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UT Case: RRO/8/2019

Opara v Olasemo

7/11/2019

Appellant’s Reply to the Respondent’s Statement of Case 4/10/2019

**Introduction**

Flat Justice became the representatives of the Appellant (A), Mr Opara, to help with his appeal. Previously, Mr Opara has been assisted by Ms Pat Gravell (PG), a Tenant Relations Officer at The Royal Borough of Greenwich (RBG). As Mr Opara could not afford the application fee of £275 for the appeal, Flat Justice advanced this on his behalf.

The appeal concerns two allegations that were not upheld by the First-tier Tribunal Property Chamber (Residential Property) (FtT):

1. An offence under s40(3)5 The Housing and Planning Act 2016 (HaPA): the HMO licensing offence
2. An offence under s40(3)2 HaPA 2016: the illegal eviction offence

PG has passed to us a detailed and convincing rebuttal of the Respondent’s (R) grounds for opposing the appeal which we have adapted as the basis for our reply along with additional arguments, particularly concerning the HMO offence and the requirement to prove “only or main residence” of the HMO occupiers.

**Correction**

The A request to appeal contained a typographical error at 4(IV). The first sentence should read: “Material facts …**Mr Neville** claimed housing benefit…” not Mr Gradinaru. Mr Neville is mentioned later in the paragraph so that the meaning should have been clear, however we wish to apologise for any confusion this may have caused and ask that the grounds be adjusted accordingly.

This relates particularly to §13 of the R grounds for opposition.

Nevertheless, R would know from the hearing that evidence was given by PG that Mr Neville was a housing benefit claimant and had provided the dates of that claim in her 2nd witness statement at paragraph 43 where she wrote “Royal Borough of Greenwich’s Revenues and Benefits department paid £84.27 per week in housing benefit respect of William Neville’s occupation between 1/10/17 and 9/7/18”.

The tribunal decision acknowledged at para 41 that evidence had been raised of Mr Neville being a Housing Benefit claimant.

**HMO licensing offence**

“only or main residence”

The FtT rejected the application for a Rent Repayment Order (RRO) on the grounds of a licensing offence as it felt that the Apellant (A) had not proved that the occupants in the relevant period were using the property as their “only or main residence”, according to the Housing Act 2004 (HA) S254(2)(c).

We argue below for the Apellant as follows:

* 1. The intention of the legislation is being subverted by the stringency of proof that is being required by the FtT in this case, for this sub-clause, HA 2004 s254(2)(c)
	2. The requirement to prove “only or main residence” presents a logical inconsistency, when taken to such an extreme, so that no proof is possible and the law becomes inoperable
	3. In this case there is sufficient evidence to prove the residency question beyond reasonable doubt
1. The problem of proving “only or main residence” is not new. However, the need to prove it to a criminal standard is a rarity. In this case the Respondent, or their advisor, seem to have worked their way down the list of HMO qualifications in order to attempt an escape route. Having given up on trying to make out that the 3 male occupants were in a homosexual ménage-à-trois (the single household exemption s254(2)(b)), they try to argue that the property was not the occupants’ only or main residence s254(2)(c)
	1. Similar problems have been experienced in Scotland, where HMO legislation was introduced earlier than England, and on which some of the English law is based. The Scottish Parliament has discussed a comparable problem where a “principal residence” must be proved for HMO occupants. We refer to “Private Housing Issues: Housing Bill Consultation” of July 2009, Part 4[[1]](#endnote-1):

“*18. Some local authorities have expressed concern that some landlords are avoiding HMO licensing because - or because they are claiming that - occupants are living in the premises for only a short time and that they have a principal residence elsewhere*.”

* 1. At Flat Justice we have seen several cases where landlords exploit this issue. In one recent case the tenants were issued HMO tenancy agreements labelled “Time Share” and were explicitly required in the agreement to make a declaration that their main residence was elsewhere and to give that address. Their occupancy, however, was exactly as a normal AST tenancy.
	2. It is instructive to look at cases where the residency of the landlord has been in question. Palmer v McNamara (1990)[[2]](#endnote-2) held that a landlord was resident in a flat where he kept a small back room for himself, despite there being no cooking facilities and the fact that he did not stay in the room overnight. For RRO cases that hinge on proving that the landlord is a resident with the tenants (in order to meet the occupancy threshold), the case can depend on proving the landlord’s residency in the property. Clearly there needs to be consistency in treatment of both tenant and landlord for the question of residency to avoid any suggestion of bias towards the property owner. This is, just as clearly, not currently the situation.
	3. The intention of the wording “only or main residence” was as a protection against wrongful prosecution of landlords where a property was over-occupied by unauthorised guests of the tenants. This qualification also protects owners of hotels and guest-houses. However, its use to attempt to thwart RRO Applicants who were legitimate tenants of long duration is a subversion of the law’s intention.
		1. Following Pepper v Hart, it is legitimate to consider the intention of the law as discussed in the English Parliament. Some debate has shed light on the purpose of the phrase “only or main residence” that was in the draft Housing Bill (later The Housing Act 2004 (HA)). At the Bill stage s254 of the current Housing Act 2004 was initially clause 164 of the draft Housing Bill first published in 2003. In later drafts, clause 164 became clause 217. The term “only or main residence” was maintained throughout. This term was in the first draft Bill and was not debated at any time in the Standing Committee E debates during their 18 sittings: the term in clause 164 was allowed to stand. We have not been able to trace any debate of the phrase during later readings of the Bill.
		2.  However, a precursor to s259 of the HA 2004, clause 168 of the first HB draft, contains a subsection that is no longer in the HA but which indicates the intention of the disputed term:

