



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

Case Reference : CHI/00HD/HMF/2022/0002

Property : 24 Edward Parker Road, Bristol, BS16 1QE

Applicants : Thomas MacDonald
Michael Brown
Callum Stacey
Oliver Kincaid
Mohamed Fathi
James Rennie

Representative : Jane MacDonald

Respondent : Yafang Hu

Representative : Daniel Gill, Solicitor of Clarke Willmott

Type of Application : Application of Rent Repayment Order by
Tenant
Sections 40, 41, 42, 43 and 45 of the
Housing and Planning Act 2016

Tribunal Member(s) : Judge Tildesley OBE
Mr J Reichel
Mr M Jenkinson

**Date and venue of the
Hearing** : Havant Justice Centre, Elmleigh Road,
Havant PO9 2AL
Hybrid Hearing
24 May 2022

Date of Decision : 1 July 2022

DECISION

Summary of Decision

1. The Tribunal orders the Respondent to pay Mr Fathi on behalf of the Applicants the sum of £17,500 by way of a rent repayment order and to reimburse Mr Fathi with the application and hearing fees in the sum of £300 within 56 days from the date of this decision. The Tribunal directs Mr Fathi to apportion the sum of £17,500 amongst the Applicants in proportion to their contributions towards the rent paid, and repay whoever has paid the application and hearing fees.

Background

2. On 7 February 2022 the Tribunal received an application for a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 (the Act) from Mrs MacDonald on behalf of six tenants: Thomas MacDonald, Michael Brown, Callum Stacey, Oliver Kincaid, Mohamed Fathi and James Rennie. The tenants were all students and shared a house under an assured shorthold tenancy. Mr Rennie replaced Mr Kincaid as one of the five occupiers during the tenancy. The property was known as 24 Edward Parker Road, Bristol.
3. The original application named Mr Roland Tao, Ms Yafang Hu, Co & Co Property Management Limited and IletPro Limited as Respondents.
4. The tenancy was for a fixed period of ten months and 1 day from the 1 September 2020 to 1 July 2021. The rent payable under the tenancy was £2,750 per calendar month. The tenancy agreement defined the Landlord as “anyone owning an interest in the property, whether freehold or leasehold, entitling them to possession of it upon the termination or expiry of the tenancy”. The Tenant was defined “as anyone entitled to possession of the property under the agreement”. The Tenant was responsible and liable for all the obligations under the agreement as a joint and several Tenant if the Tenant formed more than one person. Under the agreement, “joint and several” meant that when more than one person comprised the Tenant, they would each be responsible for complying with the Tenant’s obligations under this agreement both individually and together.
5. During the period 1 September 2020 to 1 July 2021 two tenancy agreements were drawn up. They were both dated 1 September 2020. The first tenancy agreement was signed by Mohamed Fathi, Michael Brown, Thomas MacDonald, Oliver Kincaid and Callum Stacey as Tenants, and by Mr Tao as Landlord [43]. The second tenancy agreement which covered the same period as the first agreement, 1 September 2020 to 30 June 2021, named Mohamed Fathi, Michael Brown, Thomas MacDonald, Callum Stacey and James Rennie as Tenants and Yafang Hu as the Landlord. The

second tenancy agreement exhibited in the bundle [101] was not signed by James Rennie and Ms Yafang Hu. The other occupiers signed the second tenancy agreement on the 15 January 2021. The Tribunal understands that the second tenancy agreement was issued because Mr Rennie replaced Mr Kincaid as an occupier of the property.

6. Ms Yafang Hu as landlord appointed Co & Co Property Management Limited as agent for managing 24 Edward Parker Road, Bristol, (the Property). The agreement was signed by Ms Yafang Hu on 29 August 2020, and by Mr Tao on 7 September 2020. The agreement was for a fixed 12 months contract, and authorised the payment of a management fee of 7.5 per cent of the rental achieved which was specified at £2,750 per calendar month [622]. The bundle also contained a copy of the agreement written in Chinese [664].
7. Ms Yafang Hu was registered on 13 March 2020 with HM Land Registry under Title Number GR445690 as the proprietor with absolute title of the freehold of the property [521].
8. Mr Tao was the director of AJS Bristol Limited which was formerly known as IletPro Limited (11 September 2020 to 28 March 2022) and as Co & Co Property Management Limited (6 November 2017 to 11 September 2020) [347].
9. The total amount of rent claimed was £27,500 which represented the rent paid for the period 1 September 2020 to 1 July 2021. The Applicants appropriated the rent claimed, £5,500 each for Mr MacDonald, Mr Stacey, Mr Brown and Mr Fathi, £3,025 for Mr Rennie, and £2,475 for Mr Kincaid.
10. The Applicants' ground for their application for RRO was that the Respondents had committed the offence of having control of or managing an HMO which required to be licensed but was not so licensed contrary to section 72(1) of the Housing Act 2004.
11. The property was a three storey semi-detached house which had been constructed in 2020 and located close to the University of West of England in Stoke Gifford a northern suburb of Bristol. The original design of the property had four bedrooms on the first and second floors with a living room and a separate kitchen on the ground floor. Ms Yafang Hu had converted the property so that it had six bedrooms, although one of the bedrooms was never used because it was below the minimum size for a bedroom in a licensed HMO.

