



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

Case Reference : **CAM/00KG/HMF/2021/0012 & 14**

HMCTS : **CVP**

Property : **62 Ottawa Road, Tilbury, Essex RM18 7RH**

Applicants (Tenants) : **Sohidur Rahman
Ian Divers**

Respondents : **(1) Macturner Estates Limited
(2) Houselook Limited**

Representative for Respondent 2 : **CW Law Solicitors**

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

Application for reimbursement of fee (Rule 13 Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 13 (2))

Tribunal : **Judge JR Morris
Mr N Miller BSc**

Date of Application : **15th September 2021**

Directions : **8th December 2021
amended 24th February 2022**

Date of Hearing : **5th July 2022**

Date of Decision : **8th July 2022**

DECISION

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Decision

1. The Tribunal makes no Rent Repayment Order.
2. The Tribunal makes no order for the reimbursement of the Application and Hearing Fees.

Reasons

Application

3. On 15th September 2021 the Applicants applied for a Rent Repayment Order as Tenants of 62 Ottawa Road, Tilbury, Essex RM18 7RH (“the Property”). The legislation applicable to this Application is found in the Housing Act 2004 (the “2004 Act”) and the Housing and Planning Act 2016 (the “2016 Act”). The relevant provisions are attached to this decision at Annex 2.
4. The Applicants allege the Respondents have committed an offence under section 72(1) of Part 2 of the Housing Act 2004 (the “2004 Act”) of being a person having control of or managing a House in Multiple Occupation (an HMO) which is required to be licensed. Under section 55(b) and 56 of Part 2 of the 2004 Act a local authority may designate the area of a district or an area within their district as subject to Additional Licensing provided that certain criteria, as detailed in section 57 to 58 of Part 2 of the 2004 Act, are met.
5. The Property is situated within an Additional Licensing area as designated by Thurrock Council. The Additional Licensing Scheme requires that any properties containing more than 3 persons from more than 1 household would require an HMO licence.
6. Directions were issued on 8th December 2021 and sent to the Applicants and the Macturner Estates Limited who appeared from the Tenants’ Tenancy Agreements provided to be the Managing Agent for Houselook Limited, who appeared to be the Landlord. Not having received any response the Tribunal noted that Mr Adedeji Soyemi, director of Houselook Limited, used the same address for correspondence as Macturner Estates Limited. The companies therefore appeared connected. Therefore, the Tribunal wrote to Mr Soyemi at that address. Houselook Limited’s legal representative, CW Law Solicitors, replied informing the Tribunal on 22nd February 2022 that their client had not heard of the proceedings until 1st February 2022 when the Tribunal wrote. Therefore, on 24th February 2022, the Tribunal amended the Directions making Houselook Limited a Respondent (Respondent 2) and to give Houselook Limited an opportunity to submit a statement of case.

Description of the Property

7. The Tribunal did not make an inspection of the Property but was able to obtain a relevant description from the statements of case of the parties and the HMO Licence granted from 19th March 2021 as follows:

8. The Property, is a two-storey house. On the ground floor there is an entrance lobby from which rise stairs to the first floor and off which is a shared kitchen with dining area and Bedroom 1. On the first floor there is a landing off which are bedrooms 2, 3 and 4 and a bathroom.

The Licence

9. Under Schedule 5 paragraph 7 of the 2004 Act, a notice of decision by a local authority to grant a licence under Part 2 of the 2004 Act was served on Ms Tolulope Opaleye on 19th March 2021 which stated that the application for a licence had been received on 20th September 2020 and that a notice proposing a grant of an HMO licence was served on 4th March 2021 and the decision to grant a licence was made on 19th March 2021.
10. A copy of an HMO Licence was provided for the Property which granted a licence for a period of five years from 19th March 2021 to Ms Tolulope Opaleye as the licence holder and the manager of the Property. The maximum number of households permitted to occupy the Property is 4 and the maximum number of occupants is 5.
11. Conditions were attached to the Licence including a table of occupancy which stated that Rooms 1, 2 and 3 could be occupied by 2 persons and room 4 by 1 person and a table of amenities which listed a kitchen/diner for the use of 5 persons and a bathroom for the use of 5 persons. The maximum number of occupants of the Property is restricted by the number of kitchens and bathrooms available.

Hearing

12. A video hearing was held on 5th July 2022 which was attended by the Applicants Mr Ian Divers and Mr Sohidor Rahman and Ms Tolu Opaleye, representing Respondent 1, Macturner Estate Limited. No representative attended for Respondent 2, Houselook Limited.

