



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

Case Reference : CAM/00KA/HMI/2019/0001

Property : 14 Havelock Rise, Luton LU2 7PS

Applicant (Tenant) : Chantel Campbell

Respondent (Landlord): Liondaris Trading Limited

Date of Application : 7th June 2019

Type of Application : Application by a tenant for a rent repayment order (“RRO”) where there has been no conviction of the landlord and no imposition of a financial penalty on the landlord by the local authority – Section 41 of the Housing and Planning Act 2016

Date of Directions : 13th June 2019

Tribunal : Judge JR Morris
Mrs M Wilcox BSc MRICS
Mr C Gowman BSc MCIEH

Date of Hearing : 4th October 2019

Date of Decision : 7th October 2019

DECISION & ORDER

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Decision

1. The Tribunal makes no Rent Repayment Order.
2. The Tribunal makes no order for costs under Part 2, Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Reasons

The Application

3. On 7th June 2019 the Applicant applied for a Rent Repayment Order as a Tenant. The Tribunal may make a Rent Repayment Order (“RRO”) under section 41

Housing and Planning Act 2016 (the 2016 Act) if it is satisfied beyond reasonable doubt that the landlord has committed the alleged offence(s) in the period of 12 months ending with the day on which the application is made. In this instance it is alleged the offences were committed during the period September 2018 until June 2019 and repayment of rent for ten months is sought.

4. On the Application Form the Applicant stated that the Respondent was in breach of an HMO licence by having more tenants than the house could accommodate. However, it was not clear whether there was a licence and the number of tenants was exceeded, in respect of which an RRO cannot be made, or whether the number of tenants meant that the house should have been licensed and was not, in which case an RRO can be made. As there was a further reason for the application regarding harassment for which an RRO can be made Directions were issued with a view to hearing two alleged offences for which an RRO could be made as follows:
 - a) The Property comes within the definition of a House in Multiple Occupation (HMO) and is required to be licensed under section 61(1) Housing Act 2004 (the 2004 Act) but is not so licensed, contrary to section 72(1) Housing Act 2004. (Referred to hereinafter as Issue 1)
 - b) The Applicant was intimidated and harassed by the Landlord and other persons contrary to section 1(3) Protection from Eviction Act 1977. (Referred to hereinafter as Issue 2)
5. The Application was determined by written representations and an oral hearing which was held on 4th October 2019. The Hearing was attended by the Applicant Miss Chantel Campbell, who represented herself and the Respondent's Directors Andreas Christos Liondaris, Christos Andreas Liondaris, Pancios Andreas Liondaris and Georgina Liondaris. Mrs Georgina Liondaris represented the Respondent. Miss Campbell was accompanied by Mr Victor Daitso and Mr Jonathan Eid was an observer.

The Law

6. The legislation applicable to this Application is found in the Housing Act 2004 (the "2004 Act") and the Housing and Planning Act 2016 (the "2016 Act"). The relevant provisions are set out in an Annex to this decision.

Inspection

7. The Property is a large bay fronted late Victorian detached house on four floors. It is constructed of brick under a clay tile roof. There are upvc windows and rainwater goods. There is a porch over the front door. There is a car park to the rear. Externally the Property is in fair to good condition.
8. There is a basement which is unoccupied and is used for storage. On the ground floor there are two letting rooms, Rooms 1 and 2, both of which have ensuite bathrooms. There is also a communal kitchen. On the first floor there are three letting rooms, Room 3, which has a balcony and Rooms 4 and 5. All three rooms have an ensuite. In addition, there is a communal bathroom. On the second floor there is one letting room, Room 6, which has a balcony and a bathroom. All Rooms have an under-counter fridge with icebox.

9. Internally the Common Parts are in good condition and well maintained. The walls are decorated in neutral colours. The hall and landing floors are laid with laminate flooring, the stairs are carpeted and the communal kitchen and bathroom floors are tiled. The communal kitchen has a fridge freezer, a washing machine and a double cooker with five gas burners, an electric hob and two ovens and there is a microwave. There is sufficient room for six persons to prepare and eat food. The communal bathroom is modern and well fitted.

