



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

**Case Reference** : **BIR/00FY/HMJ/2021/0009**

**HMCTS code  
(paper, video,  
audio)** : **Remote Video Hearing**

**Property** : **Flat 3 The Point, 6 Bellar Gate,  
Nottingham, NG1 1JN**

**Applicant** : **Ms Noor Khoursheed**

**Representative** : **Litigant in Person**

**Respondent** : **Mr David Jackson**

**Representative** : **Mr Tom Carter, Counsel**

**Type of  
Application** : **Application for Rent Repayment Order  
by a Tenant under section 41 of Chapter  
4 of Part 2 of the Housing and Planning  
Act 2016**

**Tribunal Members** : **Judge C Payne  
Mr A McMurdo**

**Date of Hearing** : **22 April 2022**

**Date of Decision** : **18 July 2022**

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**DECISION**

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## **Decisions of the tribunal**

1. The Respondent committed an offence under section 95(1) of the 2004 Act in that at the relevant time he was the person who controlled or managed a property that was required to be licensed but was not so licensed.
2. The tribunal orders the Respondent to repay to the Applicant by way of rent repayment the sum of £5,405.22.

## **Introduction**

1. The Applicant has applied for a rent repayment order against the Respondent under section 41 of Chapter 4 of Part 2 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The basis for the application is that the Respondent was controlling and/or managing a house which was required under Part 3 of the Housing Act 2004 (“**the 2004 Act**”) to be licensed at a time when it was let to the Applicant but was not so licensed and that it was therefore committing an offence under section 95(1) of the 2004 Act.
3. The Applicant’s claim is for repayment of rent paid during the period from 4 February 2021 to 3 February 2021 in the amount of £13,200.00 or for such period as the Property has been unlicensed.

## **Applicant’s Case**

4. The Applicant, provided a witness statement, bank statements showing rent payments, a copy of the Tenancy Agreement and copies of correspondence with Nottingham City Council as well as providing submissions at the hearing.
5. The parties agreed that the Applicant rented the property from the Respondent for a fixed term from 4 February 2021 to 3 February 2022. The parties agreed and the Tenancy Agreement confirms the rent was £1,100 per month. The initial six months was paid in advance upon entering into the tenancy agreement. From 1 August 2021, rent of £1,100 was payable on a monthly basis. The parties agreed that at the outset of the tenancy the Applicant paid six months of rent at £6,600 and that in August 2021 the Applicant then paid a further total of £6,600 in respect of the second six months of the tenancy. This was confirmed by the Applicant’s bank statements. The Applicant funded the payment of the rent privately and was not in receipt of any housing benefit payments. There is no dispute that the rent was paid in full.

6. It is accepted by the parties that, as of 1 August 2018, the property fell within an area designated for selective licencing by Nottingham City Council (“**the Council**”)
7. On 11 October 2021, the Applicant received a letter put through the door of the property by Ms Charlotte Cockerton of the Council’s Safer Housing Team making enquiries about her occupation of the property. Upon contacting Ms Cockerton by email, confirmation was provided to the Applicant that the property was unlicenced. Ms Cockerton requested the contact details for the Landlord and a copy of the Tenancy Agreement, which the Applicant supplied.
8. The Applicant’s application for a Rent Repayment Order was received by the Tribunal on 17 November 2021.
9. The Applicant vacated the Property on 3 February 2022 when the tenancy came to an end. There were no other issues with the property or the tenancy, other than the lack of a licence.
10. The Respondent had raised an accusation against the Applicant that she had failed to pass on post in accordance with the terms of the Tenancy Agreement. Upon being questioned about what she did when post addressed to the Respondent was delivered to the property, the Applicant confirmed that the Landlord’s agents, Liberty Gate, had advised her to put any post in a pile on the side in the kitchen. The agents would then collect the post as and when they visited the property, which they did regularly during the tenancy. The Applicant submitted that she had never had cause to open any post addressed to the Respondent and did not recall seeing anything that was obviously a letter from the Council delivered to the tenancy other than the letter on 11 October 2021, which was addressed to her as ‘The Occupier’.

