FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AM/HMF/2020/0107**
HMCTS Code	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 3, 25 Parkholme Road, London E8 3AG**
Applicants	**:**	**(1) Nicola BANKS** **(2) Rebecca DUDGEON**
Applicant's representative	**:**	**Alastair MacLenahan of Justice for Tenants**
Respondent	**:**	**Angeles Doria MARTIN**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge T Cowen** **Ms Rachael Kershaw**
Date of decision	**:**	**15 October 2021**

DECISION

The Tribunal orders that:

(1) The Respondent is required to make a rent repayment to the First Applicant in the sum of £1,480.65.

(2) The Respondent is required to make a rent repayment to the Second Applicant in the sum of £1,559.28.

(3) The Respondent is required to reimburse the Applicants' tribunal fees in the sum of £300.

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected 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 before the tribunal at the hearing were in the form of electronic bundles.

Following the hearing, the Tribunal became aware of recent Upper Tribunal decisions in *Ficcara v James* [2021] UKUT 38 (LC) and *Awad v Hooley* [2021] UKUT 55 (LC) which appeared to be relevant and which had not been cited at the hearing. The Tribunal wrote to both sides directing them to file written submissions on the impact of those recent decisions. Both the Applicants' representative and the Respondent submitted written representations accordingly. This contributed to the delay between the date of the hearing and the date of this decision.

The Tribunal took account of all of the documents submitted and all of the evidence and submissions made at the hearing, and the written submissions filed after the hearing, in reaching its decision.

REASONS FOR ORDER

The application

1. The Applicants made this application for a rent repayment order under section 41 of the Housing Act 2016 on 1 May 2020. It was based on an allegation that the Respondent has committed the following offence:

   - Having control of or managing an unlicensed house under section 95(1) of the Housing Act 2004 for the period from 12 January 2020 to 24 March 2020,

   which is an offence to which Chapter 4 of the Housing and Planning Act 2016 applies, pursuant to section 40(3) of that Act.

2. The amount claimed by way of rent repayment in respect of this period is as follows:

2.1. the sum of **£1,974.20** in respect of the First Applicant

2.2. the sum of **£2,079.04** in respect of the Second Applicant,

making a total of **£4,003.24**.

3. The Applicants were not in receipt of a housing element of universal credit or housing benefit during the relevant period. There was no evidence of any utilities or council tax paid for by the Respondent at the Property in respect of the relevant period.

4. The figure of **£4,003.24** is therefore the maximum which the Applicants could be awarded under section 44 of the 2016 Act.

The Evidence

5. The Applicants' evidence was contained in their joint statement of case which was signed by both Applicants together with a statement of truth. The Applicants gave oral evidence in which they confirmed the truth of their statement of case and answered questions put by the Respondent and the Tribunal.

6. The Respondent's evidence was contained in emails treated by the Tribunal as her statement of case and she gave oral evidence and was cross-examined by the Applicant's representative. She also answered questions put by the Tribunal.

Findings of Fact

7. Most of the facts are agreed between the parties. The differences between them are largely attributable to their interpretations of the facts. As a result of hearing and reading the evidence and submissions and reviewing the documents relied upon in support, we have made the following findings of fact.

The Property

8. The Property is a three bedroom maisonette on the first and second floors of a three storey converted house.

9. The Respondent is the joint registered owner of a long leasehold estate in the Property. She and her husband purchased it on 24 September 1991. The Respondent's husband, the other registered co-owner of the Property, was not a party to the tenancies in question and did not play a role in managing or controlling them. He is not a party to these proceedings.

The Tenancies

10. A room in the Property was let to the First Applicant on 12 January 2020 under an assured shorthold tenancy granted by the Respondent. It is expressed by the written tenancy agreement to be a "periodic tenancy commencing at 12:00 noon on 12th January 2020 and continuing for a period of three months until the 12th April 2020". The language used to define the term seems to be self-contradictory in that it is effectively expressed be a fixed term and a periodic tenancy at the same time. The most likely interpretation is that this created a fixed term tenancy of 3 months, but nothing turns on this. The rent was £850 per month payable in advance on the 26th of each month.

