



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

Case Reference	: HAV/00LC/HMC/2026/0001
Property	: 22 Gravel Walk, Rochester, Kent, ME1 1XP
Applicants	: Victoria King (formerly, Odd)
Representative	: None
Respondent	: Peter Wadhams
Representative	: Brachers LLP Ms Imogen Gander, counsel
Type of Application	: Application for rent repayment orders made by tenants pursuant to sections 40 to 45 of the Housing and Planning Act 2016
Tribunal members	: District Judge Pain, sitting as a Judge of the First-tier Tribunal (Property Chamber) Jayam Dalal
Date of Hearing	: 27 August 2026
Date of Decision	: 7 September 2026

DECISION

Summary of the Decision

1. **The Tribunal strikes out the Applicant's application pursuant to rule 9(3)(e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Tribunal Rules').**
2. **The Tribunal dismisses the Applicant's application for the reimbursement of fees by the Respondent, pursuant to rule 13(2) of the Tribunal Rules.**
3. **The Tribunal orders that the Applicant pays the sum of £750 to the Respondent in respect of the Respondent's costs of the application, pursuant to rule 13(1)(b) of the Tribunal Rules.**

The application

4. On 27 November 2025, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ('the 2016 Act') from the Applicant, seeking a rent repayment order ('an RRO') against the Respondent. The amount claimed was stated to be "12 months' rent, totalling £12,000, covering the period during which the property was unlawfully let."
5. In the application, the Applicant stated that she was a tenant at a property known as 22 Gravel Walk, Rochester, ME1 1XP ('the Property') and identified the Respondent as her landlord at the Property.
6. In section 9 of the application, "Grounds for making the application", the Applicant stated that the Respondent, has, "committed multiple offences under Chapter 4 of Part 2 of the Housing and Planning Act 2016." She also stated that the property had been unlawfully let to her since 26 February 2020 for the following reasons:

1. No Gas Safety Certificate (CP12)

There has never been a Gas Safety Certificate at any point during my tenancy. The landlord confirmed this in writing on 28 July 2025. This is a criminal offence under the Gas Safety (Installation and Use) Regulations 1998.

2. EPC Rating F – Unlawful Letting Without Valid Exemption

The EPC for the property is F (37). The landlord claimed an exemption existed, but no valid PRS exemption reference has been provided and the exemption appears to be based on false information (claiming "all-electric" when a live gas supply exists). Letting an EPC F property without a lawful exemption is an offence.

3. Misrepresentation of Gas Supply

British Gas and Octopus confirmed a live gas supply to the property. The landlord repeatedly told me and the local authority that the gas was capped/not live. No gas safety checks have ever been undertaken.

4. Failure to Address Category 1/2 Hazards

Severe excess cold, unsafe heating, persistent condensation, damp risk, and rats in the roof void have been reported repeatedly. The landlord failed to remedy these hazards.

5. Misleading Information Provided to Local Authority

The landlord made contradictory and misleading statements regarding EPC status, exemption, gas supply, and safety compliance.

7. The Applicant also applies for an order against the Respondent for the reimbursement of the application fee of £114.00 and hearing fee of £227.00.

Procedural Background

8. A Legal Officer issued directions to the parties on 10 June 2026.
9. Those directions noted that the Respondent's representative had emailed the Tribunal on 27 February 2026, "disputing the Applicant's grounds of application and requesting the application be dismissed." The directions added that, "This should be addressed in the Respondent's statement of case once the Applicant has sent her full case in accordance with [these directions]," and that, "The Tribunal in determining the application needs to be satisfied beyond a 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. The Applicant will need to provide evidence of such within her statement of case."
10. Those directions also listed a hearing to take place remotely by video on 27 August 2026, with a time estimate of 3 hours, and gave directions to each party as to the filing of statements and witness evidence.
11. Attached to those directions, was a document headed: 'Explanation of the Tribunal's jurisdiction to make a Rent Repayment Order'. The first identified issue was, "Whether the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences," and thereafter set out the table in section 40(3) of the 2016 Act, listing the seven offences listed therein.
12. It appears that the reference to the Respondent's representatives' email, dated 27 February 2026, related to a document headed "Statement of Respondent" sent to the Tribunal by email together with a letter dated 26 February 2026. That statement summarised the seven offences set out in section 40(3) of the 2016 Act and noted that "none of the grounds set out in the Applicant's application... relate or refer to" any of those offences and that, accordingly, "the First-tier Tribunal does not have power to make a Rent Repayment Order." The statement further stated that the application was misconceived and should be dismissed. The Respondent also sought an order that the Applicant should pay his costs.

