



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

Case Reference : CHI/23UC/HMF/2019/0007

Property : 58 Queen Elizabeth Road
Cirencester
Gloucestershire
GL7 1DJ

Applicant : Chloe Taylor

Representative :

Respondent : Stuart Homewood

Representative :

Type of Application : **Application for a rent repayment
order by tenant**
Sections 40, 41, 43 & 44 of the Housing
and Planning Act 2016

Tribunal Member(s) : Judge Tildesley OBE
Mrs J E Coupe FRICS

**Date and venue of the
Hearing** : The Law Courts, North Parade Road, Bath
BA1 5AF
10 October 2019

Date of Decision : 15 November 2019

DECISION

Summary of Decision

1. The Tribunal determines that this is a case which justifies the maximum amount payable by means of a rent repayment order. The Tribunal orders Mr Homewood to pay Ms Taylor the sum of £1,700.00 and to reimburse Ms Taylor with the application and hearing fees in the sum of £300.00 within 28 days from the date of this decision.

Background

2. On 13 May 2019 Ms Taylor applied under section 41 of the Housing and Planning Act 2016 for a rent repayment order (RRO) covering the sums of £1,600.00 rent, and a deposit of £500.00 plus reimbursement of costs of £300.00. The rent claimed of £1,600.00 related to the rent paid of £400.00 per month for the period September to December 2018 of which only the rent paid for the months from October to December 2018 totalling £1,200.00 can be the subject of a RRO. Ms Taylor also raised the issue of Mr Homewood's Claim before the Court for £2,800.00 plus interest and costs representing the "unpaid" rent for the period January to July 2019.
3. Ms Taylor is a student and held an assured shorthold tenancy of 58 Queen Elizabeth Road, Cirencester (the property) jointly and severally with four other students. The term of the agreement was from 1 September 2018 to 31 July 2019. The rent payable under the agreement was £1,975.00 per calendar month. Ms Taylor's share of the rent was £400.00 per month.
4. Mrs Carolyn M Homewood was named as the landlord/agent on the tenancy agreement. It later transpired that Mrs Homewood was acting as agent for her son, Mr Stuart Homewood, who was the joint registered owner of the property under Land Registry title number GR201837, and the landlord for the property.
5. The property is a modern five bedroom house with a drive and garden at the front and garden at the rear. There is a sitting room, dining area, kitchen, utility room and toilet on the ground floor. The five bedrooms together with bathroom and separate shower unit are located on the first floor.
6. Ms Taylor alleged that Mr Homewood had committed an offence of not licensing the property as a house in multiple occupation (HMO). Mr Homewood accepted that he did not apply for a licence until 8 December 2018. On 1 January 2019 Cotswold District Council notified Mr Homewood that there were outstanding documents which were not supplied to the Council until the 8 May 2019. Cotswold District Council granted the licence on 4 June 2019.

7. On 9 July 2019 Judge Tildesley directed Ms Taylor to provide clarification of the nature of the offence alleged against Mr Homewood. On 23 July 2019 Ms Taylor stated that the offence was one of an HMO without a licence.
8. On 23 July 2019 Judge Tildesley issued further directions naming Carolyn Homewood as the Respondent. Ms Taylor was required to supply additional information in support of her application. Mrs Homewood was ordered to give a response by 10 September 2019. A hearing date was fixed for the 10 October 2019.
9. On 6 September 2019 the Tribunal received a letter from Mrs Homewood stating that she was acting as agent for the landlord, Mr Stuart Homewood. Mrs Homewood said that Ms Taylor knew that she was acting in this capacity and produced an email between Mr Homewood and Ms Taylor dated 12 November 2018 to substantiate her assertion. Mrs Homewood said that she and Mr Homewood had a fragmented relationship with Ms Taylor because she was always in financial difficulties. Mr Homewood ended her letter stating that she had informed the landlord, Mr Homewood, of the current proceedings, and that Mr Homewood should be contacted directly if the Tribunal or Ms Taylor wished to take up this matter further.
10. On 9 September 2019 the Tribunal wrote to Mrs Homewood advising her that Judge Tildesley had amended the file by naming Mr Homewood as the landlord. Further the Tribunal requested Mrs Homewood to provide an address for Mr Homewood, and informed her that the application was listed for hearing on 10 October 2019 and that if Mr Homewood did not appear the hearing would proceed in his absence.
11. On 12 September 2019 Mr Christopher Elvidge of Global Collections Limited applied to vary the directions by extending the time for submission of the landlord's case. Judge Whitney granted an extension until 20 September 2019 but noted the following:

