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

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| **Case Reference** | : | CHI/00HB/HMB/2020/0006 |
| **Property** | : | 6 Byron Street, Redfield, Bristol BN5 9NN |
| **Applicant** | : | Cyrus Coxswain |
| **Representative** | : | None |
| **Respondent** | : | Shanaz James |
| **Representative** | : | Mr Addison, Powells Law |
| **Type of Application** | : | **Application for a rent repayment order by a Tenant**<br>Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016 |
| **Tribunal Member(s)** | : | Judge J. Dobson<br>Mr. I Perry FRICS<br>Mr. M Jenkinson |
| **Date and venue of hearing** | : | 19th August 2020 |
| **Date of Tribunal reconvene** | : | 9th September 2020 |
| **Date of decision** | : | 22nd October 2020 |

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DECISION

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## Summary of the Decisions of the Tribunal

1. The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord, Shanaz James, has committed offences under section 1(3A) of the Protection from Eviction Act 1977.

2. The Tribunal is not satisfied beyond reasonable doubt that the Respondent landlord has committed any of the other offences on the basis of which a rent repayment order may be made.

3. The Tribunal has determined that it is appropriate to make a rent repayment order.

4. The Tribunal makes a rent repayment order in favour of the Applicant, Cyrus Coxswain, in the sum of £1560.

5. The Tribunal determines that the Respondent pay the Applicant an additional £100 as reimbursement of the Tribunal fee paid.

## Application

6. The Applicant applied 13th February 2020 to the Tribunal for a rent repayment order against the Respondent, his landlord, in relation to his tenancy of 6 Byron Street, Redfield, Bristol BN5 9NN ("the property") pursuant to section 41 of the Housing and Planning Act 2016 ("the HPA 2016"). The Applicant claimed repayment of £8700, the rent said to have paid for a period January 2019 to January 2020.

7. The grounds for seeking a rent repayment order, as set out in the application, are 5-fold. They do not specifically cite the offences on the basis of which the Tribunal may make a rent repayment order in the HPA 2016. However, in effect they amount to 4 types of allegations:

    i) offences committed by the Respondent under section 1(3A) of the Protection from Eviction Act 1977 ("the PEA 1977") and potentially section 6 of the Criminal Law Act 1977 ("CLA 1977")- the matters are described as harassment, 4 unlawful evictions attempts, verbal and physical assaults committed by landlord and her accomplices but the Tribunal understands them to be asserted offences under those Acts;
    ii) an offence committed in respect of licensing of a house in multiple occupation ("HMO")- control of an unlicensed HMO, s72(1) of the Housing Act 2004 ("HA 2004")
    iii) an offence of failure to comply with an Improvement Notice pursuant to s30(1) of the HA 2004 and
    iv) failure to protect a deposit and to provide a gas safety certificate.

8. The task for the Tribunal in rent repayment case was summarised in *London Borough of Newham v John Francis Harris* [2017] UKUT

0264 (LC). Whilst that case related to HA 2004 prior to the amendment by HA 2016 and an application by a local authority and not an occupier, the task remains the same. The Upper Tribunal stated that as follows:

> "The task for the Tribunal therefore is as follows: firstly to decide whether the conditions in sections.....have been fulfilled; secondly to decide in the circumstances whether or not to make an order and finally if an order is made, then to determine the amount of the order having regard to the requirements of....."

## Directions made/ history of the case

9. Directions were first given on 23rd March 2020, providing for a Case Management Hearing to take place, attended by the Applicant only. Directions were then given setting out the steps to be taken by the parties in advance of either a paper determination, if the parties did not object to one, or a final hearing. Further Directions were given at a short subsequent Case Management Hearing, by which time the Respondent was represented but at which only the Applicant attended. It was apparent that confusion had arisen, hence the shortness. The Tribunal concluded that the application required determination at a hearing.

10. The Respondent's representative applied for the hearing to be adjourned as the Respondent was unavailable. That application was granted and further directions given on 21st July, including listing a further Case Management Hearing as requested, on 27th July 2020, which on this occasion the Respondent attended by way of her representative but the Applicant did not. Consequently, that hearing was also short. The Respondent raised an issue as to a transcript of a County Court hearing in a case between the parties on 17th March 2020. The Judge subsequently ordered that if either party relied on the transcript, that party should produce it. The final hearing was re-listed for 19th August 2020, as video proceedings.

11. The Respondent's representative provided a paginated bundle for the final hearing, containing the application and the evidence relied on by the parties, albeit the directions had not required one and whilst the bundle was of some help during the hearing, it also contained multiple copies of certain documents.

## Hearing

12. The hearing was conducted remotely as video proceedings. The Applicant represented himself. The Respondent was represented by Mr Addison of Powells Law. The only 2 witnesses were the parties.

13. Preliminary matters were first addressed. The Applicant asserted that his housemates had gone to work and that he was unable to obtain a translator for them but that he wished to rely on their letters. He also

clarified that he wished to claim from January 2019. The Applicant objected to the bundle provided by the Respondent's representative and stated that he had not looked at it. The Judge stated that the Tribunal would use the bundle in order to locate documents during the hearing but not otherwise.

14. In respect of the transcript, the Tribunal indicated that it had access to the County Court case management system and that it was likely to be able to obtain the transcript, assuming entered on that system, and provide it to the parties. However, the Judge made it clear that the Tribunal would only do so to fill the gap produced by neither of the parties producing the transcript, albeit both made reference to the County Court hearing and judgment, and only then if either wished to rely on it and both agreed. Judge Dobson noted that it was not for the Tribunal to advance evidence and so accessing the transcript would be an unusual step. The parties did not wish the Tribunal to take that step, which was not taken.

15. It should also be recorded that at one stage in the hearing, it was necessary to briefly mute the Applicant. The Judge sought to explain in response to a query by the Applicant. However, the Applicant repeatedly attempted to talk over the Judge, despite the Judge having clearly explained at the outset of the hearing that parties must not talk over each other or the Tribunal members. Inevitably, the Applicant could not hear and consider what the Judge said, and neither could the other parties. The Applicant was muted only for as long as it took for the Judge to address the point raised.

16. It should finally be recorded that the Applicant complained about not having received the link to the hearing, although the Tribunal understands that to be the original final hearing date that was vacated. He also suggested that he had not received details of the third CMH hearing and there was "something afoot". The Tribunal indicated that if required any asserted absence of contact with him could be investigated.

17. The Tribunal also records that the Tribunal stated during the course of the hearing that the letter dated 26th March 2019 referred to by the Applicant as being an improvement notice issued by Bristol City Council was not. It was a letter listing works to be undertaken. The Tribunal explained that an improvement notice takes a certain form and identifies itself as one, whereas the letter was just that and was, nor did it suggest itself to be, an improvement notice. The Applicant accepted the matter and did not refer to that argument further after that point in the hearing.

18. The Tribunal gave the opportunity for extra breaks, the Applicant having indicated following the lunch break that his eye injury was causing difficulties to him, although the Applicant was able to continue until the end of the Respondent's evidence. However, the Applicant then explained that his eye was hurting. In light of that and

the length of the hearing by that point, the Tribunal concluded that it should not continue the hearing to hear oral closing comments.

19. Mr Addison cross examined the Applicant as to his case, including as to the instances of harassment which the Applicant asserted. The Tribunal further put questions to the Applicant. The Applicant's evidence was lengthy. Thereafter, the Applicant cross examined the Respondent and questions were also put to her by the Tribunal.

20. Rather than reciting the oral evidence given, which was largely along the lines set out in writing, the Tribunal sets out the facts found and deals with the evidence as and where relevant to those, including resolving any disputes as to evidence where required. The Tribunal does so at somewhat greater than usual length.

21. Closing submissions in writing were ordered by 26th August 2020 and provided on behalf of both parties. The Tribunal subsequently reconvened to consider those and to agree its decision, on 9th September 2020, slightly delayed due to the holiday season.

## The parties' cases

22. The parties' written cases as to facts are set out in their statements of case and related documents. The Tribunal summarises them below but does not recite them at length. The key elements are addressed in this Decision, principally in the "Evidence and Facts Found" section.

23. The essence of the Applicants' written application and evidence received by the Tribunal asserted that he obtained a tenancy of a room in the Property in August 2018 (the agreement produced is dated 25th) from one Sam Mitchell, who he described as the Respondent's agent, that there were 7 other occupiers and that in December 2018 a document was received naming Sam Mitchell and requiring him to vacate the Property, that the Applicant and others went to the address given for the landlord on that document. He asserted that they spoke to the Respondent's husband who said he was unaware of the condition of the Property and number of occupiers, were referred to Murrays Letting Agents and then reached an agreement with one Mark Dehaney employed there to pay £1000 per month for the Property, which he says that they did, at least for January and February. The Applicant asserts that they complained (again) about repairs, that he received a threatening telephone call from the Respondent's husband and that subsequently bailiffs attended to execute a warrant, on 2 consecutive days, the most significant outcomes being that the Applicant was assaulted and received an eye injury and that a written tenancy agreement ("the Tenancy Agreement") was entered into between the Applicant and Mark Dehaney, on behalf of the Respondent, in the presence of 2 police officers and following the Applicant playing a recording of Mark Dehaney accepting rent from the occupiers, at rent of £725 per month. That was followed by a further Warrant scheduled for

execution in May and prompted an application to dismiss that, resulting a court hearing at which the Judge identified the Tenancy Agreement. The Applicant says the Judge advised the Respondent to obtain an HMO licence, after which the Respondent initially agreed to work with the Applicant in repairing the Property but did not obtain an HMO licence. He says that an agreement was reached that the cost of work undertaken by the Applicant would be deducted from rent otherwise payable. There was an attendance at the Property by the Respondent as arranged by Bristol City Council. The Notices were served regarding possession in Autumn 2019, proceedings were taken and a Possession Order was made in March 2020, which the Applicant has appealed. The Applicant describes the warrants and the proceedings as attempts to harass or evict and that repairs were not carried out. Documents attached include the Tenancy Agreement, various photographs and letters from other occupiers. The Applicant submitted a Skeleton Argument, although in practice a summary of factual matters similar to the above summary, as opposed to raising any legal matters. An additional factual allegation was contained, not previously referred to, that the Respondent attempted to push him down the stairs on 20th June 2019 (the Applicant says 2018 but that must be a clerical error).

