



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

**Case references** : **First application:  
LON/00AY/HMF/2019/0101  
Second application:  
LON/00AY/HMF/2020/0122**

**HMCTS code** : **V: VIDEO**

**Property** : **42 Cranmer Road London SW9 6EF**

**The First Applicant** : **Daniel Kurzer**

**The Second Applicants** : **B M Capodici and L Randazzo  
F Vassallo and J Di Domenico  
Ms F Ali**

**Representative** : **Mr D Kurzer**

**Respondent** : **Mr X Zhao**

**Representative** : **Mr R Whittock of counsel**

**Type of application** : **Application for a Rent Repayment Order  
by tenants**  
Sections 40, 41, 42, 43 and 45 Housing and  
Planning Act 2016.

**Tribunal members** : **Judge Pittaway  
Ms A Flynn MRICS**

**Date of Hearing** : **8 September 2021**

**Date of decision** : **21 September 2021**

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**DECISION in relation to the First Application and DIRECTIONS in  
relation to the Second Application**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal before the hearing were in a bundle from the First Applicant of 44 pages, and a bundle from the Respondent of 26 pages, the Application dated 3 July 2020 made by the Second Applicants and 4 pages of Additional Evidence supplied by the First Applicant on 7 September 2021, the contents of which the tribunal has noted. In addition it became apparent during the hearing that there the Applicant had provided a response to the Respondent's case (3 pages). While this was not before the tribunal members at the hearing it was sent to it subsequently and referred to during the hearing itself.

At the hearing Mr Kurzer represented himself and the Second Applicants, and Mr Whittock of counsel represented the Respondent.

There were no witness statements in the bundle provided by the First Applicant. The bundle did contain a schedule of when the property was occupied and by whom, tenancy agreements between the Respondent and Mr Capodici, Miss Ali Fay Fatima, Mr D Kurzer and evidence of rent payments made by these tenants and evidence of rent payments made by Jessica Di Domenico. At the hearing the First Respondent confirmed that his statement of truth applied to the application and the documents in his bundle. The Respondent's bundle contained witness statements from Mr Zhao and Ms Song.

The tribunal heard submissions from Mr Kurzer and Mr Whittock.

## **Decisions of the tribunal**

### **The Second Application**

- 1. The Tribunal finds that the Second Application was duly delivered to the Respondent. However the Tribunal finds that further directions are required before the Second Application can be considered. The Tribunal therefore postpones the hearing of the Second Application to a date to be fixed and gives the Directions set out below.**

### **The First Application**

- 2. At the hearing the Tribunal refused to postpone the hearing on the First Application until the Second Application was heard and refused to strike the First Application out for want of evidence.**
- 3. The Tribunal find that the Respondent did not commit an offence under section 1(3) or (3A) of the Protection from Eviction Act 1977 but did commit an offence under section 72(1) of the Housing Act 2004 without reasonable excuse between December 2018 and May 2019.**

4. **The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £3,606.04. The amount is to be reduced by the rent arrears owed by the First Applicant to the Respondent, calculated by the Tribunal to be £1,446.77.**
5. **The reasons for the Tribunal decisions are given below.**

### **The background**

6. The tribunal received an application from the First Applicant dated 6 December 2019 under section 41 of the Housing and Planning Act 2016 (“**the 2016 Act**”) for a rent repayment order in the sum of £7,150 respect of 42 Cranmer Road London SW9 6EF (‘the **Property**’). The amount sought was eleven months’ rent (at £650 per month) calculated from 13 December 2018. The application stated that for the period until 2 August 2019 the property was an unlicensed House in Multiple Occupation and that for the entire eleven months the Respondent had harassed the occupants of the property.
7. On 16 December 2019 the Tribunal issued Directions, which provided for the First Applicant to provide a bundle to the tribunal by 20 January 2020 and for the Respondent to provide a bundle to the Tribunal by 17 February 2020.
8. On 30 June 2021 the Tribunal issued further directions directing any person who had wished to apply for a rent repayment order issue a separate application.
9. On 14 July 2020 the tribunal received an application from the Second Applicants under section 41 of the 2016 Act for a rent repayment order in the sum of £13,239.26 in respect of the Property.

