



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

Case reference : CHI/24UB/HMB/2022/0001

Property : 36 Copenhagen Court, 32 New Street,
Basingstoke, Hampshire, RG21 7DT

Applicant : Mr Alan John Joseph Stamp

Representative : None

Respondent : HMAF Holding UK Ltd

Representative : The Home Cloud

Type of application : Application for a Rent Repayment Order
Sections 40, 41, 42, 43 & 45 of the
Housing and Planning Act 2016

Tribunal member(s) : Mrs. J Coupe FRICS
Judge J Dobson
Mr. T Sennett MA FCIEH

**Date Hearing
and venue** : Havant Justice Centre, Elmleigh Road,
Havant, PO9 2AL
12 May 2022

Date of decision : **28 June 2022**

DECISION

Summary of the Decision of the Tribunal

- 1. The Tribunal orders the Respondent to pay the Applicant the sum of £3,300.00 by way of a rent repayment order. Such sum to be paid within 28 days of this decision.**
- 2. The Tribunal orders the Respondent to reimburse the Applicant the application and hearing fees in the sum of £300.00. Such sum to be paid within 28 days of this decision.**

Background

3. By way of an application received on the 6 January 2022 the Applicant applied to the Tribunal for a Rent Repayment Order (“RRO”). The grounds of that application are set out in his application.
4. The Applicant is the tenant of 36 Copenhagen Court, 32 New Street, Basingstoke, Hampshire, RG21 7DT (“the Property”). The Respondent is the Landlord owner of the Property. The Property is a one bedroom flat within a converted office building of 38 units.
5. The Respondent let the Property to the Applicant under an Assured Shorthold Tenancy agreement dated 14 January 2021 which granted the Applicant a tenancy for 6 months from 19 January 2021 until the 18 July 2021 at a rent of £825.00 per calendar month.
6. The Applicant paid 6 months’ rent in advance, that being £4,950.00.
7. Following receipt of the Application the Tribunal issued Directions dated 4 March 2022 requiring the parties to submit their statements of case and any other documents upon which they would rely within a defined time period.
8. Both parties were required to provide a signed and dated statement, with a declaration of truth.
9. The Applicant was directed to quantify the amount of rent claimed, the period for which it was claimed and the offence which he alleged the Respondent had committed.
10. The Respondent was urged to seek independent legal advice and was directed to submit evidence relating to their financial circumstances and a statement as to any circumstances that could justify a reduction in the amount of any RRO.
11. The time limits in the Directions were adhered to however the Respondent did not provide a signed and dated statement of truth.
12. An electronic hearing bundle comprising 104 pages of documents; a voice recording of approximately 3-4 minutes; and a Dropbox link providing access to a number of documents submitted by the Respondent, was submitted.

The Hearing

13. The hearing was attended by the Applicant in person and, representatives for the Respondent, Ms. Choinski, Operations Manager of The Home Cloud, and Mr. Jewell, Director of The Home Cloud, both of whom joined the hearing by video link. The Home Cloud was the Respondent's appointed letting agent for the Property.

Applicant's Submissions

14. The Applicant alleged an offence, by the Respondent, under the Protection from Eviction Act 1977 and cited the following as examples of the Respondent's behaviour:

- a. Repeated issuing of 'fraudulent' invoices for monies not owed;
- b. Interference with the peace and comfort of his occupation;
- c. Attempts to illegally evict him or pressurise him into leaving his home;
- d. Advertising the property online despite being notified that he did not intend to vacate;
- e. The arrangement of multiple viewings despite being advised that permission for such was refused;
- f. Entry, in his absence and without permission, to undertake a viewing;
- g. Inappropriate email correspondence from Mr. Jewell;
- h. The refusal to attend mediation.

15. The Applicant's Assured Shorthold Tenancy commenced on the 19 January 2021 for an initial term of 6 months, for which the full rent of £4,950.00 was paid in advance.