The Proceedings

12. On 18 March 2022 the Tribunal directed the parties to exchange statements of case and fixed a hearing on the 24 May 2022. The

directions named Roland Tao and Yafang Hu as Respondent One and Two respectively.

13. On 27 April 2022 Roland Tao made various applications including substituting him as Respondent One with AJS Bristol Limited and excluding the evidence of Mr Griffiths, an Environmental Health Officer for South Gloucestershire Council.
14. On 28 April 2022 the Tribunal issued further directions declining to deal with the various case management applications until Respondent One had supplied Office Copy entries of title for the Property and until both Respondents had provided their statements of case in accordance with the timetable established on the 18 March 2022.
15. On 5 May 2022 the Tribunal after reviewing the statements of case concluded that the only Respondent to the proceedings was Ms Yafang Hu. The Tribunal explained that under section 40 of the 2016 Act the Tribunal may make a rent repayment Order where a *landlord* has committed a “housing” offence. Further the evidence provided by the parties indicated that Ms Yafang Hu was the landlord and that Mr Tao under his various companies was the managing agent. The Tribunal, therefore, directed that it was minded to amend the Application by naming Ms Yafang Hu as the sole Respondent unless the parties objected in writing to the Tribunal within seven days from receipt of the directions. The parties did not object to the proposed amendment
16. The Tribunal having read Mr Tao’s witness statement decided that it was relevant to the case before it, and indicated that it would order Mr Tao to attend the hearing to give evidence on his witness statement if he was not prepared to attend voluntarily. The parties were also given an opportunity to object to Mr Tao attending as a witness. Mr Tao stated that he was prepared to attend the hearing and give evidence. No party objected to Mr Tao’s attendance as a witness.
17. On the 5 May 2022 the Tribunal instructed the Respondent’s representative to inform the Tribunal straightaway if an interpreter was required for Ms Yafang Hu. The Tribunal confirmed the hearing date of 24 May 2022.
18. On the 20 May 2022 the Respondent’s representative informed the Tribunal that the Respondent required an interpreter and that she had returned to China because her husband was terminally ill, and was quarantining in a hotel. The Respondent also advised the Tribunal that she would be joining the hearing by video link. After enquiring about the dialect required the Tribunal managed to organise an interpreter for the hearing on 24 May 2022.
19. On 23 May 2022 the Tribunal informed the Respondent’s representative that he would have to enquire of the “Taking of

Evidence Unit” at the Foreign and Commonwealth and Development Office about whether the Chinese Authorities would give permission to the Respondent to give evidence from China. The Tribunal explained to the representative that the Respondent was able to attend the hearing, the problem concerned the giving of evidence. The Tribunal noted that the Respondent had provided a witness statement.

20. The Respondent’s representative decided to submit a case management application requesting an adjournment of the hearing to obtain the necessary authority from the Chinese authorities. The Tribunal advised the representative that the application for adjournment would be heard as a preliminary matter by the Tribunal at the hearing the following day. The Tribunal required the Respondent to attend the hearing so that she would be present when the application for adjournment was made.
21. On the morning of the hearing the Respondent’s representative advised that the Respondent was unable to attend the hearing because of technical difficulties. The representative, however, indicated that he was not pursuing the application for adjournment and that he would be relying on the Respondent’s witness statement. The Tribunal explained to the Applicant’s representative that if the Tribunal decided to proceed the Applicants would not be able to ask questions of the Respondent, and that her witness statement would be admitted in evidence to which the Tribunal would give such weight as appropriate having regard to the totality of the evidence. The Applicants agreed to the hearing proceeding.
22. At the hearing Mrs McDonald appeared for the Applicants, each of whom attended and gave evidence. Mr Daniel Gill of Clarke Wilmott solicitors appeared for Ms Yafang Hu, the Respondent. Mr David Griffiths, Environmental Health Officer, and Mr Roland Tao were also in attendance to give evidence. The parties and the witnesses except for Mr Tao attended by video link. Mr Tao attended the hearing in person at Havant Justice Centre. The Applicants produced a hearing bundle comprising 1391 pages which was admitted in evidence. References to documents in the bundle are in [].

Consideration

23. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (2016 Act) Parliament extended the powers to make RRO’s to a wider range of “housing offences”. The rationale for the expansion was that Government wished to support good landlords who provided decent well maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.

24. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making an RRO.
25. The Tribunal is satisfied that the Applicants met the requirements for making an application under section 41 of the 2016 Act. The Applicants alleged that the Respondent had committed an offence of control or management of an unlicensed HMO under section 72(1) of the Housing Act 2004 whilst the property was let to them. An offence under section 72(1) falls within the description of offences for which an RRO can be made under section 40 of the 2016 Act. The alleged offence was committed from 1 September 2020 to 8 June 2021 which was in the period of 12 months ending on the day in which the Applicants made their applications on 7 February 2022.
26. The Respondent's representative submitted that Mr Kincaid was not entitled to make an application for a RRO because the application for a RRO was made more than 12 months after he had left the property on 15 January 2021.
27. The Tribunal finds that Mr Kincaid did not have an individual tenancy agreement for his occupation at the property. Under the tenancy agreement each tenant was joint and severally liable to pay the rent for the property. Mr Fathi in fact paid the rent throughout the tenancy to Co & Co Property as agent for the Respondent.
28. The Tribunal takes the view that the construction of the word "tenant" in section 41(2) of the 2016 Act should have regard to the terms of the tenancy agreement for the property which is the subject of the application. In this case "the tenant" under the agreement included all persons who had permission to occupy the property during the period of the tenancy, which did not end when Mr Kincaid left the property but continued until the 1 July 2021. Likewise the alleged offence did not end when Mr Kincaid left the property but continued until the 8 June 2021 when the property was still let to the "tenant" as defined by the agreement. The Application was made by the "tenant" which was within the period of 12 months from when the date of the alleged offence was committed. The "tenant" in this case was a united entity of all the persons who occupied the property during the period of the tenancy. Mr Kincaid did not make his own separate application.
29. The Tribunal turns now to those issues that it must be satisfied about before making an RRO.

Has the Respondent committed a specified offence?

30. The Tribunal must first be satisfied beyond reasonable doubt that the Respondent has committed one or more of seven specified offences. The relevant offence in this case is under section 72 (1) of the Housing Act 2004, "control or management of an unlicensed HMO".

31. The Tribunal heard from the Applicants who were first year University students not related to each other. They contacted each other over social media to form a group to find a house to live in. The Applicants confirmed in evidence that they had taken out a tenancy of the property for ten months from 1 September 2020 to the 1 July 2021 for which they paid rent of £2,750 per calendar month to IletPro Limited. Throughout the tenancy five persons occupied the property. They each had their own room in the property and they shared facilities for cooking and washing.
32. Mr Griffiths, an Environmental Health Officer with South Gloucestershire Council, stated that the property had come to his attention following a Council Tax search in November 2020 which revealed that the property was occupied by five persons with differing surnames and was, therefore, potentially an unlicensed HMO [161]. According to Mr Griffiths, the ensuing investigation revealed that IletPro Limited was the managing agent and the owner of the property was Ms Yafang Hu.
33. Mr Griffiths stated that an application for HMO Licence for the Property was submitted on 1 April 2021 in the name of Ms Yafang Hu. Mr Griffiths said that the application was not a valid application until the HMO Licence Fee was paid which was on 8 June 2021. On 22 July 2021 South Gloucestershire Council granted an HMO licence in respect of the property to Ms Yafang Hu for five years with effect from 18 August 2021 for occupation by no more than five households and six persons.
34. Mr Griffiths said that Ms Yafang Hu also owned the neighbouring property 22 Edward Parker Road which too required an HMO Licence.
35. Mr Griffiths explained that South Gloucestershire Council decided to prosecute IletPro Limited for two offences of having control of unlicensed HMOs at 22 and 24 Edward Park Road respectively. The proceedings were brought before Bristol Magistrates Court on the 29 November 2021. The Magistrates convicted IletPro Limited in its absence and was fined a total of £2,700.06.
36. Mr Griffiths stated that the solicitor for South Gloucestershire Council did not consider there was sufficient evidence to bring a prosecution against Ms Yafang Hu for being in control of or in charge of an unlicensed HMO. Mr Griffiths gave the impression that the Council believed that Ms Yafang Hu had relied upon IletPro to manage the properties including the licensing of them for HMOs.
37. Ms Yafang Hu made a witness statement with a statement of truth dated 28 April 2022 [1127]. Ms Yafang Hu admitted that she was the owner of the property. However, Ms Yafang Hu contended that

she was not in control of or in charge of the property, and denied that she had committed an offence in relation to unlicensed HMOs.

38. Ms Yafang Hu stated that she had very little to do with the property as it was rented out and controlled and managed by IletPro Limited. Ms Yafang Hu said she was not a director and shareholder of IletPro Limited.
39. Ms Yafang Hu said that she was not aware of the existence of the tenancy agreement in her name. Ms Yafang Hu pointed out that her address given in the agreement was that of Co & Co Property Management Limited, and that she had not signed the agreement. Ms Yafang Hu also relied on the fact that the first tenancy agreement was in the name of Mr Tao.
40. Ms Yafang Hu insisted that she was not liable to pay a RRO because the facts showed that she had no direct involvement with the Applicants throughout the time they lived at the property. The Applicants had paid the rent to IletPro Limited, and had dealt with IletPro Limited when they had issues with the property. Ms Yafang Hu also relied on the decision of South Gloucestershire Council not to prosecute her for any offence in relation to the property.
41. Mr Tao supplied a witness statement dated 29 April 2022 [530]. Mr Tao stated in evidence that Ms Yafang Hu had agreed to let the property to the Applicants in return for payment of the rent. Mr Tao stated that IletPro Limited collected the rent for the property on behalf of Ms Yafang Hu which was then transferred electronically to Ms Yafang Hu's bank account minus deductions for the management fee and other legitimate expenses connected with the property. Mr Tao exhibited a summary of the BACS payments made to Ms Yafang Hu in connection with the property together with an analysis of the deductions made [575].
42. Mr Tao explained that on 29 August 2020 Ms Yafang Hu had signed a contract with Co & Co Property Management Limited (the former name of IletPro Limited) to manage the property for a fixed term of 12 months in return for a management fee of seven and a half percent of the rent [617].
43. In the agreement Ms Yafang Hu was described as the Landlord and Co & Co Property Management Limited as the Agent of the property.
44. The agreement set out the services provided by Co & Co Property Management Limited which included: "1.2 We will assist you, as the Landlord, to fulfil the Landlord statutory requirements"; "1.4 We will endeavour to collect the monthly rent and transfer it into your nominated account"; "1.5 We will deduct our fee from the monthly rent in line with the terms of Co & Co Property Management Smart Management Package Agreement"; "1.6 We will produce a quarterly

