FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/45UE/HMJ/2020/0001
Property	**:**	11 Haywards, Crawley, West Sussex RH10 3TR
Applicant	**:**	David Soanes
Representative	**:**	None
Respondent	**:**	Mr Mohammad Zohaib Farooq Miss Shamim A Farooq
Representative	**:**	None
Type of Application	**:**	Application for a rent repayment order by Tenant Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016
Tribunal Members	**:**	Judge H Lederman P Turner-Powell FRICS T Wong
Date and venue of hearing	**:**	4th March 2021 Remote: Cloud Video Platform
Date of Decision	**:**	6th April 2021

DECISION AND REASONS

Decision of the Tribunal

The Tribunal:

a. refuses the Applicant's request to the Tribunal dated 2nd March 2021 to issue a witness summons to Denise Burly of Data Protection Department Tesco Card, PC Smith and Sergeant Sawyer of Sussex Police Force to attend the hearing of this application;

b. dismisses this application for a Rent Repayment Order ("RRO").

c. refuses the Applicant's request for reimbursement of application and hearing fees.

Reasons

The Application

1. The Tribunal is required to determine an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for an RRO in respect of 11 Haywards, Crawley, West Sussex RH10 3TR ("the premises"). The application form claimed rent paid from 09 November 2019 to 12 January 2020 amounting to £1157.95 (being £1165.00 less £7.05 for television use). The request to amend that figure to claim for a longer period in which rent was paid was not pursued at the hearing.

Structure of these reasons

2. These reasons address in summary form the key issues raised by the Applicant. They do not rehearse each and every point raised by the Applicant or debated. The Tribunal concentrates on those issues which in its view go to the heart of the application for an RRO.

The Premises

3. The premises were a semi-detached house with 4 bedrooms upstairs (one double and three single) and a single bedroom on the ground floor. There was a ground floor dining room, lounge, a bathroom/wc on the ground floor and kitchen. The double room on the first floor had an en-suite toilet /bathroom. The Applicant occupied a room on the first floor between 09 November 2019 and 12 February 2020.

Procedural history and background to the Decision

3 On 9 June 2020, the Tribunal received the application asking for an RRO in the sum of £1157.95 against the Respondent landlord. At that stage, the Applicant requested that no hearing date was given until proceedings he

had commenced against the Respondents were heard at Brighton County Court.

4 On 15th June 2020, the Tribunal directed that the RRO application was stayed until 15 September 2020 and the Applicant should apply to reinstate proceedings by no later than 14 September 2020. It was directed that if he failed to do so, the application would be struck out without further notice. The Tribunal received a written request from the Applicant dated 22nd August 2020 asking that the Tribunal "stay the application for a rent refund order until" the latest of the following:

> "(a) the conclusion of the judicial review proceedings (and any subsequent prosecution and conviction) against the refusal of Crawley Borough Council to prosecute the respondents herein and Mr Jun 'Tim' He (FTT case no CHI/43UE/HMF/2019/0016 Soanes -v- Jun 'Tim' He) for illegally eviction the applicant and owning and managing an unlicensed HMO
>
> (b) the conclusion of the private prosecution in the offing of the respondents herein by the applicant for alleged breach of section 72(1) of the Housing Act 2004 (Unlicensed HMO) and section 238 (1) and section 238(2) of Housing Act 2004"

5 On 16 October 2020 the Tribunal refused the request for a further stay and directed the Applicant to send to the Tribunal and to the Respondent's representative by 4 pm on 15th November 2020:

a. Evidence he intended to give supported by a statement of truth;
b. copies of all documents, statements, evidence or other materials that he intends to rely upon in support of his application at hearing on the assumption it takes place remotely by cloud video platform

The full reasons for that decision have been given separately.

In November 2020 the Applicant (by written application) asked the Tribunal to:

a. grant permission to amend the sum claimed to £1697.27 for the RRO. The reason given was the Applicant realised "that he can claim RRO for entire period of his stay from 9 Nov 2019 to 12 Feb 2020 for illegal eviction, in breach of Protection from Eviction Act 1977 and Criminal Law Act 1977. ..... the applicant prays to amend the amount claimed to £1712.85 (daily rate £18.03 - 95 days - £1712.85 less fees for TV at daily rate of £0.164 – 95 days £15.58. Balance £1697.27."

b. "Stay the order of this Tribunal dated 16 October 2020 refusing a stay

(a) until the Honourable Court of Appeal have ruled on claim appeal C1/2020/1736 Soanes -v- Crawley Borough Council and any subsequent prosecution or conviction or civil penalty order

(b) Until the High Court have ruled on the applicant's application for judicial review of the Honourable DJ Kelly's refusal to sign summons against Mr Farooq and Miss Farooq for alleged breach of s.72(1) and section 238 (1) and section 238(2) of Housing Act 2004"

The Applicant produced 4 Bundles of documents to support that application described as A, B C and D. He later sought to utilise those bundles at the final hearing of this application.

6 On 18th December 2020 the Tribunal refused the Applicant's request for permission to appeal against its order of 16th October 2020 and gave directions for serving and filing of further evidence. Among other things the Applicant was required to file and serve by way of Reply the evidence he intended to rely upon on 27th January 2021.

7 On 5th February 2021 the Upper Tribunal (Lands Chamber) refused the Applicant permission to appeal against this Tribunal's order made on 16 October 2020. In the course of that decision the Upper Tribunal made the following comments about the Applicant's suggestion that the First tier Tribunal Judges who had previously made orders or gave directions in cases concerning the Applicant were biased against him:

> "There is absolutely no basis for the suggestion that the FTT judge (or other judges whom the applicant identifies) are biased against him. Coming to a decision which the applicant disagrees with is not evidence of bias."

8 On 1st March 2021 the Tribunal Judge provided a separate written ruling which explained the difficulties and issues arising from the Applicant's application of 25th February 2021 concerning his proposed use of bundles for the remote hearing listed on 4th March 2021. No further details of the outcome of the Applicant's judicial review proceedings were provided to the Tribunal. There was no evidence of any prosecution for or convictions in relation to any of the various offences which the Applicant contends were committed by the Respondents. The Brighton County Court proceedings were mentioned in the Hearing Bundle and documents referred to the Tribunal in passing. The Applicant did not draw attention to any relevant findings or orders in those County Court proceedings.

Bundles of documents used at the hearing on 4th March 2021

9 Following the ruling on 1st March 2021 the Applicant produced a small bundle of 4 pages relating to his application for a witness summons and a bundle with pages numbers [327-351]. The Respondents produced a bundle with pages numbered [327 -329]. References to page numbers in these Reasons are to the combined bundle comprising of 326 numbered pages (the pagination on the left hand side of the bottom of each page being used).

The Applicant's request for permission to amend

10 The Tribunal Judge invited the Applicant to explain his request after initial introductions before the substantive hearing commenced. The Applicant said that he did not wish to pursue this request to amend.