16. The Applicant advised the Tribunal that his intention was to renew the tenancy upon the expiry of the fixed term, that being 18 July 2021. At the time of the initial letting, he advised that he was unable to satisfy referencing checks or provide a suitable guarantor and therefore, and in order to secure the tenancy, he advanced six months' rent, on the understanding that should he successfully meet credit checks or provide a guarantor upon the expiry of the fixed term, then he would be entitled to pay rent on a monthly basis from thereon.

17. As a consequence of the pandemic however he was unable to secure employment and, consequently, could not provide the income guarantee that the Respondent required. Nevertheless, he requested permission to pay the rent upon renewal on a monthly basis.

18. He claimed that the Respondent refused this request and, subsequently, issued a s.21 Notice for Possession. Such Notice was duly served on 27 July 2021 and provided a date of 18 December 2021 for vacating the Property.

19. The Applicant referred the Tribunal to Paragraph 2 of the signed Assured Shorthold Tenancy agreement which read: *'The Tenancy shall be from and including the 19th day of January 2021 (the Commencement Date) to and including the 18th day of July 2021 and thereafter from month-to-month and until terminated by either party serving a notice on the other in accordance with this Agreement*

(‘the Expiration Date’), ‘the Term’.

20. Further, he referred the Tribunal to page 3 of the tenancy agreement whereby, in the *‘Summary of Agreement’* the expiry date was noted as *‘18/07/2021 and thereafter from month-to-month’*.
21. The Applicant continued to pay rent at the original rate of £825.00 per month from July 2021 onwards and advised the Tribunal that all payments were up to date.
22. The Applicant contended that, upon expiry of the fixed term, the tenancy continued on a periodic basis for which rent was due, and duly paid, monthly.
23. In September 2021 the Applicant received four invoices for rent issued by The Home Cloud, each invoice being for the sum of £3,300. These were received on the 1st, 6th, 7th and 13th September.
24. Between the 28 September 2021 and 18 October 2021, the Applicant received a further six rental invoices, these being for £1,650 each, received 28th September; 30th September; 4th October; 11th October; 12th October; 18th October.
25. The Applicant again referred the Respondent to the tenancy agreement wherein it was documented that, upon expiry of the fixed term, the tenancy would continue of a periodic basis with rent due on a monthly basis, that being the 19th of each month. He advised the Applicant of his intention to pay rent monthly and that he considered the outstanding invoices were invalid.
26. He further advised the Respondent that the relevant end date for the period to which the invoice related was beyond the date set for vacating the property in December 2021 and, accordingly, even if the amounts were due, which he contested they were not, the sums demanded were incorrect.
27. The Applicant averred that the Respondent not only demanded money that was not due, that being six months’ rent in advance when only one month was payable, but that the sums were incorrect. Coupled with the alleged excessive frequency of the incorrect demands, it was the Applicant’s position that the Respondent’s actions caused him considerable distress, and, in his opinion, constituted harassment. He alleged the Respondents’ actions were an attempt to remove him from the Property prior to the conclusion of the legal process.
28. In further evidence of alleged harassment, the Applicant informed the Tribunal that, on 13 October 2021, The Home Cloud, on behalf of the Respondent, advertised the Property on Rightmove, an online rental platform, despite him notifying them of his preference to remain in occupation.
29. On 14 October 2021, The Home Cloud emailed the Applicant advising him of their intention to market the Property and advised him that they would provide 24 hours’ notice in advance of any viewings.

