FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00FY/HMJ/2022/0007**
Property	**:**	**16, Fearnleigh Drive, Nottingham, NG6 0JH**
Applicant	**:**	**Julie Ann Bacon**
Representative	**:**	**None**
Respondent	**:**	**Karen Carter**
Representative	**:**	**Mr Giles Gunstone, Barrister Martin Lee & Co, Solicitors**
Type of Application	**:**	**Application for a Rent Repayment Order By the Tenant. Part 3 Housing Act 2004 Ss40, 41, 43 & 44 Housing & Planning Act 2016**
Tribunal:		**Tribunal Judge P. J. Ellis Tribunal Member Mr A McMurdo**
Date of Hearing	**:**	**20 January 2023**
Date of Decision	**:**	**17 February 2023**

DECISION

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1. The Respondent has committed a housing offence contrary to s95(1)Housing Act 2004 being a person having control of or managing a house which is required to be licensed under Part 3 but is not so licensed.

2. The Applicant is entitled to a rent repayment order against the Respondent who has committed the offence at paragraph 1 above in accordance with ss 40 &41 Housing and Planning Act 2016.

3. The rent repayable is the sum of £468.72

Introduction

1. This is an application for a rent repayment order because the Property, 16 Fearnleigh Drive, Basford Nottingham NG6 0JH, is in an area of selective licensing requiring a licence pursuant to Part 3 Housing Act (the 2004 Act) and is not so licensed.

2. The Applicant, Julie Bacon, is the tenant of the Property under a succession of assured shorthold tenancy agreements each of six months duration commencing 1 January 2019 until July 2022 when the tenancy became a monthly statutory tenancy. The rent was £600.00pcm until 1 July 2022 when it was increased to £650.00pcm.

3. On 1 August 2018 a selective licensing scheme started in Nottingham city. The Property is within the area covered by the scheme. It is owned by the Respondent Karen Carter who applied for a licence on 11 July 2022. It was granted on 30 August 2022 and remains in force until 12 July 2027.

4. This application was issued on 24 August 2022. The tenant was responsible for all utilities and outgoings of the Property. The total rent paid in the relevant period being between 11 July 2021 and 10 July 2022 was agreed by the parties as £7204.30. The Applicant is in receipt of universal credit. The housing benefit element was disclosed and agreed by the parties at £4079.52.The parties further agreed that the claim is reduced by reason of the

operation of s 44(3)(b) Housing and Planning Act 2016 (the 2016 Act). The claim after the deduction of universal credit is £3124.78.

5. When the tenancy commenced in January 2019 the Applicant paid a deposit of £600.00. On 21 July 2022 the Respondent received a formal pre-action protocol letter in accordance with Annex A Civil Procedure Rules Practice Direction-Pre Action Conduct on behalf of the Applicant making a claim of between £13200.00 and £15,000.00 because of an alleged failure of the Respondent to comply with s213 2004 Act as amended by s184 Localism Act 2011. The claim was calculated by reference to the deposit for each new tenancy and the multiplier provided for in the legislation. It was settled by the payment of £8400.00 made 6 September 2022. This application was issued on 24 August 2022. In her application, the Applicant referred to the failure to protect the deposit but not the size of the claim.

The Property

6. 16 Fearnleigh Drive is a two-bedroom semi-detached property of conventional brick and tile construction on an estate of similar houses constructed in the 1990s. There are gardens front and rear. Entry by the front door opens into a hallway with stairway leading to the upper floor. The front room is a living room leading to a kitchen beyond which is a conservatory. The upper floor comprises two bedrooms and shower room with w/c and handbasin. There is double glazed throughout. It has full gas central heating. The rear garden has been recently altered by the removal of old wooden decking replaced by artificial turf. The soffits are in poor condition showing some signs of damage and want of repair in places.

The Statutory Framework

7. Part 3 of the 2004 Act introduced the selective licensing scheme applicable in this case. Section 79 provides:
   (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), or

(ii)under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4).