24. The essence of the Respondent's written case and evidence was that Sam Mitchell was not her agent, that she was unaware of the Applicant and other occupiers before December 2018, that she was not aware of the arrangement entered into by Mark Dehaney with the Applicant, that she was not a party to any conversation he had with her husband, that she was unaware of the events in March 2019, that she applied for a further warrant having been told that the previous one had not been executed and that she was surprised at the Tenancy Agreement entered into by Mark Dehaney and that it bound her. The Respondent said that the tenancy was only with the Applicant and his liability for Council Tax as determined by Bristol City Council was for the full sum and she treats that as the time when the Applicant started to have a tenancy. The Respondent denied that any issue arose with her pursuing possession proceedings as issued on 31st October 2019, which had resulted in the Order obtained on the basis of rent arrears, following which Order the Respondent said that no further rent had been paid, the last payment having been £589 on 22nd January 2020. The Respondent denied that she had attempted to evict the Applicant unlawfully. The Respondent did not accept that the Property needed to be licensed- not accepting there to be sufficient occupiers- denied any agreement about the Applicant undertaking work and deducting cost from rent and denied that there had ever been an Improvement Notice served. The Respondent queried whether any rent has been paid using Housing Benefit Universal Credit money. She asserted that the Applicant's tenancy was as agreed in March 2019, for the whole Property and for him only. The Respondent's representative in his Skeleton Argument flagged up the relevant bases for the application and why he said the application should fail, also seeking to claim costs. The Respondent's statement of case asserted that the failure to

protect a deposit was the only ground not already determined by the County Court.

25. In his Closing Statement, the Applicant set out a number of factual assertions, dealt with below in setting out the findings made. He goes beyond those in asserting the Respondent to have a long history of abusing her tenants and for targeting vulnerable minorities, for neither of which was any evidence presented and therefore which the Tribunal makes no finding about and takes no account of.

26. The Respondent, in 9-page Closing Submissions, in contrast submitted that agents had managed the property until March 2019 and referred to the Tenancy Agreement. The Submissions also addressed at length the potential offences which the Respondent may be asserted to have committed, denying that any were committed and then moved onto the various instances of harassment, or similar, asserted by the Applicant in oral evidence and in response to the Respondent's representative's questions. It is denied that certain allegations were proved and that others amounted to a relevant offence. There is a detailed denial of the Property being an unlicensed HMO, including under the additional licensing scheme implemented by Bristol City Council in relation to the area in which the Property is located from 8th July 2019.

**Facts found and relevant evidence**

27. The Tribunal understands that it must be satisfied to the criminal standard, beyond reasonable doubt, or as often expressed, so that the Tribunal is sure. The Tribunal applies that standard to an unusually complex factual background and the large number of factual issues in this case.

28. The Tribunal finds that there was no tenancy agreement between the Applicant and the Respondent prior to January 2019. The Applicant entered into an agreement with Sam Mitchell, in or about August 2018. The Tribunal accepted the Applicant's evidence about that. There was insufficient evidence to support the Applicant's assertion that Sam Mitchell was acting as the agent of the Respondent and it is notable that the tenancy agreement produced by the Applicant names Sam Mitchell as the landlord and makes no mention of the Respondent. The Applicant accepted in evidence that he did not know that the Respondent owned the Property, saying that he did not care and it was not his business to know, which the Tribunal found a surprising view. There was no evidence that the Applicant was even aware of the Respondent prior to in December 2018, or vice versa. Indeed, the Tribunal accepted the Respondent's evidence that it was Sam Mitchell who was her tenant, albeit she became aware that he was sub-letting- that is generally rather than to whom specifically.

29. There is no evidence that any part of the money paid by the Applicant to Sam Mitchell was paid to the Respondent. The Tribunal finds that

the Applicant has failed to prove any payment of rent by him to the Respondent, even indirectly, during that period.

30. It was agreed by both parties that the Respondent obtained a Possession Order against Sam Mitchell, which the copy of the Order reveals to have been on 14th December 2018, and that must have been the culmination of a process started at least several weeks earlier. The Tribunal accepted the Applicant's evidence of various others living in the Property at one time or another.

31. The Tribunal accepts the evidence of the Applicant that he- and 2 others- attended unannounced at the Respondent's home on 26th December 2018, having seen the possession document- which Mr Addison put to the Applicant was a Possession Order rather than a Notice of Eviction- speaking to the Respondent's husband, who said something along the lines of fine, eviction will not be proceeded with. The Tribunal accepts the Respondent's evidence that she was out at work. The Tribunal also accepts that the Applicant was referred by the Respondent's husband to Mark Dehaney, of Murray's Letting Agents, as the letting agent of the Respondent. The Tribunal considers it quite possible that the Respondent's husband may have felt intimidated by 3 unknown attendees out of the blue and so was keen for them to leave. The Tribunal finds that there were 4 occupiers as at December 2018 on the available evidence, namely the Applicant, Faisal Mohammed, Slovak (no identified surname) and Rafiq (no identified surname), notwithstanding some contradiction as to that from the Applicant, causing the Tribunal some concern. The Tribunal accepts the Applicant's evidence that 3 of them attended at the Respondent's home but notes that the Applicant stated that he attended with "all other tenants, 2 of them". The Tribunal further accepts that the overwhelming likelihood is that the Respondent's husband told the Respondent about the incident and finds that the Respondent knew that at least the 3 attendees occupied the Property at that time, although the Tribunal heard no evidence to indicate that personal information was given by the attendees and there was no suggestion that, for example, a note of names was taken.

32. The Tribunal further accepts the evidence of the Applicant that he- and others- spoke to Mark Dehaney and that an agreement was entered into by the Applicant and the others on the one hand and Mark Dehaney on behalf of, or purportedly on behalf of, the Respondent for the Applicant and others to live at the Property on payment to Mark Dehaney of £1000 per month from January 2019 onwards, split equally between the occupiers. The Tribunal further finds that they were all in occupation for a period of time during 2019, addressed further below. However, the Tribunal finds that the Respondent, accepting her evidence which was cogent on that point and consistent in the face of understandable pressing by the Applicant in cross-examination, was not aware of the agreement entered into and further was not aware that the occupiers were making payments in return for their occupation, receiving no money from Murrays in relation to the

Property until at least after the bailiff attendance in March 2019, which is also referred to below. The Tribunal also accepts, notwithstanding the visit in December 2018, the Respondent's evidence that she did not know that Sam Mitchell was necessarily no longer at the Property at that time, much as it seems Mark Dehaney did. The Respondent was pressed by the Applicant but was firm in her response.

33. The Tribunal finds that payments were made by the Applicant and the other occupiers of £1000 per month in January and February 2019, which Mark Dehaney attended at the Property to collect in cash, and that the Applicant and others occupied the Property on that basis thereafter. The Tribunal accepts the evidence given by the Applicant that the payments were contributed to by him and that he therefore paid £250 for each of those 2 months. .

34. The Tribunal accepts the evidence given by the Applicant that the Respondent's husband spoke to the Applicant on the telephone in February or early March 2019 and was threatening to the Applicant, which included him saying that he wanted the occupiers out and further that the Applicant had missed calls prior to that. The Applicant also stated that the Respondent's husband said that if the Applicant did not get out of the Property, the Respondent's husband would cut off the Applicant's testicles. The Tribunal is not satisfied that the Respondent was a party to the conversation. The Applicant said in oral evidence that he could hear the Respondent shouting in the background. However, that is an occasion on which the Applicant's oral evidence went beyond anything set out in the several previously produced documents. The Tribunal further finds that there is in any event no direct evidence that any threat was made at the instigation of the Respondent, and does not consider that an inference can properly be drawn. The Applicant said in evidence that he had recorded the conversation and there is some evidence that he may have done but no recording was produced to the Tribunal.

35. That evidence comes in the form of a string of text messages on 5th and 6th March 2019 between someone, potentially the Applicant, and potentially the Respondent's husband. No oral evidence was given about those. The participant who may be the Applicant refers to viewing another property but also stating "There are still tenants at the address" and also in response to the assertion that he needed to leave, stating "I will call the police and show them yesterday's recording." That may be the recording of the telephone conversation. There is on the other hand, no confirmation of what was said and, in particular, whether the Respondent was involved. Indeed, the email chain reinforces the impression that the Respondent's husband had more dealings with the Property than the Respondent and makes it less, not more, that the Respondent was involved.