11. Another room in the Property was let to the Second Applicant on 12 January 2020 under an assured shorthold tenancy granted by the Respondent. It is expressed by the written tenancy agreement to be a "periodic tenancy commencing at 12:00 noon on 12th January 2020 and continuing for a period of six months until the 12th April 2020", which involves the same contradictory language. It is likely that this created a fixed term tenancy of 3 months, but again nothing turns on this. The rent was £850 per month payable in advance on the 26th of each month.

12. There was a deposit payable of £850 in respect of each of the two tenancies.

13. There was another occupant of the Property, Ben Wells Knight, who was a friend of the Respondent's son. He is not an applicant in these proceedings, but the fact of his occupation is important for establishing the elements of the alleged offence.

14. All of the occupants of the Property, during the relevant period, shared a kitchen and a bathroom.

15. Both of the Applicants vacated the Property by 24 March 2020, in advance of the expiry of their agreed terms. There is a dispute about the way in which the Applicants left the Property. The Applicants claim that they were effectively forced out by the Respondent. The Respondent claims that they left by agreement. That dispute will be considered when we come to the issue of conduct below.

16. There is no dispute that they had both vacated by 24 March 2020 and that they were not charged rent for the remainder of that month (rent being payable in advance on the 12th of each month).

17. The Respondent admits that the tenancies were granted and admits that the following rent was paid by the Applicants:

Date paid	Rental period	Paid by	Amount (£)	
09.01.2020	12.01.2020-11.02.2020	Kelly Banks on behalf of First Applicant	850.00	
27.02.2020	12.02.2020-11.03.2020	First Applicant	850.00	
	12.03.2020-24.03.2020	First Applicant	274.20	deducted from £850 deposit
App 1 TOTAL			**1,974.20**	
Date paid	**Rental period**	**Paid by**	**Amount (£)**	
12.01.2020	12.01.2020-11.02.2020	Rebecca Dudgeon	850.00	
03.02.2020	12.02.2020-11.03.2020	Rebecca Dudgeon	850.00	
03.03.2020	12.03.2020-departure	Rebecca Dudgeon	329.04	After refund of £520.96 in respect of period moving out
App 2 TOTAL			**2,029.04**	

These figures accord with the amounts which form the basis of the rent repayment order application.

Licensing

18. On 10 May 2018, the Council exercised its powers under section 55(b) and 56 of the 2004 Act and designated the entire area of its district (ie the whole of the London Borough of Hackney) as being subject to additional licensing. The designation applies to "all Houses in Multiple Occupation ("HMOs") that are occupied under a tenancy or a licence unless it is an HMO that is subject to mandatory licensing under section 55(2)(a) of the Housing Act 2004 or is subject to any statutory exemption and with the exception that, in respect of a converted block of flats to which section 257 of the Housing Act 2004 applies, the Additional Licensing scheme will only apply where all the units of accommodation in the block are privately rented."

19. The additional licensing designation came into force on 1 October 2018 and will cease to have effect on 30 September 2023.

20. The Property is within the area of the designation. It is not subject to mandatory licensing, nor any statutory exemption and it is not a converted block of flats to which section 257 applies.

21. The Property is an HMO within the meaning of the "standard test" in section 254(2) of the 2004 Act because:

21.1. It consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

21.2. During the relevant period of the claim, the living accommodation was occupied by the two Applicants and Ben Wells Knight, being three persons who did not form a single household, as their only or main residence.

21.3. The Applicants were paying rent.

21.4. The Property was not used for any purpose other than as a dwelling for its said occupants.

21.5. The households who occupied the living accommodation shared basic amenities, namely a bathroom facilities and cooking facilities.

22. The Respondent was in control of the Property or was managing it within the meaning of section 263 of the Housing Act 2004, because she was receiving rent from the Applicants. There was no evidence as to whether the rent payable under the tenancy agreements was a rack-rent, but if the Property was let at a rack-rent, then the Respondent is a person who would have received it.