8. The Act of 2004 gave the First-tier Tribunal the jurisdiction to make a rent repayment order against a person who had been convicted of controlling or managing an unlicensed premises. Chapter 4 of the Housing and Planning Act 2016 replaced the jurisdiction to make a rent repayment order where a landlord has committed an offence to which the Chapter applies after 6 April 2017. The Chapter provides the framework by which decisions are made.
   S40(2) of the 2016 Act defines a rent repayment order as an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant, and subsection (3) provides; *"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"*

9. The following item in the table is relevant to this case:
   a. *Item 6 control or management of an unlicensed house*

10. By s41 of the 2016 Act(*1)A tenant …. 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.

11. S43 provides that a Tribunal may make a rent repayment order only if made under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies, whether or not the landlord has been convicted. By s43(3) the amount of a rent repayment order in the case of an application by a tenant is to be determined in accordance with s44.

12. S44(3) provides that where a First-tier Tribunal decides to make an order under s43 the amount to be repaid must not exceed
    a. *the rent paid in respect of (the unlicensed) period, less*
    b. *any award of universal credit paid (to any person) in respect of rent under the tenancy during that period.*

13. By s44(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 been convicted of an offence to which the Chapter applies.*

14. In this case the Respondent referred the Tribunal to the effect of other proceedings between these parties arising from the treatment of the deposit which the Applicant paid to her at the commencement of the tenancy on 1 January 2019. The provisions of s 213 of the 2004 Act are relevant. Subsection 1 provides

"1)Any tenancy deposit paid to a person in connection with a shorthold tenancy must, as from the time when it is received, be dealt with in accordance with an authorised scheme.

15. Failure to comply with s213 and the scheme introduced results in consequences for the landlord. Section 214(1) empowers the tenant to make an application to the county court

Where a tenancy deposit has been paid in connection with a shorthold tenancy on or after 6 April 2007, the tenant or any relevant person (as defined by section 213(10)) may make an application to the county court on the grounds—

(a)*that section 213(3) or (6) has not been complied with in relation to the deposit,*

Section 214 continues with provisions governing the powers the court has to award compensation to the tenant.

Subsection (1) also applies in a case where the tenancy has ended, and in such a case the reference in subsection (1) to the tenant is to a person who was a tenant under the tenancy.

(2)Subsections (3) and (4) apply in the case of an application under subsection (1) if the tenancy has not ended and the court—

(a)is satisfied that section 213(3) or (6) has not been complied with in relation to the deposit, or

(b)is not satisfied that the deposit is being held in accordance with an authorised scheme,

as the case may be.

(2A)Subsections (3A) and (4) apply in the case of an application under subsection (1) if the tenancy has ended (whether before or after the making of the application) and the court—

(a)is satisfied that section 213(3) or (6) has not been complied with in relation to the deposit, or

(b)is not satisfied that the deposit is being held in accordance with an authorised scheme,

as the case may be.

(3)The court must, as it thinks fit, either—

(a)order the person who appears to the court to be holding the deposit to repay it to the Applicant, or

(b)order that person to pay the deposit into the designated account held by the scheme administrator under an authorised custodial scheme,

within the period of 14 days beginning with the date of the making of the order.

(3A)The court may order the person who appears to the court to be holding the deposit to repay all or part of it to the Applicant within the period of 14 days beginning with the date of the making of the order.

(4)The court must… order the landlord to pay to the Applicant a sum of money not less than the amount of the deposit and not more than three times the amount of the deposit within the period of 14 days beginning with the date of the making of the order.

16. Rule 9 Tribunal Procedure(First-tier Tribunal)(Property Chamber) Rules 2013 empowers the Tribunal to strike out a case. Paragraph (3)(c) &(d)states the Tribunal may strike out a case where:
(c)the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d)the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal;

The Parties' Submissions

17. The Respondent admitted and accepted that the Property was at all material times and is in an area of selective licensing and that it was not so licensed. Accordingly, Mrs Carter accepted that she was susceptible to an order for repayment of rent subject to her submissions of law and fact.

18. The Applicant relied on the fact of the failure to licence the Property as the basis for her claim for a repayment order, but Miss Bacon conceded that her

entitlement is reduced by the amount of universal credit she had received through the relevant period.