36. The Tribunal accepts the Applicant's evidence in relation to the allegation that he complained about the state of the Property in 2019,

although notes that the Applicant identified that the complaint was made to Bristol City Council and to Mark Dehaney and not the Respondent. The Tribunal notes that the letter sent to the Applicant by the Council is dated 26th March 2019 and infers that the letter to the Respondent is most likely to have been dated the same date.

37. The Tribunal finds that Mark Dehaney arranged for bailiffs to attend at the property on 20th March 2019, having been requested to do so by the Respondent or her husband with her agreement and so there ought to have been a Notice of Eviction served at some stage, albeit no evidence was given as to that and no application was made to the courts about it. That could be indicative of the Applicant's perception of his legal position at that time, when he did not possess a tenancy agreement, or may be because the Notice of Eviction did not come to his attention for whatever reason. Alternatively, it may be that there was none. The Tribunal notes that the Applicant referred in oral evidence to the owner of the bailiff company. The Tribunal deliberately refers to attendance of bailiffs rather than execution of a Warrant, given the uncertainty.

38. The oral evidence was not clear as to whether Mark Dehaney instructed the bailiffs to attend at the instruction of the Respondent. However, the Respondent said in oral evidence to the County Court on 7th May 2019, at a hearing referred to further below, about Mark Dehaney and the March evictions attempts and conveying the Respondent's surprise about the Tenancy Agreement described below:

"He was meant to help the eviction go ahead."
"That was- that was what his instructions were, to make sure the eviction happened."

39. That evidence to the County Court was clear about the arrangements made with the bailiffs by Mark Dehaney being at the Respondent's instigation. The Tribunal so finds.

40. The Tribunal is satisfied that the Respondent did know that there were residential occupiers in the Property and that she did, as she accepts, instruct bailiffs via Mark Dehaney to attend and to remove them from the Property. The Tribunal further finds that the Respondent's intention was to ensure that the residential occupiers, including the Applicant, left the Property, as she stated in evidence to the County Court. The Tribunal finds that the Respondent knew that she did not hold any Possession Order against any actual occupiers.

41. The Tribunal, finds that the Respondent may well have believed that she was able to evict the occupiers. The Tribunal has found that she was not aware of the arrangements made by Mark Dehaney and the rent paid to him – and was plainly let down and either actively mislead or at least kept in the dark- and accepts that the Respondent may well have therefore believed, albeit wrongly, that the occupiers

lacked rights to remain at the Property. The Tribunal cannot be satisfied that she knew that rights to remain existed.

42. However, the Tribunal is also satisfied that the Respondent had not, sought to establish, at all, the legal position of the Applicant and other occupiers in advance. If she had done so, the Tribunal has no doubt that the Respondent would have been made aware of the agreement entered into with Mark Dehaney in January 2019 and the payments made- it is inconceivable that the Applicant would have been slow to tell her- and so she should have become aware that she was not entitled at that time to obtain possession against the Applicant or any other occupier. Similarly, if the Respondent had sought advice after establishing the position and particularly if she had informed the advisor of any payments accepted by her agent from the occupiers.

43. The Tribunal, whilst concluding that there is insufficient evidence that the Respondent knew that she could not evict, is satisfied that the Respondent was at least reckless.

44. It is also accepted by the parties that the bailiffs attended again the following day, 21st March 2019. The exact sequence of events after the bailiff's attendance on 20th March is unclear. The Applicant referred in evidence to having attended at the office of Murrays and to presenting Murrays with a recording of rent being paid to Mark Dehaney, which the Tribunal understands to have been later in the day on 20th March 2020. No explanation has been advanced as to why the bailiffs then attended a second time. Nevertheless, that the bailiffs did return was not in dispute and the Tribunal accepts that Rafiq and the Applicant were present and that the other occupiers had gone to work and further that an incident occurred involving the bailiff and the Applicant during which the Applicant was injured. The Applicant suggested that he had submitted footage, although there was no evidence of that being correct. That second attendance is unusual and offers further support for doubt as to the bailiffs being employed by the County Court.

45. The Tribunal is mindful that such injury may be the subject of other proceedings in another forum and that the precise circumstances do not impact on the outcome of this matter. Therefore, the Tribunal considers it preferable not to make any specific finding about such circumstances, save in respect of one specific element. That is that the Applicant's evidence was that the injury was not sustained in the course of anyone securing entry into the Property but rather once the bailiff was inside the Property. That appears to be accepted by both parties and should be recorded.

46. There appears to have been an unusual number of people present at least at one of the intended evictions, including from an organisation called Acorn, contacted by the Applicant, and the police. However, that is not directly relevant to the issues in this application. The Tribunal is far from impressed with Mark Dehaney seemingly denying

the Applicant and other occupiers had any rights and ignoring the fact that he had taken payments from them until presented with the recording of doing so by the Applicant, but that does not alter the outcome of this application.

47. The Tribunal also finds that Mark Dehaney did not inform the Respondent about the attendance at the offices of Murrays on 20th March 2020. The Tribunal infers that the Respondent was also not informed that the bailiffs would attend on 21st March 2019.

48. The Tribunal has no difficulty in finding that the bailiffs' attendance on 20th March 2019- and 21st March 2019- caused considerable distress to the Applicant and presumably to the other occupiers and that whilst the attempt on 20th March was unsuccessful, fear was caused of other efforts to evict.

49. The written Tenancy Agreement was found by the County Court to have been entered into by Mark Dehaney on behalf of the Respondent, or purportedly on her behalf and sufficient to bind her, with the Applicant and signed, by the Applicant and Mark Dehaney only, on 21st March 2019, notwithstanding the lack of a signed copy being produced, with rent which was agreed of £725. The Tribunal adopts those findings. The Tribunal does not accept the Applicant's assertion that a contract was created for "everyone in the household". The Applicant said that one was created but precluded any pets or similar, whereas Slovak had a fish tank and hence it wasn't signed. He also asserted that Mark said that he would take a copy and that he, the Applicant, took a photograph of it. No such photograph was produced. The Tribunal also notes that the Applicant gave evidence that only 2 people were present and notes the lack of any cogent explanation as to how a tenancy agreement was created in more names than that of the Applicant alone but yet the Applicant was in possession of a tenancy agreement in his own name alone and was able to produce that in May 2019. The Tribunal further notes that the Applicant referred later in his evidence to an original tenancy agreement that Mark Dehaney and that he signed, with no mention of anyone else doing so. The Tribunal rejects the Applicant's assertion that this was a "cut-throat contract", by which the Tribunal understands the Applicant to suggest that it was very onerous to the Applicant, not that anything turns on the matter. The Tribunal did not accept the Applicant's evidence that the terms were not agreed (and hence he said the tenancy agreement was not valid).

50. The Tribunal is mindful of further text messages in the documentation, in particular one from the Applicant to Mark Dehaney stating that he would not sign "this agreement unless you acknowledge that there are 3 other tenants in here". That contemporaneous evidence has to be given weight but the Tribunal finds that the Applicant had in any event relied on the Tenancy Agreement later in court proceedings. The Tribunal also notes the letter to the Applicant from Murrays stating that they as company ceased to manage the Property following 21st

March 2019, which was consistent with the oral evidence of the Respondent, although it reflects the Applicants own evidence to the court in May 2019. The Tribunal notes that Mark Dehaney seems to have then taken on the task himself.

51. The Tribunal finds that prior to that Tenancy Agreement being entered into, both the Applicant and the other occupiers had been physically removed from the Property. The parties seemed to accept that and the evidence firmly points to it.

52. The Tribunal finds that payments were made of £725 per month thereafter. The Tribunal is satisfied on the unchallenged- on this point- oral evidence of the Applicant that £725 was paid for March 2019 and for April 2019. The Tribunal accepts the Applicants evidence that £500 was contributed by others to the March rent and is prepared to accept that the Applicant cannot be sure in respect of later months. He suggested in response to clarification sought by the Tribunal, that he thought he paid half and half was contributed in April 2019, although, to his credit, he stated that he could not remember and it depended on when certain work was undertaken. Nothing turns on that. The Tribunal finds that least one other contributed money to the £725 for at least the next few months, although accepting the Applicant's evidence that the Applicant covered the payment otherwise agreed to be paid by Faisal when he was in Turkey (on dates which were unclear).

53. The Tribunal notes that Mark Dehaney appears in an email in early April to have denied the Applicant to be a tenant, in spite of the Tenancy Agreement and receipt of further rent, which is again conduct about which the Tribunal is far from impressed. However, his conduct does not amount to a relevant offence and neither is there evidence that the Respondent was aware of it. Mark Dehaney also appears to have told the Applicant that the Respondent had applied for the eviction of the occupiers. The Tribunal finds that the email from Mark Dehaney to the Applicant later in April 2019 that neither he nor Murrays had an interest in the Property was, by that date, correct.

54. The Tribunal finds that the receipt of the Notice of Eviction dated 29th April 2019, with the date of eviction of 10th May 2019, by the Applicant and any other occupiers in early May 2019 caused distress to the Applicant and that his injury at the time of the previous bailiffs' attendance added to that. The Tribunal finds that the Notice was served within a day or two of 29th April 2019. The Applicant was prompted to make an application to prevent execution of the Warrant for Possession.

55. The Tribunal has had particular regard to the explanation given by the Respondent for her instruction of bailiffs in late April 2019, to the County Court at the hearing of the Applicant's application to set aside that warrant. That explanation was accepted by an experienced

Deputy District Judge on hearing the oral comments of the Respondent about the matters and as such the Judge was very well placed to make that assessment.

