



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

**Case Reference** : **BIR/00FY/HMK/2021/0038**

**Property** : **36 Denstone Road, Nottingham,  
NG3 2AW**

**Applicant** : **Mr Sagheer Hussain**

**Respondent** : **Mr Mohammed Latif**

**Type of Application** : **Application under section 41(1) of the  
Housing and Planning Act 2016 for a  
rent repayment order**

**Tribunal Members** : **Judge M K Gandham  
Mr A McMurdo MCIEH**

**Date of Hearing** : **7 December 2021 and 14 March 2022**

**Date of Decision** : **21 April 2022**

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**DECISION**

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## Decision

1. The Tribunal orders Mr Mohammed Latif to repay to Mr Sagheer Hussain the sum of £3,000.

## Reasons for Decision

### Introduction

2. By an Application received by the Tribunal on 28 August 2021, Mr Sagheer Hussain ('the Applicant') applied for a rent repayment order under section 41(1) of the Housing and Planning Act 2016 ('the Act'). The order was in respect of rent he had paid as the tenant of the property known as 36 Denstone Road, Nottingham, NG3 2AW ('the Property'), to his landlord, Mr Mohammed Latif ('the Respondent').
3. The Tribunal issued Directions on 2 September 2021. The Directions confirmed that an inspection of the Property would not be undertaken. In accordance with the Directions, the Tribunal received a bundle of documents from the Applicant on 24 September 2021, a bundle of documents from Respondent on 21 October 2021 and a Statement in Reply to the Respondent's bundle from the Applicant on 1 November 2021.

### The Law

4. Section 40 of the Act provides that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant. It confers power on the tribunal to make such an order in favour of a tenant where the landlord has committed an offence to which Chapter 4 of the Act applies.
5. The relevant offences are detailed in section 40(3) of the Act as follows:

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	<i>Criminal Law Act 1977</i>	<i>section 6(1)</i>	<i>violence for securing entry</i>
2	<i>Protection from Eviction Act 1977</i>	<i>section 1(2), (3) or (3A)</i>	<i>eviction or harassment of occupiers</i>
3	<i>Housing Act 2004</i>	<i>section 30(1)</i>	<i>failure to comply with improvement notice</i>
4		<i>section 32(1)</i>	<i>failure to comply with prohibition order etc</i>
5		<i>section 72(1)</i>	<i>control or management of unlicensed HMO</i>
6		<i>section 95(1)</i>	<i>control or management of unlicensed house</i>
7	<i>This Act</i>	<i>section 21</i>	<i>breach of banning order</i>

6. Section 41 of the Act details the application process and provides:

**41 Application for rent repayment order**

- (1) *A tenant ... 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.*

...

7. Sections 43 and 44 of the Act detail the power of the tribunal to make an order and the amount of that order and, in respect of an application by a tenant, provide:

**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);*

...

**44 Amount of order: tenants**

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

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

*(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.*

## **Hearing**

8. The hearing was held remotely, via Cloud Video Platform (CVP), on 7 December 2021 and reconvened on 14 March 2022.
9. Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and to enable this case to be heard remotely during the COVID-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal, the Tribunal directed that the hearing be held in private.
10. The Applicant attended the hearing and was accompanied by his witnesses – Mrs Afshan Bibi (his wife), Mr Shahid Akhtar (his cousin), Mr Muhammad Bilal Tasnim (his friend) and Mr Norman Mukhtar (his work colleague) – on the first day of the hearing, when they gave evidence on his behalf. He attended the second day alone. The Respondent attended on both days of the hearing and was represented on both days by his son, Mr Adil Latif, who also gave evidence on his behalf.
11. The parties (and some of the witnesses) were assisted by way of an interpreter.

## ***Matters agreed between the parties***

12. The following matters were agreed by the parties:
  - The Applicant and his wife began residing in the Property in 2017 and were still in occupation;
  - The current tenancy agreement relating to the Property commenced on 28 January 2020, for a term of 12 months, by virtue of a tenancy agreement made between the Respondent and the Applicant on that date ('the Tenancy Agreement');
  - The rent was £500 per calendar month and all of the rent had been received by the Respondent;
  - In addition to paying the rent, the Applicant was also responsible for payment of the council tax and the utilities;
  - A Notice requiring possession was served by the Respondent on the Applicant on 30/8/2020;

- The Property was subject to a Selective Licensing scheme which came into force on 1 August 2018;
- The Property was without a licence between 1 August 2018 and the date upon which the Respondent's application for a licence was received by Nottingham City Council ('the Council'), being 20 March 2021;
- A licence was granted to the Respondent on 20 April 2021; and
- The Respondent had not been convicted or received a Financial Penalty in respect of any offence detailed in section 40(3) of the Act.