### **Respondent’s Case**

11. The Respondent provided a detailed Defence appended to which were copies of emails with his agent, Liberty Gate, a copy of a case status summary from the Council’s website, copies of correspondence with the Council and a copy of the property’s title. Separately a copy of a letter from the Council dated 23 March 2021, which had been sent to the property, was provided along with a photograph of the cleared kitchen of the property with a small pile of papers on the work surface adjacent to the door. It was submitted to the Tribunal that this letter was found in that pile of papers after the end of the tenancy in February 2022. The Respondent’s Representative assisted the Tribunal by providing a Skeleton Argument. The Respondent also provided submissions at the hearing.

12. The Respondent is listed on the Property's title, NT366524, as the sole proprietor.
13. The Respondent confirmed the terms of the Tenancy Agreement and that the rent was paid in full. The only accusation against the Tenant was that she had failed to pass on letters to the Respondent, in particular the letter to the Respondent from the Council dated 23 March 2021, in accordance with clause 1.37 of the Tenancy Agreement which states:

*Forward Correspondence*

*Pass to the Landlord or the Landlord's Agent as soon as is reasonably practicable following receipt, any notice or other communication left on or delivered or posted to the Property that are addressed to the Landlord with the exception of obvious circulars or marketing material.*

14. The Respondent accepted that a licence should have been obtained for the Property. However, submitted that, under section 95(4) of the 2004 Act, the Respondent was not guilty of an offence under section 95(1) as he had a reasonable excuse for not having licensed the Property, namely that he thought he had applied for a licence on or around 3 February 2021.
15. The Respondent lived in the property himself, prior to letting it out. He had bought a property elsewhere and investment had been made into refurbishing the Property with a view to selling it. When this proved challenging, he decided to rent it out. This is the Respondent's only rental property and, as such, he chose to engage professional agents, Liberty Gate, to source a tenant and manage the letting of the property.
16. Prior to letting the Property, the Respondent ensured that Gas and Electrical Safety Certificates and an EPC were obtained. Liberty Gate emailed the Respondent on 27 January 2021, before the commencement of the Tenancy Agreement, advising him that the Property required a licence in order for it to be let.
17. The Respondent started an application on 27 January 2021 on the Council's website. The application started was allocated the reference number FS-Case-301105830.
18. On 3 February 2021, the Respondent's father, Mr Terry Jackson, emailed Ms Sophia Goodwin of Liberty Gate asking for a copy of the Electrical Certificate, which was required to complete the licence application. Ms Goodwin responded providing a copy of the certificate and stating:

*“If David (the Respondent) has started the application then he should have the reference number. I will just need this before we can move the tenant in tomorrow.”*

19. The Respondent provided the reference number he was provided with upon starting his application to Liberty Gate, who proceeded to let the Property to the Applicant on his behalf, on the basis that an application had been started but not submitted. They failed to advise the Respondent that he needed to ensure the application was submitted before the letting commenced.
20. The Respondent submitted that he had difficulties with the Council’s system when it came to making payment for the licence application. He believed that his father made a payment in February 2021. He could not recall if he or his father had then submitted the application. He could not recall if he had uploaded the electrical certificate to the application portal following its provision on 3 February 2021.
21. No evidence was provided to the Tribunal by the Applicant’s father, Mr Terry Jackson, and the Applicant was unable to confirm to the Tribunal when the payment was made or when the application was submitted. The Respondent did not receive any receipt for the submission of the licence application at this time.
22. The Council’s letter dated 23 March 2021, which was sent to the Respondent at the Property, refers back to a letter of 10 February 2021 and states that no application for a licence has been submitted at that time. This is consistent with the case status summary provided from the Council’s website. The Respondent submitted that he did not receive any letter from the Council dated 10 February 2021. He has not requested a copy from the Council. He submitted that the letter dated 23 March 2021 did not come into his possession until it was located in a pile of post left by the Applicant on the kitchen counter upon her vacation of the Property in February 2022.
23. The Respondent noted that there was a notice on the Council’s website when he started completing the application which suggested that the processing of applications was being delayed due to the Covid 19 Pandemic. For this reason, he presumed his application was being processed.
24. The Respondent submits that he called the Council a number of times to ask about the progress of his application. He submits that during those calls he gave details of the Property address and was told that there were ongoing delays due to the pandemic. He said he was not advised that no application had been received by the Council’s officers on any occasion of him calling to check progress of his application. He did not email regarding the application as he prefers to deal with matters over the

telephone. The Respondent was unable to recall when the calls took place and had not kept any note of them.