### **The Property**

10. The Property is described in both applications as a five bedroom flat on three storeys.
11. No party requested an inspection and the tribunal did not consider that one was necessary.
12. The relevant local housing authority is L B Lambeth.
13. Mr Zhao is the freeholder and the landlord named in the tenancy agreement with the First Applicant, a copy of which was included in the First Applicant’s bundle.

## **Preliminary Issues**

14. At the Hearing Mr Whittock initially advised the tribunal that his client had not received the Second Application and invited the Tribunal to strike out that application. It transpired that the Respondent had received the Second Application, but only by e mail. Mr Whittock submitted that service by e mail was insufficient referring the tribunal to Practice Direction 6A of the Civil Procedure Rules and Rule 16 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
15. In Mr Whittock's submission the Respondent would be unfairly prejudiced if the tribunal proceeded to consider the Second Application at the hearing, as the claim was by six persons and the rent claimed was significantly more than claimed by the First Application. Mr Kurzer submitted that the Second Application complied with the Tribunal's directions, set out in its e mail of 30 June 2020 in procuring that the Second Application be issued by 14 July 2020. Mr Whittock submitted that if the Second Application had been properly served there should have been further directions issued in relation to it.
16. Mr Kurzer's submitted that his bundle for the First Application referred to the Second Applicants and contained the relevant information (as to tenancy agreements and rent payments) for them. Mr Whittock submitted that the First Application only named Mr Kurzer as the applicant. Mr Kurzer submitted that if the Second Application was postponed the First Application should also be postponed.
17. After an adjournment the tribunal advised the parties that it found that the Second Application had been delivered to the Respondent but that further Directions should have been issued in relation to it. It therefore postponed the the hearing of the Second Application and stated that Further Directions would be issued.
18. The Tribunal found that, given the length of time since the First Application was made, that the directions in relation to it had been complied with and that both parties had joined the hearing expecting that the First Application would be heard it was not appropriate to postpone the hearing of that application further. It could be heard independently of the Second Application.
19. Mr Whittock accepted that the First Application had been properly served but submitted that it should be struck out for absence of evidence.
20. The tribunal did not strike out the First Application for absence of evidence. It finds that it had sufficient evidence as to occupation by various tenants by reason of the rent they paid and the tenancy agreements in the First Applicant's bundle for the First Application to enable the hearing of the First Application to proceed.

## **Issues in the First Application**

21. The issues before the tribunal to determine in the First Application were
- Had the Respondent committed an offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977 (the '**1977 Act**') (eviction or harassment of the occupiers, and/or under section 72(1) of the Housing Act 2004 (the '**2004 Act**') (controlling or managing an unlicensed HMO);
  - The period during which an offence had been committed;
  - Did the Respondent have a defence to the commission of the offence(s) under section 72 (4) or (5) of the 2004 Act?
  - The maximum amount of RRO that can be ordered under section 44(3) of the 2016 Act.
  - Any relevant conduct of the landlord, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenant to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

## **Evidence and submissions**

### **Offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977**

22. Mr Kurzer submitted that he had been harassed by the Respondent. As evidence of harassment Mr Kurzer referred the tribunal to text messages in his bundle from Ms Song, the Respondent's wife who was managing the property on her husband's behalf. He submitted that these contained threats to cut off the water and power to the property and deny access to the kitchen. He accepted that Ms Song was not fluent in English. On being cross-examined Mr Kurzer confirmed that he would regard lack of access to the kitchen for any length of time to be unacceptable. Mr Kurzer gave evidence that a builder had arrived on 11 November 2019 to remove the kitchen but had left without doing so. Mr Kurzer confirmed to the tribunal that during his occupation of the property (until January 2020) the utilities were not disconnected.
23. Mr Kurzer also referred the Tribunal to the disconnection of the internet, for which there was provision in his tenancy agreement, and entry onto the property on 14 September 2019 with less than the required twenty four hours' notice.
24. The Respondent denied harassing the tenants of the property. The Tribunal heard evidence from Mr Zhao and Ms Song that they considered that there had been a verbal agreement between Ms Song and the tenants that they would vacate the Property on or before 24 September 2019 (two of the tenants left on that date) and that the Respondent had been financially disadvantaged when all the tenants did not leave on that date. The internet was disconnected on the

24 November 2019 because the Respondent had believed that all the tenants would be leaving the property on 24 September 2019.