### ***Matters in dispute between the parties***

13. The following matters were in dispute:
- Whether the Respondent was guilty of any offence committed under sections 1(2), (3) or 3(A) of the Protection from Eviction Act 1977;
  - Whether the Respondent had a reasonable excuse for not having a licence;
  - The conduct of the Respondent;
  - The conduct of the Applicant; and
  - The financial circumstances of the Respondent.

### ***The Applicant's submissions***

14. The Applicant stated that, prior to the pandemic, he had been on relatively good terms with the Respondent. He stated that he had travelled to Pakistan in March 2020 for a family holiday, however, was unable to return to the UK until June 2020 due to COVID-19 restrictions. As such, he stated that he was late with his May and June payments of rent. The Applicant said that, during this period, he received numerous telephone calls from the Respondent chasing and threatening him for the rent.
15. The Applicant stated that he was no longer in arrears by the end of June, the Respondent having utilised £500 from his deposit for one of the monthly payments and he having paid the remainder. Despite this, the Applicant stated that the Respondent continued chasing him throughout the months of July and August to ensure that he paid the rent on time. He stated that the Respondent had also attended the Property, via the back garden without any prior notice, upon his return from Pakistan.
16. The Applicant stated that, in August 2020, the Respondent served a notice requiring possession on him, giving him three months' notice to vacate the Property. The Applicant stated that this notice was invalid as it should have been for a minimum of six months due to the temporary changes in legislation during the pandemic. Following the service of the notice, the Applicant stated that the Respondent failed to carry out essential repairs to the Property and would continuously call him asking him when he was going to leave.
17. The Applicant also stated that, during this period, someone would knock on the front door of the Property at night and, although the Applicant had no evidence that this was the Respondent, he believed that it was him and that he was trying to scare the Applicant into vacating the Property. The Applicant stated that both

his cousin and a friend had tried to help him find alternative accommodation without success.

18. The Applicant stated that he began to suffer from stress and that, after discussing the ongoing problems he was having with a friend, Mr Tasnim, he took his advice and contacted his GP. The Applicant included within his bundle a copy of two Consultation Information Sheets with his GP, one on 25 August 2020 and the other on 8 September 2020.
19. The Consultation Sheet in August confirmed that the Applicant reported problems with headaches, poor sleep, stress and depression. The Applicant reported that he was behind with his rent and that his landlord was “*suggesting he find somewhere else to live*” and that he was “*Thinking about looking for a new property anyway*” as there was damp at the Property. The report also referred to his wife being of “*working age but not working due to tennis elbow*” and him “*Also financially supporting family in Pakistan*”. The September Consultation Sheet referred to his financial problems as “*ongoing*” and that a notice to vacate had been served by his landlord upon him. It reported that he “*Feels this may be a positive as wanted to find a new property anyway*” It concluded by reporting that the Applicant had made “*really good progress so doesn't feel he needs any further support from us*”.
20. The Applicant stated that the problems with the Respondent escalated in January 2021 when the Applicant had reported a fault with the front door. He stated that it took the Respondent over four days to carry out the repair and that, when the Respondent came to view the door, there was an altercation between them. The Applicant alleged that the Respondent had tried to physically assault him and had needed to be restrained by the handyman the Respondent had brought with him. The Applicant stated that, after this incident, both he and his wife felt very intimidated by the Respondent.
21. The Applicant stated that in February 2021 the Respondent, again, telephoned him on a number of occasions “*forcefully*” asking him to leave the Property. He stated that he discussed the matter with Mr Mukhtar, a colleague at work, who advised him to speak to a legal adviser at their workplace. In March 2021, the Applicant stated that he took this legal advice and contacted both the Council and the Police about the Respondent's behaviour. The Applicant stated that, prior to this, he was unaware of any legal rights that he had against the Respondent.
22. The Applicant stated that he had received a great deal of support from Ms Emma Power, a Tenancy Intervention Officer with the Council. He stated that she had informed him that the Property should have been licenced under the Council's Selective Licensing scheme and advised him of his right to make an application to the tribunal for a rent repayment order.
23. The Applicant stated that he did not wish to pursue that route at the time as he had hoped to settle matters with the Respondent, however, he stated that the Respondent's behaviour towards him worsened. He stated that he began to receive letters from a company called HeBS Letting in June 2021, wanting to