Applicants' Statements

Mr Sohidor Rahman

13. Mr Rahman said in his written statement that when he and another Tenant, Mr Ryan Malcom, moved into the Property on 13th November 2020, Mr Ian Divers and Mr Alex Bernard were already occupying a room each.
14. He said the Council had told him that this was the only accommodation available and if he did not take it, he would be homeless.
15. Mr Ian Divers and Mr Alex Bernard told him that when they moved into the Property on 20th August 2020, there were no fire doors, smoke alarms or carbon monoxide alarms, firefighting equipment or a banister rail on the stairs. Also two electrical sockets were cracked and in a dangerous condition. Mr Divers contacted Thurrock Council about these failings and an Officer

from the Private Housing Department of the Council came to view the Property and informed them that the Property did not have an HMO licence.

16. Mr Rahman said that Macturner Estates Limited were told to put things right. They installed fire alarms and fire doors although they do not shut of their own volition. They also installed a banister rail and replaced the broken electric socket. They did not install a fire extinguisher until December 2020. This was a water extinguisher on the ground floor and therefore not suitable for kitchen or electrical fires.
17. Macturner Estates Limited turned the gas off for five days due to what they said was a leak. During this time, we could not cook and there was no hot water. The contractor who came to repair the leak said he could not find the leak.
18. In support of his statement that the Property did not have an HMO licence Mr Rahman provided copies of emails from Thurrock Council stating that an HMO Application form was submitted by Macturner Estates Limited on 30th September 2020, which was validated on 3rd February 2021 and the HMO licence was issued on 19th March 2021.
19. Mr Rahman provided a copy of his Assured Shorthold Tenancy Agreement for Room 4, a furnished first floor double room in a shared house, which was dated 13th November 2020. The term of the Tenancy was from 13th November 2020 to 12th November 2021 at a rent of £550.00 per calendar month.
20. A Notice Seeking Possession of Room 4 of the Property on 19th November 2021 was served on 15th July 2021 and Mr Rahman subsequently left the Property.
21. Mr Rahman confirmed at the hearing that the rent under the Tenancy Agreement was £550.00 per calendar month. He said he had received Universal Credit which he had paid to Respondent 1. The Universal Credit did not cover the £550.00 but he was unable to make up the full amount from his own resources. He added that life was difficult for him as he had health issues.
22. Ms Opaleye said that Mr Rahman had only paid his Universal Credit towards his rent and therefore there were arrears of rent outstanding.
23. The Tribunal informed the parties that the legislation was to enable tenants to claim repayment of rent that they personally had expended. Therefore, they could not claim repayment of Universal Credit as this had been paid by the local authority. They also could not claim arrears of rent as only rent paid could be repaid. A claim or counter claim regarding arrears of rent was a matter for the County Court and was not within the jurisdiction of the Tribunal.

Mr Ian Divers

24. Mr Divers said on the Application Form that he moved into Room 1 of the Property on 20th August 2020 together with three other people. The Property

had no HMO licence. He said that the Property was not fit for use as an HMO because it did not have: fire doors, smoke alarms, carbon monoxide alarms, fire extinguishers or a fire blanket It also did not have a banister rail up the stairs. There were broken electrical sockets in two of the bedrooms. In addition, he said that the gas was turned off for 5 days.

25. Mr Divers added that the Property was not licensed as an HMO until 19th March 2021.
26. Mr Divers provided a copy of his Assured Shorthold Tenancy Agreement for Room 1, a furnished ground floor double room in a shared house, which was dated 20th August 2020. The term of the Tenancy was from 20th August 2019 to 19th August 2021 at a rent of £600.00 per calendar month.
27. Mr Divers provided a statement of his account at Macturner Estates Limited which showed that a deposit was paid of £1,292.31 on 27th August 2020 and twelve payments of rent of £600.00 per calendar month had been paid from 20th August 2020 to 20th August 2021. No moneys were outstanding.
28. Mr Divers said that he had received Universal Credit of £368.40 per calendar month and the remaining £231.60 was paid from his pension.