“It is clear that Mr Homewood has known of the application as confirmed by his mother, Mrs Homewood, in her correspondence to the Tribunal. It would seem there is no good reason why he has failed to file his response to the application.

The Application to vary the directions is dated 11th September 2019 and was received on 12th September 2019 by the Tribunal. The application was made and received after the date for compliance with the same. Applications for variation should be made prior to this date. On this occasion, reluctantly, the Tribunal does extend time as set out below although the current hearing date fixed remains”.

12. The Tribunal heard the application on 10 October 2019 at Bath Law Courts. Ms Taylor attended with her mother, Mrs Debbie Taylor. Mr Homewood appeared in person together with his mother, Mrs Homewood, and Mr Elvidge who attended as an observer.
13. The Tribunal had before it the following documents: The application and attachments, the Applicant's case dated 19 August 2019 and the Respondent's reply which was received on 20 September 2019. At the commencement of the hearing it transpired that Ms Taylor had not seen the Respondent's reply. The Tribunal adjourned the proceedings for 20 minutes to give Ms Taylor an opportunity to read the reply. Ms Taylor indicated on her return that she agreed for the case to proceed and did not require further time to consider the reply. Mr Elvidge said that he had sent the Respondent's reply to Ms Taylor's home address. Mr Elvidge supplied "proof of posting" after the hearing.
14. During the hearing Mr Homewood referred to various documents which were not included in his reply. These documents referred to his dealings with Cotswold District Council. The Tribunal decided to ask Cotswold District Council to confirm the position regarding Mr Homewood's late application for an HMO Licence. The Council's response was copied to the parties who made no representations on it.
15. Ms Taylor supplied a copy of a "Notice of Transfer of Proceedings" issued by the County Court at Gloucester and Cheltenham dated 30 September 2019. The Tribunal understands that Mr Homewood had brought a money payment claim (F88YJ962) against Ms Taylor and her mother for the outstanding rent due under the tenancy agreement for the months: January to July 2019.

Communications between the Parties

16. Ms Taylor stated that she had encountered problems with the Student Loans Company which placed her in serious financial difficulties at the commencement of her course with the Royal Agricultural University at Cirencester.
17. In order to ease her financial situation Ms Taylor decided she would find another person to take over her tenancy at the property. Ms Taylor advised Mr Homewood by email dated 2 October 2018 that she had tried to advertise her room but had meet with opposition from the other tenants. In his reply of 3 October 2018 Mr Homewood advised Ms Taylor of her obligations under the agreement to pay the rent due under the tenancy, and that if she failed to do so he would seek payment direct from her guarantor, Mrs Taylor. Mr Homewood reminded Ms Taylor of their conversation in July 2018 when she was deliberating about taking the room at the property. Mr Homewood said that he had implored Ms Taylor not to take the room if she had any doubts about whether

she could afford it. Mr Homewood said he was sorry about the circumstances Ms Taylor found herself in but there was provision for cost of accommodation in the student loan.

