



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

<b>Case Reference</b>	: HAV/00MS/HMB/2025/0604
<b>Property</b>	: Flat 1, 48 Cambridge Road, Southampton, Hampshire, SO14 6US
<b>Applicant</b>	: Wai Kwong Ho
<b>Representative</b>	: N/A
<b>Respondent</b>	: Smart Homes Southampton Limited
<b>Representative</b>	: N/A
<b>Type of Application</b>	: Application for a rent repayment order by Tenant Sections 40, 41, 42, 43, 44 & 45 of the Housing and Planning Act 2016
<b>Tribunal Members</b>	: Regional Surveyor Clist MRICS Ms Jayam Dalal
<b>Date of Hearing &amp; Venue</b>	: 31 March 2026 at Havant Justice Centre
<b>Date of Decision</b>	: 21 May 2026

---

**Decision**

---

## **Summary of Decision**

**The Tribunal is not satisfied that the Respondent Landlord has committed an offence under Chapter 4, paragraph 40 (3) of the Housing and Planning Act 2016. Accordingly, the Tribunal dismisses the application and makes no order.**

## **Background**

1. On 3 September 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 tenancy agreement was for the period 1 July 2024 to 31 August 2025.
3. The application includes a copy of a Section 21 notice dated 28 February 2025. The notice required the Applicant to leave the address after 30 April 2025 and the Applicant states on the application that they left the property on 30 April 2025. The Applicant believes that Section 21 notice should not have been served within the fixed term of the tenancy. The Applicant believes that the same amounts to an unlawful eviction.
4. The amount claimed is £3800 for the period of 1 May – 1 August 2025, to recover rent that was paid for in advance of the tenant vacating the Property.
5. The Tribunal in determining the application needs to be satisfied beyond reasonable doubt that the landlord has committed one or more of the offences outlined in Chapter 4, paragraph 40 (3) of the Housing and Planning Act 2016 before it will decide (a) whether to make a rent repayment order and, if so, (b) for what amount.
6. Prior to the hearing, the Tribunal issued further Directions following a case management application for the Respondent to submit its own hearing bundle as a result of the Applicant's difficulty in producing a single final hearing bundle.

## **Law**

7. 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.
8. 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.

9. 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).

10. Section 1(2), 1(3) and 1(3A) of the Protection from Eviction Act 1977, which provides as follows:

1. Unlawful eviction and harassment of occupier

(1) .....

*(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier has ceased to reside in the premises.*

*(3) If any person with intent to cause the residential occupier of any premises –*

*(a) to give up the occupation of the premises or any part thereof; or*

*(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof; does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.*

*(3A) Subject to subsection*

*(3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if*

*– (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or*

*(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence, and (in either case) he knows, or has reasonable cause to believe, that*

*that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.*

*3(B) A person shall not be guilty of an offence under sub-section*

*(3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question”.*

11. 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.
12. 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**

13. The hearing took place at Havant Justice Centre on 31 March 2026.
14. The Applicant, Mr Ho was in attendance and accompanied by Mr Tiho. Ms Liu-Brahm, a Tribunal-appointed Cantonese translator, attended remotely to provide translation on behalf of Mr Ho. The Tribunal permitted Mr Tiho to assist Mr Ho where needed but translation would need to be conducted by Ms Liu-Brahm.
15. Mr Singh appeared for the Respondent. Accompanying Mr Singh was his mother, Ms Kaur who stated that she was a director of Smart Homes Limited Southampton.

16. The Tribunal confirmed to the parties that it had read both the Applicant's and Respondent's hearing bundles prior to the hearing. The Applicant's bundle amounted to 130 pages whilst the Respondent's bundle comprises 58 pages.
17. This decision records the most salient parts of the hearing which the Tribunal took account of in reaching its determination. It is not however a transcript of all that took place.
18. References in this determination to electronic page numbers in the bundle are indicated as [ ].

