



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

Case Reference : **LON/00AL/HMB/2018/0004**

Property : **Ground and first floor at 90 Ennis Road, London SE18 2QT**

Applicant : **Mr Paulinus Chukwuemera Opara**

Representative : **Ms Patricia Gravell
Tenancy Relations Officer
Royal Borough of Greenwich**

Respondent : **Ms Marcia Omolara Olasemo**

Representative : **Mr James Sandham Counsel**

Type of Application : **S41 Housing and Planning Act 2016
– rent repayment order**

Tribunal Members : **Judge John Hewitt
Mr Peter Roberts DipArch RIBA**

Dates and venue of Hearing : **31 May & 14 June 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **21 June 2019**

DECISION

NB In this Decision to a reference to a letter and a number in square brackets ([]) is a reference to the page number of the hearing files provided to us for use at the hearing. The prefix 'A' refers to the applicant's files and the prefix 'R' refers to the respondent's file.

The issue before the tribunal and its decisions

1. The single issue before the tribunal was whether it should make a rent repayment order (RRO) in favour of the applicant, and if so, in what sum.
2. The decision of the tribunal is that the application is refused and it will not make a RRO
3. The reasons for this decisions are set out below.

Procedural background

4. The applicant (Mr Opara) claims he was a residential tenant of a room at the Property (with the shared use of a kitchen and bathroom/wc) from about January 2017 until 6 July 2018 when he says he was unlawfully evicted by his landlord, the respondent (Ms Olasemo).
5. In December 2018 the tribunal received an application form signed by Mr Opara. It is dated 1 December 2018. It bears a statement of truth. It was accompanied by a witness statement also made by Mr Opara and also dated 1 December 2018.
6. Directions were given on 17 December 2018 and 28 February 2019. By and large there has been compliance with the directions.
7. The application was set for hearing on 31 May 2019. By that time there had been filed with the tribunal:

Applicant

The application form and Mr Opara's opening witness statement; and

A bundle page numbered [A1-99] which includes, as far as material:

Expanded reasons for claim [A1a];

An undated and unsigned witness statement made by Mr Opara [A1/1-5];

A tenancy agreement dated 21 August 2017 for a tenancy said to commence on 21 May 2017 ; [A1/6-11];

A witness statement by Ms Gravell dated 10 December 2018 [A1/53-54] exhibiting material extracts from the council's 'Designation of an Area for Additional Licensing of Houses in

Multiple Occupation 2017' which came into force on 1 October 2017 [A1/55-64];

A further witness statement by Ms Gravell dated 7 February 2019 [A1/70-84]; and

A further witness statement by Ms Gravell dated 1 May 2019 [A1/85-91];

A supplemental bundle by way of a reply page numbered [A1/100 - 189] received on 28 May 2019 and which contains, amongst other things:

A further witness statement by Mr Opara dated 24 May 2019 [A1/100 -110]; and

A series of prints of text or sms messages [A1/111- 189].

A bundle labelled 'Bundle 2' containing a further series of prints of text or sms messages [A2/1 – 218].

Respondent

A statement of case containing:

A witness statement made by Ms Olasemo dated 11 January 2019 [R1-5];

A witness statement made by Steven Luke Ahearne dated 22 January 2019 [R6-7];

A tenancy agreement dated 21 August 2017 for a tenancy said to commence 21 August 2017 [R8-13];

Prints of a series of text or sms messages [R14-21];

A letter from Ms Olasemo to the tribunal dated 12 April 2019 plus various documents attached thereto (all unnumbered);

A letter from Ms Olasemo to the tribunal dated 17 April 2019 plus various documents attached thereto (all unnumbered);

A further witness statement by Ms Olasemo dated 7 May 2019 plus a substantial number of various documents attached thereto (all unnumbered);

A letter from Ms Olasemo to the tribunal dated 8 May 2019 plus a substantial number of various documents attached thereto (all unnumbered);

The hearing

8. The hearing was heard on Friday 31 May and Friday 14 June 2019. Ms Patricia Gravell represented Mr Opara. Mr James Sandham

represented Ms Olasemo. Both Mr Opara and Ms Olasemo gave oral evidence, both were cross-examined and both answered questions put to them by members of the tribunal.