30. Notification of viewings were emailed by The Home Cloud to the Applicant on 15 October, 19 October, 25 October, 26 October, 27 October.
31. On 18 October the Applicant emailed The Home Cloud advising that he sought to renew the tenancy and referring them to the periodic status of his agreement. He advised The Home Cloud that he considered the issuing of multiple invoices as a form of harassment. Furthermore, he refused permission for viewings to take place, citing, amongst others, concerns relating to coronavirus however, by way of an alternative arrangement, he offered a possibility of virtual viewings in future, when viewings 'are necessary'.
32. The same day The Home Cloud replied by email advising the Applicant that, as per his tenancy agreement, he was obliged to provide access for viewings and, as such, the booked viewings would proceed. One of these bookings was arranged for the 23 October 2021.
33. On 20 October the Applicant again emailed the Respondent reiterating that access for viewings was denied. The Home Cloud responded that same day, advising him of his obligation under the tenancy agreement to provide access and reiterating that viewings would proceed. The Applicant advised the Tribunal that he considered these actions, collectively, to constitute a form of harassment and that, in his opinion, they were co-ordinated as such to force him to vacate the Property before he was legally required to do so.
34. The viewing on Saturday 23 October was booked for 12.45pm, for which the Applicant had refused permission to enter. Upon attending the Property and in the company of a potential new tenant, the representative from The Home Cloud was advised by the police that the Applicant had been taken into custody, along with some of his possessions. Once the police left the building the staff member entered the Property to conduct the viewing whereupon they found the residence to be in an unsatisfactory condition for showing to potential tenants. The Applicant contended that such entry was expressly against his instructions having, on at least two occasions notified the agent, in writing, that access for any viewings was refused. The Applicant claimed that such behaviour constituted harassment.
35. During his oral evidence the Applicant inferred a link between a complaint he made to The Home Cloud, plus his refusal to allow access for viewings, and The Home Cloud's co-operation with the police which may, or may not, have assisted the police in exercising his arrest. He noted the timing of his arrest to be convenient for the letting agent to carry out a viewing.
36. On 27 October the Applicant received an email from The Home Cloud advising him that an inventory clerk would be attending the Property at 09.30am on 18 December 2021 to complete the check out and that all personal belongings must be removed by that time. Having already notified the letting agent of his intention to remain in occupation, in part as he had nowhere else to go, the Applicant advised the Tribunal that the receipt of this email further increased the stress of the situation and added to the overall feeling of harassment.
37. The Applicant did not vacate the Property by the 18 December 2021 and, on the 20 December 2021, Mr. Jewell, Director of The Home Cloud, emailed

him advising that he was under instruction from the Respondent to seek a County Court Order for Possession. The Applicant claimed the tone of the email exerted further pressure on him to give up occupation and, as such, constituted harassment. Mr. Jewell wrote: 'I just wanted to reach out before I do this to make sure you are making the right decision in ignoring this. This will have long term consequences on you and your ability to rent in the future and I would strongly recommend co-operating in leaving the Property without the need for a court order'.

38. On 4 January 2022 The Home Cloud emailed the Applicant to advise they were applying for a Court Order.
39. In summary, the Applicant asserted that the Respondent persistently interfered with the peace and comfort of his occupation as evidenced by multiple demands for monies not owed; the arrangement of numerous viewings without his consent; advertising the Property online despite notification that he would not be vacating; entry to the Property in his absence and without consent, and that such behaviour constituted a relevant offence.
40. The Tribunal asked the Applicant whether he considered it reasonable that a landlord could carry out viewings of a tenanted property two months prior to the term end. He agreed that, in principle, this was an acceptable practice however his case differed in that he'd repeatedly made it clear to the letting agent that he intended remaining in the Property and that, as the letting was now on a periodic basis and subject to the possession order, the viewings arranged didn't fall within the last two months of his tenancy.
41. The Applicant claimed a RRO in the sum of £3,300.00 that being for a period of four months from 1 September 2021 to 31 December 2021 when, he averred, the harassment to be at its worst. He also claimed reimbursement of the application fee and hearing fee.

