FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/33UC/HMB/2021/0004**
Property	**:**	**Salle Moor Hall** **Wood Dalling Road** **Reepham** **Norfolk** **NR10 4SB.**
Applicant	**:**	**Mr Michael Chatha**
Represented by:		**In person**
Respondent	**:**	**Mr Ardeshir Naghshineh**
Represented by	**:**	**Mr Corin Thoday**
Type of Application	**:**	**Application for a rent repayment order pursuant to ss.40 to 44 of the Housing and Planning Act 2016.**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Mr Gerard Smith MRICS FAAV**
Date and venue of Hearing	**:**	**18 and 19 July 2022,** **Norwich Magistrates Court**
Date of Decision	**:**	**8 August 2022**

DECISION

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(1) The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay within 35 days of the date of this decision the sum of £6000 to the Applicant.

(2) The Respondent shall pay the Applicant the application fee of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

DECISION

Introduction

1. The Applicant seeks an order for the repayment of 7 months' rent, which it is accepted he paid to the Respondent in two tranches: 6 months' rent paid in advance of the commencement of the tenancy, and another month paid by his then partner on his behalf, in or around June 2021.

2. The parties' relationship began in or around early November 2020, when the Applicant commenced discussions with the Respondent with a view to renting the Property. It is the Applicant's claim that it was part and parcel of the agreement for the tenancy that he would be allocated a field for his horses. In the event, for the reasons set out within this decision, although the Tribunal heard evidence from both parties in relation to their position on the extent of the demise, it is not necessary for us to make any findings in that regard in order to come to our conclusions. The extent of the geographical demise in the terms of the tenancy as a whole we leave to any future civil proceedings, which have been intimated by the Respondent, and which (we expect) will be vehemently defended by the Applicant.

3. What is clear is that on 16 November 2020 the Applicant signed an assured shorthold tenancy in respect of the Property (whatever its ambit) at a rent of £3000 per month. Unfortunately, the relationship between the parties soon broke down, essentially because of the difference of opinion between the parties as to the extent of the demise and whether or not (and to what extent) the Applicant was permitted to keep animals at the Property.

4. The Applicant's claim is that the Respondent then went on to "harass" him, so as to give him the right to bring this application for a rent repayment order in the sum of £21,000.

5. It is an undisputed fact that the Applicant ceased to pay rent after June 2021.

The relevant law

6. The relevant provisions of the Protection From Eviction Act 1977 and the Housing and Planning Act 2016 are set out in the Appendix to this decision.

The Application

7. The application for a rent repayment order was made on 18 December 2021. Accordingly, the Applicant has to show the commission of at least one offence in the period between 18 December 2020 and 18 December 2021.

The Hearing

8. The hearing took place over 2 days, face to face. The hearing had originally been fixed as a video hearing with a time estimate of 1 day, but having received the papers in good time for the hearing, the Tribunal considered that the time estimate was insufficient, given that the Applicant was alleging 18 heads of harassment. In addition, the Tribunal considered that given the nature of the allegations, a face-to-face hearing would be preferable.

9. At the outset of the hearing, it was explained to the Applicant that the burden of proof lay on him to establish an offence, with the standard of proof being beyond reasonable doubt. It was also explained that the Applicant would need to do more than prove "harassment" in general terms, and that he would need to prove the essential elements of an offence under one or more of the subsections to section 1 of the Protection From Eviction Act 1977. Section 1 was explored with the Applicant, the Tribunal explaining that he would need to prove not only the commission of an act, but also the requisite mental element, according to which subsection the Applicant might rely on.

10. The was also asked to clarify the dates of his tenancy, because if it was contended that he did not lawfully surrender his tenancy (as the Respondent alleged on 15 November 2021), on his case he would still be the tenant and liable for the rent from that date.

11. As regards the Respondent, he was represented by Mr Corin Thoday, but did not appear in person. We were informed this was because his father was ill in hospital, and that the Respondent had a very bad cold. The Tribunal reminded the Respondent's representative that it would need to decide matters of mental intent, and that without the presence of the Respondent, both to confirm his witness statement and generally, the Respondent might find himself at a disadvantage.

12. The parties were therefore afforded a period of 30 minutes during which they might reflect upon their respective positions, and so far as necessary

to consider the relevant provisions of the 1977 Act and any relevant case law (which the Tribunal had brought to the parties' attention).

13. When the hearing recommenced, Mr Thoday informed the Tribunal that his instructions were to proceed in the absence of the Respondent, and that he was not seeking either a hybrid hearing or an adjournment; the Respondent was keen to see a resolution to the matter.

14. The Applicant informed the Tribunal that he wished to reduce the allegations he would pursue to numbers 4, 5, 10, 11, 13, 14, 15 and 16 on his Index of Allegations.

15. In the event, during the course of the proceedings, numbers 5 and 10 were also withdrawn.

16. The Applicant also confirmed that the dates of his tenancy were 16 November 2020 until 5pm on 15 November 2021, given the terms of the document which he signed on that day, and which we deal with in more detail below.

17. There had been some late disclosure of additional documents/ evidence by statement, by both the Applicant and the Respondent. Neither party objected to the additional evidence being adduced.

The issues

18. As the Tribunal directions dated 22 February 2022 state, the issues we have to decide are:

    (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

    (2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

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

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

    (5) What account must be taken of:

        (a) The conduct of the landlord?

        (b) The financial circumstances of the landlord?

(c) Whether the landlord has at any time being convicted of an offence?

(d) The conduct of the tenant?

(e) Any other factors?

Determination

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

19. Taking the 6 allegations remaining, we make the following findings of fact.

Allegation 4

20. The first allegation the Applicant asked us to consider was withholding and interfering with post. The Applicant explained that there was a post box at the end of the drive; any post addressed to him should have been delivered to it. However, in the time that he was residing, there were periods when he had either no post or a surfeit of it. He would then find files of post in the Respondent's company's office next door. He explained this was the situation from the start. He had even found post stacked up on his doorstep, and had complained about this multiple times. To his knowledge the post was never opened; it was just that he would go next door and find a stack of it.

21. The Applicant was asked to explain which subparagraph of section 1 he intended to rely on, He responded that it was subsection (3A).

22. The Applicant took the Tribunal to various photographs in the bundle showing the post in places it should not have been.

23. The Applicant relied on the following dates for the commission of the alleged offence: 21 August 2021, 24 June 2021, 12 July 2021 and 30 July 2021.

24. The Applicant complained that, after the incident of 21 August 2021, when he found several items of post at the landlord's office, he complained to Royal Mail. He said he got a response, which from memory was dismissive, but which suggested it was the landlord's fault. However, the Applicant had not included this letter in the bundle, and could not give a satisfactory explanation as to why it had not been adduced in evidence.

25. The Applicant accepted that he did not have evidence of any act by the landlord apart from the photographs which he adduced.

26. The Applicant contended that the landlord's motive was to make his life extremely inconvenient, so that he would leave Property, and this was part of a course of conduct generally by the Respondent, which included threatening messages by text and by e-mail on 19 January 2021 and 24 February 2021. All this was a pattern of aggression, the Applicant contended. He relied on the fact he had been given just 24 hours' notice to quit in writing at one stage by Mr Thoday.

27. In relation to 24 June 2021, when a large amount of post was found on his doorstep, the Applicant contended that it didn't get there by itself. He said that it suddenly appeared there, and it was not possible it could have been the postman who brought it. He said that they were bills dating over the course of a month in this pile.

28. In relation to the incident on 12 July 2021, again the Applicant said it could not have been the postman, and that must have been the landlord.

29. In relation to 30 July 2021 the Applicant contended that the landlord gave instructions to divert the Applicant's post to the Respondent's offices. The Applicant, however, could provide no evidence of direct instructions beyond suspicion.

30. The Tribunal asked the Applicant whether or not he had spoken to the postman himself as to what was going on. The Applicant informed the Tribunal that he had not.

31. Mr Thoday made representations that he understood the post was mistakenly delivered to the commercial premises. He believed it was a Royal Mail misunderstanding. He explained there were a number of commercial tenants (6 or 7) and there is an area which serves as a repository for their post, almost like an unofficial post room. He stated that the Respondent's position was that he believed at times the post person took the Applicant's post there, rather than to the Property. He also stated it was the Respondent's position that Royal Mail was informed of this, when they became aware of the situation. Mr Thoday then referred us to emails in the Respondent's bundle at pages 49 and 50, which indicate that the Royal Mail made an apology, and stated that they had spoken to the post person concerned and reminded them of the need to take additional care when sorting and delivering the mail.

32. Mr Thoday also gave evidence that the Applicant had admitted to him on 15 November 2021 that he realised that the Respondent had not been interfering with the post; that it was the Applicant's ex-partner, to the extent that she was even putting copies of it on social media.

33. The Respondent, we were told, denied a pattern or course of conduct, and Mr Thoday stated that his own request that the Applicant leave within 48

hours was in the context of the Applicant himself asking to surrender his tenancy, beginning in January 2021. He stated that in the document the Applicant was referring to, he did not say the Applicant must leave in 2 days. Unfortunately, neither party had adduced this letter in evidence, to enable us to examine its true terms.

34. As regards the post that had arrived on the Applicant's doorstep, Mr Thoday stated that it appeared that it might have been an employee of the Respondent called Steve Bonner, who had taken it on himself to put the post there. However, such an act could not be considered interference with the post.

35. Having heard all the evidence, the Tribunal is not satisfied beyond reasonable doubt that the Respondent committed any act likely to interfere with the peace or comfort of the residential occupier or members of his household, or had persistently withdrawn or withheld services reasonably required for the occupation of the premises in question as a residence. The Applicant's evidence amounted to no more than a suspicion that the Respondent's servants or agents had removed the Applicant's post from the post box, or had directed that it be sent to the commercial units. In relation to the one or two occasions on which Mr Bonner had placed post at the doorstep of the Property, we do not find that that was an act likely to interfere with the peace or comfort of the Applicant. It was quite the opposite; it was putting the post where it was meant to be. Moreover, we note and accept the written evidence of the Royal Mail which has been put before us by the Respondent, which tends to evidence that the issue lay with the post person concerned, and not the Respondent.

36. The Applicant therefore has not reached the high hurdle of proving beyond reasonable doubt the act required toe be shown under this subsection.

37. We therefore do not need to consider the Respondent's mental state, had such an act or acts been committed.

Allegation #11

38. The next allegation we were asked to consider was an allegation of entering the Property without consent on 2 occasions. The Applicant relied on events taking place on 18 March 2021 and 1 April 2021. He explained that he was again relying on subsection (3A) of section 1 of the 1977 Act. He explained that on both occasions the act alleged was the entry into the Property by the Respondent's servants or agents, knowing that there was a person shielding in the Property on account of their susceptibility to COVID-19; an act which amounted to a breach of UK government guidance, he said.

39. The Applicant contended that it was stated in the guidance that it was necessary to have the consent of the tenant before a landlord could enter the Property to order to inspect it. Unfortunately, the Applicant was unable to produce the guidance in force at the time of the 2 dates in question in order to make good this argument.

40. Moreover, when asked by the Tribunal whether he had allowed the persons into the Property, he accepted that he had. He accepted that he did not simply bolt the door and phone the police to complain that they were attempting to commit an unlawful act. The Applicant claimed that the Respondent's servants or agents were 100% intent on doing what they wanted to do, so he did allow them access.

41. On the second occasion, the Respondent's servants or agents wanted access because they had been unable to gain access to the kitchen on the earlier occasion, by reason of the presence of the Applicant's dogs inside. The Tribunal notes that it was the Respondent's position, and had been for some time, that the dogs were not allowed to live in the house. Whilst the Applicant complained that one of the landlord's agents entering on the day was not wearing gloves, the offence which he alleged to have been committed on this occasion was the same as that on 18 March 2021, i.e. the act was entry onto the Property without consent, and in breach of government guidelines, an act which was likely to interfere with the peace or comfort of a lawful occupier, including the Applicant's ex-partner who was living there at this time with his licence.

42. The Applicant claimed to have videoed the whole incident, but again he could not provide an explanation as to why the video had not been disclosed and included as part of his case.

43. The Applicant once again stated that he allowed the operatives into the Property because he was worried they would call the police themselves. He claimed he did try to object to their entry when he was speaking to them on the doorstep.

44. On the second day of the hearing, the Applicant was unable to produce the government guidance, but indicated to the Tribunal that he did intend to pursue this allegation, nonetheless.

45. The Respondent's evidence was that it had sought a convenient time to do the viewings; that the context was that the Respondent had received a list of issues regarding the state of repair of the Property, and that they were concerned about damage caused by the presence of unauthorised animals in the Property. Mr Thoday explained that the evidence shows that the first

inspection on 18 March 2021 was deferred at the request of the Applicant. Fair and reasonable notice had been given to the Applicant, he added.

46. Mr Thoday further explained that on 18 March 2021 he was personally present and the Applicant welcomed them in; that he had told the Applicant that he did not need to accompany them on the inspection, but that the Applicant insisted that he did. That was his personal choice, Mr Thoday added. The Applicant did not make them aware on the day that anyone was shielding, and the Applicant's ex-partner was not in fact there. Mr Thoday explained that the Applicant would not let them inspect the kitchen because the dogs were there, and the Applicant was fearful that they might harm them.

47. Mr Thoday explained that on the subsequent inspection on 1 April 2021, the landlord's servants were Mr. Arthur Moore and his father John Moore. As with 18 March 2021, they did not think that the Applicant's consent was required, as long as the tenancy terms and conditions were complied with, i.e. giving of 24 hours' notice. Mr Thoday alleged that the operatives had taken COVID 19 precautions, but accepted that Mr. John Moore did not have gloves on, despite Mr Thoday asking the staff to wear them.