The Applicant's request to issue a witness summons

11 As explained in the ruling of 1st March 2021, the Tribunal's provisional list of issues raised by the Rent Repayment Order ("RRO") application was:

a. Whether the Applicant can show to the criminal standard of proof that the Respondents were managing or in control of the premises as an unlicensed House in Multiple Occupation between 09 November 2019 and 12 January 2020 contrary to section 72 of the Housing Act 2004.

b. Whether the Respondents had reasonable excuse or other defence to that alleged offence.

c. Whether the Applicant can show to the criminal standard of proof that the Respondents were guilty of the offences of harassment and/or wrongful eviction contrary to section 1 of the Protection from Eviction Act 1977 ("PFE") as alleged in his "Grounds for making the application" (June 2020);

d. Whether the Applicant can show to the criminal standard of proof that the Respondents were guilty of an offence contrary to section 6(1) of the Criminal Law Act 1977 in respect of the allegation of "violent eviction" asserted in paragraph 10 of his "Grounds for making the application" (submitted June 2020 but bearing the date March 2020);

e. Whether a rent repayment order ("RRO") should be made under section 43 of the 2016 Act;

f. If such an order should be made, the amount of such an order. The conduct of the parties would be relevant to the amount of such an order.

13. It was against that background that the Applicant's request to the Tribunal to issue a witness summons was considered before the substantive hearing commenced. In relation to the request to issue a summons to Denise Burly of the Data Protection Department at Tesco Clubcard, the Applicant clarified that if such an order was made it would in his opinion provide evidence that Mrs Nadia Ali was occupying the premises during the relevant period and show she was one of 6 of tenants in occupation. This would be relevant (so the Applicant argued) to showing that an offence under section 72 of the Housing Act 2004 had been committed by the Respondents as the premises were a House in Multiple Occupation without a licence. He drew attention to the envelope from Tesco Clubcard addressed to Ms Nadia Ali at page [318]. His evidence was this envelope, showed that she was in occupation on 22nd December 2019. (Another part of his evidence appeared to contend that the envelope was post marked 31 October 2019 – see statement of case for injunction paragraph 2.a page [300]). Giving the Applicant the benefit of the doubt on this part of the argument, the Tribunal accepts that that evidence might have some potential relevance, to the issue of whether Ms Nadia Ali was in occupation of part of the premises at some point between 31 October 2019 and 22nd December 2019.

14. The address and other personal data concerning Nadia Ali held by Tesco Clubcard would not be determinative or even unequivocal evidence of occupation by the holder of the card as a residence at the relevant date. The fact that correspondence is addressed to a person at the premises does not necessarily provide evidence that that person was living there, let alone living there at the date of receipt of the letter. The Tribunal approached this issue against the background of a property where occupants were said to change – according to the evidence in the hearing bundle. The Tribunal's approach to this summons might have been very different had the request been made at one of the earlier stages in this application. The hearing had been fixed for 04 March 2021 for many months and there had been considerable passage of time since the events complained of.

15. Grant of the witness summons would have required an adjournment at cost to the public purse and considerable inconvenience to the parties. In particular there is evidence in the bundle that at least one of the Respondents found this litigation was giving rise to or aggravating ill health: see the General Practitioner's letter dated 17 February 2020 at [179]. Given the amounts at issue, and the absence of any explanation or good reason for not seeking issue of the summons at any earlier stage, the Tribunal considered it was not consistent with the overriding objective to grant a summons to secure Ms Burley's attendance or the records held by Tesco, unless an adjournment of the hearing would have been required for another reason. The Tribunal also took into account the fact that the request for issue of a summons relating to Tesco Clubcard may not have come to the attention of Ms Ali and involve disclosure of her personal data, upon which she had not been given the opportunity to make submissions.

16. The Tribunal gave separate consideration to whether a summons should be issued to require the attendance of PC Smith and Sergeant Sawyer of Sussex Police Force. The Tribunal enquired of the Applicant the purpose of the summons. It was to ascertain whether these police officers had evidence that the Respondents' account of events on 12th February 2020 to the effect that police officers gave advice that the locks to the premises should be changed following the altercation described in paragraph 9(o) of the Applicants' ground for making the application at [19]. The Respondents' account of this is at paragraphs 46 and 47 of the statement of Mr Mohammad Farooq of 18th January 2021 at page 42 of the bundle and paragraph 5.12 on page [49]. The Tribunal is far from satisfied that the evidence of PC Smith and Sergeant Sawyer would be relevant to resolution of the key issues which arise from this incident for the purpose of deciding whether an offence under sections 1(2), 1(3) or 1(3A) of PFE was committed. Even if those officers gave advice about changing the locks, it would not be a defence to any of those offences. However, assuming for this purpose that their evidence might be relevant to the accuracy or truthfulness of the Respondents' evidence, the Applicant has been aware of the identity and warrant number of PC Smith since 18th January 2021, but not taken steps to issue an application for a summons until 2 days before the hearing.

17. To secure the attendance of PC Smith or Sergeant Sawyer an adjournment would have been required. The Applicant initiated a complaint against PC Smith – according to statement made by him in judicial review proceedings, a copy of which he sent to the Tribunal on 25 February 2021. Making allowances for the fact that the Applicant does not have access to legal advice, the Tribunal finds that to issue this summons would disrupt the hearing fixed for 4th March 2021. The Applicant has experience of other legal proceedings and procedure. The Tribunal found it was not consistent with the overriding objective to grant a summons. There has been considerable delay and litigation initiated by the Applicant arising out of the events of 12th February 2020. It was in the interests of justice that this part of the litigation concerning the events of that date was brought to an end without further delay.

Introductions

18. The Tribunal explained a pre-condition for making an RRO was that the Applicant is able to show that a relevant offence specified in the 2016 Act was committed. A list of the relevant "housing" offences was given in the Tribunal's directions of 15th June 2020.

19. The Tribunal explained that it would only have regard to the evidence in these proceedings and would not take into account the evidence given in any other proceedings (whether in this Tribunal or elsewhere) unless shown to be relevant or admissible, and was contained in the evidence introduced in these proceedings.

The Applicant

20. The Applicant initiated a number of different legal challenges to decisions arising out of his occupation and loss of right to occupy the premises. It was evident from his written statements and the history set out above, that he had experience of legal terminology, concepts and procedure. He is articulate and sufficiently intelligent to be able to express himself clearly.

21. The Tribunal makes allowance for the fact that it is difficult for a litigant to present his own case and give evidence. Nevertheless the Tribunal formed the impression that the Applicant had convinced himself of the justice of his case and his complaints. In his evidence he found it difficult to contemplate that he might be mistaken or that his view of documents produced might not be shared by others. When asked about the documents presented as evidence for commission of offences, he appeared to assume that his recollection of events could not be doubted. None of this is to prejudge any of the allegations, but is the background against which the accuracy of his evidence had to be considered.