Respondent's Submissions

42. Contrary to the Tribunal Directions dated 4 March 2022 the Respondent's representative, The Home Cloud, had not filed a signed and dated witness statement, with a statement of truth attached (i.e. "I believe that the facts stated in this witness statement are true"). A three-page statement was included in the bundle and, prior to proceeding, the Tribunal enquired as to whether this stood as the Respondent's case. On behalf of the Respondent Ms. Choinski confirmed this to be the case and advised that she would be addressing the Tribunal on the Respondent's behalf. With the Tribunal's consent she provided an oral statement of truth.
43. Ms. Choinski, on behalf of the Respondent, argued that, contrary to the Applicant's assertion, the tenancy did not continue on a periodic basis with monthly rental payments upon the expiry of the fixed six-month term, as no such agreement had been reached. She maintained that the Applicant was not entitled to pay rent on a monthly basis, although she agreed that, to date, he had done so and that no rent was outstanding.
44. Ms. Choinski advised the Tribunal that the original agreement was for a fixed term of six months and that the tenant had paid the full rent in advance due

to failing referencing and an inability to provide a suitable guarantor.

45. She claimed that at the end of the fixed term the Applicant could either meet referencing criteria and, in doing so, pay rent monthly or, in the absence of a satisfactory credit check or guarantor, he could fund a further six months' rent in advance.
46. In response to questioning from the Tribunal she conceded that the tenancy had now converted to a periodic agreement but claimed that paying rent on a monthly basis was never an option unless income or guarantor requirements could be met.
47. As the Applicant was unable to meet either of these criteria The Home Cloud raised, and demanded, a further six months' rent in advance. Ms. Choinski advised the Tribunal that the multiple invoices Mr. Stamp referred to were in fact reminders for monies outstanding and that these reminders were issued manually on their software system by a staff member 'pressing a button'.
48. Following questioning from the Tribunal Ms. Choinski conceded that a second six-month tenancy had never been entered into and, as such, six months' rent in advance could not, legally, be due from the Applicant. However, she maintained her assertion that, from the outset, the agreement was that a second six months' rental would need to be advanced should the Applicant fail to meet the criteria previously referenced.
49. Upon further questioning from the Tribunal as to whether the receipt of ten demands within a seven-week period for significant sums, which were not legally due, with two such reminders only a day apart, would be likely to cause a tenant stress she replied that as the monies were due The Home Cloud had followed their internal procedures in issuing said reminders.
50. Ms. Choinski advised the Tribunal that upon notifying the Respondent of the Applicant's inability to meet the two requirements, income or guarantor, the Respondent instructed her to seek possession, an instruction which led to the issuing of a s.21 Notice for Possession.
51. To avoid rental voids and in accordance with the existing tenancy agreement, Ms. Choinski advised the Tribunal that the Respondent instructed The Home Cloud to commence marketing the Property and to conduct viewings, an instruction they duly followed.
52. Ms. Choinski accepted the Applicant's evidence that the Property had been advertised on online platforms and viewings arranged from mid-October 2021.
53. Ms. Choinski further accepted that the Applicant had refused access for the purpose of viewings however The Home Cloud were of the opinion that the tenancy agreement provided for such access within the last two months and, hence, proceeded accordingly.
54. Ms. Choinski was asked by the Tribunal, repeatedly, whether she considered entering a property without the occupiers' consent, or repeatedly booking

viewings in the knowledge that access was denied, would be likely to induce, or further aggravate, stress. She declined to answer.

55. Upon questioning from the Tribunal, Ms. Choinski advised that it was the Respondents' position that the tenancy was due to end on the 18 December 2021, that being the date recorded within the Possession Order, and that despite the tenant's refusal for permission to enter they were legally entitled to do so.
56. In regard to the viewing conducted on the 23 October 2021 whilst the Applicant was in police custody, Ms. Choinski explained that a junior member of staff carried out the viewing however on noting the condition of the property following the police attendance they took the decision that no further viewings would be carried out.
57. Upon questioning from the Tribunal as to why The Home Cloud considered it appropriate to enter a property, with a member of the public, which had just been the subject of a police raid and in the absence of the occupier, Ms. Choinski conceded that, in hindsight it wasn't appropriate and that, instead, the junior member of staff should have contacted the office for instruction. She further commented that, as a more experienced and senior letting agent herself, she personally would not have entered the Property at that time.
58. When asked by the Tribunal whether she considered Mr. Stamp to be a good tenant and whether any issues other than that under consideration had been experienced during his tenancy, Ms. Choinski responded that Mr. Stamp had been a reasonable tenant and that no other issues had arisen.
59. In regard to the attendance of the inventory clerk Ms. Choinski advised that The Home Cloud were following their internal procedures and that, in her opinion, such action, did not constitute harassment.
60. Ms. Choinski was asked by the Tribunal what professional letting qualifications or formal training she had, to which the response was that she had none.
61. Mr. Jewell had not filed a witness statement in this matter and, as such, was not entitled to give evidence before the Tribunal. That said, he requested permission to do so. In the absence of any objection from the Applicant and having considered that no prejudice would be suffered by the Applicant, the Tribunal decided it would not only be just and fair to hear from Mr. Jewell but helpful, as he may be able to answer questions that Ms. Choinski wasn't able to. Having provided an oral statement of truth Mr. Jewell proceeded to give evidence, which amounted to answering questions from the Tribunal. The Applicant had no questions for Mr. Jewell.
62. Mr. Jewell explained to the Tribunal that, his firm, The Home Cloud, was originally staffed by himself, an ARLA member, and that the appointment of Ms. Choinski as Operations Manager and Ms. Froude as Property Manager followed. Having already established that Ms. Choinski had no professional qualifications and had attended no property management seminars Mr. Jewell was asked by the Tribunal what in-house training or ongoing professional development he provided for his staff. His response was that Ms. Choinski's training was in the form of shadowing him and that

Ms. Froude was about to undertake some formal qualification.

63. Mr. Jewell was asked by the Tribunal for his understanding as to when a tenancy came to an end, to which he repeated Ms. Choinski's previous answer, that being the date recorded on the s.21 Notice, which, in this instance, was 18 December 2021.
64. Mr. Jewell was asked by the Tribunal as to whether he considered it appropriate to enter a property without a tenants' consent, to which he referred the Tribunal to the tenancy agreement which, he asserted, granted such permission. He was further asked by the Tribunal if he considered it appropriate to enter a property following a police raid, and in the presence of a member of the public, to which he responded that, in hindsight, it wasn't.
65. The Tribunal asked Mr. Jewell the same question that Ms. Choinski felt unable to answer, that being whether he considered the issuing of multiple invoice reminders for monies not owed, and the entering of a property for viewings at the express refusal of the occupier, would be likely to induce stress. Mr. Jewell was reluctant to answer but finally replied with "potentially".
66. The Tribunal, noting that The Home Cloud only comprised three staff, asked Mr. Jewell whether he was personally involved in the issuing of overdue rent reminders to which he responded that Ms. Choinski or Ms. Froude were more likely to undertake such work.

The Law

67. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (2016 Act) Parliament extended the powers to make RROs to a wider range of "housing offences".
68. Section 40 of the Act confers the Tribunal with powers to make a RRO where a landlord has committed an offence to which it applies.
69. Section 40(3) contains a table listing the offences and included in the list at row 2 is the offence of eviction or harassment of occupiers under sections 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977 (PEA).
70. Section 1(3) of the PEA states: "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 (likely) to interfere with the peace and 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".

71. Section 1(3A) states that “Subject to section (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 of the occupation of the premises in question as a residence,
And (in either case) he knows, or has reasonable cause to believe, that the 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.”
72. Section 1(3B) provides that a person shall not be guilty of an offence under subsection 3a if he proves he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.
73. The relevant standard of proof is the criminal standard. The Tribunal must be satisfied beyond reasonable doubt, that is to say the Tribunal must be sure, that a landlord has committed an offence to which Chapter 4 of the Act applies (whether or not the landlord has been convicted) (Section 43 of the PEA).

Has the Respondent committed a specified offence?

74. The Tribunal must first be satisfied beyond reasonable doubt that the Respondent has committed an offence to which Chapter 4, Section 40 of the Act applies. The relevant alleged offence in this case is the unlawful eviction and harassment of an occupier under Section 1 of the PEA, whereby the offence must be committed in the period of 12 months ending with the day on which the application is made.
75. The application was made on 6 January 2022. The offences were alleged to have been committed between 1 September 2021 and 31 December 2021 and therefore fall within the relevant period.
76. Section 1(1) of the PEA requires the occupier to occupy the premises as a residence and to have the right to remain in occupation. The Tribunal finds that Mr. Stamp had the right to occupy the Property under an assured shorthold tenancy which continued on a periodic basis at the end of the initial six-month term.
77. The Respondent, via their letting agent, claimed that the tenancy ended on the 18 December 2021, that being the date recorded within the s.21 Notice of Possession. The Tribunal disagrees. The assured shorthold tenancy does not end until the tenant either gives up possession or a warrant is executed following a court order. The Tribunal therefore finds that Mr. Stamp’s right to occupy the premises as a residence and his right to remain in occupation continued as at the date of application.

78. The Respondent in this matter is the Landlord, represented at the hearing by their managing agent, The Home Cloud. When questioned by the Tribunal as to why the Respondent was not in attendance at the hearing, Mr. Jewell replied that, as managing agent for the Property, the Respondent and Mr. Jewell had agreed between themselves that The Home Cloud would be better placed than the Respondent to answer the Tribunal's questions. However, he asserted that the Respondent were fully aware of the proceedings.
79. Section 1(3) of the PEA considers whether the alleged action is carried out with intent, whilst Section 1(3A) considers whether the Respondent either knew or had reasonable cause to believe that their action was likely to cause the occupier to give up occupation. Section 1(3B) states a person shall not be guilty of an offence under (3A) if he proves that he had reasonable grounds for doing the acts or withholding the services in question.
80. The Tribunal must therefore determine whether the Respondent, through their actions and instructions to their agent, committed a criminal offence by seeking to exclude the Applicant where the Applicant had a right to occupation, by acting intentionally or where it knew or reasonably ought to have known the consequences.
81. The Tribunal finds the following facts:
- a. The Property was let by the Respondent to the Applicant under an assured shorthold tenancy commencing 19 January 2021.
 - b. On expiry of the six-month term, that being 18 July 2021, the tenancy continued on a periodic basis.
 - c. On expiry of the six-month term rent became due on a monthly basis.
 - d. The Home Cloud issued multiple invoice-reminders for sums not due.
 - e. The Home Cloud failed to rectify the incorrect invoices when notified by the Applicant.
 - f. The serving of a s.21 Notice of Possession did not end the tenancy.
 - g. Mr. Stamp advised The Home Cloud that his intention was to extend his tenancy and, when this was refused, that he did not intend vacating the Property as he had no alternative accommodation.
 - h. Mr. Stamp paid the rent in full, on a monthly basis from July 2021.
 - i. Mr. Stamp granted access to The Home Cloud and their contractors for periodic inspections and routine maintenance.
 - j. The Home Cloud, acting on the instructions of the Respondent, advertised the Property online on the 13 October 2021 despite Mr. Stamp advising them that he would not be vacating in December 2021.
 - k. Mr. Stamp repeatedly advised The Home Cloud that he refused entry for viewings.
 - l. The Home Cloud arranged multiple viewings of the Property despite Mr. Stamp's refusal of access.
 - m. The Home Cloud, against Mr. Stamp's instructions and in his absence, entered the Property on 23 October 2021 to conduct a viewing.

- n. The Home Cloud arranged for an inventory clerk to attend on 18 December 2021.
- o. Mr. Jewell emailed the Applicant on 20 December 2021 in regard to the implications for the tenant of The Home Cloud applying for a court order for possession.