The Respondent's representatives' letter also invited the Tribunal to "order that [the application] be dismissed given that it does not cite any grounds on which such an order can be made."

13. The Applicant provided a witness statement, dated 9 July 2026. Therein, she stated that her application is "based on the matters contained in [her application] and the evidence supplied." She identified the following concerns relating to "the Respondent's letting and management of the property":
 - the property being let with an EPC rating of F;
 - the absence of a valid EPC exemption between the expiry of the 2018–2023 exemption and the later 2025–2030 exemption;
 - the issues surrounding the declared heating arrangements and gas supply;
 - absence of gas safety certification despite a live gas supply;
 - serious heating deficiencies;
 - the involvement of Medway Council;
 - Category 1 and Category 2 hazards identified under the Housing Act 2004.
14. The statement also provided further detail in respect of each of these concerns. The Applicant also expressly referred to a Hazard Awareness Notice, dated 4 September 2025, that had been issued by Medway Council ('the Council') to the Respondent in respect of the Property. That notice had, she stated, identified Category 1 and 2 hazards at the Property. The Category 1 hazard related to 'excess cold' arising from the absence of a reliable supply of constant hot water, no installed heating provision in the front or rear bedrooms, and the sealants around the kitchen and bathroom having deteriorated significantly.
15. In addition, the statement set out the Applicant's response to the Respondent's statement. She noted the Respondent's position that her application should be dismissed as the matters raised do not amount to an offence under section 40(3) the 2016 Act; however, she stated that the issue had been raised previously by the Respondent but the Tribunal had thereafter issued directions, "requiring evidence from the parties and listed the matter for a hearing". She opposed the Respondent's request to dismiss her application and invited the Tribunal to consider the full evidence and determine whether the statutory requirements for a Rent Repayment Order are satisfied.

The Law

Substantive law

16. Section 40(1) of the 2016 confers a power on the Tribunal to make a rent repayment order ('an RRO'). Section 40(2) defines such an order as one that requires the landlord under a tenancy of housing to repay an amount of rent paid by the tenant.
17. Section 41 of the 2016 Act provides that an application for an RRO may only be made by a tenant where the offence relates to housing that, at the

time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made.

18. The power to make an RRO only arises where the Tribunal is satisfied – to the criminal standard (that is, beyond reasonable doubt) – that a landlord has committed one of the offences set out in section 40(3) of the 2016 Act: section 43(1) of the 2016 Act. Those offences are (prior to amendments made by the Renters’ Rights Act 2025):

- (1) using violence to secure entry, contrary to section 6(1) of the Criminal Law Act 1977;
- (2) eviction or harassment of occupiers, contrary to sections 1(2), 1(3), or 1(3A) of the Protection from Eviction Act 1977 (‘the 1977’);
- (3) failure to comply with an improvement notice, contrary to section 30(1) of the Housing Act 2004 (‘the 2004 Act’);
- (4) failure to comply with a prohibition order, contrary to section 32(1) of the 2004 Act;
- (5) control or management of an unlicensed HMO, contrary to section 72(1) of the 2004 Act,
- (6) control or management of an unlicensed house, contrary to section 95(1) of the 2004 Act, and
- (7) breach of a banning order, contrary to section 21 of the 2016 Act.

