



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

V: CVPREMOTE

Case Reference : **CAM/22UF/HMF/2021/0005**

Property : **8 Mascalls Way
Chelmsford
CM2 7NS**

Applicant : **Eliska Hlavinkova**

Represented by: **In person**

Respondent : **James Smith (in person)**

Type of Application : **Application for a rent repayment
order pursuant to ss.40 to 44 of the
Housing and Planning Act 2016.**

Tribunal Members : **Tribunal Judge Stephen Evans
Mr Gerard Smith MRICS FAAV**

**Date and venue of
Hearing** : **17 August 2021, remote hearing,
by cloud video platform**

Date of Decision : **13 September 2021**

DECISION

- (1) The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay within 35 days of the date of this decision the sum of £330 to the Applicant.**
- (2) The Respondent shall pay the Applicant the application fee of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.**

DECISION

Introduction

1. The Tribunal is asked to make a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016.

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

Background

3. The following facts were uncontroversial, except where stated otherwise:
4. On 24 February 2021 the Applicant moved into the Property, occupying 1 room, with shared facilities, at a cost of £110 pw. She paid a deposit to the Respondent of £440.
5. There was no written agreement. The Tribunal has seen WhatsApp messages between the parties before and after the Applicant viewed the Property on 21 February 2021, which evidence many of the terms of occupation.
6. One of those terms of occupation was that the Applicant was entitled to 1 months' notice to vacate.
7. When the Applicant moved in, it seems the following persons were in occupation: the Respondent, his wife (Emanuelle or "Manu"), plus 2 other "lodgers" called Kristian Burke and Joel Fitts. All the above shared the kitchen and bathroom. In addition, there was a Brazilian national friend of the Respondent's wife, called Bruna Poleti, whom the Respondent alleges was only visiting the Property at the time.
8. On 24 February 2021 the Respondent texted the Applicant to acknowledge receipt of 2 week's rent.

9. On 27 February 2021 the Respondent sent a WhatsApp message to the Applicant about alleged misuse of the shower and washing machine.
10. On 28 February 2021 the Respondent gave the Applicant 1 months' notice to vacate, by WhatsApp message.
11. There was an issue around this time about the Applicant allegedly refusing to self-isolate, when Ms Poleti had received an official communication that she must do so. The conflicting evidence in relation to that is set out below.
12. On 9 March 2021 the Respondent texted the Applicant to acknowledge receipt of 1 week's rent.
13. On 16 March 2021 at about 12.30am there was an incident at the Property. It is common ground there was a heated argument after the Applicant was alleged to have slammed doors on her way out to work, the Respondent being concerned that other occupants would be disturbed. The Applicant in turn alleges that the Respondent's wife kicked her, and the Respondent swore at her.
14. What is also common ground is that the Applicant returned from work the same day at about 7am to find the locks changed to the front entrance door of the Property.
15. The Police were called, but the Applicant did not hear the discussion between them and the Respondent. The Police assisted her to move to a Travelodge with all her belongings.
16. On the same day, the Respondent returned to the Applicant £400 out of her deposit of £440. £40 was deducted for the cost of the new lock/keys.
17. On a date unknown, the Applicant obtained advice from Chelmsford City Council and from the Citizens Advice Bureau.
18. It appears the Applicant left the Travelodge on or about 27 February 2021.
19. The Applicant then alleges the Respondent gave her a poor tenancy reference on 1 April 2021.

The Application

20. By her application, which appears to have been filed on or around 30 March 2021, the Applicant sought a rent repayment order of:
 - (1) £330, being 3 weeks' rent;
 - (2) Cost of room in the Travelodge £314.89;
 - (3) Unrefunded deposit of £40.

21. In the Tribunal directions of 17 May 2021, as confirmed by us at the hearing, it was explained to the Applicant that the Tribunal has no jurisdiction as regards (2) and (3) above.
22. The grounds for the rent repayment order are stated baldly in the Application, being:
- (1) Unlicensed HMO;
 - (2) Replacing front door lock without notice;
 - (3) Improper behaviour.
23. The Applicant put in an expanded statement of case on 6 June 2021.
24. The Respondent put his case in writing to the Tribunal on 16 June 2021. In brief he states:
- He was allowed to have a guest
 - There were 4 households: the Applicant, the Respondent and his wife, K Burke, J Fitts
 - The Applicant was given a month's notice after she refused to self-isolate
 - The Applicant was unpleasant to them and had no respect for the Property
 - He did change the lock to the front entrance door
 - He did return only £400 of the deposit, the remainder was withheld for the cost of changing the lock and getting new keys cut
 - He had given an honest reference in respect of the Applicant.
25. The Applicant filed a brief reply on 17 June 2021.