18. On 9 November 2018 Ms Taylor gave notice to Mr Homewood to end her tenancy as she was in the process of finding a replacement tenant. On or around 12 November 2018 Ms Taylor spoke to Mrs Homewood about a person by the name of “Dan” who was interested in the room. According to Ms Taylor, Mrs Homewood advised her that the person coming in should be a girl and a student at the Royal Agricultural University. On 13 November 2018 Mr Homewood informed her that she could not give notice and that only the landlord could agree to terminate the agreement which was entirely at his discretion. Mr Homewood then said for the avoidance of doubt that Ms Taylor was liable to pay the rent until the end of July 2019, and that under the agreement a replacement tenant is not procured until the tenant had signed a contract, and this cannot occur unless the new tenant is agreeable to the other tenants.
19. On 27 November 2018 a Ms Julie Tottle, a student adviser at the Royal Agricultural University spoke to Mr Homewood regarding Ms Taylor’s situation. Ms Tottle recited her conversation with Mr Homewood in an email to Ms Taylor. Ms Tottle advised that she had clarified with Mr Homewood who gets to choose Ms Taylor’s replacement under the agreement and that the contract did not state that the replacement should be a student or a female. According to Ms Tottle Mr Homewood had agreed to meet with the replacement and introduce them to the residents so they were happy with the new person moving in.
20. On 1 December 2018 Ms Taylor informed Mr Homewood that she had successfully found a male student named “Tom” from the University. Ms Taylor said that he would be ready to move in January 2019 and was ready to put down a deposit, and asked Mr Homewood to let her know what further information he required. Mr Homewood responded on 3 December 2018 suggesting that Ms Taylor involved her housemates in the decision, and that they work towards a collective solution.
21. On 5 December 2018 Mr Homewood spoke to Ms Taylor’s prospective tenant, “Tom”, who advised that he was not in a position to rent a room at the moment but would consider it. On 17 December 2018 Mr Homewood emailed Ms Taylor stating that “Tom” would not respond to him.
22. On 5 January 2019 Ms Taylor e-mailed Mr Homewood setting out the legal advice she had received. Ms Taylor stated that initially the advice focussed on whether Mr Homewood had been correct in treating her as an individual tenant under the agreement provided. Ms Taylor then went on to say that her adviser had discovered that

the property had not been registered as an HMO, and that the adviser had informed her that she was entitled to cancel any arrangements to occupy an unlicensed property and to recover any rent paid since her occupation. Ms Taylor asked Mr Homewood to furnish her with the licence for the property so that she could decide whether to find a replacement tenant.

23. Mr Homewood responded the same day stating that he had made the application for an HMO Licence as soon as the legislation for five bedroom HMOs had been implemented. Mr Homewood also said that the legal advice given to Ms Taylor was wrong and that there was an 18 month implementation period.
24. On 16 January 2019 Ms Taylor emailed Mr Homewood to state that she had vacated the property because it was not registered as an HMO. Ms Taylor informed Mr Homewood that she could not wait for the property to become compliant for five occupants sharing, and had been fortunate in finding alternative accommodation. Ms Taylor said that the property should be eligible under the former “fit to rent” registration for the remaining four occupants. Ms Taylor then asked Mr Homewood to return her contribution to the sum of money within the tenant’s deposit.
25. Mr Homewood responded the same day by repeating that an application had been made for the property to become an HMO in accordance with the legislation and prior to Ms Taylor raising the matter. Mr Homewood said that he had imposed an additional charge of £50 for the late payment of rent for January 2019, and insisted that she transfer the sum of £450 that day and that he would pursue the debt until settled.
26. On 4 February 2019 Mr Homewood instructed Global Collections Ltd to collect the debt of £850 (£400 rent for each of the calendar months of January and February plus £50 late payment charge).
27. Ms Taylor contacted Global Connections which responded by email stating that Ms Taylor should be confident of the facts before failing to honour the contract, and not to make untrue allegations. Ms Taylor was given until close of business on 11 February 2019 to accept the offer of £2,000 to settle the debt. On 4 June 2019 Global Connections on behalf of Mr Homewood gave Ms Taylor a final opportunity to settle the outstanding rental payments before court proceedings were taken which would be for the full amount owed plus late payment interest and costs.

Summary of the Parties’ Respective Cases

28. Ms Taylor asserted that after deciding to leave the property she had followed the terms of her agreement by finding another person to take her place in order to secure a release from its obligations. Ms Taylor stated that she found four replacement tenants who were not

acceptable to Mr Homewood for reasons which were not permitted under the agreement.