25. Liberty Gate did not check that the licence application had been submitted or whether a licence had been granted. The next communication regarding the licence from Liberty Gate was via email at 10.51 on the 1 November 2021 when they contacted the Respondent to advise him they had received a message from the Council and to ask him to provide evidence that he had applied for the licence in the next 24 hours.
26. The Respondent took immediate action. He did not make any enquiries regarding the initial application from February 2021. Instead, he immediately created a new application under reference FS-Case-375329365. He then contacted the Council at 13.28 on 1 November as he was having difficulties with making payment for that application. The payment issues were resolved and his application was submitted, with acknowledgement of receipt provided by the Council, on the morning of 2 November 2021.
27. A licence was then issued by the Council for the Property on 24 January 2022.
28. Further to the vacation of the Property at the end of the tenancy, the Respondent's father attended and noted a pile of post on the kitchen counter. He took a picture of that post. The respondent submitted that his father found the letter from the Council to him dated 23 March 2021 in that pile of papers and that it had been opened by the Applicant. He submitted that the Applicant had failed to comply with the requirement to pass post addressed to him on to him or his agents in accordance with clause 1.37 of the Tenancy Agreement.
29. The Respondent submitted that, had he received either of those letters he would have taken immediate action as he did on 1 November 2021 when he received the email from Liberty Gate. As such, it was submitted that it was the Applicant's conduct in not passing this correspondence on which led directly to the delay in applying for the licence. If the Applicant had passed on the letter promptly in February 2021, then the period during which an offence had been committed would have been limited to the period between 4 February 2021 and 10 February 2021 or 23 March 2021.
30. The Respondent submitted that for the first six months of the tenancy he had a postal redirection in place, which redirected post to the Property addressed to him to his new residence. He confirmed that this worked well and that he was not aware of any post, other than the letters from the Council in February and March 2021 having not been redirected to him.

31. The Respondent submitted that in the application he made in February 2021, he had given the Council his new address and they should have been writing to him at that address, rather than at the Property.
32. The Respondent's representative asked that the Tribunal take into account that the Respondent is not an experienced Landlord and that the property was not let on a long term basis.
33. There was substantive work done to the property, ensuring it was let in good condition. The Respondent was struggling financially after purchasing a second property and had to borrow funds to pay the licence fees and refurbish the property. The Property is mortgaged. No details of the mortgage or financial support were provided to the Tribunal.
34. The Respondent's representative submitted that, having received an FS reference number, the Respondent thought he had made an application in February 2021 and Liberty Gate did not tell him he had to complete the application and submit it after he provided them with the FS reference number on 3 February 2021. He submitted that the case summary from the Council's website is not reliable as it is not clear what the dates and times on the summary reflect or why different FS reference numbers are allocated to entries. It was put to the Tribunal that this summary relates to an internal computer process, rather than the timing of an application form being worked on or submitted by the Respondent.
35. The Respondent has no previous convictions and is of good character.

### **Relevant Statutory Provisions**

#### **36. Housing Act 2004**

##### **Section 79 Licensing of houses to which this Part applies**

- (1) This Part provides for houses to be licensed by local housing authorities where—
  - (a) they are houses to which this Part applies (see subsection (2)), and
  - (b) they are required to be licensed under this Part (see section 85(1)).
- (2) This Part applies to a house if—
  - (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
  - (b) the whole of it is occupied either—

- (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)...

**Section 85 Requirement for Part 3 houses to be licensed**

- (1) Every Part 3 house must be licensed under this Part unless—
  - (a) it is an HMO to which Part 2 applies (see section 55(2)), or
  - (b) a temporary exemption notice is in force in relation to it under section 86, or...
  - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

**Section 95 Offences in relation to licensing of houses under this Part**

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) 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 86(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection (7)).
- (3) In proceedings against a person for an offence under sub-section (1) it is a defence that, at the material time—
  - ...
  - (b) an application for a licence had been duly made in respect of the house under section 87,

and that ... application was still effective.

- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition, as the case may be.



36. **Housing and Planning Act 2016**

**Section 40**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant ...
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<b>Act</b>	<b>section</b>	<b>general description of offence</b>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house

7	This Act	section 21	breach of banning order
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**Section 41**

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

**Section 43**

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

**Section 44**

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

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

**Tribunal’s Analysis**

- 37. The Respondent has accepted that the Property was not licenced between 4 February 2021 and 24 January 2022, and that it was required to be licenced. He does not deny that he was the landlord for the purposes of the 2016 Act, nor that he was a “person having control” of the Property and/or a “person managing” the Property, in each case within the meaning of s263 of the 2004 Act.
- 38. The Tribunal is satisfied on the evidence before it that the Property required a licence under the Council’s selective licencing scheme throughout the period of the claim. We are also satisfied on the evidence that the Respondent had control of and/or was managing the Property throughout the relevant period and that the Respondent was “a landlord” during this period for the purposes of section 43(1) of the 2016 Act.
- 39. The Tribunal is satisfied, beyond reasonable doubt, that the Respondent has committed an offence under section 95(1) of the 2004 Act in that at the relevant time he was the person who controlled or managed a property that was required to be licensed but was not so licensed.

*The Defence of “reasonable excuse”*

- 40. Under section 95(4) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 3 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

41. The Respondent submits that he did have a reasonable excuse in that he believed that he had submitted an application for a licence in February 2021. The Tribunal is not persuaded by this argument.
42. It is clear that on the 3 February 2021, the day before the commencement of the Applicant's tenancy, the Respondent and his father were still seeking copies of the Electrical Certificate for the Property in order to complete the application. On that day, when the reference number was provided to Liberty Gate, the Respondent was still seeking documentation to complete the application process. As such, he was clearly aware that the application was not complete when he provided the reference number to his agent for the application that was partially complete.
43. The Respondent was unable to provide any evidence that either he or his father had paid the application fee or completed and submitted the application after the electrical certificate was provided on 3 February 2021. The Council had clearly not received an application in February 2021 as they wrote to the Respondent on 10 February 2021 and 23 March 2021 stating that they had not received his application.
44. The Respondent claims to have called the Council on a number of occasions to check on the progress of his application. However, he was unable to provide details of these calls to the Tribunal and no evidence of these calls having been made was provided. Had the Respondent contacted the Council, he would have been asked to provide the details of the Property for which he was making an enquiry. Upon looking at the record for the Property it would have been clear to any of the Council's officers taking a call from the Respondent that there was no application for a licence for the Property pending and that the Council had issued warning letters regarding the requirement to make a licence application. Had the Respondent contacted the Council on numerous occasions then the officers he spoke to would have told him there was no application pending for his Property. The Tribunal, therefore, concludes that it is unlikely that the calls described by the Respondent were made to the Council.
45. On being notified by Liberty Gate on 1 November 2021 that he needed to provide them with Proof that the application had been submitted within 24 hours, the Respondent immediately made a new application. Had he believed that an application been made and paid for in February 2021 then the Respondent would have raised that point with the Council before commencing an entirely new application, particularly where he required financial assistance to pay the licence fee and would have been being asked to pay it for a second time.
46. For the reasons set out above, the Tribunal was not persuaded that the Respondent had a genuine belief that he had completed and submitted an application for a licence in February 2021.