9. In many respects the oral evidence was confused and confusing. In broad terms we find that Mr Opara had the better and more accurate recollection of material events. Some of his evidence is supported by some of the numerous text or sms messages sent by the parties. In contrast some the explanations given by Ms Olasemo of some of the circumstances and some of the words used by her in some texts simply did not sound plausible or consistent. We tended to prefer the evidence of Mr Opara, especially where it was supported by contemporaneous documents or messages.

The gist of Mr Opara’s case

10. Mr Opara seeks a RRO. The application is made pursuant to S41(1) Housing and Planning Act 2016 (H&PA). Subsection (2) provides that a tenant may apply for a RRO 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 respect of the period of 12 months ending with the day on which the application is made.
11. S43 H&PA provides that this tribunal may make a RRO if satisfied, beyond reasonable, doubt that a landlord has committed an offence to which the Chapter applies (whether or not the landlord has been convicted).
12. A definition of ‘an offence to which this Chapter applies’ is set out in s40 H&PA and includes:

| Act | Section | General Description of offence |
|-----------------------------------|-------------------|--|
| Protection from Eviction Act 1977 | 1(2), (3) or (3A) | Eviction or harassment of occupiers |
| Housing Act 2004 | 72(1) | Control or management of an unlicensed HMO |

13. Mr Opara asserts that he took a tenancy from Ms Olasemo (his landlord) of a room at 90 Ennis Road on 21 January 2017 and that:
 1. He was unlawfully evicted from that room on 6 July 2018; and
 2. Throughout the period 1 October 2017 to 6 July 2018 the ground and first floor flat known as 90 Ennis Road was an HMO that was required to be licensed and it was not so licensed and the Property was controlled or managed by Ms Olasemo.
14. During the course of the hearing the exact nature and character of the alleged offences was refined and defined to fall within the following statutory provisions:

Protection from Eviction Act 1977

S1 Unlawful eviction and harassment of occupier

(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.

Housing Act 2004

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either–

- (a) the area of their district, or
- (b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

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.

S72 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.

S254 Meaning of ‘house in multiple occupation’

(1) For the purposes of this Act a building or part of a building is a ‘house in multiple occupation’ if:-

- (b) it meets the condition of subsection (3) (‘the self-contained flat 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);**
[Emphasis added]
- (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.

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless–

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–

(a) those persons are married to each other or live together as husband and wife (or in an equivalent relationship in the case of persons of the same sex);

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes–

(a) a “*couple*” means two persons who are married to each other or otherwise fall within subsection (3)(a);

(b) “*relative*” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) “*prescribed relationship*” means any relationship of a description specified in the regulations.

259 HMOs: persons treated as occupying premises as only or main residence

(1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.

(2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person—

- (a) as the person's residence for the purpose of undertaking a full-time course of further or higher education;
- (b) as a refuge, or
- (c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.**

(3) In subsection (2)(b) “*refuge*” means a building or part of a building managed by a voluntary organisation and used wholly or mainly for the temporary accommodation of persons who have left their homes as a result of—

- (a) physical violence or mental abuse, or
- (b) threats of such violence or abuse,

from persons to whom they are or were married or with whom they are or were co-habiting.

** Regulations have been made: Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006/373:-

5.— Persons treated as occupying premises as their only or main residence for the purposes of section 254 of the Act

(1) A person is to be treated as occupying a building or part of a building as his only or main residence for the purposes of section 254 of the Act if he is—

- (a) a migrant worker or a seasonal worker—
 - (i) whose occupation of the building or part is made partly in consideration of his employment within the United Kingdom, whether or not other charges are payable in respect of that occupation; and
 - (ii) where the building or part is provided by, or on behalf of, his employer or an agent or employee of his employer;

or

- (b) an asylum seeker or a dependent of an asylum seeker who has been provided with accommodation under section 95 of

the Immigration and Asylum Act 1999 and which is funded partly or wholly by the National Asylum Support Service.