19. Section 1 of the 1977 Act provides as follows:

(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 had 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.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

Procedural rules

20. Rule 6(3)(c) of the Tribunal Rules provides that the Tribunal has a power to permit a party to amend a document. Rule 7(1) of the Tribunal Rules provides that the Tribunal may give a direction either on application of one or more of the parties or of its own initiative. Rule 7(2) of the Tribunal Rules provides that a party may make an application either by sending a written application to the Tribunal, or orally during a hearing.
21. Rule 9 of the Tribunal Rules sets out the Tribunal's powers to strike out a party's case. In particular, rule 9(2) of the Tribunal Rules requires the Tribunal to strike out the whole or part of a case if the Tribunal does not have jurisdiction in relation to any part of that case. Further, rule 9(3) of the Tribunal Rules sets out the circumstances in which the Tribunal may strike out the whole or part of a case. Rule 9(3)(e) of the Tribunal Rules provides that the Tribunal may strike out a case if it, "considers there is no reasonable prospect of the applicant's case succeeding."
22. The Tribunal's power to award costs in proceedings is contained in rule 13 of the Tribunal Rules. In particular, rule 13(1)(b) of the Tribunal Rules provides that the Tribunal may make an order in respect of costs, "if a person has acted unreasonably in bringing, defending or conducting proceedings." Rule 13(2) of the Tribunal Rules provides that the Tribunal may make an order requiring a party to reimburse to another party the whole or part of the fees paid by that other party to the Tribunal.

The hearing

23. The hearing took place remotely by video on the afternoon of 27 August 2026. The Applicant was not represented; the Respondent was represented by Ms Gander, of counsel.
24. At the start of the hearing, the Tribunal noted the grounds specified by the Applicant for bringing her application as set out in her application. The Tribunal also noted that none of those grounds appeared to relate to the offences specified in section 40(3) of the 2016 and invited the Applicant to clarify which of those specified offences she was relying on in respect of her application for an RRO.
25. In response, the Applicant stated that she had not understood why a hearing of her application had been listed, and that she had expected the application to be dealt with on paper, as she had requested. She stated that she had understood that seeking an RRO was the correct course of action for her to take, given the factual matters she relied on in her

application. Such an application would, she believed, provide her with proper redress for the problems she had experienced during her tenancy. However, she also stated, having read the offences in section 40(3) of the 2016 Act, that she wished to rely on breaches of the sections of the 1977 Act referred to that table.

26. On being asked by the Tribunal to explain the basis on which she contended that the Respondent had committed any of those offences, the Applicant referred to an email from the Respondent, dated 28 July 2025, that appears at page 69 of the filed bundle, in which he agreed to, “a twelve month rent free period whilst these matters are being resolved as long as we can deal with these amicably between us.” She also referred to the further email to her from the Respondent, dated 13 October 2025, appearing on the same page of the bundle, in which the Respondent appears to withdraw any such agreement, seemingly on the basis that matters had not been dealt with amicably. It should be noted that the Council had issued a Hazard Awareness Notice to the Respondent on 4 September 2025.
27. Counsel for the Respondent noted that the Applicant’s application did not refer to any of the statutory offences listed in section 40(3) of the 2016 and invited the Tribunal to strike out or dismiss the application. She stated that the Applicant should not be allowed to proceed based on a ground that had not been set out in the application and that, in any event, the Applicant has no reasonable prospect of success on such an amended application.