Evidence and Decision Issue 1

Issue 1 - Applicant's Written Statement

10. The Applicant provided a written Statement of Case in the form of a Witness Statement. which is précised and paraphrased as follows:
11. The Applicant described the house which corresponded to that found by the Tribunal on its Inspection.
12. The Applicant said the rooms were occupied as follows:
Room 6 was occupied by a man called Mint in June 2018 and Viktoria, Mint's girlfriend, occupied the room as well in August 2018;
Room 5 was occupied by the Applicant in July 2018;
Room 4 was occupied by a woman called Casil in November 2018;
Room 3 was occupied by a woman called Eva in August 2018;
Room 2 was occupied by a man called Abi in August 2018;
Room 1 was occupied by two women called Alex and Barbie in September 2018.
13. As evidence of this occupation the Applicant produced a cleaning rota with the names of:
 1. the Applicant,
 2. Mint,
 3. Vic,
 4. Abee/Abi,
 5. Eva,
 6. Alex and
 7. Barb
14. The Applicant said that there were two WhatsApp Groups (WhatsApp being an Internet application that enables users to send messages by text and voice via mobile devices). The one was the House WhatsApp Group, which was a communication just between the occupiers of the House and the other is a Management WhatsApp Group which is a communication between the management and occupiers of the House.
15. The Applicant provided 32 pages of communications through the House WhatsApp. The Applicant stated that the House WhatsApp showed eight persons in 'group chats' indicating the number of occupants.

Issue 1 – Respondent's Written Statement

16. Mrs Giorgina Liondaris, company director of the Respondent provided a Statement of Case. She said that Liondaris Trading Limited has four Directors,

Andreas Christos Liondaris, Christos Andreas Liondaris, Pancios Andreas Liondaris and Georgina Liondaris.

17. Mrs Georgina Liondaris said that Liondaris Trading Limited and its Directors had substantial experience in owning and managing HMOs.
18. Mrs Liondaris said that the Respondent bought the Property on 17th April 2018. A description was provided which corresponded to what was found at the Inspection.
19. Mrs Liondaris said that the Property has an HMO Licence from Luton Borough Council for six people which was applied for on the purchase of the Property. It was granted on 30th October 2018 (a copy was provided). It was noted that the maximum number of occupants was stated to be 6.
20. Mrs Liondaris said the Property was only fully occupied from November 2018 until 28th June 2019. A table was provided showing the occupation for each month and copies of the tenancy agreements were provided as follows:

Room 1

Date of tenancy: 1st September 2018
Tenant: Alexandra Kalogeraki
Rent £550.00 per calendar month

Room 2

Date of Tenancy: 4th July 2018
Tenant: Lahira Abetha Weerakoon
Rent £500.00 per calendar month

Room 3

Date of Tenancy: 23rd August 2018
Tenant: Qi Hua Chan
Rent £450.00 per calendar month

Room 4

Date of Tenancy: 17th November 2018
Tenant: Ifeoma Cecilia Duru
Rent £475.00 per calendar month

Room 5

Date of Tenancy: 1st July 2018,
Tenant: Chantel Candice Campbell
Rent £525.00 per calendar month

Room 6

Date of Tenancy: 18th June 2018,
Tenant: Mindaugas Rinkunas
Rent £525.00 per calendar month

21. In response to the specific points raised by the Applicant, Mrs Liondaris stated that at no time were the Respondent's Directors aware that anyone other than the tenants occupied the rooms but some of the tenants had asked if their friends could stay over occasionally to which the Respondent agreed. On several

occasions two separate Luton Council HMO Inspectors were asked if friends or guests were allowed to stay and it was confirmed that this was allowed and that there is nowhere in HMO legislation that states how many times a week they could stay. Whereas the Respondent did not encourage or approve of overnight guests staying regularly, when occasional house guests stay, they should not impact on the use and availability of any house facilities. Provision was made in tenancy agreements as follows:

3.41 Friends/family/partners (guests) are allowed to stay in your room 2 nights a week with the approval of your housemates. Please ensure housemates have first access to facilities

22. Mrs Liondaris said that as far as was known by the Directors of the Respondent only the tenants who had tenancy agreements lived in the Property and these are the people in the Management WhatsApp Group. At no time did any of the tenants raise concerns about overcrowding or additional guests.
23. Mrs Liondaris said that the Directors did not know of the existence of the House WhatsApp Group. It is apparent from the transcript that there are more than six people in the Group however it is understood that anyone can be added or taken off a WhatsApp Group at any time and that it is not proof that the friends of tenants on the House WhatsApp Group lived at the Property.