c168(1) states that further refinement may be necessary of the term “only or main residence” by the Government

c168(2) indicates that one refinement may well be that occupants of HMOs are assumed to use the property as their only or main residence unless they show otherwise to the Local Authority (LA)

It would seem that the Government had intended to make the residence qualification dependent on prescribed circumstances, unless proven otherwise. This would have eased the task of proving main residency for Applicants and is consistent with our contention that the purpose of the phrase is to include only legitimate occupants in the headcount for meeting HMO thresholds.

* + 1. Hansard records a debate (09 September 2004 Volume 664) in the House of Lords in which clause 217 (2)(c) (see above) was discussed in the course of an amendment to the legislation concerning “Fitness Certificates” for landlords of HMOs. Baroness Hanham proposed an amendment (No. 99) that would add “as only or main residence” to the term “occupation”. The Government, in the form of Lord Bassam of Brighton, opposed the amendment and clarified as follows:



* + 1. The above supports our contention that the term “only or main residence” was introduced as a protection for landlords where their properties have become un-knowingly over-occupied by guests who normally reside elsewhere.
		2. The use of this wording to defend againt a RRO application by legitimate tenants is therefore a subversion of the intention of the legislation
1. In this country we do not have a system of obligatory registration of main residence (such as the German *Meldepflicht*). Nor are we obliged to carry this address on us in an identity card or passport. This leaves us with Williams v Horsham’s ‘test’ of the “reasonable onlooker” mentioned in R submission at §16 and the A grounds at 4(III).
	1. The law requires proof “beyond reasonable doubt” but the law does not provide a way to prove “only or main residence” to this standard. As the judgment in Williams v Horsham noted:

"*26 .... We think that it is probably impossible to produce a definition of "main residence" that will provide the appropriate test in all circumstances*."

* 1. In order to prove perfectly, in the UK, that one’s main residence is a particular property, one would have to prove that no other residence was available. In other words, to prove a negative. This is practically impossible in these circumstances.
	2. There is therefore a logical inconsistency in requiring proof beyond reasonable doubt for a situation that cannot be proved perfectly.
1. For the “reasonable onlooker” in this case these are the main material facts concerning the nature of their residence:
	1. The Respondent accepts that there were at least 3 occupants who shared the property, forming more than 1 household, at a time when such a property should have been licensed but was not so licensed
	2. The tenants were all long-term occupants over periods of many months, even many years (9 years in the case of Mr Gradinaru)
	3. All occupants had exclusive possession of their rooms and paid regular periodical rent. They were assured shorthold tenants
	4. Mr Gradinaru paid council tax at the property
	5. Mr Neville claimed housing benefit at the property
	6. The consequences of Mr Opara’s eviction, having to sleep on the night bus and on friends’ couches, clearly showed that he had no other residence and the FtT has accepted this at §41 of the tribunal decision
	7. We maintain that the above facts are sufficient evidence to show that the property was the only or main residence of the occupants
2. It is likely that the “only or main residence” defence will be used again in RRO cases and it would be helpful if the Upper Tribunal (UT) could offer guidance on the level of proof required at the First-tier Tribunal (FtT). Applicants already need to prove, to the criminal standard, that a range of conditions are satisfied for the ‘standard test’ for a HMO (s254 (2) (a) to (f)). In the circumstances in which HA s254 is applied, the proof of “only or main residence” is often problematic, as the occupancy of HMOs is so fluid and Applicants often lose touch with the tenants they need to prove were not only occupying the property but were doing so as their main residence. We would contend that the provision of valid occupancy agreements, consistent with using the property as a main residence should be sufficient and this would cover the majority of cases.