Determination

28. The Tribunal is satisfied that neither the Applicant’s application nor her statement filed in support thereof refers to any of the offences set out in section 40(3) of the 2016 Act. In particular, although the Applicant refers to the Hazard Awareness Notice served on the Respondent by the Council, this notice is neither an improvement notice nor a prohibition order (as referred to in section 40(3) of the 2016 Act). As such, those documents do not refer to a ground that would entitle the Tribunal to make a RRO in favour of the Applicant.
29. The Tribunal is not, however, persuaded, in the absence of cited authority, that it does not have jurisdiction to consider an application for a RRO that fails to specify any of the grounds for making such an order set out in the table appearing below section 40(3) of the 2016 Act. Provided the applicant tenant satisfies the requirements of section 41 of the 2016 Act, the Tribunal is empowered to consider that application, even if it proceeds to strike out or dismiss that application on the basis that it does not have power to make an RRO based on the grounds cited by the applicant (see *Marlborough Park Services Limited v Leitner* [2018] UKUT 230 (LC), dealing with service charge applications made pursuant to section 27A of the Landlord and Tenant Act 1985). Accordingly, the Tribunal is not satisfied that it is required to strike out the Applicant’s application pursuant to rule 9(2) of the Tribunal Rules.

30. The Tribunal is, however, satisfied that unless the application notice, and the grounds relied on therein, were amended to refer to one of the statutory offences set out in section 40(3) of the 2016 Act, it should proceed to strike out the Applicant's case, pursuant to rule 9(3)(e) of the Tribunal Rules. The application, as stated, simply cannot succeed.
31. The Tribunal is also not satisfied that it should exercise its power, pursuant to rule 6(3)(c) of the Tribunal Rules to allow the Applicant to amend her application notice to rely on sections 1(2), 1(3) and/or 1(3A) of the 1977 Act. First, as the Applicant's application does not refer to that ground, the Respondent's response does not address that ground, and the Respondent has not been given any opportunity to prepare to resist that ground at today's hearing. Proceeding to hear the application today based on an amended ground would be unfair to the Respondent. Secondly, while the Applicant has, partly at the Tribunal's invitation, identified the above provisions of the 1977 Act as the ground on which she intends to rely, the Applicant has not properly formulated that ground, or considered what she would be required to prove to make out that ground. Thirdly, the Tribunal is not satisfied that it should adjourn the hearing to allow amendments to be made to the parties' statements of case and for any further evidence to be filed. The deficiency of the Applicant's application was identified at an early stage by the Respondent in its statement and the Applicant has taken no steps to address that deficiency prior to the start of the hearing. Furthermore, the Applicant failed to take any legal advice and sought to make this application of her own accord. Therefore, allowing an adjournment would afford a disproportionate amount of the Tribunal's limited resources to the Applicant's application to adversely affect the timely dispatch of other cases, contrary to the overriding objective set out in rule 3 of the Tribunal Rules.
32. Accordingly, the Tribunal declines to permit the Applicant to amend her application to rely on sections 1(2), 1(3), and/or 1(3A) of the 1977 Act. As such, the Tribunal proceeds to strike out the Applicant's application pursuant to rule 9(3)(e) of the Tribunal Rules: the application has no reasonable prospect of succeeding.

Decision

33. The Tribunal determines that it should strike out the Applicant's application pursuant to rule 9(3)(e) of the Tribunal Rules, as having no reasonable prospect of succeeding.
34. As the Applicant's application has been struck out, the Tribunal declines to order the Respondent to reimburse the fees paid by the Applicant pursuant to rule 13(2) of the Tribunal Rules.