#### The Applicant's Evidence

19. Mr Ho explained that his tenancy agreement was for 1 July 2024 -31 August 2025. He had initially agreed to take the Property whilst in Hong Kong and had signed the tenancy upon his arrival in the UK on 2<sup>nd</sup> July 2024. He had initially paid six months rent in advance. A final prepayment of rent was made on 6 March 2025 to cover the remaining tenancy term, ending 31 August 2025.
20. Mr Ho stated that he did not take any photographs of the Property at the commencement of the tenancy as he did not know or understand the English law. It was accepted that he should have done some due diligence.
21. Mr Ho confirmed to the Tribunal that his application for a rent repayment order was on the grounds of an unlawful eviction. Mr Ho asked the Tribunal whether the Respondent's visits to the Property with little or no notice would amount to harassment.
22. Mr Ho stated that he had initially informed the Respondent that he may remain in occupation beyond 30 April 2025 if he could not find alternative accommodation but had later emailed on 29 April 2025 to inform the Respondent that he would leave the next day.
23. Mr Ho added that he had obtained advice from the Citizen's Advice Bureau and made contact with the local authority homeless team but as he and his son had been in the UK for less than a year, the local authority were unable to offer assistance with housing in the event of eviction. He was therefore very worried about the prospect of becoming homeless. As such, he took a new tenancy for another property on 29 April 2025 and voluntarily vacated the subject Property the following day.
24. In total, Mr Ho had paid £13,300 in rent payments. No utility bills were included in the rent. His application related to the rent paid for in advance covering the period of 1 May 2025 – 31 August 2025 which amounted to £3,800. To date he had not received any of the money back from the Respondent.

25. It was said by Mr Ho that the Respondent had entered his Property without prior notification on the 18<sup>th</sup> February 2025 for a damp survey, undertaken by a contractor. Mr Ho learnt of this on 7<sup>th</sup> March 2025. There had been two other occasions that he was aware of where he had not been notified of the landlord accessing the Property, referring to the My Deposits adjudication report to which the landlord had provided photographic evidence of the Property dated 17 January 2025. He did not have any evidence of the other occasion.
26. Mr Ho stated that after he vacated the Property he received a number of fees and charges from the Respondent without consultation, this included cleaning costs.
27. The dampness in the property was said to have been an ongoing issue to which he had notified the Respondent of. The Respondent had undertaken a survey and advised for heating and ventilation but the resolution was said not to be so simple. The windows were opened each day and washing was hung on windows to dry.
28. Mr Ho stated that the My Deposits adjudication capped the Landlord's awarded to the level of his deposit payment. As such, he questioned whether it was reasonable for the Landlord to recover its further costs from his advance rent payment. It was said that the Landlord should have made a court application to recover costs from his rent, at which point Mr Ho would have been able to demonstrate that the same was unreasonable.
29. During the course of Mr Singh's evidence, the Tribunal further questioned Mr Ho relating to the Respondent's visit to the Property. Mr Ho confirmed that he had visited the Respondent's office. He further confirmed that the language barrier did present difficulties and there were occasions when he did not understand telephone calls to which he would at times hang up on the calls.

#### The Respondent's Evidence

30. Mr Singh stated that there had been no unlawful eviction, rather the Applicant had vacated the Property of his own accord. At no point during the course of Mr Ho's tenancy had he been excluded or prevented from accessing the Property.
31. Any visits to the Property were requested in advance and acknowledged by the Applicant.
32. The Respondent had commenced possession proceedings due to uncertainty as to whether the Applicant would vacate and as an intention to follow the lawful process.
33. Mr Singh stated that a financial dispute exists between the parties relating to the return of the advance rent payment. The matter was a civil dispute to which had already been addressed via the My Deposits

adjudication process. The Respondent has not withheld rental monies and had on 24<sup>th</sup> November 2025 emailed the Applicant with a breakdown of costs incurred and the money due back to the Applicant. The Respondent had not received confirmation of acceptance or payment details from the Applicant.

34. Mr Singh stated that the Respondent had incurred costs for the eviction proceedings which had commenced on the basis of the Applicant stating that they will remain in the Property until alternative accommodation was found. The Respondent was only made aware that the Applicant was vacating the Property on 30<sup>th</sup> April 2025 at 16:49.
35. Mr Singh stated that all communication to the Applicant was reasonable and lawful.
36. It was said that the Section 21 Notice was lawful and valid as it had been served after the first six months of the tenancy agreement.
37. A damp survey was undertaken following Mr Ho's visit to the Respondent's office where he had made a complaint relating to damp. There had been some difficulty communicating with Mr Ho and there had been some misunderstanding. The office had followed up on his visit with a telephone call to confirm the appointment for a survey.
38. A visit to the Property had been undertaken with Mr Ho's consent to address maintenance concerns with damp. Photographs were taken.
39. Mr Singh confirmed that the Respondent had not been convicted of any offences under Chapter 4, paragraph 40 (3) of the Housing and Planning Act 2016.
40. It was said that the Respondent owns approximately 135 properties and manages a further 10 properties on behalf of other landlords.
41. Within Mr Singh's closing statement, he requested that the application be dismissed as the dispute between the parties was outside of the scope of the application and Tribunal's jurisdiction.