rental statement for you”; “1.11 We will organize general repairs up to the value of £200”.

45. The agreement set out the Obligations of the Landlord which included: “2.1 We, Co & Co Property Management Ltd is appointed as the Agent for the Landlord on the Property”; “2.3 You agree to pay the Agent the fee as outlined in page one of this Agreement. Such fees will be deducted from the rent received from the Tenant”; “2.4 You must have the full legal rights to let the Property and if necessary, you have obtained permission from your lender to let the Property”; “2.8 If a Tenant fails to pay the rent and persists not to pay the rent after 28 days after the due date, you confirm that you agree that the Agent, Co & Co Property Management, has no liability regarding the outstanding rent; “2.10 You confirm that you have received our recommendation regarding to the Landlord statutory requirement as shown in our document, CO&CO Property management Legal advice for residential Landlords”; “2.13 You confirm that if the Property is a House of Multiple Occupation (HMO), the Property has been registered with the local authority and complies with all relevant regulations”; “2.14 If you ignore or refuse to take actions to rectify outstanding issues in order to meet the Landlord statutory requirements, you confirm that you agree to pay for the costs of any legal costs, significant fines, damages suffered and/or criminal offences incurred due to the breaking of any of the Landlord’s legal responsibilities. For example, but not limited to, renting a Property without a valid HMO licence or without a valid gas safety certificate”; “2.16 You, the landlord confirm that you understand the tenancy agreement between you and the tenant thoroughly, and you authorise the agent to sign the tenancy agreement on your behalf between you and the tenant”.
46. The agreement set out the fee for Co & Co Property Management Services: “3.1 To find Tenants, you can order a package on www.rentalist.co.uk”; “3.2 To rectify the Landlord statutory requirements, you can order a Landlord service on www.rentalist.co.uk”; “3.3 To assist you to complete an HMO application and instruct 3rd parties to carry out building works, our fee is £500”.
47. Mr Tao stated that before Ms Yafang Hu signed the management agreement his company supplied her with copies of the contract in Chinese and English, and that he answered her emails which raised 15 questions on the clauses of the management agreement which included questions about HMO licensing [639]. Mr Tao explained that he and Ms Coco Li (General Manager) were native Mandarin Chinese speakers and were able to communicate with Ms Yafang Hu who was also a native Mandarin Chinese speaker. Mr Tao said that he met Ms Yafang Hu on a regular basis and she had a home in England.

48. Mr Tao said that Ms Yafang Hu was insistent about maximising the rent for the two properties in Edward Parker Road. According to Mr Tao, Ms Yafang Hu had organised builders to convert the properties to six bedrooms. Mr Tao stated that he had tried to persuade her not to do the conversions but to let the property to four persons which Ms Yafang Hu rejected because it would not yield sufficient rent for the property.
49. Mr Tao was adamant that he had informed Ms Yafang Hu about HMO regulations and laws prior to the start of the tenancy at the property. Further he asserted that Ms Yafang Hu had thoroughly read the management agreement in Chinese and English before she signed it. Mr Tao pointed out that the agreement included specific advice about HMOs in clauses 2.10, 2.11, 2.12, 2.13 and 3.3, which, he said, Ms Yafang Hu had understood.
50. Mr Tao testified that Ms Yafang Hu told his company not to apply for an HMO licence, because an early submission of the application would jeopardise her mortgage for the property. According to Mr Tao, the mortgage for the property had a restriction for a single family let and that Ms Yafang Hu was concerned that if her mortgagor, Kent Reliance, found out about the HMO it would either increase the interest rate on the mortgage or cancel it altogether.
51. Mr Tao pointed out that in September 2020 his company had deducted £500 from the first month rent in advance for the property in order to start the process for applying for an HMO. Mr Tao said his general manager, Ms Coco Li, had asked Ms Yafang Hu on several occasions to start the process for applying for an HMO Licence but Ms Yafang Hu had refused to give permission.
52. Mr Tao referred to a Webchat on 17 February 2021 when Ms Coco Li informed Ms Yafang Hu that if there were more than four shared tenants South Gloucestershire Council required a mandatory HMO licence. Mr Tao stated that the application for an HMO licence was submitted on 1 April 2021 after being signed by Ms Yafang Hu and IletPro Limited. Mr Tao explained that on 30 April 2021 IletPro Limited enquired of the Council about the progress of the application and on 13 May 2021 was provided with details for making payment of the fee. On 7 June 2021 IletPro Limited paid the fee from monies in the client account for Ms Yafang Hu.
53. The Tribunal observes that there is a clear conflict between the evidence of Ms Yafang Hu and that of Mr Tao. The Tribunal finds that Mr Tao supplied a copy of his evidence to Ms Yafang Hu's representatives on or around 29 April 2021. The Tribunal gave the parties an opportunity to object to Mr Tao being called as a witness at the hearing. The Respondent made no objection. Further the Respondent made no application to provide an additional statement to rebut Mr Tao's witness statement. At the hearing the