Issue 1 - Hearing

24. At the Hearing the Respondent raised two preliminary issues.

Preliminary Issue 1

25. The Respondent stated that the copy of the Application Form included in the Bundle was not the original Application Form as it named Premier Letts Ltd as the Respondent, whereas the original Application received by the Tribunal named Liondaris Trading Ltd.
26. She said that Liondaris Trading Ltd was the Landlord and not the person managing the HMO. She said that she understood the original Application Form should have been in the name of the person managing the HMO which was Premier Letts Ltd. She submitted that the Application was defective as it named the wrong person and so the case should be struck out.
27. The Applicant having had notice of the preliminary issue said in an email that because the Respondent had several associated companies, she did not know which one should be the Respondent in respect of this Application. She had therefore drafted one naming Premier Letts but subsequently found it should be addressed to Liondaris Trading Ltd. The Application Form submitted to the Tribunal named Liondaris Trading Ltd and she had inadvertently put the draft Application Form naming Premier Letts in the Bundle.

Decision on Preliminary Issue 1

28. The Tribunal found, as agreed by the Parties, that the original Application Form received by the Tribunal named Liondaris Trading Ltd, which is the Landlord of the Property, as the Respondent. Under sections 41(1) and 43(1) of the 2016 Act

this is the correct Respondent as a Rent Repayment Order can only be made against the Landlord. The Application is therefore valid as it names the correct parties.

29. The Direction to include the Application is merely for convenience at the hearing. The inadvertent inclusion of an incorrect draft of the Application does not in any way affect or invalidate the proceedings.

Preliminary Issue 2

30. The Respondent objected to the Applicant producing a reply to the Respondent's Statement of Case and including it in the Bundle without the agreement of the Respondent.

Decision on Preliminary Issue 2

31. The Tribunal examined the Reply and found that it included no new evidence (other than a reference to waste disposal which the Tribunal excluded) and was merely a re-statement of the Applicant's Statement of Case and a refuting of points made in the Respondent's Statement of Case. Nothing was stated that could not have been said by the Applicant orally at the hearing and in respect of which the Respondent, having had time to read the Reply prior to the hearing, would be able to address. The Tribunal therefore found that its inclusion neither gave the Applicant an advantage nor did it disadvantage the Respondent.

Evidence regarding Issue 1

32. The Tribunal stated that it had read the written Statements of Case of both the parties. It was apparent from the Applicant's Statement of Case that her case was that the Landlord is in breach of the House in Multiple Occupation (HMO) Licence by allowing more occupiers than the licence permits, contrary to section 72(2) Housing Act 2004.
33. At the hearing the Applicant made an additional point saying that when she moved into the house there was no licence displayed. On looking at the licence in the Bundle provided by the Respondent, it was dated 30th October 2018, which was after all the tenancies had been granted except that for Room 4.
34. The Tribunal referred to the provisions of section 41 of the 2016 Act which lists the grounds upon which a tenant or local authority may apply for a Rent Repayment Order. The Tribunal itemised the list and found that the only ground applicable with regard to the licence in this case was that the Respondent had allegedly committed the offence under section 72(1) of the 2004 Act.
35. Section 72(1) states that:

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.
36. Mrs Liondaris said that in order to purchase the Property the Respondent had obtained a mortgage on the basis that the Property was to be let as an HMO. Before granting the mortgage, it was a requirement that the Respondent applied

for a licence, which it did. Licences take a long time to obtain and although the Respondent was notified in July 2018 that a licence would be granted the Respondent did not have a paper version of the licence until 29th October 2018, a copy of which was provided in the Bundle. Mrs Liondaris added that Luton Council permit landlords to let the Property while an application for an HMO licence is being processed.