**Reply to R arguments**

Paragraphs 1-12 of the R’s grounds for opposition provide background for the case. We use R’s main paragraph numbering to answer the issues raised from there on:

1. Please see also the above correction mentioned at the start of this submission.

Submissions were made to the tribunal on behalf of Mr Opara that a Housing Benefit claim would only be made on a person’s only or main home in relation to the occupancy by Mr Neville. In respect of Olasemo’s para 25 – it is correct that the tribunal was not given details of which section of the benefit rules may be applicable.

* 1. There had been no defence to the RRO claim that the property was not the main or only home of Mr Neville or Mr Gradinaru. R’s defence to the claim appeared to be that either:
		1. they were there as one household;

R had tried to put the case that all 3, ie Mr Opara, Mr Gradinaru and Mr Neville, were in a complicated gay relationship. It was only under cross examination at the hearing that R acknowledged that she was not maintaining that they were in a gay relationship together and acknowledged that they were not related to each other by virtue of any relationship;

and/or

* + 1. that she had given a joint tenancy to 2 of them and that the 3rd (William Neville) was their “permitted occupier” and had nothing to do with her. See para 4 of Rs witness statement dated 6/5/19. “…there is a joint tenancy for Mr Opara and Mr Gradinaru, anyone else there would be a permitted occupier by the said joint tenants and their guests or visitors”. The tribunal rejected that there was any joint tenancy and found that the rooms were rented out individually. §22 of the tribunal judgment: “Ms Olasemo had direct management of the 4 rooms which she let out individually”.
	1. No questions were asked of Mr Opara to dispute his case that he lived in the property with Mr Neville and shared facilities with him. No questions were asked of PG as Mr Opara’s witness to dispute the fact of Mr Neville’s Housing Benefit claim or to question its authenticity or validity. PG was asked if she had seen the claim and asked to confirm that the claim form had not been put into evidence. PG confirmed that she had a copy of the claim form but that it had not been put into evidence because of the local authorities concern about sharing Mr Neville’s personal data and the risk of breaching GDPR provisions. Nonetheless we hold that the testimony of Local Government officer at a Tribunal hearing is sufficient evidence.
	2. A was taken by surprise by the final submissions by the barrister for R that, whilst the occupancy of Mr Neville and Mr Gradinaru were accepted, it was not accepted that there could be sufficient evidence of it being their only or main home to meet the criminal standard without direct evidence from those occupants. This submission was completely contrary to R’s evidence that Mr Opara, Mr Gradinaru and Mr Neville all lived in the property in a relationship together and so was an argument that had not been anticipated at all. Mr Opara was effectively a litigant in person as PG was assisting him informally and was not in a position to advance any more sophisticated argument on such short notice.
1. Summary accepted
2. It is clear, from our arguments above, that the occupants here were using the property as their main residence
3. Indeed
4. We contend a reasonable onlooker would find that the subject property was the main residence of the occupants named here
5. Not relevant, as §19 confirms
6. We contend a reasonable onlooker would find that the subject property was the main residence of the occupants named here
7. We believe the matter was proved and the FtT erred: hence the appeal. Re-stating the obvious is not an argument
8. This is not relevant as the evidential hurdle has already been set beyond “balance of probablity” in this legislation
9. In this case we are discussing the proof required for a condition related to the offence. The offence itself: that the property was not licensed by the R is clear enough. The R can have been in no doubt that her tenants were using the property as their main residence. Indeed the argument that it was not their main residence was never advanced in the R submissions. It was only made at the hearing by the R’s barrister.
10. On the contrary, it is important that the FtT should not allow itself to be distracted by a nonsensical defence such as this so that the law can operate as intended
11. Agreed, though we believe the circumstances are sufficient without this evidence
12. This is somewhat disingenuous. It is accepted that the Housing Benefit General Regulations 1987 have now been replaced by the Housing Benefit Regulations 2006. The wording of the regulation relied on is identical in the 2006 Regulations.

The 1987 Regulations stated:

*Circumstances in which a person is or is not to be treated as occupying a dwelling as his home*

*5.—(1) Subject to the following provisions of this regulation, a person shall be treated as occupying as his home the dwelling normally occupied as his home–*

*(a)by himself or, if he is a member of a family, by himself and his family; or*

*(b)if he is polygamously married, by himself, his partners and any child or young person for whom he or any partner of his is responsible and who is a member of that same household, and shall not be treated as occupying any other dwelling as his home.*

The 2006 Regs state at Part 2 reg7

*Circumstances in which a person is or is not to be treated as occupying a dwelling as his home*

*7.—(1) Subject to the following provisions of this regulation, a person shall be treated as occupying as his home the dwelling normally occupied as his home—*

*(a)by himself or, if he is a member of a family, by himself and his family; or*

*(b)if he is polygamously married, by himself, his partners and any child or young person for whom he or any partner of his is responsible and who is a member of that same household, and shall not be treated as occupying any other dwelling as his home[[3]](#footnote-1)*