23. The Respondent did not hold the necessary licence at any time during the period of the Applicants' occupation and no application for an HMO was made during that time. There is evidence from the local authority to show that the Respondent did not hold the requisite licence for the Property during the relevant period and the Respondent admits that she did not hold such a licence.

24. It follows that from 12 January 2020 until 24 March 2020, the Respondent was a person having control of or managing a house which is required to be licensed, but was not so licensed.

Reasonable excuse

25. Pursuant to section 95(4), it is a defence if the Respondent had a reasonable excuse for the acts or omissions which would amount to the commission of the offence.

26. The Upper Tribunal stated in relation to an HMO case in *IR Management Services Limited v Salford City Council* [2020] UKUT 81 at paragraph 40 that "the issue of reasonable excuse is one which may arise on the facts of a particular case without [a respondent] articulating it as a defence (especially where [a respondent] is unrepresented). Tribunals should consider whether any explanation given … amounts to a reasonable excuse whether or not [the respondent] refers to the statutory defence". See also *D'Costa v D'Andrea* [2021] UKUT 144.

27. We therefore need to consider whether there is a reasonable excuse in this case, even though the Respondent has not expressly raised it. Even so, according to the *IR Management* case, the burden of proof lies with the Respondent to prove on the balance of probabilities that there is a reasonable excuse. The only matters raised by the Respondent which could be considered in the context of a reasonable excuse are as follows:

    27.1. The Respondent claims to have been unaware of the need for an HMO licence. Ignorance of the law can amount to a reasonable excuse in certain circumstances. In the case of *Perrin v Commissioners for HMRC* [2018] UKUT 156 TCC at para 82, the Tribunal said: "Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long." Obviously in this case, we should substitute "landlord" in the place of "taxpayer". In other words, ignorance of the law can be a reasonable excuse, but not by itself. There needs to be evidence of the circumstances and reasonableness of the ignorance. There was not sufficient evidence for us to make this assessment of the Respondent's claimed ignorance in this case.

    27.2. The Respondent claims that she obtained advice from a lettings agency and that they did not advise her of the need for an HMO licence. There was no documentary evidence of this advice and no witness was called to confirm it. In any event, the mere absence of advice (rather than actual erroneous advice) is not a reasonable excuse in our judgment.

28. In our judgment, in this case, there is insufficient evidence for us to find that there was a reasonable excuse, on the evidence available to us.

The making of a rent repayment order

29. It follows from all of the above that the Respondent is guilty of an offence to which Chapter 4 of the 2016 Act applies, pursuant to section 40(3) of that Act. Because of the clear documentary evidence, the credible oral evidence of the Second Applicant, and the admissions made by the Respondent, we are sure of the truth of these findings beyond reasonable doubt, which is the appropriate standard of proof in a case such as this.

30. As a result of our above findings and pursuant to section 40(1) of the 2016 Act, we have power to make a rent repayment order in this case in respect of the offences and the period set out above.

31. This application by tenants is made under section 41(2) of the 2016 Act. We have found that the offences relate to housing that, at the time of the offences, was let to the Applicants as tenants. The application was made on 1 May 2020. We have also found that the licensing offence was committed up to 24 March 2020. Therefore the offence was committed during the period of 12 months ending with the day on which the application was made. This satisfies the requirements of section 41(2) of the 2016 Act.

32. We therefore may make a rent repayment order under section 43(1) of the 2016 Act.

The amount of the rent repayment order

33. The maximum amount claimed by the Applicants is set out and calculated above. It relates to the period set out in section 44(2) of the 2016 Act and it does not exceed the amount specified in section 44(3).

34. We have no evidence that the Respondent has been convicted of any offence to which Chapter 4 of the 2016 Act applies, for the purposes of section 44(4)(c) of the 2016 Act.

35. We are, therefore, required by section 44(4)(a) of the 2016 to take account of the conduct of the landlord and the tenants and the financial circumstances of the Respondent.