37. The Tribunal noted that under section 72(4)(b) of the 2004 Act in proceedings against a person for an offence under section 72(1) it is a defence that, at the material time an application for a licence had been duly made in respect of the house.
38. The Tribunal found from the evidence adduced by the Respondent that the Property is and was a licenced HMO whilst the Applicant was a tenant. The Tribunal therefore found that an offence had not been committed under section 72(1) of the 2004 Act. In which case a Rent Repayment Order could not be made.
39. The Applicant submitted that a Rent Repayment Order could be made for a breach of an HMO licence such as that contained in section 72(2) of the 2004 Act which states:

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*

Therefore, she said the Tribunal should consider the evidence she had adduced which she said showed the offence had been committed.

40. The Applicant referred to an Internet article but was not able to identify a provision within the legislation which supported her contention. She also referred to the Shelter website. Following some discussion, the Tribunal affirmed its finding that the only potential ground for making a rent Repayment Order applicable in this case was that the Respondent had committed an offence under section 72(1) of the 2004 Act.

Tribunal's Decision regarding Issue 1

41. The Tribunal found that an offence had not been committed under section 41 of the 2016 Act which allowed it to make a Rent Repayment Order. Therefore, the Tribunal determined no rent Repayment Order could be made.

Evidence and Decision Issue 2

Issue 2 - Applicant's Written Statement

42. The Applicant provided a written Statement of Case in the form of a Witness Statement and a Reply to the Respondent's Statement of case which reiterated and reinforced the points she had made in her statement. The relevant sections are précised and paraphrased as follows:

43. On 7th January 2019 the Applicant said that she was confronted by the couple in Room 1 regarding their “siesta” time at 4 p.m. which resulted in her being verbally abused and fearing for her life.
44. The Applicant said that the tenants in Room 1 always complained about the level of her music whenever she played it and when the volume was not loud.
45. On 20th January 2019 the Applicant received a WhatsApp message from Mrs Liondaris at 3.27 a.m. telling her to turn down her music. At 3.28 a.m. she said she informed Mrs Liondaris that she was not at home. No reply was received from Mrs Liondaris. She added that she had received other messages about the volume of her music but stated that it was not very loud, she only played it before 9 p.m. She said that she had previously lived in shared accommodation and had not received complaints when she had played music at that level.
46. She said that on 13th July 2018 she had received a WhatsApp message from the Respondent telling her to park her car at the rear of the Property. Although it was said to be to all tenants, she was the only one to have a car and felt it was directed at her. Similarly, on 13th September 2018 a message was sent by Mrs Liondaris warning tenants to obtain TV licences because the Property was under investigation. She said she had always had a TV licence and provided a copy in the Bundle, and that as a result of this message she had been accused of being a TV licence informer.
47. On 26th January 2019 the Applicant said that her belongings of two boxes and a suitcase were removed from the attic storage by the couple in room 6 and placed outside her door on the instructions of the Mrs Liondaris.
48. In addition, she said that the Respondent had not responded to her complaints making her feel isolated and threatened.

Issue 2 – Respondent’s Written Statement

49. The Respondent provided a written Statement of Case in the form of a Witness Statement in which Mrs Liondaris identified three communications on the Management WhatsApp which she had sent to the Applicant, two of which were sent to all tenants.
50. Mrs Liondaris said that on 13th July 2018 she had sent a message to all tenants requesting them to park at the rear of the Property and not in the road.
51. On 30th September 2018, 7th January 2018 and 20th January 2019 Mrs Liondaris had sent a message to the Applicant requesting her to turn her music down following complaints from tenants.
52. On 13th September 2018 Mrs Liondaris had sent a message to all tenants requesting them to obtain TV licences if they were watching live TV or downloading as the Property was “under investigation” by the TV licence enforcement body and each tenant was responsible for obtaining their own licence. The Applicant in an email on 4th April 2019 complained of being accused of being a TV licence informer.

