold tenancy at £650 per month, commencing 1 November 2023 (page A18) for a fixed term until 30 April 2024. The tenancy then continued on a statutory periodic basis until December 2024. The Respondent was the owner of Mill Brown House and the Applicant's landlord under the tenancy.

## THE LEGAL FRAMEWORK

5. The Housing and Planning Act 2016 provides:

### **Section 40 – Introduction and key definitions**

- (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.*
- (3) *A reference to 'an offence to which this Chapter applies' is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.*

|   | <b>Act</b>                        | <b>section</b>            | <b>general description of offence</b>        |
|---|-----------------------------------|---------------------------|----------------------------------------------|
| 1 | Criminal Law Act 1977             | section 6(1)              | violence for securing entry                  |
| 2 | Protection from Eviction Act 1977 | section 1(2), (3) or (3A) | eviction or harassment of occupiers          |
| 3 | Housing Act 2004                  | section 30(1)             | failure to comply with improvement notice    |
| 4 |                                   | section 32(1)             | failure to comply with prohibition order etc |
| 5 |                                   | section 72(1)             | control or management of unlicensed HMO      |
| 6 |                                   | section 95(1)             | control or management of unlicensed house    |
| 7 | This Act                          | section 21                | breach of banning order                      |

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **Section 41 – Application for rent repayment order**

- (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.

(3) ..

#### **Section 43 – Making of rent repayment order**

- (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).

(2) ..

- (3) The amount of a rent repayment order under this section is to be determined in accordance with— (a) section 44 (where the application is made by a tenant); (b) section 45 (where the application is made by a local housing authority); (c) section 46 (in certain cases where the landlord has been convicted etc).

#### **Section 44 – Amount of order: tenants**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table— If the order is made on the ground that the landlord has committed: (i) an offence mentioned in row 1 or 2 of the table in section 40(3) — the period of 12 months ending with the date of the offence; (ii) an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3) — a period, not exceeding 12 months, during which the landlord was committing the offence.
- (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.
- (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.

## **HEARING**

6. The Application was considered at a video hearing via CVP on 29 January 2026.

7. At the hearing, the Tribunal heard submissions and oral evidence from the Applicant and Ms Shirley Nicholson, the Respondent's daughter in law.

## **APPLICANT'S POSITION**

8. The Applicant's position was set out in the Application (A2) and Particulars of Claim (A16). She also gave oral evidence to the Tribunal.
9. The Applicant seeks a rent repayment of approximately £7,800 for the tenancy period from 1 November 2023 to 1 December 2024, together with associated fees.
10. She asserts that the Respondents rented out the Property despite the existence of hazards, that failure to comply with improvement requirements and fire safety obligations amounted to offences under sections 30(1) and 32(1) of the Housing Act 2004, that she had been unlawfully evicted or harassed contrary to section 1 of the Protection from Eviction Act 1977, and that the Respondents were managing an unlicensed house contrary to section 95(1) of the Housing Act 2004. She claims that she is entitled to a rent repayment order pursuant to section 40 Housing and Planning Act 2016.
11. She states that from the outset of the tenancy she experienced significant disrepair. In emails sent to the letting agent on 7 November 2023 she reported a non-functioning shower with poor water pressure, a defective smoke alarm, damaged kitchen flooring, loose skirting, and damp and water ingress affecting the bedroom and furniture. She states these issues were raised repeatedly throughout November and December 2023.
12. The Applicant also contends that the Respondents failed to provide her with a valid Energy Performance Certificate ("EPC"), failed to comply with an improvement notice, failed to comply with a prohibition order, unlawfully evicted her, and were managing an unlicensed house.
13. In her "Particulars of Claim", the Applicant states that she raised concerns with the estate agents in November 2023. She referred to water ingress close to electrical fixtures, damp, and that the building was insecure as the communal door was permanently left wide open. On 7 November 2023 she complained that the shower did not work (cold water only and no pressure), that the shower screen was broken, and that there were several other defects. On the same day she was told by the estate agents that the key for the communal door was in the letterbox, but that the door "just stays open". Her queries about who her point of contact was were not answered. She explained that on 2 January 2024 she had reported further leaks from the roof affecting areas above the hallway and both bedrooms, and that patches of black mould were present. She believed that the leaks had first arisen around six weeks earlier but had not been rectified.
14. The Applicant states that between November 2023 and the autumn of 2024 she became increasingly concerned about the condition and safety of the Property. She said that she requested an inspection by Westmorland & Furness Council, which took place in November 2024, and that a Hazard Awareness Notice was subsequently issued on 27 November 2024 identifying structural, electrical and damp hazards. She also said that the Council arranged for Cumbria Fire and Rescue Service to attend in order to assess fire risk.
15. The Applicant states that on 3 December 2024 Cumbria Fire and Rescue carried out a fire safety audit which, she said, identified serious deficiencies including failures in fire compartmentation, alarm systems, and escape route protection.