29. Ms Taylor said that she had paid her rent of £400 per calendar month from September to December and her deposit of £500 in July 2018 when she agreed to take on the tenancy. When Ms Taylor discovered in January 2019 that the property was not licensed as an HMO she formerly left the property and stopped paying rent.
30. Ms Taylor disputed Mr Homewood's contention that throughout the tenancy she paid the rent late, paid incorrect amounts or simply did not pay at all. Ms Taylor pointed out that the deposit and the rent for November were paid on time. Further the rent payments for September and October were transferred on the third day of the month rather than the first day. The incorrect amount was that she paid too much in September £420 rather than £400. Finally once she discovered that Mr Homewood had not got an HMO Licence for the property she believed she was entitled to leave the property and stop paying rent because he was in breach of his statutory obligations.
31. Ms Taylor's case was that she had tried to do the right thing by following the terms of her agreement but it was Mr Homewood who was in the wrong and should not had let the property to five persons without an HMO licence. Ms Taylor considered that Mr Homewood's behaviour was inappropriate and threatening. According to Ms Taylor, if Mr Homewood had owned up to his mistake and allowed her to leave, his letting of the property to four persons would have been lawful.
32. Mrs Taylor said that her daughter had suffered anxiety and distress as a result of Mr Homewood's actions which had adversely affected her grades at University. Mrs Taylor referred to the fact that her daughter had received counselling for her mental health and had attended seven sessions during the first term¹.
33. Ms Taylor asked for an Order in the sum of £1, 200.00 representing the rent paid in October to December, the £500 deposit and for reimbursement of the application and hearing fees in the sum of £300.00.
34. Mr Homewood said that he and his mother began investing in properties to let about seven years ago. He now owned four student lets and his mother owned two student lets and one other let. Mr Homewood said that during the past seven years he had let to over 140 students on eleven months contracts and had never encountered any problems.

¹ Ms Taylor produced a letter from Celia Povey MA MBACP of the Royal Agricultural University which substantiated the number and dates of attendance at counselling sessions.

35. Mr Homewood argued that he was a compassionate landlord and he ensured that the students taking on his properties fully understood their obligations before agreeing to the tenancy. Mr Homewood said that his properties were let to good standard and had all been accredited under the “Fit to Rent” scheme organised by the University.
36. Mr Homewood contended that it was clear that Ms Taylor had only come to the Tribunal since he had pursued her for all the outstanding rent. Mr Homewood asserted that Ms Taylor had repeatedly throughout the tenancy paid the rent late or not at all, and that Ms Taylor would send him heart-wrenching emails and text messages outlining her financial difficulties. Mr Homewood said that in January 2019 Ms Taylor sought advice on how to avoid paying the remainder of the rent to him. According to Mr Homewood, Ms Taylor found what he would describe as a loophole in the law with regards to HMO licensing. Mr Homewood stated that Ms Taylor never had any issues with the property and that he never made her living at the property difficult.
37. Mr Homewood submitted that the real issue in this case was that Ms Taylor could not afford the rent and that she was unable to get on and maintain friendships with the other tenants in the property. In this regard Mr Homewood produced letters of support from the other four tenants at the property. They all said that Mr Homewood was helpful and willing to sort out problems. They all found Ms Taylor difficult, although they acknowledged that she was rarely at the house. Ms Taylor said in evidence that although she kept her possessions at the house, she never stayed a night there.
38. Mr Homewood said in his written case that as the landlord he had always tried to do the right thing and had been on the front foot with anything to do with licensing or the Council. Mr Homewood stated that he had been misled by the advice to landlords on HMO licensing on the Council’s website which he said contained a mistake. Mr Homewood said that when he was informed of the mistake he made the application quickly which he completed on the 8 December 2018. Mr Homewood said that the Council responded on 1 January 2019 and took nearly six months to process the application. The HMO licence was granted for the property on the 4 June 2019 for six persons.
39. Mr Homewood argued that the circumstances justified a reduction in the rent claimed in the event of a RRO being made. Mr Homewood said Ms Taylor had been nothing but obstructive from the first day. She repeatedly paid her rent late, caused problems for all her “housemates” and was generally disruptive. In his view Ms Taylor was clutching at straws by relying on the HMO licence in order to claim back money.

40. Mr Homewood resisted Ms Taylor’s application for reimbursement of fees. He said that he was not willing to pay them because the entire application had been brought about in a dishonest spirit, looking to swindle money out of him.