53. Mrs Liondaris submitted that these communications were reactive to circumstances and did not amount to harassment. Both the communications regarding car parking and the TV licences were to all tenants.
54. Mrs Leondaris said that on 26th January 2019 the tenant of Room 6 informed her that the Applicant's suitcases and boxes had been put in a cupboard in the bathroom allocated to Room 6. The Tenant said that she had already refused to allow the Applicant to store these items in the cupboard.
55. Mrs Leondaris said the cupboard was for access to the plumbing and was not to be used for storage. Also, the bathroom is for the exclusive use of Room 6. Mrs Leondaris said that she told the tenant to remove the items and leave them outside the Applicant's room informing her that she must store them in her own room.
56. Mrs Leondaris said that she believed her communications with the Applicant had been polite and within the normal parameters of management and the landlord's obligations. She said that the Applicant's behaviour appeared defensive which she felt was unjustified.
57. The Respondent also referred to the negotiations between the parties when the Applicant was granted the tenancy to show that the Respondent had sought to act reasonably towards the Applicant.
58. A USB video and sound recording of events on 30th September 2018 was provided. It was said that this was to show the volume that the Applicant's sound equipment could produce. The Applicant said that she thought the recording had been made at a house party when all the tenants were present and that she thought it had been tampered with and did not give a proper impression.
59. There was no evidence to support how the recording was made or whether the persons depicted in the recording (it being a video) had agreed to being shown, nor were they called as witnesses. The recording was therefore not played or considered by the Tribunal as it was felt not to be evidentially reliable.

Issue 2 - Hearing

60. At the Hearing the Tribunal asked the Applicant about each of the occasions to which she referred. She re-iterated the points already made by in her written representations adding as follows in answer to the Tribunal's questions.
61. With regard to the incident on 7th January 2019 the Applicant said that she feared for her life because she recalled a case where those sharing a flat had ganged up on one of their number and killed her. It was her perception that she was outnumbered and that the verbal abuse from the other two tenants made her feel very vulnerable.
62. With regard to the Management WhatsApp Group messages from Mrs Liondaris asking her to turn her music down, the Applicant said that she felt this was unfair as Mrs Liondaris was taking the side of the tenants when she had not been at the house and heard whether the music was loud or not.

63. Mrs Liondaris agreed that she had not been present but the number of complaints from the tenants meant that she had to take some action. She said that the messages she sent in response which were included in the transcripts were appropriate.
64. When asked about the car parking and TV licence messages the Applicant conceded that she had over-reacted to some extent but was feeling unhappy as her relationship with the other tenants was becoming strained.
65. With regard to the moving of her belongings from the cupboard in Room 6's bathroom on 26th January 2019 the Applicant said that they had originally been put there by the Respondent's builder who came to put up her TV wall bracket. Until he did that she did not know about the cupboard. She said that was the incident which made her feel that she could no longer live at the house and left when her tenancy ended on 28th June 2019. She would have left sooner but she had nowhere to go.
66. She said that she had messaged Mrs Liondaris with regard to, what she considered to be unreasonable and harassing, complaints from the other tenants about her music but received no reply. She said she had also emailed Mrs Liondaris on 4th April 2019 (a copy of which was included at page of the Bundle). to say that she was unhappy but had received not reply.
67. Mrs Liondaris repeated what she had said regarding her communications that they were polite and appropriate. She said that she had not had any communication from the Applicant saying that she was unhappy at the house or identifying any problems with other tenants except for the exchanges to which she had referred. She said she had received an email dated 4th April 2019 however at that stage there was very little she could do to address any problems.

Tribunal's Decision regarding Issue 2

68. The Tribunal took account of all the evidence adduced except the USB recording for the reasons stated.
69. The Tribunal considered the relevant offence under the Protection for Eviction Act 1977, which is contained in section 1(2), (3) and (3A).
70. The Tribunal found that section 1(2) was not applicable as the Applicant had not been deprived of her occupation of her room nor had there been an attempt to do so.
71. For an offence to be committed under section 1(3) and (3A) it would have to be shown that the tenants and/or Mrs Liondaris intended to cause the Applicant to give up the occupation, or to refrain from exercising any right or pursuing any remedy in respect of the room and was calculated to interfere with the peace or comfort of the Applicant.
72. The friction between the Applicant and the other tenants was found to be restricted to the volume of the Applicant's music. The Tribunal found from the transcript provided, that the complaints made directly to the Applicant by the tenants through the House WhatsApp Group were restricted to 2nd October 2019 and 7th January 2019 and the exchanges were relatively temperate. The only

occasion to which the Applicant referred when she said there was any acrimony was 7th January 2019. There may have been other occasions but there is no evidence of these adduced.