56. The Respondent's evidence was that Mark Dehaney had told her that the bailiffs had been unable to execute the Warrant in March, suggesting there to have been one although it is difficult to be confident about the accuracy of anything Mark Dehaney may have said. That adds support to the Respondent being unaware of the second attendance on 21st March 2020. The Tribunal finds that Mark Dehaney did not inform her of any tenancy agreement having been entered into by him on her behalf with the Applicant and so she was unaware of any such agreement. The Respondent's evidence as to that was cogent and accepted by the Tribunal. She had been further misled or, at least, kept in the dark. That evidence was also not only accepted by the Deputy District Judge but was, in any event, entirely consistent with the Respondent's reaction and comments.

57. Nevertheless, the Tribunal repeats its previous finding that the Respondent knew that there were residential occupiers in the Property and instructed bailiffs to attend to execute a warrant and to remove them, with the specific intention again being to ensure that the residential occupiers left the Property, where the Respondent knew that she did not hold any Possession Order against any actual occupiers.

58. The Tribunal is satisfied, the Respondent having stated it in evidence, that by May 2019 Mark Dehaney had informed her that he had received some rent from the occupiers and that ought to have at least caused the Respondent to seek clarification of the effect of such payments, although there was no clear evidence as to how much and the Tribunal finds that information to have fallen short of the full picture. The Tribunal also accepts that Mark Dehaney told the Respondent that the rent related to the Applicant and other occupiers having time to leave the Property.

59. The Tribunal finds that the Respondent may well have believed that she was able to evict the occupiers and that Mark Dehaney was telling her the truth about the rent paid to him, and further that did not create any entitlement to remain. The Tribunal has found that she was not aware of the Tenancy Agreement and accepts that the Respondent could have therefore still believed, albeit wrongly, that the occupiers lacked rights to remain at the Property. The Tribunal cannot be satisfied that she necessarily did know that rights to remain existed.

60. However, the Tribunal is also satisfied that the Respondent had still not sought to establish, at all, the legal position of the Applicant and other occupiers in advance. In this instance if she had done so, the Tribunal has no doubt that the Respondent would have been made aware of the written Tenancy Agreement entered into by the Applicant on 21st March 2019 and so would have become aware that she was not

entitled at that time to obtain possession against the Applicant or potentially any other occupier. Similarly, if the Respondent had sought advice and had informed the advisor of any payments accepted from the occupiers or the Tenancy Agreement, indeed potentially any aspect of the situation would have been likely to produce advice to, at the very least, make enquiries and proceed with care.

61. The Tribunal, whilst concluding that there is insufficient evidence that the Respondent knew that she could not evict, is satisfied that the Respondent was at least reckless.

62. In the event, the instruction of bailiffs by the Respondent resulted in the identification of the written Tenancy Agreement which, as found by the Deputy District Judge at the County Court hearing 7th May 2019, had been entered into by Mark Dehaney on behalf of the Respondent, albeit that she was not aware of that, such that the Respondent was bound by it. It is apparent that some ongoing payments were made of rent after May 2019 pursuant to it and the Respondent has taken proceedings based on it. The Tribunal does not find that the Applicant's assertion that he proved at court that there were "several" of them in occupation is correct, the transcript of the hearing which was before the Tribunal and which the Tribunal read, providing no support for it. Whilst the Court indicated that it appeared that the previous Possession Order had, in effect, been concluded by the execution of a warrant on 21st March 2019, the court was reliant on the evidence of the parties on that day and in any event, is not recorded as having reached a definite conclusion, such that the court's perception does not detract from the Tribunal's query as to whether there was in fact a Warrant for Possession in March 2019.

63. The Tribunal noted that they had not seen bank statements from the Applicant. The Applicant stated that he had sent them by email, although he did not indicate when, and then moved onto documents sent to the court. Given the findings by the court, nothing turned on the matter.

64. The Tribunal does not find any of the rent paid by the Applicant to have been paid using money received from Housing Benefit. Whilst the Respondent speculated that he may have, the Applicant's unchallenged evidence was that he was a full-time student. He would not therefore qualify for either of those benefits. There is no evidence that he and any other occupier or occupiers who contributed to rent after 21st March 2019 received either benefit. The Tribunal does accept the evidence from the Applicant that payments were made direct to the Respondent's bank account.

65. The Applicant alleged that at the 7th May 2019 County Court hearing, the Judge advised the Respondent to obtain a HMO licence but the Tribunal finds that he did not, having considered the words used by the Judge as revealed by the transcript of that hearing. The Judge did

make the parties aware of the additional licensing scheme that Bristol City Council was to implement but had not yet then implemented.

66. A good deal of dispute arises in the papers- and was made to a lesser extent in the hearing- in which the Applicant is criticised for sub-letting without the knowledge of the Respondent and to which the Applicant responded. He denies that he did, although notably in the hearing, he referred to the letters dated December 2018 having been written by "my tenants", therefore stating other occupiers to be his tenants and supporting the case that he was underletting. The Tribunal finds that the Respondent did know at least that the Applicant was not the only occupier from Spring 2019, based on the comments made by the Applicant to the court in May 2019 and the attendance of the Respondent in June 2019. Save in relation to any potential question as to the amount paid by the Applicant, the Tribunal considers the dispute irrelevant to the determination of the particular application.

67. There is one additional alleged incident to which the Application referred in his oral evidence- having first mentioned it in his Skeleton Argument, namely that in June 2019 the Respondent tried to push him down the stairs, complaining that he had removed mould and then pushing him. The Tribunal was not satisfied that the incident occurred. The Applicant had not referred to the alleged push at any previous time during the proceedings. The Applicant had referred to the Respondent attending and also referred to the occupier, Faisal, being asleep in bed when the Respondent attended but in such a way as to indicate that he had been told of the Respondent's attendance later and had not been present at the time of it. The Respondent accepted seeing one occupier, who was asleep in bed but asserted it to be apparent that only 2 people occupied

68. The Applicant also asserted that he had made a recording of the alleged incident. The Tribunal found the Applicant unclear when challenged about why he had not mentioned the attempted push before and the Tribunal did not accept the Applicant's assertion in response to the suggestion that the incident was made up, that the Applicant had a recording, not even set out in the Skeleton Argument or the Applicant's earlier evidence of the incident, and not presented in evidence.

69. No other action is asserted to have been taken by the Respondent after the court hearing which could have caused a residential occupier to leave the Property until the service of a Notice Seeking Possession in Autumn 2019. The parties agree that occurred, that possession proceedings were issued based on the Notice and that a Possession Order was granted on 17th March 2020. The Tribunal finds that the Respondent served those Notices not to harass or intimidate the Applicant, whether because of the Applicant subletting or not, but rather because the Respondent did seek possession of the Property, which the Respondent was entitled to do in light of the rent arrears

found by the County Court and so cannot amount to an offence. The Tribunal does not accept the Applicant's assertion in his Closing Statement that the Respondent "deliberately used false statements to apply for further evictions", which the Tribunal understands to relate to the Notices and proceedings. The County Court found that there were rent arrears.

70. The Tribunal should record that the Applicant complained that the Respondent had written to other occupiers stating that possession action was being taken against the Applicant and that was defamatory. The fact of the Respondent's representative so writing a letter was not in dispute. The point was dealt with very briefly by the parties. The Tribunal finds that whilst a letter was written, that is entirely common in possession cases and understandable where the Applicant asserted that others occupied the Property. He accepted that he had not contacted the Respondent about the condition of the Property since a point before lockdown, which the Tribunal did not find to support the significant problems, such as the boiler not working, that the Applicant alleged.

71. The Tribunal should record that the final instance of harassment or similar asserted by the Applicant was that the conditions at the property were poor and he was forced to live in those. The Applicant said that he had rights. Questions were put to the Respondent by the Applicant in respect of the condition of the Property as at December 2018, which the Respondent said it was for Murrays to sort out people to deal with and that she had been told by Murrays that tradesmen could not get in. She did not accept any repairs had not been undertaken by her, asserting all of those referred to by Bristol City Council in its letter had been.

72. The Tribunal did not make any findings as to the condition of the Property at any given time. The Applicant did not identify how the Respondent was said to have failed to repair as an act of harassment or how the asserted failure fitted with the Applicants' assertion that it was agreed that he, the Applicant, would undertake repairs, albeit that, the parties agreed, the Deputy District Judge rejected in the possession claim that an agreement had been reached that the cost of that could be offset against rent payable.

73. The Applicant filed a Defence to the claim for possession in which he answered the question on the Defence form as to whether there were any other occupiers of the Property. He listed one such occupier, namely Faisal Mohammed. That was as at 6th January 2020. The Applicant volunteered that information and in circumstances where the number of occupiers arguably had less significance and so was more likely to be unaffected by other considerations.

74. The Possession Order records that the Deputy District Judge found there to be £4064.00 rent arrears as at that date, additionally ordering payment of a daily rate of £23.63 thereafter. The Judge did

so, having found that the Applicant was liable to the Respondent for the £725 per month stated in the Tenancy Agreement. The Tribunal does not go behind those findings, which would have been fundamental to the case before the court. Whilst the Applicant gave evidence that the rent had always been paid, the finding of arrears by the County Court firmly contradicts that. The Tribunal was accordingly unimpressed by the Applicant calling the Respondent "a liar" for asserting arrears and similarly for asserting that there were obviously more rent payments than the County Court accepted. The Tribunal notes that even if the court had not made a clear finding, the Applicant had adduced no evidence to the Tribunal to support the assertion made. Indeed, the Applicant eventually accepted in evidence that the payment schedule presented to the court must be correct during the course of cross-examination about the rent payments schedule, not being able to identify additional payments made.

