FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/HMF/2020/0255**
HMCTS code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**Studio 7, 231 Lillie Road, London SW6 7LN**
Applicants	**:**	**Mr Rafiqul Islam and Ms Justyna Siwon**
Representative	**:**	**Mr Mark Lahaise of Advice4Renters**
Respondent	**:**	**Mr Dilip Madlani**
Representative	**:**	**In person**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Ms S Coughlin MCIEH**
Date of Hearing	**:**	**16th July 2021**
Date of Decision	**:**	**13th August 2021**

DECISION

Description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in electronic bundles, the contents of which we have noted. The decisions made are set out below under the heading "Decisions of the tribunal".

Decisions of the tribunal

(1) The tribunal orders the Respondent to repay to the Applicants by way of rent repayment the sum of £6,579.

(2) The tribunal also orders the Respondent to reimburse the application fee of £100 and the hearing fee of £200 paid by the Applicants.

Introduction

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**").

2. The basis for the application is that the Respondent was controlling a house in multiple occupation ("**HMO**") which was required under Part 2 of the Housing Act 2004 ("**the 2004 Act**") to be licensed at a time when it was let to the Applicant but was not so licensed, and that it was therefore committing an offence under section 72(1) of the 2004 Act.

3. The Applicants' claim is for repayment of rent paid during the period from 3rd December 2018 to 2nd December 2019. The application was made on 26th November 2020. The amount originally sought was £9,600, but prior to the hearing the Applicants said that the total paid during that period – and therefore the amount sought – was only £8,100.

4. At the hearing, a Polish interpreter translated everything that was said from English into Polish for the benefit of Ms Siwon.

Applicants' case

5. In written submissions the Applicants state that the Respondent had control of or managed an unlicensed HMO throughout the period of claim.

6. Their flat was in the basement of 231 Lillie Road and consisted of three bedrooms, a shared kitchen/living area and a shower/toilet shared

between two bedrooms (the other one having its own separate shower/toilet). The Applicants lived in one bedroom with their young son and shared the flat with other tenants. The other tenants were not related to the Applicants and nor did they form part of the Applicants' household.

7. The flat was part of a building and was a 'self-contained flat' which met the standard test of an HMO as set out in section 254 of the Housing Act 2004 through the relevant period.

8. The local housing authority's additional licensing scheme came into operation on 15th June 2017. From 1st October 2018 the national mandatory licensing scheme applied to HMOs which were less than three storeys high. The flat should have been licensed as an HMO under the local housing authority's additional licensing scheme throughout the relevant period, as 3 to 4 people were sharing the flat. In addition, for the part of the relevant period when 5 people were sharing the flat it should also have been licensed under the national mandatory licensing scheme.

9. According to a letter from the local housing authority the flat was not licensed for any part of the relevant period, the Respondent only starting to make an application on 21st January 2021.

10. During the whole of the period to which the application relates the Respondent was the Applicants' landlord under a tenancy agreement, rent was paid to him by the Applicants and he was the registered freehold owner of the building of which the flat formed part.

11. The Applicants have provided evidence of the amount of rent paid by way of copy bank statements. They were not in receipt of Housing Benefit / Universal Credit during the relevant period. The rent included electricity and water rates but the Applicants do not know how much these were or whether gas was included in the rent.

12. As regards the Respondent's conduct, the Applicants state that he appears to be a professional landlord and should have been aware of the licensing requirements. They also comment that he appears not to have complied with the local housing authority's HMO standards including as to fire safety (no working smoke alarm or Automatic Fire Detection System) and as to electrical safety and supply. The Applicants submit that this is particularly serious as they were a family with a 4 to 5 year old child at the time.

13. The Respondent also failed to deal with disrepair issues properly. In the end the Applicants had to move out following flooding of sewage into the flat from an outside drain. There were also problems with an electrical pump for disposing of waste from the shower/toilet, and

when the pump did not work – sometimes for up to a week – they could not use the shower/toilet and had to use the facilities in the local McDonald's, with their son having to use a bucket.

14. As regards the Respondent's financial circumstances, he owns a number of properties in the London area, and the Applicants have provided details. He also is or was the director of a company that is or was the owner of other properties of which the Applicants have provided details.

15. As regards the Applicants' own conduct, they accept that there were times when there was a temporary delay in paying a small portion of the rent. However, in relation to those months when they paid £700 rather than £800, this was because it had been agreed that the rent would be reduced by £100 for so long as there was no washing machine.