19. The Respondent has not been convicted of any offence relevant to a claim for a repayment order.

20. Also, it was common ground that the Applicant had received the sum of £8400.00 from the Respondent pursuant to Ms Bacon's claim for compensation from Mrs Carter for failing to secure the deposit of £600.00 paid at commencement of the tenancy in 2019.

21. In light of the respective concessions and the agreed facts, the evidence addressed the matter of the respective party's conduct. Each party made complaints of poor conduct against the other and both sides strongly denied the truth of the other's complaint. Each party complained that the dispute between them had an adverse effect on their health.

The Applicant's case.

22. Ms Bacon asserted that relations between the parties had been cordial until June 2022 when the Respondent told her that she would not renew the tenancy for a further six months but instead in future the tenancy would be month to month. The reason for the change was the possible sale of the Property.

23. The Applicant became anxious for her security and safety as a tenant. She believed the Respondent resented her intention to make future payments of rent direct into her bank account.

24. Ms Bacon referred the state of the property to the local housing authority which reported the Respondent had failed to obtain a licence. The local housing authority also identified hazards present in the property which required remedial work (including rotted decking, loose shower controls, and inadequate provision of electrical sockets). The Applicant considered the Respondent was abusing the visit of contractors, in particular electrical

contractors, to make improper attempts to enter the Property in order to bully her.

25. The decking installed in the rear garden had deteriorated so much that it had become a trip hazard. The number of power points was inadequate and not addressed until the involvement of the local housing authority. The shower was not working properly owing to an issue with the control dial. The Applicant's friend, Wayne Rodgers, carried out some repair work with the Respondent's approval as it would save her some money. Repair and replacement of soffits was refused by the Respondent because of cost.

26. Although some of the problems were known before June 2022, the Applicant did not feel she could say anything about them.

27. The Applicant has four dogs which she keeps under control, they do not have the run of the house. They have not made mess anywhere inside the Property. The Respondent has approved the presence of the dogs as well as two additional dogs from time to time which the Applicant looks after on occasions for a friend.

28. In cross examination, the Applicant rejected suggestions she had refused permission for contractors to enter the Property. Ms Bacon had sent an EPC assessor away when he called to carry out an inspection for an EPC certificate because she felt intimidated and threatened by them and by the presence of Mrs Carter who was filming her.

29. Ms Bacon also rejected suggestions she had lost her temper with the Respondent when she was told the tenancy would change.

30. Mr Gunstone, on behalf of the Respondent, invited the Applicant to agree that the payment of £8400.00 was a suitable payment as a punishment for the Respondent's omission. Ms Bacon rejected the suggestion, asserting in reply the Respondent had broken the law.

31. The Applicant agreed she was unaware of the need for a licence until told about it (by the Council) before issuing these proceedings. Ms Bacon accepted that there was no delay on the part of the Respondent in applying for a licence once Mrs Carter realised one was needed.

32. Allegations of permitting the dogs to create a mess in the house were strongly denied. Further, allegations of refusing to allow contractors into the Property or threatening them were strongly denied.

33. The Applicant was asked why she had not disclosed on the application form that she receives universal credit. Her reply was that the Respondent had told her she did not want a tenant who is in receipt of welfare benefits. Had she made that disclosure the Respondent would try to evict her.

34. Mr Wayne Rodgers was called to give evidence. He agreed he had been in a relationship with the Applicant for a while. He confirmed the Applicant is strict with her dogs. There had been a time when six dogs were present in the house. The repairs he had made to the shower were satisfactory for a while but eventually the shower was replaced. He had put a light in the conservatory which he ran from a plug above the sink in the kitchen.

35. He heard an argument between the Applicant and the Respondent about the state of the decking, the change of tenancy arrangement to month to month and the decision by Ms Bacon to commence rent payments into the bank account. He stated both people were shouting.

36. He had heard the Respondent say she intended to enter the Property on one occasion causing the Applicant to be scared.

37. Mr. A. Stafford gave evidence on behalf of the Applicant. He asserted the Respondent had a bad attitude to the Applicant from the way she talks to Ms Bacon. Repeated phone calls were made by the Applicant to the Respondent to get work done, which were not acted upon, giving the Applicant no alternative other than going to the council. He thought Mrs Carter had not looked after

the Property properly, giving the sate of the soffits as an example. He denied that he was repeating what Ms Bacon had told him.