(2) In this regulation—

(a) “a migrant worker” is—

(i) a person who is a national of a member State of the European Economic Area or Switzerland who has taken up an activity as an employed person in the United Kingdom under Council Regulation (EEC) No 1612/68 on Freedom of Movement for Workers Within the Community, as extended by the EEA Agreement or the Switzerland Agreement; or

(ii) any person who has a permit indicating, in accordance with the immigration rules, that a person named in it is eligible, though not a British citizen, for entry into the United Kingdom for the purpose of taking employment;

(b) “*EEA agreement*” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993;

(c) “*Switzerland agreement*” means the agreement between the European Community and its Member States of the one part and the Swiss Confederation of the other on the Free Movement of Persons signed at Luxembourg on 21st June 1999 and which came into force on 1st June 2002;

(d) “*seasonal worker*” means a person who carries out for an employer or undertaking employment of a seasonal character—

(i) the nature of which depends on the cycle of the seasons and recurs automatically each year; and

(ii) the duration of which cannot exceed eight months;

(e) “*immigration rules*” means the rules for the time being laid down as mentioned in section 3(2) of the Immigration Act 1971 and

(f) “*asylum seeker*” has the meaning given to that expression in section 94 of Immigration and Asylum Act 1999.

15. By an order made under s56 Housing Act 2004 The Royal Borough of Greenwich, as a local housing authority, designated certain parts of the Borough for additional licensing of HMO's. The designation was made on 19 April 2017 and came into effect on 1 October 2017. It was not in dispute that 90 Ennis Road falls within the area of the designation.

Findings of fact

16. Having regard to the oral and documentary evidence before us we make the findings of fact set out below.

The tenancy and the use of the Property

17. 90 Ennis Road is a mid-terrace house laid out over basement, raised ground floor and first floors. It was originally constructed as a family home, probably in late Victorian or Edwardian times. Since then the basement has been adapted to create a self-contained one-bedroom flat. The ground and first floor accommodation comprises four rooms plus a bathroom/wc on the ground floor and a kitchen on the first floor. The Property was accessed by a street door into a small lobby then another door into the raised ground floor hallway.

For convenience we have designated the four rooms as follows:

- Room 1 - ground floor front;
- Room 2 - ground floor rear;
- Room 3 - first floor rear; and
- Room 4 – first floor front

On 23 April 2004 Ms Olasemo was registered at HM Land Registry as the proprietor.

18. In December 2016 Mr Opara was looking for a room to rent. He browsed a lettings agency window. He saw a property that was of interest. He contacted the agency by telephone and was put in touch with Ms Olasemo. He arranged with Ms Olasemo to view the room. It was at 262 Burrage Road. The rent was £450 pcm. Mr Opara decided to take it. He gave money to Ms Olasemo. He moved in. The shared bathroom did not suit Mr Opara he was perhaps allergic to something. He spoke with Ms Olasemo who suggested a room at 90 Ennis Road. On or about 21 January 2017 Ms Olasemo arranged to meet Mr Opara at a bus stop and take him to view the room – room 2. She did so. Mr Opara agreed to take the room at £450 pcm. Mr Opara moved in a few days later. A couple of weeks later room 1 became available. Ms Olasemo offered it to Mr Opara at £420 pcm and Mr Opara accepted it and moved in to it.

19. We find that Mr Opara’s account is supported by the following texts:

| Date | Mr Opara | Ms Olasemo |
|----------|--|------------------------------|
| 18.12.17 | | Who is this |
| | Calling in respect of the room advert | |
| | | Ah are u in Woolwich now? |
| | Yes but on my way to work. Just called to see if I can book appointment for viewing please | |
| | | Yes when can you come? Is it |

| | | |
|----------|--|---|
| | | just you? Do you have a child? |
| | It's just me. And how many people are living there and how much please? | |
| | | One other person it's a flat share |
| | Ok, how much is it please? | |
| | | Its 450 |
| | And deposit? | |
| | | Yes |
| | How much deposit please? | |
| | | It shld be a month but u can do it over two months if need be. |
| | Cool will give you a reminder tomorrow ... | |
| | | |
| 19.12.16 | Good morning. Just to remind you that I will come and view the house by 5pm th[i]s evening. | |
| | | I will be working there today, see u later |
| | Which bus stop should I get off please? | |
| | | Take 53 ... get off at trinity bus stop |
| | I am just here now at top of burrage road | |
| | | 262 burrage road. U can see it from the church. |
| | Ok I'm by the church | |
| 02.01.17 | Happy new year Marcia was even about to call you. Could you check the boiler please. The whole house is very cold even no hot water from the taps. Thanks. | |
| | | The boiler was checked on Thursday, it may be does not have gas, the meter is in the hallway. |
| 10.01.17 | Good morning Marcia. I can't help the situation because it causes me lots of discomfort. Last I went to the doctor for it, | |