1. Quite.
2. The evidence that occupants were Housing Benefit claimants and paid Council Tax, does not, of course stand on its own. All three tenants have been recoginised by the R as occupants at the subject property, they used it as their main residence, they paid rent to the R and they had exclusive possession. We fail to see what is “unjustifeid” in concluding the unlicensed property was their main residence. Indeed it is “dangerous” to conclude otherwise.
3. Please see correction above: the Housing Benefit claimant was Mr Neville.
	1. Regarding the “myriad of reasons” why Mr Neville made a claim for housing benefit, we suggest it was to help pay his rent at a property which was his main residence. This obfuscation, along with the suggestion that he might not have made a claim, when an officer of the relevant LA has made a statement that such a claim has been made, only reveals the paucity of argument available to the R.
	2. Mr Neville’s benefit claim contains a signed declaration of truth so he was an identified person who had given a statement of truth to a local government department. There is no suggestion that his claim was fraudulent – evidence of that claim being made and its payment, along with other evidence presented, should provide sufficient evidence that the he occupied the accommodation at 90 Ennis Road as his only or main home without any direct witness evidence being necessary.
4. PG confirmed in oral evidence that she had tried to contact Mr Neville by telephone and had left messages which had not been returned so he was not available as a witness. R refers to William Neville as the “permitted occupier” see para page 1 of her “extended reasons for claim” response listed under her 2nd document index. Her 2nd sentence states “The front door locks at ground/first floor flat 90 Ennis Road SE18 2QT were not changed till the flat was empty in October 2018, after the trespasser notice was served on the tenants permitted occupier Mr Neville” . In para 37 of her statement dated 6/5/19 R states “The tenants permitted occupier wanted to pay me, so he could take the house. I was surprised, I could not have such a volatile character as my tenant, he needs a landlord not me. He did not accept this but I explained, I have a child and when he gets angry because of his illness, I am afraid. I cannot live in fear like that, he agreed and said it would take him time to get another place, I agreed he should keep me posted”. R’s own evidence suggests that she accepted that Mr Neville had no other place to live and was looking for somewhere else and would tend to confirm this was his main or only home.
	1. As stated earlier R had initially tried to advance a case that the nature of Mr Gradinaru’s occupation was that Mr Neville, Mr Opara and Mr Gradinaru were in a complicated gay relationship together. If this argument had succeeded may have defeated Mr Opara’s claim if they had been considered as a household. The fact of the property being their main home had apparently been accepted by R as she had gone further than that by stating that they were all living together in a relationship as one household.
	2. It was accepted by R that Mr Gradinaru lived in the property for about 9 years. The tribunal made a finding on this point at para 21 of their decision In Feb 2017 Eddie, a Romanian had lived in the property about 7 or 8 years.
	3. R had also claimed that the true nature of the agreement between Mr Opara and Mr Gradinaru was as joint tenants but the tribunal accepted that this was not the case. At para 22 of the tribunal decision the tribunal found that Mr Opara had a tenancy of an individual room.
	4. Para 29 e – as the Tenancy Relations Officer PG gave evidence to support Mr Opara’s claim. She was not asked what investigations she had made about Mr Gradinaru’s occupancy of the property. It is not correct to assume that she made no investigation about this. PG investigated the council’s own records. R had submitted a planning application to Royal Borough of Greenwich which had been received on 5/4/19 for “Lawful development certificate (existing) is sought to establish the property as two self-contained flats” for the property. R’s agent Mr Noble had written a covering letter to the application stating that the owner had submitted a sworn declaration confirming the subdivision of the flats and the occupancy of them from year to year. I requested those documents as part of our investigation into the property being an unlicensed HMO.
	5. The statutory declaration of R sworn on 29/3/19 detailed the occupation of Mr Gradinaru at “section 6 – 90 Ennis Road occupation pre 2013” where she wrote “ both flats have been occupied by family, or family and friends since the renovations were completed, as indicated in the affidavit of Eduard Gradinaru. The tenants at times brought in, permitted occupiers to share the occupation of their home, details of these occupation fees are unknown to me as are the exact timescales”.
		1. At section 7 described as “Occupation details 2013, 90 Ennis Road” she wrote “Patrick (surname redacted), the tenant of 90 Ennis Road, left his sister Elisabeth (surname redacted) and Francis (surname redacted) in the ground/first floor flat when he vacated the property. Soon her partner, became my tenant of 90 Ennis Road and this was later changed to a joint tenancy, with both Elisabeth and Francis instead of just Francis. Their long time permitted occupier, throughout this time was Eduard Gradinaru he continued to shared their occupation”. Under section 8 “occupation details 2014 90 Ennis Road” she wrote “Francis and Elisabeth continued to live in the ground//first floor flat with their permitted occupier”. Under section 9 – “occupation details 2015 90 Ennis Road” she wrote “It’s noted that another permitted occupier by the by the tenants is found to be sharing occupation of the ground/first floor flat for a period of time…”. Under section 10 “Occupation details 2016 90 Ennis Road” she gave details of the occupants of the basement flat and an application by them to the VOA to have the council tax bill separated then wrote “2- .This leads to a breakdown in communication and results in Elisabeth and her partner leaving the ground/first floor flat. Eduard loves his home and does not want to leave so asks if he could become the tenant and inquires as to the rent he would have to pay so he could.”…”Eduard asks to become the tenant of the ground/first floor flat, he wants to continue to share occupation with his friend Paul (surname redacted) while he waits for his family to come from Romania. Section 11 “Occupation details 2017 90 Ennis Road” … “2- the breakdown in relationships between the two flats was over the separate council tax bills. Eduard and Sandu Stan, rented the ground/first floor flat at 90 Ennis Road, as joint tenants. The tenants then decided to share the flat with Paulinus Opara, not long after Sandu Stan’s accident, sandu then vacates the property, and coincidentally another permitted occupier shares occupation them, and Eduard holds joint tenancy with Paulinus starting August 2017” Paragraph 12 “Occupation details 2018 – 90 Ennis Road” “…I do not know the full details but sadly in early June there was a suicide attempt…Then Eduard vacated the flat and returned a month later to collect his furniture.
		2. One of the supporting documents was an Affidavit sworn by Mr Eduard Gradinaru at Gracelands solicitors on 4/9/17, which said: “I Eduard Gradinaru born on the (Date of birth redacted) residing at ground/first floor flat 90 Ennis Road SE18 2QT, do solemnly and truly declare as follows:
5. *I am a male born in Romania and I make this affidavit of facts concerning the above residence in which I live*
6. *On 5th December 2010 I moved into the ground/first floor flat at 90 Ennis Road, SE18 2QT. It is a self-contained flat with its own exclusive entrance. I could not speak much English then so it was my friend Mr B(redacted) that brought me into the house. I lived in this accommodation with Mr B(redacted) who has now left. Now I am a joint tenant with somebody else.*
7. *Our flat is a 3 bedroomed flat and we are responsible for our own electricity, gas and council tax bills as part of the assured shorthold tenancy.*
8. *I am aware that below our flat is a one bedroomed self-contained basement flat that has its own entrance.*
9. *I can confirm that Ms Marcia Olasemo is the owner of the property and is my landlady. She owns both flats in the building. And at all times to my knowledge both flats had been occupied.*