Applicants' Additional Submissions & Respondent 1's Reply at the Hearing

29. At the hearing Mr Rahman and Mr Divers said that the Council had said that they had to take the Tenancy Agreement at the Property or be homeless, so they had little choice. They did not select the Property, they had to take it even though it was not up to standard as an HMO. In particular, there was no hand rail on the stairs which they needed as support for access to the first floor. Also, there were insufficient fire precautions which was a basic matter of health and safety irrespective of whether it was let as an HMO or not.
30. They said that when they arrived the doors of the rooms were already numbered and locks fitted which showed it was already or intended to be an HMO. Having decided that the Property was going to be let as an HMO, Respondent 1, with its experience as an agent, should have brought the Property up to standard and obtained a licence, before the Tenants took up residence.
31. In reply Ms Opaleye said that the Property had been let as a single household prior to Respondent 1 taking it over. It was intended to let it again to a single household until Thurrock Council asked for it to be let to several persons. It was only then that the numbers were put on the doors and the locks fitted. Mr Divers and Mr Bernard were the first Tenants of the Property as a potential HMO. At the time their tenancies were granted, Respondent 1 did not know that the Property would be classed as an HMO due to Thurrock Council designating Additional Licensing for Tilbury.
32. As a house let to a single household the Property met the required standards regarding fire protection and electrical and gas standards. The affixing of the

stair rail was never required by the Council, it was fitted specifically for the needs of the particular Tenants.

33. The Applicants both felt that the Respondents' saying that there was a gas leak and turning off the gas for five days was just to make life uncomfortable for them so that they would leave the Property early. They also said that there had been an infestation of cockroaches.
34. Ms Opaleye replied that the gas leak report was towards the end of the Tenant's occupation of the Property. Ms Opaleye said that at the time she was not in the country and her staff considered it safest to turn the gas off. A contractor was employed but could not find the leak. After the Tenants left the Property, a leak was again reported and on this occasion the contractor who attended found a significant leak which was dealt with. The gas was turned off for safety reasons not to make the Tenants leave. It was noted that a reduction in the rent was made by way of compensation for the lack of gas.
35. Ms Opaleye said that the infestation of cockroaches was also towards the end of the Tenant's occupation and was dealt with by three visits from a pest control contractor.

Respondent 1's Statement

36. Respondent 1 provided a statement of case as follows:
37. The Respondent said that Mr Ian Divers moved into the Property on 20th August 2020 and Mr Sohidur Rahman moved into the Property on 13th November 2020 following an inspection of the Property by two Thurrock Council Officers who visited to confirm that the Property was suitable for housing tenants.
38. All statutory documents relating to the letting of the Property to the Tenants were provided to Thurrock Council prior to completing the letting process including the following:
 1. Electrical conditions certificate
 2. Landlord gas safety certificate
 3. Energy performance certificate
39. One of the officers having inspected and received all of the documents asked to check if the Property required an HMO licence and suggested that he would contact a colleague in the department which deals with licensing to check if a licence was required at the Property.
40. Respondent 1 said that it was agreed that if a licence was required then the Respondent would apply for one.
41. Thurrock Council Licensing Officer visited the Property on 11th September 2020 and made recommendations regarding management and works to be carried out and directions for the Property to be licensed.

42. Respondent 1 said that an initial HMO licence application was submitted on 30th September 2020.
43. Further directives were given by the HMO Licensing Officer and Respondent 1 said that it engaged various workmen to carry out the required works on the Property. This was said to be very difficult due to the coronavirus restrictions, particularly since one of the workmen contracted the virus and was unable to carry on with the work, which caused delays.
44. Respondent 1 included an email exchange between Thurrock Council and Respondent 1's prospective HMO Licence Holder and Manager, Ms Tolulpe Opaleye which in summary was as follows:

9th September 2020

Thurrock Council Licensing Officer informed Ms Opaleye that an HMO licence was required. Ms Opaleye replied said that she had believed the Property did not require a licence. The Licensing Officer replied that the Property was situated in Tilbury which came within the Additional Licensing regime which meant that any property containing more than 3 persons who form more than 1 household would require a licence. Ms Opaleye acknowledged she had taken account of a neighbouring authority's requirements rather than those of Tilbury within Thurrock Council .

11th September 2020

Thurrock Council Licensing Officer following her inspection sent a list to Ms Opaleye of management contraventions to be remedied within 6 weeks.

20th September 2020

An application for an HMO licence in respect of the Property was received by Thurrock Council from Ms Opaleye.

24th September 2020

Thurrock Council Licensing Officer reminded Ms Opaleye that to prevent her application from lapsing the 14-day requirement for forms to be completed was about to expire.

25th September and 9th October 2020

Ms Opaleye submitted the forms and those supporting documents that were available.