22. The Applicant's written submissions contained allegations that the Respondents and their solicitors were guilty of fraud or dishonesty, and had breached professional standards. By way of example. An offer of settlement made through the Respondents' solicitor was interpreted as a breach of professional standards and bribery: [187-191] (but also see the various allegations of breach of professional standards made against the Respondents' former solicitor Mr Scudder at pages [247-250] in Brighton County Court proceedings). These allegations are not simply the result of the Applicant's failure to understand the role of professional standards. The Applicant has also convinced himself of the misconduct of the various statutory bodies such as Crawley Borough Council and police officers who had become embroiled in his complaints about the Respondents and the premises. So much so, that on many occasions the Tribunal finds he was unable to provide objective or accurate evidence about the events and conduct that he complained of. The Tribunal found that on occasions when a decision was made which he disagreed he concluded that it was because of misconduct or bad faith on the part of the person who made the decision – such as the police officers or the local authority officers. The Tribunal has no predisposition as to the accuracy or otherwise of the Applicant's allegations. However, where an allegation of commission of a relevant criminal offence is made the Tribunal is required to see if there is evidence to support the allegation. References to corroboration and support in these reasons are not to formal rules of evidence but to the need for evidence to enable a Tribunal to be sure that an offence has been committed, in the absence of contemporary or independent evidence of commission of an offence. This is particularly important where there is some ground to doubt the reliability of evidence given by a key witness.

23. All of this means that that before reaching a finding of whether it was sure a criminal offence had been committed based upon the oral or written evidence of the Applicant, it looked carefully to see if there was

any independent evidence in support. The Tribunal bears in mind that the need for the Applicant to show a relevant offence has been committed beyond reasonable doubt does not mean beyond any doubt at all: *Opara v Olasemo* [2020] UKUT 96 (LC).

24. The Tribunal checked that all parties had the same copies of the bundles before the hearing started.

The allegation of control or management of an unlicensed HMO

25. The first offence alleged by the Applicant was the control or management by the Respondents of the premises said to be an "HMO" between 09 November 2019 and 12 January 2020 (Items 2-6 "grounds for making the application"), under section 72(1) of the 2004 Act. The Applicant alleges that between these dates the premises were "an unlicensed HMO". He says there were "Five other tenants were living there – Mr Jigar Ali, Nadia Ali in en-suite bedroom upstairs, Mr Dell ' Darren' May in an upstairs bedroom, Mr Syed Rizvi in another upstairs bedroom and Mr Michael Bowden in a bedroom downstairs": paragraph 2 grounds for making the application. He alleges that when he moved in that made a sixth tenant in occupation.

26. To evaluate this contention the Tribunal turns to the relevant statutory provisions. Section 72(1) of the 2004 Act provides that a person who has control of or manages an HMO required to be licensed under section 61 of the 2004 Act commits an offence if it is not so licensed. Section 72(5) of the 2004 Act provides that "In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that [the person accused] 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."
>
> (Tribunal's insertions)

27. Section 61(1) of the 2004 Act provides that "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."

The relevant part of the 2004 Act is Part 2. Section 55 of the 2004 Act is entitled "Licensing of HMOs to which this Part applies". Sections 55(1) and 55(2) provide:

"(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."

28. Article 4 of Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221 provides that "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."

References to "the Act" in that Order are to the 2004 Act: article 3.

29. No evidence was led to suggest that the area in which the premises were situated had been the subject of designation by the local authority. Nor did the Applicant so contend. The Tribunal leaves that possibility out of consideration.

30. The Tribunal turns to the definition in section 254(2) of the 2004 Act. This sets out what constitutes an HMO, falling within the "standard test":

"(a) it consists of one or more units of living accommodation not consisting of self-contained flats;
(b) the living accommodation is occupied by persons who do not form a single household;
(c) the living accommodation is occupied by the tenants as their only or main residence;
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable in respect of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities, namely the kitchen, a bathroom and a toilet."

31. Section 260 of the 2004 Act enacts a presumption that the occupation of living accommodation constitutes the only use of that accommodation where that issue arises in proceedings. There is no presumption (evidential or otherwise) in respect of any of the other elements of the standard test. The burden remains upon the Applicant to establish each element of the offences so the Tribunal is satisfied so that it is sure an offence was committed.

32. The Applicant approached this part of his case on the basis that the main point he had to establish was whether 5 people were living in the premises between 09 November 2019 and 12 January 2020. In particular, he had to satisfy the Tribunal beyond reasonable doubt that the living accommodation was occupied by the tenants as their only or main residence.

33. A person alleging an offence under of section 72(1) of 2004 Act is not required to prove that the accused knew that he had control of or managed a property which was an HMO, which was required to be licensed: *R. (on the application of Mohamed) v Waltham Forest LBC* [2020] EWHC 1083.

34. The Tribunal turns to the evidence of occupation of the premises by the other named occupants during the period in which the offence is alleged to have been committed.

35. The Applicant gave oral evidence at the hearing to the effect that five tenants were living there when he arrived in November 2019 - Mr Jigar Ali, Miss Nadia Ali in en-suite bedroom upstairs, Mr Dell ' Darren' May in an upstairs bedroom, Mr Syed Rizvi in another upstairs bedroom and Mr Michael Bowden in a bedroom downstairs). More detail was provided in the Applicant's document described as Statement of Case for an Injunction on 2nd March 2020 in Brighton County Court (Claim G00BN160) - paragraph 2 pages [300-301] (a redacted version of which follows):

"Owning & managing an unlicensed HMO, in breach of s 72(1) of Housing Act 2004

The [Respondents] have been managing an unlicensed HMO at 11 Haywards Crawley RH11 0EE inter alia between 9 November 2019 and about 14 January 2020. The [Applicant] can confirm that the subject property is not on the list of licensed HMO published by Crawley Council, as on 10 January 2020.

Tenants:

a. Nadia Ali. [.....9897]. Wife (not certain) of Jigar Ali. Lived in the bedroom upstairs with ensuite with Mr Jigar Ali. Heavy build. Tesco Clubcard Statement envelope marked ' Gatwick Mail Centre 31 Oct 2019. Attached herewith Metadata shows that photo taken on 22 December 2019 at 12.35

b. Dell May. [..... 3686]Drives big truck

c. Syed Rizvi. [..... 5733] Project Manager for Gatwick Airport; Client WH Smith. Please see his picture in attachment

d. Michael. Bowden [.....5978]. Buiilder/ Construction Company owner (*sic*)

e. Jigar Ali. [.....6869] Taxi or Hackney Driver; Muslim; Pakistani descent, speaks Urdu & Hindi. Heavy build. Currently his profile on whatsapp has many countries flags and a 5 year old (about) boy. Please see attachment. Previously his profile had Arabic script and his picture when he was slim.