47. In the alternative, the Respondent argues that the Applicant failed to pass on the Council's letters dated 10 February 2021 and 23 March 2021. He submits that, had he received either of those letters in a timely fashion that he would have ensured an application was submitted promptly upon receipt, leaving the Property unlicensed for a much shorter period.
48. The Respondent provided evidence that his father had found the letter from the Council dated 23 March 2021 at the property in February 2022. He was unsure of the date when this occurred. The evidence of the letter being found in this way and at this time was hearsay evidence, there being no evidence submitted by the Respondent's father on this point. A photograph was provided of a neat pile of documents on a cleared kitchen counter. It is not possible from the photograph to see if the Council's letter is included in that pile. It is not clear from the photograph that any envelopes in the pile have been opened.
49. The Respondent gave evidence that he had a postal redirection in place for the Property for the first six months of the tenancy, which would cover the period of February and March 2021 when the Council's letters were sent to the Property, addressed to him. Other post was redirected to him without issue and he was not aware of any other post not being redirected to him.
50. The Applicant made clear submissions that she had followed the direction given by the Respondent's agent to leave the post on the side for collection. In doing so, the Tribunal finds that she did discharge her duty for pass on post under the Tenancy Agreement. The Applicant denied opening any correspondence for the Respondent and is not accused of having opened any other correspondence. She did not recall seeing any letter from the Council.
51. The Tribunal prefers the Applicant's evidence on this point. Her submissions were clear that she had not opened or withheld any correspondence from the Respondent and there was no evidence before the Tribunal that she had done so, other than hearsay which could not be tested. If it was her intention to withhold the letters then it would be very unlikely that she would leave a letter she had been withholding, clearly opened by her, in the pile of post for collection at the end of the tenancy, particularly as her application was already with the Tribunal. Therefore, the Tribunal does not find that the Applicant acted to delay the Respondent making an application for a licence.
52. In the alternative, the Respondent argued that the Council should have written to him at his new address. He says he provided his new address in the application he started in February 2021. The Tribunal finds that application was not submitted to the Council and, as such, it would not be expected that their records be updated. Further, the Respondent has a postal redirect service operational at the time the letters were sent to

the Property. Given all other post was successfully redirected to him at this time, it is unlikely that the two letters from the Council and only those two letters would not have been redirected. Therefore, the Tribunal does not find that the Council's actions in any way delayed the application for a licence being made.

### *The Offence*

53. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of control or management of an unlicensed house under section 95(1) of the 2004 Act is one of the offences listed in that table.
54. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. Having determined that the Respondent did not have a reasonable excuse for failing to license the Property, the Tribunal is satisfied beyond reasonable doubt that an offence has been committed under section 95(1), that the Property was let to the Applicant at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which the application was made.

### *Amount of Rent to be Ordered to be Repaid*

55. Based on the findings set out above, the Tribunal has the power to make a rent repayment order against the Respondent.
56. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period.
57. In this case, the application for a licence was made on 2 November 2021. Therefore, the relevant period for the purpose of the rent repayment order is from the start of the Applicant's tenancy on 4 February 2021 to the date an application for a licence was made on 2 November 2021. There is no suggestion that universal credit had been paid in respect of the rent.

58. On the basis of the Applicant's evidence, which in this respect is not disputed by the Respondent, we are satisfied that the Applicant was in occupation for the whole of the period to which the rent repayment application relates and that the Property required a licence for the whole of that period. There is also no dispute between the parties as regards the amount of rent paid by the Applicant in respect of this period.
59. The period for which the property was unlicensed was 9 months, less 2 days. The rent for 9 months under the Tenancy Agreement was £9,900. The daily rate of rent was £36.16. Taking 2 days of rent, £72.32, from the 9 months of rent, £9,900, the total sum that the Tribunal may order by way of rent repayment would be £9,827.68.
60. Under sub-section 44(4), in determining the amount the tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which the relevant part of the 2016 Act applies.
61. In *Williams v Parmar & Ors [2021] UKUT 244 (LC)*, Mr Justice Fancourt stated that the FTT had in that case taken too narrow a view of its powers under section 44 to fix the amount of the rent repayment order. There is no presumption in favour of the maximum amount of rent paid during the relevant period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.
62. Mr Justice Fancourt went on to state that the FTT should not have 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", and 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 was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise.
63. The landlord in the *Williams* case was a first offender with no relevant convictions but was also a professional landlord. There was nothing in her financial circumstances or conduct that Mr Justice Fancourt felt justified reducing the amount of the rent repayment order. The landlord only applied for a licence after an environmental health officer had visited and itemised deficiencies of the Property and the absence of a licence. The Property would not have obtained a licence without further substantial works, had the landlord applied for one, and her February 2020 application was in due course refused because the works had not been done. There were serious deficiencies in the condition of the property, which affected the comfort of all the tenants. Mr Justice

Fancourt went on to conclude in the circumstances of that case that it was not necessary or appropriate to mark the offending of the landlord with a rent repayment order in the maximum adjusted amount (after taking into account certain undisputed reductions). Leaving to one side the separate position of one particular tenant in that case, he made a rent repayment order of 80% of the agreed adjusted starting point in respect of the other tenants.