access the Property, and calls from someone claiming to be the new tenant of the Property. The Applicant stated that he forwarded the letters from HeBS Letting to Ms Power, who stated that the information in the letters was false and that she would be reporting the company to Trading Standards for further investigation. The Applicant stated that it was then that he decided to take formal action against the Respondent by making an application to the Tribunal.

24. The Applicant stated that, in September 2021, the Council's Safer Housing Team visited the Property and carried out a two-hour inspection. He stated that the Property had failed to pass the electrical inspection, which further indicated that the Property was not safe.
25. The Applicant confirmed to the Tribunal that he had not reported any incidents regarding the Respondent's behaviour to the Police or to the Council prior to taking advice in March 2021, as he was not aware that he was being harassed. He also confirmed that, upon reporting the Respondent's behaviour to the Police, they had stated that the matter "*was not very serious*" and that there was insufficient evidence to prosecute. He stated that they had advised him to call 999 if a serious incident occurred and that he had never had occasion to do so. The Applicant also stated that he had always allowed the Respondent access to the Property on Fridays and at the weekends, until relations had completely deteriorated between them in March 2021.
26. In relation to the Respondent's financial circumstances, the Applicant submitted that the Respondent was a professional landlord who had failed to disclose the rental income from a neighbouring property that he owned (34 Denstone Road) and had not provided any of his Self Assessments tax returns.
27. The Applicant had included within his bundle a number of documents which included a copy of the tenancy agreement, evidence of rental payments, written statements from his witnesses, as well as correspondence with the Council which included a Housing Report for the Property dated 16 March 2021. This report contained a Schedule of Works that had been reported to the Council by the Applicant (following a telephone conversation with them but without an inspection) and required the Respondent to investigate sources of damp and remove traces of mould, investigate issues with a draft emanating from the rear UPVC door and investigate any issues with the extractor fan in the first floor bathroom.
28. At the hearing, Mr Mukhtar confirmed that he was a work colleague of the Applicant. He stated that he had known the Applicant to be a very calm and sociable person, however, noted that at work he had begun disconnecting from other colleagues. He stated that the Applicant confided in him regarding his issues with the Respondent and that he had advised the Applicant to seek legal advice from the advisers at their workplace. Mr Mukhtar also stated that he had visited the Property on one occasion and had noticed that there was damp in the living room. Mr Mukhtar confirmed that he was not a damp specialist and had not viewed any other problems with the state of the Property.

29. Mr Tasnim confirmed that he had been friends with the Applicant for approximately three years. He stated that the Applicant had a very calm nature, however, for the past year had been suffering with stress and depression. He stated that the Applicant had reported to him that he had experienced suicidal thoughts as a result of the Respondent's actions towards him. Mr Tasnim stated that he advised the Applicant to speak to his GP. Mr Tasnim also referred to the Property suffering from damp and stated that he would often not enter the Property because of it, although, again, he confirmed that he was not an expert in such matters.
30. Miss Bibi relied on the information given in her witness statement. In her statement she referred to various problems with the Property since the beginning of their occupation in 2017. She stated that she had, initially, struggled to cook in the kitchen as they were without a light for a week, that there were no fire alarms at the Property and that the Respondent failed to carry out any repairs in a timely manner.
31. Miss Bibi concurred with the Applicant's submissions regarding the problems they encountered with the Respondent following their holiday in Pakistan and stated that, other than during May, rental payments were paid on time each month. She also corroborated the Applicant's assertions regarding the altercation between him and the Respondent in January 2021 and stated that it took the Respondent three or four days to fix the front door. She stated that, following that incident, the Respondent continuously telephoned them asking them "*forcefully*" to leave the Property until the Applicant sought legal advice in March 2021. She stated that the Council informed the Applicant to ignore the calls and report the Respondent to the Police.
32. Mr Akhtar concurred with Miss Bibi, in that he stated that that there had been problems with the Respondent since the beginning of the Applicant's tenancy. Mr Akhtar confirmed that he had helped the Applicant to secure the tenancy of the Property in October 2017 but that the Respondent had failed to provide the Applicant with a copy of the tenancy agreement, Gas Safety Certificate or Energy Performance Certificate (EPC) for the Property. He also stated that there were no fire alarms at the Property and that the Property had always suffered with damp.
33. Mr Akhtar stated that he was aware of many incidents relating to the Respondent's failure to repair items such as the bathroom and kitchen light and that it also took the Respondent four days to fix the shower and the front door. Mr Akhtar also referred to issues with the heating, windows and doors. Although Mr Akhtar referred to the Respondent calling the Applicant daily to try and get him to vacate the Property "*forcefully*" he confirmed that he had never been present during these calls and had never personally witnessed any physical altercation between the Applicant and the Respondent.