Conduct of the tenants: the evidence

36. There is nothing negative to say about the conduct of the tenants. They paid their rent on time and were very accommodating of the landlord's request for early termination and for the premises to be deep cleaned in the light of the pandemic.

Conduct of the landlord: the evidence

37. Issues relating to the conduct of the landlord formed the largest part of the evidence given at the hearing.

Circumstances of letting

38. The background to the lettings is necessary to set out briefly in order to understand properly the context of the landlord's conduct. The Respondent is not a professional landlord. Before and immediately after this letting, the Property was the family home of the Respondent and her family. The Respondent told the Tribunal that her husband had been very ill for some time and had recently recovered. They decided to take this opportunity to go abroad on what she described as a "dream trip" for

three months. The trip would also include an opportunity to visit their son, who was living at the time in Bali.

39. Before departing, the Respondent and her husband decided to allow Ben Wells Knight to stay in the Property with some friends. Although Ben Wells Knight himself did stay in the Property, as noted above, his friends did not. So the Respondent advertised for two other tenants to occupy the Property. She said that she was overwhelmed with hundreds of people applying and she chose the first two, the Applicants. The Respondent said that she sorted the whole thing out in three days. It is clear to this Tribunal that the Respondent's decision to let the Property to the Applicants was a fairly last-minute decision and had not previously been planned.

40. The Respondent did not use the service of a lettings agency, but she said that she took some advice from one. Despite that, she remained unaware of the requirement for licensing, the laws about HMOs and other requirements relating to gas and electrical safety.

Rent deposit scheme

41. She also claimed that she was unaware of the requirement to place tenancy deposits in an authorised scheme. That was not strictly true. The Respondent's husband, Cameron, communicated extensively with the First Applicant before during and at the end of the tenancy. On 9 January 2020, the First Applicant messaged Cameron to ask about the deposit: "will it be in the deposit protection scheme thing?". Cameron replied to say: "I would prefer to avoid it but if I need to I will - this is a short term thing and I was hoping more to get by on trust."

42. It is true that the First Applicant replied to say "Ok. That's fine really", but that does not release the Respondent from her statutory obligation. We find that the Respondent and her husband acted together for these purposes and that this exchange of messages shows that the Respondent knew about the requirement for a deposit scheme, but deliberately chose to avoid it.

43. The Second Applicant's deposit was returned to her after she vacated the Property. The First Applicant's deposit was partially returned to her after she vacated the Property. Part was retained by the Respondent, by agreement, to cover the apportioned rent for part of the last month of the tenancy.

Safety certificates

44. The Respondent also admitted that:

    44.1. she did not obtain a gas safety certificate

44.2. she did not obtain an electrical safety certificate

45. These are serious omissions, as the statutory requirements for safety certificates are designed to protect tenants from potentially serious harm and the absence of such certification exposes the tenants to those risks.

46. In the Respondent's favour, however, it can be said that she complied with fire safety requirements.

Alleged forced eviction

47. The Applicants relied on the circumstances surrounding the termination of the tenancies in support of their case that the landlord's conduct was not satisfactory. In essence, they alleged that the Respondent had effectively forced them out of the Property.

48. The Applicants both vacated the Property by 24 March 2020, having agreed with the Respondent to terminate the tenancy on that day. In return, the Respondent agreed to waive or return the rent payable in respect of the remainder of the rental month.

49. It is important to keep in mind the prevailing circumstances in the days leading up to 24 March 2020. The COVID-19 pandemic was accelerating and most of the world, including the UK, were rapidly putting in place extreme measures to control the spread of the virus, such as lockdowns, curfews and travel restrictions. On top of that, there were conflicting and inaccurate rumours and high levels of fear and uncertainty. The Respondent was in the Far East with her family. They were finding it difficult to find places willing to allow them to stay and they quickly realised that the further planned legs of their trip were not going to be possible. They were originally expecting to be continuing their holiday for several more weeks, but understandably decided to make immediate plans to return to the UK as soon as possible.