75. The Tribunal finds that the Applicant did pay some but not most of the rent between May 2019 and December 2019 and accepts the Applicant's case that the rent was split between the number of occupiers of the Property, with any such other occupier(s) at any given time paying to the Applicant, who then made payment of the whole sum to the Respondent, also accepting the Applicant's evidence that Faisal Mohammed was away for approximately 2 months during that period.

76. As £4064 of arrears accrued between May 2019 and mid-March 2020, a period of 10 months, although 9 months and a part month of rent if the May 2019 had already been paid when due, the relevant rent was approximately £6800, to or at most approximately £7600. The exact figure matters not in the event. Whichever way, £4064 was the larger part of that. In the absence of other evidence of rent having been paid by the Applicant, the Tribunal is satisfied as to some payments made by the Applicant during this period in consequence of the arrears otherwise being greater.

77. The Tribunal finds that, whether because of disagreement with the judgment of the Deputy District Judge or otherwise, the Applicant has failed to make any payments towards the rent payable for the Property since the date of the Order for Possession. The Applicant was reluctant to answer about that.

78. The parties also agree that the Deputy District Judge hearing the possession claim in March 2020 rejected the Applicant's assertion that the Property was a HMO following the selective licensing by Bristol City Council commencing 8th July 2019. The Tribunal does not know the exact basis for that decision, the reasoning not being set out in the Order for possession- not that the Tribunal would have expected that- and the Tribunal did not have the advantage of the transcript of the hearing or of the judgment. The Tribunal notes that it is unclear in what manner the point would have been relevant to a possession claim based on rent arrears and so whether any firm

finding was made. The Tribunal therefore cautiously makes its own assessment in case there may be any distinction between that which the County Court sought to express and the findings relevant to this application.

79. The Tribunal finds that as at 6th January 2020, the Property was occupied by the Applicant and Faisal Mohammed only. The Applicant's evidence as to who else occupied and when was unclear. The Applicant made reference to those who attended the Respondent's home in December 2018, rather than clear evidence as to who occupied the property with him at later times. The Tribunal considers that if there had been other occupiers as at 6th January 2020, the Applicant would have included their names on the Defence form. The Applicant was unable to provide any cogent explanation of his failure to include other names in the event of there being other occupiers, as he asserted. Whilst the Tribunal notes that the Applicant said in evidence that the Respondent's representatives' letter which he described as defamatory was shown to him by Rafiq, that was only mentioned well into the Applicant's evidence and some while after he was first questioned about that letter and lack of evidence of occupiers other than himself and Faisal July 2019 onwards. In that context, the Tribunal was not satisfied that the Applicant was shown the letter by Rafiq.

80. The Tribunal further notes that the Applicant accepted in evidence that he told the County Court in May 2019 that Faisal was at the Property but was away and the Applicant was unsure whether he would return and further and notably, that "everyone else" was looking for other accommodation. The Tribunal accepts that the Applicant did not ordinarily live there alone, accepting his evidence about Faisal, which is not disputed, and noting the Council Tax bill does not record a single person discount.

81. The Applicant said in evidence that the other occupiers left the Property in or about April 2019- although the date was unclear and may have been later- when the Applicant undertook work to what he described once as a ceiling and once as the roof, except himself and Faisal. He did not explain when they returned. The Tribunal is not satisfied on the weight of evidence that any others than Faisal who did occupy as at that work being undertaken ever did return to the Property. Whilst there is correspondence from Bristol City Council in May 2019 indicating that advice was given about HMO licensing, that did not extent to finding such a licence to be required.

82. There was a long way from sufficient evidence on which the Tribunal could be satisfied to the required standard at any other time after the start of July 2019 that there were 3 or more occupiers of the property. It is of particular note that the Applicant has provided no witness evidence from any other occupier since the letters about the attendance at the Respondent's home in December 2018. The Applicant could offer no cogent explanation for the lack of those,

simply saying that no-one had asked for statements from such occupiers. The only 2 pieces of evidence of occupiers after July 2019, indeed after the eviction and Tenancy Agreement on 21st March 2019, are the Applicant's Defence in the possession action and a letter 30th November 2019 about a bedroom window. However, that is from Faisal Mohammed. It does not refer to any other occupier or demonstrate there to be any. Indeed, the fact that the only other written evidence is from Faisal Mohammed, tends to support there being 2 occupiers- the Applicant and Faisal Mohammed- rather than the contrary and so casts further doubt on the Applicant's case.

83. The Tribunal did consider the Applicant's explanation for the lack of attendance at the hearing of the housemates the Applicant claimed to have. The Tribunal found that explanation entirely unconvincing. Even if there had been a convincing explanation for the lack of attendance at the final hearing, that would have gone little way to explaining the complete lack of anything in writing from any asserted occupiers-other than Faisal Mohammed- about any matter after December 2018.

84. While it is a matter for the Applicant as to the evidence he chooses to present, the Tribunal must reach a decision on the basis of the evidence presented, subject to any inferences which can properly be drawn. No such inference in support of the Applicant's case can be drawn from the evidence presented. The Applicant has been consistent in his assertion of 3 or more occupiers but there is nothing at all which offers support for that assertion being correct on or after 8th July 2020.

85. It is of relevance, although it would not of itself be determinative, that Bristol City Council did not seek to take any action on the basis of breach of its additional licensing requirements. The Tribunal is well aware that Bristol City Council is active in such matters, a significant percentage of the applications for rent repayment orders received by the Southern Region of the Property Chamber being received from Bristol City Council or by those supported by the Council in pursuing applications. The Tribunal considers that the Council would have been likely to take action if it had concluded that a breach of HMO licensing requirements existed.

86. The Tribunal finds that no Improvement Notice was served on the Respondent by Bristol City Council. The letter relied on was not such a notice.

87. The Tribunal makes no finding as to whether, or not, the Respondent protected a deposit or provided a gas safety certificate, for the reasons explained below. In the circumstances, those matters were not explored at the hearing, although it can be noted that the Applicant made a bare allegation about the gas safety certificate without supporting evidence or information, but did produce a receipt in

respect of the deposit said to have been paid- although that was to Sam Mitchell.

88. The Tribunal also makes no finding on the alleged agreement that the Applicant could deduct the cost of work undertaken from the rent. As noted above, the Tribunal will not go behind the finding made by the County Court and where the point was of considerable importance and is likely to have been addressed rather more fully than in this application. Even if the County Court had not apparently already made a finding of fact that there was no agreement, any breach of any such agreement is not an offence on which a rent repayment order can be made in any event and so no finding is required.

89. The Tribunal further finds that as at the 19th August 2020, the Applicant had failed to make any other payments of rent to the Respondent since the date of the Order for possession, 17th March 2020, such that the rent arrears pursuant to the terms of the tenancy agreement amounted to £7836.26.

90. The Tribunal observes that its findings were made on less than satisfactory and convincing evidence from either party about a number of matters. The Applicant was inconsistent on occasion, was evasive for example in respect of rent payment, added colour absent from detailed earlier written assertions and would not accept valid points, also asserting other supportive evidence, including video recordings existed in respect of a number of matters but where he had not supplied that, as it seems he did not to the County Court when ordered to. The Tribunal accepts that the Applicant said that he could produce other evidence after the hearing but it was explained by the Judge that the final hearing was just that and that the Tribunal would proceed on the evidence before it.

91. The Respondent was also less than convincing about all matters. For example, the Tribunal does not know what, if any finding the County Court made about the Respondent's assertion that she was not aware of anyone other than the Applicant occupying the Property and the implication that she only learnt of that in or about November 2019 but the Tribunal has found that to be incorrect. The determination that the Applicant has failed to prove allegations is far from being in consequence of the Respondent's case being accepted. However, it is the Applicant upon whom the burden falls to prove the allegations and, whilst care should be taken not to rely too heavily on that burden in cases in which the civil burden of proof applies, it is more significant where the criminal standard of proof does.

**Grounds advanced for a rent repayment order- application of the law to the findings of fact**

92. The relevant period to consider in respect of any offence is the 12 months preceding the date of the application to the Tribunal. As that date was 13th February 2020, the relevant 12-month period was that

from 14th February 2019 onward. Anything which occurred earlier than that date cannot amount to a relevant offence for the purpose of a rent repayment order. It necessarily follows that any offence, if any, committed by the Respondent prior to 14th February 2019 cannot form the basis of a rent repayment order in this case.

93. The several relevant statutory provisions are set out in the Appendix to this Decision. The PEA 1977 is particularly relevant, as explained below. The tests, in the event that sections 1(3A) and 1(3B) apply, of reasonable cause to believe and reasonable excuse are objective ones.

94. The Respondent does, the Tribunal finds, have to commit the acts with intent, or with knowledge or having reasonable cause to believe. The PEA 1977 does not provide for the landlord committing the acts through others whose actions are unbeknown to the landlord.

