FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**BIR/00FN/HMK/2021/0025-0027**
HMCTS Code	**:**	**V:CVPREMOTE**
Subject Property	**:**	**115 Beaconsfield Road Leicester Leicestershire LE3 0FH**
Applicants	**:**	**(1) Corrie Ashley Davis (2) Evan Duru (3) Mohamed Mohamud**
Respondent	**:**	**Property Solution (UK) Ltd**
Representative	**:**	**Landlords Defence Ltd**
Type of Application	**:**	**Application under section 41(1) of the Housing and Planning Act 2016 for rent repayment orders**
Date of Hearing	**:**	**8 February 2022**
Tribunal Members	**:**	**Deputy Regional Judge Nigel Gravells Alan McMurdo MCIEH**
Date of Decision	**:**	**28 February 2022**

DECISION

Introduction

1 This is a decision on three applications for rent repayment orders under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').

2 The legal background to the application is the requirement for certain houses in multiple occupation ('HMOs') to be licensed. It is a criminal offence to manage or be in control of an HMO that is required to be licensed and is not so licensed. Among the possible consequences of committing that offence is that a landlord may be ordered to repay up to twelve months' rent to the tenants.

3 Part 2 of the Housing Act 2004 ('the 2004 Act') introduced licensing for HMOs. Licensing was mandatory for all HMOs which have three or more storeys and are occupied by five or more persons forming two or more households. However, since 1 October 2018 the requirement that the property must have three or more storeys no longer applies.

4 Under section 72 of the 2004 Act a person who controls or manages an HMO that is required to be licensed but is not so licensed commits an offence.

5 Commission of that offence may lead to a criminal prosecution and conviction or to the imposition by the local housing authority of a financial penalty pursuant to section 249A of the 2004 Act. Furthermore, under section 43 of the 2016 Act the Tribunal may make a rent repayment order in favour of the (former) occupiers if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 72 of the 2004 Act, *whether or not the landlord has been convicted*.

Facts

6 The Applicants are three former tenants of 115 Beaconsfield Road, Leicester, Leicestershire LE3 0FH ('the subject property'). Mr Davis occupied a room under an assured shorthold tenancy from 7 February 2017 to 12 September 2021 at £325.00 per month. Mr Duru occupied a room under an assured shorthold tenancy from 2 July 2018 to an unspecified date in June 2021 at £300.00 per month. Mr Mohamud occupied a room under an assured shorthold tenancy from 1 June 2015 to 12 September 2021 at £310.00 per month.

7 The Respondent, Property Solution (UK) Ltd, is the immediate landlord of the subject property, holding from the freeholder, Synergy Asset Management Group Limited. (Synergy was originally named as a Respondent to the present application, along with Property Solution (UK) Ltd; but, following the decision of the Court of Appeal in *Rakusen v Jepsen* [2021] EWCA Civ 1150, Synergy was removed as a Respondent.)

8 By applications received by the Tribunal on 10 June 2021, the Applicants applied for rent repayment orders under section 41 of the 2016 Act. They alleged that, from 11 June 2019 to 10 June 2020 inclusive ('the relevant period'), the Respondent was controlling or managing the subject property, which, as an HMO occupied by five or more people forming two or more households, was required to be licensed pursuant to Part 2 of the 2004 Act but was not so licensed.

9 The relevant period was identified by the Applicants because during that time two other rooms in the subject property were let to Roland Bike and Andrew

Wilks – so that the property was occupied by five persons. However, Mr Wilks vacated the property on 12 June 2020, with the result that the property was no longer an HMO that was required to be licensed.

10 Neither Mr Bike nor Mr Wilks joined in the present application.

11 Directions were issued on 13 July 2021; and further Directions were issued to address procedural issues that subsequently arose.

12 A hearing was held by remote video conferencing on 8 February 2022. The hearing was attended by (i) the three Applicants, (ii) Mr Ketal Patel, one of the directors (and the public face) of the Respondent company (and of Synergy), and (iii) Mr Des Taylor, of Landlords Defence Ltd, who represented the Respondent.

Statutory regime

13 The statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act. So far as relevant to the present application, the statute provides as follows –

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 …

(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
…			
5	Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO
…			

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.