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

#### *Conduct of the Parties*

65. The Applicant's conduct has been good. Other than the accusations regarding post, which the Tribunal has determined to be unfounded, there have been no other issues raised in respect of the Applicant's conduct.
66. The Respondent's conduct has also been broadly good aside from the very serious matter of failing to license the Property. His failure to license, whilst not being a failure for which he had a reasonable excuse for the purposes of section 95(4), was not as culpable as it could have been. He is not someone with a property portfolio and had complied with the other necessary obligations before renting the Property to the Applicant.
67. There is no evidence that his failure to license the Property has had any adverse impact on the Applicant. The Property was seemingly in a good and safe condition and the evidence indicates that he was a good landlord in all other respects. The application made in November 2021 was processed and granted without any modification or work being required to the Property.

#### *Financial circumstances of the Landlord*

68. The Respondent has stated that, following his purchase of a second property, he required assistance from his father in order to pay for the renovation of the Property and the licence fee. No evidence of these contributions was provided to the Tribunal.
69. The Respondent is in full time employment and owns the property in which he is currently resident. No other evidence of financial hardship was provided to the Tribunal.



*Whether the Landlord has at Any Time been Convicted of a Relevant Offence*

70. The Respondent has not been convicted of a relevant offence.

*Other Factors*

71. The Respondent is not a professional landlord, which the Property being the only property which he lets due to difficulties in selling it. He engaged a professional agent, Liberty Gate, to assist him with the management of the letting. Liberty Gate knew at the time of the letting that the application for a licence had not been submitted. They advised the Respondent, through emails with his father, that if they had the reference for an application having been started to be provided to them, that was sufficient to enable the tenancy to commence, which is clearly not correct.

72. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal “must, in particular, take into account” the specified factors. One factor identified by the Upper Tribunal in *Vadamalayan* as being something to take into account in all but the most serious cases is the inclusion within the rent of the cost of utility services. However, in the present case the Respondent is not arguing that any deductions need to be made for utility costs. The Applicant made reference in her application to having made separate payments for water and electricity during the tenancy but there was no suggestion that these formed part of the rent that was paid.

73. The Tribunal are not persuaded that there are any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

*Amount to be Repaid*

74. The first point to emphasise is that a criminal offence has been committed. There has been much publicity about licensing of privately rented property, the Respondent was expressly made aware of the need to obtain a licence prior to letting the property by his agent and no mitigating factors are before us which adequately explain the failure to obtain, or at least apply for a licence prior to commencement of the Applicant’s tenancy.

75. The Tribunal is also conscious of the argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be

heavily incentivised not to let out licensable properties without first obtaining a licence.

76. There is no persuasive evidence before us that the Applicant's conduct has been anything other than good. Even where it can be argued that the Applicant did not suffer direct loss through the Respondent's failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.
77. On the other hand, aside from the very important fact of his failure to obtain a licence, the evidence before the Tribunal indicates that the Respondent's conduct has been good. The Property was in a good and safe condition throughout the tenancy. In addition, the Respondent is not someone with a property portfolio. Furthermore, the Respondent has not at any time been convicted of a relevant offence.
78. Therefore, and in particular taking into account the recent decision in *Williams*, the Tribunal takes the view there is significant scope for deductions from the *Vadamalayan* starting point of 100% of the amount of rent claimed. Taking all the circumstances together, including the good condition of the Property, both parties' good conduct and the Respondent's lack of any criminal conviction, it is considered that a 45% deduction would be appropriate in this case. The Tribunal considers that to deduct any more in these circumstances would serve to downplay the seriousness of the offence and weaken the deterrence value of the legislation.
79. As the total award available is £9,827.68, a 45% deduction would reduce this to £5,405.22. Accordingly, we order the Respondent to repay to the Applicant the total sum of £5,405.22.

### **Rights of Appeal**

80. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
81. 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.
82. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look

at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

83. 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.

Judge C Payne  
Chairman  
First-tier Tribunal (Property Chamber) (Residential Property)