| | | |
|----------|--|---|
| | they said it's allergy caused either by water or environment. I can't be taking Puriton every time I wanna have my shower... As is stands now, I've never started looking for a a place but, hope I get one asap.... | |
| | | I do understand, yes it is an inconvenience but I am sure things will work out. |
| 22.01.17 | | The time you have spent is 378 wth 150 deposit. You paid 450 so its 400 and 50 towards your deposit. The you paid 600 originally so you had 222 to carry over. What I will do is call it a full deposit and I owe you 22 pounds |
| | But I told you that day that I'm paying half deposit £200 for this room inside your car and you accepted and based on that I used every money I have right now to pay for my course. To that effect, I will pay you the sum of £525 on the 15 th February please. That will be my next rent and the remaining balance of the deposit (£125). Sorry about that please. | |
| | | No you can't decide to pay half deposit, that is the point. I am glad you are happier in this place but it needs to be said ... |
| 24.01.17 | | We will change the lock tomorrow. I will let you know where your key is. |
| | Ok | |
| 25.01.17 | | I have put a lock on the inside door as well. It will not be locked today until I know I have both keys. |
| | Ok | |
| ?? | | I will change the lock today, I |

| | | |
|----------|---|--|
| | | may leave your key in your old place on the bed so you can get it with ease. |
| | | He is going to concentrate on the kitchen tomorrow, I all have your new keys and the inside door should be closed at all times, keep the hallway warmer, and ... |
| ?? | | ... The Rota in the hall is for the gas and electric, Eddi says it's easier like that because then there is no argument |
| 20.02.17 | Morning Marcia. Hope you had a good weekend? I will like to speak with you later please. ... Its about the couple that moved in yesterday ... | |

20. Ms Olasemo's account was that the property she first showed Mr Opara was in Herbert Road, owned by a man called Hassan. She, Ms Olasemo, was just helping out in the letting agency run by her cousin. Ms Olasemo agreed in cross-examination that she owned and let out 262 Burrage Road but denied that she had ever let a room in it to Mr Opara.
21. Ms Olasemo said that in February 2017 the Property was let as 3-bedroom flat with one living room to an Eduardo Gradinaru (Eddie) and Mr Sandu Stan on a joint tenancy. No copy of that tenancy agreement was produced. At that time Eddie a Romanian, had lived in the Property for 7 or 8 years.

Ms Olasemo said that the first she knew that Mr Opara had moved into the Property was when she passed by in February 2017 and saw him smoking outside it. Ms Olasemo said she assumed Eddie and Mr Stan had sublet a room to him. Ms Olasemo denied she played any part in the letting to Mr Opara and that she had not taken a deposit from him. Ms Olasemo accepted that over the ensuing months Mr Opara had made regular bank transfers into her bank account. At [A1/11-37] are copies of Mr Opara's bank statement over the period 10 July 2017 to 6 July 2018. They show frequent transfers to Ms Olasemo's account sometimes of £420 and sometimes of various sums between £100 and £440 each.

Ms Olasemo denied these were payments of rent due to her from Mr Opara direct but were made on behalf of Eddie and were contributions towards the rent of £1,200 pcm payable by Eddie and Mr Stan and then by Eddie and Mr Opara.

22. As mentioned above we prefer Mr Opara's account that he was a tenant of room 2 and then of room 1, let to him by Ms Olasemo at a rent of £420 pcm. That account is supported by several of the text messages.

We rejected Ms Olasemo's account. We are reinforced in that conclusion by several subsequent texts which showed quite plainly that Ms Olasemo had direct management of the four rooms which she let individually. From time to time there was friction between the various occupiers and they looked to Ms Olasemo to sort it out. This included the use of the kitchen and contributions to the gas and electric.

23. When Mr Opara first moved into the Property he was given Room 2 at a rent of £450 pcm. After a couple of weeks Room 1 became available and he was asked if he would like to move into it at £420 pcm. Mr Opara did so. At that time the Property was then occupied:

Room 1 - Mr Opara;

Room 2 – a man named Ekene, sometimes referred to as the 'Praying Man' he did not stay long and in March 2017 he was replaced by a William Neville who was till there in July 2018;

Room 3 let individually to a range of different people for a while by a man, Israel and his wife/girlfriend until mid-2017. It was empty for a while. At some point Manuela (Eddie's sister) moved in for a while. Evidently Manuela is a teacher of English and came over from Romania from time to time to take several courses; and

Room 4 – Eddie – he moved out in about June 2018 but left some possessions and furniture in that room (and other parts of the Property) including the hallway and kitchen.