95. Whilst the PEA 1977 does not explicitly state that the landlord can commit an offence by way of actions of servants or agents carried out at the instigation of the landlord, the Tribunal understands that is the accepted effect of the PEA 1977. It would indeed be nonsensical if the landlord could escape conviction because of arranging third parties to throw a tenant out, for example, rather than physically doing it himself or herself.

96. However, the Tribunal considers that the Respondent cannot intend something of which she is unaware and cannot know or have reasonable cause to believe in the effect of something of which she is unaware. That is not a matter of the Respondent having reasonable grounds for doing the acts. Rather, if the acts are committed without her knowledge, she does not "do" them at all in the manner the PEA 1977 provides for.

97. In respect of the CLA 1977, bailiffs instructed by the County Court to execute a warrant have lawful authority to enter premises albeit not to force entry unless specifically authorised by an order, although it is not certain that private bailiffs would. However, it is the Respondent who would have to commit the offence for the purpose of this application. The same points set out in the 3 preceding paragraphs apply.

98. The Tribunal does not accept that any offence could have been committed in respect of the Possession Order in December 2018 because the occupiers enjoyed no rights as against the Respondent. However, as the Tribunal has found no rent to have been paid by the Applicant to the Respondent for that period and that December 2018 is more than 12 months prior to the application, there could be no rent repayment order made for that period whether the Tribunal considered there to have an offence committed or not.

99. The Tribunal determines that the arrangement entered into by the Applicant and others with Mark Dehaney amounted to a tenancy. The

Applicant and the others jointly had exclusive possession of the Property for payment of rent and that the agreement reached and position created had the features of a tenancy.

100. Therefore, in respect of the events from January 2019 onward, the Applicant was in law a tenant. The Respondent is wrong to argue that the Applicant was only a tenant from 21st March 2019. However, even if, for reasons not identifiable, the Tribunal had concluded that the Applicant was not a tenant, he was unquestionably a residential occupier of the Property with at least a licence to occupy and the net effect would have been the same for the purpose of the provisions for consideration by the Tribunal.

101. The Applicant continued to be tenant of the Property from 21st March 2019. It is somewhat problematic as to whether the Applicant became the sole tenant at that time. It is not apparent that the tenancies (or licences if relevant) of other occupiers were lawfully terminated, albeit that they were physically removed from the Property, and if so, on what basis they were lawfully terminated. The attempted warrants would not end their rights, not being a proper way of doing so. The entry of the Applicant into the written Tenancy Agreement could potentially amount to his surrender of the previous tenancy ending that for all of the then tenants. It is not appropriate to make any determination in the absence of any argument having been heard.

102. Similarly, the precise status of such of the other occupiers as remained for any time after 21st March 2019 until leaving, or who returned after 21st March 2019 having left at that time is not directly relevant. Whichever way, the Applicant had the Tenancy Agreement requiring payment of £725 and no payment was demanded by the Respondent from anyone else. Accordingly, the Tribunal determines that as from 21st March 2019, the Applicant was at least a tenant of the Property, liable for the rent of £725 per month but with that having been found to be financially contributed to by one or more other occupiers.

103. In terms of the acts complained of, firstly in light of the finding that it has not been proved that the Respondent instigated the threat made by her husband by telephone in February or early March 2019, the Tribunal determines that there was no offence proved to have been committed under the PEA 1977 on the part of the Respondent.

104. The actions of the Respondent's agent in March 2019 up to and including 20th March 2019 were acts carried out with intent to cause the residential occupier, the Applicant, to give up possession. There is scarcely any other way that attending at the Property with bailiffs could be viewed. The Tribunal finds on the facts as found that to amount to an offence under the PEA 1977 on the part of the Respondent. The Respondent had a specific intention to evict the Applicant and set out to do so. Knowledge or reasonable cause to believe in s(3A) and the statutory defence in s(3B) are not therefore relevant.

105. Given the lack of finding that the Respondent was aware of the events on 20th March 2019 and had no involvement in the return of the bailiffs to the Property on 21st March 2019, the Tribunal does not find the Respondent to have committed an offence under PEA 1977 on that later date.

106. The same point applies in respect of the CLA 1977 and therefore the Tribunal holds that no offence under CLA 1977 was committed by the Respondent in respect of the actions of the bailiff. It is not necessary to go beyond that.

107. The Tribunal is satisfied beyond reasonable doubt that the Respondent did commit an offence under PEA 1977 in respect of the Warrant for Possession in May 2019. Taking the situation at its simplest, the Respondent was not entitled to evict by bailiffs the Applicant as a tenant under a written tenancy agreement against whom no Possession Order had been obtained and where any date for possession had not then passed. Whilst the Applicant asserted the specific Tenancy Agreement not to be valid- which would have potentially meant there was no written tenancy agreement, although there would still have been occupation and rent paid and a tenancy for the Applicant and/ or others accordingly- the Tribunal considers that the Applicant is estopped from denying the Tenancy Agreement that he relied on in court to prevent an eviction.

108. The finding that the Respondent did try to evict the Applicant, and intending the Applicant to give up occupation in those circumstances, must again lead to holding that a further offence was committed pursuant to s3 PEA 1977. Knowledge or reasonable cause to believe in s(3A) and the statutory defence in s(3B) are not relevant.

109. The actions of the Respondent in serving Notices Seeking Possession and in taking possession proceedings were plainly also actions taken to ensure that the Applicant and other occupiers left the Property. However, they do not constitute offences under the PEA 1977. They follow the process that should be followed. It is not strictly relevant that they resulted in a Possession Order being made, nor would it be if the Applicant's appeal were to succeed and that Possession Order be overturned. The Notices and proceedings would not amount to the commission of offences whichever way.

110. The Tribunal considers that the Respondent writing a letter of the nature indicated and to other occupiers of the Property in the course of the possession action does not constitute an offence under PEA 1977 either.

111. The Tribunal further does not find the conditions at the Property, about which no specific findings were made by the Tribunal, amount to harassment in law by the Respondent against the Applicant. The Applicant is correct to say that he had rights in respect of conditions

at the Property. However, whilst the Tribunal does not preclude the potential for a landlord to deliberately refuse to repair a property as an act of harassment, whether to seek to ensure that an occupier leaves or otherwise, there was limited evidence about communications about repairs, other than the asserted agreement that the Applicant could undertake works and deduct costs, and such as there was did not demonstrate a failure to address repairs identified as required. No evidence was presented going close to supporting the Tribunal being satisfied that an offence was committed.

112. In relation to the asserted breach with regard to the licensing of a house in multiple occupation, the inevitable effect of the Tribunal not being satisfied that there were 3 occupiers of the Property after July 2019 is that the Respondent is found not to have been in breach of licensing requirements and did not commit any such offence.

113. Until 8th July 2019, the usual licensing requirements set out in s72 of the HA 2004 applied, such that a licence was needed in the event of there being 5 occupiers of the Property. However, as at December 2018, the Tribunal found there to have been 4 occupiers and it is not even asserted by the Applicant that there were more than 4 occupiers thereafter. It necessarily follows that the Respondent cannot be found to have breached HMO licencing requirements until 7th July 2019.

114. As at 8th July 2019, the selective licensing requirements of Bristol City Council, described by a Housing Advisor at the Council as the Central Additional Licensing Scheme, applied, such that an HMO within the area in which the Property is situated needed to be licensed in the event of there being 3 occupiers comprising 2 or more households. In the event that the Tribunal had been satisfied that there were still 4 occupiers during that period and assuming a finding or 2 or more households a breach would have been found. However, where the Tribunal cannot be sure that there were more than 2 occupiers, the Applicant has not proved to the required standard any HMO licensing offence under the selective licensing. The nature of the rights to occupy do not matter for these purposes where there is not an offence committed whatever those rights may have been.

115. The Respondent did not commit an offence of failing to comply with an improvement notice, the Tribunal finding on the evidence that none was issued to the Respondent. That ground for the application fails, as it must.

116. The HPA 2016 does not include in the grounds for a rent repayment order any failure to protect a deposit, if any, or a failure to provide a gas safety certificate, which are not offences listed in the HPA 2016, albeit that there are other potential actions in respect of each of those where appropriate. That ground advanced by the Applicant also necessarily fails.

117. The application for a rent repayment was made within 12 months of the offences found by the Tribunal to have been committed.

**The decision in respect of making a rent repayment order**

118. The Tribunal is satisfied, beyond reasonable doubt, that the Respondent has, on two occasions, committed an offence under section 1(3A) of the PEA 1977. A ground for the making of a rent repayment order has been made out.

119. Pursuant to the HPA 2016, a rent repayment order "may" be made if the Tribunal finds that a relevant offence was committed. It is apparent from *Newham* that the Tribunal could determine that a ground for a rent repayment order is made out but not go on to make such an order. The Tribunal considers that such circumstances will be rare and that, in the normal course, it will be plain that a rent repayment order should be made. However, the matter will always require consideration and is likely to require consideration with most care where the grounds have been made out but on a limited basis.

120. The Tribunal considers that the very clear purpose of the HPA 2016 to support good landlords and to crack down on rogue landlords and the fact that the imposition of a rent repayment order is penal and not compensatory must weight especially heavily in favour of an order being made if a ground for one is made out. The Tribunal again derives support for the above proposition from *Newham*, in which Judge McGrath said the following:

> "I should add that it will be a very rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent or housing benefit then the Tribunal should be reluctant to refuse an application for a rent repayment order."