…

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);
…

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.

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 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.

Determination of the Tribunal

14 The Tribunal considered the application in four stages –

(i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time the Respondent was a person who

controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed.

(ii) Whether the Applicants were entitled to apply to the Tribunal for rent repayment orders.

(iii) Whether the Tribunal should exercise its discretion to make rent repayment orders.

(iv) Determination of the amounts of any orders.

Offence under section 72(1) of the 2004 Act

15 In accordance with sections 43(1) of the 2016 Act, the Tribunal was satisfied beyond reasonable doubt that the Respondent, as immediate landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 72(1) of the 2004 Act. Indeed, the Respondent did not dispute that it had committed the offence.

(i) Prior to the vacation of the subject property by Mr Wilks on 12 June 2020 the subject property was an HMO subject to mandatory licensing.

(ii) The subject property was not licensed.

(iii) The Respondent was the person having control and/or managing the subject property.

(iv) The Respondent accepted that it had no reasonable excuse.

Entitlement of the Applicants to apply for rent repayment orders

16 The Tribunal determined that the Applicants were entitled to apply for rent repayment orders pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the subject property was let to the Applicants throughout the period that the Respondent was committing the relevant offence; and the offence was committed in the period of 12 months ending with the day on which the application was made (10 June 2021).

Discretion to make rent repayment orders

17 The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make rent repayment orders in the circumstances of the present case.

Amounts of rent repayment orders

18 In accordance with section 44(2) of the 2016 Act, the amount of an order must relate to rent paid in a period, not exceeding 12 months, during which the landlord was committing an offence under section 72(1) of the 2004 Act. It is not disputed that the Applicants' claims satisfy that condition.

19 In accordance with section 44(3) of the 2016 Act, the amount that the landlord is required to repay in respect of a period must not exceed the rent paid by the tenants in respect of that period less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

20 Moreover, in *Awad v Hooley* [2021] UKUT 0055 (LC) the Upper Tribunal took the view that, where at the beginning of the relevant period the tenant was in arrears with his/her rent, the first payment(s) made during the

relevant period should be applied to pay off those arrears – so that for the purposes of section 44(3) of the 2016 Act the sum required to pay off the arrears could not be regarded as rent paid *in respect of* the relevant period.

21 Those principles apply to the Applicants as follows:

(i) Mr Davis claims repayment of £3900.00, which is the rent paid during the relevant period, although he accepts that he cannot claim the amount of universal credit received in respect of his housing costs during the period March to June 2020 and included in the amount paid to the Respondent. It is not disputed that the amount of universal credit received by Mr Davis in respect of housing costs during the relevant period was £769.16. The Tribunal therefore deducts that sum from the £3900.00, leaving £3130.84 as the sum paid. Since Mr Davis had rent arrears of £50.00 at the beginning of the relevant period, the net rent paid in respect of the relevant period and therefore the maximum amount of a rent repayment order is £3080.84.

(ii) Mr Duru claims repayment of £3600.00, which is the rent paid during the relevant period. There are no deductions to be made in respect of universal credit or rent arrears at the beginning of the relevant period; and therefore the maximum amount of a rent repayment order is £3600.00.

(iii) Mr Mohamud claims repayment of £3720.00. However, during the relevant period Mr Mohamud paid only £2885.00. Moreover, Mr Mohamud had arrears of £110.00 at the beginning of the relevant period. The net rent paid in respect of the relevant period and therefore the maximum amount of a rent repayment order is £2775.00.

22 In accordance with section 44(4) of the 2016 Act, in determining the amount of any rent repayment order, the Tribunal must, in particular, take into account the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.

23 The proper approach that the Tribunal is required to take at the final stage of the determination of the amount of any rent repayment order has been considered by the Upper Tribunal (Lands Chamber) in a series of recent decisions: see *Vadamalayan v Stewart* [2020] UKUT 183 (LC), *Ficcara v James* [2021] UKUT 38 (LC), *Awad v Hooley* [2021] UKUT 55 (LC), *Williams v Parmar* [2021] UKUT 244 (LC), *Aytan v Moore* [2022] UKUT 27 (LC).