The Issues

26. On 17 May 2021 directions were given in this matter by Regional Judge Wayte. The Judge identified the following issues to be determined:
- (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

- (2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.
- (3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
- (4) What is the maximum amount that can be ordered under section 44(3) of the Act?
- (5) 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 being convicted of an offence?
 - (d) The conduct of the tenant?
 - (e) Any other factors?

The Hearing

27. This was a remote hearing which was not objected to by the parties. A face-to-face hearing was not held, because it was not practicable on account of the Coronavirus restrictions, and all issues could be determined in a remote hearing. On 17 May 2021, the Tribunal gave directions that any remote hearing would be likely to be conducted by telephone or video. The Tribunal confirmed the above direction that the hearing be in private and recorded on Cloud Video Platform. The documents before the Tribunal were contained in an Applicants' bundle, a Respondent's bundle, and the Applicant's 1 page reply.
28. The Applicant was assisted by an interpreter, Mr Peter Zpevak. The Tribunal was satisfied that the Applicant, in the interests of justice, required his services, especially given some of the technical issues and legal language to be used, albeit that the Applicant could speak, read and understand English well at times.
29. The Tribunal reminded the parties that the standard and burden of proof lay on the Applicant to establish an offence beyond reasonable doubt, but any defence of reasonable excuse raised by the Respondent need only be proved on balance of probability.

30. The Tribunal explained that it appeared that the following potential offences might be engaged in this case:

(1) Section 72 of the Housing Act 2004 (control or management of unlicensed House in Multiple Occupation);

(2) Section 1(2) of the Protection from Eviction Act 1977: unlawful eviction;

(3) Section 1(3) and/or (3A) of the Protection from Eviction Act 1977: harassment of an occupier.

31. The Tribunal therefore explained briefly to both parties the constituent elements of each offence.

32. The Tribunal took the opportunity to remind the Respondent that while he could not be prosecuted for any offences for which a financial penalty had been imposed, he could be prosecuted for other matters admitted by him or in respect of which the Tribunal made findings of fact; that he did not have to answer any question or make any statement which might tend to incriminate him, although the Tribunal might draw an adverse inference from his failure to answer. The Respondent indicated that he wished to proceed.

33. The Applicant gave her evidence first. She confirmed there was no written occupation agreement. She said the Respondent was against it. She confirmed that it was agreed with the Respondent that it would be ok for her to go to work at 1am. The Tribunal asked her to confirm the terms of the agreement as stated in the Application. She did so, adding that the terms were reached at the viewing. She said she had contacted someone in the Council, and someone called David from the CAB who expressed an opinion the Applicant had been unlawfully evicted. She gave the Tribunal the CAB reference number.

34. She explained that on the morning of the unlawful eviction she rose to leave, in order to start work at 1am. She did not want to make a noise going to work. She forgot her rear light to her bicycle or her helmet, however, and had to go back upstairs. She says that, within a few seconds, both the Respondent and Emanuelle ran up the stairs and stood in front of her. They were both very angry. Manu kicked the Applicant's hand, she alleged. Every other word the Respondent said was a swear word. He was shouting about the noise she had been making. She got the feeling they would not let her leave for work. She said she would call the Police and they stepped back. She then went to work until 6.30am. When she returned from work at about 7am, she could not open

the front door with her key, and was ringing the bell, but with no answer. She contacted a colleague, Mr Fisher, who helped her by calling the Police, who arrived within 15 minutes. The Respondent was inside, and opened the door to the Police. The Police asked the Applicant to stay outside. When the Police came back outside, they asked the Applicant where she wanted to move next. No further explanation was given.

35. The Applicant explained that Manu had sent the message on 28 February 2021 at 15:58 giving 1 month notice to vacate, and that was the first time she had been given notice. She confirmed she thought she had until 28 March 2021 to leave, but the locks had been changed on 16 March 2021. She confirmed she believed it had been agreed by both parties that each of them could give 1 months' notice to terminate their agreement.
36. The Applicant confirmed her proof of payment of rent by reference to the text messages from Mr Smith.
37. The Applicant submitted the Tribunal should exercise its discretion to make an order because the eviction was unlawful. She stated she was still contending the Property was a HMO, based on advice from the CAB, although she was no expert and did not fully understand the licensing aspect.
38. Mr Smith then gave evidence. He stated he relied on his written defence. He said he strongly denied his wife Manu had kicked the Applicant's hand. He did agree there was a heated argument, but for 2 minutes only. He admitted he would have said the f-word a few times. The Tribunal asked why the argument was so heated. The Respondent said it was a build-up of things, not just that evening. He himself had to get up for work at 5am. The Applicant was wholly ignoring them, and then there was the issue of the Applicant not self-isolating; in his line of work he was seeing people die all the time, working as he did on Covid Positive wards for the NHS.
39. The Respondent said he could have asked the Applicant to leave at any time, but when asked by the Tribunal about this, he accepted the Applicant was entitled to 1 months' notice, and accepted this had been expressly discussed. He said he felt the Applicant was breaking the law, and he was protecting people from catching Covid-19. He accepted that notice to vacate was given on 28 February 2021 and the locks were changed on 16 March 2021. He accepted this was less than 1 months' notice. He said he had nothing else to add to his letter.