48. In the Tribunal's determination, no offence was committed on this date. The Applicant was unable to show that any inspection without the tenant's consent was a breach of UK government guidelines, and therefore likely to interfere with the peace and comfort of the Applicant and or his ex partner, who was not seemingly present on the first visit in any event. We are satisfied that the contractual requirements of the tenancy agreement were complied with by the Respondent, and that the entry on both occasions was lawful. In any event, the Applicant allowed access to the landlord's servants on both occasions. It is a relevant fact that the Applicant's emails gave mixed messages, both suggesting that access would not be given at all, and stating that conditions would have to be met if access were to be given.

49. Yet further, there is no evidence that, even if the Applicant is right to contend the government guidance was in the terms alleged, that the landlord's intention was any of those matters required in subsection (3A) of section 1 of the Protection from Eviction Act 1977. We find that the landlord's true intention was to gain access to inspect the state of repair of the Property, and to see what the situation was with the animals. We are not satisfied that there was any intention to compel the Applicant to give up occupation of the Property, or to refrain from exercising any right or remedy.

Allegation #13

50. The Applicant contended there had been an offence committed under subsection (3A).

51. In this regard, he relied on several messages, starting with an e-mail dated 4 February 2021 from the Respondent personally to the Applicant. This reads:

> "As I have not heard from you, we may now have to approach our advisers to take possession of our premise (sic) from you. This procedure will be costly and would be charged you under the terms of your AST. In the meantime please move the unauthorised animals off the premise (sic) with immediate effect. If this does not get done, then we may have to [employ] professional people to expedite with the removal of these animals. Your prompt response will be appreciated."

52. The Applicant also relied on text messages on 19 January 2021 and 11 February 2021 in these terms:

> "Hi Mike hope all is well. Have you received my emails? Ardeshir"

> "Hi Mike you need to respond to my and Anthony's emails and calls before more serious and costly action is taken pls. Ardeshir"

53. The Applicant explained that he found these to be aggressive and stressful for him. He felt they were completely unwarranted. He accepted the text messages were factually correct but totally inappropriate, he said.

54. The Applicant also relied on an e-mail from Mr Thoday dated 29 March 2021, and in particular its last paragraph, which he considered to be unnecessary and threatening, because the Respondent knew he had a heart condition, and knew he had been beaten with a whip his ex- partner, because he had informed the Respondent himself. The Applicant said the Respondent wanted to push him over the edge in order to make him to give up occupation.

55. The last paragraph of the relevant email reads:

> "It would be best for everyone if you found a new property, as it does not look like you have a resolution for the matters highlighted above. If this does not happen, we must consider taking action to remove you on account of the various breaches of contract. We are already incurring significant

costs that would need to be claimed against you were we to go down this route."

56. The Applicant also said there was evidence that the landlord would not give a reference for another property the Applicant wished to take in Shropshire, but accepted that such documentation was not in the bundle.

57. Finally, the Applicant relied on an email from himself to Mr Thoday which made reference to a missive (not adduced before us) in which Mr Thoday had allegedly given notice to the Applicant to vacate in 48 hours.

58. The Respondent's representations were that he believed that all the messages were strongly worded, but were not meant as threats and were not acts likely to interfere with the peace or comfort of the Applicant. Mr Thoday explained that the landlord did not know about the Applicant's heart condition at this point. As regards the assault by the Applicant's ex-partner, the Mr Thoday said that he responded with sympathy. As regards the request for a reference, Mr Thoday explained it was not their policy to provide a reference unless the new landlord or landlord's agents made a request for the same, and that their reply would have been in standard form in any event.

59. As concerns the email from Mr Thoday giving 48 hours' notice, Mr Thoday represented that this came in the context of numerous requests to surrender by the Applicant, and in the knowledge of the personal difficulties that the Applicant was having with his ex-partner. He denied that it was meant to be threatening or intimidating in anyway.

60. The Tribunal is not satisfied that any offence was committed under the relevant subsection on any of these dates. We agree with the Respondent that they were strongly worded messages in the context of a dispute over civil rights, i.e. breach of tenancy, and were unlikely to interfere with the peace or comfort of the Applicant. But even if they were, we do not find that there is proven the mental intent required under the subsection on the part of the Respondent.

61. Finally, we have not seen the alleged 48 hour notice, and cannot be satisfied so as to be sure there was a breach of s.1(3A) in such circumstances.

Allegation #14

62. The Applicant complained that he had been locked out of the Property since October 2021; that he had no keys and that his ex-partner had barricaded herself in.

63. He relied on the fact that he had requested spare keys from the landlord on 4 October 2021 in 2 emails. However, he had received no response.

64. The Applicant contended this failure to provide keys was an offence under section 1(2), namely unlawful deprivation of his occupation of the premises.

65. The Tribunal pointed out to the Applicant that there was nothing in the contractual agreement, i.e. the tenancy agreement, which required the landlord to provide spare keys. The Applicant was unable to point to any statutory law or case law which indicated the landlord had such a duty. Nor could the Applicant point to anything than in the bundle which stated that the landlord was refusing to provide a set of keys. If anything, the landlord had omitted to do something (being silent in the face of requests for keys), but did not seem to have committed any act of unlawful deprivation.

66. Mr Thoday stated that he believed they held spare keys, but stated that the Police had advised Arthur Moore not to give a set of keys. In this regard he relied on an e-mail within the bundle which tended to evidence that they had sought the advice of the police, and that Mr. Moore had been informed verbally not to provide a spare set of keys whilst the dispute continued between the Applicant and his ex-partner.

67. In the Tribunal's determination there was no act of unlawful deprivation on 4 October 2021 or any date. The Applicant was unable to prove the landlord had a duty to supply a set of spare keys in law. The Respondent's actions were, instead of being criminal, in accordance with the law, in so far as Police advice was sought.

68. We therefore dismiss this allegation.

Allegation #15

69. The next allegation the Applicant asked us to consider was an offence under section 1(2) of the 1977 Act, namely an unlawful deprivation of the occupation of the Property or part of it, on 11 November 2021.

70. The Applicant explained the background; that he had been informed by the police that his ex-partner was no longer residing in the Property. This was on 11 November 2021 at about 11:00 AM.

71. The Applicant was at this time subject to a non-molestation order made by the Family Court which prevented him from coming near the Property while his ex-partner was in residence.

72. The Applicant stated that he arrived at the Property at about 6:00 to 7:00 PM, and was then met by a security man, who appeared to be living in the Property. The man said he would call his team, and that he had arrived that day. The man told the Applicant that he had been instructed to remain there. The Applicant relied on an invoice which he had been sent on a later date by the Respondent, which indicated that security was on site from 11 November 2021 until 15 November 2021, for a total period of 119 hours.

73. The Applicant claimed that he had a reasonably pleasant conversation with the security man, and walked in, the front door being open. He went inside while the other man was making the telephone call. The Applicant inspected the Property, to find the carpets filthy because the dogs had been running round the hall. He went upstairs to collect some belongings and left after about 20 to 30 minutes. He alleged that, as he was leaving, he saw that a team of security men had arrived, at least four or five persons, in three cars. One of the persons was very large. The Applicant stated to the Tribunal that these men had told him that he could not be there and that he was not allowed to be there. The Applicant informed them he would be coming back on the following Monday to collect the rest of his belongings.

74. The Applicant was asked to explain why there was no evidence about these extra teams turning up, within his documentation. Moreover the Applicant was taken to page 235 of the bundle which was an e-mail he had sent to the landlord at 6:35 PM that day, in which made no such complaint. The Applicant also accepted he had got the time wrong, and that he had in fact turned up at 5:30 PM. More importantly, the e-mail seemed clear that on that same day the Applicant had made no allegation that the Respondent's servants or agents had prevented him access. The Applicant had stated in that e-mail that he had videoed the whole incident, but could not explain to the Tribunal why the video had not been adduced in evidence.

75. The Applicant was also taken to the 6th bullet point of his email on page 231 of his bundle, in which he had written that the conversation that he had had with the team of security men on this occasion had been pleasant. The Applicant alleged to the Tribunal that it was within that pleasant conversation that a security guard said he was not allowed in.

76. The Respondent's evidence was that the Respondent was aware in the preceding 8 weeks that the Applicant's ex-partner and a number of unauthorised animals were in the premises; and that there were various allegations of domestic abuse, as well as some enforcement of the non-molestation order. Mr Thoday explained that when the Applicants ex-partner had left the Property, there had been various trucks and lorries which had arrived to take away the many animals she had kept on the Property. He explained that the Respondent was extremely concerned about his very valuable asset being depreciated, so he took the decision to secure the Property on 11 November 2021, by asking a security firm to secure the Property.

77. The Respondent's position was that he was not depriving the Applicant of occupation of the Property but was simply taking steps to secure the Property. He claimed that this was 24 hour security and hoped that the operatives were not sleeping in the Property. He accepted that the security men were occupying the living room, and not just patrolling the grounds. He alleged that there was one security person there at any one time, with persons taking turns.

78. Mr Thoday did not dispute that other persons turned up on the day.

79. When asked about the Respondent's own e-mail which had alleged that the Applicant had forced his way into the Hall (suggesting that there had been resistance on the part of his operatives), Mr Thoday stated that this was emotive language, and was not supported by the Applicant's own evidence, as he did not have to force his way into the Hall. He accepted that this was not the correct language to use in the e-mail, and asserted it did not reflect the situation on the ground.

80. In the Tribunal's determination, an offence was committed beyond reasonable doubt on 11 November 2021 by the Respondent. The Tribunal finds that the Applicant was the lawful tenant at this stage, because he had not yet surrendered his tenancy. As a tenant, he had exclusive possession of the Property for a term at a rent. It is trite law that that exclusive possession is good against the world, even against the tenant's own landlord. What the Respondent did on this occasion of 11 November 2021 was not simply to secure the Property, but to put persons into the front room of the same. The Respondent had no right to do this, whatever his concerns might have been, legitimate or otherwise. It was therefore an unlawful deprivation of part of the Property enjoyed by the Applicant.

81. We note that, under this particular subsection, the Applicant does not need to prove any specific mental intent on the part of the Respondent. There is a defence, which the landlord can make good on balance of probability, if he shows that he believed (and had reasonable cause to believe) that the residential occupier had ceased to give up occupation. That defence was not advanced by Mr Thoday for good reason. Whilst it is correct that the parties were in discussion about a potential surrender, no written surrender had yet been drawn up, let alone signed on this day. Moreover, all the Applicant's belongings were still in the Property, even if his ex-partner was not. He had not, we find, ceased to occupy the Property.

82. Given that we are satisfied an offence was committed in the above circumstances, we do not need to consider whether a security guard acted in a way which amounted to an attempted unlawful deprivation of occupation in so far as he allegedly stated that the Applicant was not allowed to enter. However, we have to say that we would have been hard pressed to find an offence had been committed, given the terms of the Applicant's emails of 11 and 12 November 2021.

Allegation #16

83. The final allegation was that of an offence committed under either subsection (2) or subsection (3A) of section 1 of the 1977 Act, on 15 November 2021.

84. As regards subsection (2), the Applicant stated that his primary aim was to get access to the Property to take his belongings away and give vacant possession. We have seen his emails in the days preceding 15 November 2021, in which the Applicant makes clear that he wanted to do that very thing, then inspect the Property in the presence of Mr Thoday, and then sign a written surrender of the Property, the terms of which had been emailed to him on 12 November 2021.

85. However, the Applicant said, he was met on the drive by Mr Thoday, and Mr Arthur Moore behind him, as well as Steven Bonner, and a security team consisting of a small gentleman in the hallway of the Hall, plus a larger gentleman called Vinnie outside.

86. The Applicant requested the Tribunal to view an unredacted copy of a video which he had taken on this day. The Tribunal had in the weeks preceding the hearing refused to adduce a video of this incident which had been edited by the Applicant, and which contained some rather dramatic subtitling and surtitling. By contrast, the video which he now wished to

adduce at the hearing was unedited in any way, and the Respondent did not object to its admission in evidence. We therefore viewed it.

87. The Applicant alleged that the gentleman called Vinnie had come close to him and threatened him, and that there was another man (whom he described as portly) appearing at the end of the video. But no allegation was levelled against this man, save for his presence.

88. The Applicant's main complaint was that Mr Thoday and Vinnie would not let him into the Property until he gave up his tenancy rights. He stated that he had felt compelled to sign the surrender agreement before he could enter his own premises.

89. As regards the alleged offence under subsection (3A), the Applicant said the act on which he relied was of presenting him with a surrender document and requiring him to give up occupation before he could enter. He stated that the fact of all persons surrounding him was an act likely to interfere with his peace and comfort. He further added that the intent on the part of the Respondent was to make him feel that he had no choice but to give up occupation of the whole or part of the Property.

90. The Applicant was reminded of subsection (3B) of section 1, which provides a defence to the landlord on balance of probability if he proves that he has reasonable grounds for doing the acts complained of.

91. The Applicant accepted that the Tribunal could concentrate on the video, but emphasised that the words of Vinnie that he was "no longer the tenant" were both wrong as a matter of fact and law, and were said in a threatening manner.

92. The Applicant also contended that the gentleman Vinnie had said "you're gonna go bye byes", which he considered a threat.

93. There were therefore no reasonable grounds for the landlord's actions, as the Applicant saw it.

94. The Applicant explained that he did sign the surrender document, because he felt he had no other choice; that he'd been trying for months to get into his home, but had been prevented by his ex-partner from doing so. Because of that, he feared the Respondent would sell his stuff or destroy his belongings. He said he had no faith in the relationship with the Respondent, who had not accepted his request for meetings, and that he felt traumatised by all the events which had taken place; he just wanted to see an end to it all.

95. Mr Thoday and Mr. Arthur Moore gave evidence that Arthur Moore was not present at this time, only later in that day, roundabout 2:00 PM. Mr Thoday accepted that he had made a mistake on day 1 of the hearing when he had inadvertently said that this meeting had taken place around about 1:00 o'clock, when it was in fact 10:30am as the Applicant alleged.

96. Mr Thoday relied on the Respondent's second witness statement dated 20 June 2022, but this is extremely brief, and contains no details in response to the allegation made.

97. Mr Thoday informed the Tribunal that the Respondent had instructed them to achieve three things on the day: (1) the surrender of the Property by the Applicant (2) to permit him to collect his belongings, and (3) to conduct an inspection.

98. Mr Thoday accepted that these three things were not in the order which the Applicant wanted. Mr Thoday therefore accepted that the parties had not reached terms as to the procedure of surrender before it took place. The Applicant had imposed conditions to which the Respondent did not agree. Mr Thoday accepted that it was the landlord's wish that they would first get the surrender signed, prior to the Applicant accessing and collecting his belongings.

99. Mr Thoday denied any violence on their part, and said that matters only became fractious when it was realised that the Applicant was videoing the events. When asked why this was a problem, Mr Thoday pointed to the redacting of the video by the Applicant at a later date as being evidence that he was capable of misleading or manipulating the facts.

100. Mr Thoday also claimed that it was his understanding personally that the Applicant had agreed to sign the surrender before entry into the Property. Mr Thoday claimed his understanding came from the exchange of emails taking place prior to this visit.

101. Mr Thoday also said that the Respondent had reason to believe that the Applicant had no intent on residing in the Property, particularly as he had entered on the 11th and had gone away again. They therefore believed the Property remained vacant. He said that he was personally surprised when the Applicant's first reaction was to refuse to sign the surrender document and to allege that he had not received it. Mr Thoday accepted that Vinnie had incorrectly said to the Applicant that he was not the tenant, and Mr Thoday further accepted that he did not correct Vinnie in this regard.

102. In the Tribunal's determination an offence was committed by the Respondent under subsection (2) on this date. The Respondent and his representatives had no right to prevent the Applicant accessing the Property while he was still the lawful tenant. Until the Applicant signed the surrender document, he remained entitled to exclusive possession of the Hall; indeed even after signing it, by the terms of the document he was entitled to be the tenant up to and including 5:00 PM. We therefore find that the Applicant was unlawfully deprived of his occupation of the Property before he signed the surrender.

103. We do not find that, on balance of probability, the Respondent subjectively believed that the Applicant had ceased to reside in the Property. No such evidence was adduced from the Respondent by way of witness statement, only by representations from Mr Thoday. The Respondent was not present in court to back up those assertions. But in any event, we find that objectively the landlord would have had no reasonable cause to believe that situation existed. Indeed, the landlord knew that the Applicant's belongings were still in the Property and was proceeding on the basis that the Applicant would surrender the Property at 5:00 PM that day, but not before. He was therefore accepting and acknowledging that the Applicant was the lawful tenant up to that time. The Respondent was contending that the Applicant remained liable for the rent up to that time, even if he was not in fact paying it. The emails do not reveal that the Applicant had agreed to sign the surrender before getting his belongings.

104. Whilst we accept it is not the only situation, the defence within subsection (2) is geared towards a landlord who considers that the tenant has abandoned the premises but is unable to make contact with the tenant. That was not the situation here.

105. The Tribunal also determines that the offence under s1(3A) is proven beyond reasonable doubt. We are satisfied, so as to be sure, that the act of requiring the Applicant to sign the surrender document before he could access the Property was an act likely to interfere with his peace or comfort. Moreover, it is clear from Mr Thoday's evidence that the Respondent knew that his conduct was likely to cause the Applicant to give up his occupation of the Property. He had given instructions to Mr Thoday and therefore to the security team, that the surrender must be effected before anything else.

106. We are not satisfied that the Respondent had reasonable grounds for doing the act complained of. A landlord can seldom (if ever) have reasonable grounds for forcing a tenant to sign a surrender before they can legitimately enter their own demised premises. The parties had not

reached consensus as to the terms of surrender, because the Applicant wanted his conditions to be met, and the Respondent did not agree to those conditions. The Respondent could not insist on the Applicant signing the surrender before he could go into the Property, particularly when he had an on-site security presence since 11 November 2021, and therefore had no cause to believe further damage could be caused. Moreover, a court hearing was soon to take place on 24 November 2021 in respect of a possession claim issued by the Respondent against the Applicant. We find that the Respondent's actions to short circuit that possession hearing and obtain vacant possession earlier than any court bailiff could have entered the Property were not reasonable ones.

107. The Tribunal therefore finds this matter satisfied beyond reasonable doubt.

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

108. For all the reasons given under the previous 2 issues, the Tribunal finds beyond reasonable doubt that the Respondent committed the offences within the relevant 12 month period.

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

109. By section 44 of the 2016 Act, the amount must relate to rent paid by the Applicant in respect of a period of 12 months ending with the date of the offence: s.44(2).

110. It was an agreed fact that all the payments alleged by the Applicants were made in the sums set out in the Application, i.e. £21,000.

111. There was no evidence of receipt of universal credit to deduct from any rental payment.

112. Accordingly, the maximum amount is £21,000.

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

113. A rent repayment order scheme is not meant to be compensatory. It is a punitive regime: *Ficcara v James* [2021] UKUT 38 (LC) at paras. 31 and 39.

The Tribunal does not have to award the maximum sum, and it is not a starting point: *Williams v Parmar* [2021] UKUT 244 (LC).

114. In *Awad v Hooley* [2021] UKUT 0055, an appeal that the FTT's award (providing for a 75% deduction from the maximum rent) was too low was dismissed. The Applicant was in substantial arrears of rent and had refused entry to an electrician which prevented the landlord from obtaining a certificate, and had cancelled pre-arranged visits. This conduct was relevant conduct, even though it had no effect on the offence (at [34]).

115. The Tribunal concludes that it should make a rent repayment order, but not in the maximum sum, for the following reasons:

116. *Aytan v Moore and others* [2021] UKUT 27 (LC) demonstrates that the Tribunal is not required to undertake a fine grain analysis of the parties' conduct. Neither party here can be said to have conducted themselves without criticism, but in our determination the root cause of the issues was the Applicant's bringing onto the property a quantity of animals for whom he had not obtained permission, or if he later obtained permission, he continued to keep the same despite the unequivocal withdrawal of the landlord's consent. In this regard it is an indisputable fact that solicitors for the Respondent sent the Applicant a letter on or about 9 April 2021 withdrawing permission for the keeping of any animals save 2 horses, and requiring the removal of the unauthorised animals in 14 days. The Applicant accepted during the hearing that he did not comply with the request. The pig, sheep, goats and chickens and dogs remained. In our determination, he had no reasonable grounds to keep them there, after that letter had been served.

117. Further, the Applicant's failure to pay rent after June 2021 up to 15 November 2021 was an indisputable serious breach of tenancy.

118. On the other hand, the conduct of the Respondent we have found proven on 2 occasions was serious, although there is some mitigation on the landlord's part, in so far as he was not personally committing the acts, albeit he had expressly authorised his servants or agents to occupy part of the Property and to insist on surrender before entry by the Applicant. Furthermore, it is some additional mitigation that the acts of the landlord on 11 and 15 November 2021 came during the death throes of the tenancy, which neither wanted to continue beyond the short-term.

119. Mr Thoday indicated he was not relying on the Respondent's financial circumstances to reduce any award made.

120. It was common ground the Respondent had not been convicted of any relevant offence.

121. We consider that an award of £6000, being 2 months' rent and amounting to 28.5% of the total rent claimed, is appropriate in all the circumstances.

Conclusions

122. The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay to the Applicant the sum of £6000 within 35 days of the date of this decision.

123. By virtue of section 47 of the Housing and Planning Act 2016, the above amount is recoverable by the Applicant as a debt.

124. The Tribunal further determines that the Respondent shall reimburse the successful Applicant his fee for the issue of the application in the sum of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

Judge: S J Evans

Date:
8/8/22

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Appendix 1

Housing and Planning Act 2016

Section 40

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant …

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

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

Section 41

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

(2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

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

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

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) …

Section 44

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

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

If the order is made on the ground that the landlord has committed
the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)
-the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)
-a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the Tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Protection from Eviction Act 1977

1 Unlawful eviction and harassment of occupier.

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

(2)If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

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

(a)to give up the occupation of the premises or any part thereof; or

(b)to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

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

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

(b)he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

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

(3C)In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a)the residential occupier's right to remain in occupation of the premises, or

(b)a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4)A person guilty of an offence under this section shall be liable—

(a)on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b)on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5)Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6)Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/33UC/HMB/2021/0004**
Property	**:**	**Salle Moor Hall** **Wood Dalling Road** **Reepham** **Norfolk** **NR10 4SB.**
Applicant	**:**	**Mr Michael Chatha**
Represented by:		**In person**
Respondent	**:**	**Mr Ardeshir Naghshineh**
Represented by	**:**	**Mr Corin Thoday**
Type of Application	**:**	**Application for a rent repayment order pursuant to ss.40 to 44 of the Housing and Planning Act 2016.**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Mr Gerard Smith MRICS FAAV**
Date and venue of Hearing	**:**	**18 and 19 July 2022,** **Norwich Magistrates Court**
Date of Decision	**:**	**8 August 2022**

DECISION

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(1) The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay within 35 days of the date of this decision the sum of £6000 to the Applicant.

(2) The Respondent shall pay the Applicant the application fee of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

DECISION

Introduction

1. The Applicant seeks an order for the repayment of 7 months' rent, which it is accepted he paid to the Respondent in two tranches: 6 months' rent paid in advance of the commencement of the tenancy, and another month paid by his then partner on his behalf, in or around June 2021.

2. The parties' relationship began in or around early November 2020, when the Applicant commenced discussions with the Respondent with a view to renting the Property. It is the Applicant's claim that it was part and parcel of the agreement for the tenancy that he would be allocated a field for his horses. In the event, for the reasons set out within this decision, although the Tribunal heard evidence from both parties in relation to their position on the extent of the demise, it is not necessary for us to make any findings in that regard in order to come to our conclusions. The extent of the geographical demise in the terms of the tenancy as a whole we leave to any future civil proceedings, which have been intimated by the Respondent, and which (we expect) will be vehemently defended by the Applicant.

3. What is clear is that on 16 November 2020 the Applicant signed an assured shorthold tenancy in respect of the Property (whatever its ambit) at a rent of £3000 per month. Unfortunately, the relationship between the parties soon broke down, essentially because of the difference of opinion between the parties as to the extent of the demise and whether or not (and to what extent) the Applicant was permitted to keep animals at the Property.

4. The Applicant's claim is that the Respondent then went on to "harass" him, so as to give him the right to bring this application for a rent repayment order in the sum of £21,000.

5. It is an undisputed fact that the Applicant ceased to pay rent after June 2021.

The relevant law

6. The relevant provisions of the Protection From Eviction Act 1977 and the Housing and Planning Act 2016 are set out in the Appendix to this decision.

The Application

7. The application for a rent repayment order was made on 18 December 2021. Accordingly, the Applicant has to show the commission of at least one offence in the period between 18 December 2020 and 18 December 2021.

The Hearing

8. The hearing took place over 2 days, face to face. The hearing had originally been fixed as a video hearing with a time estimate of 1 day, but having received the papers in good time for the hearing, the Tribunal considered that the time estimate was insufficient, given that the Applicant was alleging 18 heads of harassment. In addition, the Tribunal considered that given the nature of the allegations, a face-to-face hearing would be preferable.

9. At the outset of the hearing, it was explained to the Applicant that the burden of proof lay on him to establish an offence, with the standard of proof being beyond reasonable doubt. It was also explained that the Applicant would need to do more than prove "harassment" in general terms, and that he would need to prove the essential elements of an offence under one or more of the subsections to section 1 of the Protection From Eviction Act 1977. Section 1 was explored with the Applicant, the Tribunal explaining that he would need to prove not only the commission of an act, but also the requisite mental element, according to which subsection the Applicant might rely on.

10. The was also asked to clarify the dates of his tenancy, because if it was contended that he did not lawfully surrender his tenancy (as the Respondent alleged on 15 November 2021), on his case he would still be the tenant and liable for the rent from that date.

11. As regards the Respondent, he was represented by Mr Corin Thoday, but did not appear in person. We were informed this was because his father was ill in hospital, and that the Respondent had a very bad cold. The Tribunal reminded the Respondent's representative that it would need to decide matters of mental intent, and that without the presence of the Respondent, both to confirm his witness statement and generally, the Respondent might find himself at a disadvantage.

12. The parties were therefore afforded a period of 30 minutes during which they might reflect upon their respective positions, and so far as necessary

to consider the relevant provisions of the 1977 Act and any relevant case law (which the Tribunal had brought to the parties' attention).

13. When the hearing recommenced, Mr Thoday informed the Tribunal that his instructions were to proceed in the absence of the Respondent, and that he was not seeking either a hybrid hearing or an adjournment; the Respondent was keen to see a resolution to the matter.

14. The Applicant informed the Tribunal that he wished to reduce the allegations he would pursue to numbers 4, 5, 10, 11, 13, 14, 15 and 16 on his Index of Allegations.

15. In the event, during the course of the proceedings, numbers 5 and 10 were also withdrawn.

16. The Applicant also confirmed that the dates of his tenancy were 16 November 2020 until 5pm on 15 November 2021, given the terms of the document which he signed on that day, and which we deal with in more detail below.

17. There had been some late disclosure of additional documents/ evidence by statement, by both the Applicant and the Respondent. Neither party objected to the additional evidence being adduced.

The issues

18. As the Tribunal directions dated 22 February 2022 state, the issues we have to decide are:

    (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

    (2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

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

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

    (5) What account must be taken of:

        (a) The conduct of the landlord?

        (b) The financial circumstances of the landlord?

(c) Whether the landlord has at any time being convicted of an offence?

(d) The conduct of the tenant?

(e) Any other factors?

Determination

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

19. Taking the 6 allegations remaining, we make the following findings of fact.

Allegation 4

20. The first allegation the Applicant asked us to consider was withholding and interfering with post. The Applicant explained that there was a post box at the end of the drive; any post addressed to him should have been delivered to it. However, in the time that he was residing, there were periods when he had either no post or a surfeit of it. He would then find files of post in the Respondent's company's office next door. He explained this was the situation from the start. He had even found post stacked up on his doorstep, and had complained about this multiple times. To his knowledge the post was never opened; it was just that he would go next door and find a stack of it.

21. The Applicant was asked to explain which subparagraph of section 1 he intended to rely on, He responded that it was subsection (3A).

22. The Applicant took the Tribunal to various photographs in the bundle showing the post in places it should not have been.

23. The Applicant relied on the following dates for the commission of the alleged offence: 21 August 2021, 24 June 2021, 12 July 2021 and 30 July 2021.

24. The Applicant complained that, after the incident of 21 August 2021, when he found several items of post at the landlord's office, he complained to Royal Mail. He said he got a response, which from memory was dismissive, but which suggested it was the landlord's fault. However, the Applicant had not included this letter in the bundle, and could not give a satisfactory explanation as to why it had not been adduced in evidence.

25. The Applicant accepted that he did not have evidence of any act by the landlord apart from the photographs which he adduced.

26. The Applicant contended that the landlord's motive was to make his life extremely inconvenient, so that he would leave Property, and this was part of a course of conduct generally by the Respondent, which included threatening messages by text and by e-mail on 19 January 2021 and 24 February 2021. All this was a pattern of aggression, the Applicant contended. He relied on the fact he had been given just 24 hours' notice to quit in writing at one stage by Mr Thoday.

27. In relation to 24 June 2021, when a large amount of post was found on his doorstep, the Applicant contended that it didn't get there by itself. He said that it suddenly appeared there, and it was not possible it could have been the postman who brought it. He said that they were bills dating over the course of a month in this pile.

28. In relation to the incident on 12 July 2021, again the Applicant said it could not have been the postman, and that must have been the landlord.

29. In relation to 30 July 2021 the Applicant contended that the landlord gave instructions to divert the Applicant's post to the Respondent's offices. The Applicant, however, could provide no evidence of direct instructions beyond suspicion.

30. The Tribunal asked the Applicant whether or not he had spoken to the postman himself as to what was going on. The Applicant informed the Tribunal that he had not.

31. Mr Thoday made representations that he understood the post was mistakenly delivered to the commercial premises. He believed it was a Royal Mail misunderstanding. He explained there were a number of commercial tenants (6 or 7) and there is an area which serves as a repository for their post, almost like an unofficial post room. He stated that the Respondent's position was that he believed at times the post person took the Applicant's post there, rather than to the Property. He also stated it was the Respondent's position that Royal Mail was informed of this, when they became aware of the situation. Mr Thoday then referred us to emails in the Respondent's bundle at pages 49 and 50, which indicate that the Royal Mail made an apology, and stated that they had spoken to the post person concerned and reminded them of the need to take additional care when sorting and delivering the mail.

32. Mr Thoday also gave evidence that the Applicant had admitted to him on 15 November 2021 that he realised that the Respondent had not been interfering with the post; that it was the Applicant's ex-partner, to the extent that she was even putting copies of it on social media.

33. The Respondent, we were told, denied a pattern or course of conduct, and Mr Thoday stated that his own request that the Applicant leave within 48

hours was in the context of the Applicant himself asking to surrender his tenancy, beginning in January 2021. He stated that in the document the Applicant was referring to, he did not say the Applicant must leave in 2 days. Unfortunately, neither party had adduced this letter in evidence, to enable us to examine its true terms.

34. As regards the post that had arrived on the Applicant's doorstep, Mr Thoday stated that it appeared that it might have been an employee of the Respondent called Steve Bonner, who had taken it on himself to put the post there. However, such an act could not be considered interference with the post.

35. Having heard all the evidence, the Tribunal is not satisfied beyond reasonable doubt that the Respondent committed any act likely to interfere with the peace or comfort of the residential occupier or members of his household, or had persistently withdrawn or withheld services reasonably required for the occupation of the premises in question as a residence. The Applicant's evidence amounted to no more than a suspicion that the Respondent's servants or agents had removed the Applicant's post from the post box, or had directed that it be sent to the commercial units. In relation to the one or two occasions on which Mr Bonner had placed post at the doorstep of the Property, we do not find that that was an act likely to interfere with the peace or comfort of the Applicant. It was quite the opposite; it was putting the post where it was meant to be. Moreover, we note and accept the written evidence of the Royal Mail which has been put before us by the Respondent, which tends to evidence that the issue lay with the post person concerned, and not the Respondent.

36. The Applicant therefore has not reached the high hurdle of proving beyond reasonable doubt the act required toe be shown under this subsection.

37. We therefore do not need to consider the Respondent's mental state, had such an act or acts been committed.

Allegation #11

38. The next allegation we were asked to consider was an allegation of entering the Property without consent on 2 occasions. The Applicant relied on events taking place on 18 March 2021 and 1 April 2021. He explained that he was again relying on subsection (3A) of section 1 of the 1977 Act. He explained that on both occasions the act alleged was the entry into the Property by the Respondent's servants or agents, knowing that there was a person shielding in the Property on account of their susceptibility to COVID-19; an act which amounted to a breach of UK government guidance, he said.

39. The Applicant contended that it was stated in the guidance that it was necessary to have the consent of the tenant before a landlord could enter the Property to order to inspect it. Unfortunately, the Applicant was unable to produce the guidance in force at the time of the 2 dates in question in order to make good this argument.

40. Moreover, when asked by the Tribunal whether he had allowed the persons into the Property, he accepted that he had. He accepted that he did not simply bolt the door and phone the police to complain that they were attempting to commit an unlawful act. The Applicant claimed that the Respondent's servants or agents were 100% intent on doing what they wanted to do, so he did allow them access.

41. On the second occasion, the Respondent's servants or agents wanted access because they had been unable to gain access to the kitchen on the earlier occasion, by reason of the presence of the Applicant's dogs inside. The Tribunal notes that it was the Respondent's position, and had been for some time, that the dogs were not allowed to live in the house. Whilst the Applicant complained that one of the landlord's agents entering on the day was not wearing gloves, the offence which he alleged to have been committed on this occasion was the same as that on 18 March 2021, i.e. the act was entry onto the Property without consent, and in breach of government guidelines, an act which was likely to interfere with the peace or comfort of a lawful occupier, including the Applicant's ex-partner who was living there at this time with his licence.

42. The Applicant claimed to have videoed the whole incident, but again he could not provide an explanation as to why the video had not been disclosed and included as part of his case.

43. The Applicant once again stated that he allowed the operatives into the Property because he was worried they would call the police themselves. He claimed he did try to object to their entry when he was speaking to them on the doorstep.

44. On the second day of the hearing, the Applicant was unable to produce the government guidance, but indicated to the Tribunal that he did intend to pursue this allegation, nonetheless.

45. The Respondent's evidence was that it had sought a convenient time to do the viewings; that the context was that the Respondent had received a list of issues regarding the state of repair of the Property, and that they were concerned about damage caused by the presence of unauthorised animals in the Property. Mr Thoday explained that the evidence shows that the first

inspection on 18 March 2021 was deferred at the request of the Applicant. Fair and reasonable notice had been given to the Applicant, he added.

46. Mr Thoday further explained that on 18 March 2021 he was personally present and the Applicant welcomed them in; that he had told the Applicant that he did not need to accompany them on the inspection, but that the Applicant insisted that he did. That was his personal choice, Mr Thoday added. The Applicant did not make them aware on the day that anyone was shielding, and the Applicant's ex-partner was not in fact there. Mr Thoday explained that the Applicant would not let them inspect the kitchen because the dogs were there, and the Applicant was fearful that they might harm them.

47. Mr Thoday explained that on the subsequent inspection on 1 April 2021, the landlord's servants were Mr. Arthur Moore and his father John Moore. As with 18 March 2021, they did not think that the Applicant's consent was required, as long as the tenancy terms and conditions were complied with, i.e. giving of 24 hours' notice. Mr Thoday alleged that the operatives had taken COVID 19 precautions, but accepted that Mr. John Moore did not have gloves on, despite Mr Thoday asking the staff to wear them.

48. In the Tribunal's determination, no offence was committed on this date. The Applicant was unable to show that any inspection without the tenant's consent was a breach of UK government guidelines, and therefore likely to interfere with the peace and comfort of the Applicant and or his ex partner, who was not seemingly present on the first visit in any event. We are satisfied that the contractual requirements of the tenancy agreement were complied with by the Respondent, and that the entry on both occasions was lawful. In any event, the Applicant allowed access to the landlord's servants on both occasions. It is a relevant fact that the Applicant's emails gave mixed messages, both suggesting that access would not be given at all, and stating that conditions would have to be met if access were to be given.

49. Yet further, there is no evidence that, even if the Applicant is right to contend the government guidance was in the terms alleged, that the landlord's intention was any of those matters required in subsection (3A) of section 1 of the Protection from Eviction Act 1977. We find that the landlord's true intention was to gain access to inspect the state of repair of the Property, and to see what the situation was with the animals. We are not satisfied that there was any intention to compel the Applicant to give up occupation of the Property, or to refrain from exercising any right or remedy.

Allegation #13

50. The Applicant contended there had been an offence committed under subsection (3A).

51. In this regard, he relied on several messages, starting with an e-mail dated 4 February 2021 from the Respondent personally to the Applicant. This reads:

> "As I have not heard from you, we may now have to approach our advisers to take possession of our premise (sic) from you. This procedure will be costly and would be charged you under the terms of your AST. In the meantime please move the unauthorised animals off the premise (sic) with immediate effect. If this does not get done, then we may have to [employ] professional people to expedite with the removal of these animals. Your prompt response will be appreciated."

52. The Applicant also relied on text messages on 19 January 2021 and 11 February 2021 in these terms:

> "Hi Mike hope all is well. Have you received my emails? Ardeshir"

> "Hi Mike you need to respond to my and Anthony's emails and calls before more serious and costly action is taken pls. Ardeshir"

53. The Applicant explained that he found these to be aggressive and stressful for him. He felt they were completely unwarranted. He accepted the text messages were factually correct but totally inappropriate, he said.

54. The Applicant also relied on an e-mail from Mr Thoday dated 29 March 2021, and in particular its last paragraph, which he considered to be unnecessary and threatening, because the Respondent knew he had a heart condition, and knew he had been beaten with a whip his ex- partner, because he had informed the Respondent himself. The Applicant said the Respondent wanted to push him over the edge in order to make him to give up occupation.

55. The last paragraph of the relevant email reads:

> "It would be best for everyone if you found a new property, as it does not look like you have a resolution for the matters highlighted above. If this does not happen, we must consider taking action to remove you on account of the various breaches of contract. We are already incurring significant

costs that would need to be claimed against you were we to go down this route."

56. The Applicant also said there was evidence that the landlord would not give a reference for another property the Applicant wished to take in Shropshire, but accepted that such documentation was not in the bundle.

57. Finally, the Applicant relied on an email from himself to Mr Thoday which made reference to a missive (not adduced before us) in which Mr Thoday had allegedly given notice to the Applicant to vacate in 48 hours.

58. The Respondent's representations were that he believed that all the messages were strongly worded, but were not meant as threats and were not acts likely to interfere with the peace or comfort of the Applicant. Mr Thoday explained that the landlord did not know about the Applicant's heart condition at this point. As regards the assault by the Applicant's ex-partner, the Mr Thoday said that he responded with sympathy. As regards the request for a reference, Mr Thoday explained it was not their policy to provide a reference unless the new landlord or landlord's agents made a request for the same, and that their reply would have been in standard form in any event.

59. As concerns the email from Mr Thoday giving 48 hours' notice, Mr Thoday represented that this came in the context of numerous requests to surrender by the Applicant, and in the knowledge of the personal difficulties that the Applicant was having with his ex-partner. He denied that it was meant to be threatening or intimidating in anyway.

60. The Tribunal is not satisfied that any offence was committed under the relevant subsection on any of these dates. We agree with the Respondent that they were strongly worded messages in the context of a dispute over civil rights, i.e. breach of tenancy, and were unlikely to interfere with the peace or comfort of the Applicant. But even if they were, we do not find that there is proven the mental intent required under the subsection on the part of the Respondent.

61. Finally, we have not seen the alleged 48 hour notice, and cannot be satisfied so as to be sure there was a breach of s.1(3A) in such circumstances.

Allegation #14

62. The Applicant complained that he had been locked out of the Property since October 2021; that he had no keys and that his ex-partner had barricaded herself in.

63. He relied on the fact that he had requested spare keys from the landlord on 4 October 2021 in 2 emails. However, he had received no response.

64. The Applicant contended this failure to provide keys was an offence under section 1(2), namely unlawful deprivation of his occupation of the premises.

65. The Tribunal pointed out to the Applicant that there was nothing in the contractual agreement, i.e. the tenancy agreement, which required the landlord to provide spare keys. The Applicant was unable to point to any statutory law or case law which indicated the landlord had such a duty. Nor could the Applicant point to anything than in the bundle which stated that the landlord was refusing to provide a set of keys. If anything, the landlord had omitted to do something (being silent in the face of requests for keys), but did not seem to have committed any act of unlawful deprivation.

66. Mr Thoday stated that he believed they held spare keys, but stated that the Police had advised Arthur Moore not to give a set of keys. In this regard he relied on an e-mail within the bundle which tended to evidence that they had sought the advice of the police, and that Mr. Moore had been informed verbally not to provide a spare set of keys whilst the dispute continued between the Applicant and his ex-partner.

67. In the Tribunal's determination there was no act of unlawful deprivation on 4 October 2021 or any date. The Applicant was unable to prove the landlord had a duty to supply a set of spare keys in law. The Respondent's actions were, instead of being criminal, in accordance with the law, in so far as Police advice was sought.

68. We therefore dismiss this allegation.

Allegation #15

69. The next allegation the Applicant asked us to consider was an offence under section 1(2) of the 1977 Act, namely an unlawful deprivation of the occupation of the Property or part of it, on 11 November 2021.

70. The Applicant explained the background; that he had been informed by the police that his ex-partner was no longer residing in the Property. This was on 11 November 2021 at about 11:00 AM.

71. The Applicant was at this time subject to a non-molestation order made by the Family Court which prevented him from coming near the Property while his ex-partner was in residence.

72. The Applicant stated that he arrived at the Property at about 6:00 to 7:00 PM, and was then met by a security man, who appeared to be living in the Property. The man said he would call his team, and that he had arrived that day. The man told the Applicant that he had been instructed to remain there. The Applicant relied on an invoice which he had been sent on a later date by the Respondent, which indicated that security was on site from 11 November 2021 until 15 November 2021, for a total period of 119 hours.

73. The Applicant claimed that he had a reasonably pleasant conversation with the security man, and walked in, the front door being open. He went inside while the other man was making the telephone call. The Applicant inspected the Property, to find the carpets filthy because the dogs had been running round the hall. He went upstairs to collect some belongings and left after about 20 to 30 minutes. He alleged that, as he was leaving, he saw that a team of security men had arrived, at least four or five persons, in three cars. One of the persons was very large. The Applicant stated to the Tribunal that these men had told him that he could not be there and that he was not allowed to be there. The Applicant informed them he would be coming back on the following Monday to collect the rest of his belongings.

74. The Applicant was asked to explain why there was no evidence about these extra teams turning up, within his documentation. Moreover the Applicant was taken to page 235 of the bundle which was an e-mail he had sent to the landlord at 6:35 PM that day, in which made no such complaint. The Applicant also accepted he had got the time wrong, and that he had in fact turned up at 5:30 PM. More importantly, the e-mail seemed clear that on that same day the Applicant had made no allegation that the Respondent's servants or agents had prevented him access. The Applicant had stated in that e-mail that he had videoed the whole incident, but could not explain to the Tribunal why the video had not been adduced in evidence.

75. The Applicant was also taken to the 6th bullet point of his email on page 231 of his bundle, in which he had written that the conversation that he had had with the team of security men on this occasion had been pleasant. The Applicant alleged to the Tribunal that it was within that pleasant conversation that a security guard said he was not allowed in.

76. The Respondent's evidence was that the Respondent was aware in the preceding 8 weeks that the Applicant's ex-partner and a number of unauthorised animals were in the premises; and that there were various allegations of domestic abuse, as well as some enforcement of the non-molestation order. Mr Thoday explained that when the Applicants ex-partner had left the Property, there had been various trucks and lorries which had arrived to take away the many animals she had kept on the Property. He explained that the Respondent was extremely concerned about his very valuable asset being depreciated, so he took the decision to secure the Property on 11 November 2021, by asking a security firm to secure the Property.

77. The Respondent's position was that he was not depriving the Applicant of occupation of the Property but was simply taking steps to secure the Property. He claimed that this was 24 hour security and hoped that the operatives were not sleeping in the Property. He accepted that the security men were occupying the living room, and not just patrolling the grounds. He alleged that there was one security person there at any one time, with persons taking turns.

78. Mr Thoday did not dispute that other persons turned up on the day.

79. When asked about the Respondent's own e-mail which had alleged that the Applicant had forced his way into the Hall (suggesting that there had been resistance on the part of his operatives), Mr Thoday stated that this was emotive language, and was not supported by the Applicant's own evidence, as he did not have to force his way into the Hall. He accepted that this was not the correct language to use in the e-mail, and asserted it did not reflect the situation on the ground.

80. In the Tribunal's determination, an offence was committed beyond reasonable doubt on 11 November 2021 by the Respondent. The Tribunal finds that the Applicant was the lawful tenant at this stage, because he had not yet surrendered his tenancy. As a tenant, he had exclusive possession of the Property for a term at a rent. It is trite law that that exclusive possession is good against the world, even against the tenant's own landlord. What the Respondent did on this occasion of 11 November 2021 was not simply to secure the Property, but to put persons into the front room of the same. The Respondent had no right to do this, whatever his concerns might have been, legitimate or otherwise. It was therefore an unlawful deprivation of part of the Property enjoyed by the Applicant.

81. We note that, under this particular subsection, the Applicant does not need to prove any specific mental intent on the part of the Respondent. There is a defence, which the landlord can make good on balance of probability, if he shows that he believed (and had reasonable cause to believe) that the residential occupier had ceased to give up occupation. That defence was not advanced by Mr Thoday for good reason. Whilst it is correct that the parties were in discussion about a potential surrender, no written surrender had yet been drawn up, let alone signed on this day. Moreover, all the Applicant's belongings were still in the Property, even if his ex-partner was not. He had not, we find, ceased to occupy the Property.

82. Given that we are satisfied an offence was committed in the above circumstances, we do not need to consider whether a security guard acted in a way which amounted to an attempted unlawful deprivation of occupation in so far as he allegedly stated that the Applicant was not allowed to enter. However, we have to say that we would have been hard pressed to find an offence had been committed, given the terms of the Applicant's emails of 11 and 12 November 2021.

Allegation #16

83. The final allegation was that of an offence committed under either subsection (2) or subsection (3A) of section 1 of the 1977 Act, on 15 November 2021.

84. As regards subsection (2), the Applicant stated that his primary aim was to get access to the Property to take his belongings away and give vacant possession. We have seen his emails in the days preceding 15 November 2021, in which the Applicant makes clear that he wanted to do that very thing, then inspect the Property in the presence of Mr Thoday, and then sign a written surrender of the Property, the terms of which had been emailed to him on 12 November 2021.

85. However, the Applicant said, he was met on the drive by Mr Thoday, and Mr Arthur Moore behind him, as well as Steven Bonner, and a security team consisting of a small gentleman in the hallway of the Hall, plus a larger gentleman called Vinnie outside.

86. The Applicant requested the Tribunal to view an unredacted copy of a video which he had taken on this day. The Tribunal had in the weeks preceding the hearing refused to adduce a video of this incident which had been edited by the Applicant, and which contained some rather dramatic subtitling and surtitling. By contrast, the video which he now wished to

adduce at the hearing was unedited in any way, and the Respondent did not object to its admission in evidence. We therefore viewed it.

87. The Applicant alleged that the gentleman called Vinnie had come close to him and threatened him, and that there was another man (whom he described as portly) appearing at the end of the video. But no allegation was levelled against this man, save for his presence.

88. The Applicant's main complaint was that Mr Thoday and Vinnie would not let him into the Property until he gave up his tenancy rights. He stated that he had felt compelled to sign the surrender agreement before he could enter his own premises.

89. As regards the alleged offence under subsection (3A), the Applicant said the act on which he relied was of presenting him with a surrender document and requiring him to give up occupation before he could enter. He stated that the fact of all persons surrounding him was an act likely to interfere with his peace and comfort. He further added that the intent on the part of the Respondent was to make him feel that he had no choice but to give up occupation of the whole or part of the Property.

90. The Applicant was reminded of subsection (3B) of section 1, which provides a defence to the landlord on balance of probability if he proves that he has reasonable grounds for doing the acts complained of.

91. The Applicant accepted that the Tribunal could concentrate on the video, but emphasised that the words of Vinnie that he was "no longer the tenant" were both wrong as a matter of fact and law, and were said in a threatening manner.

92. The Applicant also contended that the gentleman Vinnie had said "you're gonna go bye byes", which he considered a threat.

93. There were therefore no reasonable grounds for the landlord's actions, as the Applicant saw it.

94. The Applicant explained that he did sign the surrender document, because he felt he had no other choice; that he'd been trying for months to get into his home, but had been prevented by his ex-partner from doing so. Because of that, he feared the Respondent would sell his stuff or destroy his belongings. He said he had no faith in the relationship with the Respondent, who had not accepted his request for meetings, and that he felt traumatised by all the events which had taken place; he just wanted to see an end to it all.

95. Mr Thoday and Mr. Arthur Moore gave evidence that Arthur Moore was not present at this time, only later in that day, roundabout 2:00 PM. Mr Thoday accepted that he had made a mistake on day 1 of the hearing when he had inadvertently said that this meeting had taken place around about 1:00 o'clock, when it was in fact 10:30am as the Applicant alleged.

96. Mr Thoday relied on the Respondent's second witness statement dated 20 June 2022, but this is extremely brief, and contains no details in response to the allegation made.

97. Mr Thoday informed the Tribunal that the Respondent had instructed them to achieve three things on the day: (1) the surrender of the Property by the Applicant (2) to permit him to collect his belongings, and (3) to conduct an inspection.

98. Mr Thoday accepted that these three things were not in the order which the Applicant wanted. Mr Thoday therefore accepted that the parties had not reached terms as to the procedure of surrender before it took place. The Applicant had imposed conditions to which the Respondent did not agree. Mr Thoday accepted that it was the landlord's wish that they would first get the surrender signed, prior to the Applicant accessing and collecting his belongings.

99. Mr Thoday denied any violence on their part, and said that matters only became fractious when it was realised that the Applicant was videoing the events. When asked why this was a problem, Mr Thoday pointed to the redacting of the video by the Applicant at a later date as being evidence that he was capable of misleading or manipulating the facts.

100. Mr Thoday also claimed that it was his understanding personally that the Applicant had agreed to sign the surrender before entry into the Property. Mr Thoday claimed his understanding came from the exchange of emails taking place prior to this visit.

101. Mr Thoday also said that the Respondent had reason to believe that the Applicant had no intent on residing in the Property, particularly as he had entered on the 11th and had gone away again. They therefore believed the Property remained vacant. He said that he was personally surprised when the Applicant's first reaction was to refuse to sign the surrender document and to allege that he had not received it. Mr Thoday accepted that Vinnie had incorrectly said to the Applicant that he was not the tenant, and Mr Thoday further accepted that he did not correct Vinnie in this regard.

102. In the Tribunal's determination an offence was committed by the Respondent under subsection (2) on this date. The Respondent and his representatives had no right to prevent the Applicant accessing the Property while he was still the lawful tenant. Until the Applicant signed the surrender document, he remained entitled to exclusive possession of the Hall; indeed even after signing it, by the terms of the document he was entitled to be the tenant up to and including 5:00 PM. We therefore find that the Applicant was unlawfully deprived of his occupation of the Property before he signed the surrender.

103. We do not find that, on balance of probability, the Respondent subjectively believed that the Applicant had ceased to reside in the Property. No such evidence was adduced from the Respondent by way of witness statement, only by representations from Mr Thoday. The Respondent was not present in court to back up those assertions. But in any event, we find that objectively the landlord would have had no reasonable cause to believe that situation existed. Indeed, the landlord knew that the Applicant's belongings were still in the Property and was proceeding on the basis that the Applicant would surrender the Property at 5:00 PM that day, but not before. He was therefore accepting and acknowledging that the Applicant was the lawful tenant up to that time. The Respondent was contending that the Applicant remained liable for the rent up to that time, even if he was not in fact paying it. The emails do not reveal that the Applicant had agreed to sign the surrender before getting his belongings.

104. Whilst we accept it is not the only situation, the defence within subsection (2) is geared towards a landlord who considers that the tenant has abandoned the premises but is unable to make contact with the tenant. That was not the situation here.

105. The Tribunal also determines that the offence under s1(3A) is proven beyond reasonable doubt. We are satisfied, so as to be sure, that the act of requiring the Applicant to sign the surrender document before he could access the Property was an act likely to interfere with his peace or comfort. Moreover, it is clear from Mr Thoday's evidence that the Respondent knew that his conduct was likely to cause the Applicant to give up his occupation of the Property. He had given instructions to Mr Thoday and therefore to the security team, that the surrender must be effected before anything else.

106. We are not satisfied that the Respondent had reasonable grounds for doing the act complained of. A landlord can seldom (if ever) have reasonable grounds for forcing a tenant to sign a surrender before they can legitimately enter their own demised premises. The parties had not

reached consensus as to the terms of surrender, because the Applicant wanted his conditions to be met, and the Respondent did not agree to those conditions. The Respondent could not insist on the Applicant signing the surrender before he could go into the Property, particularly when he had an on-site security presence since 11 November 2021, and therefore had no cause to believe further damage could be caused. Moreover, a court hearing was soon to take place on 24 November 2021 in respect of a possession claim issued by the Respondent against the Applicant. We find that the Respondent's actions to short circuit that possession hearing and obtain vacant possession earlier than any court bailiff could have entered the Property were not reasonable ones.

107. The Tribunal therefore finds this matter satisfied beyond reasonable doubt.

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

108. For all the reasons given under the previous 2 issues, the Tribunal finds beyond reasonable doubt that the Respondent committed the offences within the relevant 12 month period.

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

109. By section 44 of the 2016 Act, the amount must relate to rent paid by the Applicant in respect of a period of 12 months ending with the date of the offence: s.44(2).

110. It was an agreed fact that all the payments alleged by the Applicants were made in the sums set out in the Application, i.e. £21,000.

111. There was no evidence of receipt of universal credit to deduct from any rental payment.

112. Accordingly, the maximum amount is £21,000.

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

113. A rent repayment order scheme is not meant to be compensatory. It is a punitive regime: *Ficcara v James* [2021] UKUT 38 (LC) at paras. 31 and 39.

The Tribunal does not have to award the maximum sum, and it is not a starting point: *Williams v Parmar* [2021] UKUT 244 (LC).

114. In *Awad v Hooley* [2021] UKUT 0055, an appeal that the FTT's award (providing for a 75% deduction from the maximum rent) was too low was dismissed. The Applicant was in substantial arrears of rent and had refused entry to an electrician which prevented the landlord from obtaining a certificate, and had cancelled pre-arranged visits. This conduct was relevant conduct, even though it had no effect on the offence (at [34]).

115. The Tribunal concludes that it should make a rent repayment order, but not in the maximum sum, for the following reasons:

116. *Aytan v Moore and others* [2021] UKUT 27 (LC) demonstrates that the Tribunal is not required to undertake a fine grain analysis of the parties' conduct. Neither party here can be said to have conducted themselves without criticism, but in our determination the root cause of the issues was the Applicant's bringing onto the property a quantity of animals for whom he had not obtained permission, or if he later obtained permission, he continued to keep the same despite the unequivocal withdrawal of the landlord's consent. In this regard it is an indisputable fact that solicitors for the Respondent sent the Applicant a letter on or about 9 April 2021 withdrawing permission for the keeping of any animals save 2 horses, and requiring the removal of the unauthorised animals in 14 days. The Applicant accepted during the hearing that he did not comply with the request. The pig, sheep, goats and chickens and dogs remained. In our determination, he had no reasonable grounds to keep them there, after that letter had been served.

117. Further, the Applicant's failure to pay rent after June 2021 up to 15 November 2021 was an indisputable serious breach of tenancy.

118. On the other hand, the conduct of the Respondent we have found proven on 2 occasions was serious, although there is some mitigation on the landlord's part, in so far as he was not personally committing the acts, albeit he had expressly authorised his servants or agents to occupy part of the Property and to insist on surrender before entry by the Applicant. Furthermore, it is some additional mitigation that the acts of the landlord on 11 and 15 November 2021 came during the death throes of the tenancy, which neither wanted to continue beyond the short-term.

119. Mr Thoday indicated he was not relying on the Respondent's financial circumstances to reduce any award made.

120. It was common ground the Respondent had not been convicted of any relevant offence.

121. We consider that an award of £6000, being 2 months' rent and amounting to 28.5% of the total rent claimed, is appropriate in all the circumstances.

Conclusions

122. The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay to the Applicant the sum of £6000 within 35 days of the date of this decision.

123. By virtue of section 47 of the Housing and Planning Act 2016, the above amount is recoverable by the Applicant as a debt.

124. The Tribunal further determines that the Respondent shall reimburse the successful Applicant his fee for the issue of the application in the sum of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

Judge: S J Evans

Date:
8/8/22

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Appendix 1

Housing and Planning Act 2016

Section 40

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant …

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

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

Section 41

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

(2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

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

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

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) …

Section 44

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

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

If the order is made on the ground that the landlord has committed
the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)
-the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)
-a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the Tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Protection from Eviction Act 1977

1 Unlawful eviction and harassment of occupier.

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

(2)If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

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

(a)to give up the occupation of the premises or any part thereof; or

(b)to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

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

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

(b)he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

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

(3C)In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a)the residential occupier's right to remain in occupation of the premises, or

(b)a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4)A person guilty of an offence under this section shall be liable—

(a)on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b)on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5)Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6)Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/33UC/HMB/2021/0004**
Property	**:**	**Salle Moor Hall** **Wood Dalling Road** **Reepham** **Norfolk** **NR10 4SB.**
Applicant	**:**	**Mr Michael Chatha**
Represented by:		**In person**
Respondent	**:**	**Mr Ardeshir Naghshineh**
Represented by	**:**	**Mr Corin Thoday**
Type of Application	**:**	**Application for a rent repayment order pursuant to ss.40 to 44 of the Housing and Planning Act 2016.**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Mr Gerard Smith MRICS FAAV**
Date and venue of Hearing	**:**	**18 and 19 July 2022,** **Norwich Magistrates Court**
Date of Decision	**:**	**8 August 2022**

DECISION

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(1) The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay within 35 days of the date of this decision the sum of £6000 to the Applicant.

(2) The Respondent shall pay the Applicant the application fee of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

DECISION

Introduction

1. The Applicant seeks an order for the repayment of 7 months' rent, which it is accepted he paid to the Respondent in two tranches: 6 months' rent paid in advance of the commencement of the tenancy, and another month paid by his then partner on his behalf, in or around June 2021.

2. The parties' relationship began in or around early November 2020, when the Applicant commenced discussions with the Respondent with a view to renting the Property. It is the Applicant's claim that it was part and parcel of the agreement for the tenancy that he would be allocated a field for his horses. In the event, for the reasons set out within this decision, although the Tribunal heard evidence from both parties in relation to their position on the extent of the demise, it is not necessary for us to make any findings in that regard in order to come to our conclusions. The extent of the geographical demise in the terms of the tenancy as a whole we leave to any future civil proceedings, which have been intimated by the Respondent, and which (we expect) will be vehemently defended by the Applicant.

3. What is clear is that on 16 November 2020 the Applicant signed an assured shorthold tenancy in respect of the Property (whatever its ambit) at a rent of £3000 per month. Unfortunately, the relationship between the parties soon broke down, essentially because of the difference of opinion between the parties as to the extent of the demise and whether or not (and to what extent) the Applicant was permitted to keep animals at the Property.

4. The Applicant's claim is that the Respondent then went on to "harass" him, so as to give him the right to bring this application for a rent repayment order in the sum of £21,000.

5. It is an undisputed fact that the Applicant ceased to pay rent after June 2021.

The relevant law

6. The relevant provisions of the Protection From Eviction Act 1977 and the Housing and Planning Act 2016 are set out in the Appendix to this decision.

The Application

7. The application for a rent repayment order was made on 18 December 2021. Accordingly, the Applicant has to show the commission of at least one offence in the period between 18 December 2020 and 18 December 2021.

The Hearing

8. The hearing took place over 2 days, face to face. The hearing had originally been fixed as a video hearing with a time estimate of 1 day, but having received the papers in good time for the hearing, the Tribunal considered that the time estimate was insufficient, given that the Applicant was alleging 18 heads of harassment. In addition, the Tribunal considered that given the nature of the allegations, a face-to-face hearing would be preferable.

9. At the outset of the hearing, it was explained to the Applicant that the burden of proof lay on him to establish an offence, with the standard of proof being beyond reasonable doubt. It was also explained that the Applicant would need to do more than prove "harassment" in general terms, and that he would need to prove the essential elements of an offence under one or more of the subsections to section 1 of the Protection From Eviction Act 1977. Section 1 was explored with the Applicant, the Tribunal explaining that he would need to prove not only the commission of an act, but also the requisite mental element, according to which subsection the Applicant might rely on.

10. The was also asked to clarify the dates of his tenancy, because if it was contended that he did not lawfully surrender his tenancy (as the Respondent alleged on 15 November 2021), on his case he would still be the tenant and liable for the rent from that date.

11. As regards the Respondent, he was represented by Mr Corin Thoday, but did not appear in person. We were informed this was because his father was ill in hospital, and that the Respondent had a very bad cold. The Tribunal reminded the Respondent's representative that it would need to decide matters of mental intent, and that without the presence of the Respondent, both to confirm his witness statement and generally, the Respondent might find himself at a disadvantage.

12. The parties were therefore afforded a period of 30 minutes during which they might reflect upon their respective positions, and so far as necessary

to consider the relevant provisions of the 1977 Act and any relevant case law (which the Tribunal had brought to the parties' attention).

13. When the hearing recommenced, Mr Thoday informed the Tribunal that his instructions were to proceed in the absence of the Respondent, and that he was not seeking either a hybrid hearing or an adjournment; the Respondent was keen to see a resolution to the matter.

14. The Applicant informed the Tribunal that he wished to reduce the allegations he would pursue to numbers 4, 5, 10, 11, 13, 14, 15 and 16 on his Index of Allegations.

15. In the event, during the course of the proceedings, numbers 5 and 10 were also withdrawn.

16. The Applicant also confirmed that the dates of his tenancy were 16 November 2020 until 5pm on 15 November 2021, given the terms of the document which he signed on that day, and which we deal with in more detail below.

17. There had been some late disclosure of additional documents/ evidence by statement, by both the Applicant and the Respondent. Neither party objected to the additional evidence being adduced.

The issues

18. As the Tribunal directions dated 22 February 2022 state, the issues we have to decide are:

    (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

    (2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

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

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

    (5) What account must be taken of:

        (a) The conduct of the landlord?

        (b) The financial circumstances of the landlord?

(c) Whether the landlord has at any time being convicted of an offence?

(d) The conduct of the tenant?

(e) Any other factors?

Determination

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

19. Taking the 6 allegations remaining, we make the following findings of fact.

Allegation 4

20. The first allegation the Applicant asked us to consider was withholding and interfering with post. The Applicant explained that there was a post box at the end of the drive; any post addressed to him should have been delivered to it. However, in the time that he was residing, there were periods when he had either no post or a surfeit of it. He would then find files of post in the Respondent's company's office next door. He explained this was the situation from the start. He had even found post stacked up on his doorstep, and had complained about this multiple times. To his knowledge the post was never opened; it was just that he would go next door and find a stack of it.

21. The Applicant was asked to explain which subparagraph of section 1 he intended to rely on, He responded that it was subsection (3A).

22. The Applicant took the Tribunal to various photographs in the bundle showing the post in places it should not have been.

23. The Applicant relied on the following dates for the commission of the alleged offence: 21 August 2021, 24 June 2021, 12 July 2021 and 30 July 2021.

24. The Applicant complained that, after the incident of 21 August 2021, when he found several items of post at the landlord's office, he complained to Royal Mail. He said he got a response, which from memory was dismissive, but which suggested it was the landlord's fault. However, the Applicant had not included this letter in the bundle, and could not give a satisfactory explanation as to why it had not been adduced in evidence.

25. The Applicant accepted that he did not have evidence of any act by the landlord apart from the photographs which he adduced.

26. The Applicant contended that the landlord's motive was to make his life extremely inconvenient, so that he would leave Property, and this was part of a course of conduct generally by the Respondent, which included threatening messages by text and by e-mail on 19 January 2021 and 24 February 2021. All this was a pattern of aggression, the Applicant contended. He relied on the fact he had been given just 24 hours' notice to quit in writing at one stage by Mr Thoday.

27. In relation to 24 June 2021, when a large amount of post was found on his doorstep, the Applicant contended that it didn't get there by itself. He said that it suddenly appeared there, and it was not possible it could have been the postman who brought it. He said that they were bills dating over the course of a month in this pile.

28. In relation to the incident on 12 July 2021, again the Applicant said it could not have been the postman, and that must have been the landlord.

29. In relation to 30 July 2021 the Applicant contended that the landlord gave instructions to divert the Applicant's post to the Respondent's offices. The Applicant, however, could provide no evidence of direct instructions beyond suspicion.

30. The Tribunal asked the Applicant whether or not he had spoken to the postman himself as to what was going on. The Applicant informed the Tribunal that he had not.

31. Mr Thoday made representations that he understood the post was mistakenly delivered to the commercial premises. He believed it was a Royal Mail misunderstanding. He explained there were a number of commercial tenants (6 or 7) and there is an area which serves as a repository for their post, almost like an unofficial post room. He stated that the Respondent's position was that he believed at times the post person took the Applicant's post there, rather than to the Property. He also stated it was the Respondent's position that Royal Mail was informed of this, when they became aware of the situation. Mr Thoday then referred us to emails in the Respondent's bundle at pages 49 and 50, which indicate that the Royal Mail made an apology, and stated that they had spoken to the post person concerned and reminded them of the need to take additional care when sorting and delivering the mail.

32. Mr Thoday also gave evidence that the Applicant had admitted to him on 15 November 2021 that he realised that the Respondent had not been interfering with the post; that it was the Applicant's ex-partner, to the extent that she was even putting copies of it on social media.

33. The Respondent, we were told, denied a pattern or course of conduct, and Mr Thoday stated that his own request that the Applicant leave within 48

hours was in the context of the Applicant himself asking to surrender his tenancy, beginning in January 2021. He stated that in the document the Applicant was referring to, he did not say the Applicant must leave in 2 days. Unfortunately, neither party had adduced this letter in evidence, to enable us to examine its true terms.

34. As regards the post that had arrived on the Applicant's doorstep, Mr Thoday stated that it appeared that it might have been an employee of the Respondent called Steve Bonner, who had taken it on himself to put the post there. However, such an act could not be considered interference with the post.

35. Having heard all the evidence, the Tribunal is not satisfied beyond reasonable doubt that the Respondent committed any act likely to interfere with the peace or comfort of the residential occupier or members of his household, or had persistently withdrawn or withheld services reasonably required for the occupation of the premises in question as a residence. The Applicant's evidence amounted to no more than a suspicion that the Respondent's servants or agents had removed the Applicant's post from the post box, or had directed that it be sent to the commercial units. In relation to the one or two occasions on which Mr Bonner had placed post at the doorstep of the Property, we do not find that that was an act likely to interfere with the peace or comfort of the Applicant. It was quite the opposite; it was putting the post where it was meant to be. Moreover, we note and accept the written evidence of the Royal Mail which has been put before us by the Respondent, which tends to evidence that the issue lay with the post person concerned, and not the Respondent.

36. The Applicant therefore has not reached the high hurdle of proving beyond reasonable doubt the act required toe be shown under this subsection.

37. We therefore do not need to consider the Respondent's mental state, had such an act or acts been committed.

Allegation #11

38. The next allegation we were asked to consider was an allegation of entering the Property without consent on 2 occasions. The Applicant relied on events taking place on 18 March 2021 and 1 April 2021. He explained that he was again relying on subsection (3A) of section 1 of the 1977 Act. He explained that on both occasions the act alleged was the entry into the Property by the Respondent's servants or agents, knowing that there was a person shielding in the Property on account of their susceptibility to COVID-19; an act which amounted to a breach of UK government guidance, he said.

39. The Applicant contended that it was stated in the guidance that it was necessary to have the consent of the tenant before a landlord could enter the Property to order to inspect it. Unfortunately, the Applicant was unable to produce the guidance in force at the time of the 2 dates in question in order to make good this argument.

40. Moreover, when asked by the Tribunal whether he had allowed the persons into the Property, he accepted that he had. He accepted that he did not simply bolt the door and phone the police to complain that they were attempting to commit an unlawful act. The Applicant claimed that the Respondent's servants or agents were 100% intent on doing what they wanted to do, so he did allow them access.

41. On the second occasion, the Respondent's servants or agents wanted access because they had been unable to gain access to the kitchen on the earlier occasion, by reason of the presence of the Applicant's dogs inside. The Tribunal notes that it was the Respondent's position, and had been for some time, that the dogs were not allowed to live in the house. Whilst the Applicant complained that one of the landlord's agents entering on the day was not wearing gloves, the offence which he alleged to have been committed on this occasion was the same as that on 18 March 2021, i.e. the act was entry onto the Property without consent, and in breach of government guidelines, an act which was likely to interfere with the peace or comfort of a lawful occupier, including the Applicant's ex-partner who was living there at this time with his licence.

42. The Applicant claimed to have videoed the whole incident, but again he could not provide an explanation as to why the video had not been disclosed and included as part of his case.

43. The Applicant once again stated that he allowed the operatives into the Property because he was worried they would call the police themselves. He claimed he did try to object to their entry when he was speaking to them on the doorstep.

44. On the second day of the hearing, the Applicant was unable to produce the government guidance, but indicated to the Tribunal that he did intend to pursue this allegation, nonetheless.

45. The Respondent's evidence was that it had sought a convenient time to do the viewings; that the context was that the Respondent had received a list of issues regarding the state of repair of the Property, and that they were concerned about damage caused by the presence of unauthorised animals in the Property. Mr Thoday explained that the evidence shows that the first

inspection on 18 March 2021 was deferred at the request of the Applicant. Fair and reasonable notice had been given to the Applicant, he added.

46. Mr Thoday further explained that on 18 March 2021 he was personally present and the Applicant welcomed them in; that he had told the Applicant that he did not need to accompany them on the inspection, but that the Applicant insisted that he did. That was his personal choice, Mr Thoday added. The Applicant did not make them aware on the day that anyone was shielding, and the Applicant's ex-partner was not in fact there. Mr Thoday explained that the Applicant would not let them inspect the kitchen because the dogs were there, and the Applicant was fearful that they might harm them.

47. Mr Thoday explained that on the subsequent inspection on 1 April 2021, the landlord's servants were Mr. Arthur Moore and his father John Moore. As with 18 March 2021, they did not think that the Applicant's consent was required, as long as the tenancy terms and conditions were complied with, i.e. giving of 24 hours' notice. Mr Thoday alleged that the operatives had taken COVID 19 precautions, but accepted that Mr. John Moore did not have gloves on, despite Mr Thoday asking the staff to wear them.

48. In the Tribunal's determination, no offence was committed on this date. The Applicant was unable to show that any inspection without the tenant's consent was a breach of UK government guidelines, and therefore likely to interfere with the peace and comfort of the Applicant and or his ex partner, who was not seemingly present on the first visit in any event. We are satisfied that the contractual requirements of the tenancy agreement were complied with by the Respondent, and that the entry on both occasions was lawful. In any event, the Applicant allowed access to the landlord's servants on both occasions. It is a relevant fact that the Applicant's emails gave mixed messages, both suggesting that access would not be given at all, and stating that conditions would have to be met if access were to be given.

49. Yet further, there is no evidence that, even if the Applicant is right to contend the government guidance was in the terms alleged, that the landlord's intention was any of those matters required in subsection (3A) of section 1 of the Protection from Eviction Act 1977. We find that the landlord's true intention was to gain access to inspect the state of repair of the Property, and to see what the situation was with the animals. We are not satisfied that there was any intention to compel the Applicant to give up occupation of the Property, or to refrain from exercising any right or remedy.

Allegation #13

50. The Applicant contended there had been an offence committed under subsection (3A).

51. In this regard, he relied on several messages, starting with an e-mail dated 4 February 2021 from the Respondent personally to the Applicant. This reads:

> "As I have not heard from you, we may now have to approach our advisers to take possession of our premise (sic) from you. This procedure will be costly and would be charged you under the terms of your AST. In the meantime please move the unauthorised animals off the premise (sic) with immediate effect. If this does not get done, then we may have to [employ] professional people to expedite with the removal of these animals. Your prompt response will be appreciated."

52. The Applicant also relied on text messages on 19 January 2021 and 11 February 2021 in these terms:

> "Hi Mike hope all is well. Have you received my emails? Ardeshir"

> "Hi Mike you need to respond to my and Anthony's emails and calls before more serious and costly action is taken pls. Ardeshir"

53. The Applicant explained that he found these to be aggressive and stressful for him. He felt they were completely unwarranted. He accepted the text messages were factually correct but totally inappropriate, he said.

54. The Applicant also relied on an e-mail from Mr Thoday dated 29 March 2021, and in particular its last paragraph, which he considered to be unnecessary and threatening, because the Respondent knew he had a heart condition, and knew he had been beaten with a whip his ex- partner, because he had informed the Respondent himself. The Applicant said the Respondent wanted to push him over the edge in order to make him to give up occupation.

55. The last paragraph of the relevant email reads:

> "It would be best for everyone if you found a new property, as it does not look like you have a resolution for the matters highlighted above. If this does not happen, we must consider taking action to remove you on account of the various breaches of contract. We are already incurring significant

costs that would need to be claimed against you were we to go down this route."

56. The Applicant also said there was evidence that the landlord would not give a reference for another property the Applicant wished to take in Shropshire, but accepted that such documentation was not in the bundle.

57. Finally, the Applicant relied on an email from himself to Mr Thoday which made reference to a missive (not adduced before us) in which Mr Thoday had allegedly given notice to the Applicant to vacate in 48 hours.

58. The Respondent's representations were that he believed that all the messages were strongly worded, but were not meant as threats and were not acts likely to interfere with the peace or comfort of the Applicant. Mr Thoday explained that the landlord did not know about the Applicant's heart condition at this point. As regards the assault by the Applicant's ex-partner, the Mr Thoday said that he responded with sympathy. As regards the request for a reference, Mr Thoday explained it was not their policy to provide a reference unless the new landlord or landlord's agents made a request for the same, and that their reply would have been in standard form in any event.

59. As concerns the email from Mr Thoday giving 48 hours' notice, Mr Thoday represented that this came in the context of numerous requests to surrender by the Applicant, and in the knowledge of the personal difficulties that the Applicant was having with his ex-partner. He denied that it was meant to be threatening or intimidating in anyway.

60. The Tribunal is not satisfied that any offence was committed under the relevant subsection on any of these dates. We agree with the Respondent that they were strongly worded messages in the context of a dispute over civil rights, i.e. breach of tenancy, and were unlikely to interfere with the peace or comfort of the Applicant. But even if they were, we do not find that there is proven the mental intent required under the subsection on the part of the Respondent.

61. Finally, we have not seen the alleged 48 hour notice, and cannot be satisfied so as to be sure there was a breach of s.1(3A) in such circumstances.

Allegation #14

62. The Applicant complained that he had been locked out of the Property since October 2021; that he had no keys and that his ex-partner had barricaded herself in.

63. He relied on the fact that he had requested spare keys from the landlord on 4 October 2021 in 2 emails. However, he had received no response.

64. The Applicant contended this failure to provide keys was an offence under section 1(2), namely unlawful deprivation of his occupation of the premises.

65. The Tribunal pointed out to the Applicant that there was nothing in the contractual agreement, i.e. the tenancy agreement, which required the landlord to provide spare keys. The Applicant was unable to point to any statutory law or case law which indicated the landlord had such a duty. Nor could the Applicant point to anything than in the bundle which stated that the landlord was refusing to provide a set of keys. If anything, the landlord had omitted to do something (being silent in the face of requests for keys), but did not seem to have committed any act of unlawful deprivation.

66. Mr Thoday stated that he believed they held spare keys, but stated that the Police had advised Arthur Moore not to give a set of keys. In this regard he relied on an e-mail within the bundle which tended to evidence that they had sought the advice of the police, and that Mr. Moore had been informed verbally not to provide a spare set of keys whilst the dispute continued between the Applicant and his ex-partner.

67. In the Tribunal's determination there was no act of unlawful deprivation on 4 October 2021 or any date. The Applicant was unable to prove the landlord had a duty to supply a set of spare keys in law. The Respondent's actions were, instead of being criminal, in accordance with the law, in so far as Police advice was sought.

68. We therefore dismiss this allegation.

Allegation #15

69. The next allegation the Applicant asked us to consider was an offence under section 1(2) of the 1977 Act, namely an unlawful deprivation of the occupation of the Property or part of it, on 11 November 2021.

70. The Applicant explained the background; that he had been informed by the police that his ex-partner was no longer residing in the Property. This was on 11 November 2021 at about 11:00 AM.

71. The Applicant was at this time subject to a non-molestation order made by the Family Court which prevented him from coming near the Property while his ex-partner was in residence.

72. The Applicant stated that he arrived at the Property at about 6:00 to 7:00 PM, and was then met by a security man, who appeared to be living in the Property. The man said he would call his team, and that he had arrived that day. The man told the Applicant that he had been instructed to remain there. The Applicant relied on an invoice which he had been sent on a later date by the Respondent, which indicated that security was on site from 11 November 2021 until 15 November 2021, for a total period of 119 hours.

73. The Applicant claimed that he had a reasonably pleasant conversation with the security man, and walked in, the front door being open. He went inside while the other man was making the telephone call. The Applicant inspected the Property, to find the carpets filthy because the dogs had been running round the hall. He went upstairs to collect some belongings and left after about 20 to 30 minutes. He alleged that, as he was leaving, he saw that a team of security men had arrived, at least four or five persons, in three cars. One of the persons was very large. The Applicant stated to the Tribunal that these men had told him that he could not be there and that he was not allowed to be there. The Applicant informed them he would be coming back on the following Monday to collect the rest of his belongings.

74. The Applicant was asked to explain why there was no evidence about these extra teams turning up, within his documentation. Moreover the Applicant was taken to page 235 of the bundle which was an e-mail he had sent to the landlord at 6:35 PM that day, in which made no such complaint. The Applicant also accepted he had got the time wrong, and that he had in fact turned up at 5:30 PM. More importantly, the e-mail seemed clear that on that same day the Applicant had made no allegation that the Respondent's servants or agents had prevented him access. The Applicant had stated in that e-mail that he had videoed the whole incident, but could not explain to the Tribunal why the video had not been adduced in evidence.

75. The Applicant was also taken to the 6th bullet point of his email on page 231 of his bundle, in which he had written that the conversation that he had had with the team of security men on this occasion had been pleasant. The Applicant alleged to the Tribunal that it was within that pleasant conversation that a security guard said he was not allowed in.

76. The Respondent's evidence was that the Respondent was aware in the preceding 8 weeks that the Applicant's ex-partner and a number of unauthorised animals were in the premises; and that there were various allegations of domestic abuse, as well as some enforcement of the non-molestation order. Mr Thoday explained that when the Applicants ex-partner had left the Property, there had been various trucks and lorries which had arrived to take away the many animals she had kept on the Property. He explained that the Respondent was extremely concerned about his very valuable asset being depreciated, so he took the decision to secure the Property on 11 November 2021, by asking a security firm to secure the Property.

77. The Respondent's position was that he was not depriving the Applicant of occupation of the Property but was simply taking steps to secure the Property. He claimed that this was 24 hour security and hoped that the operatives were not sleeping in the Property. He accepted that the security men were occupying the living room, and not just patrolling the grounds. He alleged that there was one security person there at any one time, with persons taking turns.