The [Applicant] suspects that Mr Ali and Miss Ali left the property on or about 14 Jan 2020 when Miss Farooq and Mr Farooq copped on that they are going to 'face the music' in the same way as Mr Jun He did in the FTT on 3 Feb 2020 and Brighton County Court Crawley Council requires landlords to have HMO license when there are 5 or more persons from 2 or more households"

(Tribunal's insertions and redactions)

Secondly in paragraph 4 of the Applicant's grounds for making application he said:

"Mr Rizvi mentioned on 4 Dec 2019 that he is going to Nat West Bank in Crawley Town Centre to withdraw cash towards rent and whether the applicant wants a lift.

> After withdrawing cash, Mr Rizvi sent a text at 15.02 hours on 4 Dec 2019 Quote "Just going to Taj meet u there. Done with all "Unquote."

The Applicant relied upon that as evidence that Mr Rizvi was living at the premises as a tenant and using it as his principal home, taken with other evidence. By itself, the Tribunal found that evidence to be of little weight in showing that Mr Rizvi was a tenant at some stage in December 2019. It was equivocal evidence as to whether the premises were Mr Rizvi's principal or only home at the relevant period and the dates of his occupation.

The "Whats app group" evidence

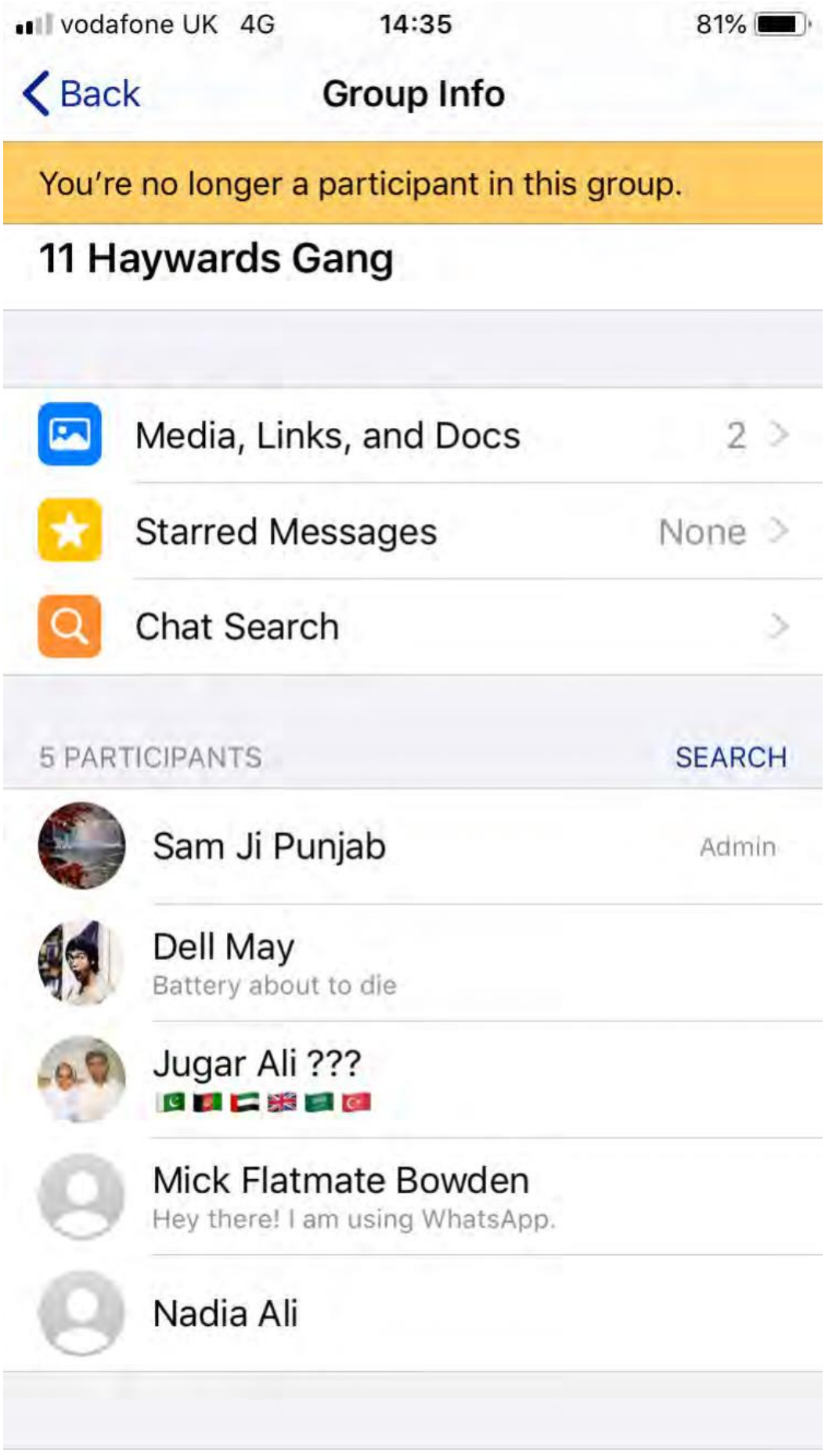
36. The Applicant pointed to the fact that "….. there were 6 tenants in the WhatsApp group 11 Haywards Gang created by [Shamin Farooq] as the admin user". This was in paragraph 17.a (page [248] and part of his skeleton argument for a claim for an injunction in Brighton County Court Claim G00BN160 - and part of the document described as an affidavit dated 02 March 2020 from him in the same case (paragraph 23 page [277]) where it was alleged:

> " [Mohammed Farooq] has fraudulently not disclosed that there were 5 tenants who were members of the WhatsApp group 11 Haywards Gang as on 9 Nov 2109 – Mr Rizvi, Mr May, Mr Bowden, Mr J Ali and Miss Nadia Ali. The claimant was added to the group on 9 Nov 2019 and removed on 15 Jan 2020."

The Tribunal has substituted the names of the parties for ease of understanding.

37. In addition the Applicant pointed to his Exhibits 37 and 36 at pages [324-325]. These appeared to be screenshots prints of (as described by the Applicant) "WhatsappChat Group 11 Haywards Gang". He relied upon these screenshots to show that these individuals were in occupation in the relevant period. These contained the following images:


vodafone UK 4G
14:35
81%
11 Haywards Gang
Dell May, Jugar, Mick Flatmate Bowden, Nadia, Sam Ji...
Thank you for your cooperation.
19:58
Dell May
Well if that is the case then we should employ a cleaner to do the communal area and everyone will just have to pay
20:11
I would be pleased to contribute to cleaning costs
20:12
Wed 15 Jan
Sam Ji Punjab
Hi all, due to recent events and the continuous problems arising in house, I am closing down the chat to minimise further conflicts between you guys. Please contact me directly in future.
22:54
Sam Ji Punjab removed Syed
Sam Ji Punjab removed you
You can't send messages to this group because you're no longer a participant.


vodafone UK 4G
14:35
81%
Back
Group Info
You're no longer a participant in this group.
11 Haywards Gang
Media, Links, and Docs
2
Starred Messages
None
Chat Search
5 PARTICIPANTS
SEARCH
Sam Ji Punjab
Admin
Dell May
Battery about to die
Jugar Ali ???
Mick Flatmate Bowden
Hey there! I am using WhatsApp.
Nadia Ali

The Tribunal raised the issue that these screenshots were undated and by themselves did not show that the participants were living at the premises or using the same as their only or principal home during the relevant period. In relation to the dates of the screenshots the Applicant's position was that his evidence about date was supported by his recollection and by what he referred to as "metadata" (The Applicant works as an online marketing consultant).