*This affidavit is now required for official purposes. And I make this declaration conscientiously in good faith believing the same to be true.*

It was said to be sworn by the said Eduardo Gradinaru and signed before Solicitor/Commissioner for Oaths Colin Ikoru Esq of Gracelands solicitors 15 Beresford Square Woolwich SE18 6AY who also signed it

* 1. R also provided several copies of Mr Gradinaru’s quarterly HSBC bank statements from the period February 2014 to May 2017 to the local authority to support the planning application. Other documents which she provided included; a letter to him from HMRC about his National Insurance contributions, 2 payslips; a P45 dated 16/8/15 and 2 letters from Royal Borough of Greenwich addressed to Mr Gradinaru and Mr Stan dated 13/3/17. One was a letter detailing the 2017/18 Council Tax liability and the other was confirming an outstanding payment due for the 2016/17 year. There were also copies of the letter to Mr Gradinaru from Sky about his broadband contract in Feb 2017 and a letter about an advanced learner loan dated 3/10/16.
	2. There was nothing in the information that PG found that made her think that 90 Ennis Road was not the only or main home of Mr Gradinaru. As R had provided the documentation to Royal Borough of Greenwich she must be aware that he had made a sworn statement of truth to a solicitor and that he considered that he was responsible for the council tax payment
	3. It is contradictory for R to obtain a sworn affidavit from Mr Gradinaru about his occupancy of the property to produce for “official purposes” including a statement about his liability for council tax payments and to now deny that Mr Gradinaru knew what he was doing when registering for Council Tax.
1. The R provided the evidence of Mr Gradinaru’s dealings with the Council tax.
	1. For example para 6f of her statement dated 7/5/19 she states “council tax was paid by me at the request of Mr Gradinaru, as always after he gave me the money each month MO2 – 17 and 18.”
	2. R then exhibited as MO2-17. MO2-17 was a letter dated 17/4/18 addressed to Mr Gradinaru and Mr Opara from Royal Borough of Greenwich which was a council tax adjustment notice. The letter contained a section to be completed, cut off and returned to the local authority to claim the transfer or refund of overpaid council tax. The document R produced had that section completed by hand in Mr Gradinaru’s name and signed and dated 15/5/18 asking for the refund to be made to the account of EDUARD GRADINARU to his HSBC account.
	3. Document MO2-18 is a very similar letter with a hand completed and signed request for a refund to be made to Mr Gradinaru but for a different credit payment. Para 22 of R’s statement dated 7/5/19 says ”The council tax payments were always decided by Mr Gradinaru, and I did not have a payment card. So there was always a delay in paying the bill as had to bank the money first.” And para 28 “I was upset when Mr Gradubnaru overpayed the council tax while drunk and abusing me daily….”. There is ample evidence that Mr Gradinaru took responsibility for the Council Tax payments, that R accepted cash from him, banked it and then paid it to the local authority and was aware of his request for a refund of overpaid money. If R did not accept that the property was Mr Gradinaru’s only or main home then it would’ve been incumbent upon her to pay the council tax herself according to the hierarchy of liability. R now seems to be trying to cast doubt on the authenticity of documents and veracity of circumstances that she has placed into evidence herself
2. Irrelevant: this is not hearsay.
3. There is no “dearth”, rather a plethora, of evidence to show that the tenants had their main residence at the property
	1. R also gave oral evidence that Mr Gradinaru “loved that house and would be there now if he could” and has repeated similar comments about how much he loved the house in formal documents. There was therefore evidence from the respondent that Mr Gradinaru didn’t want to live anywhere else, that should have been sufficient to find it was his main home.