21st October 2020

Thurrock Council Licensing Officer informs Ms Opaleye that she will be visiting the Property to check that the work outlined in the management regulation letter had been adhered to. In addition, she said she had looked at the progress with the HMO licence application and noted there were still a number of documents outstanding.

23rd October 2020

Thurrock Council Licensing Officer informs Ms Opaleye that she had noted that the fire detection system is in place and the thumb turn lock to the front door is installed. She raised issues with the fire doors, the bathroom extractor

fan and noted that there was no fire blanket in the kitchen and the manager's details were not displayed. She reminded Ms Opaleye that without the supporting documents to be provided by 27th October 2020 the HMO application would lapse.

27th October 2020

Ms Opaleye acknowledged that some of the works were still outstanding but that this was due to the illness of a contractor.

3rd November 2020

Thurrock Council Licensing Officer acknowledged receipt of supporting documents.

16th December 2020

Thurrock Council Licensing Officer warned Ms Opaleye that she is still without a licence having been made aware that she needed one three months ago. She is therefore committing an offence of having an unlicensed HMO and consideration was given to passing the matter to the legal service team to determine whether enforcement action should be taken. It was said that the HMO application was still to be signed and dated and the floorplan lacked measurements to the rooms.

3rd February 2021

The Application was complete, Thurrock referred to it as being validated.

15th February 2021

Thurrock Council Licensing Officer informs Ms Opaleye that the draft licence is completed subject to receipt of part 2 payment of £425.00.

4th March 2021

Draft license issued to Ms Opaleye

19th March 2021

HMO licence is confirmed as from 4th March 2021.

45. At the hearing, in response to the Tribunal's questions, Ms Opaleye said that there were two payments for the Application. The first (the amount she could not recall) was paid on 20th September 2020 when she made the Application. Ms Opaleye said that the Application required a number of supporting documents which could not be provided until the work identified by the Thurrock Council Licensing Officer was completed.
46. Ms Opaleye said that the delay in providing the documents was because the work took longer to complete due to the coronavirus restrictions which had a particular impact as one of the workmen contracted the disease. As soon as contractors were available, they were engaged and as soon as the work was completed the documents were sent to Thurrock Council.
47. Respondent 1 also provided some evidence of recent bills.

48. Respondent 1 submitted by way of mitigation that in making its determination the Tribunal should take into account that it had made an application for an HMO license shortly after being notified by Thurrock Council Licensing Officer that one was required.

Respondent 2's Statement

49. Mr Adedeji Soyemi Managing Director of Respondent 2 provided a statement as follows.
50. He said that Respondent 2 was incorporated on the 7th July 2017 to buy and sell real estate and that Respondent 1 was, since 2010, the company accountants to another company he controlled, Spiritalliance Consulting Limited.
51. He said that on 25th July 2018, Respondent 2 agreed to let the Property to Respondent 1 for 3 years until 25th July 2021 (the Lease). Under the Lease all letting and maintenance responsibilities were granted to Respondent 1 except structural damage, utilities service provision and building insurance obligations of Respondent 2.
52. Mr Soyemi said that prior to agreeing the Lease, all the utilities including gas and electricity were put into the name of Respondent 1. Respondent 1 took control of the property and let it out to Tenants. Respondent 2 did not have any responsibility for the management of the property, nor did Respondent 2 enter into any tenancy agreement with the Applicants.
53. Sometime in June 2021, Respondent 2 informed Ms Tolu Opaleye of Respondent 1, that the property was to be placed on the market for sale, in July 2021, and she asked Respondent 2 to email her to enable her to give the Tenants 4 months' notice as required by law at that time, due to the pandemic, which we did. At the end of July 2021, first Respondent stopped servicing its lease agreement.
54. In August 2021, a sale was agreed on the Property and Respondent 2 asked Respondent 1, to persuade the Tenants to move out earlier than the 4 months' notice in return for 1 month's free rent. In September 2021 Respondent 2 asked for an update on the Tenants, but no response was received from Respondent 1 to any of the emails and text messages from Respondent 2. Mr Soyemi said that Respondent 2 then engaged with the Tenants directly and found that the Property had been converted to a House in Multiple Occupation.
55. The property was rented room by room including the living area, to some homeless people, through the Thurrock Council. Mr Soyemi said Ms Opaleye of Respondent 1 did mention she was going to convert the property to an HMO in November 2020, but Mr Soyemi said she was told not to do this because of the rapid wear and tear it would cause to the Property and more so the mortgage lender would not support it. Respondent 1 despite being told not to, went ahead and converted the property to HMO without Respondent 2's consent which was a breach of the Lease.