40. As to the HMO situation, the Respondent said he had spoken to the Council to find out the law. He said he was told he was allowed to have a guest. When the Tribunal ventured that it appears that there were 5 persons from 2 or more households even excluding Ms Poleti, the Respondent stated he thought he may have been misled by the Council. He confirmed he did not ask the Council to put anything in writing, in terms of any advice he had been given.
41. When asked about the statutory factors the Tribunal is to consider, the Respondent said he did not want to add to his written defence, except to say that if he has made a mistake, he accepts it.
42. The Respondent further stated that he had found the Applicant to be unreasonable in not sticking to the Covid rules. He clarified he was not in his bedroom on the Applicant's last night. His concern was that the other occupants might want to move out if they were disturbed, and it hadn't been just that night. He stated that he had not been woken that evening, but had been watching a film with his wife. He accepted his heated argument with the Applicant would have been likely to have woken the other occupants up. He stated that other occupants had not complained about the Applicant, as they were very laid back. He disagreed that the Applicant did not slam the bathroom and bedroom doors.
43. He further explained that his wife's guest Bruna had been on a flight from Brazil, and there was a person with Covid-19 on it. He had to phone work, because he could not work in a hospital with that sort of thing going on. He indicated Bruna was contacted by NHS track and trace, and passed the phone to the Applicant. He was not privy to the conversation, but he told the Tribunal that he understood everyone in the house had to self-isolate, including the Applicant, but she did not, because she went to work.
44. The Applicant claims that the following morning Bruna told her that she did not have to self-isolate, so she did go to work, but this was only after a day or two, because initially she could not get through to them. She added that when she called the NHS, they told her she did not have to self-isolate. She could not say who she spoke to.

Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

45. The Tribunal is satisfied beyond reasonable doubt that between 24 February 2021 and 16 March 2021 the property satisfied the definition of a house in

multiple occupation (HMO) on the standard test, yet was not suitably licensed. The Applicant was 1 household, and the Respondent and his wife another. Even excluding the other occupants, there were 2 households. There were at least 5 persons in occupation as their only or main residence. These included the Applicant, the Respondent, Manu, and the 2 “lodgers”. The Application at least paid for her occupation. The 5 persons shared kitchen and bathroom and WC. The other requirements of s.254(2) were also satisfied.

46. The Tribunal is further satisfied that the Respondent was at all material times a person having control of the premises, being in receipt of the rack rents for the Applicant’s room.

47. The Respondent did not advance a defence of reasonable excuse, but in any event the Tribunal does not consider that any of the matters advanced by the Respondent orally or in writing amount to a defence of reasonable excuse for the purposes of section 72(5) of the 2004 Act.

48. As to the allegation of unlawful eviction, the Tribunal is satisfied that the Respondent committed such an offence on 16 March 2021. He accepted that he did not give the month’s notice which the parties had agreed. He did not advance any case that he believed and had reasonable cause to believe the Applicant had given up occupation. He therefore unlawfully deprived the Applicant of her room, without reasonable excuse, contrary to s.1(2) of the Protection from Eviction Act 1977.

49. The Tribunal is not satisfied beyond reasonable doubt as to any offence under s.1(3) or (3A) of that Act. The Tribunal is not satisfied either that the Respondent harassed the Applicant, nor that he committed such acts with intent to, or knowing they would, cause the Applicant to give up the occupation of the Property. Neither party adduced independent evidence of the events leading up to the unlawful eviction, and the Tribunal could not be satisfied the Applicant had discharged the burden of proof on her.

The offence related to housing that, at the time of the offence, was let to the tenant

50. For the reasons already given under the first issue, the Tribunal finds this matter satisfied beyond reasonable doubt.

Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

51. For all the reasons given under the previous 2 issues, the Tribunal finds beyond reasonable doubt that the Respondent committed 2 offences on dates between 24 February 2021 and 16 March 2021.
52. At least 1 offence was therefore committed on at least 1 day within the period of 12 months preceding the applications made in November 2020.