In conclusion to the HMO offence allegation, the R does not advance any evidence that the tenants’ main residence was elsewhere: they simply exploit a section of the legislation, designed to avoid inclusion of unauthorised occupants, in an attempt to cast unsubstantiated doubt on a valid RRO application.

**Illegal Eviction**

§33-36 of R submission. As these are closely related we use §33 as the main paragraph number.

1. R’s defence of this claim did not rest on any suggestion that Mr Opara’s key or the lock to his room was defective. No questions were asked of him about whether he had considered this being the case.
	1. R’s defence was that Mr Opara had voluntarily vacated the property in July 2018.
	2. At paragraph 11 of her witness statement of 11/1/19 R said …”For this reason the applicant packed up his things so to avoid been seen as occupying the flat and therefore to avoid the payment of rents” and at para 19 of the same statement said “On 6/7/18 I deny that I prevented the applicant from entering his flat as he always had the keys. At the relevant date decorators were in the property and the applicant had packed his bags by himself to make it easy for him to collect them when he was ready and also to make it clear that he was no longer in possession…..”
	3. R denied removing Mr Opara’s belongings from his room in her oral evidence. She was asked when she had noticed his belongings were not in his room she stated that was on 5/7/18. As she had maintained that Mr Opara and Mr Gradinaru had a tenancy of the whole property she was asked “If, as she was claiming, Mr Opara had moved his own belongings to the kitchen, how would that have demonstrated to her that he was no longer living there?” She answered that it wouldn’t, a tenant could put their belongings anywhere they liked in the property.
	4. R stated in her “Extended reasons for claim” response on page 1 that she did not unlawfully evict Mr Opara on 6/7/18 but confirmed “The front door locks at ground/first floor flat 90 Ennis Road SE18 2QT were not changed till the flat was empty in October 2018”. It is implicit in the statement that R’s defence to an unlawful eviction is that Mr Opara had voluntarily left the property, at least by October 2018.
	5. The tribunal comments, at para 47 of their decision, that there was room for the conclusion that “…R was wrong to conclude that Mr Opara had voluntarily moved out “to sort himself out”. This clearly refers to her defence of the claim that she believed he had voluntarily left or abandoned the tenancy.
	6. The tribunal found that Mr Opara had a tenancy of his room, there was no evidence that he was lawfully deprived of it by any due process by obtaining a court order, no evidence of any mutual agreement to end the tenancy on any specific date so the only other alternative would be that the tenancy ended by operation of law by his abandonment of it. R was asked when she believed that his tenancy had ended and replied “well that’s a grey area isn’t it”.
	7. The tribunal’s decision lacks some relevant findings of fact that needed to be made to establish what they actually believed and had based their decision on.
	8. Para 35 of the grounds of resistence - Mr Opara confirmed that he had a key to the main door and a key to his room which had a lock. Is complaint was being deprived of access to his individual room. His evidence was not simply that the key did not work, he said that after they key had not worked he looked more carefully and the lock and noticed that it was different. After that he had gone outside to the front of the property and looked through the window to his room and noticed that all his belongings had been removed from the room. Paragraph 44 of the judgment appears to be a summary of R’s barrister’s (Mr Sandham) submissions on the key failing to work as being the only evidence of the lock change. It is not clear that this is a finding of the tribunal.
	9. R did not put any case that the lock may have been faulty. She could not have put such a case as it would have contradicted her own evidence that the internal bedroom doors had no locks on them. The grounds of resistance suggest there was a “competing explanation” of the lock to the bedroom door being faulty – there was no such evidence put forward on behalf of R.
	10. At the start of R’s evidence she confirmed that the bedroom doors all had locks. Later on in her evidence she stated that after receiving the advice from EHO Ricky Martin that the bedroom door locks needed to be removed she had removed them. As she was denying that the bedroom doors still had locks on them she could hardly put any case that the locks were faulty. Mr Opara had confirmed that in addition to the key not working the lock also looked different. The tribunal made no finding about whether they believed that his bedroom door had any lock on it at the date of alleged lock change. They generally preferred Mr Opara’s evidence. See para 9 of the judgment “…In contrast some of the explanations given by R of some of the circumstances and of the words used by her in some of the texts simply did not sound plausible or consistent”