As at 6 July 2018 when Mr Opara says he was evicted the occupation was:

Room 1 - Mr Opara

Room 2– William Neville

Room 3 - Manuela

Room 4– Vacant – having been recently vacated by Eddie

24. Ms Olasemo said that Mr Stan, who was joint tenant with Eddie, had suffered an injury and could not work and thus could not contribute to towards the rent. She said that Eddie suggested a joint tenancy with Mr Opara. This was drawn up. Different versions were put in evidence. Mr Opara said he only glanced at the front page, did not read it properly but he did initial or sign some of the pages.

Both versions are said to be dated 21 August 2017, name the Tenant as Paulinus C Opara and Eduard Gradinaru, describe the property as 'Grd/First floor flat 90 Ennis ...', cite a term of six months from 21 August and a rent of £1200 pcm.

The version produced by Mr Opara states the first payment was to be made on 21 May 2017 [A1/6]. He says he initialled several pages but did not sign the final page.

The version produced by Ms Olasemo [R/8] contains some differences to the manuscript inserts. It records the first payment of rent was due on 21 August 2017. It also bears a manuscript addition on the front page ‘*No deposit*’.

Mr Opara alleged that Ms Olasemo needed the document to present to the council who were making enquiries about occupancy and who proposed to make an inspection of the Property under HMO powers.

Ms Olasemo said it was produced at Eduardo’s request because Mr Stan was due to leave and Mr Opara was to take his place, and that Mr Opara required a tenancy document to support his immigration application. There is some support for the immigration point in a text dated 23 April 2018 [R2/81] where Mr Opara refers to wanting a ‘landlord/tenant agreement should be backdated to the time I moved in.’

25. Whichever of the rival versions is correct, neither party emerges with any credit and we are satisfied that it was prepared for a third party purpose to assist either Mr Opara and/or Ms Olasemo with other issues and it was not prepared to document an agreed joint tenancy of the Property granted by Ms Olasemo to Mr Opara and Eddie.
26. We are reinforced in our conclusions that each of the four rooms were let separately by several factors including:
 - 26.1 That each room had its own lock and key and that was controlled by Ms Olasemo.
 - 26.2 In her dealings with Eddie leaving, Ms Olasemo treated him as a sole tenant of his room rather than as a joint tenant of the whole flat with Mr Opara.
 - 26.3 The evidence of Ms Gravell to the effect that she has seen an application for Housing Benefit made by Mr Neville in which he had cited Ms Olasemo as his landlord. Ms Gravell had not exhibited the application due to concerns about data protection laws. Ms Olasemo did not dispute that an application citing her as landlord had been made, although she did dispute that she was in fact or law Mr Neville’s landlord. It is evidence that Mr Neville considered Ms Olasemo to be his landlord. We find this is another consistent pointer to what was going on at the Property.
 - 26.4 The content of some of the contemporaneous text messages mentioned in paragraph 30 below.

27. On 23 May 2018 the council wrote to Ms Olasemo indicating the that 90 Ennis Road had been identified as an HMO and drew attention to the requirement for a licence [A1/96]. Follow up letters were sent on 25 June 2018 [A1/65] and 24 July 2018 [A1/69]. Ms Olasemo received those letters but did not reply to them.
28. On 2 July 2018 Ms Olasemo applied to the council to be placed on the electoral roll and claimed that she was living in the Property. We find that was not true and Ms Olasemo was not living in the Property at that date. In her oral evidence Ms Olasemo told us that at that time she was living in the basement flat at 90 Ennis Road.