16. Both of the Applicants have given witness statements and were available to be cross-examined on them at the hearing. In Mr Islam's first statement he says that he and his family lived in one bedroom (Room 1) and that one of the other bedrooms (Room 2) was occupied by a Mr Massimo Ranghelli throughout the time that the Applicants were tenants. Mr Ranghelli was a chef who worked at the Respondent's restaurant in Victoria. He shared the kitchen/living area with the Applicants. He also had to move out because of the flooding, and he moved on 3rd December 2019 to another flat owned by the Respondent. In relation to the third bedroom (Room 3), people moved in and out quite often. Sometimes there was a single occupier of Room 3, but sometimes two people shared and sometimes it was empty. A Mr Mohammed Ali lived there for about 3 to 4 months and moved out in about May/June 2019. There was also another person who lived in Room 3 for about 2 to 3 months and a further person who lived there between September and December 2019.

17. In a reply to the Respondent's written representations, the Applicants note that at the top of Mr Ranghelli's tenancy agreement dated 1st August 2019 there is a handwritten note saying "Renewed 1st Aug – 19" and they suggest that this indicates that there was a prior tenancy agreement in favour of Mr Ranghelli.

18. Mr Islam's first witness statement also gives more details regarding the sewage flooding. He states that the problem happened about four or five times and that someone came to deal with it but it was seemingly not fixed properly. On the final occasion the sewage came into the kitchen/living area and the shower/toilet was about 4 inches deep at its worst. The local housing authority inspected the flat shortly thereafter and took some photographs and a short video which form part of the hearing bundle. His statement also refers to dirty water dripping down the ceiling from the flats above down the electric light cable and where

the smoke alarm was. He reported the problem to the Respondent on a number of occasions but the problem continued. Attached to his statement is a letter from the local housing authority's Private Housing Standards Officer dated 16th March 2021 detailing the condition of the Property as at 10th December 2019.

19. Mr Islam also states that he did not get back all of his belongings from the Respondent when he moved out and that the Respondent did not return his £800 deposit.

20. At the hearing, Mr Lahaise for the Applicants noted that the Respondent was arguing that the rent arrears amounted to £2,700, whereas the Applicants believed the arrears to be just £706. The main reason for the discrepancy was the Applicants' belief that the rent had been reduced because of the lack of a washing machine.

Respondent's case

21. In written submissions the Respondent states that the Applicants approached him many times for accommodation but he did not have anything available at the time to suit their budget. The Respondent then decided "as a kindness" to offer Mr Islam a temporary room at the Property on the understanding that the Applicants would move out within 6 months. When they moved into the Property it was a vacant 3-bedroom flat, and they were on their own in the flat for first 6 months.

22. As they did not move out after 6 months and the Respondent was making a loss, the Respondent offered a room to a member of his staff and then 3 months later in August 2019 he offered another room to a separate person known to his caretaker.

23. The Respondent accepts that he was in breach from August 2019 until December 2019, as over this period he had three different households. He states that no action was taken by the local housing authority as the breach was unintentional. He was not aware of the amendments of the HMO legislation at that time. He was told by the local housing authority to register as an HMO if he rents out individual rooms in the future

24. In his statement he expresses the view that since the flat is now offered as a family flat he does not need to obtain a licence. The Property has never been rented out to individual tenants in the past as it has always been occupied by a family. He regrets the error on his part in this case.

25. The Respondent also states that the Applicants owe rent arrears of £2,700 and that they have never paid their rent on time and have always paid short.

26. The hearing bundle contains a statement purportedly from a Dario Remane of Flat 7, 242 Lillie Road. The statement says that Mr Remane is currently in Mozambique but helped as a caretaker for the Respondent for the last 9 years in relation to his properties. He states that Room 2 at 231 Lillie Road has always been empty since the Applicants moved in to Studio 7. A friend of his then occupied Room 2 from the second week of October 2019.

27. The Respondent states that his chef, Mr Massimo Ranghelli, stayed occasionally in Room 3 until 1st August 2019 when he took up an Assured Shorthold Tenancy. Prior to that date Mr Ranghelli only stayed for odd nights in Room 3, the rest of the time living in Victoria above the Respondent's restaurant. Room 2 was vacant all the time until October 2019 when Mr Gulherme moved in, although prior to that the Respondents used it occasionally to store items.

28. The hearing bundle contains some evidence of medical issues that the Respondent has experienced. The Respondent has also given witness statements and was available to be cross-examined on them at the hearing.

29. At the hearing the Respondent said that there had been no rent reduction to compensate for the lack of a washing machine and expressed scepticism at the idea that he would have agreed a rent reduction of £100 per month for this. Regarding the flooding, he said that this was very unfortunate but was caused by the neighbour's drain becoming blocked. He accepted that he had committed a criminal offence in failing to license the Property but said that this was only for 2 months.