50. It was in that context that the Respondent and her husband emailed the Second Applicant on 19 March 2020 and said: "we have been forced to get a flight back home …we have no other option but to come back home…We are a bit shocked but powerless to do anything. I will send this off to Ben and Nicola so that we are all on the same page with information. We are not sure of the hotel situation in London either based on the news today. We need to talk."

51. By 20 March 2020, WhatsApp messages between Cameron and the First Applicant show that the Applicants were planning to vacate the Property by 26 March 2020 and that the First Applicant had already found somewhere else to go. She and Cameron discussed apportioning the rent and arranging to deep-clean the Property before the Respondent's family arrived. It is clear from the context and the content of those messages

that the purpose of the proposed deep-clean was to clear surfaces in the Property of the COVID-19 virus between one set of households leaving and the next arriving. For that reason, it was not an option for the incoming Respondent to do the deep-clean herself. The Respondent was also understandably unwilling to introduce a professional "stranger" to go into the Property to perform a deep-clean. The First Applicant was not happy about being asked to do this and expressed her displeasure to Cameron.

52. However, in our judgment this was not a case of an unreasonable threat to the Applicants' deposit. It was borne of a reasonable fear of the virus in the middle of a worldwide panic. This is illustrated by messages sent by Cameron to the First Applicant at 14:09h on 21 March 2020 which said: "We cannot go to a dirty house given the circumstances…It's dangerous."

53. The Respondent and her family arrived back in the UK on or before 20 March 2020 and stayed in a hotel at Heathrow. They were keen to move back into the Property as soon as possible to save the costs of the hotel. They put pressure on the First Applicant to leave by 22 March 2020. At the same time, Cameron made clear to the First Applicant in messages that if she or the other tenants wanted to stay to the end of their fixed term contracts, then the Respondent and her family would make other plans. For example at 11:17am on 21 March 2020, he said: "If you want to stay until the end of the contract. It's no problem. We will find a place."

54. Meanwhile, Ben Wells Knight had also found somewhere else to stay and the Second Applicant was already in Scotland and needed only to arrange to collect her belongings from the Property.

55. The Second Applicant had a WhatsApp message exchange with Ben Wells Knight on 22 March 2020. He asked about the Second Applicant's plans for moving out and she replied that she had spoken to the Respondent about them quarantining in the Property, which would prevent the Second Applicant from collecting her belongings. Ben Wells Knight said that the Respondent and her family could occupy his room, which was free. The Second Applicant replied: "They've not given any notice…So I'm a bit stressed about it because I don't know when I can or should come down."

56. We find that the Applicants were not evicted or forced out by the Respondent. The Applicants freely agreed to vacate the Property, albeit in exceptional pressured circumstances, and the Respondent made it clear that the Applicants could elect to stay. The Applicants were under pressure, but it was the pressure of the incipient pandemic, rather than any undue pressure from the Respondent. We do not think it fair to regard these circumstances as bad conduct on the part of the landlord.

Conduct: The Tribunal's Reasoning

57. In considering the issue of conduct, we take account of the submissions of the parties at the hearing and their subsequent written submissions.

58. The recent authorities were helpfully summarised by the Upper Tribunal in *Awad* at paras 37-40 as follows:

> ‘37. Because this is the third decision of the Tribunal in the last few months about the effect of section 44 of the 2016 Act it may be helpful if I summarise the current position.
>
> 38. In Vadamalayan v Stewart [2020] UKUT] 183 (LC) the Tribunal said that it was no longer appropriate for rent repayment orders to be limited to the repayment of the profit element of the rent. Nor is it correct for the FTT to deduct from the maximum amount the amount of any fine or civil penalty imposed on the landlord:
>
> > "19. The only basis for deduction is section 44 itself. and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence."
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> 39. More recently in Ficcara v James [2021] UKUT 38 (LC) the Deputy President said this:
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> > "49 ... the Tribunal's decision in Vadamalayan ... rejected what, under the 2004 Act , had become the convention of limiting the amount payable under a rent repayment order to the amount of the landlord's profit from letting the property during the relevant period. The Tribunal made clear at [14] that that principle should no longer be applied. In doing so it described the rent paid by the tenant as "the obvious starting point" for the repayment order and indeed as the only available starting point.
> >
> > 50. The concept of a "starting point" is familiar in criminal sentencing practice, but since the rent paid is also the maximum which may be ordered the difficulty with treating it as a starting point is that it