The alleged eviction

29. In the weeks prior to 6 July 2018 Mr Opara had informed Ms Olasemo of his intention to move out once his immigration status had been determined. In early June 2018 Mr Opara was expecting to hear shortly since his application had been made eight weeks previously.
30. As at 9 June 2018 Mr Olasemo was struggling to pay his rent on time. There is a series of text messages:

| Date | Mr Opara | Ms Olasemo |
|-------------|---|---|
| 09.06.18 | | I think you should use your deposit for what you owe me and decide what you want to do. ... I have just had a mouthful from William (Neville) but no one wants to live in a house where they can't get to the bathroom do they? In the light of what's happened I either live there myself, or rent it but cannot continue without knowing it's all going to change soon. |
| | I'm owing you £440, that's one month + £20 and my next rent is coming up next weekend which I hope I can make some payments and maybe we devise a means of payment even weekly until and finish the payment (sic). Be it as it may I will leave the house once my application is decided and I get back to full work. Probably save some money two months and move. I | |

| | | |
|----------|--|---|
| | don't know if it's ok with you. | |
| | | I want William out of my hair. He will be my main focus. If he was not there I would attempt air B and B, tidy the house but I can't do it with him. So let's see. ... Manuela is coming 1 st I think for a month so I am not really thinking of an exact date till after that but I am concentrating on William |
| 18.06.18 | Eddie door is locked. I don't think he's in. | |
| | | I shall come and open it when I get a chance. |
| | | I need to know what you are going to do on the 21 st you have not said |
| | | You said you might ... I don't want to be coming to you weekly for the money |
| | | I can't accept weekly, if you want to pay in two halves ok but weekly can't work. |
| | Ok let me pay in two halves. I'm just tired. | |
| | | You can also stay with a friend and cover your other bills easily. You can still get your letters and keep the key, but you won't be holding me up, expecting what is not coming. As you have at least a month of this and I need to make plans for July without uncertainty. |
| | | It's a suggestion we are all in trouble at present, when you finish work we can talk about it. |
| | Marcia, please immediately owing you rent and definitely will pay my rent. I don't know which friend you want me to move in with because I'm owing you and you know every circumstances that put me to this angle. I owe you and will pay you as I receive my wages weekly please. | |
| | | It's a suggestion because you always have guests, and this is what Nigerians do all the time. |

| | | |
|----------|---|--|
| | I always have guests right, but none is UK based. Not having any guest again till I leave your house. If my application comes out, I give you 1 month notice and leave your house so that you can find someone who won't owe you. | |
| ?? | | You knew that I wanted my money on time you could of at least told me. |
| | You said you want your house empty that's why you want to bring your troubles to me but you can get me... | |
| | | You have been unable to pay for a while. I got you out of last month because I am understanding. Now you are taking advantage or have not told me the full story so I cannot understand. |
| 03.07.18 | | It was a terrible day, William tried to pay me and I could not stay in the house with him. He understands that I need the space for us. I think the penny dropped. |
| 05.07.18 | | No more payments necessary you need to sort yourself out. And the sooner you do that the sooner we can all relax in our new settings. |
| | | I shall be painting the windows on Friday. I will check if yours and I appreciate the no more smoking in the room |
| | That's fine. Good morning. | |
| | | Great |
| | Can you get the housing association at Thamesmead details for me please. | |
| | | Oh yes |
| | You didn't confirm to me the £220 I paid into your account last week Thursday | |
| 06.07.18 | | I won't accept any money from you either, after our discussion a few days |

| | | |
|--|---|---|
| | | ago. You are now staying with me for free. If you accidentally transfer money I shall give it back to you once sign for it. You can now get to work and not worry. I am tired of the war zone bubbling in the background, let's try and make this a pleasant environment. |
| | | Painting windows/hand rail and skirting today. It will take 24 hours to dry. Will put up notices. |
| | I paid money £220 into your account last week Thursday as agreed earlier and you still keep quiet about it or it did not hit your account. You've given me quit notice and I have to look for money to afford a new rent and deposit. There's nothing hard here unless you want to make trouble which you will never get from me. | |
| | When I moved into your house, I paid rent and deposit so you should expect me to still afford rent and deposit next house I'm moving into because no landlord will allow me to move into his house without full rent and deposit. I have to look for the money from no other place except from the current job I'm doing now. | |
| | | Am I holding your deposit? |
| | You said you've taken the deposit as my rent from 21/05/18 to 21/06/18, then I've already paid £220 as part rent on 21/06/18 to 21/07/18. As at today, I'm not | |

