



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

Case Reference : **BIR/00FN/HMK/2019/0065-71**

Property : **11 University Road, Leicester LE1 7RA**

Applicants (Tenants) : **James Tidd (1)
Amy Thomas (2)
Luke Cotton (3)
Kiran Lall (4)
Wesley Hunt (5)
Maddy Blunt (6)
Peter Miller (7)**

Representative : **Justice for Tenants**

Respondents : **Hawkstead Commercial Limited (1)
Warwick Lodge Limited (2)**

Date of Application : **29th & 30th September & 1st October
2019 (Received 3rd October 2019)**

Type of Application : **Application by a tenant for a Rent
Repayment Order (RRO) where there has
been no conviction of the landlord and no
imposition of a financial penalty on the
landlord by the local authority (Section 41
Housing and Planning Act 2016)**

Tribunal : **Judge JR Morris
Mr DA Lavender BSc (Hons) MCIEH**

Date of Inspection : **9th January 2020**

Date of Decision : **18th February 2020**

DECISION

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Decision

1. The Tribunal makes a Rent Repayment Order of the sum of £7,000.00 payable within 48 days of this Order.
2. The Tribunal makes an order for the reimbursement of the Application Fees of £100.00. This sum is to be paid within 48 days of this Order.

Reasons

Application

3. On 3rd October 2019 the Applicants applied for a Rent Repayment Order as Tenants of 11 University Road Leicester LE1 2RA (“the Property”). The legislation applicable to this Application is found in the Housing Act 2004 (the “2004 Act”) and the Housing and Planning Act 2016 (the “2016 Act”). The relevant provisions are attached to this decision at Annex 2.
4. The Applicants allege the Respondents have committed an offence under section 72(1) of the Housing Act 2004 (the “2004 Act”) of being a person having control of or managing a House in Multiple Occupation (an HMO) which is required to be licensed under Part 2 of the 2004 Act (see section 61(1)) but is not so licensed.
5. Directions were issued on 5th November 2019 by which the Applicants were to prepare a joint Statement of Case to be served on the Respondents by 20th November 2019. The Respondents were to prepare a joint Statement of Case to be served on the Applicants by 4th December 2019, although this was extended to 11th December 2019.
6. The Applicants consented to a paper determination of the matter and the Respondents were required to notify the Tribunal if they wished to have an oral hearing on lodging their Statement of Case. No request was made for an oral hearing.

Inspection

7. The Tribunal inspected the Property on 9th January 2020 in the presence of Mr Dipesh Shah.
8. The Property is a Victorian or late Edwardian mid terrace house of brick under a slate roof with stone mullioned single glazed timber windows to the front. There are four-storeys including a basement (access to which is not available to the Tenants and was not inspected by the Tribunal) and a ground floor and a first and second floors which were viewed by the Tribunal.
9. The exterior of the Building appeared to be in fair condition. There is a fore court which is let to a car parking company. There is a yard to the rear from which rises a metal fire escape staircase to the first and second floors. The yard was untidy and although there is a gate in the back wall of the yard, on

the day of the inspection this was blocked due to building work taking place in the neighbouring property.

10. The interior of the Property was in fair to good decorative order and condition. There was laminating flooring on all floors and carpet on the stairs and landings. On the ground floor there was a large living room with sofas, a table and chairs and a table-tennis table. Beyond the living room was a kitchen with fitted units and white goods. On the first and second floors were six bedrooms each with ensuite shower room. There was a shower room on a mezzanine floor between the 1st and second floors serving the two bedrooms that did not have an ensuite shower room.
11. It was noted that an internet connection was supplied as were television in each bedroom.

