



FIRST - TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case Reference : CAM/22UF/HMF/2021/0022

HMCTS : CVP

Property : Room 2 at 5 Trent Road, Chelmsford, Essex  
CM1 2LG

Applicants (Tenant) : Emma Bumpstead  
Representative : Justice for Tenants

Respondents : (1) Mary Hampako Chimba  
(2) Anderson Chipepeo Chimba

Type of Application : Application by a tenant for a Rent  
Repayment Order (RRO) where there has  
been no conviction of the landlord and no  
imposition of a financial penalty on the  
landlord by the local authority (Section 41  
Housing and Planning Act 2016)

Application for reimbursement of fee (Rule  
13 Tribunal procedure (First-tier Tribunal)  
(Property Chamber) Rules 13 (2))

Tribunal : Judge JR Morris  
Mr A Kapur

Date of Application : 25<sup>th</sup> November 2021  
Directions : 28<sup>th</sup> February 2022  
Date of Hearing : 15<sup>th</sup> July 2022  
Date of Decision : 22<sup>nd</sup> August 2022

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DECISION

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## Decision

1. The Tribunal is satisfied beyond a reasonable doubt that the Respondents were persons having control of or managing an HMO which was required to be licensed but was not so licensed which is an offence under section 72(1) of the Housing Act 2004.
2. The Tribunal was satisfied beyond a reasonable doubt that the removal of the door by Respondent 2 was calculated to interfere with the peace and comfort of the Applicant with intent to cause the Applicant to give up the occupation of the Property which is an offence under section 1(3) of the Protection from Eviction Act.
3. The Tribunal makes a Rent Repayment Order against Respondent 1, as the immediate landlord, in the sum of £3,266.63 payable within 48 days of this Order.
4. The Tribunal makes an order for the reimbursement of the Application and Hearing Fees of £300.00 to be paid within 48 days of this Order.

## Reasons

### Application

5. On 24<sup>th</sup> November 2021 the Applicant applied for a Rent Repayment Order as a Tenant of Room 2 ("the Property") at 5 Trent Road, Chelmsford, Essex CM1 2LG ("the House"). The legislation applicable to this Application is found in the Housing Act 2004 (the "2004 Act") and the Housing and Planning Act 2016 (the "2016 Act"). The relevant provisions are attached to this decision at Annex 2.
6. The Applicant had alleged two types of Offence as follows:
  1. That the Respondents have committed an offence under section 72(1) of Part 2 of the Housing Act 2004 (the "2004 Act") of being a person having control of or managing a House in Multiple Occupation (an HMO) which is required to be licensed;
  2. That the Respondents have committed one or more of the specified offences under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (eviction or harassment of occupiers),  
during the period from 1<sup>st</sup> December 2019 to 30<sup>th</sup> November 2020 for which the Rent Repayment Order was claimed (the period in issue).
7. The relevant provisions are attached to this decision at Annex 2.
8. Directions were issued on 28<sup>th</sup> February 2022.
9. The Tribunal considered the validity of the Application for a Rent Repayment Order and the period for which it was claimed.

10. Firstly, the Tribunal found that the Application was valid in that the alleged offence had occurred between 1<sup>st</sup> December 2019 to 30<sup>th</sup> November 2020 and the Application was received on 25<sup>th</sup> November 2021 which was within 12 months of the offence taking place under section 41 of the 2016 Act.
11. Secondly, the Tribunal found that under section 44 the period for which the Applicant could potentially claim a Rent Repayment Order was from 1<sup>st</sup> December 2019 to 30<sup>th</sup> November 2020 during which time the Applicant occupied the Property as her main residence and the alleged offence of there being no HMO licence was being committed also in respect of the alleged eviction the period of 12 months ending with the date of the offence.
12. Thirdly, the Tribunal found that no notice of intended proceedings had been served by the local housing authority on the Respondents under section 42 of the Housing and Planning Act 2016.

### Description of the Property

13. The Tribunal did not make an inspection of the House or Property but was able to obtain a relevant description from the statements of case of the parties and the Internet as follows:
14. The House in which the Property is situated is a two-storey semi-detached house. On the ground floor there is an entrance hall from which rise stairs to the first floor and off which is a lounge and a kitchen. Off the kitchen on the one side is a utility room from which there is a door to a w.c. and wash hand basin and another to a large store room. On the other side of the kitchen there is a dining room which leads to a conservatory. On the first floor there is a landing off which are three bedrooms and a bathroom.
15. The occupation of the Property as described by the Applicant and confirmed by the Respondent, was as follows:  
the Lounge was Room 5,  
the Dining room and Conservatory were Room 2,  
Bedroom 1 was Room 4,  
Bedroom 2 was Room 3 and  
Bedroom 3 was Room 1.

### Preliminary Issue - The Tenancy

#### *Applicant's Case*

16. The Applicant provided a written Statement of Case supported by a witness statement developed at the hearing.
17. The Applicant submitted that she was a tenant of the Property from 20<sup>th</sup> April 2019 to 19<sup>th</sup> December 2020 but she had not been provided with a written tenancy agreement by the Respondents.
18. The Applicant stated in her witness statement that the rooms were let to a number of different persons. The Applicant also referred in the Statement of

Case to 4 Data Collection Forms dated 15<sup>th</sup> December 2020 obtained under the Freedom of Information Act 2000 by the Applicant's Representative from Chelmsford City Council which were made by the occupants of the House each of which was a different person who was not related to anyone else in the House and did not share with any of those persons. This evidence is set out in more detail below in the section regarding the alleged "Unlicensed House in Multiple Occupation" under the heading "Occupation".

19. At the hearing the Applicant's Representative referred the Tribunal to *Street v Mountford* [1985] AC 809 and stated that the Applicant's occupancy met the three criteria set out by Lord Templeman as follows:
  - a) The Applicant had exclusive possession in that each room could be locked and that the Applicant alone occupied Room 2, notwithstanding that she had use of the common parts of kitchen and bathroom.
  - b) It was agreed between the parties that the Applicant had paid a rent of £450.00 per calendar month for Room 2, which had been funded partly through Universal Credit with the balance being paid from the Applicant's own resources.
  - c) Based upon the way in which the rent was paid it was stated that the occupancy was for a certain periodic term of a calendar month. It was confirmed that the rent was paid directly by the Applicant to Respondent 1.
20. The Applicant's Representative submitted that therefore the Applicant had a tenancy and not a licence.