24 In *Aytan v Moore* the Upper Tribunal stated –

> [14] Provisions relating to rent repayment orders were first enacted in the 2004 Act. It became the practice of the First-tier Tribunal when making orders under those provisions, following the Tribunal's decision in *Parker v Waller* [2012] UKUT 301 (LC), to order landlords to repay only the profit element of the rent, deducting for example the cost of repairs and expenditure that the landlord was obliged under the terms of the tenancy to incur and which enhanced his own property and enabled him to charge rent for it.

[15] In *Vadamalayan v Stewart and others* [2020] UKUT 183 the Tribunal held that that was not a correct response to the provisions of the 2016 Act and that the practice should cease. A rent repayment order is about the repayment of rent, not the repayment of profit, although it is appropriate to deduct from the amount to be repaid sums that were included in the rent for the tenants' benefit, such as utilities which they consumed. At paragraph 12 the Tribunal (Judge Cooke) referred to

> 'the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.'

[16] That reference to a starting point has given rise to some difficulties, and has led the FTT in some cases to take the view that it should order a landlord to repay the whole of the rent unless it is possible to make deductions in light only of good conduct by the landlord or bad conduct by the tenants, or of financial difficulties on the landlord's part. That approach leaves no room for the FTT to reflect, in its award, the seriousness of the offence committed by the landlord, nor to make any allowance for the absence of convictions in accordance with section 44(4)(c).

[17] In *Ficcara and others v James* [2021] UKUT 38 (LC) the Deputy President, Martin Rodger QC, said:

> '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.
>
> 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.'

[18] Similarly in *Awad v Hooley* [2021] UKUT 55 (LC) the Tribunal (Judge Cooke) said at paragraph 40:

> '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.'

[19] The future appeal to which the Tribunal looked forward in *Ficcara* and in *Awad* turned out to be *Williams v Parmar* [2021] UKUT 244 (LC), where the Tribunal (the Hon. Sir Timothy Fancourt, President) said at paragraph 23:

'the terms of section 46 show that, in cases to which that section does not apply, there can be no presumption that the amount of the order is to be the maximum amount that the tribunal could order under section 44 or section 45. The terms of section 44(3) and (4) similarly suggest that, in some cases, the amount of the order will be less than the rent paid in respect of the period mentioned in the table in section 44(2), though the amount must 'relate to' the total rent paid in respect of that period.

24. It therefore cannot be the case that the words 'relate to rent paid during the period …' in section 44(2) mean 'equate to rent paid during the period …'. It is clear from section 44 itself and from section 46 that in some cases the amount of the RRO will be less than the total amount of rent paid during the relevant period. Section 44(3) specifies that the total amount of rent paid is the maximum amount of an RRO and section 44(4) requires the FTT, in determining the amount, to have regard in particular to the three factors there specified. The words of that subsection leave open the possibility of there being other factors that, in a particular case, may be taken into account and affect the amount of the order.

25. However, the amount of the RRO must always 'relate to' the amount of the rent paid during the period in question. It cannot be based on extraneous considerations or tariffs, or on what seems reasonable in any given case. The amount of the rent paid during the relevant period is therefore, in one sense, a necessary 'starting point' for determining the amount of the RRO, because the calculation of the amount of the order must relate to that maximum amount in some way. Thus, the amount of the RRO may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid during the period is not a starting point in the sense that there is a presumption that that amount is the amount of the order in any given case, or even the amount of the order subject only to the factors specified in section 44(4).

26. … *Vadamalayan* is authority for the proposition that an RRO is not to be limited to the amount of the landlord's profit obtained by the unlawful activity during the period in question. It is not authority for the proposition that the maximum amount of rent is to be ordered under an RRO subject only to limited adjustment for the factors specified in section 44(4).'