Applicants' Statement

12. The Applicants' Representative provided a statement of case précised and paraphrased as follows.
13. The Application is made by the Applicants as Tenants of the Property for a Rent Repayment Order (RRO) under sections 40, 41, 43 and 44 of the 2016 Act, where there has been no conviction of the landlord and no imposition of a financial penalty on the landlord by the local authority.
14. The basis for the Application is that the Respondents were persons having control of or managing a House in Multiple Occupation (an HMO) which is required to be licensed under Part 2 (see section 61(1)) of the 2004 Act but is not so licensed contrary to section 72(1) of the 2004 Act which is an offence under section 40(3) of the 2016 Act.
15. The Applicants alleged that the Property meets the criteria which requires it to be licensed as stated in the Licensing of Houses in Multiple Occupation Order 2018 and the Licensing of Houses in Multiple Occupation (Prescribed Description) Order 2018. They said that the Property was rented by 8 unrelated persons forming 8 households. Washing and bathroom facilities were shared.
16. The Applicants said that they held an Assured Shorthold Tenancy a copy of which was provided, the main details of which were:
 - (1) The Tenancy Agreement dated 1st July 2018 was between Hawkshead Commercial Ltd who was said to be the Landlord and Amy Elizabeth Thomas, Evelyn Rosemary Loy, James Alexander Tidd, Kiran Kaur Lall, Luke Nathan Cotton, Madeline Blunt, Peter John Miller and Wesley Ross Hunt identified as the Tenants.
 - (2) The term was for 12 months from 1st July 2018 to 30th June 2019 inclusive.

- (3) The rent was:
£8,712.00 for July, August and September 2018 due by 31st May 2018
£12,584.00 for October, November and December 2018 due by 1st October 2018
£12,584.00 for January, February and March 2019 due by 1st January 2019
£12,584.00 for April, May and June 2019 due by 1st April 2019.

(4) A Deposit of £2,000.00 was payable.

(5) A 'one-off' energy contribution of £680.00 was payable which included gas, electricity, water and internet

17. Transaction details were provided for the payment of the rent.
18. It was said that the Property was unlicensed from 24th January 2019. An email from the Private Sector Housing and Area Environmental Health Department of Leicester City Council ("the Authority") to the Applicants' Representative dated 27th August 2019 was provided which confirmed that:

11 University road was issued a mandatory HMO licence on 24th January 2014.

The licence was valid for 5 years and expired 24th January 2019. To date we [the Council] have not received an application for renewal. This is something we are currently pursuing with the owner.

19. Taking into account that under section 40 of the 2016 Act a Rent repayment Order can only be made against landlord, the Applicants questioned who the landlord of the Property is. The Lease referred to Hawkstead Commercial Limited as the landlord although Land Registry Title Number LT448816 for the Property (a copy of which was provided) states that the freeholder is Warwick Lodge Limited. There is no mention of a lease to Hawkstead Commercial Limited on the Charges Register or suggested by the parties.
20. The Applicants referred to the register entry for Hawkstead Commercial Limited at Companies House which states that the nature of business for the company is "Real estate agencies". The register entry at Companies House for Warwick Lodge Limited gives its nature of business as "Other letting and operating of own or leasehold real estate".
21. The Applicants were of the opinion that Hawkstead Commercial Limited was the agent for Warwick Lodge Limited and that therefore Warwick Lodge is the Landlord of the Property.
22. The Applicants submitted that they were entitled to the repayment of all the rent paid by them as Tenants between 24th January 2019 and 30th June 2019 the Property being unlicensed during this period.

23. The Applicants provided a statement of rent payments as follows:

Date of Payment	Amount paid
01/10/2018	£12,584.00
31/12/2018	£10,998.00
07/01/2019	£1,586.00
01/04/2019	£10,998.00
30/04/2019	£1,586.00
Total Paid	£37,752.00

24. Based on these amounts they claimed a Rent Repayment Order for £21,952.09 for the period 24th January 2019 and 30th June 2019.

25. In support of their claim for this amount the Applicants set out a number of grievances with regard to the Property which are summarised as follows:

- The property was in poor condition with stained mattresses, water damage and electrical and heating issues (the heating did not work in two of the bedrooms).
- The Fire alarms were routinely inspected without sufficient prior notice.
- The Applicants were not provided with a:
 - Gas Safety Certificate under regulation 2(b) Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015;
 - Deposit Protection Certificate (deposit protected 5 months after being paid) under section 213 Housing Act 2004
 - How to Rent Guide under Regulation 3 Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015
 - Energy Performance Certificate under regulation 2(a) Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015

26. It was further stated that:

- The Applicants had been polite and reasonable and paid the rent and tried to ensure the Property was safe and habitable.
- The Respondents were slow to respond to maintenance and disrepair requests.
- The Respondents are an experienced agent and landlord. The number of charges/mortgages against Warwick Lodge Limited on the register at Companies House indicated that they had many properties. The Respondents should know the relevant legislation and comply with it but have not done so.
- The Respondents had also withheld £1,220.00 from the Deposit which the Applicants challenged. The amount was reduced to £420.00 after adjudication (a copy of the adjudication was provided).