> may leave little room for the matters which section 44(4) obliges the FTT to take into account, and which Parliament clearly intended should play an important role. A full assessment of the FTT's discretion as to the amount to be repaid ought also to take account of section 46(1). Where the landlord has been convicted, other than of a licensing offence, in the absence of exceptional circumstances the amount to be repaid is to be the maximum that the Tribunal has power to order, disregarding subsection (4) of section 44 or section 45 .
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> 51. It has not been necessary or possible in this appeal to consider whether, in the absence of aggravating or mitigating factors, the direction in section 44(2) that the amount to be repaid must "relate" to the rent paid during the relevant period should be understood as meaning that the amount must "equate" to that rent. That issue must await a future appeal. Meanwhile Vadamalayan should not be treated as the last word on the exercise of discretion which section 44 clearly requires; neither party was represented in that case and the Tribunal's main focus was on clearing away the redundant notion that the landlord's profit represented a ceiling on the amount of the repayment."

> 40. I agree with that analysis. This appeal cannot be the last word either. It is no more than a useful example of an unimpeachable exercise of discretion on the part of the FTT, and says nothing further about the amount to be awarded in the absence of anything that weighs with the FTT under section 44(4) . The only clue that the statute gives is the maximum amount that can be ordered, under section 44(3) . Whether or not that maximum is described as a starting point, clearly it cannot function in exactly the same way as a starting point in criminal sentencing, because it can only go down; however badly a landlord has behaved it cannot go up. It will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4) . The statute gives no assistance as to what should be ordered in those circumstances; nor can this Tribunal in the absence of a suitable appeal.'

59. In summary, the following principles can be derived:

59.1. The amount payable does not need to be limited to the amount of the landlord's profit from letting the property during the relevant period.

59.2. The total amount of rent paid by the tenant during the relevant period is the maximum penalty available, but it should not be treated in the same way as a "starting point" in criminal sentencing, because it can only go down, however badly a landlord has behaved.

59.3. "It will be unusual for there to be absolutely nothing for the FtT to take into account under section 44(4)" (*Awad* para 40)

60. The Applicant's representative said that in this case, we should award the maximum amount. He said that in order for us to be able to make any deduction from the maximum (in respect of conduct), the following condition would need to be satisfied:

> "it must be that the Tribunal can itemise how there is more weight to examples of good conduct by the landlord and bad conduct by the tenant, than weight attached to examples of good conduct by the tenant and bad conduct by the landlord."

61. We disagree. That is an unnecessarily high bar to the exercise of the Tribunal's discretion. There is no authority for the proposition that specified examples of good and bad conduct should be itemised and weighed against each other. In our judgment, the Tribunal should be forming an overall impression of the conduct of the parties. That is the ordinary meaning of the wording of section 44(4).

62. To suggest otherwise would result in significant injustice to landlords in general and the Respondent in particular in this case. The wording of section 44, taken together with the authorities, provides a maximum penalty and then requires the Tribunal to take all parties' conduct into account (amongst other things) when deciding how much to award in the range between zero and the maximum. Then is no authority for the submission that there is a presumption of the maximum penalty unless the landlord can satisfy some evidentiary hurdle in relation to conduct. Such a presumption would result in most landlords being penalised with the maximum award.

63. The passage quoted above from *Awad*, that it would be unusual for there to be nothing to take into account on conduct, implies that it would be unusual for there to be nothing to take into account to **reduce** the total below the maximum. This is a necessary inference from the words of the Upper Tribunal, because the award can only go down from the maximum, not up. So the Upper Tribunal is clearly anticipating that in most cases the award would be below the maximum, because it would be unusual for there to be nothing to take into account in the landlord's favour to reduce the award.