Consideration

41. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (2016 Act) Parliament extended the powers to make RRO’s to a wider range of “housing offences”. The rationale for the expansion was that Government wished to support good landlords who provide decent well maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.
42. Sections 40 to 47 of the 2016 Act set out the matters that the Tribunal is required to consider before making a RRO.
43. The Tribunal is satisfied that Ms Taylor met the requirements for making an application under section 41 of the Act. Ms Taylor alleged that Mr Homewood had committed an offence of control or management of an unlicensed HMO under section 72(1) of the Housing Act 2004 whilst the property was let to her. An offence under section 72(1) falls within the description of offences for which a RRO can be made under section 40 of the 2016 Act. The alleged offence was committed from 1 October 2018 to 7 May 2019 which was in the period of 12 months ending on the day in which Ms Taylor made her application on 13 May 2019.
44. The Tribunal turns now to those issues that it must be satisfied about before making a RRO

Has the Respondent committed a specified offence?

45. The Tribunal must first be satisfied beyond reasonable doubt that the Respondent has committed one or more of seven specified offences. The relevant offence in this case is under s.72(1) of the Housing Act 2004, “control or management of an unlicensed HMO”.
46. Ms Taylor occupied the property with four other students who were not related under the terms of assured shorthold tenancy agreement dated 23 July 2018. Although Mrs Homewood was named as the landlord/agent in the agreement, Mr Homewood accepted that he was the landlord for the property and that he owned the freehold jointly with a Geoffrey Homewood.
47. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 amended the definition of a

licensable HMO under section 55(2)(a) of the 2004 Act by removing the requirement of three storeys from the 1 October 2018.

48. The Tribunal is satisfied that the property met the definition of an HMO which was required to be licensed under section 61 of the 2004 Act, namely that the property:
 - a) is occupied by five or more persons;
 - b) is occupied by persons living in two or more separate households; and
 - c) meets the standard test under section 254(2) of the 2004 Act.
49. Mr Homewood did not dispute that the property was an HMO which required to be licensed from 1 October 2018.
50. Ms Taylor relied on the statement of Claire Packer of Publica a company wholly owned by Cotswold District Council and other councils which said that an HMO licence was granted for the property on the 4 June 2019 and the date of inspection was the 15 May 2019.
51. Mr Homewood accepted that he did not have an HMO licence for the property from 1 October 2018. Mr Homewood said that he applied for the licence on the 8 December 2018 and paid the appropriate fee, receipt of which was acknowledged by the Council on 1 January 2019. Mr Homewood said that the Council took nearly six months to grant the licence which was longer than the Council's performance target of 16 weeks. When Mr Homewood was pressed on the reasons for the delay he acknowledged that he had not provided the Council with the requisite information regarding floor plans and titles. Mr Philip Measures of Publica confirmed that there were outstanding documents relating to the Application which were notified to Mr Homewood on 1 January 2019. Mr Measures said that Mr Homewood supplied these documents on the 8 May 2019.
52. Under section 72(4) of the 2004 Act if a person can demonstrate that he has applied for a licence and the application remains effective the person has a defence to the offence of no HMO licence at the material time when the application is made. This defence is relevant to this case insofar as determining the period for which the alleged offence of no HMO licence was committed.
53. The question in this case is the correct date when Mr Homewood made a valid application for an HMO licence. Under the directions Mr Homewood was required to provide in his reply copies of all correspondence relating to any application for a licence and any licence that has now been granted. Mr Homewood did not comply with the direction. The only information included in his reply was a copy of the email from Ms Packer to Ms Taylor.