27. Witness statements were provided from Luke Cotton, James Tidd, Peter Miller and Amy Thomas confirming the above supporting representations.

Luke Cotton said:

- that 50% of the lights in the main bathroom were broken;
- the mattresses showed signs of vomit, blood and other staining;
- there was a water stain on the ceiling in his bedroom which increased in size while he was a tenant;
- the Respondents failed to reply to communications and when contacted failed to address the issues he raised.

James Tidd said that the certificates (as set out above) were not provided and the deposit was not protected for 5 months and failed to provide the requisite information. In addition, the Respondents retained £1,200 of the deposit but the adjudicator awarded only £420.00. In addition, a fault warning light was flashing on the fire alarm panel which was not fixed. Instead a person was sent to test the alarms without notice and often at inconvenient times.

Peter Miller said that he was unhappy with the lack of communication, the lighting and plumbing faults throughout the house. In particular the heating did not work in rooms 7 and 8.

Amy Thomas said that the certificates referred to above were not provided, the electrical fuse was located in another building, the fire alarms were tested without notice and at inconvenient times, light bulbs were not replaced despite many messages, the deposit was not protected for 5 months.

28. The Applicants applied for reimbursement of the Application Fees.

Respondents' Statement

29. Mr Dipesh Shah, Co-director with his father Mr Dilip Shah of Hawkshead Commercial Limited who is also a director of Warwick Lodge Limited made a statement which in summary was as follows.

30. Warwick Lodge Limited is the registered proprietor of the Property since 2012 and Hawkstead Commercial Limited's function is that it manages the Property and collects a commission for the same. All the tenancies that have been entered into in relation to the Property have been entered into with Hawkstead Commercial Limited.

31. The Property has had an HMO Licence issued by the Authority since 2014. Since that date it was said that Mr Shah had been not been aware of any breach or violations of the HMO Licence.

32. Mr Shah went on to say that his father had suffered health problems since November 2018 and was admitted to hospital in March 2019 for heart surgery following a heart attack. He then took a period of rest for around 6 months (Medical evidence was provided). In addition to his father's illness his maternal grandparents had been in and out of hospital numerous times throughout 2019. As the only son he had taken on all the responsibilities which had been his father's. These included looking after the business and the family, his mother and two younger sisters. As a close-knit family, they had

relied upon his father a lot and therefore it was a particularly difficult time and Mr Shah said he found 2019 a challenging year managing his personal and work commitments.

33. Mr Shah said that it was around the end of July 2019 that it came to his attention that the HMO Licence on the property had expired on 24th January 2019. He made an application for renewal on 10th September 2019 (Copy provided). The issued Notice of the Proposed Grant of a Licence, to be back dated to 24th January 2019, on 26th November 2019. Representations were to be made by 11th December 2019 (Copy provided). The application for renewal of the Licence was made before the present Application for a Rent Repayment Order.
34. Mr Shah said that no penalties have been imposed by the Authority for the late Licence application and the Fee of £900.00 was paid on 10th September 2019. During the inspection in November 2019 prior to the granting of the Licence the Housing Officers of the Council noted a few minor maintenance issues none of which were deemed to be major or serious. The house has at all times been kept in good order.
35. First 4 Lettings acted for Hawkstead Commercial Limited in letting the Property to the Applicants and should have provided the relevant information. The Property has a valid Gas and Electricity Safety Certificates.
36. The Respondents subsequently provided a copy of the Licence dated 12th December 2019 for a period of 5 years and back dated to 24th January 2019.