[20] In *Williams v Parmar* the President set aside the decision of the FTT to order the landlord to repay the whole of the rent for the relevant period,

because the FTT had erred in taking the view that it had no discretion to award a lesser sum. At paragraph 39 the President said:

> 'I am not clear what the FTT meant … when it said that the decision in *Vadamalayan* deprived it of discretion to increase the amount of the orders. The 2016 Act does not permit orders to be made in amounts greater than the amount of rent paid by a tenant during the relevant period. The FTT then appeared to look for meritorious conduct on the part of the landlord that might justify reducing the adjusting starting point.
>
> 40. It seems to me that the FTT took too narrow a view of its powers under section 44 to fix the amount of the RROs. For reasons already given, there is no presumption in favour of the maximum amount of rent paid during the period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), though the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.
>
> 41. In my judgment, the FTT also interpreted section 44(4)(a) too narrowly if it concluded that only meritorious conduct of the landlord, if proved, could reduce the starting point of the (adjusted) maximum rent. The circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord', so the FTT may, in an appropriate case, order a lower than maximum amount of rent repayment, if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise. In determining how much lower the RRO should be, the FTT should take into account the purposes intended to be served by the jurisdiction to make an RRO: see [43] below.'

[21] At paragraph 43 the President referred to:

> 'guidance to local authorities issued under Chapter 3 of Part 2 of the 2016 Act, entitled 'Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities', which came into force on 6 April 2017. … Para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.'

[22] At paragraph 51 the President added:

> 'It seems to me to be implicit in the structure of Chapter 4 of Part 2 of the 2016 Act, and in sections 44 and 46 in particular, that if a landlord has not previously been convicted of a relevant offence, and if their conduct, though serious, is less serious than many other offences of that type, or if the conduct of the tenant is reprehensible in some way, the amount of the RRO may appropriately be less than the maximum amount for an order. Whether that is so and the amount of any reduction will depend on the particular facts of each case. On the other hand, the factors identified in para 3.2 of the guidance for local housing authorities are the reasons why the broader regime of RROs was

introduced in the 2016 Act and will generally justify an order for repayment of at least a substantial part of the rent.'

25 Distilling the substance of those observations and applying them to the facts of the present case, the Tribunal determined that various deductions should made from the maximum repayment amounts set out in paragraph 21 above.

26 First, it was stated in *Vadamalayan v Stewart* – and not questioned in the subsequent cases – that it is appropriate to deduct from the amount to be repaid sums that were included in the rent for the tenants' benefit, such as utilities which they consumed. The Respondent produced a schedule of costs for gas, electricity, water and internet (broadband) charges during the relevant period, which were paid by the Respondent.

27 The Applicants questioned some of the figures in the Respondent's schedule. Specifically, they argued (i) that the Respondent had produced no invoices for gas charges; and (ii) that the invoices that the Respondent did produce did not cover the exact dates of the relevant period.

28 In relation to (i), the Respondent stated that it had a single contract covering its entire property portfolio and that the figures for the subject property were extracted from the single invoice. The Respondents did not challenge that evidence. Relying on its general knowledge and experience, the Tribunal was satisfied that the figure of £2200.00 for the annual cost of gas for the subject property was not unreasonable.

29 In relation to (ii), the Applicants had occupied the subject property for significant periods before and after the relevant period. The Tribunal was satisfied that, even though the 12-month period covered by the invoices did not cover the exact dates of the relevant period, the usage and related costs during the two periods were unlikely to be significantly different.

30 The Tribunal therefore determined that charges paid by the Respondent for gas (£2200.00), electricity (£2354.61), water (£273.24) and internet (broadband) charges (487.35), a total of £5315.20, should be deducted from the combined amounts of the rent repayment orders. Although the Applicants suggested that the deductions should be different – to reflect different usage by the tenants of the subject property, the Tribunal determined that such differentiation was wholly impracticable.

31 The Tribunal therefore determined that 20 per cent of the total utility charges (£1063.04) should be deducted from each of the maximum repayment amounts set out in paragraph 19 above.

32 The Respondent also argued that council tax of £1488.00, paid by the Respondent, should be deducted. The Applicants did not argue to the contrary. Although not a utility charge in the same strict sense, on balance the Tribunal was of the view that council tax should be treated in the same way. The Tribunal finds that the benefit of council tax accrued to the tenants (and not to the Respondent) and that the costs should be deducted from the amounts of the rent repayment orders.

33 The Tribunal therefore determined that 20 per cent of the council tax (£297.60) should be deducted from each of the maximum repayment amounts set out in paragraph 21 above.