### ***The Respondents' submissions***

34. Mr Latif, on behalf of the Respondent, stated that Respondent strongly denied the accusations made by the Applicant of any form of harassment by him



towards the Applicant or of any aggressive or threatening behaviour. Mr Latif also referred to there being no evidence to suggest that the Respondent had been knocking on the Applicant's door and that the Applicant conceded that he had been informed by the Police that there was insufficient evidence of any form of harassment or any illegal eviction by the Respondent.

35. In relation to the failure to obtain a licence, Mr Latif stated that, although the Respondent was aware that the Property required a licence under the Selective Licencing scheme, he submitted that he had a reasonable excuse for not obtaining the same.
36. Mr Latif stated that, having checked the website, it referred to requiring a Gas Safety Certificate to be uploaded as part of the application process. He stated the Respondent had been unable to obtain such a certificate as the Applicant had failed to allow the engineer access to the Property.
37. Mr Latif stated that, although the Applicant and Respondent had generally been on good terms since the beginning of his occupancy, the Respondent had always encountered problems with accessing the Property. Mr Latif stated that the Applicant would only allow access if he required the Respondent to carry out repairs but that, if the Respondent required access, he was obstructive and unreasonable, only allowing access on a Friday or at the weekend. He stated that the Applicant's failure to allow reasonable access to the Property led to the Respondent being unable to obtain a Gas Safety Certificate and thus prevented him from applying for a licence previously.
38. Mr Latif stated that, when the Council became involved in March 2021, he informed them of the situation and was advised to upload a blank document instead of a Gas Safety Certificate to allow the online application to proceed, which he did on 20 March 2021. Mr Latif stated that the Respondent had not contacted the Council prior to this, as he was scared that he may have been penalised for failing to have obtained a Gas Safety Certificate earlier.
39. Mr Latif disputed the Applicant's assertions that the Property did not benefit from smoke alarms when the tenancy was first granted and referred the Tribunal to the Gas Safety Record dated 1 July 2017 within the bundle, which confirmed that smoke alarms were fitted at the Property. He also referred the Tribunal to the EPC contained within the bundle, which had also been obtained prior to the Applicant's occupancy.
40. Mr Latif agreed with the Applicant, that there had been a breakdown in relations after the Applicant's return to the UK, however, stated that it was the Applicant who had requested the Respondent serve a three-month notice as he stated that the Applicant wished to secure alternative accommodation. Mr Latif confirmed that the Respondent had, towards the end of three months, contacted the Applicant to enquire as to whether he had found any alternative accommodation.
41. Mr Latif stated that the Applicant had failed to make a payment of rent in May 2020 and had also not informed the Respondent that he was going to leave the

Property unoccupied for a number of weeks, which would have invalidated the terms of the property insurance. The Respondent also disputed that repairs were not carried out promptly and included within the bundle a 'Statement of Works' which, he stated, detailed repairs that had been carried out by him between December 2020 and September 2021.