121. The Tribunal exercises its discretion to make a rent repayment order in favour of the Applicants.

122. The Tribunal has found the ground for a rent repayment order being made to be two offences of attempted unlawful eviction with the intention of the Applicant leaving his home. The Tribunal considers that is far more than ample basis for the exercise of discretion to make a rent repayment order. The Tribunal does not consider that there is any other circumstance identifiable in this case sufficient to weigh against that.

**The amount of rent to be repaid**

123. Having exercised its discretion to make a rent repayment order, the next decision is how much should the Tribunal order. In this instance, the amount of rent to be repaid is a more difficult question than perhaps usual.

124. The period of rent to be considered is identified, in section 44 of the HPA 2016, as the period of 12 months ending with the date of the offence. The offences found to have been committed were committed on and just before 20th March 2019 and the date of service of the Notice of Eviction dated 29th April, on or about 30th April 2019. The relevant period of time is therefore that to the end of April 2019. The amount of rent ordered to be repaid must not, as stated in section 43, exceed the rent paid during that period.

125. 100% of the rent paid is the mandatory amount if there had been an actual conviction unless there are exceptional circumstances. In a case such as this one, where there has been no conviction, there is no reference in the HPA 2016 that a 100% refund of payments made should be ordered. However, the Tribunal has had particular regard to the decision of the Upper Tribunal in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC). The Upper Tribunal held that a 100% rent repayment order should be the starting point nevertheless, stating as follows:

> "That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent."

126. The Upper Tribunal has, since the hearing of this application and in a decision issued on 19th October 2020, confirmed the approach to be taken in *Chan v Bilkhu [2020] UKUT 3290(LC).*

127. This Tribunal approaches the question on that basis. That said, the starting point and the end point are not always the same and indeed may be very different once the relevant factors have been considered. Section 44 identifies factors to be considered in respect of an application such as this one which is made by a tenant.

128. The Applicant has applied for repayment of 12 months' or so worth of rent- January 2018 to the date of the application in February 2019, being claimed as £8700. However, that is not, the Tribunal finds, the relevant amount of the rent paid for the purpose of this order, or indeed during the period claimed at all.

129. The amount of rent paid by the Applicant to the Respondent, or in the main the Respondent's agent Mark Dehaney during the period was £500 for January and February 2019. That is the Applicant's quarter share of £1000, i.e. £250 for each of those 2 months. The amount paid during the period March and April 2019 inclusive was £1450. There was no rent found by the Tribunal to have been paid to the Respondent by the Applicant for the period May 2018 to December 2018 inclusive. Rent paid May 2019 onwards is not relevant, although given the level of rent arrears found by the County Court would have been somewhat less than the sum claimed.

130. It must also be borne in mind that of the £1450 element, it is clear that not all of it was the Applicant's money in the first instance and that at least a significant percentage of it was paid to the Applicant by the other occupier, or occupiers. That said, the Tribunal has been unable, on the very unclear evidence presented, to establish exactly how much was paid to the Applicant by others during that period beyond the £500 for March 2020.

131. It is clear from Section 44(3)(b) of the HPA 2016 that the amount of the portion of any award of universal credit insofar as it relates to the rent has to be deducted from the overall rent paid. The Tribunal understands that to reflect the fact that the tenant has received that award to be paid over as rent and has not paid over his or her other money and hence would otherwise receive an order for payment by the landlord of more than the rent effectively cost the tenant.

132. There is no other provision which refers to the source of funds that the tenant uses to pay the rent which is paid by the tenant. The Tribunal has considered carefully whether the sum falling for consideration should only be such portion of the rent during the relevant period as was paid by funds emanating from the Applicant himself and so should exclude any contributions from other occupiers.

133. However, such wording does not appear in the HPA 2016 and to limit the amount of the rent paid in such a way would involve reading into the HPA 2016 several additional words, where there is not an outcome obviously inconsistent with the purpose of the HPA 2016 produced by simply taking the words as they are. The Tribunal therefore does so. Whilst it may be considered that there would be a moral obligation on a tenant who receives payment under a rent repayment order of a sum to which others contributed to then pay over a portion of that sum to the contributors, that is neither provided for within the HPA 2016 or within the jurisdiction of this Tribunal.

134. That said, whilst the source of funds has been found not to impact on the amount of "rent paid" pursuant to s44, it is appropriate to briefly revisit the source of funds below in respect the factors relevant to the amount of the rent to be ordered repaid.

135. The total sum of rent paid for the purpose of the rent repayment order in this instance is therefore £1950.00.

136. The Tribunal notes, that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. The Tribunal further notes that Sections 44 and 45 of the HPA 2016 do not include the word "reasonable" and that *Vadamalayan* and *Chan* stated there is no longer a requirement of reasonableness. Those judgments also held in clear terms that the Tribunal must consider the actual rent paid and not simply any profit element which the landlord derives from the

property, to which no reference is made in the HPA 2016. For the avoidance of doubt, the Respondent did not pay the utilities.

137. Section 44(3) of the HPA 2016 requires the Tribunal to, in particular, take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which Chapter 4 of the HPA 2016 applies. Whilst the listed factors must therefore be taken into account, and the Tribunal should have particular regard to them, they are not the entirety of the matters to be considered. Any other relevant circumstances should also be considered, requiring the Tribunal to identify whether, or not, there are such circumstances and, if so, to give any appropriate weight to them.

138. In terms of the financial circumstances of the landlord, the Tribunal can only take those into account insofar as it is provided with evidence of them. No information was provided in any documentary or oral evidence to suggest that the amount of any order should potentially be reduced because of the Respondent's financial circumstances.

139. There is no evidence that the Respondent has received any previous convictions in respect of any relevant offence.

140. The Tribunal considers that the key element of those specifically listed in the HPA 2016 is therefore conduct. That includes the conduct of both parties, which the Tribunal understands to mean the conduct of the parties in relation to the tenancy and the obligations as landlord and tenant and not to mean the conduct of these proceedings.

141. The Respondent's conduct does not sit at the very top of the scale and allowance has to properly be made for the fact that very significant information was not provided to the Respondent by her agent Mark Dehaney. The Tribunal has found two instances of an offence, under the PEA 1977, but has found the Respondent may have believed that she was able to obtain a Warrant, albeit that she was not and any reasonable enquiries would have been likely to reveal that. It is of a degree of relevance that the second time at least and when she made the arrangements herself, the Respondent did seek a Warrant to be executed by County Court officers: this was not a case of deliberately flouting requirements- much as there is some reason to believe the earlier attempts by Mark Dehaney may have been.

142. The events of 20th March 2019 and the receipt of the Notice of Eviction dated 29th April 2019 have, however, been found to have caused real concern to the Applicant. If the Applicant had not been able to prevent the eviction on 20th March 2019 and if the Applicant had not applied to the County Court in May 2019 and the Warrant had been executed, in either instance the Applicant would have been unlawfully evicted. The amount of the order must have proper regard to that and the entitlement of the Applicant to remain, having made agreements and paid money, but tempered to a certain degree, by way of mitigation,

by the Respondent's belief, in order to reach the relevant weight for these purposes. The Tribunal determines that degree to be 20%.

143. There is one other potentially relevant element of conduct, the question of any failures in respect of repairs. However, none has been found which would weigh in favour a higher award, albeit the apparent but disputed attention to repairs is not found to add to mitigation.

144. The more difficult issue is that of the Applicant's conduct in respect of the rent account. As referred to above, the Deputy District Judge in the County Court found that there were rent arrears of £4064.00 as at 17th March 2020. That is later than the date of the Applicant's application to this Tribunal. As the accepted evidence is that the Applicant last paid in January 2020 and there must have been a further payment of rent due as at 1st March 2020, the evidence indicates that the arrears as at the date of the application were in the region of £3500. Equally, by the date of the hearing of the application the arrears were considerably greater.

145. However, that bears no relation to the relevant period of rent in this case. That period is, as noted above, to April 2019. There is no evidence of arrears which relate to that period, or more pertinently the period January 2019 onward in which rent was payable to the Respondent or her agent, Mark Dehaney, by the Applicant.

146. The Tribunal does not consider that the Applicant's conduct in relation to payment of rent after the date of the offence relevant to the rent repayment order should alter the amount of the rent repayment order in this case. In that regard, the Tribunal is very much mindful of several points, addressed below.

147. The first is that there were arrears at the time of the application and there has subsequently been a substantial increase in the rent arrears. However, the Applicant's claim is limited to the rent paid in the 12-month period prior to the date of the offence committed several months earlier than the arrears accrued.

148. The second is that this Tribunal is aware of the approach to rent arrears recently taken by the Tribunal in *Awad v Hooley* CHI/21UD/HMG/2020/0003. That case related to the failure by the Respondent to obtain a licence where the local authority required all private landlords to be licensed. That aside, the case has considerable similarities with this one, the Respondent having taken possession proceedings based on arrears of rent and, whilst the Order for possession was set aside on the basis of a defect with the Notice Seeking Possession, nevertheless there was no apparent dispute that substantial arrears of rent were owed. The rent repayment order had been sought for a quite particular period, and somewhat less than 12 months, where there had been arrears of rent at the start of the period and the Applicant was considered to have specifically selected a period in which most of the rent had been paid by her. In addition, in

ascertaining the rent paid during the period, the differently-constituted Tribunal adopted standard accounting practice of setting payments against the oldest arrears, such that the payments found to be made in respect of rent during the relevant period were significantly reduced.