34 The maximum repayment amounts, following the deductions referred to in paragraphs 31 and 33 above, are set out in the table below:

Applicant	Net rent paid (paragraph 21 above)	Deduction for utilities (paragraph 31 above)	Deduction for council tax (paragraph 33 above)	Maximum repayment amount
Corrie Davis	3080.84	1063.04	297.60	1720.20
Evan Duru	3600.00	1063.04	297.60	2239.36
Mohamed Mohamud	2775.00	1063.04	297.60	1414.36

35 Turning to the factors listed in section 44(4) of the 2016 Act, the first factor that the Tribunal is required to take into account is the conduct of the landlord and the tenant: see section 44(4)(a).

36 The Applicants raised a number of issues in relation to the conduct of the Respondent:

(i) The Applicants argued that the Respondent had failed to remedy serious defects in the subject property, in particular issues with the plumbing. They asserted that raw sewerage was leaking from the toilet on the first floor and through the living room ceiling and that this had to be collected in Tupperware containers. The Tribunal finds that there was a serious issue, which the Respondent should have addressed with much greater urgency and much more effectively. On the other hand, the Tribunal also accepts that Mr Mohamud behaved in an unnecessarily aggressive manner towards Mr Patel, resulting in a partial 'stand-off' between the parties. Nonetheless, the Tribunal determines that the failures of the Respondent in relation to repairs and maintenance is a factor that should weigh significantly against the Respondent in determining the amount of the rent repayment order.

(ii) Mr Mohamud alleged that he had contracted h-pylori as a result of contact with the raw sewerage. Mr Mohamud informed the Tribunal that he had commenced a personal injury claim against the Respondent; but he produced no evidence that the Tribunal could take into account in the context of the present application.

(iii) The Applicants alleged that Mr Patel had used fake names and signatures on various documents but, assuming the allegations to be true, they failed to explain how the Applicants were adversely affected.

37 As the Upper Tribunal has made clear, the conduct of the Respondent also embraces the culpability of the Respondent in relation to the offence that is the pre-condition for the making of a rent repayment order. The offence of controlling or managing an unlicensed HMO is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not regarded as the most serious of the offences listed in section 40(3). However, it is clear from the portfolio of properties controlled and/or managed by the Respondent that the Respondent is a professional landlord who should be fully conversant with the HMO licensing requirements. It should have been readily apparent to the Respondent that five tenants were

residing at the property, not least because the Respondent was receiving five separate rental payments in respect of the property. The Respondent offered no explanation for the failure to apply for a licence for the subject property. The Tribunal determines that the culpability of the Respondent in relation to the offence should be reflected in the amount of the rent repayment orders.

38 In relation to the conduct of the Applicants, the Respondent's schedule of rent payments, which the Applicants did not dispute, shows that to different degrees all three Applicants had rent arrears during their tenancies. Mr Mohamud was by far the worst 'offender', being in arrears for 60 of the 77 months of his tenancy and having arrears of £2584.00 when he vacated the subject property. Mr Davis and Mr Duru both had rather better (but by no means perfect) rent payment histories; but they had arrears of £565.00 and £560.00 respectively when they vacated the subject property. The Tribunal determines, following the observations of the Upper Tribunal in *Awad v Hooley* at paragraph 36, that the Applicants' histories of non-payment or under-payment of rent is a factor that should be (differentially) reflected in the amount of the rent repayment orders.

39 Although each party sought to identify additional instances of unreasonable behaviour on the part of the other party, the Tribunal determines that such behaviour cannot be regarded as sufficiently significant to warrant further adjustment of the amount of the rent repayment orders. Alternatively, any unreasonable behaviour on the part of one party is matched by any unreasonable behaviour on the part of the other party.

40 Section 44(4)(b) of the 2016 Act requires the Tribunal to take into account the financial circumstances of the landlord. However, the Respondent declined to make any representations in relation to its financial circumstances, only confirming that it was in a position to comply with any repayment order.

41 Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the landlord has at any time been convicted of any of the offences listed in section 40(3). The Respondent has no such convictions.