Additional Evidence

37. Were an order to be made, the Tribunal had not received any evidence of the expenses relating to the Property to which, it was of the opinion, it should have regard, taking into account the Upper Tribunal decision of *Parker v Waller and Others* [2012] UKUT 301 (LC),
38. Following its inspection of the Property on 9th January 2020, the Tribunal sent a letter to the Respondents dated 10th January 2020 (copy to the Applicants Representative) inviting them to provide the annual or monthly expenditure with regard to the following:
Gas,
Electricity,
Water,
Internet,
Insurance,
Council Tax,
Cleaning (if any),
Mortgage repayments.
39. The Tribunal informed the Respondents that whereas it is to their advantage to give this information it should be noted that the Tribunal is obliged to send a copy to the Applicants.

40. The Applicants' Representative in a letter dated 14th January 2020 referred the Tribunal to section 44(4) of the 2016 Act and said that the section did not state that the amount awarded should be "such amount as the tribunal considers reasonable in the circumstances". It was submitted that the legislation gave no basis for considering any outgoings for a property. A Tribunal should only consider the financial circumstances of a landlord and verified information such as audited accounts.
41. With regard to the Respondents' financial circumstances generally, reference was made in the Bundle to the entries at Companies House of both Hawkstead Commercial Limited and Warwick Lodge Limited. Apart from the Directorship which is referred to above, the Tribunal noted that Hawkstead Commercial Limited had capital and reserves of £17,667.00 as at 31st January 2019 and Warwick Lodge Limited had Capital and Reserves of £1,339,262 as at 31st August 2018.
42. The Respondents provided the following account on 27th January 2020:
 Costs incurred for the period 1st July 2018 to 30th June 2019
- | | |
|--|-------------------|
| Electricity & Gas | £1,690.00 |
| Water | £895.00 |
| TV Licence | £145.00 |
| Broad Band | £432.00 |
| Rent Paid to Warwick Lodge Limited | £30,000.00 |
| Cost of renewing HMO Licence (£900 ÷ 5) | £180.00 |
| Other Expenses in Upkeep/Maintenance | £235.00 |
| Tenant Finder Fee for First 4 Lettings | £1,560.00 |
| Total costs incurred by
Hawkstead Commercial Limited | £35,137.00 |
| Loan Payments | £24,800.00 |
| Property Insurance | £1,300.00 |
| Depreciation for Fixtures and
Furniture inside the Property | £3,600.00 |
| Total costs incurred by Warwick Lodge Limited | £29,500.00 |
43. The Tribunal sent a copy of the Respondents' statement of expenses to the Applicants' Representatives with a Direction that any reply should be made by 7th February 2020 after which time a Decision would be issued.
44. On receipt of the Respondents' statement of expenses, the Applicants' Representative said in a letter dated 30th January 2020 that the Respondent's statement of expenses had not been verified by invoices, receipts or proof of payment and it should not be presumed that they are true. It was also stated that the payment of £30,000.00 from one Respondent to another is an outgoing for the purposes of these proceedings. It was added that only the overall financial circumstances of the Respondents should be considered.
45. The Respondents replied on 4th February 2020 with:
 A copy of the invoice for the rent and receipt of the rent paid,
 A copy of an account of direct debits to Virgin Media,

A copy of an invoice from First 4 Lettings,
An account of the payment history for gas and electricity,
A copy of the Television Licence,
A copy of a payment of £900.00 for the HMO licence,
Extracts from Lloyds Bank statement referring to loan repayments,
A copy of an insurance quotation.

46. The Applicant's Representative stated in a letter dated 5th February 2020 that the proof provided by the Respondent was questionable except for the Television Licence, as they all had key sections redacted. In summary the Respondent's Representative contended that, apart from the Television Licence, there was no clear link in the documents between the payments and the Property, when it would be very easy to provide evidence of outgoings, if they existed to a credible standard.
47. On 7th February 2020 the Respondents replied, with some explanation, that all the documents were genuine and any redactions were necessary for confidentiality reasons, and that the Applicants' Representative was welcome to view the original documents at the offices of Hawkstead Commercial Limited.