	11. R was asked in cross examination what the meaning of the texts where Mr Opara had sent the message to her on 18/6/18 to say “Eddie door is locked. I don’t think he’s in” and R had replied “I shall come and open it when I get a chance” (the messages are included in para 30 of the tribunal judgment). R denied that her reply meant that she was suggesting that she could come and unlock the room and maintained that the bedroom door locks had all been removed.
	12. During the final “submissions” Mr Sandham, R’s barrister, put forward a suggestion that as decorators had been in the property the door may have become stuck with paint. No suggestion was put to Mr Opara about whether he thought the door may have become stuck with paint. R’s case was that Mr Opara had left the property voluntarily.
	13. R did not put any case that her workmen had moved any of Mr Opara’s belongings and she had sought witness evidence from one of those men who did not attend the hearing.
	14. Mr Opara did not say that all his belongings had been well stored. He described them as being “scattered throughout the house” and took photographs of the black bin bags to show where his items had been put which were exhibited in his evidence. These photographs were poor quality and were even worse when I tried to reproduce them. Mr Sandham made submissions about Mr Opara’s evidence of some of the clothes being hung without referring to the totality of his evidence of how the belongings were “scattered” with some in bin bags.
	15. Mr Opara’s evidence of the surrounding circumstances included that he was being asked to leave, he had confirmed he would leave when his immigration application had been decided but that he had clearly stated he could not leave until he was ready and had found somewhere else to live. He provided a copy of his message to R at 7.19am on 6/7/18 (page 191 of his message bundle) which said “Macia, there’s no war anywhere, I will leave your house when I get a place affordable. There’s no problem in this issue”. He gave evidence that on that evening he had returned from work that evening he had found the lock to his room changed.
	16. Ms Opara said he believed the message sent to him by R the previous day 5/7/18 “No more payments necessary you need to sort yourself out…” repeated in para 30 of the tribunal judgment were intended to be her form of “notice to quit”. At para 47 of the judgment the tribunal found that there was room for the conclusion that he had misinterpreted this. However the tribunal appears to have ignored R’s written evidence at para 40 of her witness statement of 7/5/19 that the offer of paying no rent was intended to be an official cancelling of the tenancy agreement. “If a tenant is leaving, rarely do they want to pay for the transition period. I know they are supposed to but many will avoid it, and come up with all manner of excuses. To avoid aggression or trouble I just thought, if I officially cancel the ongoing tenancy, and let him have his wish, then with no payments, I can’t be asked for any more loans…”
	17. At para 7 of R’s witness statement of 11/1/19 she had written on 2/7/18 “I went to the Greenwich Electoral Offices at Woolwich to update the electoral register for the property.” She confirmed in oral evidence that she had registered herself as being resident in the property. (See para 28 of the tribunal judgment). That was a false statement. In oral evidence she said she had intended to register herself as living in the basement and claimed that was where she was actually living at that time. The basement is accessed down a flight of external stairs.
	18. Mr Opara had given evidence that he had returned to the property on the morning of 7/7/19 (para 21 of his witness statement of 24/5/19 and had been asked to leave by R’s builder. R acknowledged that she had written the note pinned to the door dated 9/7/18 (page 189 of the claimant’s first bundle) which said “DOWNSTAIRS Paul Opara PLS inform us via text before entering with your friends or alone” . This was evidence which corroborated his claims of being illegally evicted from his room on 6/7/18. See para 35 tribunal judgment.
	19. R provided a witness statement from her builder/decorator Steven Luke Ahern His evidence at para 3 was that on 7/7/18 he had found Mr Opara in the property on the settee of the room where they were keeping their tools and had been shocked to see him there. As he didn’t attend the tribunal hearing to be cross examined he wasn’t able to say why he was shocked to find Mr Opara in a property that he should’ve been entitled to be in. However his evidence does lend support to Mr Opara’s claim that he was unable to access the ground floor bedroom which he had a tenancy of.
	20. The tribunal does not appear to have made any findings of how Mr Opara’s tenancy ended or when it ended. The reasoning behind the decision is not clear. It appears that the suggestion that Mr Opara voluntarily left was a part of their decision.