42. The Respondent also disputed the Applicant's recollection regarding the incident with the front door in January 2021. He stated that he had received a call from the Applicant on 14 January 2021 regarding the problem with the front door and that he inspected it with Mr Imtiaz, his general handyman. As Mr Imtiaz was unable to carry out the repair, he confirmed that he instructed SkyView windows to repair the same and provided a letter from them which confirmed that a service call was scheduled on 15 January 2021 and that the total cost of the repair amounted to £120. The Respondent stated that this proved that the door had been repaired within a day, not four days as asserted by the Applicant.
43. With regard to the altercation, he stated that, during his visit, he had noticed that the Applicant was drying clothes indoors, causing condensation and damp. He stated that, upon advising the Applicant that he should not do this, it was the Applicant who became aggressive towards him. The Respondent provided, within his bundle, a witness statement from Mr Imtiaz corroborating the Respondent's version of events.
44. In relation to the items of disrepair reported to the Council in March 2021, Mr Latif referred to email correspondence contained within the bundle between him and various Council departments. These included correspondence in which Mr Lewis Heron (from the Councils' Safer Housing Team) confirmed that the works identified in March 2021 were not enforceable under relevant housing legislation as the risk was relatively low. The correspondence also confirmed that, due to difficulties with access to the Property (the Applicant only appearing to allow access on some Fridays and at the weekend), the Council's file with regard to these items was closed on 1 June 2021.
45. Mr Latif also referred to witness statements provided within the Respondent's bundle from both the electrician and gas engineer, relating to difficulties in gaining access to the Property, the gas engineer confirming that he had finally been granted access on a Sunday and the electrician having gained access during an inspection by the Council in September 2021.
46. Mr Latif stated that the Respondent had been advised by the Council, due to lack of access, that he could issue court proceedings to obtain access or instruct a letting agent to gain access to the Property to inspect the same. Mr Latif stated that it was then that the Respondent instructed HeBS Letting. Mr Latif stated that the Respondent had no personal or professional relationship with the letting agent and that the letters the Applicant had produced referred to the agents trying to gain access to carry out an inspection of the Property.
47. In relation to the final inspection of the Property by the Council in September 2021, Mr Latif stated that the Respondent had not yet received the full report,

however, the Council had not served any improvement notice or prohibition order against the Property and that the only thing outstanding related to the issuing of the Electrical Safety Certificate. Mr Latif stated that this had not been issued, as the electrician found that there were insufficient electrical sockets at the Property.

48. Mr Latif confirmed that the Respondent had not had to carry out any major repairs during the Applicant's occupation and that the Respondent had never taken any formal action against the Applicant to gain access to carry out repairs. Mr Latif also confirmed that the Respondent had never tried to withhold any services from the Applicant, nor had he ever tried to change the locks or forcibly remove the Applicant from the Property.
49. The Respondent had provided within his bundle copies of the Gas Safety Certificates in 2017 and 2021, an EPC for the Property which was valid to 2 March 2025 and a copy of a DASH Landlord Accreditation Certificate relating to a development training course the Respondent had completed in June 2021. The Respondent also enclosed within his bundle a statement of good character from Mr Abassi (the Respondent's tenant at 34 Denstone Road) and a letter from the Respondent's GP dated 8 October 2021. This letter reported that the Respondent had been suffering with significant anxiety and depression stemming from a "*very stressful situation with a tenant*" and that he had "*recently*" being commenced on antidepressant medication.
50. In relation to his financial circumstances, Mr Latif stated that the Respondent was not a professional landlord but a self-employed taxi-driver, with no savings, whose already low income had been severely affected by the pandemic. The bundle contained copies of the Respondent's bank statements, a credit card statement and confirmation of a payment to him of a Government Self Employment Support grant in September 2021.
51. Mr Latif accepted that the bundle failed to include information regarding the rental income received from Mr Abassi and confirmed that this was also £500 per month. He confirmed that these rental payments were received throughout the pandemic. He stated that both rental properties were subject to mortgages and that the monthly mortgage payments were around £200 to £300 per month. In addition, he confirmed that the Respondent owned his own residential property with his wife which, although subject to a mortgage, was in positive equity.

### **The Tribunal's Deliberations**

52. In reaching its determination the Tribunal considered the relevant law, in addition to all of the evidence submitted and briefly summarised above.
53. Prior to being able to make a rent repayment order under the Act, the Tribunal must be satisfied '*beyond reasonable doubt*' (under section 43) that the Respondent had committed one or more of the offences referred to in section 40(3) of the Act.