Decision

The Landlord

48. The Tribunal considered a preliminary issue which had been raised by the Applicants' Representative namely the identification of the Landlord. Under the 2016 Act a Rent Repayment Order can only be made against a landlord who, in this case, has committed an offence under section 72(1) of the 2004 Act. Therefore, before making any determination with regard to a Rent Repayment Order the Tribunal must decide who is the Landlord and whether the Landlord has committed an offence under section 72(1) of the 2016 Act.
49. As stated above Hawkstead Commercial Limited was referred to as the Landlord on the Tenancy Agreement but the registered proprietor on Land Registry Entry Title Number LT448816 is Warwick Lodge Limited.
50. Mr Shah in his written statement said that:
3. *Warwick Lodge Limited is the registered proprietor of the Property...since 2012.*
 4. *Hawkstead Commercial Limited's function... is that it manages [the Property] and collects a commission for the same. All the tenancies that have been entered into in relation to [the Property] have been entered into with Hawkstead Commercial Limited.*
51. From this statement the Tribunal finds that Hawkstead Commercial Limited in taking a commission for managing the Property is the agent for Warwick Lodge Limited. There has been no suggestion by the Respondents that Hawkstead Commercial Limited or any other person Leases the Property from

Warwick Lodge Limited. The Tribunal finds that the Property is let to the Applicants by Warwick Lodge Limited, the registered proprietor, through its agent Hawkstead Commercial Limited.

52. The Tribunal finds support for its finding in the Upper Tribunal Case of *Goldsbrough & Swart v CA Property Management Ltd & Gardner* [2019] UKUT 311 (LC) which concerned the identification of the landlord as the respondent in an application for a Rent Repayment Order. In that case the managing agent (CAPM) had been granted a lease by the registered proprietors (Mr and Mrs Gardener). Judge Elizabeth Cooke held that the managing agent was the immediate landlord and the registered proprietor the head landlord. Both were landlords. It was for the applicants to prove which had committed the offence which made them liable to a rent repayment order.
53. In the course of the decision reference was made by the applicant to paragraph 3.8 of *Rent Repayment Orders under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities published by the Department for Communities and Local Government* which stated that a managing agent could not be a landlord. Judge Cooke observed at paragraph 31, that if the Guidance meant that a managing agent that does not have a lease of the property cannot be a landlord, then it was correct.
54. The Tribunal therefore finds that Warwick Lodge Limited is the Landlord and the correct Respondent so far as the person against whom the order should be made, hereinafter referred to as “the Respondent Landlord” and Hawkstead Commercial Limited is referred to as the Landlord’s “Agent”.

The Offence

55. 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.
56. The Tribunal considered whether it was satisfied beyond a reasonable doubt that an offence had been committed to which the Rent Repayment Order provisions applied. In this case it considered whether the Respondent Landlord had committed an offence under section 72(1) of the 2004 Act.
57. To commit the offence and be liable for a Rent Repayment Order the Respondent Landlord must, as landlord, be a person having control of or managing a House in Multiple Occupation which is required to be licensed but is not so licensed.
58. It was common ground and not in issue that the Property is a House in Multiple Occupation
59. The Tribunal referred to Section 263 of the 2004 Act and found that the Respondent Landlord came within the definition of a “person having control” of a House in Multiple Occupation.