38. There was some corroboration for the Applicant's account of a Whatsapp group amongst the occupants of the premises by 2 screenshots of Whatsapp messages within the Respondents' evidence at pages [184 and 185]. These screenshots appeared to show that the Applicant was in Whataspp contact with the landlord about events concerning his occupation (and possibly the occupation of others) at the premises on 14th and 15th January 2020 respectively. Those screenshots did not confirm the other members of the Whataspp group, although by inference the Tribunal concludes those messages were from the Respondents.

39. The photograph of a person said to be Syed Rizvi at page [305] (purportedly attached to a screenshot with a date of 16 May 2020 added by the Applicant) was annexed to the Applicant's "Statement of case for Injunction" in the Brighton County Court proceedings dated 2nd March 2020 – at paragraph 2c page [301]. This is of no evidential value by itself in proving the identity of the person in the photograph, the date of the photograph or the date (if any) of his occupation of the premises. It does not provide support for the Applicant's allegation of commission of this offence.

40. Similar points may be made about the photograph of a person said to be Jugar Ali at page [309] (sic ? Jigar), also referred to in the Applicant's "Statement of case for Injunction" in the Brighton County Court proceedings. The date in that photograph is 18th March 2020 - on any view outside the period in issue. By themselves, these photographs are of little weight in proving that the persons depicted were tenants occupying the premises as their principal or only home. This is of significance as occupation by Jugar Ali and Nadia Ali in the relevant period is a key fact put in issue by the Respondents.

The evidence of envelopes/correspondence addressed to the premises

41. The Tribunal mentioned in the course of the hearing to assist the Applicant, that photographs of correspondence addressed to Mr S Rizvi at pages [311] and [312] of the Bundle were of very limited evidential weight to show that the addressee was in occupation as his principal or only residence in the relevant period. In relation to the dates which the Applicant attributed to these photographs 27 January 2020 and 22nd December 2019, within the bundle, he asserted that those dates were borne out by "metadata". There was no independent evidence to support those assertions, although the occupation of some of the persons the

Applicant referred to as tenants was not challenged by the Respondents. There was no visible date stamp on the envelopes. Even if the Tribunal had given the Applicant the benefit of the doubt about the dates upon which these photographs were taken, those dates would not establish the dates upon which the envelopes were delivered or received. Nor are those envelopes good evidence that the addressee was living at the premises during a particular period. Some of the photographs of envelopes the Applicant produced were addressed to persons who he accepted had not been in occupation of the premises in the relevant period.

42. The photograph of what was said to be Syed Rizvi's car at page [306] produced by the Applicant is not of any weight when considering the relevant issues for the Tribunal, nor is the date of 17 January 2020 which he attributes to that photograph. The photograph does not provide support for the contention that Syed Rizvi was using the premises as his only or principal home at the relevant time.

43. Similar observations may be made about the photograph of a Tesco club card envelope addressed to a Mrs N Ali which is at page [318], with one qualification. That envelope appears to bear a date stamp of 31 October 2019. Assuming without deciding, that the envelope was found at the premises, and assuming that Mrs N Ali is the same as the person referred to previously by the Applicant (i.e Nadia Ali), that post mark does not easily square with the date of 22nd December 2019 which is attributed to that photograph by the Applicant with his label "metadata". The difference in the dates raises a reasonable doubt about the dates when the person which the letter identifies as Mrs Ali, received the letter at the premises, and does not assist the Tribunal to make a finding that she lived at the premises at any relevant time.

44. The Applicant is on slightly stronger ground in relation to the photograph of address label of a parcel addressed to Michael Bowden at the premises which bears the date 12 January 2020 (consistently with the date of 13 January 2020 at [313] which the Applicant describes as "metadata"). That photograph would appear to show that a parcel was addressed to Michael Bowden at the premises on or around 12 January 2020. It does not show that he was occupying the premises as his main residence at that time by itself. It could be taken as evidence supporting the contention in Whatsapp group evidence that Michael Bowden was a tenant at some point between 12th and 15th January 2020.

45. The photograph of the label addressed to Dell May at page [316] has been attributed a "Metadata" date of 27 January 2020 by the Applicant. There is no other support for that date attributed to that photograph. As the Whataspp group was (on the Applicant's case) closed on 15th January 2020, it does not provide evidence for the contention that Dell May was part of the Whataspp group before 15th January 2020. The photograph of what was said to be Michael Bowden's van at page [308] produced by the Applicant is not of any weight when considering the relevant issues for the Tribunal, nor is the date of 19 January 2020 which he attributes to that photograph.

The Respondents' evidence on the issue of occupation of the premises

46. Before the Respondents gave evidence and commenced their case they were informed that they need not give evidence or introduce the documents in their bundle as evidence, but could simply make observations (arguments) and rely upon any perceived failures or omissions to prove his case, without the Tribunal drawing adverse inferences from their omission to give evidence. The Respondents decided that they wished to rely upon the various bundles and give evidence. They had the benefit of independent legal advice until a point in late 2020.

47. The Tribunal turns to consider whether the Respondent's evidence provides any support for his allegation of breach of section 72 of the 2004 Act at the relevant dates. In summary, the Respondents' say the premises were an HMO when the Applicant was in occupation but it was not licensable: see paragraph 3 of Respondents' "Response to Claimant's allegations" (undated) paragraph 3 page [47]. The Respondents rely upon the views expressed by Chris Modder Private Sector Housing Manager of Crawley Brough Council in his e-mail of 14 February 2020 at page [95] to their former solicitor Mr Scudder as follows:

> "From: Modder, Chris <Chris.Modder@crawley.gov.uk>
> Sent: 14 February 2020 09:54
> To: Leonard Scudder
>
> Subject: 11 Haywards, Pound Hill
>
> Dear Mr Scudder,
>
> I can confirm the above property was a House in Multiple Occupation at the time of my inspection on 14th January 2020. However, the property was NOT a licensable HMO at the time as there was not 5 persons living in the house. The self-contained 1st floor unit was clearly un-occupied on the day of my visit.
>
> Given the information supplied by Mr Soanes, I do now need to re-inspect the property and have set aside 2pm on Wednesday 19th February 2020. Can you please confirm with your client that this date and time is convenient for them.
>
> Kind regards
> Chris Modder
> Private Sector Housing Manager"

48. The Respondents also rely upon a subsequent letter from Mr Modder of 26 March 2020 at pages [98-99] the relevant parts of which expressed the view that as they were occupied by 4 persons or 4 households the premises were not a *licensable* HMO. The Tribunal is not bound by the views expressed by Mr Modder or Crawley Borough Council. The Tribunal takes into account the contents of that letter, at least as to the findings of Mr Modder on inspection of the premises.