149. The Tribunal hearing that case referred to the tenant's failure to pay rent since the end of the period for which repayment was claimed to be a "deliberate, persistent and very substantial" breach of the terms of the tenancy agreement. The maximum potential level of rent repayment order was reduced by 75% because of conduct. It is apparent that the Tribunal took a very dim view of the approach of the tenant and perhaps the quite particular selection of the period for which a rent repayment order was sought. That is understandable. However, the net effect was to reduce the amount of the rent repayment order because of matters separate to the period of the claim and for the tenant could not obtain any benefit. Good conduct by the tenant during that period could not have increased the rent repayment order above the sum claimed.

150. It is not for this Tribunal to suggest that taking account of conduct subsequent to the period of rent which can be ordered to be repaid and reducing the rent repayment order was inappropriate in that case. The Tribunal notes that the HPA 2016 does not limit the time during which relevant conduct can be committed and could have chosen to. The Tribunal also notes that when considering the landlord's financial position, the only logical approach is to look at that as at the date on which the Tribunal considers the matter. It would be nonsensical to make an order based on finances at an earlier date, potentially a much earlier date in the circumstances such as those in this case. The Tribunal further notes that a relevant offence committed by the landlord is not limited to one for which the landlord was convicted by the date of the offence on which a rent repayment order is based. The Tribunal can accept that there is a good argument that relevant conduct may also be later than the date of the specific offence on the basis of which the Tribunal imposes a rent repayment order.

151. However, this Tribunal has some doubt that Parliament can have intended that where an Applicant may be entitled to a rent repayment order in respect of rent paid during a given period of time and so necessarily limited by that time period, the repayment ordered should ordinarily be limited by payments, or lack of them, which occur outside of that period and for which, no potential rent repayment order can be made. In the event that the Applicant had the potential for there to be a rent repayment order for a period of 12 months prior to the date of the offence and then for rent paid after that up to the date of the application and also subsequent to the date of the application, that would be a different matter.

152. The Tribunal accepts that to so proscribe the relevant period in which conduct in relation to the payment of rent is committed would be to

impose a limit which does not appear on the face of the HPA 2016 and runs in a different direction to the lack of obvious limit to the period for the other factors. However, any rent repayment ordered is enforceable as a debt, where the landlord is able to raise against that any debt owed to him or her by the tenant. Where there are arrears, the net effect ought to be that amount owed by the tenant to the landlord is reduced by the amount of the rent repayment order; arrears do not cease to be payable.

153. Equally, the rent repayment order can only be for rent paid. Any rent not paid, at least during the period for which a rent repayment order can be claimed, cannot be the subject of an order in any event. Consequently, for that rent not to be able to be ordered repaid- as not paid in the first place- and for the tenant to continue to owe the landlord the rent in arrears and then to have the amount of the rent repayment order which could be made also reduced because of those arrears is to produce a greater balance owed by the tenant than otherwise the case and to financially penalise the tenant. Bearing in mind the purpose of the HPA 2016 and its predecessor the HA 2004, to impose such an impact on the tenant appears to the Tribunal to be likely in most cases to run contrary to that purpose. It is not easy to find that to have been the intention of Parliament.

154. However, given the HPA 2016 does not on its face limit the period of conduct to be considered, the Tribunal has considered the arrears which accrued subsequent to the period for which an order may be made for rent to be repaid and has considered what effect they should have. The Tribunal is mindful that the arrears are far from insignificant.

155. In considering the point, the Tribunal has nevertheless given considerable thought to any weight which ought to be given to the arrears. The Tribunal is particularly influenced by the time during which rent arrears accrued, the time during which rent was paid which can be the subject of a rent repayment order and the significant difference in time between those two periods and to the potential penalty to the Applicant. Weighing those matters against the arrears in all of the circumstances, the Tribunal's considered approach is that the conduct does not weigh such that the amount of the rent repayment order should be reduced. The Tribunal respectfully does not consider that the approach to the impact on the rent repayment order taken in *Awad* is appropriate in this instant case.

156. Accordingly, whilst the Applicant has failed to pay rent in full since the date of relevant offence and make further payments of rent at all since the date of this application and hence owes the Respondent a greater sum which she can enforce against him, that does not alter the appropriate amount of the rent repayment order.

157. There is one potential other element of conduct of the Applicant to refer to for completeness. It is not in dispute that the Applicant

undertook works to the Property. The Respondent's case did not go beyond the unquestionably correct position that the Applicant's case about works could not form the basis for a rent repayment order and, given the unquestionable correctness of that position, the Tribunal did not receive much in the way of evidence or submissions on the matter. The Tribunal notes that the Deputy District Judge before whom the possession action was heard apparently held that no agreement had been entered into that the Applicant was entitled to deduct the cost of the works from the rent.

158. The Tribunal had far from adequate evidence on which to determine that there was conduct on the part of the Applicant with regard to works which should impact on the amount of the rent repayment order. In a large part, that was because no argument was advanced along such lines by the Respondent. The Tribunal has concluded that there is no conduct of the Applicant in respect of works which the Tribunal properly can or should take into account.

159. Neither party identified any other relevant considerations in relation to the amount of the rent repayment order. The Tribunal considers that the source of the Applicant's funds is potentially a consideration relevant in the context of s44(3) and may impact on the amount of rent which should be repaid. However, as neither party raised the matter as relevant, the Tribunal has concluded that it should not seek to determine whether such source of funds is in fact a factor to consider or the weight to give to it (and hence does not need to make a finding as to the exact amount of the contribution). That is better left to another case where the parties have addressed the point and a Tribunal has the benefit of such submissions.

160. As noted above, the amount of any rent repayment order is a penal sum and not compensation. The Tribunal is very much mindful of that and of that purpose of the HPA 2016. The Upper Tribunal stated in *Vadamalayan* the Judge's understanding that:

> "Parliament intended a harsh and fiercely deterrent regime".

161. That statement was made in the context of a HMO licensing offence. However, the regime cannot have been intended to be less harsh, and more obviously would if anything be harsher, in the context of offences under the PEA 1977.

162. Noting the starting point identified in *Vadamalayan* and otherwise taking the various relevant factors into account, including but not limited to those specifically identified in the HPA 2016, and balancing those, the Tribunal has determined that the totality of the reduction is 20%. Therefore, the appropriate amount for a rent repayment order is 80% of the rent paid during the period for which a rent repayment order can be made. So, 80% of £1950.

163. The Tribunal makes a rent repayment order in the sum of £1560.00.

164. The Tribunal is mindful that the amount of that order is someway lower than the current level of rent arrears. However, the relationship between those arrears and the sum now ordered is beyond the jurisdiction of this Tribunal.

**Application for refund of fees**

165. The Applicant asked the Tribunal to award the fees paid in respect of the application should he be successful, namely reimbursement of the £100 issue fee. The £200 hearing fee was not paid as the Applicant was exempt.

166. The fee having needed to be paid in order to bring the claim and the Applicants having been successful in the proceedings, albeit to a rather reduced extent, it is appropriate to order and the Tribunal does order the Respondent to refund the £100 to the Applicant, in addition to the amount of the rent repayment order itself.

## Rights of appeal

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

2. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

3. The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

4. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

# Appendix of relevant legislation

## Protection from Eviction Act 1977

### Section 1 Unlawful eviction and harassment of occupier

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(3) If any person with intent to cause the residential occupier of any premises-

(a) To give up the occupation of any 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 or comfort of the residential occupier or members of his household……. he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if-

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) …..

and in either case he knows or has reasonable cause to believe that that conduct is likely to cause the residential occupier to give up occupation of the whole or part of the premises

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts…….

## Criminal Law Act 1977

### Section 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 purposes of securing entry into any premises for themselves or any 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 violence knows that that is the case.

(2) Subject to subsection 1(A) above [displaced residential occupiers or protected intending occupiers], the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

**Housing Act 2004 (Part 3)**

**Section 80 Designation of selective licensing areas**

(1) A local housing authority may designate either-
(a) The area of their district, or
(b) An area in their district
as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

**Section 85 Requirement for Part 3 houses to be licensed**

(1) Every Part 3 house must be licensed under this Part unless.....

**Section 95 Offences in relation to licensing of houses under this Part**

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1) but is not so licensed.

**Section 96 Other consequences of operating unlicensed HMOs: rent repayment orders**

(1) For the purposes of this section an HMO is an "unlicensed HMO" if-
(a) It is required to be licensed under this Part but is not so licensed and.....

**Housing and Planning Act 2016**

**Chapter 4 RENT REPAYMENT ORDERS**

**Section 40 Introduction and key definitions**

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) .....

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

| Act | section | general description of offence |
|---|---|---|
| Criminal Law Act 1977 | section 6(1) | violence for securing entry |
| Protection from Eviction Act 1977 | section 1(2), (3) or (3A) | eviction or harassment of occupiers |

| | | |
|---|---|---|
| Housing Act 2004 | section 30(1) | failure to comply with improvement notice |
| | section 32(1) | failure to comply with prohibition order etc |
| | section 72(1) | control or management of unlicensed HMO |
| | section 95(1) | control or management of unlicensed house |
| This Act | section 21 | breach of banning order |

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

**Section 41 Application for rent repayment order**

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

**Section 43 Making of rent repayment order**

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);
(b) .....
(c) section 46 (in certain cases where the landlord has been convicted etc).

**Section 44 Amount of order: tenants**

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

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

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a)the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.