25. In his (undated) response to the issues raised in the respondent's bundle Mr Kurzer stated that the tenants had tentatively raised the possibility of moving out of the property when Ms Song attended the property on 7 September but that this 'was not a guarantee nor a verbal contract'. On cross examination Mr Kurzer stated that the agreement to leave on his part was conditional on his having found alternative accommodation.
26. Mr Whittock submitted that for an offence to be committed under section 1(3) or section 1(3A) of the 1977 Act the person has persistently to withdraw or withhold services reasonably required for the occupation of the premises and that the Respondent had not done so in this case.

#### **Offence under section 72(1) Housing Act 2004**

27. Mr Kurzer submitted that the Respondent committed an offence under section 72(1) of the 2004 Act from when he became a tenant in December 2018 until 2 August 2019 being the date upon which the Respondent obtained an HMO licence.
28. The First Applicant's bundle contained a schedule headed 'How the property was occupied'

This showed that for the months December 2018 to February 2019 the property was occupied, in addition to the First Applicant, by Marco Capodici and Luciana Randazzo, Jessica di Domenico and Fabiola Vassallo, and Fay Ali (six occupants in more than two households). Their occupation was supported by copies of tenancy agreements and/or evidence of rent payments. During this period the First Respondent also claimed that the property was occupied by 'Andrea and George' but without any supporting evidence.

From February 2019 until May 2019 the schedule shows that the property was occupied, in addition to the First Applicant, by Marco Capodici and Luciana Randazzo, Fay Ali and another couple named as 'Paula and Sergio' (for whom there is no supporting evidence of occupation) (six occupants in more than two households). The schedule also suggests that in March 2019 Andrea and George remained in occupation.

From May 2019 to August 2019 the schedule shows the occupants to have been the First Occupant, Fay Ali, Paula and Sergio (four occupants).

29. When giving evidence Ms Song was unable to confirm the dates upon which the various tenants were in occupation, but she did not deny that the people in question had occupied the property. She stated that Paula and Sergio and Andrea and George could not have been in occupation at the same time, as Paula and Sergio replaced Andrea and George at the property.

30. The Respondent admits that he failed to obtain an HMO Licence but that as soon as he became aware of the need for a licence he applied for one, on or before 28 June 2019, which application was approved on 2 August 2019.
31. Mr Zhao confirmed that he had owned the property since 2007. He stated that it had initially remained vacant but that he had rented it 'after a couple of years'. He was unable to be precise as to when he had started letting the property. Ms Song gave evidence that she had come to United Kingdom five years ago. Ms Song was unable to give the tribunal precise information for how long the property had been rented, suggesting that it might have been for a year before December 2018. Mr Zhao gave evidence that he had one other property which he had been letting for a couple of years.
32. Mr Whittock submitted that the Respondent had a reasonable excuse for committing the offence in that he had not known that he needed an HMO licence and that as soon as he learnt that he did he applied for one. Mr Whittock referred to the Respondent relying on the income from the property to pay the mortgage and outgoings related to it.
33. Mr Kurzer submitted that ignorance of the law was not an excuse, that Mr Zhao should be considered an experienced landlord as he had owned the property for 12 years, he owned another property which was rented, that the property had been let up to eight occupants from time to time during his tenancy and that the absence of a licence placed the occupants at risk.

### **Amount of the RRO**

34. Mr Whittock submitted that the decision in *Vadmalayan v Stewart* [2020] UKUT 0183 (LC) (**'Vadamalayan'**) was the correct authority for determining the amount of any RRO, and that the Respondent could not seek a reduction in the amount of the RRO by reason of mortgage payments that he was making for the property.
35. The Respondent stated that he paid c.£200 per month for gas and electricity consumed at the property. The tribunal was referred to evidence of payments to EDF in the Respondent's bundle of less than £200 but was told that these did not relate to both gas and electricity. The Respondent claimed that he had paid £44.97 per month for the provision of internet but there was no evidence in the bundle of this payment.
36. As to the factors set out in section 44(4) of the 2016 Act to which the Tribunal in particular should have regard to in determining the amount of the RRO Mr Whittock submitted that the Respondent was an inexperienced landlord, without any conviction, who had applied for an HMO licence as soon as he had become aware of the need for one. As to his financial circumstances the Respondent relied on the income of the property to pay the mortgage on it.