64. As well as fitting in with the ordinary meaning of the statute and the necessary inference from the decision of the Upper Tribunal in *Awad,* our interpretation of the scheme fits naturally with general principles of law. In particular, the policy of the law relating to penalties is to reserve the maximum penalty for the most serious offences committed in the most blameworthy way. This makes sense. It allows the law to reflect a range of seriousness so that the penalty matches the offence. It also assists with the deterrence aspect of the penalty.

65. So, for example, it would make sense for a professional landlord who has persistently and knowingly flouted the law with the intention of saving costs and maximising profit to be penalised to the maximum degree. But a more lenient penalty should be awarded against an amateur landlord who unwittingly and carelessly breached a regulation in a one-off letting and who expresses sincere regret. In the latter case, one may not be able to identify an item or example of specific good conduct on the part of the landlord, nor a specific item of bad conduct by the tenant, but the Tribunal's overall impression of the parties' conduct ought to lead to the conclusion we have posited.

66. It is important to keep in mind the following distinction. In some cases of an unwitting breach of regulations there may be a reasonable excuse (as discussed above) and that would lead to a decision that **no** offence had been committed at all. But in other cases, such as the present one, there may be an unwitting breach of the law but no finding of reasonable excuse. That would lead to a finding, as here, that the offence was committed. But in our judgment, the fact that the offence was not intentional or calculated is a factor which can be considered as part of the conduct of the landlord - in the landlord's favour.

67. It is natural and understandable, during the evidence and submissions, for each side to concentrate on identifying instances of good conduct and bad conduct of the parties, but the itemised weighting exercise suggested by the Applicant's representative is overly prescriptive.

68. We are further supported in that conclusion by the language of the Upper Tribunal in para 40 of *Awad* in which Judge Cooke describes the process as an "exercise of discretion" on the part of the Tribunal.

69. Applying that discretion to the facts of this case, we have decided as follows. The relevant conduct of the Respondent in this case includes all of the circumstances of how she dealt with this letting. It includes the fact that the Respondent was naïve and ignorant, rather than flagrant and profiteering. At most, she was careless, rather than uncaring. She admitted the breach at the hearing and expressed sincere regret for having made the error. We also take into account that the Respondent did provide mains power fire detection and did return the deposits (subject to an agreed deduction in respect of apportioned rent).

70. On the other hand, we do think that the failure to use a rent deposit scheme and the failure to put the required safety certificates in place are serious matters which should be taken into account against the Respondent.

71. Taking all of that into consideration, we have decided to award 75% of the maximum. In doing so, we recognise that this case is towards (but not at) the more serious end of the scale. The legislation is clearly designed to catch those, like this Respondent, who take on the serious responsibilities of letting without properly checking and complying with their statutory obligations.

Landlord's Financial Circumstances

72. We have not decided to deduct any further amount to reflect the financial circumstances of the landlord. The Respondent stated that she is on universal credit and that she has no other income, save for some benefits relating to the care of her husband. However she was expressly directed by the Tribunal in an order dated 29 October 2020 as follows:

> "If reliance is placed on the landlord's financial circumstances, appropriate documentary evidence should be provided (redacted as appropriate)."

Despite that direction, the Respondent did not supply any documentary evidence of her financial circumstances. Although documentary evidence of financial circumstances is not necessary as a matter of law, we take the view that her failure to supply such documents when directed to do so substantially weakens her oral evidence of financial circumstances. It also means that we have no details of the Respondent's means and we therefore do not take any account of her financial circumstances.

Award and costs

73. As a result of all of the above, we have made the order in the amounts which are set out in the order above.

74. The Applicants have also applied for an order requiring the Respondent to reimburse the fees paid to the Tribunal in the sum of £300. We will make that order under rule 13(2) of the Rules. The Applicants have had to bring these proceedings to enforce their rights and should not be out of pocket as a result.

Dated this 15th day of October 2021

JUDGE TIMOTHY COWEN

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).