56. In October 2021, two of the Tenants left of their own free will and the third one later left due to some unknown dispute with the police. Mr Soyemi said Respondent 2 was only aware of this when the police came looking for him. The last Tenant which we understood was named Ryan, was the only one remaining at the Property at the time the notice expired in November 2021.
57. In December 2021, Mr Soyemi said there was serious gas leak at the Property and in order to be able to carry out safe repair of the extensive leak, we asked Respondent 1 to evacuate the Tenant to other accommodation, which they did. When the gas leak was fixed in January 2022, due to delays, we proceeded to complete on the sale of the Property as the Lease with Respondent 1 had expired.
58. In January 2021 Respondent 2 sent a notice of rent arrears to Respondent 1, as they were still in possession of the Property up until 8th December 2021.
59. On 29th February 2022, Respondent 2 received the Tribunal letter through its new registered office, naming it as the second respondent to a Rent Repayment Order against the first respondent. Mr Soyemi said Respondent 2 had no idea what the bundle of the case was about and why Houselook Limited had been named as a second respondent as Respondent 2 had not received any correspondence before then.
60. Mr Soyemi summarised saying:
- Houselook and its officials are in no way connected to Macturner Estates and these two are separate companies.
 - Houselook used to share an office with Macturner Estate and had its registered address, as the same address with Macturner Estates.
 - Houselook Ltd is an entity on its own, and its directors do not use Macturner Estates as corresponding address. This was the legally trading address of the company and as such has no bearing on the official or directors.
 - Houselook has now been provided with the bundle mentioned in the letter dated 1st February 2022 and is still in the dark with regards to why we are being added as a second respondent to the case.
61. He added that notwithstanding, the above even if Houselook limited are obligated to the Applicants, the complaints are untrue and baseless because, there was an existing property licence application filed with Thurrock Council as at 28th September 2020, at which time only one Tenant was in occupation. A copy of the Tenancy Agreement of Mr James Ryan Malcolm dated 13th November 2020 was provided which was for a 12-month term for 13th November 2020 to 12th November 2021. It was submitted that hence, a licence was not required as at 8th August 2020 or as at 19th November 2020.
62. A document was provided by Respondent 2 which was headed “Full Management Property and Guaranteed Rent Service Agreement” (the Agreement) for the Property. The Agreement was made on 5th July 2018 between Macturner Estates Limited as “the Agent” and Houselook Limited as “the Landlord”. Under the Agreement the Landlord (Respondent 2) confirmed

the appointment of the agent (Respondent 1) to act on its behalf in accordance with the service, notes and general terms and fees therein in respect of the Property.

63. The Services to be provided are transcribed here as follows:
1. Providing rental valuation and of the property, and offering advice as required.
 2. Advertising the property, selecting tenants, arranging or carrying out viewings, obtaining references, and dealing with negotiations incident to the letting of the property.
 3. Preparing and signing as agent for the owner a suitable tenancy agreement in accordance with the current law existing in England and Wales on this matter.
 4. Preparing an inventory and schedule of condition at the agreed charge stated herein.
 5. Advising and assisting in the transfer of utility service account (where applicable).
 6. Collecting and holding a security deposit from the tenant on behalf of the Landlord in accordance with existing legislation.
 7. Receiving on behalf of the Landlord, ongoing rental payments, preparing and forwarding to the Landlord/their accountant, financial statements on a quarterly basis, and remitting the guaranteed rent of £1,000 per calendar month within one month of the due date less any agreed costs.
 8. Making payments of certain regular outgoings provided the agent has agreed to do so separately in writing and that sufficient funds are held in credit by virtue of paragraph 7 above.
 9. Advising on and ensuring the compliance with the gas safety (installation and use) Regulations 1988 (and its current amendments), with regard to the inspection, maintenance and keeping records in respect of gas appliances in the tenanted property. The Landlord being responsible for all the costs involved.
 10. Advising on and ensuring compliance with the Furniture and furnishings fire safety regulations 1988 (and its current amendments), with regards to the minimum fire-resistant standards of specified items supplied in the course of letting the property. The Landlord being responsible for all the costs involved.
 11. Advising on and ensuring compliance with the electrical equipment safety regulations 1994 (and its current amendments), with regards to the condition and safety of electrical equipment supplied in the course of letting the property. The Landlord being responsible for all the costs involved
 12. Inspecting the property periodically to ensure compliance with the terms of the tenancy agreement.
 13. Arranging repairs, maintenance or replacement to the property or contents which come to or are brought to the agents notice and which the agent considers necessary, up to an estimated cost of £200, and notifying the Landlord or their nominated representative who will be responsible for arranging and paying for such work or replacement.
 14. Dealing with any insurance claim on the Landlord's behalf, at a charge equivalent to 10% + VAT of the value claimed.