16. The Applicant states that on the evening of 12 December 2024 the Fire Authority served a Prohibition Notice. She said that the Respondents' son told her she had to leave immediately. She contends that this amounted to an unlawful eviction and/or harassment. She said that no alternative accommodation was offered and that she had nowhere to go. However, she later accepted that she had been given a telephone number by the fire officers, and that she had been provided with accommodation in Barrow in Furness as a result of calling the number provided. She also accepted that she retained her keys and returned to the Property a number of times to collect belongings, stating that she encountered no difficulty because the front door was unsecured and she had a key to her flat.
17. The Applicant also stated that she had never received an EPC for the Property, when she was questioned by the Tribunal in relation to why she had signed the Tenancy Checklist confirming that she had received the certificate on 27 October 2023, 4 days prior to signing the form, she became defensive but confirmed that she had signed it on trust and was firm that she had not received the certificate.
18. She was unable to refer the Tribunal to any Improvement Notice and she was not able to satisfy the Tribunal that the Property was subject to any scheme of licensing.

## **RESPONDENT'S POSITION**

19. The Respondent's had provided the Tribunal with documents entitled Background information (page R31) and Timeline (page R33), both had been signed by Mrs Patricia Nicholson.
20. Mrs Nicholson was present at the hearing with her daughter in law, Shirely Nicholson who addressed the Tribunal on her behalf. Mrs Nicholson explained that her husband, Robert Nicholson, was 91 and suffering from dementia but that she had a power of attorney on his behalf.
21. The Tribunal confirmed that Ms Shirley Nicholson was permitted to speak on behalf of the Respondents.
22. The Respondents accept that the Applicant was their tenant but deny that any statutory offence was committed.
23. The Respondents state that the Applicant was requested to leave the Property as a result of the Prohibition Notice and that whilst they could have queried the approach, they were keen to comply and referred to a recent major, fatal, fire in Kirby Lonsdale that had directly affected their family. Ms Shirley Nicholson confirmed that, on behalf of the Respondents, she and her husband assisted the Cumbria Fire and Rescue Service to arrange for Mill Brow House to be evacuated.
24. They further state that under section 44 of the Housing and Planning Act 2016, no rent was paid during any period when an offence was allegedly being committed (after 12 December 2024) and therefore no amount is recoverable.
25. The Respondents considered that, throughout the tenancy they responded reasonably to maintenance issues. They say that delays in late 2023 and early 2024 were caused by difficulties securing trusted contractors over the Christmas period. They rely on correspondence from 2–3 January 2024 in which Mrs Nicholson explained that her usual builder was abroad and that works would commence when he returned. They further state that roof repairs were arranged with their contractor, Mr Baines, and that some works were carried out. They rely on an invoice

dated 14 February 2025 confirming works undertaken on the roof above Flat 7, including tile removal, inspection, and arrangements for chimney repointing when weather permitted.

26. Regarding the Prohibition Notice, the Respondents state that they cooperated fully with the fire officers. They state that they evacuated residents immediately, in compliance with the Fire Authority's instructions and deny that their son's presence or conduct amounted to harassment or unlawful eviction. Ms Nicholson said that she was present during the evacuation, going from flat to flat accompanied by the fire officers, and that tenants were permitted to keep their keys and return to collect belongings.
27. In relation to the EPC, the Respondents state that there had been a clerical error. They usually relied on the estate agents to obtain EPCs on their behalf and believed that one had been obtained for Flat 7. They later discovered that the EPC obtained had incorrectly referred to the address as "7 Mill Brow" rather than "Flat 7, Mill Brow House". They said that they had subsequently been advised that because the building was listed, an EPC was not in fact required. Ms Nicholson emphasised that Mrs Patricia Nicholson had tried hard to maintain the Property but was struggling due to her age.
28. On the issue of licensing, the Respondents say they were not aware that Mill Brow House or the Property required a licence. They said Mill Brow House was in a quiet location and that no authority had ever informed them that it was subject to selective licensing or any other licensing requirement.
29. Finally, in relation to matters under section 44(4) of the Housing and Planning Act 2016, Ms Nicholson confirmed that neither Respondent had been convicted of any relevant offence. She acknowledged that the Respondents were not obliged to disclose their financial circumstances and elected not to do so, confirming that she understood that the Tribunal would then proceed on the basis that the Respondents are able to pay any repayment order but added that any repayment would be difficult for them.

## **ANALYSIS AND DECISION**

30. The Tribunal has considered each of the alleged offences under section 40(3) of the Housing and Planning Act 2016 in turn.