49. The Tribunal turns to the Respondents' other evidence about occupation of the premises in the relevant period. The following parts of the Respondents' evidence provide some support to the Applicant's case that the premises were occupied by 5 persons who were not part of the same household in the relevant period:

    a. The "Witness statement of Syed Rizvi" dated 05 August 2020 at pages [57-58]. This confirms that he was a tenant of the premises in the period when the Applicant was in occupation. The dates are not given. It is clear they were living in separate households but sharing the wc and kitchen facilities. There are copies of e-mails of 13 January 200 at [67] and texts at [75] (November 2019) expressing concern about the Applicant's conduct.

    b. The "Witness statement of Michael Bowden" dated 16 January 2021 at pages [59-60]. This confirms that he was a tenant of the premises in the period from November 2019 when the Applicant arrived and by inference until he ceased occupation. There are copies of e-mails from Michael Bowden to the Respondents complaining of the Applicant's behaviour dated 02 January 2020, 04 January 2020 and 13 January 2020 at [64-66] and 20 January 2020 at [69-72].

    c. The "Witness statement of Derek May" dated 14 January 2021 at pages [61-62] and an e-mail from him dated 26 February 2020 at [93]. These confirm that he was a tenant of the premises in the period when the Applicant was in occupation. There are copies of texts from David May in January and February 2020 at [77].

51. For the purpose of this part of the decision the Tribunal does not need to make findings about the truth or accuracy of the various complaints about the conduct of the Applicant whilst he was in the premises. The statements texts and e-mails in the Respondents' part of the Bundle provide evidence of occupation of Michael Bowden, Derek May and Syed Rizvi. They do not evidence occupation of the premises by Jigar Ali or Nadia Ali during the relevant period between November 2019 and February 2020. In his favour the Applicant has been consistent in his assertions that 6 individuals were in occupation of the premises during this relevant period between November 2019 and February 2020 including Jigar Ali or Nadia Ali: see for example the exchange of e-mails

with Mr Scudder the Respondents' solicitor in late January 2020 at [143].

52. Ultimately, this comes down to whether the Tribunal found the Applicant to be a credible and reliable witness who had persuaded the Tribunal so they were sure of his account in preference to the Respondents' version of events. The Tribunal has been troubled by a number of parts of the Applicant's evidence in addition to the matters raised at the beginning of these reasons. These include:

    a. The suggestion made in the correspondence in parts of the hearing bundle that the Applicant deliberately conducted himself so as to be a nuisance to other occupants and provoke an altercation;

    b. The allegations of excessive and disproportionate correspondence by the Applicant with Crawley Council relating to his occupation of 5 separate properties in the Crawley area and that Council's alleged failure to intervene or prosecute landlords who the Applicant alleged had committed housing offences: see the Council's letter of 09 April 2020 at [101-103];

    c. The apparent willingness of the Applicant to make allegations of perjury, perverting the cause of justice and defamation in e-mails such as that of 04 February 2020 at [147];

    d. The suggestion made in the correspondence that he engaged in litigation with a view to profit;

    e. The concerns expressed in the witness statements of Messrs Bowden and May that the Applicant obtained correspondence addressed to them at the premises without their consent or knowledge and removed it to his room at the premises;

The Tribunal makes allowances for the Applicant as an unrepresented litigant in person who had a fervent belief in the justice of his cause. The Tribunal makes no finding about the underlying allegations made by the Applicant, their truth or accuracy or the truth of the allegations made against him. It suffices to say that the volume and ferocity with which serious allegations are made, causes the Tribunal real concern about his reliability as a witness. The allegations made against the Applicant by the other occupants, the Respondents and Crawley Council raise a reasonable doubt about the reliability of his evidence about occupation of the premises where it conflicts with evidence tendered on behalf of the Respondents. They cast doubt upon the Applicant's reliability and his ability to give accurate or objective evidence where it conflicts with his feelings of injustice.

Whether the Applicant can show to the criminal standard of proof that the Respondents were guilty of the offences of harassment contrary to section 1 of the Protection from Eviction Act 1977 ("PFE") as alleged in his "Grounds for making the application" (June 2020);

53. The Applicant is required to show that one or more of the acts of harassment complained of (either alone or taken with other things) were "acts" done by or on behalf of the Respondents

> "with intent to cause [the Applicant] .....
>
> (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;

and were an act or acts done "[likely] to interfere with the peace or comfort" of the Applicant, or amounted to a persistent withdrawal or withholding of services which he would have "reasonably required for the occupation of the premises as a residence" (section 1(3) of PFE);

It has been emphasised that a positive intent to cause the residential occupier to give up the premises has to be shown: see Ormrod J. in *McCall v Abelesz* [1976] Q.B. 585 at 598. In addition to intent, there must also be alleged and proved the element of calculated acts or of persistent withdrawal or withholding of services as appropriate.

54. Alternatively to make out an offence under section 1(3A) of PFE the Applicant must prove that one or more of the matters complained of (either alone or taken with other things) done by the Respondents were "likely to interfere with the peace or comfort" of the Applicant, or amounted to a persistent withdrawal or withholding services reasonably required for the occupation of the premises as a residence. In either case) the Applicant has to show the Respondents knew, or had reasonable cause to believe, the conduct was likely to cause him "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." (section 1(3A) of PFE).

It is a defence to an allegation under section 1(3A) of PFE that the Respondents "prove[..] that [they] had reasonable grounds for doing the acts or withdrawing or withholding the service in question": see section 1(3B) of PFE. The Respondents cannot be required to make out this defence, but once the evidential basis is laid the Applicant would have to disprove or establish that it could not succeed beyond reasonable doubt: compare *Polychronakis v Richards & Jerrom* [1998] Env LR 346.

55. Alternatively, the Applicant must show the matters complained of (or any of them) were an attempt to "unlawfully deprive" him of his occupation of the premises within the meaning of section 1(2) of the PFE. "unlawful

deprivation" of occupation must mean something more than conduct likely to cause the occupier to give up the occupation of the whole or part of the premises in section 1(3A) of PFE.

56. The Tribunal considers these in turn by reference to the "Grounds for making the application" paragraph 9 page [16] onwards.

Paragraphs 9(a), 9(b) and 9 (c) on page 17

57. The Applicant's criticisms and complaints in these paragraphs relate to events which occurred after his occupation of the premises had ceased or concern the Respondents' solicitors' conduct of litigation relating to his occupation. They do not fall within any of the relevant provisions of PFE.