| | | |
|-------------------|--|--|
| | owing you any penny. | |
| | | You are wrong |
| | How please? | |
| | | We will put it in writing later. I am not doing this via text. |
| | When the record are on my bank statement I don't think you need any other proof. | |
| | | I will see you later. You are always fighting. |
| | I'm always fighting? That's so funny and petty. | |
| | | Leave me pls I am trying to get her ready. |
| A few texts later | The true me because you think I'm a fool right? No, I'm not. December I wanted to leave the house because of William. You persuaded me to stay and you think can frustrate me now; no way. I tried to avoid this when you repeatedly telling me you want your house empty. I tried to avoid it making sure at least from my little earnings I pay my rent. | |
| | Hope you know your action of not paying the council tax for 3 months and council writing me and Eddie with court case pushed into depression as he believed his hope of becoming a British Citizen is gone. He started acting funny as soon as he got that letter. | |
| | | You are evil |
| 07.07.18 | Can I get that masonic emblame please. I need to pawn it and look for | |

| | | |
|----------|---------------------------|--|
| | a place to stay. | |
| 08.07.18 | You treated me very badly | |

31. At about 6;30 pm on Friday 6 July 2018 Mr Opara arrived home from work. He used his keys to gain access through the street door and the lobby door, put his key into the lock on the door of room 1 but the door would not open. Mr Opara assumed from this and the text messages that had passed earlier during day that Ms Olasemo had terminated his tenancy, changed the locks and had evicted him. Mr Opara noticed that some of his belongings had been put into black plastic bin bags and left in the kitchen. Some of his shirts were on hangers on a rail in the hallway.
32. Mr Opara tried to call Ms Olasemo but she did not pick up. He went to Plumstead police station, they tried to call Ms Olasemo but she did not pick up that call. The police informed Mr Opara that the issue was a civil matter and they advised him to get in touch with the council after the weekend. Mr Opara then went out, had a few drinks and slept on a night bus.
33. Early on Saturday 7 July 2018 Mr Opara went to the property. He slept on a sofa in Eddie’s room – room 3. It still contained some of Eddie’s furniture but it was also being used as a storeroom by the painters and decorators – Mr Steven Aherne and Mickey who had been in the Property painting for some days. When Mr Aherne arrived for work he saw Mr Opara there and Mr Opara left shortly thereafter.
34. On Monday 9 July 2018 Mr Opara attended at the council. He met a Mr Richard Hugill, a senior environmental health officer, and explained his position to him. On 10 July 2018 Mr Hugill wrote to Ms Olasemo alleging an unlawful eviction [A1/68]. We find that Ms Olasemo received that letter but did not reply to it.
35. On Tuesday 10 July 2018 Mr Opara returned to the Property with a view to collecting some of his possessions. He was accompanied by an elderly black lady who he wanted there as a witness. Mr Opara saw a note pinned to a door: *Downstairs 9th July 2018 Paul Opara pls inform us via text before entering with your friends or alone*” [A1/189]

At this point Mr Opara’s possessions were still located in several places within the Property. He stayed about half an hour and collected some of his things. Mr Aherne was working at the Property at this time.

36. There was further text traffic:

| Date | Mr Opara | Ms Olasemo |
|-------------|-----------------|---|
| 11.07.18 | | You should tell me when you are coming to collect the rest of your stuff as you keep bringing strangers into my home and it is my home. |

| | | |
|----------|---|--|
| 04.08.18 | I'm here to collect my things | |
| | | Please go ahead I am not there |
| | Ok cheers | |
| | Have I got any mails as I can only see one? | |
| | | There was a pile of mail yesterday mostly unknown names and William. I take it he is still in hiding I have not seen him since the police left |
| | William just left here | |
| | | Now |
| | | Be careful I had to call the police on him, he got violent |
| | He has left | |
| | | Double lock the doors while you are there [s]o [h]e does not creep up on you |

37. Mr Opara was able to get some money together to instruct a solicitor – Gracelands. They wrote to Ms Olasemo on 23 July 2018 [A1/50]. They urged Ms Olasemo to restore Mr Opara to his room. We find Ms Olasemo received but did not reply to that letter.
38. In the event Mr Opara was not able to recover any further clothes and possessions. He has lost a number of documents and certificates as well as other papers.

Discussion

39. S43 HPA 2016 provides that a tribunal may make a RRO 'if satisfied, beyond reasonable doubt, that a landlord has committed' one of the specified offences. That is the criminal standard of proof and the bar is set high.

It is for an applicant to make out his case on each ingredient of the offence(s) alleged to the required standard. A respondent does not have to prove a positive case. It is sufficient if a respondent shows there is reasonable doubt such that the test is not met.