60. It was not disputed by the parties that the previous Licence had expired on the 24th January 2019 and a new Licence had been applied for on 10th September 2019. It was also not in disputed that on 26th November 2019 the Authority issued a Notice of the Proposed Grant of a Licence, to be back dated to 24th January 2019 and a Licence dated 12th December 2019 for a period of 5 years and back dated to the 24th January 2019 was issued by the Authority in relation to the Property.
61. It was submitted on behalf of the Respondent Landlord that the backdating of the Licence meant that there was no time when the Property was without a Licence therefore the offence under section 72(1) had not been committed. The Tribunal is aware that authorities back date Licences in order that a landlord should not have an advantage of time by obtaining a Licence, late. If in this instance the new Licence commenced, say, on the date of application, the Licence would in effect be for a period of about 5 years 7 months and not 5 years. The act of back dating the Licence does not mean that an offence under section 72(1) has not been committed.
62. Based upon the email from the Authority to the Applicants' Representative, dated 27th August 2019, and Mr Shah's admission in his statement that it was around the end of July 2019 that it came to his attention that the HMO Licence on the Property had expired on 24th January 2019 and that he applied for renewal on 10th September 2019, the Tribunal was satisfied beyond a reasonable doubt that an offence under section 72(1) had been committed.
63. The Tribunal then considered whether the defence in section 72(5) to the offence under section 72(1) of the 2004 Act, applied. This being that the Respondent had reasonable excuse for having control of or managing the Property as an HMO notwithstanding that it was unlicensed.
64. The Tribunal noted that in his statement Mr Shah explained that the reason the Licence had not been renewed was that his father had suffered health problems since November 2018 and was admitted to hospital in March 2019 for heart surgery following a heart attack following which he was recuperating for around 6 months. The Tribunal is not unsympathetic to the difficulties faced by a family business when a parent is taken seriously ill.
65. Nevertheless, from the entry relating to the Respondent Landlord on the register at Companies House the rental of properties is the nature of its business and its accounts show it to be a financially substantial organisation. It is a professional landlord and a higher standard is expected than from a landlord with only one or two properties. It would be expected that a business such as that of the Respondent Landlord or its Agent would have procedures and management systems in place which would ensure that tasks as important as the licensing of an HMO would be dealt with notwithstanding the unavailability of a particular Director or employee.
66. Therefore, the Tribunal did not accept the applicability of the defence in section 72(5) but, taking into account that the Respondent Landlord was a family run business, considered that the illness of Mr Dilip Shah was a mitigating factor.

67. Pursuant to section 44 of the 2016 Act the Tribunal finds that the Respondent Landlord has committed the offence under section 72(1) of the 2004 Act for the period 24th January 2019 to 30th June 2019 during which time the Applicants were residing at the premises as a tenant and a Rent Repayment Order may be made.

The Application

68. The Tribunal considered the validity of the Application for a Rent Repayment Order and the period for which it was claimed.
69. Firstly, the Tribunal found that the Application was valid in that the alleged offence had occurred between 24th January 2019 and 30th June 2019 and the Application was received on 3rd October 2019 which was within 12 months of the offence taking place under section 41 of the 2016 Act.
70. Secondly, the Tribunal found that the period for which the Applicants could claim a Rent Repayment Order was from 24th January 2019 when the Licence issued in 2014 expired and 30th June 2019 when their Tenancy expired and the Applicants left the Property. The offence ceased on the date on submission of a full, complete and determinable application with associated application fee being submitted, which was on the 10th September 2019. A new HMO Licence was granted to the Respondent on 12th December 2019 which was after the Applicants had left the Property and the date to which the claim was made.
71. Thirdly, the Tribunal found that no notice of intended proceedings had been served by the local housing authority on the Respondent Landlord under section 42 Housing and Planning Act 2016. It followed that neither the Respondent Landlord nor its Agent had been convicted of an offence under section 72(1) of the 2004 Act, nor had the Authority imposed a financial penalty.

The Order

72. The Tribunal considered the amount of the Rent Repayment Order.
73. The Tribunal finds that the amount of rent paid by the Applicants during this period was £21,962.00 (158 days, approximately 5 months, at £139.00 per day). The Applicants calculate the amount £21,952.09 the difference being *de minimus*.
74. No evidence was adduced that during this period any of the Applicants were in receipt of Universal Credit.
75. In accordance with section 44(4) of the 2016 Act the following must be considered:
- a) The conduct of the landlord and the tenant,
 - b) The financial circumstances of the landlord,

c) Whether the landlord has at any time be convicted of an offence to which the specific legislation applies.

76. Firstly, the Tribunal considered the financial circumstances of the Landlord Respondent and secondly the conduct of the parties.

Financial Circumstances of the Landlord

77. The Tribunal was of the opinion that in determining the amount of the Rent Repayment Order it should consider both the financial circumstances of the Respondent Landlord specifically in relation to the Property and generally.

78. The Tribunal had regard to the Upper Tribunal decision of *Parker v Waller and Others* [2012] UKUT 301 (LC). In that case it was held the amount of the Rent Repayment Order should be based upon the landlord's profit from renting the Property (removing the landlord's financial benefit). Therefore, the costs incurred in respect of the Property should be taken into account.