Respondent's representative cross-examined Mr Tao on his evidence. The Tribunal formed the view that the representative was unsuccessful in his attempts to undermine Mr Tao's credibility and the reliability of his evidence. Further the representative did not challenge Mr Tao's evidence that IletPro Limited transferred the balance of the rent after deductions for management fee and other expenses each month to Ms Yafang Hu. The representative conceded in his final submissions at the hearing that if the Tribunal found against him that there was a contract between the Applicants and the Respondent that the Respondent met the definition of having control of the property in section 263 of the Housing Act 2004 because she was in receipt of the rack-rent of the property. Finally the representative accepted in the statement of case for the Respondent [1121] that there was a management agreement in place between IletPro Limited and the Respondent. The copy in the bundle was signed by the Respondent. The Tribunal adds that Mr Tao's evidence would not alter the fact that IletPro Company would remain convicted of an offence under section 72(1) of the Housing Act 2004. The Tribunal observes that both a landlord and a managing agent can be convicted of an offence under section 72(1) in relation to the same property. The Tribunal decided that Mr Tao was a reliable witness in relation to his dealings and those of his company with the Respondent.

54. The Tribunal starts with the Respondent's representative's submission that there was no contract between the Respondent and the Applicants for the letting of the property. The representative's submission was based on the fact that the first tenancy agreement was in the name of Mr Tao, and there was no evidence that the Respondent had signed the second agreement even though she was named as landlord. The Tribunal observes that there is no requirement in law for a tenancy agreement to be in writing.
55. The Tribunal considers there is persuasive evidence outside the agreements that the Respondent had granted a tenancy of the property to the Applicants which was binding on the parties. The Tribunal finds the following:
- a) The Respondent owned the property and was the only person in law capable of granting a tenancy of the property.
 - b) The Applicants occupied the property throughout the time specified in the tenancy agreements.
 - c) The Respondent took no proceedings against the Applicants to evict them from the property.
 - d) The Respondent received the rent for the property from the Applicants through the agent which deducted its fee and expenditure authorised by the Respondent's agreement with the managing agent.

- e) The Respondent had signed a management agreement with Co & Co Property Management Limited on 29 August 2020 authorising the agent to let the property on behalf of the Respondent. Under clause 2.16 the Respondent confirmed as the landlord that she understood the tenancy agreement between her and the tenant thoroughly, and that she authorised the agent to sign the tenancy agreement on her behalf between her and the tenant.
56. The Tribunal is satisfied from the above findings that the Respondent in her capacity as landlord had granted a tenancy of the property in the terms set out in the tenancy agreements.
57. The Tribunal turns next to whether the Respondent has committed an offence under section 72(1) of the Housing Act 2004. The Respondent argued that the Tribunal should rely on the findings of South Gloucestershire Council not to prosecute her. According to the Respondent, South Gloucestershire Council had all the relevant facts before it and had decided that only IletPro Limited were in control of or managing the property for the purposes of section 72(1) of the Housing Act 2004.
58. The Tribunal is not bound by the decision of South Gloucestershire Council which represents its opinion about where liability lies. As the Upper Tribunal said in *Rhodes and Quilter v Mannering* [2020] UKUT 0207 (LC) at paragraph 24:
- “It was for the FTT to decide whether the elements of the offence had been proved - to the criminal standard of proof as the 2004 Act requires - and whether the defence of reasonable excuse (section 72(5) of the 2004 Act, set out above) might have been made out”.
59. In order to decide the Tribunal must make its own findings of fact which are as follows:
- a) The Property comprised three storeys and had been let to five persons living as separate households and sharing facilities from 1 September 2020 to 1 July 2021.
 - b) The Respondent was the landlord of the property.
 - c) The Respondent received rent via the agent from the Applicants as tenants at the Property.
 - d) The Property was required to be licensed as an HMO under the Mandatory licensing scheme from 1 September 2020.
 - e) The Respondent did not have an HMO licence from 1 September 2020 to 22 July 2021.

f) The Respondent applied for an HMO licence on 1 April 2021 but it was not validly made until 8 June 2021.