*Protection from Eviction Act 1977*

54. In relation to the offence under sections 1 (2), (3) or (3A) of the Protection from Eviction Act 1977, the Tribunal noted that the Applicant did not submit that the Respondent had deprived him of the accommodation or unlawfully evicted him from the Property, in fact, the Applicant and his wife were still residing at the Property at the dates of the hearing. There was also no allegation made against the Respondent that he had attempted to either forcibly evict the Applicant from the Property, remove his belongings from the Property or change the locks to the Property. In actual fact, both parties had confirmed that the Respondent had repaired the front door to the Property in January 2021, some five months following the Respondent having served the notice requiring possession.
55. The Applicant's allegations, instead, related to the Respondent making forceful and threatening telephone calls, his behaviour during the incident in January 2021, the 'knocking' on the front door, his service of an invalid notice, his instruction of HeBS Letting and his failure to carry out essential repairs.
56. In relation to the telephone calls, the Applicant had failed to provide any corroborating evidence of any threatening conversations and a copy of a telephone message extract within the Respondent's bundle (dated 22 January 2021, relating to the repair of the heating and a bathroom light), appeared to be perfectly amicable. In addition, the parties' recollections regarding the altercation which took place in January were completely at odds with each other and there was no evidence that the Respondent was the person who had been knocking on the door of the Property.
57. The Tribunal noted that the Applicant had reported these incidents to the Police and concurred with them, that there was insufficient evidence that any criminal offence had been committed by the Respondent in respect of the same.
58. In relation to the service of the invalid notice, the Tribunal found that, due to the temporary changes to the legislation at the time, the Respondent could be forgiven for failing to recognise that the notice period had been extended to six months and noted that the Respondent had not pursued possession by serving a further notice having corrected the notice period. With regard to the instruction of HeBS Letting, the Tribunal noted that, although the information contained within the two letters from them was completely erroneous, the letters only referred to the letting agent requiring access to the Property to carry out an inspection. As such, the Tribunal did not consider that any either of these two acts were likely to interfere with the peace or comfort of the Applicant (or his household) with the intent of causing them to give up the occupation of the Property or cause the Applicant to refrain from exercising any of his rights and remedies in respect of the Property.
59. Finally, in relation to the Applicant's assertion that the Respondent had failed to carry out "*essential repairs*", the Applicant did not dispute the 'Statement of Works' detailed in the Respondent's bundle and the only works detailed in the Housing Report dated 16 March 2021 related to damp, mould, issues with a draft from the back door and issues with the extractor fan. The Tribunal noted

that the Council considered these to be relatively low-risk items and the Tribunal did not consider any of them to be “*essential repairs*” or “*services reasonably required for the occupation*” of the Property. In addition, the Tribunal noted that the correspondence with the Council (which the Respondent had included within his bundle) was inconclusive as to whether the damp at the Property was caused by a defect in the Property or due to the Applicant’s failure to ventilate and heat the Property sufficiently and the 2017 Gas Safety Certificate confirmed that, at that time, the Property had been fitted with smoke alarms.

60. Accordingly, the Tribunal was not satisfied beyond reasonable doubt that the Respondent was guilty of any offence under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.

*Reasonable Excuse for Failure to Licence*

61. Neither party disputed that the Property was subject to selective licensing, nor that it was without a licence between 1 August 2018 and 19 April 2021. It was also not in dispute that the Respondent had made an application to obtain a licence on 20 March 2021, thus had a defence, under section 95(3)(b) of the Act, from that date. The question for the Tribunal was whether the Respondent had a reasonable excuse under section 95(4) of the Act for failing to obtain a licence sooner. Based on the evidence before the Tribunal, the Tribunal found he did not.
62. Mr Latif, on behalf the Respondent, had confirmed that the Respondent was aware of the Selective Licensing scheme and that his failure to make an application related to his fear that the Council would penalise him for not having a valid gas safety certificate, which he stated had been unavoidable due to issues with access to the Property.
63. Although the Tribunal accepted that the Respondent had recently had issues gaining access to the Property, the majority of the evidence provided by him in this regard related to access over the preceding year or so. There was little corroborating evidence that access had not been given following the expiry of the previous Gas Safety Certificate in 2018. The Tribunal also considered that, had the Respondent encountered such difficulties which prevented him from carrying out his legal responsibilities as a landlord, the Respondent should not have granted the Applicant a new tenancy in 2020.
64. In addition, although the Tribunal noted that the Council’s website indicated that a Gas Safety Certificate was required to be uploaded to make an online application, once Mr Latif had contacted the Council to inform them of the Respondent’s difficulties, they gave instructions on how to proceed with the application without it. The Tribunal did not consider that, even if it accepted that the certificate could not have been obtained due to access issues, the Respondent’s fear of being penalised for not having a valid Gas Safety Certificate amounted to a reasonable excuse.