82. The Tribunal finds the following acts, committed by the Respondent by way of instructions to their letting agents, The Home Cloud, are, under Section 1(3A)(a) of The Protection from Eviction Act 1977 likely to have interfered with the peace and comfort of the residential occupier and that there was reasonable cause to believe that such conduct may cause the residential occupier to give up occupation. As such, the Tribunal finds the Respondent's actions, as carried out under their instructions by The Home Cloud, to constitute a course of conduct amounting to harassment:

- a. Refusal to accept the assured shorthold tenancy continued on a periodic basis;
- b. Issuing of a six-monthly rental invoice for the period commencing 19 July 2021;
- c. Advertising the property on an assumption of vacant possession on 18 December 2021;
- d. Arranging multiple viewings without the tenant's consent of entry;
- e. Entering the property without permission on 23 October 2021;
- f. Attendance of an inventory clerk 18 December 2021;
- g. Email from Mr. Jewell to the tenant 20 December 2021 advising of long- term consequences of failing to give up possession.

83. When questioned by the Tribunal on the contractual relationship between the Respondent and The Home Cloud in regard to instructions, Mr. Jewell advised that all conduct undertaken by his firm in relation to the Applicant was as of a direct consequence of the Respondent's instructions. He stated that regular meetings, typically weekly or fortnightly, were held with the Respondent during which his firm were issued with instructions and authorisation on how to proceed in this matter.

84. When invited by the Tribunal to expand on the issue of the Respondent's instructions and authority Mr. Jewell advised that the only actions not referred to the Respondent were the chasing of rent arrears which were handled in-house. All other actions were subject to the instructions of the Respondent and carried out in the Respondent's knowledge and with their authority. Giving oral evidence, Mr. Jewell said "everything we do is with their knowledge".

85. The Tribunal therefore finds that the Respondent committed offences under the PEA in consequence of the actions of the agent.

86. The Tribunal finds there to be insufficient evidence to meet the criminal standard of proof that the Respondent authorised the issuing of multiple incorrect rent reminders.

87. Under Section 1(3B) a person shall not be guilty of an offence under Section 1(3A) if he proves that he had reasonable grounds for doing the acts. The Respondents' only defence was that the terms of the assured shorthold tenancy empowered entry without the tenants' permission and that the agents were following their internal procedures at all times. The Tribunal finds the first ground incorrect and the second ground inadequate. Accordingly, the Tribunal determines no grounds of defence to be made out.

Should a RRO be made?

88. Section 43 and section 44 of the 2016 Act grant the Tribunal discretion in whether a rent repayment order should be made. The Tribunal in considering its discretion reminded itself that a criminal offence had been made out and that it should be rare in such circumstances not to make an order. The Tribunal concluded that the making of a RRO was appropriate.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44 of the 2016 Act)?

89. The amount that can be ordered under an RRO must relate to the rent paid by the tenant in respect of the period of 12 months ending with the date of the offence. The Tribunal has determined that the Respondent committed the offence from 1 September 2021 to 31 December 2021.

90. The maximum amount payable by the Respondent under an RRO in this instance is £9,400.00. That is the rent paid for the period 19 January 2021 to 31 December 2021.

91. Section 46 of the 2016 Act which prescribes the amount of a RRO following conviction or the imposition of a financial penalty does not apply in this case.

What amount should the Respondent pay under the RRO?

92. Section 44(2) of the Act states that, for an offence mentioned in row 2 of the table in section 40(3), that being an offence of eviction or harassment of occupiers, the amount of the RRO must relate to rent paid by the tenant in respect of the period of 12 months ending with the date of the offence.

93. In determining the amount of the RRO, the Tribunal must have regard in particular to factors in section 44(4) of the 2016 Act, namely, the conduct of the parties; the financial circumstances of the Landlord; and whether at any time the Landlord had been convicted of a housing offence to which section 40 applies. Furthermore, the Tribunal must consider the seriousness of the offences committed and any other factors that appear to be relevant.

94. Mr. Justice Fancourt, in *Amanda Williams v Kishan Parmar* (2021) UKUT 0244 set out the approach that should be followed by the F-Tt when applying its discretion in the statutory context to determine the amount of the RRO:

“A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant”.