37. In cross-examination and in his response to the Respondent's bundle the First Applicant agreed that he had not paid any rent to the Respondent between November 2019 and January 2020. Immediately prior to that he had proceeded on the basis that as his deposit was not protected the Respondent should set it against rent owed to him. He accepted that he owed the Respondent unpaid rent. Mr Whittock submitted that this was conduct of the First Applicant to which the tribunal should have regard when determining the amount of the RRO.
38. Mr Kurzer referred to the allegations of harassment as evidence of the landlord's conduct.

### **The tribunal's decision and reasons**

39. The tribunal has had regard to the witness statements in the bundle, the submissions made at the hearing and the decisions referred to during the Hearing in reaching its decision.

As appropriate, and where relevant to the tribunal's decision these are referred to in the reasons for the tribunal's decision. It has limited references to the cases referred to in its reasons to those most pertinent to its decision.

40. The relevant legal provisions in relation to the First Application are set out in the Appendix to this decision

### **The Second Application**

41. From the evidence before it the tribunal finds that the Respondent received the Second Application from the First Applicant as the nominated representative of the Second Applicants by e mail. The tribunal had also e mailed a copy of the Second Application to the Respondent.
42. Civil Procedure Rules are not applicable to the procedure of the Tribunal, which is governed by The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**')
43. Rule 16(1) of the Rules provides that

'16.—(1) Any document to be provided under these Rules, a practice direction or a direction must be—  
(a) sent by prepaid post or by document exchange, or delivered by hand to the address specified in paragraph (5);  
(b) sent by fax to the number specified for the proceedings;  
(c) as regards any document sent or delivered to or by the Tribunal, sent or delivered by such other method as the Tribunal may permit; or



(d) as regards any document to be sent or delivered by a method other than one provided for by sub-paragraphs (a), (b) or (c) or another paragraph in this rule, sent or delivered by such other method as the recipient may permit.’

44. Rule 16(7) provides that,

‘Subject to paragraph (8), if a party provides a fax number, email address or other details for electronic transmission of documents to them, that party must accept delivery of documents by that method.’

45. Rule 16(8) provides,

‘If a party informs the Tribunal and all other parties that a particular form of communication other than pre-paid post delivery or delivery by hand, should not be used to provide documents to that party, that form of communication must not be used.’

46. Prior to the date upon which the First Applicant e mailed the Second Application to the Respondent the Respondent had provided the First Applicant with an email address, evidenced by reference to it in the Second Application. The Respondent had not informed the First Applicant that he should not use the e mail address provided as the means of communication.

47. Rule 16(2) of the Rules provides that,

‘(2) The Tribunal may provide any document (including any notice or summons or other information) under these Rules by—  
(a) itself sending or delivering the document; or  
(b) requiring a party to do so.’

48. The Tribunal had also provided the Second Application to the Respondent as contemplated by Rule 16(2).

49. The Tribunal finds that the Second Application had been duly provided to the Respondent as required by the Rules.

50. In the alternative, Rule 8(2) provides that where a party has failed to comply with a requirement of the Rules the Tribunal may take such action as it considers just, which by sub-paragraph 8(2)(a) may include waiving the requirement in question.

51. The Tribunal finds that where the Respondent had received the Second Application and when the Second Application was made during the Covid-19 pandemic it is just that the Tribunal should waive any requirement that the Second Application be delivered by pre-paid post delivery or by hand.

52. The Tribunal accepts Mr Whittock’s submission that Directions should have been given in relation to the Second Application and these are set out below.