54. At the hearing the Tribunal requested Mr Homewood to provide copies of the documentation relied upon which he was not able to do owing to various technical difficulties with the manner in which the information was held. At the end of the hearing, the Tribunal directed Mr Homewood to supply a copy of the Council's reply of 1 January 2019. Mr Homewood supplied an incomplete copy which included no reference to the request for outstanding documents as referred to in Mr Measure's email.
55. The Tribunal finds that Mr Homewood admitted in the hearing that he had not supplied the Council with all the required information with his application for an HMO licence, which was confirmed by Mr Measures. In order for Mr Homewood to avail himself of the defence under section 72(4) of the 2004 Act he has to show on the balance of probabilities that the application on the 8 December 2018 was made in accordance with such requirements as the Council may specify. The Tribunal is satisfied on the evidence that the date when the valid application was made was the 8 May 2019 when all the information was supplied and not the 8 December 2018. The Tribunal finds that the period for the alleged offence of no HMO licence was from 1 October 2018 to 7 May 2019.
56. Mr Homewood explained in the hearing that he learnt about the proposed change in the definition of HMOs in the summer of 2018. Mr Homewood said that he then looked at the section on the website for Cotswold District dealing with HMO Mandatory Licensing, which sets out the requirements in a flow chart. Mr Homewood believed that the requirement of the "only or main residence of the occupiers" did not apply to the property because the students living there had another home with their parents. Mr Homewood made no further enquiry and took the view that the change in law regarding HMOs did not apply to the property. On 18 September 2018 Mr Homewood discovered that his understanding of the change in law was wrong because he received correspondence from Cotswold District Council telling him that the property required an HMO licence.
57. The Tribunal notes that Mr Homewood's evidence in the hearing was very different from the account given in his written reply. In the latter Mr Homewood put the blame on the Council for his misunderstanding of the law. Mr Homewood also said that he acted promptly once he discovered the "mistake" of the Council. The Tribunal records that Mr Homewood has with his evidence in the hearing corrected the inaccuracies in his written reply.
58. The Tribunal is satisfied that Mr Homewood was aware of the change in law relating to HMO licensing several months before the implementation date of 1 October 2018. On learning about the change the Tribunal finds that Mr Homewood misinterpreted the advice given by the Council on its website, and that his misinterpretation was of his own doing. The information given by

the Council was correct. Mr Homewood took no steps to confirm his interpretation of the legal requirements for mandatory HMO licensing. Mr Homewood knew from the 18 September 2018 that he had made a mistake and that he was required to apply for an HMO licence for the property. Mr Homewood did not progress the application until the 8 December 2018 which was incomplete, and a valid application was eventually submitted on 8 May 2019.

59. Mr Homewood has also suggested that he had an 18 month transitional period in which to make an application. Mr Homewood's assertion is wrong. The transitional arrangements only apply if the property was currently licensed under Part 2 of the 2004 Act or to the implementation of new conditions regarding room sizes where a new licence has been granted for the first time. Neither of these situations applied to the circumstances of this case.
60. The Tribunal makes the following findings of fact:
- a) Mr Homewood jointly owned the property.
 - b) Mr Homewood was the landlord for the property.
 - c) The property met the prescribed definition of an HMO from 1 October 2018.
 - d) The property required an HMO Licence from the 1 October 2018.
 - e) The property did not have an HMO Licence from 1 October 2018 to 7 May 2019.
 - f) Mr Homewood met the definition of a person managing an HMO under section 263 of the 2004 Act. Mr Homewood was the owner of the property and received the rents from the tenants in occupation of the property.
 - g) Mr Homewood knew that he did not have an HMO licence but continued to let it to five persons.
 - h) Mr Homewood's reasons for not having an HMO licence did not constitute a reasonable excuse. He made a mistake on the law which was of his own doing. He compounded his culpability by ignoring the legal requirements once he had discovered his mistake on 18 September 2018.
61. The Tribunal is satisfied beyond reasonable doubt from the findings above that Mr Homewood had committed the specified offence of control or management of an unlicensed HMO contrary to section 72(1) of the 2004 Act from 1 October 2018 to 7 May 2019 in respect of the property and that he did not have a defence of reasonable excuse.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act?)