15. Taking appropriate initial action in the event of rent arrears or any other breach of condition of the agreement in an effort to resolve the situation.
 16. Liaising with the tenant on a routine basis, arranging renewals of agreement or check-outs, re-advertising and re-letting to new tenants as appropriate.
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64. At the hearing the Tribunal outlined the above statement to the parties present.
 65. The Tribunal referred to the services transcribed and suggested to Ms Opaleye that the Lease appeared to be more like an agency agreement. Ms Opaleye replied that as far as Respondent 1 and 2 were concerned it was a Lease of the Property to Respondent 1 by Respondent 2. Respondent 2 was the head landlord and Respondent 2 was the head tenant.
 66. In answer to the Tribunal's questions Ms Opaleye said that under the Lease Respondent 1 paid £1,000 per calendar month to Respondent 2 from 25th July 2018, for 3 years until 25th July 2021 and was liable for all the gas and electricity bills. Respondent 1 was authorised to let the Property and any rental received from those lettings was retained by Respondent 1.
 67. In addition, she said that Respondent 1 received all the rent from all the sub lettings of the Property.
 68. Ms Opaleye confirmed that she appreciated that Respondent 1 would therefore be liable to reimburse the Tenants under a Rent Repayment Order if the Tribunal made one.

Decision

The Application

69. The Tribunal considered the validity of the Application for a Rent Repayment Order and the period for which it was claimed.
70. Firstly, the Tribunal found that the Application was valid in that the alleged offence had occurred between 20th August 2020 and 4th March 2021 and the Application was received on 15th September 2021 which was within 12 months of the offence taking place under section 41 of the 2016 Act.
71. Secondly, the Tribunal found that the period for which the Applicants could potentially claim a Rent Repayment Order was, for Mr Divers, from 20th August 2020 or, for Mr Rahman, from 5th September 2020 until 4th March 2021 when the HMO licence was issued, subject to any findings regarding the offence, during which time the Applicants occupied the Property as their main residence.
72. Thirdly, the Tribunal found that no notice of intended proceedings had been served by the local housing authority on the Respondents under section 42 Housing and Planning Act 2016.

The Landlord

73. Section 40(2) of the 2004 Act states that the Rent Repayment Order can only be made against the landlord. In the case of *Rakusen v Jepson* [2021] EWCA Civ 1150 it was held that this meant the immediate landlord and that a Rent Repayment Order cannot be made against a superior landlord.
74. The Tribunal considered the evidence of Respondents 1 and 2 concerning the agreement which they referred to as a Lease. In determining whether it was a lease the Tribunal found that it was for a specific term of 3 years from 25th July 2018 until 25th July 2021 at a rent of £1,000 per calendar month to Respondent 2. Respondent 1 had the authority to let the Property and therefore it appeared that it had exclusive possession. As such it appeared that the agreement met the requirements of a lease.
75. Therefore, the Tribunal determined Respondent 1 was the lessee of the Property and under section 263 it was a “person managing” the Property. the immediate landlord and liable for the reimbursement of rent if the tribunal made a Rent Repayment Order. In addition, the Tribunal found that Respondent 1 was in receipt of the rent from the sublets of the Property and under section 263 it was a “person having control” of the Property.
76. As a result, the Tribunal found that if it were to make a Rent Repayment Order Respondent 1 would be liable to reimburse the Tenants.
77. Mr Soyemi in his statement of case on behalf of Respondent 2 said that Respondent 1 did not have permission to operate the property as an HMO. The Tribunal did not find any restriction in the Lease preventing Respondent 1 operating the Property as an HMO or preventing Ms Opaleye being a licence holder and manager.
78. The sale and the Tenants leaving the Property are not relevant to this application as the eviction of the Tenants is not in issue.