	21. At para 45 of the tribunal judgment the tribunal has repeated some of the submissions from Mr Sandham that he thought the behaviour by Mr Opara after 6/7/18 was unusual. They stated that he didn’t “make any endeavours either legally or practically to get a locksmith to gain access to his room”. At the hearing Mr Sandham had said that he considered that an illegally evicted person would have tried to regain access to a property by changing the locks, by getting a solicitor on legal aid to have assisted etc and that from “his” experience any failure to do so was unusual. However these submissions were not based on any questions put to Mr Opara. Mr Opara wasn’t asked if he was aware of any entitlement to change the locks, he wasn’t asked why he didn’t attempt to change the locks. He wasn’t asked if he had the money to pay a locksmith. He wasn’t asked if he had been made aware of the availability of Legal Aid, he wasn’t asked if he would’ve fitted the eligibility criteria for Legal Aid, he wasn’t asked about his means to pay for a private solicitor. None of the matters in Mr Sandham’s experience were put to Mr Opara or to PG as Tenancy Relations Officer to ask what their experience of the matters were. PG objected to Mr Sandham raising submissions on which there hadn’t been any evidence given and submitted that such comments should be disregarded – clearly they weren’t.
	22. Mr Opara produced evidence that he had complained to police on 6/7/18 about the illegal eviction, (para 32 judgment) complained to Royal Borough of Greenwich about the illegal eviction (para 34 judgment) and paid Gracelands solicitors 2 payments for help with a civil claim against R. He produced a receipt from Gracelands solicitors to evidence his payment to them of £60 on 23/7/18 (claimant’s bundle page 51) plus a copy of the letter sent by Gracelands to R on 23/7/18 (claimant’s bundle page 50) and evidence of a further payment of £100 on 18/8/18 (claimant’s bundle page 52). The documentary evidence contradicts the tribunal’s finding that he made no effort legally to regain access to his room.
	23. Mr Opara’s financial situation at that time was before the tribunal – see para 41 of his witness statement dated 24/5/19 where he deals with R producing his bank statement dated 16/7/18 in her evidence. It confirmed he was overdrawn on 16/7/18 by £6.53. There was no evidence that Mr Opara had the funds to pay for legal services until the time that he did try to access legal help, there is no evidence that he was advised of the right to try and re-enter his room.
	24. Mr Sandham, barrister for R, raised in his submissions that the text messages between Mr Opara and R after the alleged eviction were reasonably friendly – no questions were put to Mr Opara of why he was so polite and tolerant. There was evidence before the tribunal that Mr Opara has a very tolerant and forgiving temperament. There was evidence before the tribunal from the text messages between Mr Opara and R which reflect this. At page 87 of the claimant’s message bundle Mr Opara sent a text on 8/5/18 to say “Eddy made two attempts to stab me last night. He said he must kill me. I have all his texts” R responses are on page 88 of the bundle where she texts “Are you going to the police?” and Mr Opara says “How can I go when he has already dropped a can of beer for me before I came back”. R questioned how he could accept a can of beer as an apology for that conduct – see page 89 of the bundle “But if he can bring a knife to stab you! That’s more than a can of beer”. R stated at para 29 of her statement of 6/5/19. “The attempted stabbing was such a shame. It took place while both parties were texting each other…Mr Opara received a can of beer as compensation for his distress”. The acceptance of an apology in such circumstances may also have been unusual but was evidence’s Mr Opara’s forgiving nature.

In conclusion, there is plenty of evidence that Mr Opara was illegally evicted by the R, just as there is for the allegation that the R operated the HMO illegally. Much evidence was ignored by the FtT. The FtT also showed itself too ready to listen to the *sotto voce* aspersions of the R’s counsel, whose only defence has been to try to cast doubt.

We trust that the UT will treat this approach according to its merit and find conclusively that the RRO should be made both for the licensing offence and the illegal eviction. It would also be helpful if further guidance could be given to how the main residency issue be assessed at the FtT for any future similar cases.

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1. Accessed here, 5/11/2019: [https://www.webarchive.org.uk/wayback/archive/20180518144142/http://www.gov.scot/Publications/2009/07/06160610/4](https://www.webarchive.org.uk/wayback/archive/20180518144142/http%3A/www.gov.scot/Publications/2009/07/06160610/4) [↑](#endnote-ref-1)
2. Palmer v McNamara (1990) 23 HLR 168, CA [↑](#endnote-ref-2)
3. http://www.legislation.gov.uk/uksi/2006/213/regulation/7/made [↑](#footnote-ref-1)