62. The amount that can be ordered under a RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. The Tribunal has decided that Mr Homewood committed the offence from the 1 October 2018 to 7 May 2019 a period of almost six months.
63. Ms Taylor paid rent of £400.00 for the months of October to December 2018 which totalled £1,200.00.
64. Ms Taylor is also asking for the deposit of £500, and the “unpaid” rent which is the subject of Mr Homewood’s money payment claim before the Court.
65. Under section 52 of the 2016 Act “rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act may be included in the calculation of an award of universal credit. Section 11 defines housing costs as an amount in respect of any liability of a claimant to make payments in respect of the accommodation they occupy as a home. The Tribunal is satisfied that Mr Homewood is withholding the repayment of the deposit as a lien against the “unpaid rent” for the period from 1 January 2019 to 31 July 2019. The Tribunal concludes that it is entitled to include the deposit of £500.00 in the RRO.
66. The Tribunal cannot include the “unpaid rent” which is the subject of Mr Homewood’s claim before the Court. The maximum payable under RRO must not exceed the rent paid. If the rent has not been paid it cannot be included in the RRO.
67. There is no evidence that the rent paid for the property included an award of universal credit.
68. The Tribunal decides that the maximum amount payable by Mr Homewood under a RRO is £1,700.00.

What is the Amount that the Respondent (Mr Homewood) should pay under a RRO?

69. In determining the amount, the Tribunal must, in particular, take into account the conduct and financial circumstances of Mr Homewood in his capacity as landlord; whether at any time Mr Homewood had been convicted of a housing offence to which section 40 applies; and the conduct of Ms Taylor.
70. Mr Homewood argued that he was a compassionate landlord and that Ms Taylor was to blame for the current situation. Mr Homewood said that Ms Taylor had been nothing but obstructive

from the first day and that she was clutching at straws by relying on the HMO licence in order to claim back the rent.

71. The Tribunal takes a different view from Mr Homewood's interpretation of the events. The Tribunal is satisfied that Mr Homewood is a professional landlord. Mr Homewood has been in the letting business with his mother for the last seven years and between them they own seven properties. Mr Homewood does have another occupation but he accepted that he spent a significant amount of time on his property letting venture.
72. Mr Homewood's failure to obtain an HMO licence was down to him and had nothing to do with Ms Taylor. Being a professional landlord Mr Homewood has a responsibility to ensure that he complies with statutory requirements. Mr Homewood knew that he had to licence the property from 18 September 2018 and his dilatoriness in submitting a valid application, waiting until 8 May 2019 compounded his culpability.
73. Mr Homewood's assertion that his properties met all the requirements for HMO licensing and that the grant of an HMO licence was a formality missed the point that he was operating illegally by letting a property for six months without a licence.
74. The Tribunal considers that Mr Homewood's dealings with Ms Taylor were misguided and confrontational. His insistence that she was wrong and had been badly advised when she pointed out that he had no HMO licence for the property was misleading. Mr Homewood knew at the time of his response no licence had been granted, and that he was required to supply further information to the Council. Given those circumstances Mr Homewood should have given consideration to Ms Taylor's suggestion that she be allowed to terminate her agreement to reduce the occupancy level below five persons and effectively put the letting on a lawful footing.
75. The Tribunal finds that Mr Homewood's accusations regarding Ms Taylor's conduct unwarranted. The Tribunal accepts that Ms Taylor was motivated by her desire to leave the property and free herself from the obligations under the agreement because of financial difficulties. The Tribunal, however, considers that Ms Taylor was approaching her problem in a responsible and transparent manner. Ms Taylor advised Mr Homewood that she was in financial difficulties and that she was endeavouring to release herself in accordance with the terms of the agreement by finding a replacement tenant. Ms Taylor paid her rent during this period up to January 2019, albeit a few days late. In contrast Mr Homewood's response was to place barriers in her way and give misinformation about what she was entitled to do. It required the intervention of the student welfare officer to inform Mr Homewood of the correct interpretation of the tenancy agreement.