## **The First Application**

### **Offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977**

53. At the hearing the Tribunal reminded the parties that, as stated in the Directions, the tribunal needs to be satisfied beyond reasonable doubt that an offence has been committed. The burden of proving this falls on the applicant.
54. The basis of Mr Kurzer's claim under the Protection from Eviction Act was not one of unlawful eviction but one of harassment. He submitted that after 24 September 2019 he had been harassed by the Respondent, the Respondent stating that the services might be cut off or that he would be denied the use of the kitchen. The tribunal do not have to consider whether there was a binding agreement between the Respondent and Mr Kurzer to leave the property on 24 September 2019, as that is not the basis of the claim of harassment of the occupier. The date is relevant to the extent that the complaints made by Mr Kurzer relate to the period after that date (with the exception of some unsubstantiated complaints about entry on the property without notice).
55. The tribunal accept Mr Whittock's submission that for the Respondent to have committed an offence under section 1(3) or 1(3A) of the 1977 Act he would have had to have persistently withdrawn or withheld services required for the occupation of the property. The tribunal find, on the evidence before it, that the Respondent did not so act. While the Respondent had indicated that services might be cut off or use of the kitchen removed this had not occurred at any time during the First Applicant's occupation which continued until January 2020. The text messages sent by Ms Song do not amount to a persistent withdrawal of services as the services were not withdrawn, and Mr Kurzer was not deprived of use of the kitchen. There was no evidence before the tribunal that entry without notice had occurred on a persistent basis. The tribunal finds that when the Respondent procured the disconnection of the internet he had believed (incorrectly) that the occupiers would have left the property by then. The tribunal finds that the provision of internet (while a contractual obligation on the Respondent) is not a service required for the occupation of the property.

### **Offence under section 72(1) of the Housing Act 2004, the period of the offence and possible defences.**

56. Section 72(1) of the 2004 Act provides, 'A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 61(1)) but is not so licensed'.
57. It was accepted by the Respondent that the property was not licensed until 2 August 2019 when the HMO licence was granted so that an offence was being committed during the period for so long as the manner in which the property was occupied was such that it fell within the definition of a House in Multiple

Occupation and the Respondent had no defence to the commission of the offence.

58. The description of an HMO is prescribed by the Secretary of State in paragraph 4 of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. This states that an HMO is of a prescribed description if it is occupied by five or more persons and occupied by two or more households.
59. For so long as the property was occupied by five or more persons in two or more households the Respondent was committing an offence under section 72(1). The tribunal finds that from June 2019 there were only four persons in occupation of the property. The offence was therefore committed by the Respondent between December 2018 and May 2019.
60. The tribunal notes that even if there had been five persons in occupation of the property between June and August 2019 the Respondent would not have been committing an offence. Section 72(4) provides that it is a defence to the offence if an application for an HMO licence has been duly made in respect of the property. While the application for the licence is not in the bundles before the tribunal there is a letter from Lambeth dated 28 June 2019 which refers to an application having been made before that date.
61. Section 72(5) of the 2004 Act provides that in proceedings against a person for an offence under section 72(1) of the 2004 Act it is a defence that that person had a reasonable excuse.
62. It is for the Respondent to prove on the balance of probability that he had a reasonable excuse. The tribunal finds that the Respondent has not so proved. It might be reasonable for the Respondent not to know for a short period of time after he acquired the property of the need for a licence. Given the length of time that the Respondent had owned the property, the probable length of time that he had let it, the number of people to whom he had let it and that that he owned another property which he also lets the Tribunal finds that the Respondent's ignorance of the need for an HMO licence is not a reasonable excuse for the purposes of section 72 of the 2004 Act.

#### **The maximum amount of any RRO.**

63. Paragraphs 12 and 47 of *Vadmalayan v Stewart* [2020] UKUT 0183 (LC) ('*Vadamalayan*') are authority for the proposition that the starting point for any RRO is the amount of rent paid. During the relevant period from December 2018 to May 2019 the First Respondent paid six months' rent in the sum of £3,900.
64. The decision in *Vadmalayan* limited possible deductions from the maximum amount to utilities paid for by the landlord.

Paragraph 16 of *Vadamalayan* states, ‘In cases where the landlord pays for utilities, as he did in *Parker v Waller*, there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of a rent repayment than a tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord’s costs in calculating the amount of the rent repayment order should cease.’

65. The tribunal have not allowed deduction of council tax as this is a fixed sum not dependent upon the amount that the tenant has consumed. It is prepared to allow a deduction for the supply of electricity and gas and the supply of the internet. The figures of £200 and £44.97 per month given by the Respondent for these items were not challenged by the First Applicant and the tribunal have therefore adopted these monthly figures. Of these figures the tribunal has apportioned one fifth of each monthly sum to the First Applicant as there were five rooms occupied by tenants at the property .