The HMO allegation

40. We are well satisfied on overwhelming evidence that Ms Olasemo controlled or managed the Property and let each of the four rooms as bedrooms to individuals. Those individuals came and went over time. Apart from Eddie and Manuela who were siblings, none of the others were related and did not form a single household.
41. The meaning of a HMO is set out in s254 Housing Act 2004. As regards a self-contained flat, the standard test is set out in s254(3). Each of the conditions in s254(2) (b) to (f) has to be met.

Condition (c) requires that the living accommodation is occupied by persons as their only or main residence or they are to be treated as so occupying.

On the evidence we find that Mr Opara was living at the Property as his only or main residence over the period January 2017 until July 2018. Mr Sandham made the very compelling submission that no evidence at all had been adduced about the other persons, particularly Eddie, Israel, William Neville and Manuela. Ms Gravells responded that Eddie and Manuela were both Romanian and that Mr Neville had made an claim to Housing Benefit. Mr Sandham responded that that was not sufficient. There was no evidence that the assumptions in s259 had been met and no evidence that any of them were migrant workers within the meaning of the regulations had been provided.

42. We preferred the submissions of Mr Sandham on this point. We find that Mr Opara had not proved beyond reasonable doubt that during the relevant period the Property was operated, controlled or managed as an HMO as defined.

The Eviction allegation

43. The circumstances which occurred on 6 July 2018 are very strange and do not reflect what is often seen when unlawful evictions happen. We have no doubt that from the spring of 2018 the local council was on Ms Olasemo's case and that she was feeling the heat. Ms Olasemo was trying to obtain vacant possession of the rooms and was having redecorations carried out with a view to moving in with her young daughter and thus would demonstrate the Property was not an HMO.
44. Mr Sandham submitted there was no direct evidence that Ms Olasemo had changed the lock to room 1 or that she had directed another to do that. There was evidence that the lock had been changed. The only evidence was that Mr Opara put his key in the lock and the door would not open. Mr Sandham speculated that the lock might have broken or the door might have been painted recently and had become stuck.
45. Mr Sandham also drew attention to the reasonably friendly post eviction texts which were an unusual feature and that Ms Olasemo did not change the locks to the front or lobby doors and was content to an extent to allow Mr Opara to come and go to collect his things, as long as he gave prior notice. There was no suggestion here that Mr Opara's possessions had been thrown out onto the street, on the contrary some had been bagged up and some hung up on hangers and rails. That might be explained by the decorators moving them whilst they painted room 1.

Further that Mr Opara did not make any endeavours whether legally or practically to get a locksmith along to gain access to his room.

46. Against that there was no evidence that upon learning of the allegation of an unlawful eviction Ms Olasemo making clear that she had not

evicted Mr Opara and that he had misread the situation and any problem with his key could be resolved and he was welcome back .

47. On the evidence there is room for the conclusion that Mr Opara wrongly concluded that Ms Olasemo's statement not to accept any further rent amounted to a notice to quit and that his inability to gain access to room 1 on 6 July 2018 amounted to an eviction and that Ms Olasemo was wrong to concluded that Mr Opara had voluntarily moved out to 'sort himself out'.
48. As we have said we found the evidence to be confused and confusing. A number of factors just did not chime. If the test was 'balance of probabilities' we would have found that Ms Olasemo procured Mr Opara to vacate so that she could move in herself and bring her HMO problems to a close. But, that is not the test. We have to be satisfied beyond reasonable doubt. We are not so satisfied. We have some doubts. Accordingly, we have to conclude that Mr Opara has not established his case to the required standard.
49. For these reasons, and with a good degree of reluctance, we conclude that we are not able to make a RRO in favour of Mr Opara. We must dismiss his application.

Judge John Hewitt
21 June 2019

ANNEX - RIGHTS OF APPEAL

1. By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify parties about any rights of appeal they may have.
2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to this tribunal - the First-tier Tribunal at the regional office which has been dealing with the case.
3. The application for permission to appeal must arrive at the regional office within 28 days after the date on which the tribunal sends out to the person making the application the written reasons for the decision.
4. 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.
5. 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.

6. If the tribunal refuses permission to appeal, a further application for permission may be made directly to the Upper Tribunal (Lands Chamber)