65. Accordingly, the Tribunal found that the Respondent had committed an offence under section 95(1) of the Act.

*Amount of the Order*

66. The Tribunal was able to make a rent payment order, having been satisfied that: an offence had been committed under section 95(1) of the Act between the dates of 1 August 2018 and 19 March 2021; that the offence had been committed within the twelve months preceding the date of the application (being 24<sup>th</sup> of August 2021) and that, whilst the offence had been committed, the Applicant had paid the rent to the Respondent from his own funds.
67. The Tribunal noted that, under section 44(2) of the Act, the amount of the order could not exceed a period of twelve months during which the Respondent was committing the offence. The Tribunal observed that the offence had been committed for a full twelve months between the periods 20 March 2020 and 19 March 2021, during which time the amount of rent paid to the Respondent was £6,000.
68. Taking into account the recent guidance given by the Chamber President, The Hon Mr Justice Fancourt, in the decision by the Upper Tribunal in *Williams v Parmar* [2021] UKUT 0244 (LC), the Tribunal noted that the correct approach when considering what amount of repayment order is reasonable in any given case was for the tribunal to consider “*what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions*”. The Tribunal also noted that the decision confirmed that the tribunal should have particular regard to the conduct of both parties (including the seriousness of the offence committed), the financial circumstances the landlord, whether the landlord had at any time been convicted of a relevant offence and “*any other factors that appear to be relevant*” [paragraph 50].
69. With regard to the conduct of the Respondent (detailed in the Tribunal’s deliberations above), the Tribunal did not consider that the Respondent had acted unreasonably when carrying out any repairs, nor did it consider that the Respondent was guilty of harassment. The Tribunal also noted that the offence committed by the Respondent was the failure to have a licence, which it considered less serious, and that, upon the Respondent making his application for a licence, it was granted within four weeks. There was also no evidence that the Respondent had at any time been convicted of any other *relevant offence*.
70. That being said, the Respondent had, in 2018 and 2019, failed to carry out a valid gas safety check on the Property, the Property did not have a valid electrical safety certificate and the Respondent had, at some point in 2020, utilised part of the Applicant’s deposit against the shortfall in the rent. The Tribunal considered all of these actions unreasonable.
71. With regard to the conduct of the Applicant, the Tribunal did consider that, from March 2021 onwards, the Applicant had made it extremely difficult for the

Respondent to gain access to the Property to carry out any works. In addition, the Tribunal did not consider that only allowing access on Fridays and at the weekend to be reasonable and, further, that such action could amount to a breach of clause 3.35 of the Tenancy Agreement.

72. Although both parties had provided medical evidence to corroborate their claims that the conduct of the other party had caused them stress and anxiety, the Tribunal did not consider such evidence furthered either party's case in this regard. The evidence provided by the Applicant did not refer to his medical conditions having been caused by the Respondent's conduct, rather they appeared to relate to his financial difficulties, and he reported feeling much better by the September consultation. The Respondent's medical evidence, although referring specifically to stress caused by a tenant, the letter was some months after the period in which the offence had been committed.
73. The Tribunal also did not consider that the Respondent's financial circumstances warranted any reduction in the amount payable by him. In addition to his income and the grant he received from the Government, he had been receiving rental payments from his two investment properties and, as far as the Tribunal was aware, had not required any mortgage breaks in relation to either his investment properties or his own residence.
74. In relation to any other relevant factors, the Tribunal accepted that the Respondent was not a professional landlord, that he was a first offender with no relevant convictions and that the licence had been granted without any works being required to Property. The Tribunal also noted that an inspection of the Property, carried out in September 2021, appeared to have revealed no substantial works were required and, although the electrical report appeared to have failed, the Applicant had never stated that the lack of sufficient electrical sockets had affected his comfort or enjoyment of the Property.
75. Having taken into account the factors detailed in paragraphs 69 to 74, the Tribunal considered that a reduction of 50% of the maximum amount was appropriate.
76. Accordingly, the Tribunal determines that the rent repayment order should comprise an amount of £3,000.

### **Appeal Provisions**

77. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham