FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AL/HMB/2018/0004**
Property	**:**	**90 Ennis Road London SE18 2QT**
Applicant	**:**	**Paulinus Chukwuemera Opara**
Representative	**:**	**Flat Justice Community Interest Company**
Respondent	**:**	**Marcia Olasemo**
Representative	**:**	**In Person**
Type of Application	**:**	**Rent Repayment Order**
Tribunal	**:**	**Judge Amran Vance**
Date and Venue of Hearing	**:**	**19 January 2022 (CVP:REMOTE)**
Date of Decision	**:**	**24 January 2022**

DECISION

NB:

(1) The relevant provisions of the Housing Act 2004 ("the 2004 Act") and the Housing and Planning Act 2016 ("the 2016 Act") are set out in an Appendix to this decision.

(2) Pages in bold and in square brackets below refer to pages in the PDF hearing bundle provided by the Applicant.

Decision

1. I make a Rent Repayment Order in the sum of **£4,160**.

2. I also order that Ms Olasemo reimburse Mr Opara for the tribunal fees he has had to pay, in the sum of **£300.**

3. Ms Olasemo should pay the total sum of **£4,460** to Mr Opara within 28 days of the date of issue of this decision.

Background

4. This application has been remitted to the tribunal following a decision of Judge Cooke in the Upper Tribunal dated 31 March 2020 ([2020] UKUT 96 (LC)) in order for it to determine whether to make a Rent Repayment Order ("RRO") in favour of Mr Opara and, if so, in what amount.

5. The application was originally heard by this tribunal on 31 May and 14 June 2019 ("the 2019 FTT"). In a decision dated 21 June 2019 ("the 2019 FTT decision") **[294]**, the tribunal refused to make a RRO as it was not satisfied to the criminal standard of proof that Ms Olasemo had committed either of the criminal offences alleged by Mr Opara, namely that of unlawful eviction, and being in control or management of a house in multiple occupation ("HMO") without the required licence.

6. In allowing Mr Opara's appeal, Judge Cooke found that he had proved, to the criminal standard of proof, that both offences had been committed and that that the condition precedent for the making of a RRO had been made out.

7. Mr Opara's application for a RRO was made on 4 December 2018 and was made in respect of his occupation of 90 Ennis Road SE18 2QT ("the Property"). Ms Olasemo has been the registered freehold proprietor of the Property since April 2004. It is a mid-terrace house with a kitchen, a bathroom, four rooms on the ground and first floors, and a self-contained one-bedroomed flat in the basement. Before moving into the Property Mr Opara let a room from Ms Olasemo at a different address. He moved to the Property in about late January 2017, initially occupying room 2, at rent of £450 per month, and then, a couple of

weeks later, moving into room 1, the ground floor front room, at a rent of £420 per month.

8. The circumstances surrounding Mr Opara's letting of a room in the Property were disputed by Ms Olasemo before the 2019 FTT which heard oral evidence from both her and Mr Opara. At paragraph 9 of its decision it found that Mr Opara had the better and more accurate recollection of material events and that his evidence was, in part, supported by some of the numerous text or SMS messages sent by the parties. In contrast, it found that some of the explanations given by Ms Olasemo, and words used by her in some texts, to be implausible and inconsistent.

9. Ms Olasemo's case, as identified at paragraph 21 of the 2019 FTT decision, was that the first she knew that Mr Opara had moved into the Property was when she passed by it in February 2017 and saw him smoking outside it. She denied playing any part in letting a room in the Property to him, and said that at the time the Property was let as a 3-bedroom flat to Eduado Gradinaru ("Eddie") and Mr Sandu Stan on a joint tenancy. The 2019 Tribunal records that no copy of that tenancy agreement was produced to it and that Ms Olasemo asserted that the regular payments paid by Mr Opara to her into her bank account were not in fact payments of rent from him but were, instead, made on behalf of Eddie and Mr Stan, who she assumed had sublet a room in the Property to him. The 2019 FTT rejected Ms Olasemo's evidence, finding that Mr Opara was a tenant of first room 2, and then room 1, at a rent of £420 per month.

10. At paragraph 4 of an undated witness statement **[45]** Mr Opara's states that in around May 2017 Ms Olasemo gave him a written tenancy agreement commencing on 21 August 2017 **[50]**which stated that he and Eddie were joint tenants of the whole ground and first floor flat for a rent of £1,200 per month. However, that agreement, he says, did not reflect the true situation, as the unwritten understanding with Ms Olasemo was that only £420 per month was expected from him, with the tenants of the other three rooms each expected to pay their rent directly to her. The 2019 FTT found that this tenancy agreement was prepared for a third-party purpose, to assist either Mr Opara and/or Ms Olasemo with other issues and that it was not prepared to document an agreed joint tenancy of the Property granted by Ms Olasemo to Mr Opara and Eddie. At paragraph 40 of its decision, the 2019 FTT said that it was "well satisfied on overwhelming evidence that Ms Olasemo controlled or managed the Property and let each of the four rooms as bedrooms to individuals".

11. At paragraph 27 of its decision the 2019 FTT record that on 23 May 2018 the local council wrote to Ms Olasemo to say that it had information to suggest that the property was being used as an HMO, and drew attention to the requirement to license. At paragraph 28, the 2019 FTT stated that on 2 July 2018, Ms Olasemo applied to be placed

on the electoral roll and claimed that she was living at the property. The 2019 FTT found that that was not true.

12. In early June 2018, as identified in paragraphs 29-30 of the 2019 FTT decision, and evidenced in a series of text messages quoted in its decision, Mr Opara was struggling to pay his rent on time. Ms Olasemo suggested that he go and stay with a friend and, on 6 July 2018, said she would not accept any further rent from him.

13. What happened next is recorded in paragraphs 19 and 20 of Judge Cooke's decision:

> "19. On 6 July 2018 the appellant got home at 18.30. He entered the house using his key to the main door, and then tried to open room 1 with his room key, but it would not open. Some of his belongings had been put into black plastic bin bags and left in the kitchen. Some of his shirts were on hangers on a rail in the hallway.
>
> 20. The appellant slept on a bus that night. On 7 July he returned to the property and spent the night on the sofa in Eddie's room, but left in the morning when the painters arrived. He collected some of his belongings on 10 July and then again in August by arrangement with the respondent. His evidence was that he was homeless until early August and that he has retrieved some, but not all, of his belongings; he has lost a number of documents, certificates and papers."

14. At paragraph 29 of its decision, the 2019 FTT said that if the test was the civil standard of 'balance of probabilities' that it would have found that Ms Olasemo procured Mr Opara to vacate so that she could move in herself, and bring her HMO problems to a close. However, it was not so satisfied to the criminal standard of proof. As stated, that decision was overturned by Judge Cooke on appeal, who found, at paragraph 44 of her decision that the evidence pointed inexorably to Ms Olasemo having changed the locks and thrown Mr Opara's things out, some of them in bags.

15. As to the HMO licensing offence, the only element of the HMO definition that the FTT did not find proved to the criminal standard was the requirement that the occupants be living there as their only or main residence. Judge Cooke concluded that there was strong evidence from which it could be inferred that Eddie and Mr Neville had their home at the Property and that Ms Olasemo had committed the criminal offence under s.72(1) of the 2004 Act of managing a HMO without a licence.

The Hearing

16. At the remitted hearing on 19 January 2021 Mr Opara was represented by Mr Penny of Flat Justice Community Interest Company. Mr Opara did not attend due to a work commitment. Ms Olasemo was present

and was represented by Mr Aullybocus of counsel. The hearing took place by remote video conferencing and no technical issues arose.

17. After Mr Penny made his opening submissions, Mr Aullybocus said that he had received an email from JFT dated 13 January 2022, sent to both him and the FTT, which contained a download link to the hearing bundle prepared by JFT. However, he had not been able to open that link or download the bundle. Mr Penny resent the email to him and, this time, he was able to access the bundle. Mr Aullybocus declined my offer of a short adjournment to allow him to read the bundle, saying that he was in a position to respond to Mr Penny's submissions. Nor, he said, did his client want the hearing to be postponed.

18. It also became apparent that Mr Penny did not have before him a copy of Ms Olasemo's 'bundle' that she had emailed to the tribunal and JFT on 24 December 2020. This contained a short witness statement from her dated 21 December 2020, some copy bank statements, a floor plan of the property, copy council tax bills, a British Gas usage projection for electricity and gas supply to the Property, and some copy receipts for cleaning of the Property. Mr Aullybocus emailed a copy to Mr Penny who, on receipt, also declined the opportunity for a short adjournment to consider its contents.

19. The hearing bundle contained an undated witness statements from Mr Opara **[45]**; witness statements from him dated 24 April 2019 **[285]** and 24 May 2019 **[148]**; a witness statement from Ms Olasemo dated 11 January 2019 **[19]** and three witness statements from Patricia Gravell, Tenancy Relations Officer at Royal Borough of Greenwich ("the Council") dated 10 December 2018 **[101]**, 7 December 2019 **118]**, and 1 May 2019 **[133]**.

The Applicant's Case

20. Relying upon the decision in London Borough of *Newham v Harris* [2017] UKUT 264 (LC), Mr Penny submitted that only in a very rare case should the tribunal decline to make a RRO where a relevant offence has been committed. This he said is not such a case.

21. He also cited the decision of the Hon. Sir Timothy Fancourt, Chamber President, in *Williams v Parmar* [2021] UKUT 244 (LC), which he said confirmed the broad discretion enjoyed by the tribunal when determining the amount of a RRO. He argued that as two offences have been proved, it was open to the tribunal to make sequential RROs where offences have been committed over different, or even the same, period. He submitted that should the tribunal elect to award less than the full 12 months' rent in respect of either offence, that a second order may be made for the whole or part of the remaining rent paid.

22. In his submission, the illegal eviction offence alone warranted a RRO in the sum of £4,800 broken down as follows:

    12 months @ £420 pcm, 420 x 12 = £5,040

less rent arrears of £240 = £4,800.

23. If, however, the tribunal considered that an award in a reduced sum should be ordered for the illegal eviction, he submitted that a second RRO should be made in respect of the licensing offence, bringing the total sum ordered up to 100% of the rent paid. He also sought an order for reimbursement of the tribunal fees paid by Mr Opara in the sum of £300.

The Respondent's Case

24. In his application form to the tribunal, Mr Opara stated that he paid £4,800 in rent for the period 7 July 2017 to 6 July 2018, with two payments being made in cash, and the rest paid by direct bank transfer. In her witness statement, Ms Olasemo acknowledges receiving rent, by way of direct bank transfer from Mr Opara totalling £4,400 for that period. Her oral evidence to me was that she could not recall receiving any cash payments from Mr Opara who, she said, always insisted on doing everything by bank transfer, which was inconvenient to her. Mr Aullybocus pointed out that the 2019 FTT made no finding of fact as to whether any cash payments were made by Mr Opara, and that the many text messages passing between the parties did not evidence such payments.

25. Mr Aullybocus encouraged me to refuse to make a RRO. He contended that Ms Olasemo had spent a lot of time and money on defending this case which he said, it has affected her mental health. She is, he said a single mother who is not in best financial circumstances and who has a leaky valve in her heart that requires treatment which she may need to obtain abroad because of the current NHS backlog. He suggested that although their relationship later became strained Mrs Olasemo had, in fact, been supportive of Mr Opara, including helping him his immigration issues. She was not, he suggested, a bad landlord, and nor was this horrible accommodation.

26. In her witness statement Ms Olasemo addresses each of the factors set out in s.44(4) of the 2016 Act that the tribunal must take into account when determining the amount of a RRO. As to conduct of the parties, she suggests that the 2019 FTT expressed doubts about Mr Opara's evidence, and that JFT's conduct had been inappropriate as they had not informed the tribunal that the cost of utilities to the Property were not paid by Mr Opara.

27. As to her financial circumstances, she states that she has incurred legal costs in defending these proceedings, in excess of the rent received from Mr Opara. She also invites me to deduct from any RRO, expenses she says that she incurred when providing Mr Opara with accommodation, namely electricity and gas costs, Council Tax payments, mortgage interest, and cleaning. These costs, she says totalled £9,074.99, of which 43% should be apportioned to Mr Opara because he had the largest room in the three-bedroom house. At the

hearing, Mr Aullybocus suggested that this should be revised to a 1/3 contribution given that this is a three-bedroom property.

Reasons for Decision

Should I make a RRO?

28. I have no hesitation in concluding that in the circumstances of this case, it is entirely appropriate for me to make a RRO in Mr Opara's favour. As determined by the Upper Tribunal, Ms Olasemo has committed two criminal offences to which Chapter 4 of the 2016 Act applies. Both are serious offences, in particular the offence of unlawful eviction.

29. As the Chamber President said in paragraph 54 of the decision in *Williams v Parmar* it is notable that the obligation on the tribunal to make a RRO, on a tenant's application, in the maximum amount that it has power to order, does not apply in respect of the offence of failing to licence a HMO, even if the landlord has been convicted of the offence. That, said the President is an indication that Parliament regarded offences of control or management of an unlicensed HMO, and control or management of an unlicensed house, contrary to sections 72(1) and 95(1) of the 2004 Act, as being capable of being less serious than other offences to which Chapter 4 of Part 2 of the 2016 Act. In my determination, Mr Opara's unlawful eviction by Ms Olasemo is, alone, sufficiently a serious offence to warrant making a RRO. When viewed in the light of the second offence, the case for making a RRO is overwhelming.

30. The fact that Ms Olasemo incurred legal costs in resisting this application is the consequence of her offending conduct, and is not a reason to decline to make a RRO.

31. There is no documentary evidence before me to substantiate Mr Aullybocus' submission that Ms Olasemo is suffering from mental or physical ill health. She says nothing about this in her witness statement and even if it is correct, I am not satisfied that it is a reason to decline to make a RRO. There is no suggestion that she was in ill health at the time she committed the relevant offences, and given the seriousness of her offending behaviour this is not a reason to decline to make a RRO.

32. Nor is the suggestion that Ms Olasemo has been a supportive landlady. I do not accept that characterisation. On the contrary, she unlawfully evicted Mr Opara, removed his belongings from his room and deposited most of them in plastic bin bags in the kitchen. As a consequence of her unlawful behaviour, Mr Opara was forced to sleep on a bus on the night of his eviction, was homeless until early August, and lost a number of documents, certificates and papers as a result of his eviction. I reject Ms Olasemo's witness evidence at paragraph 20 of

her witness statement of 11 January 2019 that Mr Opara did not sleep on a bus and continued to sleep on a sofa in the living room. Given that she denied unlawfully evicting Mr Opara in the first place, I do not find her evidence credible, and I find ,as a fact, that these events occurred.

The Amount of the RRO

33. As identified by the Deputy Chamber President, Judge Martin Rodger QC, in paragraphs 29 - 33 of his decision in *Kowalek v Hassanein* [2021] UKUT 143 (LC), Section 44(2) of the 2016 Act limits the amount of rent which may be the subject of a RRO in two quite different respects. The first limitation focusses on when the payment was made, namely that the amount must relate to rent paid *during* the period mentioned in the table in s.40(3).

34. The second limitation is provided by the requirement in the table heading that "the amount must relate to rent paid by the tenant in respect of" the appropriate period. This, said the Deputy President, focusses on the *period* in respect of which the payment was made - what the payment was for, not when it was made. Both conditions must be satisfied before a sum paid as rent can be the subject of a RRO.

35. Where the relevant offence is unlawful eviction, the period mentioned in the table in s.44(2) is "the period of 12 months ending with the date of the offence". In this case, the relevant period for the unlawful eviction offence is therefore 7 July 2017 to 6 July 2018. I find that during this period Mr Opara paid Ms Olasemo rent in the sum of £4,400. She has acknowledged the receipt of rent during this period in that sum. It is not suggested by either party that the rent paid during this period related to any period before or after, the relevant period.

36. I have given careful consideration to the assertion made by Mr Opara in his RRO application form and in his witness statement that he also paid the sum of £580 in cash. In his application for a RRO he said that he would give witness evidence to this effect. It is therefore unfortunate that he was not present at the hearing of this application in order to be cross-examined on his assertion.

37. I am very conscious of the fact that Ms Olasemo's evidence to the 2019 FTT concerning the circumstances surrounding Mr Opara's letting of his room, and her claim that she was living at the property, were rejected by that tribunal. I also bear in mind that Judge Cooke found that the evidence pointed inexorably to Ms Olasemo having unlawfully evicted Mr Opara, contrary to Ms Olasemo's evidence to the 2019 FTT. These decisions cast doubt on Ms Olasemo's credibility as a witness. I also bear in mind that at paragraph 12 of her witness statement dated 11 January 2019 Ms Olasemo states that she received rent for the subject flat by both bank transfer and cash. However, the problem with Mr Opara's evidence regarding these cash payments is that not only is there no documentary evidence that they occurred (for example, by way

of written receipts or confirmatory text messages) but Mr Opara has not said when these payments were made, nor in what amounts. As such, given that Mr Opara was not available for cross-examination, I cannot be satisfied, on the balance of probabilities, that cash payments were made during the relevant period, which also related to rent payable for the relevant period. The maximum RRO I can award for the unlawful eviction offence is therefore £4,400.

38. It is clear from the decision of the Chamber President in *Williams* that whilst the amount of the RRO must "relate to" the amount of the rent paid during the relevant period, there is no presumption that the amount of the RRO is to be the maximum amount that the tribunal can order under s.44. My task is to consider what proportion of the maximum amount of rent paid in the relevant period is appropriate, in all the circumstances of this case, bearing in mind the purpose of the legislative provisions, taking into account, in particular, the factors specified in ss.44(4).

39. Looking first at the ss.44 factors, I consider the conduct of Ms Olasemo in unlawfully evicting Mr Opara from his accommodation to be serious conduct warranting a RRO in the maximum amount, adjusted for any other s.44(4) factors and any other relevant circumstances. In unlawfully evicting Mr Opara from his accommodation Ms Olasemo's conduct was indefensible and reprehensible. As a consequence of her actions, Mr Opara's belongings were interfered with, he had to spend the night on a bus, he lost documentation, and he was rendered homeless until early August. I also find that he had to pay Graceland solicitors £200 in securing legal advice following his eviction. This is evidenced by the two invoices from the solicitors included in the bundle **[96-97]** and the letter send by the solicitors to Ms Olasemo dated 23 July 2018 **[95]**.

40. In my determination, Mr Opara's unlawful eviction, in itself, justifies the award of a RRO in the maximum amount. If I am wrong in that conclusion, I am satisfied that there are further aspects of Ms Olasemo's conduct that justify an order in that sum:

    (a) I, like the 2019 FTT find that the written tenancy agreement Ms Olasemo purported to enter into with Mr Opara did not reflect the true terms of the tenancy relationship between them. The written agreement specifies a rent of £1,200 per month, payable by Mr Opara and Mr Eddie. I accept Mr Opara's evidence that the written agreement did not reflect the true situation of four separate rooms with each occupant paying the landlady directly for their own rooms, and with his rent being £420 per month. This is evident from the history of rent payments made by Mr Opara, as confirmed by Ms Olasemo in her witness statement dated 21 December 2020. These show regular rent payments from Mr Opara of £420 per month for the first five months of the tenancy, with payments then becoming a little more erratic. The trend is,

however, clear, namely that the rent paid was £420 per month. I have seen nothing in the hearing bundle that shows that Ms Olasemo argued, at the time these payments were made, that they did not represent the full rent;

(b) Ms Olasemo has not, in witness evidence, countered any of the following assertions made by Mr Opara in his statement of case, and nor did Mr Aullybocus in his submissions to me, namely that Ms Olasemo: (i) failed to undertake, or provide Mr Opara with a copy of a Fire Risk Assessment; (ii) failed to provide Mr Opara with copies of an Electrical Installation Condition Report, Gas Safety Certificate, and Energy Performance Certificate; (iii) failed to provide to him with a copy of the Government's "How to Rent" guide; and (v) failed to display the landlord or managing agent's details inside the Property. These are all requirements where a landlord lets accommodation to a tenant in a HMO. Given the lack of evidence to the contrary, I find Mr Opara's evidence to be true.

41. As to Mr Opara's conduct, he accepts he had rent arrears of £240 when he was evicted and that this sum should be deducted from the award of a RRO. I concur. I do not consider there is any other conduct by Mr Opara that justifies any further reduction in the amount of the RRO. I reject Ms Olasemo's suggestion that the doubts expressed in the 2019 FTT's decision about the evidence tendered by both parties can constitute evidence of conduct on the part of Mr Opara relevant to the amount of a RRO. Judicial evaluation of evidence does not constitute conduct. Her criticisms of JFT's conduct appear groundless and, in any event, litigation conduct by Mr Opara's advisers cannot constitute relevant conduct by Mr Opara.

42. Turning to Ms Olasemo's financial circumstances, although in her witness statement she contended that the costs of the supply of electricity and gas should be deducted from the amount of a RRO, her evidence before me was that it was the responsibility of the tenants at the Property to pay these costs. Her oral evidence as to the metering arrangements for these utilities at the Property was highly confusing. The position appears to be that the there is one British Gas meter (for gas and electricity) serving the ground and first floors (located in the hallway where the four letting rooms are located) and a separate meter serving the self-contained basement flat. Ms Olasemo's evidence was that the tenants occupying the four letting rooms had to insert £1 coins into their meter in order to obtain electricity to the upper floors, and that they did so on a rota basis. She also said that sometimes the rota system broke down because of tenant concerns that it did not reflect each tenant's personal usage. She said that when that happened, she occasionally gave £20 to Eddie to charge the meter, as she did not want to leave the tenants without electricity. She told me that this was not a regular payment by her each month, and that she only stepped in when

there was a dispute amongst the tenants which only happened at the beginning of winter.

43. Ms Olasemo's witness statements are entirely silent on this point. Whilst I accept that she may have sometimes topped up the electricity meter herself, she herself acknowledged that her contributions were occasional, and were made at the beginning of winter when the tenants were using more electricity. There is no evidence to suggest that the need for her to do so was in any way Mr Opara's fault, as opposed to a lack of contribution from other tenants. In my determination, these occasional payments by her, if they occurred, do not warrant me making any deduction from the amount of an RRO for utility costs. As Ms Olasemo herself acknowledged in evidence, under the terms of the tenancy relationship she entered into with her tenants was that they were responsible for paying for paying for the cost of electricity and gas and not her. There is simply no justification for me doing what Ms Olasemo invites me to do in her witness statement of 21 December 2020, which is to reduce the amount of a RRO to reflect payments by her of £131.66 (electricity) and £41.45 (gas) for each month of Mr Opara's tenancy. The suggestion is contrary to her oral evidence that it was the tenants' responsibility to meet these costs.

44. I also reject her suggestion in that witness statement that Council Tax payments in the sum of £130.22 per month should be deducted from the amount of a RRO. Her oral evidence to me was that it was the tenants responsibility to pay Council Tax, except for a period from June 2018 when she moved into the building. The only Council Tax statements addressed to her that she has produced are those exhibited to her witness statement of 21 December 2020. These are dated 7 September 2018 (arrears £103.22) and 15 October 2018 (arrears £131). Both are therefore dated several months after Mr Opara's illegal eviction on 6 July 2018. In light of her assertion that it was for the tenants to pay Council Tax, no deduction from the RRO for Council Tax payments is appropriate.

45. Ms Olasemo has provided copies of some handwritten receipts that Mr Aullybocus said concern sums she paid for cleaning of the Property. There are five receipts, all of which purport to be from "Mark Dale cleaners": (a)12 May 2018, said to be for "After Party cleanup" - £320; (b) 11 June 2018, "Partial End of tenancy and general cleanup - £270; (c) undated "Partial end of tenancy" - £180; (d) 8 October 2017, undescribed - £150"; and (e) July 2017 "General Clean" - £170. Some monochrome copy photographs presumably said to reflect conditions at the Property have also been supplied.

46. All that is said in Ms Olasemo's witness statement of 21 December 2021 concerning these purported cleaning costs is that she understands that following the decision in *Vadamalayan v Stewart [2020] UKUT 183 (LC)* certain expenses incurred by her in providing Mr Opara with accommodation are, in principal, deductible from the amount of a RRO. That is a misreading of the decision in *Vadamalayan*. It is clear

from the decisions in *Vadamalayan* and *Williams* (para 36) that that the right approach to quantifying an RRO is not by reference to the profit made by the landlord. There can therefore be no assumption that expenses incurred in providing accommodation should be deducted from the amount to be ordered by way of a RRO. It is true that in *Vadamalayan* Judge Cooke contemplated a possible exception for the costs of utilities in cases where these are paid by a landlord, but cleaning costs are not utilities, and so the exception does not arise. Arguably, these costs could be relevant to the question of tenant conduct under s.44(4)(a), but that has not been argued in this case. Nor is there any evidence before me from Ms Olasemo that she incurred these costs because of any conduct on the part of Mr Opara. I therefore make no deduction for cleaning costs.

47. Nor do I agree with her suggestion that mortgage interest payments should be deducted from the amount of a RRO. As stated in the previous paragraph, the profit made by the landlord is not the correct basis on which to quantify the amount of a RRO.

48. Nor can any legal costs in resisting this application be deducted from the amount of a RRO, as Ms Olasemo suggests. As stated above, such costs are the consequence of her offending conduct.

49. I bear in mind that there is no suggestion that Ms Olasemo has been convicted of an offence relevant to which Chapter 4 of Part 2 of the 2016 Act. That counts in her favour, but weighed against that is the fact that she is a professional landlord who should be taken to know the legal requirements to end a tenancy, and the wrongfulness of unlawful eviction. Also weighing against her is the fact that she has been found guilty of a second offence, namely that of being in control or management of an un licenced HMO.

50. I do not consider there are any other factors relevant to the amount of a RRO and, having regard to all the points made above, make an order in the sum of maximum sum of £4,400, less £240 rent arrears, totalling **£4,160**. Stepping back, and considering all the circumstances of this case, I consider such an order to be proportionate and appropriate.

51. That order is made solely in respect of the offence committed by Ms Olasemo in unlawfully evicting Mr Opara. As it is the maximum I could have ordered in this application (less the small amount of rent arrears) there is no need for me to address Mr Penny's submission that a second RRO can be made for the licensing offence. All I will say on that point is that I see no obstacle to making sequential orders where more than one offence has been committed, provided that each amount ordered relates to rent paid by the tenant in respect of the appropriate periods set out in the table at s.42(2). If it had been necessary for me to decide this point I would have made a second RRO for the licensing offence, which would have resulted in Ms Olasemo being ordered to pay £4,160 in any event.

52. As Mr Opara has been successful in his application, I also order that Ms Olasemo reimburse him the tribunal fees he had to pay, in the sum of **£300**. Such an order is, in my view, just and equitable.

Name: Amran Vance **Date:** **24 January 2022**

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 Tribunal 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 for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

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 of relevant legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) - (10) .....

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

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

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

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

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(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

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

Section 41 Application for rent repayment order

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

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

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

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

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

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

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

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

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

If the order is made on the ground that the landlord has committed	*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.