### **Consideration and Decision**

42. The Tribunal gives thanks to both parties for their submissions and in particular to Ms Liu-Brahm for providing translation.
43. Throughout the course of the hearing Mr Ho asked the Tribunal a number of questions relating to his tenancy, rental payments and eviction process. The Tribunal explained to Mr Ho that the questions amounted to requests for legal advice. The Tribunal's role is not to offer legal advice and it must remain impartial to all parties. Further, the questions went beyond the scope of the application and the Tribunal's jurisdiction. It is hoped that this decision makes clear the

scope of the application for a Rent Repayment Order and the matters the Tribunal is required to consider in relation to the same.

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

44. The Tribunal has before it a copy of a tenancy agreement dated 1<sup>st</sup> July 2024 between the parties, evidence of correspondence between the parties relating to the Applicant's occupation and evidence of the Applicant's first advance rent payment. Furthermore, the Respondent accepts that it was the Applicant's landlord throughout his 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?

45. 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.

Unlawful Eviction or harassment of occupiers

46. The Applicant's application was on the grounds of an unlawful eviction. The relevant offence under Chapter 4, paragraph 40 (3) of the Housing and Planning Act 2016 was also made on the ground of an offence committed under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.
47. With regards to S1(2) of the Protection from Eviction Act 1977 (an alleged unlawful eviction), it was Mr Ho's case that the Respondent's Section 21 Notice amounted to an unlawful eviction as it was issued within the fixed term of the tenancy. Notwithstanding, the Applicant stated that he vacated the Property voluntarily on 30 April 2025 having sourced alternative accommodation. Mr Singh stated that the Respondent had served a valid Section 21 notice and followed the lawful process to commence possession proceedings. At no point had the Respondent deprived the Applicant of access to his home.
48. The Tribunal considers that the validity of the Section 21 Notice and whether an unlawful eviction occurred are two separate matters, not one as the Applicant suggests. The service of a Section 21 Notice is the beginning of the process that may lead to a lawful eviction. The Tribunal only need make a finding as to whether an unlawful eviction has occurred under the scope of this application.
49. On the basis of Mr Ho's admission that he voluntarily vacated the Property on 30 April 2025 having taken a tenancy on a new Property, accordingly the Tribunal finds that the Respondent did not deprive the Applicant of his occupation of the Property and as such no unlawful eviction occurred.

50. The Tribunal finds that Mr Ho was not deprived of his occupation of the Property by the Respondent as he had left the Property voluntarily. The offence of unlawful eviction is therefore not made out.
51. Mr Ho asked the Tribunal whether the Respondent's visits to the Property on 17 January and 18 February 2025 amounted to harassment. The Tribunal considers the same with regard to the relevant offences under S1(3) and/or S1(3)(a) of the Protection from Eviction Act 1977.
52. The Applicant stated that the visit to the Property on 18 February 2025 related to a damp survey conducted by Insite (Southern) Limited. This was agreed by Mr Singh. In relation to the visit on the 17 January 2025, Mr Singh stated that the visit was for the purpose of investigation of Mr Ho's complaints regarding damp. It was said that the visits had been communicated to Mr Ho and his consent had been given to for both visits.
53. The Tribunal finds that both visits to the Property were for the purpose of investigating damp. There was no evidence that the visits were intended to induce Mr Ho to give up his occupation, interfere with any peace or comfort of Mr Ho and his son or to withhold any services. Further, the Tribunal accepts Mr Singh's evidence that verbal notice of the visits were provided to Mr Ho. It was clear to the Tribunal, however, on the basis of Mr Ho's admission that he often did not understand telephone calls from the Respondent and would hang up. It is unfortunate that notice had not been provided in writing although nothing turns on the same given the Tribunal's findings.
54. The Tribunal is not therefore, satisfied that the offence of unlawful conviction or harassment has been committed beyond reasonable doubt.
55. As such, having found that no offence had been committed within the relevant period, the Tribunal dismisses the application.

## **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.