30. In relation to any utility charges which formed part of the rent, the Respondent had no evidence as to the amounts included within the rent. He did accept that no rent was payable for most of December 2019 because the Applicants had to vacate due to the flooding, but his feeling was that 10th December was the date from which no further rent was payable.

31. Regarding his financial circumstances, the Respondent said that he was currently in debt.

Cross-examination

32. In cross-examination the Respondent was asked why Mr Ranghelli moved to 231 Lillie Road in August 2019, and the answer appeared to be that the Respondent was at that point able to offer him a tenancy. The Respondent was also asked about the note at the top of Mr Ranghelli's tenancy agreement but his answer was unclear.

33. The Respondent was also asked when the fire inspection system stopped working, and he replied that it had not stopped working. He was also asked questions about the drainage system.

34. Mr Islam was asked why a landlord would agree a rent reduction of £100 per month just for the absence of a washing machine, but he was adamant that this was what had been agreed. Mr Islam also insisted that he had paid a deposit, although he accepted that he did not have a receipt.

35. When it was put to Mr Islam that he must have been happy in the Property because he stayed for 2 years, he said that he was not happy because the Respondent ignored his various concerns. He stayed because the rent was low and he could not afford more at that time.

36. Mr Islam was also asked questions about various photographs showing water damage and other problems such as a missing fire alarm. He said that there were problems with the toilet every few months.

Relevant statutory provisions

37. Housing and Planning Act 2016

Section 40

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

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

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

	Act	***section***	***general description of offence***
1	Criminal Law Act 1977	section 6(1)	violence for securing entry

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

Section 41

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

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

Section 43

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

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

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

Section 44

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

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

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

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

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

Housing Act 2004

Section 72

(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 … but is not so licensed.

(5) In proceedings against a person for an offence under subsection (1) … it is a defence that he had a reasonable excuse … for having control of or managing the house in the circumstances mentioned in subsection (1) … .

Tribunal's analysis

38. The Respondent has accepted that Mr Massimo Ranghelli was in occupation of the Property for at least 2 (or possibly 4) months and that this period forms part of the period to which the rent repayment application relates.

39. In relation to that period at least, we are satisfied that the Property required a licence under the local housing authority's additional licensing scheme. It is common ground that it was not so licensed and it appears to be common ground that it required a licence during that period. The Respondent also accepts that he had control of and/or was managing the Property throughout the relevant period, and on the basis of the evidence before us we are satisfied that the Respondent was "a landlord" during this period at least for the purposes of section 43(1) of the 2016 Act.

The defence of "reasonable excuse"

40. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 2 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence. The Respondent has accepted that he cannot successfully run this defence, and on the basis of the evidence before us we do not consider that the Respondent had a reasonable excuse for the purposes of section 72(5). Mere ignorance of the law (if the Respondent was indeed ignorant) is insufficient for these purposes.

The offence

41. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of control or management of an unlicensed HMO under section 72(1) of the 2004 Act is one of the offences listed in that table.

42. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. Having determined that the Respondent did not have a reasonable excuse for

failing to license the Property, we are satisfied beyond reasonable doubt that an offence has been committed under section 72(1), that part of the Property was let to the Applicants at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which the application was made.

Amount of rent to be ordered to be repaid

43. Based on the above findings, we have the power to make a rent repayment order against the Respondent.

44. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period.

45. In this case, the claim does relate to a period not exceeding 12 months. It is also common ground that no universal credit had been paid in respect of the rent, but there is a dispute between the parties as regards the length of period for which the Respondent was committing the offence. This in turn depends on the factual point as to how long the Property was a licensable HMO.

46. Aside from the occupation of Room 2 by Mr Ranghelli, there is some evidence that Room 3 was occupied by various people at various points. However, the dates are unclear and the identity of some of the occupiers is unclear. This is not meant as a criticism of the Applicants but rather by way of explanation of our conclusion that it is difficult to state with any certainty when if at all the Property was rendered a licensable HMO by virtue of Room 3 being occupied.

47. Turning to the occupation of Room 2 by Mr Ranghelli, having considered the written and oral evidence we prefer the evidence of the Applicants to that of the Respondent. Whilst it was not easy to test Ms Siwon's evidence, partly because of the language barrier, Mr Islam came across quite well and his evidence was more credible than that of Mr Madlani. Mr Madlani's written submissions in relation to Mr Ranghelli were inconsistent, and his answers under cross-examination were unconvincing. In particular, having claimed that Mr Ranghelli was not in actual occupation until 1st August 2019 he was unable to explain the handwritten note at the top of the tenancy agreement dated 1st August 2019 which stated "Renewed 1st Aug – 19". We do not consider the written statement allegedly from a Dario Remane to be persuasive.