60. Under section 263 of the Housing Act 2004 a person having control in relation to premises means a person who receives the rack-rent for the premises (whether on his account or as agent). Whilst a person managing the premises is defined under section 263 as a person who being an owner of the premises receives rent whether directly or indirectly from persons who are in occupation of an HMO.
61. The Tribunal finds that the property met the standard test for an HMO as set out in section 263 of the Housing Act 2004, and in addition met the designation for HMOs that required licensing, namely five or more persons living as two or more separate households sharing basic amenities for which they pay rent.
62. The Tribunal is satisfied beyond reasonable doubt on the above facts that the Respondent was a person having control of and managing the property which was an HMO requiring to be licensed. The offence of having no licence for an HMO under section 72(1) of the 2004 is one of strict liability. There are, however, two defences to an offence under section 72(1) of the Housing Act 2004.
63. The first is under section 72(4) of the Housing Act 2004 where if a person can demonstrate that she has applied for a licence and the application remains effective the person has a defence to the offence of no HMO licence at the material time when the application is made. This defence is relevant to this case because the Respondent made a valid application for a licence on the 8 June 2021 which meant that the offence of no licence stopped on 8 June 2021.
64. The second is under section 72(5) of the Housing Act 2004 where a person having control of or managing an HMO has a defence if she can demonstrate on the balance of probabilities that she has a reasonable excuse for committing the offence. In this case the Respondent pleaded a reasonable excuse on the basis that IletPro Limited as managing agent failed under its contractual duty to assist the Respondent to fulfil the statutory requirements as a landlord.
65. The Upper Tribunal in *Aytan and others v Moore and others* [2022] UKUT 027 (LC) added that at paragraph 40:

“... a landlord’s reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally

be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad”.

66. The Tribunal acknowledges in this case there was a contract between the Respondent and IletPro Limited. The terms, however, of that contract placed the responsibility upon the Respondent to ensure that the property was licensed as an HMO (see clause 2.13). Further the Tribunal accepts the evidence of Mr Tao that the Respondent refused to follow his advice and of his company that the property required licensing, and that the Respondent would not authorise IletPro Company to apply for a HMO licence because it would jeopardise the Respondent’s mortgage on the property. The evidence showed that it was only in March 2021 that the Respondent gave IletPro Limited permission to apply for an HMO licence on her behalf in respect of the property. Given those findings the Tribunal decides that the Respondent did not have reasonable excuse for not licensing the property as an HMO.
67. The Tribunal is satisfied beyond reasonable doubt from the findings above that the Respondent had committed the specified offence of control or management of an unlicensed HMO contrary to section 72(1) of the 2004 Act from 1 September 2020 to 8 June 2021 in respect of the property and that she did not have a defence of reasonable excuse.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act)?

68. The amount that can be ordered under an RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. Further the amount must not exceed the rent paid in respect of that period.
69. The Tribunal has decided that the Respondent committed the offence from the 1 September 2020 to 8 June 2021 a period of nine months and seven days.
70. The facts showed that the Applicants paid rent of £2,750 per month. Thus nine months at £2,750 equals £24,750; seven days equals £641.67 ($£2,750 \times 7/30$) which produces a maximum of £25,391.67.

What is the Amount that the Respondent should pay under a RRO?

71. In determining the amount, the Tribunal must have regard in particular, to factors in section 44 of the 2016 Act, namely, the conduct and financial circumstances of the Respondent, whether at

any time the Respondent had been convicted of a housing offence to which section 40 applies, and the conduct of the Applicants.

72. Mr Justice Fancourt, the President of the Upper Tribunal (Land) , in *Amanda Williams v Kishan Parmar* [2021] UKUT 0244 at [44] set out the approach that should be followed by the FT Tribunal when applying its discretion in the statutory context to determine the amount of the RRO

“A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The Tribunal should also take into account any other factors that appear to be relevant”.

73. Judge Cooke in the Upper Tribunal decision in *Vadamalayan v Stewart* [2020] UKUT 183(LC) stated that the provisions of the 2016 Act were hard edged and that it was not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord had spent on the property during the relevant period including mortgage payments because this ultimately benefitted the landlord. Judge Cooke, however, saw a case for deduction in respect of the costs of utilities included within the rent because that was for the tenant’s benefit.

74. The Respondent supplied no information about her personal and financial circumstances. The Tribunal understands that the Respondent has a home in the UK and that she also owned 22 Edward Parker Road which was let out. The Tribunal, therefore, knows of two properties, 22 and 24 Edward Parker Road that the Respondent lets out for monetary gain which suggested that the Respondent was a professional landlord.

75. The Tribunal has rejected the Respondent’s explanation for why she did not apply for an HMO licence in respect of the property. The Tribunal noted that her neighbouring property at 22 Edward Parker Road was also unlicensed . The Tribunal accepted Mr Tao’s evidence that the Respondent had thwarted the attempts of IletPro Limited to apply for the licensing of the property as an HMO and did not follow the advice of her agent. The Tribunal takes into account Mr Tao’s evidence that the Respondent converted a four bedroom property into a six bedroom one in order to maximise the rental take. The Tribunal is satisfied that the Respondent knew that the property required licensing as HMO, and that she delayed making the application because of potential difficulties with her

mortgage company. There was no evidence that the Respondent had been convicted previously of a housing offence.