The maximum amount of the RRO is therefore

$$£3,900 - [£240 + £53.96] = £3,606.04.$$

### **Relevant conduct and the landlord’s financial circumstances**

66. Section 44(4) provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.
67. It was accepted that the landlord had not at any time been convicted of a relevant offence.
68. The Tribunal find that the Respondent submitted insufficient evidence for it to be able to take his financial circumstances into account.
69. It is not possible for the Tribunal to increase the amount of the RRO beyond the maximum, as confirmed in the decision in *Ficcara v James* [2021] UKUT 0038 (LC) so that submissions as to the poor conduct of the Respondent cannot increase the amount of the RRO.

### **Rent arrears**

70. During the period the subject of the RRO application the First Applicant paid his rent, but arrears of rent arose after the period. At the hearing the First Applicant admitted that he paid rent until 13 November 2019 but did not do so

thereafter. Accordingly there are rent arrears owed to the Respondent in respect of the period from 14 November 2019 until 21 January 2020. During the hearing Mr Kurzer acknowledged there were rent arrears and confirmed that he would be content for the arrears to be deducted from the amount of any RRO. The Tribunal note this confirmation, which is consistent with the Upper Tribunal decision in *Awad v Hooley* [2021]UKUT 55 (LC) where it was held that arrears of rent owed by the appellant to the respondent outside the period to which the RRO related reduced the amount of the RRO. On the basis of a rent of £650 per month the tribunal find that the amount of the RRO should be reduced by the amount of such arrears which the tribunal calculate to be £1,467.

## **DIRECTIONS IN RESPECT OF THE SECOND APPLICATION**

### **COVID-19 ARRANGEMENTS**

- For the tribunal's current procedures, please see the Guidance for Users at: <https://www.judiciary.uk/wp-content/uploads/2021/02/Guidance-for-Users-February-2021-final.pdf>
- Unless directed otherwise, all communications to the tribunal, including the filing of documents and bundles, should be by **email ONLY**, attaching a letter in Word format. Emails must be sent to [London.RAP@justice.gov.uk](mailto:London.RAP@justice.gov.uk). The attachment size limit is 36MB. If your attachments are larger than 36MB they must be split over several emails.
- **If a party does not have email, access to the Internet and/or cannot prepare digital documents, they should contact the case officer about alternative arrangements.**

### **How the Second Applicants represented by Mr Kurzer should prepare for the hearing in case reference LON/00AY/HMF/2020/0122 (the 'Second Application')**

1. By four weeks from the date of the decision in Case Reference LON/00AY/HMF/2019/0101 (the '**First Application**') the Second Applicants must email to the respondent and to the Tribunal at [London.Rap@justice.gov.uk](mailto:London.Rap@justice.gov.uk), a digital indexed and paginated Adobe PDF bundle of all relevant documents for use in the determination of the application. The documents must, so far as possible, be in chronological order. The subject line of the email must read: "APPLICANT BUNDLE FOR DETERMINATION: [Case reference], [Property address]". If a party is unable to produce a digital bundle it must contact the case officer as soon as possible, explaining why, and alternative directions will be considered.
2. The bundle must include:
  - (a) the application and accompanying documents
  - (b) The bundle prepared for the First Application

- (c) this decision and any subsequent directions
  - (d) an expanded statement of the reasons for the application which should be dated
  - (e) any further documents not included in the bundle prepared for the First Application (**Note:** the tribunal will need to be satisfied **beyond reasonable doubt** that an offence has been committed)
  - (f) witness statements of fact relied upon with a statement of truth (see Notes below)
  - (g) full details of any conduct by the landlord said to be relevant to the amount of the Rent Repayment Order sought, and
  - (h) any other documents relied upon.
3. As the tribunal members deciding this case will be working remotely, they may not have access to a physical file or to electronic files sent to the tribunal. It is therefore essential that the parties include any relevant correspondence to the tribunal within their digital bundle.