#### *Respondents' Case*

21. The Respondents provided a written Statement of Case in the form of a witness statement by Respondent 2 developed at the hearing.
22. The Respondents conceded that there was no tenancy agreement and submitted that the Applicant was a lodger.
23. Reference was made to a WhatsApp message on 11<sup>th</sup> December 2021 from Respondent 2 to the Applicant (copy provided) in which Respondent 2 stated that "And as of Thursday you no longer a tenant your a lodger". The Applicant said that this showed the Respondent considered there was a tenancy agreement until that time. In another message the Respondent stated that "There is no tenancy agreement. You are there on a lodging basis"
24. In addition, the Respondent stated in their Statement of Case that the House was never let out as an HMO but to a single-family unit including adults of different ages and sex. There was no signed tenancy agreement and certain changes regarding the tenant's family structure were not communicated to the owner.
25. The Respondents said that although the Applicant contended that Respondent 2 was the landlord, she also stated that her occupation and alleged eviction were instituted by Vanessa Gill. It was submitted that the Applicant was an excluded occupier and the landlord had legal rights to have access to the Property in the lodger's absence without prior notice or permission.

26. The Respondents said the Applicant did not sign any assured shorthold tenancy agreement, but simply went into an understanding with Vanessa Gill who had no legal authority to do whatever she did.
27. At the hearing the Respondents' Representative said that the Applicant was a lodger, i.e., that the occupancy was a licence, because at one time Respondent 2 had lived at the house and that services were provided in the form of a shared kitchen and bathroom. In addition, it was made clear to the Applicant that because the House was due to be sold any accommodation would only be temporary.

#### Preliminary Issue - Decision re Tenancy

28. The Tribunal considered the respective statements as to the factual circumstances in the House. The evidence of the Respondents lacked clarity. They state the House was let to a single family but then say that the persons in occupation were lodgers. The reference to Vanessa Gill purporting to let the Property to the Applicant was not supported by any evidence. If this was a genuine issue submitted by the Respondents, Ms Gill should have been called to give evidence.
29. The Tribunal found that the Applicant's evidence, supported by the Data Collection Forms obtained from Chelmsford City Council, that the rooms were occupied by unrelated individuals was more credible.
30. In determining whether the Applicant's occupancy was a tenancy or a licence the Tribunal considered the distinction between the two. In *Street v Mountford* [1985] AC 809 it was held by the then House of Lords, now Supreme Court, that a tenancy must fulfil the following criteria:
  - a) exclusive possession of residential accommodation
  - b) for a fixed or periodic term
  - c) at a stated rent.He considered that an objective approach should be taken of looking only at the nature of the occupancy, taking into account the nature and extent of the accommodation provided and the intended and actual mode of occupation.
31. In the present case there is no written agreement therefore the Tribunal considered the nature of the occupancy as expressed in the practical arrangements. As Lord Templeman stated "If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy and the parties cannot alter the effect of that agreement by insisting that they only created a licence. The manufacture of a five-pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade."
32. The Tribunal also considered whether there were any exceptional circumstances such as family arrangements.
33. The Tribunal also referred to the cases of *Antoniades v Villiers* [1990] 1 AC 47 and *AG Securities v Vaughan* [1990] 1 AC 417 noting that the House was, as in those cases, occupied by a number of persons and that multiple occupancy

may amount to each individual holding a licence under a joint tenancy. Such a situation would arise if there was one tenancy agreement held collectively as co-owners with all the occupiers having the same right of possession (unity of possession), the same interest in extent nature and duration (unity of interest), which began at the same time (unity of time) and from the same document (unity of title).

34. On looking at the evidence of the agreed practical arrangements, there being no written agreement, the Tribunal found that the Applicant's occupancy met the criteria set out in *Street v Mountford*:
  - a) the Applicant had exclusive possession of Room 2, notwithstanding she had use of the common parts of kitchen and bathroom;
  - b) the parties agreed the Applicant had paid a rent every calendar month for the period 20<sup>th</sup> April 2019 to 19<sup>th</sup> December 2020; and
  - c) the occupancy was for a certain periodic term of a calendar month.
35. The Tribunal found there were no exceptional circumstances such as family arrangements or serviced accommodation which made it think the occupancy was a licence and not a tenancy. The Tribunal did not accept that the accommodation was so temporary as not to amount to a tenancy. It was agreed that the Applicant had been in occupation from 20<sup>th</sup> April 2019 to 19<sup>th</sup> December 2020, a period of some 18 months. The Tribunal also found that there was no collective single agreement to which the four unities applied and under which a licence was granted to each occupier. The occupiers appeared to have their own individual agreements with the Respondents for their respective rooms which commenced at different times and for which they each paid the rent separately to Respondent 1.
36. The failure to provide a written agreement does not affect the ability of the occupation to be a tenancy nor the validity of that tenancy which is by default an assured shorthold tenancy under the Housing Act 1988 as amended.
37. Therefore, the Tribunal found that the Applicant had a tenancy during the period during the period from 1<sup>st</sup> December 2019 to 30<sup>th</sup> November 2020 which was the period in issue.
38. There is a requirement under section 21A of the Housing Act 1988 as amended that requires a landlord to comply with prescribed legal requirements which are identified in legislation which include the obligation to provide:
  - a written tenancy agreement,
  - a how to rent booklet,
  - a gas safety certificate,
  - an Electrical Installation Condition Report (EICR) and
  - an Energy Performance Certificate (EPC) Certificate.

Whereas enforcement of these individual requirements is not within the Tribunal's jurisdiction but is a matter for other bodies under the specific regulations that impose them. Nevertheless, they are relevant when considering the landlord's conduct when making an RRO.

## Hearing

39. A video hearing was held on 15<sup>th</sup> July 2022 which was attended by the Applicant, Ms Emma Bumpstead represented by Ms Clara Sherratt of Justice for Tenants and the Respondent Mr Anderson Chipepo Chimba represented by Mr Prinsloo Kandemiri. The Respondent, Ms Mary Hampako Chimba, was not present.