### **Protection from Eviction Act 1977**

31. The first alleged offence relied upon by the Applicant was that of unlawful eviction and/or harassment under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977. Although the parties frequently referred in evidence to the Applicant's removal from the building on 12 December 2024 as an "eviction", the Tribunal must assess whether, on the facts, she was in fact unlawfully evicted on that date.
32. The evidence establishes that the Applicant was asked to leave the building following attendance by Cumbria Fire and Rescue and the service of a Prohibition Notice which prohibited sleeping or resting in the flats until significant fire-safety defects were remedied. The effect of the Prohibition Notice was to render continued residential occupation unlawful for safety reasons.
33. The Tribunal notes that the Applicant accepted she had been permitted to retain her keys and that she was able to return to Mill Brow House freely in order to collect her belongings. She said that she returned on multiple occasions, and on at least one occasion, with a removal van, and that she encountered no difficulty entering the building because the front entrance door was not secure and she held a key to the Property.

34. The Applicant also stated that, after being asked to leave, she spoke with a Fire Safety Officer, who told her she could safely return for short periods to collect items but should not remain in the building for more than an hour due to the identified hazards. This is consistent with the terms of the Prohibition Notice.
35. The Tribunal does not place weight on the repeated use of the word “evicted” in oral evidence. That terminology was used loosely, and whether the Applicant was unlawfully evicted for the purposes of the Protections from Eviction Act 1977 must be determined by reference to the actual circumstances and not the labels adopted by witnesses.
36. On all the evidence, the Tribunal finds that the events of 12 December 2024 amounted to an evacuation of the premises in compliance with a statutory Prohibition Notice, and was necessary for safety reasons. The Applicant retained access, she was not locked out, she could return as needed, and the restrictions on overnight occupation were imposed by the Fire Authority, not by the Respondents.
37. Accordingly, the Tribunal does **not** accept that the events of 12 December 2024 amounted to an eviction, nor that the Respondents committed any offence under the Protection from Eviction Act 1977.
38. As the Applicant removed her belongings and did not return, the Tribunal considers that the tenancy must have come to an end by conduct or agreement. No evidence was provided of any further disputed events after 12 December 2024.

#### **Failure to Comply with an Improvement Notice (Housing Act 2004, s.30(1))**

39. The Applicant relied upon the Hazard Awareness Notice dated 27 November 2024. However, a Hazard Awareness Notice is not an Improvement Notice under Part 1 of the Housing Act 2004, and it does not require the recipient to carry out works within a specified time.
40. The Hazard Awareness Notice required only that the Respondents notify the Housing Standards Team within 14 days of the works they proposed to undertake and any intended timescales. The Respondents gave evidence that they did contact the local authority on several occasions after receipt of the notice. The Tribunal accepts this.
41. As no Improvement Notice is known to have been served, no offence under section 30(1) can arise.

#### **Failure to Comply with a Prohibition Order (Housing Act 2004, s.32(1))**

42. The Tribunal has considered the Prohibition Notice (page R17). It is not in dispute that the Respondents (acting through Mr Robin Nicholson and Ms Shirley Nicholson) and the Cumbria Fire and Rescue Service evacuated all tenants from the building on the date the notice was served.
43. The Applicant expressly accepted that the Respondents ensured that the building was vacated. There is no suggestion that any occupier continued to sleep or rest in the flats thereafter.
44. The Tribunal is therefore satisfied that the Respondents complied with the Prohibition Notice, and no offence under section 32(1) arises.

### **Control or Management of an Unlicensed House (Housing Act 2004, s.95(1))**

45. For licensing to be required, a property must fall within an area designated for selective licensing under Part 3 of the Housing Act 2004, or an additional licensing designation must apply (including one expressly covering section 257 HMOs).
46. Neither party provided evidence of any selective licensing designation or additional licensing scheme applicable to Mill Brow House. The Applicant produced correspondence suggesting that the building was a section 257 HMO, but no other evidence was provided to support this, nor to demonstrate that any relevant licensing scheme applied to this category of building.
47. In the absence of evidence that Mill Brow House required a licence, the Tribunal cannot be satisfied beyond reasonable doubt, or indeed on any lesser standard, that the Respondents were controlling or managing an unlicensed house contrary to section 95(1).

### **Conclusion under Section 40 Housing and Planning Act 2016**

48. For a Rent Repayment Order to be made, the Tribunal must be satisfied beyond reasonable doubt that the Respondents have committed an offence listed in section 40(3) of the Act.
49. In this case, the Tribunal is not satisfied that the Respondents committed:
  - a. any offence under the Protection from Eviction Act 1977;
  - b. any offence under section 30(1) (Improvement Notice);
  - c. any offence under section 32(1) (Prohibition Order); or
  - d. any offence under section 95(1) (unlicensed house).
50. As no qualifying offence has been proved to the criminal standard, the statutory conditions in sections 41 and 43 for making a Rent Repayment Order are not met. Therefore, there is no requirement for the Tribunal to give further consideration to the conduct of the Respondent which would have included the disrepair and the EPC allegation. Therefore, the application is dismissed.

### **Appeal**

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin  
29 January 2026