The Offence

79. The Tribunal considered whether it was satisfied beyond a reasonable doubt that an offence had been committed by Respondent 1 as the “person managing” or the “person having control” of the Property to which the Rent Repayment Order provisions applied. In this case it considered whether Respondent 1 had committed an offence under section 72(1) of the 2004 Act.
80. To commit the offence and be liable for a Rent Repayment Order Respondent 1 must be a person having control of or managing a House in Multiple Occupation which is required to be licensed but is not so licensed.
81. The Tribunal found from the evidence of the email dated 9th September 2020 from Thurrock Council to Respondents 1 that the Property was situated in Tilbury which came within an area designated by Thurrock Council for Additional Licensing under section 56 of the 2004 Act. Under the designation

any property containing more than 3 persons from more than 1 household would require a House in Multiple Occupation licence.

82. The Tribunal found from the evidence of the Tenancy Agreements the Tenants occupied the Property and were of more than one household as follows:
Mr Ian Divers from 20th August 2020 to 19th August 2021
Mr James Ryan Malcolm from 13th November 2020 to 12th November 2021
Mr Sohidor Rahman from 13th November to 12th November 2021
83. It was further found from the emails dated 9th September 2021 that there was no HMO licence when Mr Ian Divers took up occupation on 20th August 2020 until 4th March 2021.
84. However, it is a defence under section 72(4) of the 2004 Act that at the material time an application for a licence had been duly made and still effective until the licence was granted or refused.
85. Ms Opaleye submitted on behalf of Respondent 1 that she had made an application on 20th September 2020 for a licence in respect of the Property for her to be the licence holder and manager.
86. Due to the length of time between the date when Ms Opaleye said that she made the application on 20th September 2020 and the granting of the licence on 4th March 2021 the Tribunal considered the evidence adduced to determine whether the application was “duly made” and “effective”. An application is effective under section 72(8) of the 2004 Act if it has not been withdrawn, and the authority have not decided whether to grant a licence, in pursuance of the application.
87. The Tribunal was of the opinion that if an application was made well in advance of the establishment of an HMO, then there would be time to ensure the property fulfilled the requirements (which are more extensive than for the letting of a single household property) and obtain all the necessary information to submit with the application. This would enable a decision to grant or refuse a licence on receipt. However, it is appreciated that this is not always possible and this is recognised in the legislation by reference to a definition of an application being “effective” and by the local authority, in this case, having a two-part fee. One part at the beginning of the application procedure and the other at the end.
88. The Tribunal found that Ms Opaleye had completed an application form and paid the first part of a two-part fee (the second part being payable on service of the draft licence) on 20th September 2020. From that date the application was effective and would remain so until it was withdrawn or a decision was made to grant or refuse. It appeared from the emails that Thurrock Council had pursuant to section 63(2) of the 2004 Act specified a number of time limits for production of documents in the course of processing the application and these appeared to have been complied with. The email dated 16th December 2020 from Thurrock Council Licensing Officer to Ms Opaleye is not correct to say that she is committing an offence of having an unlicensed HMO. As stated above whilst the application is being processed section 72(4) of the

2004 Act applies. If the matter were passed to the legal service team, they would no doubt have advised the Officer accordingly.

89. The Tribunal therefore found that from 20th September 2020 Ms Opaleye was not committing an offence under section 72(1). The first letting of the Property was on 20th August 2020 to only two Tenants, Mr Divers and Mr Bernard. The letting to Mr Rahman and Mr Malcolm was not until 13th November 2020. The HMO licence was not required unless there were three or more tenants comprising more than one household. Therefore, at the time the Property was let to Mr Divers and Mr Bernard, prior to the application on 20th September 2020 an HMO licence was not required.
90. Therefore, the Tribunal did not find beyond a reasonable doubt that the offence under section 72(1) of the 2004 Act was committed for the period 20th August 2020 when the Property was first let to 20th September 2020 when an application was made for an HMO licence.