42 As Sir Timothy Fancourt stated in *Williams v Parmar* (at paragraph 24), the wording of section 44(4) leaves open the possibility of there being factors other than those expressly referred to in paragraphs (a) to (c) that, in a particular case, may be taken into account and affect the amount of the rent repayment order. Neither party raised any factors other than those referred to above.

43 However, the Tribunal notes (i) the reminder from Sir Timothy Fancourt (at paragraph 43) that *Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities* identifies the factors that a local authority should take into account in deciding whether to seek a rent repayment order as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending; and (ii) the clear indication (at paragraph 51) that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent.

44 The Tribunal determines that, in order to reflect the factors discussed in paragraphs 35-43 above, the maximum repayment amounts set out in the paragraph 34 above should be discounted – in relation to Mr Davis and Mr Duru by 15 per cent and in relation to Mr Mohamud by 25 per cent.

45 However, it would be unfair simply to apply those discounts to the maximum repayment amounts for each of the Applicants because, paradoxically, that would disproportionately favour the worst payer. The Tribunal therefore averaged the discount percentages (18.33 per cent) and applied that percentage to the total of the three maximum repayment amounts (£5373.92) to produce the total sum to be deducted from the combined amounts payable by the Respondent. That sum (£985.04) was then apportioned between the Applicants in the ratio 15:15:25 and the resulting amounts (£268.65, £268.65, and £447.75) were deducted from the individual maximum repayment amounts.

46 The amounts of the (provisional) rent repayment orders determined by the Tribunal are set out in the table below:

Applicant	Maximum repayment amount (paragraph 34 above)	Deduction pursuant to section 44(4) of the 2016 Act (paragraph 45 above)	(Provisional) rent repayment order amount
Corrie Davis	1720.20	268.65	1451.55
Evan Duru	2239.36	268.65	1970.71
Mohamed Mohamud	1414.36	447.75	966.61

47 The figures in the final column of the above table represent the amount of the rent repayment orders that the Tribunal would make under the provisions of the 2016 Act.

48 However, in *Awad v Hooley* the Upper Tribunal declined to order repayment where the outstanding arrears of the Applicant tenant at the date of the hearing exceeded the amount of the (provisional) rent repayment order. Rather the Tribunal indicated that the amount of the (provisional) order should be deducted from the outstanding arrears.

49 Applying that approach in the present case, the Tribunal deducted from the amounts of the provisional rent repayment orders the arrears outstanding at the date of the hearing (see paragraph 38 above) less the arrears at the beginning of the relevant period (which were already factored in to the calculation of the rent paid in respect of the relevant period) (see paragraph 21 above):

Applicant	(Provisional) rent repayment order amount (paragraph 46)	Deduction of arrears (paragraphs 38 and 21 above)	Amount of rent repayment order
Corrie Davis	1451.55	515.00	936.55
Evan Duru	2239.36	560.00	1679.36
Mohamed Mohamud	966.61	2474.00	-1507.39

50 Since the repayment order amount for Mr Mohamud is a negative sum, the Tribunal makes a zero order on his application. The Respondent will need to seek repayment of the outstanding arrears by the appropriate procedure.

Rule 13 application

51 The Applicants applied under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Tribunal to make an order requiring the Respondent to reimburse to the Applicants their application fees (£100.00 each) and the Tribunal hearing fee (£200.00).

52 Since the Tribunal has made rent repayment orders in favour of the Applicants, albeit in lesser amounts than those applied for, it is appropriate that they should have their fees reimbursed.

Summary

53 The Tribunal orders that the Respondent repay:

(i) to Mr Davis the sum of £936.55;

(ii) to Mr Duru the sum of £1679.36;

(iii) to Mr Mohamud the sum of £00.00.

54 The Tribunal orders that the Respondent reimburse to Mr Davis and Mr Duru £100.00 each in respect of their application fees and £66.67 each in respect of their shares of the hearing fee.

55 The sum of £166.67 representing Mr Mohamud's application fee and his share of the hearing fee should be deducted from the debt owed by Mr Mohamud to the Respondent.

Appeal

56 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.

57 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

58 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

59 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

28 February 2022

Professor Nigel P Gravells
Deputy Regional Judge