Costs

35. The Respondent seeks an order for its costs of the Applicant's application pursuant to rule 13(1)(b) of the Tribunal Rules and relies on a schedule of costs in the total sum of £3,883 inclusive of VAT, including counsel's fee of £1,250 plus VAT.
36. The Respondent's counsel submitted that the Applicant has acted unreasonably in bringing and in continuing her application. The flawed basis of that application was, she submits, clear as early as the end of February 2026 when the Respondent's statement of response was filed. She also referred a 'without prejudice save as to costs' offer made by the Respondent to settle the matter on the basis that the Respondent pay the Applicant £500.
37. The Applicant stated that she did not believe that she had acted unreasonably: all she had wanted to do, she said, was to have a warm flat. She said that if she had got the legal side of things wrong, it was not done intentionally. She had wanted someone to notice that the flat was "absolutely awful" and could not see any other way to address that.
38. The Tribunal considers and applies the guidance on the application of rule 13(1)(b) as set out in the decision of *Willow Court Management Limited v Alexander* [2016] UKUT 290 (LC). In particular, the Tribunal considers:
 - (1) (applying an objective standard) whether the Applicant has acted unreasonably ("is there a reasonable explanation for the action complained of"), noting that an unsuccessful outcome is not sufficient to justify a finding of acting unreasonably and that the power should not be exercised too readily,
 - (2) if so, should the Tribunal make an order for costs, considering the nature and seriousness of the conduct?
 - (3) If so, what should the terms of that order be, bearing in mind there is no requirement for a causal connection between the conduct relied on and the costs incurred.
39. The Tribunal finds that the Applicant has acted unreasonably in bringing and in continuing her application. The application has not failed because the Tribunal was not satisfied on the evidence that the Applicant had made out the grounds for bringing such a claim: the application has failed because none of the matters she relied on in her application permitted the Tribunal to make an RRO in her favour. The application was misconceived. In addition, the Respondent had set out his position in respect of her application at an early stage – indeed, over 3 months before the Tribunal gave its initial directions. The Applicant's response was not, however, to acknowledge the problems with her application, but to invite the Tribunal to consider the full evidence. Although the Applicant states that she believed the matter would be dealt with on paper rather than at a hearing, the application form had set out clearly that the Tribunal may decide that a hearing was required even if a party

had stated that they were content for the matter to be dealt with on paper. The Tribunal also notes that the Respondent offered to settle the application for the payment of £500, terms that are better than the decision reached by the Tribunal today.

40. The Tribunal therefore considers that a costs order should be made against the Applicant in this case. The Respondent has been put to expense by the making of an application that was, on its stated terms, bound to fail.
41. The Tribunal is not, however, satisfied that the sums claimed by the Respondent are either reasonably incurred or reasonable in amount. The Tribunal notes that the application is not complex and does not present any significant legal challenge – that can be seen in the brevity with which the Respondent chose to respond to the application at the end of February 2026. The application was misconceived, being based on grounds that did not entitle the Applicant to the order that she sought. In those circumstances, the Tribunal does not consider that it was reasonable for the matter to be dealt with by a Grade A fee earner, or at a charging rate that exceeds the guideline amounts for such a grade within National Band 1 (that is, now £295 per hour). And given the times claimed for work done, the Tribunal is not satisfied that the instruction of the Grade A fee earner has, as counsel for the Respondent submits, led to the matter being dealt with in less time than would have been taken by a fee earner of a lower grade. The Tribunal is also not satisfied, given the straightforward nature of the Respondent's position on the application, that it was reasonable to instruct counsel to attend or, if so, to incur a brief fee of the amount claimed.
42. The Tribunal is also not satisfied that the items of work identified on the Respondent's schedule were reasonably incurred: other than the drafting of the initial response, it is difficult to see that much of the further work was reasonable. In any event, the time taken in respect of some of those tasks is unreasonable: for example, it is difficult to see how drafting instructions to counsel and reading emails from the Tribunal and the Applicant would take an hour.
43. In addition, the court notes that the Respondent did not follow up on its initial emailed invitation to the Tribunal to dismiss the application, relying on the same grounds as the Tribunal has relied on today in striking out the application. Doing so would, in the Tribunal's view, have significantly reduced the costs incurred by the Respondent.
44. Taking all of these matters together and noting the limited detail provided to us in the Respondent's schedule the Tribunal determines that the appropriate order, pursuant to rule 13(1)(b) of the Tribunal Rules, is that the Applicant should pay the Respondent's costs, summarily assessed in the sum of £750.

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- 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.