What is the maximum amount that can be ordered under section 44(3) of the 2016 Act?

53. By section 44 of the 2016 Act, the amount must relate to rent paid by the Applicant in respect of a period not exceeding 12 months during which the landlord was committing the offence: s.44(2).
54. It was an agreed fact that all the payments alleged by the Applicants were made in the sums set out in the Application, i.e. £330.
55. There was no evidence of receipt of universal credit to deduct from any rental payment.
56. Accordingly, the maximum amount is £330.

What account must be taken of the matters in s.44(4) or any other factors?

57. The Tribunal does not find any adverse conduct issues which might impact on the level of the award. Neither the Applicant nor the Respondents adduced any independent evidence of the alleged behaviour by the other party, or what they had been told by the authorities, whether that was the Council, the CAB or anybody else.
58. There was no evidence the Respondent had been convicted of an offence by the relevant Council.
59. The Tribunal is mindful of the following recent caselaw:
60. The case of *Vadamayalan v Stewart* [2020] UKUT 183 (LC) suggests that the “obvious starting point” for a rent repayment order is the maximum rent paid (up to 12 months) in section 44(2).
61. However, there has been an explanation, if not something of a retreat, from *Vadamayalan*: see *Ficcara v James* [2021] UKUT 38 (LC) at para. 49-51 and *Awad v Hooley* [2021] UKUT 005 (LC) at paras 39-40. *Vadamayalan*

“should not be treated as the last word on the exercise of the [statutory] discretion”, per Martin Rodger QC at para 51 of *Ficcara*.

62. The Tribunal is not limited to the statutory factors (*Ficcara*, para. 31).
63. As to conduct (section 44(4)(a)), the fact that a landlord is not a professional landlord and had no idea they needed a licence is one of the relevant factors: see *Awad v Hooley* [2021] UKUT 005 (LC).
64. On the other hand, the rent repayment order scheme is not meant to be compensatory. It is a punitive regime: *Ficcara v James* [2021] UKUT 38 (LC) at paras. 31 and 39.
65. Considering all the relevant factual circumstances against the backdrop of the law, the Tribunal reaches its conclusions as follows:
66. The Tribunal does not consider this case to be one of deliberate evasion of a responsibility to licence a HMO, although the offence was still committed. On the other hand, the unlawful eviction of the Applicant was wilful and inexcusable.
67. The Tribunal concludes that it should make a rent repayment order, and there is (in all the circumstances) no reason to depart from the initial starting point of £330.

Conclusions

68. The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay to the Applicant the sum of £330 within 35 days of the date of this decision.
69. By virtue of section 47 of the Housing and Planning Act 2016, the above amount is recoverable by the Applicant as a debt.
70. The Tribunal further determines that the Respondent shall reimburse the Applicant’s fee for the issue of the application in the sum of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

Judge: _____
S J Evans

Date:
13/9/21

ANNEX – 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 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 to 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.

Appendix 1

Housing and Planning Act 2016

Section 40

(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 ...

(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.

Act	section	general description of offence
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

Section 41

(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.

Section 43

(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 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)

...

Section 44

(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.

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

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.

(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 the 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.

Housing Act 2004

Section 72

Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2)...
- (3)...
- (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.

254 Meaning of “house in multiple occupation

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if— (a) it meets the conditions in subsection (2) (“the standard test”); (b) it meets the conditions in subsection (3) (“the self-contained flat test”); (c) it meets the conditions in subsection (4) (“the converted building test”); (d) an HMO declaration is in force in respect of it under section 255; or (e) it is a converted block of flats to which section 257 applies.

- (2) A building or a part of a building meets the **standard test** if—
- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect

of at least one of those persons' occupation of the living accommodation; and (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

- (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).
- (4) A building or a part of a building meets the **converted building test** if—
- (a) it is a converted building;
 - (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
 - (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (d) 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);
 - (e) their occupation of the living accommodation constitutes the only use of that accommodation; and
 - (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

- (8) In this section— “basic amenities” means— (a) a toilet, (b) personal washing facilities, or (c) cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

“self-contained flat” means a separate set of premises (whether or not on the same floor)— (a) which forms part of a building; (b) either the whole or a material part of which lies above or below some other part of the building; and (c) in which all three basic amenities are available for the exclusive use of its occupants.

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

- (1) In this Act “*person having control*”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of

another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “*rack-rent*” means a rent which is not less than 2-thirds of the full net annual value of the premises.

(3) In this Act “*person managing*” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

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

“4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the [Housing] Act [2004] 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.”