The Order

91. The Tribunal considered whether an order should be made in the event that a licence had been required before the application on 20th September 2020 due to there being another person occupying the Property in addition to Mr Bernard and Mr Divers who has not been identified. If this were the case then the maximum amount that could be awarded to Mr Divers would be £231.60 for the month 20th August 2020 to 20th September 2020 as the Universal Credit element is paid by the local authority and so cannot be reimbursed to a tenant.
92. In *Vadamalayan v Stewart & Others* [2020] UKUT0183 (LC) it was held that the starting point is the rent and there is no reason why the landlord's costs in meeting the obligations under the lease should be set off against the cost of meeting an obligation to comply with a Rent Repayment Order. Utilities are also all part of the rent.
93. In *Ficcara & Others v James* [2021] UKUT0038(LC) and *Amad v Hooley* [2021] UKUT0055 (LC) it was stated that the tribunal must weigh up the seriousness of the offence against any mitigating circumstances. In this regard the Tribunal took account of *Williams v Parma* [2021] UKUT 244 (LC). In that case it was held that the tribunal must consider the facts of each case and referred in relation to that particular case, the need to take account of any previous convictions, the seriousness of the offence which was the subject of the proceedings, any reasons for failing to obtain a licence, the condition of the premises, whether the respondent was a commercial landlord who 'should have known better'.
94. If the Tribunal were to make an order, in accordance with section 44(4) of the 2016 Act, it must consider:
 - a) The conduct of the landlord and the tenant,
 - b) The financial circumstances of the landlord,
 - c) Whether the landlord has at any time been convicted of an offence to which the specific legislation applies.

95. Firstly, no evidence of the Respondent 1's financial circumstances were adduced.
96. Secondly, no evidence that Respondent 1 had been convicted of a relevant offence was provided.
97. Thirdly, the Tribunal considered the conduct of the Landlord and the Tenant.
98. With regard to the Tenant no evidence was adduced to show that Mr Divers conduct had been anything other than exemplary.
99. With regard to the Landlord, the Tribunal was of the view that Parliament required tribunals to differentiate between offending landlords when determining the amount of rent to be repaid and to grade the repayment order accordingly. On this basis a higher award is to be made against those landlords who fail to obtain a licence to avoid the scrutiny of the local authority and flagrantly disregard the safety, health and welfare of their tenants. In contrast a lower repayment order might be made against those landlords where there are mitigating circumstances, and whose HMOs meet appropriate standards, notwithstanding that they have not complied with the administrative requirements intended to safeguard tenants.
100. The purpose of the Orders as set out in Government Guidance is to:
 - Punish the offender,
 - Deter the offender from repeating the offence,
 - Dissuade others from committing similar offences,
 - Remove any financial benefit from the offender as a result of committing the offence.
101. This opinion is reinforced by the Upper Tribunal decisions of *Williams v Parma* [2021] UKUT 244 (LC) referred to above and *Parker v Waller and Others* [2012] UKUT 301 (LC) where it was said that the benefit obtained by the tenant in having had accommodation is not a material consideration, however, the length of time that the offence has been committed and the degree of culpability of the landlord are relevant factors.
102. The Tribunal found that Respondent 1 had let the Property to individual tenants as opposed to a single household at the request of Thurrock Council housing department. The Tribunal found that a licence would not have been required except for the Additional Licensing designation of which Respondent 1 was unaware until Thurrock Council Licensing Officer's email of 9th September 2020. At this stage Respondent 1 was in communication with Thurrock Council and was seeking to both offer accommodation and comply with the legal requirements. On being informed that a licence was required Respondent 1 applied within 14 days, which the Tribunal considered reasonable.
103. With regard to the subsequent conduct of Respondent 1 for the reasons stated above the Tribunal found that Ms Opaley, acted reasonably in obtaining the licence. Also, in the absence of evidence to the contrary the Tribunal found

that Respondent's 1's actions were appropriate in respect of the gas leak and the cockroaches.

Summary

104. While Mr Rahman was a Tenant, the Tribunal found that there was no breach of section 72(1). Even if there had been a breach as Mr Rahman had only paid his Universal Credit towards his rent and the balance was still outstanding, there was no rent to be repaid.
105. While Mr Divers was a Tenant the Tribunal found that there was no breach of section 72(1). Even if there had been a breach for the reasons stated the Tribunal exercised its discretion and determined that a Rent Repayment Order should not be made.

Determination

106. The Tribunal determined that it would not order a Rent Repayment Order.

Application for Reimbursement of Fees

107. The Applicants both received assistance with application fee and hearing fee and therefore no order was made for reimbursement of fee pursuant to Rule 13 of the Tribunal procedure (First-tier Tribunal) (Property Chamber) Rules 13 (2).

Judge JR Morris

ANNEX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e., give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2 – THE LAW

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

Section 72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

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

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

Section 40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
 - (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if –
- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if–
- (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with–
- (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

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

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
 - (a) the rent paid in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount, the tribunal must, in particular, take into account—
 - (a) the conduct of the landlord and the tenant,
 - (b) the financial circumstances of the landlord, and
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

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

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

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

- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

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

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