73. Mrs Liondaris's messages through the Management WhatsApp Group to the Applicant about the volume of the music were few (30th September 2018, 7th January 2018 and 20th January 2019). From the transcript, the Tribunal found them to be polite and within the normal parameters of management and the landlord's obligations.
74. The Tribunal found from the evidence adduced that neither the other tenants nor the landlord intended to cause the Applicant to give up occupation, or to refrain from exercising any right or pursuing any remedy in respect of the room and their conduct was not calculated to interfere with the peace or comfort of the Applicant. In consequence, the Tribunal found that no offence had been committed under section 1(2), (3) and (3A) of the Protection for Eviction Act 1977 which allowed it to make a Rent Repayment Order. Therefore, the Tribunal determined no rent Repayment Order could be made.

Application for Costs

75. On the conclusion of the hearing the Respondent made an Application for costs.
76. The Tribunal starts from a position that its jurisdiction is one in which costs are generally not awarded. The only exception being under under Part 2, Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, where a party has acted unreasonably. The Civil Procedure Rules do not apply to tribunals including the provision relating to costs.
77. The Upper Tribunal stated in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 at paragraph 62:

“The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs...”
78. In accordance with that case the Tribunal applied a three-stage test considering:
 - (i) Whether the Applicant had acted unreasonably, applying an objective standard;
 - (ii) If unreasonable conduct is found, whether an order for costs should be made or not;
 - (iii) If so, what should the terms of the order be?
79. The Tribunal also took into account the meaning of “unreasonable” in *Ridehalgh v Horsefield* [1994] Ch. 205 which dealt with a wasted costs order, the principles of which we consider apply in this case:

“Unreasonable” means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution

of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable.

80. The Tribunal was of the opinion that the Applicant genuinely believed that she was entitled to a Rent Repayment Order because there had been some transgression with regard to the HMO Licence and because she felt she had been harassed and suffered as a result. She had also provided what she believed to be cogent evidence of the matters she alleged.
81. In the event when the legislation was applied to the Applicant's submissions the Tribunal found that the Applicant's case failed but it did not find that she had *acted unreasonably in bringing, defending or conducting proceedings.*
82. The Tribunal however does express concern that the Applicant was given to believe that she had a wholly justifiable case due to information she had obtained from the Internet which proved to be unreliable. Parties should take considerable care in following uncorroborated advice from this source.

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

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

ANNEX 2 – THE LAW

1. The relevant provisions regarding the offence in relation to licensing of HMOs are in Chapter 5 Part 2 Section 72 of the Housing Act 2004 as follows:

Section 72 Offences in relation to licensing of HMOs

The following is the subsection applicable (see section 40 of the Housing and Planning Act 2016):

- (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.

From the evidence adduced the following subsection was relied on by the Applicant but is not applicable (see section 40 of the Housing and Planning Act 2016):

- (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.

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

Section 40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
 - (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
			improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if –
- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if–
- (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with–
- (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);

- (c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
 - (a) the rent paid in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
 - (4) In determining the amount, the tribunal must, in particular, take into account—
 - (a) the conduct of the landlord and the tenant,
 - (b) the financial circumstances of the landlord, and
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.
3. The relevant provisions of Part 1 Unlawful Eviction and Harassment of the Protection for Eviction Act 1977 are as follows:

Section 1 Unlawful eviction and harassment of occupier

- (1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.
- (2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

- (3) If any person with intent to cause the residential occupier of any premises—
- (a) to give up the occupation of the premises or any part thereof; or
 - (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;
- does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.
- (3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—
- (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
 - (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,
- and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.
- (3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.
- (3C) In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—
- (a) the residential occupier’s right to remain in occupation of the premises, or
 - (b) a restriction on the person’s right to recover possession of the premises,
- would be entitled to occupation of the premises and any superior landlord under whom that person derives title.
- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding [F2the prescribed sum] or to imprisonment for a term not exceeding 6 months or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.
- (5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.
- (6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

4. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which states that:

- (1) *The Tribunal may make an order in respect of costs only-*
 - (b) *if a person has acted unreasonably in bringing, defending or conducting proceedings in-*
 - (ii) *a residential property case*