The Respondent's Case and Submission

38. Mrs Karen Carter submitted her statement of evidence endorsed with a statement of truth. In addition, she told the Tribunal that relations with the Applicant that relations were good until the meeting when she told Ms bacon that her aunt was ill and it was her intention to sell the Property upon her death which was expected shortly.

39. The Respondent agreed she had attended the Property but the reason for her visit was to take an EPC assessor to carry out the required safety inspection. The Applicant had refused admission for the electrician to enter the house. Eventually, on 2 November 2022, a solicitor was instructed requiring admission by an electrician. The Respondent first sought access for an electrical inspection in July 2022. An EPC certificate was not issued until November because of the difficulty of obtaining access. Another electrical contractor, D Selby, had refused to return to the Property because of abuse from the Applicant.

40. When the Applicant first visited the house, she told the Respondent she wanted to have two dogs with her. The Respondent agreed to this request although the tenancy agreement forbad keeping pets. Later the Respondent agreed to a third dog being present, but no permission was given for keeping four or more dogs.

41. D Selby, the electrician on his visit had carried out electrical work to correct work done by Mr Rodgers. Also, a plumber was instructed to replace the shower which was damaged beyond repair

42. The Respondent has a key to the Property in order to gain access if ever necessary. She denied ever insisting on entry.

43. The Applicant's conduct and these proceedings have caused her anxiety which still requires medication.

44. In answer to the Tribunal, the Respondent admitted she was unaware of the need for a licence and an EPC certificate. She knew that a tenancy agreement was required and a gas safety certificate (her awareness stemmed from speaking to a friend who is a landlord) but was unaware of other requirements including the obligation to protect a tenant's deposit. The Applicant instructed a solicitor to make a claim for up to £15,000.00 for the failure to protect the deposit. The solicitor's letter of 21 July 2022 was produced.

45. The Respondent produced the letter from the local housing authority following its inspection of the Property on 2 August 2022. The report identified 11 hazards requiring attention of which 3 were recommendations, one was an observation, the remainder were either legal requirements or recommendations. The Respondent had completed all work required by 9 September apart from attention to the shower which was delayed by the Applicant's refusal to allow the contractor to enter the premises.

46. Upon learning of her error regarding the licence and the deposit, she took all steps necessary to correct the position. The Respondent settled the deposit claim with a payment of £8,400.00 made on 6 September 2022 after advice from a barrister. The deposit is now protected with the Deposit Protection Service. She made an application for a licence which was successful. The fees paid were £890.00. She stated that once being made aware of the licensing requirement by the Council, she made an application within 5 days.

47. The Respondent is in receipt of a state pension of £718.00 paid four weekly and the rent from the Property. She has no other income. Her assets are a half share in the Property and another house. Settlement of the deposit claim was made from an inheritance of her share in her father's estate which was also used to pay off mortgages. There is no money in her bank account. Any award of this Tribunal will require a payment plan.

48. In his submission on behalf of the Respondent Mr Gunstone relied first on the Henderson Doctrine as summarised by Mr Justice Pepperall in *Moorjani v Durban Estates [2019]EWHC 1229* (at paragraphs 15 & 16)where he stated the rule from *Henderson v Henderson (1843) 3 Hare 100)*restated by Lord Bingham of Cornhill in *Johnson v Gore-Wood & Co [2002]2AC 1* which this Tribunal respectfully reproduces as follows:
"*HENDERSON v. HENDERSON ABUSE*

In the landmark case of Henderson v. Henderson (1843) 3 Hare 100, Wigram V-C said, at page 114:

15"... where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points on which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time ..."

16 In Johnson v. Gore-Wood & Co. [2002] 2 AC 1, Lord Bingham of Cornhill restated the rule, at page 31:

"Henderson v. Henderson abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse)

that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.""

49. Mr Gunstone contended that the use of a protocol letter by the Applicant's solicitor amounted to the issue of proceedings and as an equitable principle it is unfair to now go back and ask for more after receiving £8400.00 especially when both claims arise from landlord's naivety.