76. Mr Tao's record of the financial transactions with the Respondent gave an indication of the Respondent's costs associated with the letting of the property. The Respondent's principal items of expenditure were in HMO fees and in management fees which cost £2,074 and £1,904.38 plus £399 for set up costs respectively. The other items of expenditure were £360 electrical safety returns, £66 Gas Safety, £171 for compiling the inventory, £12.99 for fire blanket and £17.50 for a new key. The Applicants were liable under the tenancy agreement for the costs of utilities and broadband, and Council Tax.
77. Mr Tao gave evidence about the conduct of the Applicants during their tenancy of the property [537]. Mr Tao said that his manager, Ms Coco Li, had reported that the Applicants were "the worst tenants she had encountered in her experience".
78. Mr Tao included in his evidence numerous emails from the Applicants' neighbours who made frequent complaints against the Applicants alleging anti-social behaviour, smoking illicit substances, the dumping of rubbish bags, and trespass.
79. Mr Tao pointed out that the University of West England (UWE) had required the Applicants to sign an Anti-Social Behaviour Contract on 30 October 2020 which formed part of the University's Level One disciplinary process. The purpose of the contract was to outline the expectations in writing of what behaviour the University expected of the Applicants whilst they were living in the local community. The Tribunal noted that breaches of the contract could result in the Applicants being suspended and or possible exclusion from the University.
80. Mr Tao stated that the Applicants did not always pay their rent on time. Mr Tao cited the following months when the full monthly rent was late: October 2020, five days in arrears; January 2021, 12 days in arrears; February 2021, four days in arrears; March 2021, eight days in arrears; and April 2021, 13 days in arrears. Mr Tao alleged that the Applicants did not keep the property clean and tidy (inside and outside) throughout the entire tenancy.
81. The Applicants supplied a detailed response to the allegations regarding their conduct. The Applicants pointed out that they have no criminal convictions and have not been cautioned or charged with any crime in relation to the complaints made against them. Four applicants supplied references from their current landlords which stated that there had been no issues during their tenancy. The two remaining Applicants were not able to provide references because one was now residing in a student Hall of Residence where

anti-social behaviour would not be tolerated, and the other was living at home.

82. The Applicants said that they had never met Mr Tao or Ms Coco Li. Throughout the tenancy they dealt with a Mr Brad Cottrell of IletPro Limited who was prepared to help them find new accommodation at the end of the current tenancy at the property [1217] which in the Applicants' view questioned the validity of Ms Coco Li's statement that "they were worst tenants she had encountered".
83. The Applicants observed that the complaints about their conduct originated from one source, their neighbours. The Applicants stated that the property was opposite a retirement home and close to other homes occupied by families who did not make any complaints about their behaviour. The Applicants believed that their neighbours having recently bought their property were upset with the arrival of students on the estate, and mounted a campaign against students which were extended to other student households in the vicinity.
84. The Applicants acknowledged that their conduct at the beginning of the tenancy caused some annoyance to their neighbours and that they were not as considerate as they should have been to them. The Applicants admitted that they had problems with disposing of rubbish which was due in part to having just one waste container, and due to not being aware of the local requirements for recycling. The Applicants stated in mitigation that they were all aged 18/19 years and this was their first experience of living away from home which was exacerbated by having to cope with University life under Covid restrictions.
85. The Applicants insisted that they had learnt their lessons. They said that there had been no repetition of the annoying conduct after they signed the Anti-social behaviour contract on 30 October 2020. The Applicants contended that although their neighbours continued to complain the University realised that the neighbours' accusations were targeted and without substance. The Applicants supported their contention said by the fact that the University did not escalate their procedures against the Applicants to the next stage in the disciplinary process, which the University would have done if there had been a repetition of the anti-social behaviour.
86. The Applicants stated that Mr Fathi was responsible for collecting and paying the rent to IletPro. Limited. The Applicants explained that there were some months where one of them would not give his contribution to Mr Fathi on time. When that happened Mr Fathi would pay what he had received on the first day of the month and remit the balance once he had received the contribution from the defaulting Applicant. The Applicants said that they had checked this with Mr Cottrell who reassured them that it was not a problem.

87. The Applicants disputed the allegation that they did not keep the property clean. The Applicants relied on the final inspection report carried out on 10 June 2021 [680] which recorded that the general condition of the interior of the property was in need of a light clean. The Applicants accepted that the carpets required further cleaning.
88. At the hearing the Respondent's solicitor cross examined at some length the Applicants on their conduct. The Tribunal formed the view that their answers were truthful and consistent with each other. The Tribunal noted that Mr Tao had no direct contact with the Applicants and that his evidence on their conduct was based on the records held by IletPro Limited. This was in contrast with his dealings with the Respondent with whom he had met in person. The Tribunal's concluded that the Applicants' conduct at the beginning of the tenancy was unacceptable and potentially in breach of the tenancy agreement by causing a nuisance and annoyance to their neighbours. The Tribunal, however, accepted the Applicant's evidence that there was no recurrence of significant bad behaviour after they signed the Anti-social behaviour contract with the University on 30 October 2021. The Tribunal finds that there was no evidence that the Applicants had committed criminal offences. The Tribunal does not attach weight to the Applicants' late payments of parts of the rent, which was not a problem at the time for the managing agent. Likewise, the Tribunal draws no adverse conclusion on the Applicants conduct in respect of the condition of the property. It appears to the Tribunal the principal dispute was with the state of cleanliness of the property which was a matter that would be dealt with under the deposit arrangements. There was no suggestion that the Applicants had deliberately damaged the property.
89. The Applicants in their evidence identified various shortcoming with the property. They said that several door handles broke or came off, a curtain rail fell down and no fire blanket was ever provided. They asserted that there were ongoing issues with the shower and water pressure which meant that there were periods of time when five tenants had to share a single shower. Further they stated that the boiler broke during September 2020 and they were left without hot water from the taps or heating in most rooms, for approximately a month. According to the Applicants, some of them contracted Covid during this time and they believed that the lack of washing facilities contributed to this. Finally they stated that no sofa was provided until one month into the tenancy.
90. The Applicants in their reply to the Respondent's case raised further issues which included that the gas safety certificate and the EICR electricity certificate were not obtained until December 2020 and February 2021 respectively. The Applicants also alleged that the property did not comply with the relevant fire safety standards required of an HMO as stated in "South Gloucestershire Council