79. The Tribunal considered the statement of account provided by the Respondent Landlord and its Agent. The Agent as manager appeared to have deducted a number of costs from the rent it collected which is paid net of those costs to the Respondent Landlord. The costs itemised below are therefore treated as costs of the Landlord Respondent in respect of the Property.

80. The Tribunal noted that under the Tenancy Agreement a single payment of £680.00 was made at the start of the tenancy as an "Energy Contribution" for gas, electricity, water and internet. The Tribunal deducted this amount from the total.

81. The Tribunal did not accept the following items as being costs in respect of the Property because, in this case, they were company operating costs, which are taken into account when considering the general financial circumstances of the Respondent:

- Cost of renewing HMO Licence;
- Tenant Finder Fee for First 4 Lettings;
- Depreciation for Fixtures and Furniture inside the Property; and
- Other Expenses in Upkeep/Maintenance.

82. The rent paid to the Respondent Landlord by its Agent is the rack rent to which the Respondent is entitled (£30,000) and therefore is not a cost in respect of the Property.

83. The Tribunal found that, in the knowledge and experience of its members, the annual costs which the Respondent Landlord's Agent said had been incurred for electricity, gas, water, broad band and insurance were, on the balance of probabilities, correct. The amounts said to be incurred for gas and electricity were commensurate with those estimated by Ofgem for the size and occupancy of the Property. Therefore, notwithstanding the lack of invoices, receipts or proof of payment these amounts were accepted.

84. In the absence of evidence, the Tribunal was rather more circumspect about the amount paid for the loan on the Property. The Respondent Landlord said that Loan Payments of £24,800.00 were made, which amounted to about £10,300 for the 5 months in issue. The Tribunal noted from the entry at Companies House for the Respondent Landlord that the Property was security for a charge against the Respondent Landlord as a company. Whereas the monies raised might be to purchase the Property, this was by no means certain. The Land Registry Title Number LT448816 for 11 University Road, Leicester LE1 7RA indicates that the property was bought by Warwick Lodge Limited on the 24th December 2012 for £267,000. It is noted that the property was charged by Lloyds on the 11th February 2014. The funds could be used for some other corporate purpose not linked to the Property or for purchasing another property and therefore not a cost incurred in respect of the Property. In addition, the loan amount specified does not confirm whether it is interest only or a capital repayment loan.
85. In these circumstances the Tribunal was of the opinion that it should not take into account the loan repayments of £10,000. The Tribunal considered its approach justified in that the Respondent Landlord had substantial assets of which the Property was but one.
86. The outgoings for the period 24th January 2019 to 30th November 2019 which the Tribunal found were costs that it might take into account when determining the amount of the Rent Repayment Order are:
- | | |
|--|----------------|
| Electricity & Gas (£1,690.00 ÷ 12 x 5) | £704.00 |
| Water (£895.00 ÷ 12 x 5) | £373.00 |
| TV Licence (£145.00 ÷ 12 x 5) | £60.00 |
| Broad Band (£432.00 ÷ 12 x 5) | £180.00 |
| Property Insurance (£1,300.00 ÷ 12 x 5) | <u>£542.00</u> |
| Total | £1,859.00 |
| Less one-off energy payment (£680.00 ÷ 12 x 5) | <u>£283.00</u> |
| Total costs incurred by Warwick Lodge Limited | £1,576.00 |
87. The expenses of £1,576.00, when deducted from the rent paid of £21,962.00, gives a profit of £20,386.00.
88. In considering the Landlord Respondent's general financial circumstances the Tribunal found that it was a company with substantial Capital and Reserves and that no reduction in the amount of the order was warranted on that basis.

Conduct of the Parties & Previous Convictions of Landlord

89. The Tribunal then considered how much of the profit should be repaid.
90. The Tribunal was of the view that Parliament required tribunals to differentiate between offending landlords when determining the amount of rent to be repaid and to grade the repayment order accordingly. On this basis a higher award is to be made against those landlords who fail to obtain a licence to avoid the scrutiny of the local authority and flagrantly disregard the safety, health and welfare of their tenants. In contrast lower repayment order

might be made against those landlords where there are mitigating circumstances, and whose HMOs meet appropriate standards, notwithstanding that they have not complied with the administrative requirements intended to safeguard tenants.