50. His second and alternative submission was that the conduct of the landlord when her fault was identified was good. The earlier claim was a sufficient sanction. The application for a selective licence was made promptly and granted without significant conditions. In any event her financial circumstances, although asset rich, are poor. She is helping her aged aunt.

51. By contrast, he asserted the Applicant's conduct was poor. There was a breach of contract by the keeping of more dogs than permitted and persistent failure by her to allow access for the purpose of carrying out necessary works.

52. He submitted that for either or both reasons the Tribunal should exercise its discretion and there should be no award in favour of the Applicant. He relied

the cases of *Awad v Holey [2021]UKUT 0055(LC)* and *Kowalek & Anr v Hassanein Ltd [2022]EWCA Civ 1041* for the exercise of discretion.

53. In her reply, the Applicant stated that her claim was made when she learned that a repayment order may be made when a house is unlicensed. Moreover, the Respondent had broken the law.

Decision

54. This claim arises from a want of understanding of a landlord's obligations on both parts. It is regrettable that what appeared to be cordial relations between landlord and tenant broke down when the tenant's continued occupation was put in doubt. Both sides have found the situation that developed stressful and harmful to their health.

55. The Applicant referred her position to the Nottingham City Council as local housing authority and the trading standards office whereupon the Respondent's shortcomings as landlord were investigated.

56. The first in time matter was the deposit. The Tribunal has not reviewed the settlement but noted a substantial payment was made by the Respondent to the Applicant after the Respondent consulted counsel. The Respondent now contends these proceedings are abusive.

57. Parliament has created two separate statutory causes of action which it decided should be heard in separate forums. From the extract of the judgment of Lord Bingham of Cornhill it is not necessarily abusive to raise something which could have been raised in earlier proceedings. It is necessary to balance public and private interests involved and take account of all the facts of the case to decide whether or not these proceedings are abusive.

58. By s214(1) 2004 Act where a tenancy deposit has been paid in connection with a shorthold tenancy on or after 6 April 2007, the tenant or any relevant person (as defined by section 213(10)) may make an application to the county court.

Whereas by s44(1) of the 2016 Act a tenant may apply to the First-tier Tribunal for a rent repayment order.

59. It is legitimate to ask why solicitors instructed in connection with the deposit did not advise on other possible causes of action but even had they done so, two separate actions would result. In this case the gap between notification of the deposit claim and commencement of these proceedings was four weeks which is not a substantial interval within which to lead the Respondent to believe all matters were resolved. Also, it was not argued that the settlement contained a clause that the payment settled all possible causes of action. Naivety has played an important part of the respective cases. It is not surprising that another issue was raised in the course of both sides trying to secure the best position for themselves.

60. This Tribunal does not consider the issue of these proceedings was abusive. However, it has noted the size of the settlement. The present statutory arrangements are designed to drive out rogue landlords by imposing penalties for the commission of housing and criminal offences. In *Rakusen v Jepson & Ors [2021] EWCA Civ 1150* the regime introduced by Chapter 4 of Part 2 Housing and Planning Act 2016 is described as *"intended to deter landlords from committing the specified offences"*.

61. The failure to licence the Property was acknowledged as soon as the omission was understood. The Respondent applied for a licence promptly and one was granted without undue delay after inspection by the local housing authority and the remedying of relatively minor works required. Had the Respondent applied for a licence in 2019 there is no reason to believe her application would have failed. There have been no apparent benefits to the Respondent by the application being delayed.

62. In Acheampong v Roman [2022]UKUT 239 (LC) HHJ Cooke set out a four stage approach to determining a repayment claim:
The following approach will ensure consistency with the authorities:
a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked.

63. In Hancher v David [2022] UKUT 277 (LC) the four steps were affirmed including the importance of consideration of the seriousness of the offence. HHJ Cooke said at paragraph 19:

"Next the Tribunal has to consider the seriousness of the offence and the appropriate percentage of the rent to reflect that seriousness, in order to generate a starting point. The offence under section 72(1) of the Housing Act 2004 is not one of the more serious of the offences for which a rent repayment order can be made. And this is not one of the most serious examples of the section 72(1) offence; in particular, whilst some improvements were clearly needed at the property there is no evidence of fire hazards, for example, and no suggestion that the property would not have qualified for an HMO licence had one been sought".