76. The Tribunal does not consider that the witness statements of the other tenants in the property assist Mr Homewood's case. It appeared to the Tribunal that they were introduced to cast aspersions on Ms Taylor's character and substantiate Mr Homewood's submission that Ms Taylor was a disruptive influence in the house. The Tribunal, however, finds it difficult to reconcile the other tenants' view of Ms Taylor as a disruptive influence with the fact that she did not live in the house and had not spent a night there.
77. The Tribunal acknowledges that the other tenants speak highly of Mr Homewood and that is to his credit. The Tribunal, however, is examining Mr Homewood's conduct in the context of the offence and his dealings with Ms Taylor. The Tribunal's conclusion in this context is that Mr Homewood was intent on depicting Ms Taylor as the scapegoat for his failure to comply with the law.
78. Mr Homewood did not provide details of his financial circumstances. Mr Homewood indicated that he had paid employment in addition to his income from his property letting ventures. The Tribunal formed the view that he would not suffer financial hardship from the imposition of a RRO.
79. There was no evidence that Mr Homewood has been prosecuted and or convicted of an "housing" offence.
80. The Tribunal is satisfied for the reasons given above that Ms Taylor was not complicit in the circumstances giving rise to Mr Homewood's failure to obtain an HMO licence for the property. Further the Tribunal finds that Ms Taylor was attempting to do the right thing by the terms of her agreement, and if Mr Homewood had responded in a more empathetic and constructive way Mr Homewood would not have been before the Tribunal as a Respondent in these proceedings.
81. The Tribunal in reaching its determination on the size of the RRO has had regard to the decision of the Upper Tribunal in *Parker v Waller* [2012] UKUT 301. The Tribunal observes that the then President of the Upper Tribunal stated that there was no presumption that a RRO should be for the total amount received by the landlord. Equally the then President did not rule out the possibility of a maximum order if the circumstances merited it.
82. The Tribunal also notes that the decision was based on the previous provisions under the 2004 Act dealing with RROs. Under those provisions the Tribunal was required to make an order of such amount as it considered reasonable in all the circumstances.

83. The 2016 Act extended the scope of RROs and removed the requirement for the Tribunal to determine such amount as it considered reasonable for the eventual order.
84. The structure of the 2016 legislation requires the Tribunal to determine first the maximum amount payable under an RRO and then to determine the actual amount payable by taking into the circumstances of the case, having particular regard to specific factors. This would appear to be a different approach from that followed under the 2004 provisions.
85. The Tribunal has found that Mr Homewood knowingly broke the law by letting an HMO without a licence, and that far from accepting responsibility for his own misdeeds sought to blame Ms Taylor for the situation that he was in.
86. The Tribunal is satisfied that its findings on Mr Homewood's conduct and the fact that for the period from 1 October 2018 to 7 May 2019 he was not entitled to let the property to five persons are the determinative features of this case and outweigh any mitigation on Mr Homewood's behalf. The Tribunal, therefore, determines that this is a case which justifies the ordering of the maximum amount allowable under a RRO.

Decision

87. The Tribunal orders Mr Homewood to pay Ms Taylor the sum of £1,700.00.
88. Ms Taylor also applied for an Order against Mr Homewood to reimburse her with the £100.00 application fee and the £200.00 hearing fee.
89. Mr Homewood said that he was not willing to reimburse the fees because the entire application had been brought about by Ms Taylor in a dishonest spirit, looking to swindle money out of him.
90. The Tribunal's findings question the appropriateness of Mr Homewood's remarks. The Tribunal in its deliberation on Mr Homewood's conduct has been careful not to confuse it with his conduct of the case. The latter is relevant to the question of reimbursement of fees and any prospective application for costs.
91. The Tribunal observes that Mr Homewood's written reply was misleading in respect of his dealings with the Council and that he failed to comply with the directions regarding the provision of all correspondence dealing with the application for an HMO licence. Also the Tribunal was not impressed by the fact that Mr Homewood waited six weeks after the issue of directions to volunteer through his mother that he was the landlord of the property.

92. The Tribunal considers that as Ms Taylor has been successful with her application and having regard to Mr Homewood's conduct of the case, Mr Homewood is ordered to reimburse Ms Taylor with the £300.00 in fees.
93. The Tribunal Orders Mr Homewood to pay the sums due to Ms Taylor of £1,700.00 and £300.00 which makes a total of £2,000.00 within 28 days.
94. The Tribunal's decision is separate from the Claim currently pursued by Mr Homewood through the County Court. The Tribunal suggests that Ms Taylor may wish to seek independent advice on Mr Homewood's claim in the light of the Tribunal's determination.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.