48. Taking all of the evidence together, we are satisfied that Mr Ranghelli was in occupation for the whole of the period to which the rent repayment application relates, that the Property required a licence under the local housing authority's additional licensing scheme for the whole of that period as it was occupied by three or more persons comprising two or more households and – for the reasons already stated – that the Respondent was committing an offence under section 72(1) of the 2004 Act for the whole of that period.

49. As regards the amount of rent paid, the Respondent does not seem to dispute that the Applicants paid £8,100 by way of rent in respect of the period for which they claim rent repayment. However, there is a dispute between the parties as to the extent of the Applicants' rent arrears.

50. To the extent that any rent arrears relate to the 12 month period covered by the application, any such arrears are not relevant to the maximum amount of rent repayment that can be ordered. This is simply because if it has not been paid then it cannot be ordered to be repaid. However, if and to the extent that rent arrears accrued prior to that 12 month period those arrears should be deducted from the maximum amount of rent repayment that can be ordered as in our view any such previous underpayment of rent is a relevant circumstance to be taking into account when determining the amount of rent repayment to which the Applicants are entitled.

51. The Applicants claim that it was agreed that the rent would be reduced by £100 per month for so long as there was no washing machine and that this agreement was in place for several months. Whilst it is perfectly possible that the Applicants believe this to be the case, in our view it is not plausible that the Respondent would have agreed what amounts to a 12½% reduction for several months just because of the lack of a washing machine, especially as it would have been much cheaper just to buy one. In the absence of any written agreement our view is that this would have been agreed as a one-off deduction (i.e. for one month) but not as an ongoing reduction in the amount of rent payable. It is apparent from the bank statements that the Applicants paid only £700 instead of £800 per month for 10 months prior to the period of the rent repayment claim. Based on the above finding we consider that 9 of those payments represent an underpayment of £100 and therefore that there was an underpayment of £900 prior to the period of the rent repayment claim. We do not accept, based on the evidence provided, that there were any other arrears prior to the 12 month period covered by the application.

52. However, it is also the case that the Applicants paid rent for the whole of December 2019 but that they had to move out early in that month due to the problems with sewage flooding. The Respondent accepts that they were not liable to pay rent after they moved out but states that

they moved on 10th December, whilst the Applicants state that they moved on 8th December. We prefer the Applicants' evidence on this point and therefore there was an overpayment of £800 divided by 31 (the number of days of December) multiplied by 23 (the number of days of overpayment) = £594. Therefore, we will deduct from any rent repayment the sum of £900 less the sum of £594 = £306.

53. Under sub-section 44(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 the relevant part of the 2016 Act applies.

54. The Upper Tribunal decision in *Vadamalayan v Stewart (2020) UKUT 0183 (LC)* is one of the leading authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. Importantly, it was decided after the coming into force of the 2016 Act and takes into account the different approach envisaged by the 2016 Act.

55. In her analysis in *Vadamalayan*, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted. She departs from the approach of the Upper Tribunal in *Parker v Waller (2012) UKUT 301*, in part because of the different approach envisaged by the 2016 Act, *Parker v Waller* having been decided in the context of the 2004 Act. Judge Cooke notes that the 2016 Act contains no requirement that a payment in favour of a tenant should be reasonable. More specifically, she does not consider it appropriate to deduct everything that the landlord has spent on the property during the relevant period, not least because much of that expenditure will have repaired or enhanced the landlord's own property and/or been incurred in meeting the landlord's obligations under the tenancy agreement. There is a possible case for deducting utilities, but otherwise in her view the practice of deducting all of the landlord's costs in calculating the amount of the rent repayment should cease.

56. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases where the landlord's good conduct or financial hardship will justify an order less than the maximum.

57. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James* (2021) UKUT 0038 (LC) and *Awad v Hooley (2021) UKUT 0055 (LC)*. In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the

starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. He also noted that section 46(1) of the 2016 Act specifies particular circumstances in which the FTT must award 100% and must disregard the factors in section 44(4) in the absence of exceptional circumstances, and he expressed the view that a full assessment of the FTT's discretion ought to take section 46(1) into account. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

58. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4).

59. Therefore, adopting the approach of the Upper Tribunal in the above cases and starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

Conduct of the parties

60. The Applicants' conduct has been broadly good, save that they have been in arrears of rent on a few occasions. Whilst they have some legitimate concerns about the Respondent's own conduct, the failure to pay the rent in full on a few separate occasions is a relevant matter as regards conduct.