However, it is clear from the FTT's findings about credibility that the offence was committed deliberately; Ms Hancher chose not to apply for a licence even though she had been told by her architect that she needed one.

64. In Acheampong, at paragraphs 16 and 17, HHJ Cooke gave some examples of how the degrees of seriousness of the relevant offence:
16. So in a case where the landlord of several properties had no HMO licence and whose eventual application for a licence was rejected on the basis of the fire hazards at the property, and who nevertheless failed to remedy those defects for over a year, the Tribunal ordered repayment of 90% of the rent (Wilson v Arrow and others [2022] UKUT 27 (LC)) ; in a case where the landlord was letting just one property through an agent, and might reasonably have expected the agent to warn him that a licence was required, and the condition of the property was satisfactory, the Tribunal ordered repayment of 25% of the rent (Hallett v Parker [2022] UKUT 165 (LC)).
17. There are no rules as to the amount to be repaid; there is no rate card. But it is safe to say that if the landlord is ordered to repay the whole of the rent (after deduction of any payment for utilities), without consideration of the seriousness of the offence, or in a case that is far from the most serious of its kind, it is likely that something has gone wrong and that the FTT has failed to take into consideration a relevant factor.

In Hancher a repayment of 65% of the rent was appropriate to reflect the seriousness of the offence.

65. Applying the principles identified, the parties agreed that the whole of the rent for the relevant period was £7204.30. There are no deductions for utilities but the sum to be deducted because the Applicant was in receipt of universal credit was agreed as £4079.52. The amount in dispute is agreed at £3124.78.

66. The time taken at the hearing was directed substantially to the respective parties' complaints against each other of misconduct. The respective allegations were strongly denied by each side. The Tribunal having heard the

complaints does not consider the misconduct allegations a significant issue in its final determination of the matter.

67. Having identified the matters described in paragraphs (a) and (b) of the *Acheampong* decision the Tribunal has considered the seriousness of the admitted offence. On being made aware of the need for a licence the Respondent submitted her application within five days. The hazards identified following the inspection by the local housing authority on 2 August 2022 were not sufficient to delay the issue of a selective licence on 30 August 2022.

68. In *Kowalek v Hassanein Limited [2021] UKUT 143 (LC))* the Upper Tribunal observed "*unlicensed accommodation may provide a perfectly satisfactory place to live, despite its irregular status, and the main object of rent repayment orders is deterrence rather than compensation.*"

69. The Tribunal considers the seriousness of the offence to be low. This case is similar to the facts found in the *Hancher* case in that improvements were needed to the Property and the evidence suggests the Property would have gained a licence if an application had been made at an earlier point in time. Unlike the *Hancher* case, where the reduction was 65% because Ms Hancher disregarded advice but the property was licensable, Mrs Carter responded immediately to correct her omission. That being so, the only gain made by not having a licence was the application fee, although it has now been paid. There was no evidence that the fee was lower owing to a submission being made at a later point in the scheme.

70. The Tribunal proposes to make a deduction from the amount in dispute but as pointed out in *Kowalek at* paragraph 37, *"A tenant in whose favour a rent repayment order is made cannot be regarded as being punished by a reduction in the amount of the order below the maximum permissible. From the point of view of the tenant, any repayment is a windfall. It is of course the case that some tenants in whose favour orders are made have been the victims of serious housing offences (harassment or unlawful eviction) or will*

have lived in hazardous or unpleasant conditions because of breaches of their landlords' obligations. But that will often not be the case."

71. Although the offence was not serious, there was an oversight on the Respondent's part at the outset of the tenancy. A conversation with any letting agent in January 2019 would have informed Mrs Carter of her obligations. Anyone who wishes to let their property should inform themselves of their obligations, which Mrs Carter failed to do.

72. Her failure, in this regard, has already cost her £8400.00. Mr Gunstone urged the Tribunal to have regard to that payment which is a windfall the tenant has already received.

73. Having regard to the nature of the offence and the cost of failing to comply with current regulations already incurred but considering the failure to take the most basic steps of obtaining advice the Tribunal reduces the repayable rent by 85% to £468.72.

Appeal

74. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Tribunal Judge P. J. Ellis