Paragraphs 9(d) and 9(e) on page 17: allegations of disconnecting the broadband

58. The Applicant's complaints here are in essence that the broadband at the premises did not work or it was not fixed quickly or efficiently enough. This does not come close to showing that the Respondents had any role in the failure of the internet. Nor does the evidence show they did so with a view to doing an act "likely to interfere with the peace or comfort" of the Applicant, or this amounted to a persistent withdrawal or withholding services reasonably required for his occupation as a residence. The Applicant's complaint was that he could not use the broadband at the premises for his business. Internet was not required for his use as residence at the premises.

59. The Tribunal finds the Applicant has not proved that the broadband was interfered with or disrupted to the criminal standard, simply that it did not work to his satisfaction when he alleges he required it. Other occupants reported that the Applicant was seen tampering with the router. The Tribunal does not have sufficient material to make findings about the cause of any interruption to the internet service at the premises. It suffices that the Applicant has not shown that the Respondents had any role in that interruption to the criminal standard.

Not paying the Council tax - Paragraph 9(f) on page [17]

60. There is no documentary evidence about Council tax. Assuming for the sake of argument that Council tax was not paid by the Respondents in breach of agreement, the Applicant has not come close to showing that was done with the intent that is the Respondents knew, or had reasonable cause to believe, that the conduct was likely to cause the Applicant "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." (section 1(3A) of PFE). The Respondents assert that they paid Council tax: see paragraph 5.5 of their Response at page [48]. The Applicant has not come close to demonstrating that statement was incorrect.

Repeatedly asking the Applicant to leave the premises by text message - Paragraph 9(g) on page [17]

61. It was difficult to find many examples of the text messages referred to in the bundle but one example was text message dated 24 December 2019 at page [78] from the Respondents which read as follows:

> "14/12/2019, 15:21 - Shamim: Hi David
>
> Thank you for getting back to me. I appreciate it takes time but we really need the room back ASAP. We will try to help you speed up the process in anyway we can as it has been two weeks since we have given you notice to find somewhere suitable. Please check spareroom.com as there are presently over 200 available rooms within your budget range within Crawley.we request you to please work with us to part on good terms as we have a good relationship with you and would like to part ways on positive terms We can give positive feedback for reference should you require any. Thanks"

The Respondents replied to this at paragraph 5.6 on page [48] as follows:

> "Harassment by repeatedly asking the Claimant to vacate from the Property. We deny repeatedly asking the Claimant to vacate, in fact moving from the Property was a suggestion made by the Claimant himself, and we merely asked him about the progress of it in order to update the other tenants (as they were being disturbed constantly). We also assisted him in finding alternative accommodation and agreed to accept rent payment on a weekly basis. We were always polite when doing so but unfortunately, the Claimant would become aggressive whenever confronted on this matter. See Exhibit 2.13 "

The Applicant has not shown that text of 14 December 2019 or any other text from the Respondents was "[likely] to interfere with" his "peace or comfort". His communications at that time did not reveal distress or particular discomfort. There was subsequent correspondence from the Respondents' solicitor at about the time of the service of Notice to Quit, but that does not fall within this head of complaint.

Assertion of underpaying of rent – paragraph 9 (h) page 18

62. The Applicant complains the Respondents asked him for rent at the rate of £140.00 per week and alleged arrears of £42.00. The Respondents in paragraph 5.7 at page [48] say "Harassment by asking for rent. We deny this as the question of rent was merely an oversight in our calculations. The Claimant was not pursued after we became aware of the oversight."

63. The Applicant has not proved that this request for payment of arrears of rent was made with intent with intent to cause him to give up the occupation of the premises or to refrain from exercising any right or pursuing any remedy in respect of the premises.

The incident on 12th - 13th February 2020

64. The Applicant says that the circumstances leading up to him ceasing occupation (on his case an assault by agents of the Respondents) and being refused re-entry to the premises on 12th and 13th February 2020 amounted to wrongful eviction within section 1(2) of PFE. His complaint could also be read as saying that the assault was an act of harassment calculated to interfere with his peace and comfort and likely to cause him to give up occupation within section 1(3A) of PFE (a form of harassment).

65. The Applicant's case about this incident is set out in paragraphs 19(n) and 19(o) at page [19] ("Grounds for making the application") as follows:

> "n. On 11 Feb 2020 at 13.09 hours, Mr Scudder, the respondent's solicitor sent an email Quote "Dear David, Some remedial work is taking place tomorrow and perhaps the day after. I am writing to put you on notice of the same. Kind regards, Yours sincerely, Leonard Scudder"
>
> o. On 12 Feb 2020 at about 13.30 hours, the 2nd respondent and three alleged builders of Pakistani or Indian origin came to the property and within 3 minutes of arriving, the applicant was pushed against the sink by one of the builders, Mr Mohammad Hussain who was behind him. Mr Hussain tried to place a knife in the applicant's hand and claimed that the applicant tried to stab him with a knife. The applicant was then manhandled and dragged to the hall by Mr Hussain and the other two builders (A Mr Rajesh and 2nd builder sit on top of him in the hall, while the applicant was on the floor and Mr Hussain video recorded the alleged affray on his phone and called the police. The 2nd respondent was a silent spectator who video recorded the incident on his phone. When the applicant was released by the police at about 10 pm on said date, the applicant found that the locks have been changed at the subject property. The applicant stayed the night of 12 Feb 2020 at Travelodge Crawley for about £76.00 Mr Scudder has refused to provide the names, addresses and contact details of the alleged builders as well as photographs and video recording of the aforesaid affray."

66. The subsequent and associated incidents of his belongings being "dumped" outside the property are also complained of in paragraphs 9 q.

to 9 u and 9 x on pages [19-20] ("grounds for making application") as follows:

> "q. Agreeing to grant access to subject property between 7-8 pm on 13 Feb 2020, postponing time to 9.30 pm and in a volte face, denying access at 9.30 pm by email on the grounds that the other tenants object
> r. Dumping all his belongings outside the front door of subject property in black refuse bags on 20 Feb 2020 at about 12.01 pm, in breach of Torts (Interference with Goods) Act 1977
> s. The 1st respondent recorded the applicant taking his gear on 20 Feb 2020 at about 12.01 pm on the video camera on her phone despite the applicant's objection, in breach of article 8(1) of the Human Rights Act 1998 and in breach of confidence. A Sussex police offer was a witness to the said recording.
> t. Dumping all his belongings outside the front door of subject property in black refuse bags on 27 Feb 2020 at about 6 pm
> u. The 2nd respondent recorded the applicant taking his gear on 27 Feb 2020 at about 6 pm on the video camera on his phone despite the applicant's objection, in breach of article 8(1) of the Human Rights Act 1998 and in breach of confidence"
> x. asserts that Mr Modder Crawley Council) advised that the Applicant should be allowed to re-occupy his room at the premises on 13 February 2020 and 15 February 2020

67. The Respondents' case about these matters is found in part at pages [49 – 50] paragraphs 5.12 to 5.15 and 5.18:

> "5.12 Harassment in relation to the events of 12 February 2020. We deny harassment and dispute the [Applicant's] fabricated version of events. The [Applicant] violently attacked the builders which is why he was subsequently arrested (Crime Reference 47200026991). The builders were undertaking work under the Respondents' lawful instruction to fit fireproof doors, pursuant to the Crawley Borough Council's suggestion. PC Smith suggested that I change the locks and that I was entitled to do so under the given circumstances. Exhibits 1.5, 1.8
>
> Although the locks were changed, it was after Notice to Quit had expired. Mr. Scudder (Respondent's former legal representative at SAR) did not disclose the names, addresses, and contact details of the builders because they fear for their safety and do not wish to have their personal details made known to the [Applicant]. For this reason, one builder has omitted their personal details from their witness statement.