### **How the respondent (Mr Xinyu Zhao) should prepare for the hearing**

4. The respondent is urged to seek independent legal advice.
5. By **eight weeks from the date of this decision** the respondent must email to the Tribunal at [London.Rap@justice.gov.uk](mailto:London.Rap@justice.gov.uk) and send to the applicants' representative a digital indexed and paginated Adobe PDF bundle of all relevant documents for use in the determination of the application. The documents must, so far as possible, be in chronological order. The subject line of the email must read: "BUNDLE FOR DETERMINATION: [Case reference], [Property address]". If a party is unable to produce a digital bundle it must contact the case officer as soon as possible, explaining why, and alternative directions will be considered.
6. The bundle may include the bundle prepared for the First Application but must include:
- (a) a full statement of reasons for opposing the application, including any defence to the alleged offence and response to any grounds advanced by the applicant, and dealing with the issues identified above
  - (b) a copy of all correspondence relating to any application for a licence and any licence that has now been granted
  - (c) any witness statements of fact relied upon with a signed statement of truth (see Notes below)
  - (d) evidence of the amount of rent received in the period;
  - (e) a statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order (see Annex), including full details of any conduct by the tenant said to be relevant to the amount of the Rent Repayment Order sought. If reliance is placed on the landlord's financial circumstances, appropriate documentary evidence should be provided (redacted as appropriate)

- (f) evidence of any outgoings, such as utility bills, paid by the landlord for the let property during the period; and
  - (g) any other documents relied upon.
7. As the tribunal members deciding this case will be working remotely, they may not have access to a physical file or to electronic files sent to the tribunal. It is therefore essential that the parties include any relevant correspondence to the tribunal within their digital bundle.

### **Second Applicants' (tenants') reply**

8. By **12 weeks after the date of this decision** the tenants may send a brief reply to the issues raised in the respondent's statement and supporting documentation. Any such reply must be emailed to the tribunal at the address above and copied to the respondent.

### **Hearing/inspection arrangements**

9. The case will be decided by a hearing on a date to be notified. The parties' availability will be taken into consideration.
10. To allow the tribunal to arrange the hearing, **by 1 October** each party must return by email to the tribunal the attached listing questionnaire showing the availability of the parties, and any representatives and any witnesses, during the period of **1 December 2021 and 31 January 2022**.
11. The hearing will be convened by remote video conferencing, making use of the electronic documents received. Full details of how to take part will be sent nearer the time. No specialist software is needed to access the hearing. However, parties will need to have access to a computer, connected to the Internet, with a webcam and microphone, or a similarly enabled smartphone or tablet device. If a party does not have suitable equipment to attend a video conference, it must notify the tribunal promptly, and consideration will be given to alternatives.
12. The hearing is estimated to last for **three hours**. The hearing should end in time for the tribunal to deliberate on its decision. If any party considers this is an unrealistic estimate, they should write to the tribunal (and send a copy to the other party, explaining why, no later than two weeks prior to the hearing date).

**Name:** Judge Pittaway

**Date:** 21 September 2021

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

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



## **Appendix of Relevant Legislation**

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

#### **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.

**[F1(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.

### **Housing Act 2004**

#### **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.

## **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.

## **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 **[F3the 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).

### **Housing and Planning Act 2016**

#### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to 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).

**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.
- (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.

**43 Making of a 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 had 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 with –
  - (b) section 45 (where the application is made by a local housing authority);

**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.

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

**The Licensing of Houses in Multiple Occupation (Prescribed Description) (England)**  
**Order 2018**

**4. Description of HMOs prescribed by the Secretary of State**

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.

## Annex

The issues for the tribunal to consider include:

- Whether the tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences:

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
1	Criminal Law Act 1977	s.6(1)	violence for securing entry
2	Protection from Eviction Act 1977	s.1(2), (3) or (3A)	unlawful eviction or harassment of occupiers
3	Housing Act 2004	s.30(1)	failure to comply with improvement notice
4	Housing Act 2004	s.32(1)	failure to comply with prohibition order etc.
5	Housing Act 2004	s.72(1)	control or management of unlicensed HMO
6	Housing Act 2004	s.95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	s.21	breach of banning order

- Did the offence relate to housing that, at the time of the offence, was let to the tenant?
- Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
- What is the applicable 12-month period?<sup>1</sup>
- What is the maximum amount that can be ordered under section 44(3) of the Act?
- What account must be taken of:
  - (a) The conduct of the landlord?
  - (b) The financial circumstances of the landlord?
  - (c) Whether the landlord has at any time been convicted of an offence shown above?
  - (d) The conduct of the tenant?
  - (e) Any other factors?

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<sup>1</sup> s.44(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.