78. Mr Thoday did not dispute that other persons turned up on the day.

79. When asked about the Respondent's own e-mail which had alleged that the Applicant had forced his way into the Hall (suggesting that there had been resistance on the part of his operatives), Mr Thoday stated that this was emotive language, and was not supported by the Applicant's own evidence, as he did not have to force his way into the Hall. He accepted that this was not the correct language to use in the e-mail, and asserted it did not reflect the situation on the ground.

80. In the Tribunal's determination, an offence was committed beyond reasonable doubt on 11 November 2021 by the Respondent. The Tribunal finds that the Applicant was the lawful tenant at this stage, because he had not yet surrendered his tenancy. As a tenant, he had exclusive possession of the Property for a term at a rent. It is trite law that that exclusive possession is good against the world, even against the tenant's own landlord. What the Respondent did on this occasion of 11 November 2021 was not simply to secure the Property, but to put persons into the front room of the same. The Respondent had no right to do this, whatever his concerns might have been, legitimate or otherwise. It was therefore an unlawful deprivation of part of the Property enjoyed by the Applicant.

81. We note that, under this particular subsection, the Applicant does not need to prove any specific mental intent on the part of the Respondent. There is a defence, which the landlord can make good on balance of probability, if he shows that he believed (and had reasonable cause to believe) that the residential occupier had ceased to give up occupation. That defence was not advanced by Mr Thoday for good reason. Whilst it is correct that the parties were in discussion about a potential surrender, no written surrender had yet been drawn up, let alone signed on this day. Moreover, all the Applicant's belongings were still in the Property, even if his ex-partner was not. He had not, we find, ceased to occupy the Property.

82. Given that we are satisfied an offence was committed in the above circumstances, we do not need to consider whether a security guard acted in a way which amounted to an attempted unlawful deprivation of occupation in so far as he allegedly stated that the Applicant was not allowed to enter. However, we have to say that we would have been hard pressed to find an offence had been committed, given the terms of the Applicant's emails of 11 and 12 November 2021.

Allegation #16

83. The final allegation was that of an offence committed under either subsection (2) or subsection (3A) of section 1 of the 1977 Act, on 15 November 2021.

84. As regards subsection (2), the Applicant stated that his primary aim was to get access to the Property to take his belongings away and give vacant possession. We have seen his emails in the days preceding 15 November 2021, in which the Applicant makes clear that he wanted to do that very thing, then inspect the Property in the presence of Mr Thoday, and then sign a written surrender of the Property, the terms of which had been emailed to him on 12 November 2021.

85. However, the Applicant said, he was met on the drive by Mr Thoday, and Mr Arthur Moore behind him, as well as Steven Bonner, and a security team consisting of a small gentleman in the hallway of the Hall, plus a larger gentleman called Vinnie outside.

86. The Applicant requested the Tribunal to view an unredacted copy of a video which he had taken on this day. The Tribunal had in the weeks preceding the hearing refused to adduce a video of this incident which had been edited by the Applicant, and which contained some rather dramatic subtitling and surtitling. By contrast, the video which he now wished to

adduce at the hearing was unedited in any way, and the Respondent did not object to its admission in evidence. We therefore viewed it.

87. The Applicant alleged that the gentleman called Vinnie had come close to him and threatened him, and that there was another man (whom he described as portly) appearing at the end of the video. But no allegation was levelled against this man, save for his presence.

88. The Applicant's main complaint was that Mr Thoday and Vinnie would not let him into the Property until he gave up his tenancy rights. He stated that he had felt compelled to sign the surrender agreement before he could enter his own premises.

89. As regards the alleged offence under subsection (3A), the Applicant said the act on which he relied was of presenting him with a surrender document and requiring him to give up occupation before he could enter. He stated that the fact of all persons surrounding him was an act likely to interfere with his peace and comfort. He further added that the intent on the part of the Respondent was to make him feel that he had no choice but to give up occupation of the whole or part of the Property.

90. The Applicant was reminded of subsection (3B) of section 1, which provides a defence to the landlord on balance of probability if he proves that he has reasonable grounds for doing the acts complained of.

91. The Applicant accepted that the Tribunal could concentrate on the video, but emphasised that the words of Vinnie that he was "no longer the tenant" were both wrong as a matter of fact and law, and were said in a threatening manner.

92. The Applicant also contended that the gentleman Vinnie had said "you're gonna go bye byes", which he considered a threat.

93. There were therefore no reasonable grounds for the landlord's actions, as the Applicant saw it.

94. The Applicant explained that he did sign the surrender document, because he felt he had no other choice; that he'd been trying for months to get into his home, but had been prevented by his ex-partner from doing so. Because of that, he feared the Respondent would sell his stuff or destroy his belongings. He said he had no faith in the relationship with the Respondent, who had not accepted his request for meetings, and that he felt traumatised by all the events which had taken place; he just wanted to see an end to it all.

95. Mr Thoday and Mr. Arthur Moore gave evidence that Arthur Moore was not present at this time, only later in that day, roundabout 2:00 PM. Mr Thoday accepted that he had made a mistake on day 1 of the hearing when he had inadvertently said that this meeting had taken place around about 1:00 o'clock, when it was in fact 10:30am as the Applicant alleged.

96. Mr Thoday relied on the Respondent's second witness statement dated 20 June 2022, but this is extremely brief, and contains no details in response to the allegation made.

97. Mr Thoday informed the Tribunal that the Respondent had instructed them to achieve three things on the day: (1) the surrender of the Property by the Applicant (2) to permit him to collect his belongings, and (3) to conduct an inspection.

98. Mr Thoday accepted that these three things were not in the order which the Applicant wanted. Mr Thoday therefore accepted that the parties had not reached terms as to the procedure of surrender before it took place. The Applicant had imposed conditions to which the Respondent did not agree. Mr Thoday accepted that it was the landlord's wish that they would first get the surrender signed, prior to the Applicant accessing and collecting his belongings.

99. Mr Thoday denied any violence on their part, and said that matters only became fractious when it was realised that the Applicant was videoing the events. When asked why this was a problem, Mr Thoday pointed to the redacting of the video by the Applicant at a later date as being evidence that he was capable of misleading or manipulating the facts.

100. Mr Thoday also claimed that it was his understanding personally that the Applicant had agreed to sign the surrender before entry into the Property. Mr Thoday claimed his understanding came from the exchange of emails taking place prior to this visit.

101. Mr Thoday also said that the Respondent had reason to believe that the Applicant had no intent on residing in the Property, particularly as he had entered on the 11th and had gone away again. They therefore believed the Property remained vacant. He said that he was personally surprised when the Applicant's first reaction was to refuse to sign the surrender document and to allege that he had not received it. Mr Thoday accepted that Vinnie had incorrectly said to the Applicant that he was not the tenant, and Mr Thoday further accepted that he did not correct Vinnie in this regard.

102. In the Tribunal's determination an offence was committed by the Respondent under subsection (2) on this date. The Respondent and his representatives had no right to prevent the Applicant accessing the Property while he was still the lawful tenant. Until the Applicant signed the surrender document, he remained entitled to exclusive possession of the Hall; indeed even after signing it, by the terms of the document he was entitled to be the tenant up to and including 5:00 PM. We therefore find that the Applicant was unlawfully deprived of his occupation of the Property before he signed the surrender.

103. We do not find that, on balance of probability, the Respondent subjectively believed that the Applicant had ceased to reside in the Property. No such evidence was adduced from the Respondent by way of witness statement, only by representations from Mr Thoday. The Respondent was not present in court to back up those assertions. But in any event, we find that objectively the landlord would have had no reasonable cause to believe that situation existed. Indeed, the landlord knew that the Applicant's belongings were still in the Property and was proceeding on the basis that the Applicant would surrender the Property at 5:00 PM that day, but not before. He was therefore accepting and acknowledging that the Applicant was the lawful tenant up to that time. The Respondent was contending that the Applicant remained liable for the rent up to that time, even if he was not in fact paying it. The emails do not reveal that the Applicant had agreed to sign the surrender before getting his belongings.

104. Whilst we accept it is not the only situation, the defence within subsection (2) is geared towards a landlord who considers that the tenant has abandoned the premises but is unable to make contact with the tenant. That was not the situation here.

105. The Tribunal also determines that the offence under s1(3A) is proven beyond reasonable doubt. We are satisfied, so as to be sure, that the act of requiring the Applicant to sign the surrender document before he could access the Property was an act likely to interfere with his peace or comfort. Moreover, it is clear from Mr Thoday's evidence that the Respondent knew that his conduct was likely to cause the Applicant to give up his occupation of the Property. He had given instructions to Mr Thoday and therefore to the security team, that the surrender must be effected before anything else.

106. We are not satisfied that the Respondent had reasonable grounds for doing the act complained of. A landlord can seldom (if ever) have reasonable grounds for forcing a tenant to sign a surrender before they can legitimately enter their own demised premises. The parties had not

reached consensus as to the terms of surrender, because the Applicant wanted his conditions to be met, and the Respondent did not agree to those conditions. The Respondent could not insist on the Applicant signing the surrender before he could go into the Property, particularly when he had an on-site security presence since 11 November 2021, and therefore had no cause to believe further damage could be caused. Moreover, a court hearing was soon to take place on 24 November 2021 in respect of a possession claim issued by the Respondent against the Applicant. We find that the Respondent's actions to short circuit that possession hearing and obtain vacant possession earlier than any court bailiff could have entered the Property were not reasonable ones.

107. The Tribunal therefore finds this matter satisfied beyond reasonable doubt.

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

108. For all the reasons given under the previous 2 issues, the Tribunal finds beyond reasonable doubt that the Respondent committed the offences within the relevant 12 month period.

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

109. By section 44 of the 2016 Act, the amount must relate to rent paid by the Applicant in respect of a period of 12 months ending with the date of the offence: s.44(2).

110. It was an agreed fact that all the payments alleged by the Applicants were made in the sums set out in the Application, i.e. £21,000.

111. There was no evidence of receipt of universal credit to deduct from any rental payment.

112. Accordingly, the maximum amount is £21,000.

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

113. A rent repayment order scheme is not meant to be compensatory. It is a punitive regime: *Ficcara v James* [2021] UKUT 38 (LC) at paras. 31 and 39.

The Tribunal does not have to award the maximum sum, and it is not a starting point: *Williams v Parmar* [2021] UKUT 244 (LC).

114. In *Awad v Hooley* [2021] UKUT 0055, an appeal that the FTT's award (providing for a 75% deduction from the maximum rent) was too low was dismissed. The Applicant was in substantial arrears of rent and had refused entry to an electrician which prevented the landlord from obtaining a certificate, and had cancelled pre-arranged visits. This conduct was relevant conduct, even though it had no effect on the offence (at [34]).

115. The Tribunal concludes that it should make a rent repayment order, but not in the maximum sum, for the following reasons:

116. *Aytan v Moore and others* [2021] UKUT 27 (LC) demonstrates that the Tribunal is not required to undertake a fine grain analysis of the parties' conduct. Neither party here can be said to have conducted themselves without criticism, but in our determination the root cause of the issues was the Applicant's bringing onto the property a quantity of animals for whom he had not obtained permission, or if he later obtained permission, he continued to keep the same despite the unequivocal withdrawal of the landlord's consent. In this regard it is an indisputable fact that solicitors for the Respondent sent the Applicant a letter on or about 9 April 2021 withdrawing permission for the keeping of any animals save 2 horses, and requiring the removal of the unauthorised animals in 14 days. The Applicant accepted during the hearing that he did not comply with the request. The pig, sheep, goats and chickens and dogs remained. In our determination, he had no reasonable grounds to keep them there, after that letter had been served.

117. Further, the Applicant's failure to pay rent after June 2021 up to 15 November 2021 was an indisputable serious breach of tenancy.

118. On the other hand, the conduct of the Respondent we have found proven on 2 occasions was serious, although there is some mitigation on the landlord's part, in so far as he was not personally committing the acts, albeit he had expressly authorised his servants or agents to occupy part of the Property and to insist on surrender before entry by the Applicant. Furthermore, it is some additional mitigation that the acts of the landlord on 11 and 15 November 2021 came during the death throes of the tenancy, which neither wanted to continue beyond the short-term.

119. Mr Thoday indicated he was not relying on the Respondent's financial circumstances to reduce any award made.

120. It was common ground the Respondent had not been convicted of any relevant offence.

121. We consider that an award of £6000, being 2 months' rent and amounting to 28.5% of the total rent claimed, is appropriate in all the circumstances.

Conclusions

122. The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay to the Applicant the sum of £6000 within 35 days of the date of this decision.

123. By virtue of section 47 of the Housing and Planning Act 2016, the above amount is recoverable by the Applicant as a debt.

124. The Tribunal further determines that the Respondent shall reimburse the successful Applicant his fee for the issue of the application in the sum of £100, together with the fee of £200 for the hearing, also within 35 days of the date of this decision.

Judge: S J Evans

Date:
8/8/22

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

Appendix 1

Housing and Planning Act 2016

Section 40

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant …

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

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

Section 41

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

(2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

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

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

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) …

Section 44

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

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

If the order is made on the ground that the landlord has committed
the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)
-the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)
-a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the Tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Protection from Eviction Act 1977

1 Unlawful eviction and harassment of occupier.

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

(2)If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

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

(a)to give up the occupation of the premises or any part thereof; or

(b)to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

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

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

(b)he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

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

(3C)In subsection (3A) above "landlord", in relation to a residential occupier of any premises, means the person who, but for—

(a)the residential occupier's right to remain in occupation of the premises, or

(b)a restriction on the person's right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4)A person guilty of an offence under this section shall be liable—

(a)on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b)on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5)Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6)Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.