## Unlicensed House in Multiple Occupation

### *Applicants' Case*

40. The Applicant's Representative provided a Statement of Case supported by a witness statement made by the Applicant which was confirmed and developed at the hearing.
41. In response to the Tribunal's questions at the hearing the Applicant's Representative stated that the Property was a House in Multiple Occupation as defined in article 4 of The Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (2018 /No.221) which prescribes a House in Multiple Occupation for the purpose of section 55(2)(a) of the 2004 Act as a house occupied by five or more persons living in two or more separate households; and meets the standard test under section 254(2) of the 2004 Act.
42. Reference was made to an email from Joanne Grimley at Chelmsford City Council (a copy of which was provided) which stated in response to questions asked by the Applicant's Representative that as at 15<sup>th</sup> June 2021 the Property was not licenced as an HMO. It was also confirmed that it had never been licensed and no license application was pending.
43. It was noted in the Statement of Case that for most offences there are two elements. First the acts or omissions which constitute the offence (*actus reus*) and secondly the intention to commit the offence (*mens rea*). The Applicant's Representative referred to *Mohamed v London Borough of Waltham Forest* [2020] EWHC1083 which held that section 72(1) of the 2004 Act creates a strict liability offence which means that it is enough to show that the offender, in this case, has omitted to obtain an HMO licence to have committed the offence. It does not have to be shown that the offender intended to commit the offence. However, the Respondents have a defence if they can show on the balance of probabilities that they had a reasonable excuse for having control of or managing the HMO without a licence or for permitting the persons to occupy the house without obtaining an HMO licence.
44. The Applicant's Statement of Case then went on to identify and apply the elements of the *actus reus* of the offence.

### *Occupation*

45. First, it was said it must be shown that the House was a House in Multiple Occupation.

46. The Applicant said in her witness statement that while she resided at the Property from 20<sup>th</sup> April 2019 to 19<sup>th</sup> December 2020 the House was occupied as follows (the rooms in brackets relate to the description of the House and Property above):
- Room 1: (Bedroom 3 upstairs front room to right) Isaac Carter was living at the House when the Applicant moved in and moved out in September 2019. Tanner Bailey replaced Isaac about a month later and continued to live at the House until the Applicant was evicted.
  - Room 2: (Dining Room and Conservatory) Emma Bumpstead from 20 April 2019 to 19 December 2020.
  - Room 3: (Bedroom 2 upstairs front room to left) Milton Costa at the House when the Applicant moved in and continued to reside at the House after the Applicant was evicted.
  - Room 4: (Bedroom 1 upstairs rear room) Vanessa Gill, Phil (Vanessa's friend) and on occasions Phil's son were living at the House when the Applicant moved in. Vanessa and Phil moved out of the House early April 2020. Ashleigh Baines lived at the House from May 2020 and was still living at the House when the Applicant moved out.
  - Room 5: (Lounge) Unfortunately, the Applicant did not get to meet this person as they were arrested shortly after the Applicant moved in. They were replaced by an older man named Gary who lived at the House for around 3/4 months before being evicted. Kieran Gaiger moved into the House around February 2020 after just coming out of prison. Kieran was evicted within 2 months for causing issues at the House. After Kieran, there was another man called Gary who lived at the Premises but left within 2 or 3 months of staying at the House due to issues with the police. Kaitlyn Hart lived at the House from approximately late May 2020 and was still living at the House when the Applicant moved out.
47. There were communal cooking and toilet and washing facilities. At any one time there were 5 persons living at the House who were unrelated individuals each paying rent and occupying their rooms as their only residence.
48. Reference was made in the Statement of case to 4 Data Collection Forms dated 15<sup>th</sup> December 2020 obtained under the Freedom of Information Act 2000 by the Applicant's Representative from Chelmsford City Council who was conducting an inquiry as to whether the House required an HMO licence. Each was made by a different person who was not related to anyone else in the House. Each said there were 5 persons living in the House and that they did not share with any of those persons. They said the House was their main address and that they paid rent to Respondent 2 (variously identified as Andy, Andy Chimba or Andrew Chipepo Chimba). Certain additional information was redacted under the Data Protection Act 2018



49. It was submitted that pursuant to section 254 of the 2004 Act, the living accommodation was occupied by the above persons as their only or main residence or they are to be treated as so occupying it; their occupation constitutes the only use of that accommodation; rents are payable in respect of at least one of those persons' occupation; and two or more of the households share one or more basic amenities.

*Person Having Control and Person Managing the Property*

50. Secondly, the Applicant's Statement of Case said it must be shown that the Respondents are persons having control or managing the Property. Section 263 of the 2004 Act was referred to and it was submitted that the Respondents are eligible to have a Rent Repayment Order made against them as the persons having control or managing the Property.
51. Under Rule 20 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 20 (the 2013 Rules) the Applicant's Representative was asked for an address in order to serve the proceedings on the Respondents. In the course of inquiry, the Applicant's Representative stated that Ms Mary Hampako Chimba and Mr Anderson Chipepo Chimba are related (mother and son).
52. It was submitted that Ms Mary Hampako Chimba is an appropriate Respondent for this application because she is the beneficial owner of the House as shown by the HM Land Registry Title Number EX364809 (copy provided). She is therefore, a "person having control" of the premises as she is the person who received or would so receive the rack-rent if the premises were let. The Respondent also received or would so receive rent from tenants in an HMO and is therefore a "person managing" the House.
53. Anderson Chipepo Chimba is believed to be an appropriate Respondent for this application because he actively managed the House and received rent. He is therefore a "person managing" the House.
54. Therefore, the Respondents are eligible to have a Rent Repayment Order made against them.

*Defence*

55. The Applicant's Statement of Case said that the Respondents have a defence under section 72(5) of the 2004 Act, if they can show, on the balance of probabilities, that they had a reasonable excuse for having control of or managing the HMO without a licence or for permitting the persons to occupy the house without obtaining an HMO licence. It was submitted that until the hearing no reasonable excuse had been put forward.

*Respondents' Case*

56. Respondent 2 provided a statement of case in the form of a witness statement dated 11<sup>th</sup> April 2022.

57. He said that the Respondents wished to defend the claim because they considered that it was baseless and without foundation and sought to have the matter dismissed with costs. The property has now been sold. It was agreed that Respondent 1 was the registered proprietor at HM Land Registry, whilst Respondent 2 oversaw managing the property in the absence of Respondent 1.
58. The House was never let out as an HMO but to a single-family unit including adults of different ages and sex. There was no signed tenancy agreement and certain changes regarding the tenant's family structure were not communicated to the owner. This could be the reason why there were no other complainants other than the Applicant. It was said that the Applicant had spoken to Vanessa Gill when she occupied the Property and yet Vanessa Gill is neither the title owner nor appointed agent.
59. It was said that the Applicant was a member of the family who were renting the property and that she had a misunderstanding with the room she occupied. The personal differences within the family have led to the present case.
60. At the hearing the Respondents' Representative stated that the Respondents did not deny that the house was an HMO however they had a reasonable excuse for having control of and managing the house in the circumstances.
61. Firstly, it was said that the House was in the process of being sold. Respondent 1 is the registered proprietor of the House and was in Zambia and so it was left to Respondent 2 to manage the House. The decision to sell the House was made in 2019. In March 2020 covid restrictions were imposed which made it very difficult to sell properties. It was not known how long the restrictions would last and so it was uncertain as to when the House was likely to be sold. While it was on the market it was initially let to 4 persons and so did not require to be licensed. It was made clear to the Applicant who was the fifth person that the accommodation was only a temporary.
62. Secondly it was apparent that to obtain a licence, repairs would be needed to the House. The Respondents' Representative said that there was little point in applying for a licence while the repairs were outstanding which were difficult to get done due to the covid restrictions. The Respondents were not aware that the local authority would grant any exemption for a licence while such repairs were carried out. It appeared that the reasonable action was to wait until the House was sold or it was possible to carry out repairs and then apply for a licence.
63. The combination of the uncertainty caused by the pending sale and the repairs that would be needed before a licence was granted amounted to a reasonable excuse for the Respondents not obtaining a licence. In the event the House was sold on 22<sup>nd</sup> September 2021. A copy of a letter was provided from the solicitors acting confirming the sale together with the contract and transfer.

### *Applicant's Reply*

64. At the hearing the Applicant's Representative referred the Tribunal to *Thurrock v Daoudi* [2020] UKUT 209 stating that it was held that ignorance of the provisions cannot amount to reasonable excuse, although it may in some circumstances amount to mitigation of a penalty. The Respondents lack of knowledge regarding any exemptions that may be granted by the local authority are not a reasonable excuse for not obtaining an HMO licence.
65. Reference was also made to *Hallett v Parker* [2022] UKUT 165 (LC) which in turn referred to *Aytan v Moore* [2022] UKUT 027 (LC), where at [40] the circumstances in which reliance on an agent may provide a reasonable excuse for a landlord neglecting to licence an HMO were considered. It was held that it was for persons having control and managing an HMO to acquaint themselves with the regulations and to obtain professional advice. Some latitude may be afforded a landlord of a single property who in this case is letting it while seeking a purchaser which may amount to mitigation of a penalty it is not a reasonable excuse for not obtaining an HMO licence.
66. In the light of these cases the Applicant's representative submitted that Respondent 1's absence and Respondent 2's lack of knowledge concerning the regulations and his apparent belief that the uncertainty regarding when the House would be sold and the alleged temporary nature of the Applicant's occupation did not amount to a reasonable excuse under section 72(5) of the 2004 Act.

### Decision re Unlicensed House in Multiple Occupation

67. The Tribunal considered the evidence adduced and submission made in the parties' written Statements of Case, the Applicant's and Respondent 2's witness statements and oral evidence at the hearing.
68. The Tribunal found that Respondent 1 was a "person having control" of the House and the Respondent 2 was a "person managing" in the House as defined in section 263 of the 2004 Act.
69. The Tribunal found the House to be a House in Multiple Occupation for the period 20<sup>th</sup> April 2019 to 19<sup>th</sup> December 2020 which included the period in issue of 1<sup>st</sup> December 2019 to 30<sup>th</sup> November 2020.
70. The Tribunal accepted the Applicant's witness statement supported by the Data Collection Forms from Chelmsford City Council that there were during the period in issue 5 occupants of the House which required it to be licensed under section 254(2) of the 2004 Act. However, from the parties' written and oral statements and the email from Chelmsford City Council, the Tribunal found the House was not so licensed for the period in issue. It further found that Respondent 1's absence and Respondent 2's lack of knowledge concerning the regulations and his apparent belief that the uncertainty regarding when the House would be sold and the alleged temporary nature of the Applicant's occupation did not amount to a reasonable excuse under section 72(5) of the 2004 Act.

71. Therefore, the Tribunal was satisfied beyond a reasonable doubt that the Respondents were persons having control of or managing an HMO which was required to be licensed but was not so licensed and the Respondents had committed an offence under section 72 of the Housing Act 2004.

## Eviction or Harassment of an Occupier

### *Applicant's Case*

72. The Applicant's Representative provided a Statement of Case supported by a witness statement made by the Applicant which was confirmed and developed at the hearing.
73. The Applicant's Representative referred to the following incidents in the Statement of Case supported by the Applicant's witness statement which were said to show an offence under the Protection from Eviction Act 1977 ("the 1977 Act").

### *Incident 1*

74. On 5<sup>th</sup> December 2020, Respondent 2 switched off the water to the boiler for 2 days which left the Applicant and the other tenants without hot water or heating. No attempt was made by the Respondent to get it checked by a gas engineer.
75. At the hearing the Applicant said that Respondent 2 had claimed that the boiler thermostat had been tampered with by Tanner Bailey, one of the occupiers of the House. It was a very cold winter and the boiler was turned off for two days. The Applicant said that she believed the heating was switched off to punish the tenants for turning the thermostat up because the heating was not high enough.

### *Incident 2*

76. On 12<sup>th</sup> December 2020, a trespasser attempted to occupy the Applicant's room. Respondent 2 and his wife, Dhana Williams, came into the House and shouted abuse at the Applicant from the hallway telling the Applicant to "get the fuck out of the property". The police were called to diffuse the situation. The Applicant left with the police after locking all doors to the Property. When the Applicant returned to the House to collect some personal belongings, she found that the door to the Property had been removed. It was stated that Respondent 2 unlawfully entered the Property, forced the door to the Property open then removed the door by unscrewing the hinges and subsequently departed the House with the door (photograph provided of door having been removed). It was alleged that by this action, Respondent 2 sought to unlawfully deprive the Applicant of her premises.
77. The Applicant made a witness statement to the police under Incident 48412/12/2020 and to the Chelmsford City Council in respect of her

application for accommodation as a homeless person Ref:20/06644/HST11. The relevant parts of the statement are summarised as follows:

“At around 12pm on Saturday 12th December 2020 the Applicant was sitting on the sofa in the conservatory and her friend, Mr White, was sleeping in the bed in the other room. A Ms Gill came into the conservatory from the back door, placed her bags down and sat down on the sofa and ordered the Applicant to make her a cup of tea. Ms Gill had no relation to the property or the management of the property and how she got into the premises is not known as she does not have a key. Mr White confronted Vanessa and told her to get out of the room. The Applicant telephoned the Police. Ms Gill continued to shout and scream that it was her room, and that the Applicant was squatting in her room. Two other tenants arrived and told Ms Gill to leave the Property and she was ejected from the Property via the conservatory door.

Respondent 2 arrived with his wife, Dhana Williams and shouted abuse from the hallway, telling us to “get the fuck out of the property.”

Eventually the police came Ms Gill claimed that Mr White had assaulted her and the Applicant and Mr White left with the Police after the Applicant had locked all doors to her room.

Later, at around 2pm, the Applicant said she returned to the Property and found that Respondent 2 had broken into her room and that he with another man drilled the door off of its hinges and took it away with them.”

78. Before leaving Respondent 2 handed the Applicant a written notice stating:

“Saturday 12<sup>th</sup> December 2020

Dear Emma Bumpstead,

This is a letter serving you notice to quit the Property of 5 Trent Road, Chelmsford, Essex CM1 2LG

“You have been evicted from this property due to violence and damage caused to the users of said property and damage caused. This is one week’s notice you are required to leave the stated property by 1pm on Saturday 19<sup>th</sup> December 2020.

Please leave the room in a clean state. Any further damages or assault [sic] or bullying to the owner or anyone else in the house will result in the police being called again.

Please leave all keys to the property in the kitchen on the worktop or you can arrange to meet me to hand the keys back in person.

And please refrain from using drugs in the property until you leave. This is illegal.

So just to clarify you need to leave 5 Trent Road Chelmsford by 1 pm on Saturday 19<sup>th</sup> December 2020.

Chipepo Chimba  
Landlord"

79. Following the removal of the door on 12<sup>th</sup> December 2020, an officer from Chelmsford City Council inspected the Property and served an emergency prohibition order relating to "the ground floor bedroom (referred to as 'dining room' on the attached plan [to the Order]) and the adjoining conservatory...for the purposes of sleeping and residential accommodation". The reason for the Order was that "the Council is satisfied that a Category 1 hazard exists on the ...premises that involves an imminent risk of serious harm to the health and safety of the occupier (copy of front page provided).
80. The Applicant gave oral evidence stating that the deficiency that gave rise to the Emergency Prohibition Order was that there was no fire door between the Property and the kitchen and there was no 'thumb turn' to the lock on the door to the conservatory giving access to the garden. This was not disputed by the Respondents.
81. On 16<sup>th</sup> December 2020 the Council provided temporary accommodation under section 188 of the Housing Act 1996 Part VII as the Applicant was considered to be homeless (copy of Council's letter provided)
82. It was submitted by the Applicant's Representative that the Respondents actively interfered with the Applicant's right to peace and comfort at the Property by shutting off the heating and hot water and removing the door from the Applicant's room, knowing or had reasonable cause to believe, that that conduct was likely to cause the residential occupier to give up the occupation of the whole or part of the premises.
83. At the hearing the above statements were confirmed by the Applicant. In response to the Tribunal's questions the Applicant said that when she returned from the police station, about two to three hours after the altercation she saw that the door to the Property was damaged due to the attempt by Respondent 2, together with another man who was only then present, to open the door in order that they could access the hinges to unscrew them and remove the door.
84. In response to Respondent 2's contention that the door had been damaged by the Applicant's friend in the course of the altercation the Applicant said, firstly, that her friend had not damaged the door but in any event the damage to the door was on the kitchen side of the door whereas the altercation took place in the Property. The Applicant said that the damage to the door was that the lock had been broken on the kitchen side. She said that Respondent 2 and his wife were outside the Property in the hallway of the House and so could not see what happened. The Applicant said that her friend had pushed Ms Gill out of the conservatory door from which she had entered. He did not strike her and no charges were brought against him.

85. The Applicant said that she could not stay in the Property because it no longer had a door and so was not secure. The Applicant's Representative added that the door was a fire door and therefore the safety of the Property was compromised as later shown by the issuing of the Emergency Prohibition Order.
86. The Applicant's Representative said that Respondent 2 removed the door with the intention of evicting the Applicant because the House was being sold and the Applicant could not be lawfully be evicted by issuing a notice under section 21 of the Housing Act 1988 because there was no written tenancy agreement or statement of terms which is prescribed information in legislation as required by section 21A of the Housing Act 1988.

### *Respondent's Case*

87. Respondent 2 provided a statement of case in the form of a witness statement responding to the two incidents as follows.

#### *Incident 1*

88. Respondent 2 said that when he inspected the boiler cupboard, he found that wires had been cut to the thermostat. When he discovered that there was a problem with the gas boiler, he took health and safety protective measures, by turning it off. This was never aimed at "punishing" any occupant. He said that it was dangerous to have loose electrical wires in the cupboard next to the boiler and he had it fixed as soon as possible. The time taken to resolve the issue with the boiler was beyond his control. The heating was only off for 48 hours.

#### *Incident 2*

89. At the hearing Respondent 2 said that he had been at the House on 12<sup>th</sup> December 2020 when an altercation had occurred between the Applicant, her friend and Ms Gill. He confirmed that the police were called and that the Applicant and her friend left with the police. Respondent 2 said that the door between the Property and the kitchen had been damaged by the Applicant's friend in the course of the altercation. Respondent 2 said that the door was a fire door which would not close properly due to the damage and so he had to remove it in order for it to be repaired or replaced.
90. Respondent 2 confirmed that he had handed the Applicant the purported notice on her return from the police station.
91. The Respondents Representative submitted that the Respondents were entitled to evict the Applicant as her friend had been violent and damaged the Property. The fire door was damaged and so as a matter of health and safety it had to be removed. He said that her witness statement lacked clarity on important matters and that she had failed to establish that she was a victim of illegal eviction.

## Decision re Eviction or Harassment of an Occupier

92. The Tribunal considered the evidence adduced and submission made in the parties' written Statements of Case, the Applicant's and Respondent 2's witness statements and oral evidence at the hearing.

### *Incident 1*

93. With regard to Incident 1, the parties agreed that the heating was switched off on 5<sup>th</sup> December 2020 but was restored within about 48 hours. The Tribunal found that this single interruption did not amount to a persistent withdrawal of services reasonably required for the occupation of the premises in question as a residence for there to be an offence under section 1(3A) under the 1977 Act. Also, in the absence of evidence to the contrary the Tribunal accepted that there may well have been a problem with the boiler which led Respondent 2 to switch it off until the issue was remedied which, in the absence of evidence to the contrary, amounted to reasonable grounds for withdrawing or withholding the services in question which under section 1(3A) is a defence to the offence under section 1(3B) under the 1977 Act.
94. Therefore, the Tribunal was not satisfied beyond a reasonable doubt that Respondent 2 as the agent of Respondent 1 had been guilty of an offence of persistently withdrawing or withholding services reasonably required for the occupation of the premises in question as a residence, knowing or having 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.

### *Incident 2*

95. With regard to Incident 2 the appearance of Ms Gill in the Property and the coincidental presence of Respondent 2 at the House was puzzling. However, the Tribunal was of the opinion that the altercation and its causes were not of themselves relevant. The essential cause of the Applicant leaving the Property was the removal by Respondent 2 of the fire door between the kitchen and the Property which as evidenced by the Emergency Prohibition Notice made the Property uninhabitable for residential purposes. The question for the Tribunal was whether the removal of the door amounted to an unlawful eviction under section 1 of the 1977 Act.
96. The Tribunal considered the elements of the offence and applied them to the present case.
97. Subsection (1) states:  
"In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises."



98. Irrespective of whether the Applicant was a lodger or a tenant the Tribunal found that it was common ground between the parties that the Applicant was a "residential occupier" within the meaning of the 1977 Act.
99. Subsection (3) is the relevant part of the section for the conduct which the Applicant alleges amounted to unlawful eviction which states:  
"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 calculated 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."
100. The Tribunal firstly looked at the actions of the Respondents. The "acts" referred to in the subsection may be carried out by "any person" which would include the agent of the landlord and not just the landlord and therefore would relate to Respondent 2.
101. It was not contested between the parties that the act in this instance was the removal of the fire door. The issue is whether the act was calculated to interfere with the peace or comfort of the residential occupier to cause the residential occupier of the premises to give up the occupation of the premises or any part thereof.
102. The Applicant said that the damage to the fire door was to the lock and was caused by Respondent 2 in the course of removal. The Respondent said that the removal was to repair or replace the fire door due to damage caused by the Applicant or her friend, Mr White.
103. The Tribunal found the account given by the Applicant more credible as there was no mention by the police of criminal damage being caused which would probably have been the case if the Applicant's friend had caused the damage. The Tribunal found from its knowledge and experience, that however the fire door was damaged, it should have been possible to secure the Property to enable the Applicant to continue to reside there and repair or replace the door within 24 hours. There was nothing in the respective accounts to suggest that the door left in situ amounted to a risk to the health and safety of the Applicant and that it required to be removed.
104. Secondly, the Tribunal considered the intention of the Respondents. Respondent 2 appeared to be under the erroneous impression that if he declared the Applicant a lodger or if there was an altercation such as occurred on 12<sup>th</sup> December 2020, he was entitled to evict her with minimal notice. The purported notice handed to the Applicant on 12<sup>th</sup> December at the time the door was removed supported this view. As stated, the Tribunal did not find Respondent 2's justification for removing the door credible. By handing the Applicant the purported notice to quit the Respondent showed a clear intention to evict the Applicant and that the removal of the door was

calculated to interfere with the peace and comfort of the Applicant with intent to cause the Applicant to give up the occupation of the Property.

105. Therefore, the Tribunal is satisfied beyond a reasonable doubt that the Respondents have committed an offence under section 1(3) of the Protection from Eviction Act 1977.

Evidence re Conduct of Parties etc and Amount of Order if made

#### 1. Conduct of Parties

106. Having found that the Respondents had committed an offence under section 72 of the 2004 Act and section 1(3) of the 1977 Act, before determining whether or not to make an order the parties addressed the matters that the Tribunal must consider as set out in section 44(4) of the 2016 Act as follows:
- a) The conduct of the landlord and the tenant,
  - b) The financial circumstances of the landlord,
  - c) Whether the landlord has at any time been convicted of an offence to which the specific legislation applies.

#### *Applicant's Case*

107. It was said that the Applicant had paid rent and complied with the legal obligations placed on her.
108. The Respondents had failed to carry out and provide the relevant documentation to the Applicant in respect of the following:
- a. Ensure the Applicant was provided with a tenancy agreement;
  - b. Ensure that a gas safety certificate was in place throughout the tenancy and provide a copy to the Applicant Tenant pursuant to regulation 36 of The Gas Safety (Installation and Use) Regulations 1998;
  - c. Ensure that an electrical safety certificate was in place throughout the tenancy and provide a copy to the Applicant Tenant pursuant to regulation 3 of The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020;
  - d. Ensure an energy performance certificate was in place and provide a copy to the Applicant Tenant pursuant to regulation 6 of The Energy Performance of Buildings (England and Wales) Regulations 2012.
109. The Applicant's Representative submitted that the Respondents had failed to take reasonable or any steps to keep abreast of their licencing obligations as to be expected of a professional landlord and manager (*Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) [48]; *Chan v Bilkhu & Anor* (2020) UKUT 289 (LC) [25]).
110. At the hearing, in relation to the failure by the landlord to obtain an HMO licence the Applicant's Representative referred to *Hallett v Parker* [2022]

UKUT 165 (LC) at [37] which was a case where a landlord had failed to obtain a HMO licence. It was noted that there were mitigating circumstances including it being the first time the Landlord had let to more than one household and the condition of the property was fairly good and a 25% Rent repayment Order was made.

111. In relation to the eviction the Applicant's Representative referred to *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC) at [57]. The application for a Rent Repayment Order was based on the condition of the property and the failure to comply with The Management of Houses in Multiple Occupation (England) Regulations 2006. In that case the landlord lawfully evicted the tenants under section 21 of the Housing Act 1988 but the tribunal found that the reason behind the lawful eviction was the tenants' complaints about the condition of the property. Taking this and other issues into account the tribunal made an order for 80% of the rent.
112. In this case the Applicant's Representative submitted that if it was found to be an unlawful eviction then 100% of the rent should be repaid.

### *Respondents' Case*

113. The Respondents' Representative submitted that the Respondents had acted reasonably throughout.
114. With regard to the HMO licence the Respondents were selling the house and the occupation was an interim measure. There was reasonable excuse for not obtaining an HMO licence.
115. With regard to the alleged harassment and eviction, the Respondents' Representative said that the boiler was repaired within 48 hours. It was reasonable to evict the Applicant as her friend was violent and damaged the fire door which then had to be removed in order for a new fire door to be fitted.

### 2. Financial Circumstances of the Landlord

116. No evidence was adduced regarding the financial circumstances of the landlord. The Applicant's Representative said that the house had been sold and rent repayment could be paid from the proceeds.

### 3. Previous Convictions of Landlord

117. Neither respondent had any previous convictions. The Applicant's Representative referred to *Hallett v Parker* [2022] UKUT 165 (LC) at [35] where it was said that the fact that the local authority has decided not to prosecute a landlord for an offence should not be treated as a "credit factor". It was submitted that the lack of a conviction is a neutral factor. Reference was made to the final sentence of [35] which states "what matters are the relevant facts and the tribunal's assessment of how serious the offence is".

### Calculation of Total Rent That May Be Repaid

118. The Applicant was seeking to recover rent for the period 1<sup>st</sup> December 2019 to 30<sup>th</sup> November 2020 during which time a part of the rent was paid by reason of Universal Credit which cannot be included in a Rent Repayment Order. From the bank and local authority statements provided the Tribunal calculated the amounts in issue to be as set out in the table. The rent paid by the Applicant is listed in the column headed Tenant and that paid by the local authority as Universal Credit (UC) is listed under the column LA.

Date	LA (UC)	Tenant	Total
	£	£	£
December 2019	280.72	139.28	420.00
January 2020	280.72	139.28	420.00
February 2020	280.72	139.28	420.00
March 2020	280.72	139.28	420.00
April 2020	272.48	177.52	450.00
May 2020	223.95	226.05	450.00
June 2020	143.44	306.56	450.00
July 2020	8.53	441.47	450.00
August 2020	5.87	444.13	450.00
September 2020	9.60	440.40	450.00
October 2020	154.64	295.36	450.00
November 2020	71.99	378.01	450.00
Totals	2,013.37	3,266.63	5,280.00

119. The Tribunal found the total that could be claimed was £3,266.63 as only the Tenant's contribution can be repaid.

#### Application and Hearing Fee

120. The Applicant's representative applied for the cost of the Application Fee and Hearing Fee to be reimbursed by the Respondents.

#### Decision regarding the Order taking into account the relevant matters

##### *The Landlord*

121. As stated above, the Tribunal found that that Respondent 1 was a "person having control" of the House and the Respondent 2 was a "person managing" the House as defined in section 263 of the 2004 Act.
122. Section 40(2) of the 2004 Act states that the Rent Repayment Order can only be made against the landlord. In the case of *Rakusen v Jepson* [2021] EWCA Civ 1150 it was held that this meant the immediate landlord and that a Rent Repayment Order cannot be made against a superior landlord.
123. The Tribunal found that Respondent 1 was the immediate landlord and that Respondent 2 was her agent. Therefore, any order made would be against Respondent 1.

### *The Offence*

124. As stated above, the Tribunal found beyond a reasonable doubt that Respondents 1 and 2 had committed an offence under section 72(1) of the Housing Act 2004 and under section 1(3) of the Protection from Eviction Act 1977.

### *The Order*

125. The Tribunal considered whether an order should be made in the event that a licence had been required.
126. In *Vadamalayan v Stewart & Others* [2020] UKUT0183 (LC) it was held that the starting point is the rent and there is no reason why the landlord's costs in meeting the obligations under the lease should be set off against the cost of meeting an obligation to comply with a Rent Repayment Order. Utilities are also all part of the rent.
127. In *Ficcara & Others v James* [2021] UKUT0038(LC) and *Amad v Hooley* [2021] UKUT0055 (LC) it was stated that the tribunal must weigh up the seriousness of the offence against any mitigating circumstances. In this regard the Tribunal took account of *Williams v Parma* [2021] UKUT 244 (LC). In that case it was held that the tribunal must consider the facts of each case and referred in relation to that particular case, the need to take account of any previous convictions, the seriousness of the offence which was the subject of the proceedings, any reasons for failing to obtain a licence, the condition of the premises, whether the respondent was a commercial landlord who 'should have known better'.
128. If the Tribunal were to make an order, in accordance with section 44(4) of the 2016 Act, it must consider:
- d) The conduct of the landlord and the tenant,
  - e) The financial circumstances of the landlord,
  - f) Whether the landlord has at any time been convicted of an offence to which the specific legislation applies.
129. Firstly, no evidence of the Respondents financial circumstances was adduced.
130. Secondly, no evidence that the Respondents had been convicted of a relevant offence was provided.
131. Thirdly, the Tribunal considered the conduct of the Landlord and the Tenant.
132. With regard to the Applicant Tenant, other than the altercation referred to as Incident 2, no evidence was adduced to show that there was anything remiss in her conduct. With regard to Incident 2 only the Applicant's friend was considered to have acted unnecessarily forcefully in ejecting Ms Gill and the matter was settled by his apologising. It appears that the police had considered there to be a degree of provocation on her part. Why Ms Gill entered the Property at all is something of a mystery.

133. With regard to Respondent 1 as Landlord and Respondent 2 as her Agent, the Tribunal was of the view that Parliament required tribunals to differentiate between offending landlords when determining the amount of rent to be repaid and to grade the repayment order accordingly.
134. On this basis in respect of the HMO licence, a higher award is to be made against those landlords who fail to obtain a licence to avoid the scrutiny of the local authority and flagrantly disregard the safety, health and welfare of their tenants. In contrast a lower repayment order might be made against those landlords where there are mitigating circumstances, and whose HMOs meet appropriate standards, notwithstanding that they have not complied with the administrative requirements intended to safeguard tenants.
135. With regard to the eviction, a higher award would be made where there is violence involved and the tenant is actually evicted. Whereas a lower award might be made where words alone are used and the tenant feels able to remain in the property despite the words being intended to cause the tenant to leave.
136. The purpose of the Orders as set out in Government Guidance is to:  
Punish the offender,  
Deter the offender from repeating the offence,  
Dissuade others from committing similar offences,  
Remove any financial benefit from the offender as a result of committing the offence.
137. This opinion is reinforced by the Upper Tribunal decisions of *Williams v Parma* [2021] UKUT 244 (LC) referred to above and *Parker v Waller and Others* [2012] UKUT 301 (LC) where it was said that the benefit obtained by the tenant in having had accommodation is not a material consideration, however, the length of time that the offence has been committed and the degree of culpability of the landlord are relevant factors.
138. First, the Tribunal considered the failure to obtain an HMO licence. The Tribunal found that the House had been let as HMO that required licensing and from 20<sup>th</sup> April 2019 to 19<sup>th</sup> December 2020 and the Respondents conceded that it was an HMO although suggested that prior to the Applicant's occupation there were only 4 persons in residence for which no licence was required. Irrespective of the circumstances or reasons for letting a house the landlord is entering a commercial arrangement and must meet the legal requirements. The Respondents knew the House was an HMO and should have been aware that when let to 5 persons, a licence was required. The fact that it was intended to sell the House did not exempt the Respondents from obtaining a licence. If they had any doubts as to the requirements the onus is on them to contact the local authority to clarify matters.
139. However, there was no evidence that the House was or was not in a suitable condition or that Respondent 2's management met or did not meet the required obligations. There was evidence that the local authority was conducting an investigation as to whether an HMO licence was required but this presumably was aborted once the House was sold.

140. Secondly the Tribunal considered the eviction of the Applicant. The failure to provide the prescribed tenancy information to the Applicant meant that the Respondents were not able to lawfully evict the Applicant by a notice under section 21 of the 2004 Act until the information was provided and in the absence of a tenancy agreement the Respondents would need to have a reason under section 8 of the Housing Act 1988 to evict the Applicant. The Tribunal was of the opinion that this may have prompted Respondent 2 to take the action to evict the Applicant by some other means in anticipation of the House being sold. Whether this was the case or whether the circumstances that led to the altercation were contrived between the Respondent 2 and Ms Gill to prompt the action is a matter of conjecture but the Tribunal was satisfied that the act of removing the door was an action calculated to interfere with the peace and comfort of the Applicant with intent to cause the Applicant to give up the occupation of the Property.
141. The action led to an Emergency Prohibition Order being placed upon the Property and the eviction of the Applicant and her having to be housed by the local authority.
142. Whereas the Tribunal is of the opinion that the offence under section 72(1) of the 2004 Act in this instance does not appear to be particularly serious, the offence under section 1(3) of the 1977 Act is of particular concern. Landlords must be discouraged from evicting tenants by putting a property into such a condition that a local housing authority is obliged by reason of their duties under the 2004 Act to make Prohibition Orders. Taking into account that the purpose of the legislation is to dissuade others from committing similar offences and to remove any financial benefit from the offender as a result of committing the offence the Tribunal considered it appropriate to make an order for repayment of all the rent paid by the Applicant for the period in issue.

#### Decision re Application for Reimbursement of Fees

143. The Applicant applied for reimbursement of the Application Fee of £100.00 and Hearing Fee of £200.00 pursuant to Rule 13 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 13 (2). An order for the reimbursement of fees, unlike that for costs, is not dependent upon the unreasonable behaviour of a party.
144. The Tribunal found that the Applicant had been wrongfully evicted from her home and has made an order for the repayment of rent. The Tribunal determined that it was just and equitable that the amount of the rent Repayment Order should not be depleted by the Application Fees.
145. The Tribunal therefore grants an order for reimbursement of the Application fee of £100.00 and the Hearing Fee of £200.00. This sum is to be paid within 48 days of this Order.

Judge JR Morris

## ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.



## ANNEX 2 – THE LAW

1. The relevant provisions regarding the Licensing of Houses in Multiple Occupation are in the following sections of the Housing Act 2004 Part 2 and 7:

### Section 55 Licensing of HMOs to which this Part applies

- (1) This Part provides for HMOs to be licensed by local housing authorities where—
  - (a) they are HMOs to which this Part applies (see subsection (2)), and
  - (b) they are required to be licensed under this Part (see section 61(1)).
- (2) This Part applies to the following HMOs in the case of each local housing authority—
  - (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
  - (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.
- (3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

The prescribed description is:

Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (2018 /No.221)

Interpretation

3. In this Order "the Act" means the Housing Act 2004.

Description of HMOs prescribed by the Secretary of State

4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—
  - (a) is occupied by five or more persons;
  - (b) is occupied by persons living in two or more separate households; and
  - (c) meets—
    - (i) the standard test under section 254(2) of the Act;
    - (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
    - (iii) the converted building test under section 254(4) of the Act.

## Section 61 Requirement for HMOs to be licensed

- (1) Every HMO to which this Part applies must be licensed under this Part unless—
  - (a) a temporary exemption notice is in force in relation to it under section 62, or
  - (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.
- (2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.
- (3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

## Section 72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if—
  - (a) he is a person having control of or managing an HMO which is licensed under this Part,
  - (b) he knowingly permits another person to occupy the house, and
  - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
  - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
  - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
  - (a) a notification had been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for permitting the person to occupy the house, or
  - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
  - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are—
  - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

#### Section 254 Meaning of “house in multiple occupation”

- (1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—
  - (a) it meets the conditions in subsection (2) (“the standard test”);
- (2) A building or a part of a building meets the standard test if—
  - (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
  - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
  - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
  - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
  - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation; and
  - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

2. The relevant provisions regarding the Protection from Eviction Act 1977 are as follows:

Section 1 Unlawful eviction and harassment of occupier.

- (1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.
- (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 calculated 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.

3. The relevant provisions regarding the Rent Repayment Orders are in Chapter 4 sections 40, 41, 43 and 44 of the Housing Act 2016 (2016 Act) as follows:

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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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) A local housing authority may apply for a rent repayment order only if—
- (a) the offence relates to housing in the authority's area, and
  - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

### 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) A rent repayment order under this section may be made only on an application under section 41.
- (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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</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
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.

Section 263 Meaning of “person having control” and “person managing” etc.

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
  - (a) receives (whether directly or through an agent or trustee) rents or other payments from—
    - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
    - (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
  - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
 and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

4. Rule 13 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 13 (2) states:
  - (2) The tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
  - (3) The tribunal may make an order under this rule on an application or on its own initiative.
  
5. 21A Compliance with prescribed legal requirements
  - (1) A notice under subsection (1) or (4) of section 21 may not be given in relation to an assured shorthold tenancy of a dwelling-house in England at a time when the landlord is in breach of a prescribed requirement.
  - (2) The requirements that may be prescribed are requirements imposed on landlords by any enactment and which relate to—
    - (a) the condition of dwelling-houses or their common parts,
    - (b) the health and safety of occupiers of dwelling-houses, or
    - (c) the energy performance of dwelling-houses.
  - (3) In subsection (2) “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.
  - (4) For the purposes of subsection (2)(a) “common parts” has the same meaning as in Ground 13 in Part 2 of Schedule 2.
  - (5) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.