61. The Respondent's conduct has been poor. He did not deal effectively with the problems of sewage flooding, which must have been very distressing for a couple with a young child, and it would have been humiliating to have to go to the local McDonald's to wash and use the toilet due to the repeated problems with the pump which again appear not to have been addressed effectively. There have also been other significant problems, including in relation to the smoke alarm and electrical equipment, and the Applicants' evidence has been supported by evidence from the local housing authority.

62. In addition, not only has the Respondent committed the criminal offence of controlling and/or managing an unlicensed HMO but he has done so despite having a significant property portfolio and being a director of a property-owning company. The Respondent claimed lack of knowledge of the law, but that is an insufficient excuse even for someone who is letting out a single property and has no knowledge of property law. It is more serious for someone who owns or is in part-

control of a number of different properties, particularly when the legislation has been in force for several years.

63. Furthermore, the Respondent did not come across well in written representations or at the hearing, and he tried to give the impression that he was acting with great kindness and doing the Applicants a great favour by allowing them to rent a room. His evidence regarding Mr Ranghelli was particularly lacking in credibility.

Financial circumstances of the landlord

64. Whilst we have not been provided with any specific financial information on the Respondent, the Applicants have shown that he has (or at least had) a property portfolio and was a director of a property-owning company. The Respondent has claimed that he is in debt but has brought no supporting evidence, credible or otherwise.

Whether the landlord has at any time been convicted of a relevant offence

65. The Respondent has not been convicted of a relevant offence, and nor is it alleged that he has been convicted of any offence.

Other factors

66. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, in particular, take into account" the specified factors. One factor identified by the Upper Tribunal in *Vadamalayan v Stewart* as being something to take into account in all but the most serious cases is the inclusion within the rent of the cost of utility services. There is some evidence in the present case that the rental payments included charges for utilities, but neither party has provided any details and therefore we are not in a position to make any deductions for utilities.

67. We are not persuaded that the Respondent's medical issues are circumstances to be taken into account in this case, and nor do we consider that there are any other specific factors which should be taken into account in determining the amount of rent to order to be repaid, save that we consider that the rental underpayment prior to the 12 month rent repayment period less the rental overpayment for the period 9th to 31st December 2019 (£306 in aggregate) should be factored in.

Amount to be repaid

68. The first point to emphasise is that a criminal offence has been committed. There has been much publicity about licensing of HMOs, and no mitigating factors are before us which adequately explain the failure to obtain a licence. The Respondent claims ignorance of the law, but this is highly surprising for someone with a property portfolio.

69. We also note that the legislation is in part intended to assist local authorities in locating and monitoring HMOs. Multi-occupied property has historically contained the most unsatisfactory and hazardous living accommodation, with particular concerns about inadequate fire safety provision. Against this background, the failure to apply for a licence is potentially extremely serious. We are also aware of the argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable HMOs without first obtaining a licence.

70. Secondly, the Respondent's conduct has not been good for the reasons already summarised. Thirdly, even if it could be argued that the Applicants did not suffer direct loss through the Respondent's failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss then this will significantly undermine the deterrence value of the legislation. Fourthly, the Respondent's financial circumstances would appear to be relatively good.

71. On the other hand, whilst the Applicants' conduct has generally been good, they have been in rent arrears a few times. Although rent repayments are not primarily intended to reflect the worthiness of tenants to receive them, nevertheless the legislation requires poor conduct on the part of the tenant to be taken into account when assessing the amount. Also, for the reasons set out above we consider the rent arrears which accrued prior to the 12 month period (less the later overpayment) to be a relevant separate circumstance to be taken into account. In addition, the Respondent has not at any time been convicted of a relevant offence.

72. Therefore, in our view there is some scope for deductions from the *Vadamalayan* starting point of 100% of the amount of rent claimed. Taking all the circumstances together, including the Applicants' failure to pay the rent in full at all times and the lack of any criminal conviction, we consider that (aside from the £306 reduction for unpaid rent) a 15% deduction would be appropriate in this case. Taking the amount claimed, namely £8,100, a 15% deduction would reduce this to

£6,885. Factoring in the net rent arrears of £306, this amount needs to be reduced further to £6,579. Accordingly, we order the Respondent to repay to the Applicants the total sum of £6,579.

Cost applications

73. The Applicants applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £100 and the hearing fee of £200.

74. The Respondent did not object to this and we are satisfied that it is appropriate in the circumstances to order the Respondent to reimburse these fees.

Name: Judge P Korn **Date:** 13th August 2021

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.