5.13 Harassment by not granting access to the Property. We deny harassment by not granting access to the Property because the tenants and both Respondents were extremely frightened of the [Applicant] following the incidents of 12 February. The tenants pleaded to not allow the [Applicant] back into the Property as they feared they would be killed or attacked by him. Exhibits 5.1, 5.2, 5.3. In any event, the [Applicant's] voluntary actions have afforded him the situation he finds himself in. His intent to attack a person with a knife, cause distress and fear to tenants, to the Respondents and their family, and behave in an antisocial manner is the reason for his exit from the Property and therefore it was not involuntary. The [Applicant's] actions are thought out and calculated as they mirror those in his previous tenancies. He has also proudly admitted this in the video recording where he states clearly that he has done the exact same with 3 other landlords. SEE EXHIBIT 4.5

5.14 Harassment by dumping belongings in breach of Torts (Interference of Goods) Act 1977 (the 'TA'). We deny harassment by dumping belongings and breaching the TA as these allegations are completely fabricated. The [Applicant's] belongings were placed in a bag and always kept locked in the garage of the Property, in a safe and secure place. As the [Applicant] refused to take all his belongings after we asked him to do so, he kept coming back every week for only a few items at a time. The police also stated that the [Applicant] was responsible for his belongings, yet we still stored the belongings in an attempt to not cause further issues given the nature of the [Applicant]. Exhibit 17.4 The police have recorded video footage of the 1st Respondent removing the [Applicant's] belongings from the garage and placing it outside on a sheltered porch, then putting the belongings back each time when the [Applicant] refused to take everything. We also reiterate the fact that any collection of the [Applicant's] belongings always required police presence. The third time, the police could not attend but had to be called in an emergency due to the [Applicant's] behaviour towards the Respondents and their family. Exhibit 17.5

5.15 Harassment by breaching Article 8 (1) of the Human Rights Act 1988. We deny harassment under Article 8 as the footage recorded showing the [Applicant] approaching the Property was not private, and therefore not a breach of his privacy. The police corrected the [Applicant] stating that it is not an offence to record someone on public property. Furthermore, the recording was taken in order to evidence the fact that (a) the Respondents have not

displaced any of the [Applicant's] belongings, and (b) that the Respondents have accommodated the [Applicant's] requests to collect belongings (c) have acted in an amicable manner."

"5.18. Harassment by not giving the [Applicant] keys to the Property. Although Mr. Modder of Crawley Borough Council advised to give the 5.18 Harassment by not giving the keys to the Property. Although Mr. Modder of Crawley Borough Council advised to give the [Applicant] keys, we feared for ours and our tenants' lives and felt forced to maintain ours and our tenants' safety by keeping the [Applicant] a volatile and aggressive man, outside of the Property. We wrote to the Council expressing we had no intention of breaking the law and we were willing to work with all parties for a peaceful resolution, but we have a duty of care to our tenants and wish to protect the tenants and ourselves from serious danger or harm. We also stipulated that if we were forced to allow the [Applicant] back into the Property, and someone is subsequently injured or killed, we would hold the Council responsible. The Council did not respond to this. Exhibit 6.2 "

68. The Tribunal finds there are stark conflicts of fact and evidence about:

a. What happened on 12th February 2020;
b. Whether the acts complained of on 12 February 2020 were carried out on behalf of the Respondents or at their direction or were a response by the individual builders to what they perceived as a threat or a provocation by the Applicant;
c. Whether the Respondents had reasonable grounds for denying access to the premises after the incident on 12 February 2020;
d. Whether the Respondents had reasonable grounds for photographing the Applicant (and whether that amounted to harassment as defined above under the PFE)
e. Whether the "dumping" of the Applicant's belongings amounted to an act of harassment (as defined above) under PFE or whether they were stored in such a way as to avoid the need for him to return inside the premises after 12th February 2020;
f. Whether the arrangements for collection of the Applicant's belongings amounted to harassment under the PFE

69. The Applicant's evidence on these issues was tendentious, hotly disputed and not corroborated or supported by any other witness in respect of any of the key events or upon the key elements of proving the offences under PFE such as intention. He failed to discredit the Respondents' evidence. He has not established that the offences he alleged were committed to the criminal standard. This is not to say that the Tribunal has sufficient evidence to reach findings as to precisely what occurred. It is just that the

evidence provided did not enable the Tribunal to be sure that the Applicant's account was correct or that the Respondents directed or authorised the alleged assault or had the requisite intention to deprive the Applicant of his residence at the premises. (For the purpose of section 1(3A) of PFE the Respondents as landlord could not have vicarious liability for the acts of others: see *R v Quereshi* [2012] 1 W.L.R. 694.).

The Applicant's allegations of breach of section 6(1) of the Criminal Law Act 1977

70. As the Tribunal explained to the Applicant, the relevant part of section 6 of the Criminal Law Act 1977 provides

> "6.— Violence for securing entry.
> (1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—
> (a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
> (b) the person using or threatening the violence knows that that is the case"

The Applicant contended that what he describes as "the violent eviction" on 12th February 2020 amounted to an offence under this provision: see paragraph 10 of his Grounds for making application page [22].

71. According to the Applicant, the events of 12th February 2020 were an illegal and violent attempt to evict him from the premises without due process or a Court order. Those events were not for the purpose of securing entry to the premises, an essential element of proving this offence. This allegation fails for that reason. It is misconceived.

Other allegations made in the Applicant's "Grounds for making application"

72. The Applicant complains of failure to protect his deposit and breaches of the Human Rights Act 1988, perjury, perverting the cause of justice, fraud and defamation. There are also allegations about the Notice to Quit. None of these are relevant Housing offences for the purpose of considering whether to make and rent repayment order under the 2016 Act.

73. These allegations are unhelpful and totally without merit.

Reimbursement of fees

74. The Tribunal declines to make any order for reimbursement of any hearing or application fees which may have been paid in view of the failure of this application.

Disposal

75. This application is dismissed.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.