Fire Safety Standards for Licensable Houses in Multiple Occupation” [1231]. They said that the property had no intumescent fire seals, the front and back exit doors could not be opened immediately without the use of a key, and no Fire Blanket was provided throughout the tenancy.

91. The Tribunal noted that the Applicants did not raise the gas and electricity safety certificates and the alleged non-compliance with the Fire Safety Standards in their statement of case which meant that the Respondent had been given no opportunity to respond to the allegations. In those circumstances the Tribunal has decided to disregard them in its consideration.
92. Of the other matters raised by the Applicants, the Tribunal considered the breakdown of the boiler and the low water pressure matters of concern. However, it would appear that the managing agent did its best to resolve the issues but was hampered by the fact that these problems fell within the developer’s warranty (Taylor Wimpy) because the property was a new build. According to the evidence seen by the Tribunal in the hearing bundle Taylor Wimpy was experiencing a huge backlog of work.
93. It is now necessary for the Tribunal to pull the various threads together to decide upon the amount of the RRO. The Tribunal has identified that the maximum amount payable under the RRO is £25,391.67 which was the rent paid during the period in question. It is important for the Tribunal to stress that this is not the starting point for its consideration. In *Williams v Parmar* [2021] UKUT 244 (LC) the Tribunal (Mr Justice Fancourt, Chamber President) emphasised the need for tribunals making rent repayment orders to conduct an evaluation of all relevant factors before deciding on the amount of the order, rather than starting from an assumption that the full rent should be repaid unless there is some good reason to order repayment of a lesser sum.
94. The Tribunal found that the Respondent knew that the property required licensing as an HMO, and that she delayed making the application because of potential difficulties with her mortgage company. The Tribunal also decided that the Respondent thwarted the efforts of the managing agent to apply for a licence and did not follow the agent’s advice. These are matters that aggravated the seriousness of the offending and would support the making of an RRO at the upper end. The Tribunal knew little else about the financial and personal circumstances of the Respondent because she chose not to supply details on them. The Tribunal was aware that the Respondent owned two HMOs including this property which were let out to tenants. The Tribunal inferred that the Respondent was more likely than not a professional landlord, which would add to the case for an RRO at the upper end.

95. The Tribunal identifies two matters which were in the Respondent's favour. First there was no evidence that the Respondent had previous convictions for housing offences. The Tribunal is entitled to proceed on the basis that she was a person of good character. Second the Respondent employed a managing agent from which the tenants derived some benefit from having the property professionally managed.
96. The Tribunal determined that the Applicants' conduct at the beginning of the tenancy was unacceptable and potentially in breach of the tenancy agreement by causing a nuisance and annoyance to their neighbours. The Tribunal, however, accepted the Applicant's evidence that there was no recurrence of significant bad behaviour after they signed the Anti-social behaviour contract with the University on 30 October 2021. The Tribunal considers that the Applicant's conduct was a material factor in this case, and would warrant a lower amount for the RRO than that justified by the seriousness of the offending.
97. The Tribunal has examined Mr Tao's evidence regarding the Respondent's outgoings. The Tribunal is not convinced that any of the expenditure merited a deduction from the maximum amount payable for the RRO. The Tribunal has already identified the engagement of a managing agent as a mitigating factor for the Respondent.
98. The Tribunal considers there are no other factors to be taken into consideration in respect of the amount of the RRO.
99. The Tribunal having weighed up the various factors determines a RRO in the sum of £17,500 which amounts to 69 per cent of the maximum amount payable of £25,391.67, and is in the Tribunal's view a fair reflection of the seriousness of the Respondent's offending as against the mitigation and the adverse impact of the Applicants' conduct.

Decision

100. The Tribunal orders the Respondent to pay Mr Fathi on behalf of the Applicants the sum of £17,500 by way of a rent repayment order and to reimburse Mr Fathi with the application and hearing fees in the sum of £300 within 56 days from the date of this decision. The Tribunal directs Mr Fathi to apportion the sum of £17,500 amongst the Applicants in proportion to their contribution towards the rent paid, and repay whoever has paid the application and hearing fees.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk .
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.