91. The Tribunal formed this view from:
 - a) The legislation which requires tribunals to take into account, in particular (therefore not exclusively), the conduct of the landlord and the tenant, and the financial circumstances of the landlord when making a determination.
 - b) The purpose of the Orders as set out in Government Guidance as being:
 - Punishment of the offender,
 - Deter the offender from repeating the offence,
 - Dissuade others from committing similar offences,
 - Remove any financial benefit from the offender as a result of committing the offence.
92. This opinion is reinforced by the Upper Tribunal decision of *Parker v Waller and Others* [2012] UKUT 301 (LC) where it was said that there is no presumption or starting point that 100% refund of payments should be made, nor is the benefit obtained by the tenant in having had accommodation a material consideration. However, the length of time that the offence has been committed and the degree of culpability of the landlord are relevant factors.
93. In considering the conduct of the Landlord Respondent the Tribunal found no evidence that the Respondent Landlord or its Agent had at any time been convicted of an offence to which the specific legislation applies in the past or in relation to this offence.
94. However, the Applicants stated in their evidence that the Respondent Landlord or its Agent had failed to protect the Applicants' deposit for five months and that they had had to resort to an adjudication which reduced the retention from £1,200 to £420.00. The Tribunal took this conduct into account although also bearing in mind that there are other statutory penalties for failing to comply with these provisions.
95. The Tribunal found on its inspection that the Property was in fair to good condition. However, the statements, made by the tenants based on their experience, regarding the lighting and heating and the failure to address those issues, the soiled mattresses and the testing of the fire alarms, which were not contested by the Respondent Landlord or its Agent, were also taken into account.
96. The Tribunal also took into account the fact that the Respondent Landlord and its Agent are a professional landlord and property manager, respectively. Therefore, it is an expectation that they are compliant with the legislation and respond to maintenance issues appropriately.

97. The Tribunal accepted a degree of mitigation in respect of these matters and the failure to obtain a licence, due to the poor health of Mr Dilip Shah. Although he is not the sole director of a commercial entity, nevertheless, the illness of a key member of a family firm is likely to cause disruption which may understandably lead to a fall in standards in the short term.
98. The Tribunal also found that the Authority did not apply any penalties against the Respondent Landlord or its Agent for failure to obtain a licence, which supported their submission that the non-compliance was an oversight and not wilful.
99. The Tribunal found that there was no evidence to indicate that the Applicants had not acted other than reasonably in all the circumstances.
100. Having regard to all the circumstances, the Tribunal determines that a rent repayment order for £7,000.00 should be made, equating to approximately a third of the rental profit. This sum is to be paid within 48 days of this Order.

Application for Reimbursement of Fees

101. The Applicant applied for a reimbursement of the Application Fee of £100.00 pursuant to Rule 13 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 13 (2). An order for the reimbursement of fees, unlike that for costs, is not dependent upon the unreasonable behaviour of a party.
102. The Tribunal's jurisdiction is one in which costs are not generally borne by a losing party. Nevertheless, the Tribunal had found in favour of the Applicants who had acted reasonably and aspects of the management of the Property by the Respondent Landlord and its Agent had been found wanting, as identified in the Applicants' witness statements. Therefore, the Tribunal determined that it was just and equitable that the amount of the rent Repayment Order should not be depleted by the Application Fees.
103. The Tribunal therefore grants an order for reimbursement of the Application fee of £100.00. This sum is to be paid within 48 days of this Order.

Judge JR Morris

ANNEX 1 - 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.

ANNEX 2 – THE LAW

1. The relevant provisions regarding the offence are in Chapter 5 Part 2 Section 72 of the Housing Act 2004 (2004 Act) as follows:

Section 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) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

2. The relevant provisions regarding the Rent Repayment Orders are in Chapter 4 sections 40, 41, 43 and 44 of the Housing Act 2016 (2016 Act) as follows:

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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.

Section 263 Meaning of “person having control” and “person managing” etc.

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

- (a) receives (whether directly or through an agent or trustee) rents or other payments from—
 - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
 - (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
 - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
- and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

4. **Rule 13 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 13 (2)** states:

- (2) *The tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*
- (3) *The tribunal may make an order under this rule on an application or on its own initiative.*