95. Conduct of the Respondent: A particular feature of this case was that the Respondent was represented by professional letting agents acting on behalf of, and with full authority from, the Respondent.
96. The standard of conduct, knowledge of the law, and general practice a Tribunal typically require a professional firm to demonstrate is higher than that for a litigant in person.
97. In this instance the Managing Director of The Home Cloud is a full member of the Association of Residential Letting Agents (ARLA) and whilst his two staff are neither professionally qualified nor formally trained, he, nevertheless, had a duty to his clients and tenants alike to conduct his firm’s activities in accordance with the code of practice laid down by ARLA.
98. ARLA members are required to commence marketing a property only once they are satisfied that they have their clients’ authority and have agreed the basis of their terms of engagement. Furthermore, an ARLA member should agree with the client the requirements regarding viewing arrangements. Both Mr. Jewell and Ms. Choinski repeatedly asserted during their oral evidence that their activities follow established procedures, that they acted on clients’ instructions in this matter and that they adhered to ARLA’s code of practice.
99. ARLA recommends that members arrange for, or carry out, the final checkout as soon as is reasonably practicable after the tenant vacates and at the lawful end of the tenancy. The Home Clouds’ repeated misconception that the tenancy terminated on 18 December 2021 led them, inappropriately, to instructing the attendance of an inventory clerk on that same day.
100. The Tribunal finds that The Home Cloud, on behalf of the Respondent and contrary to the guidance of ARLA, failed to demonstrate an up to date working knowledge of their legal responsibilities and obligations in dealing with tenants.
101. In considering the Respondent’s behaviour the Tribunal had regard to the seriousness of the offence, that being that their authorised agent, an ARLA regulated letting agent entered a tenant’s home when expressly and repeatedly forbidden to do so and the distress thus caused; the ongoing refusal to acknowledge the legal standing of the periodic tenancy and the right of the Applicant to pay rent monthly; and the wording and tone of Mr. Jewell’s email of 20 December 2021. The Tribunal considered such actions demonstrated a standard of practice falling short of that expected from a professional letting agency or professional landlord.

102. The Home Cloud demonstrated a lack of legal awareness and, despite being so urged by the Tribunal, they chose not to seek any legal advice in this matter.
103. Conduct of the Applicant: Ms. Choinski confirmed that, with the exception of this particular issue, The Home Cloud found Mr. Stamp to be a good tenant who kept the Property clean and tidy, and who paid his rent in a timely manner, albeit monthly.
104. In regard to the Tenants' relevant conduct the Tribunal found no evidence of behaviour that should weigh in relation to the amount of RRO awarded.
105. Other factors: The Respondent was required to provide details of their financial circumstances including any outgoings. No such information was provided. In oral evidence Mr. Jewell advised the Tribunal that the Respondent retained the leasehold interest in a number, if not all, of the flats within the development and that The Home Cloud were instructed on each.
106. The Respondent was required to provide a statement as to any circumstances that could justify a reduction in the amount of any RRO. No such statement was provided. In the absence of evidence to the contrary the Tribunal concluded that the awarding of a RRO would cause no hardship to the Respondent.
107. Having considered the seriousness of the offence, the conduct of both parties, the lack of financial disclosure and any other relevant factors including that the Respondent had not been convicted of a housing offence to which s.40 applies, the Tribunal determined that the appropriate level of RRO that should be awarded was £3,300.00, a sum which is the equivalent of the full rent for the period of harassment as claimed by the Applicant, that being 1 September 2021 to 31 December 2021.
108. The Tribunal notes the sum awarded to be the order sought by the Applicant. In any event, whilst the Tribunal is mindful that it is not limited to an award of repayment of rent for the period of any unlawful eviction offence and could award up to twelve months' rent, the Tribunal has noted that no issues arose during the first months of the tenancy and also determined taking all relevant factors into account and looking at matters in the round that a sum equivalent to four months' rent is the appropriate one.

The Tribunal's Decision

109. The Tribunal orders the Respondent to pay the Applicant the sum of £3,300.00 by way of a rent repayment order and to reimburse the Applicant with the application and hearing fees in the sum of £300.00 within 28 days from the date of this decision.

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.