FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/HMF/2022/0240**
HMCTS code (paper, video, audio)		**V: CVPREMOTE**
Property	**:**	**15 Rose Garden, London, W5 4JU**
Applicants	**:**	**(1)Mr Mihaly Szabo** **(2)Mr Krzysztof Dzwonkowski**
Representative	**:**	**Miss Elizabeth Salmon, West London Equality Centre**
Respondents	**:**	**Dale Key Limited**
Representative	**:**	**Ms Jessica Wang**
Type of application	**:**	**Application for a Rent Repayment Order under s.41 of the Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge N Rushton KC** **Mr C Gowman MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**22 February 2023**
Date of decision	**:**	**23 February 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to or not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because no-one requested this and all issues

could be determined in a remote hearing. The documents that the Tribunal were referred to were in a bundle submitted by the applicants of 116 pages.

Decisions of the tribunal

(1) Permission was granted by the tribunal during the hearing for the applicants, Mr Mihaly Szabo and Mr Krzysztof Dzwonkowski to give oral evidence remotely from outside the jurisdiction, from Poland.

(2) The tribunal is satisfied beyond reasonable doubt that the applicants' landlord, the respondent, Dale Key Limited committed an offence under section 72(1) of the Housing Act 2004 ("**the 2004 Act**") in that it had control of and/or managed a house in multiple occupation ("**HMO**") which was required to be licensed under section 61 of the 2004 Act but was not so licensed, during the period from 24 April 2021 until 13 October 2021 (it being admitted by the applicants that the respondent applied for a licence on 14 October 2021).

(3) The tribunal makes rent repayment orders against Dale Key Limited in favour of the applicants, as follows:

   a. £1,668 in favour of Mr Mihaly Szabo;

   b. £1,668 in favour of Mr Krzysztof Dzwonkowski.

(4) The tribunal makes an order on its own initiative under rules 13(2) and (3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the 2013 Rules**") that Dale Key Limited shall reimburse the application fee of £100 and the hearing fee of £200 paid by the applicants, within 14 days of the date this Decision is received by the parties.

(5) The tribunal makes the further determinations set out under the various headings in this Decision.

The application

1. The applicants, Mr Mihaly Szabo and Mr Krzysztof Dzwonkowski, issued an application on 7 October 2022 (albeit dated 25 September 2022) for a rent repayment order ("**RRO**") under s.41(1) of the Housing and Planning Act 2016 ("**the 2016 Act**"), against the respondent, Dale Key Limited ("**DKL**"), their former landlord. The application concerns the property known as 15 Rose Garden, London, W5 4JU ("**the Property**"). They have been represented throughout by Miss Elizabeth Salmon from West London Equality Centre.

2. This was the second application which the applicants made, their first application having been dismissed on 6 June 2022 because it had been wrongly made against the freeholders of the Property, Mohammed and Busra Hai, who were not the applicants' landlords and were not persons with control of the Property.

Procedural matters

3. Directions in respect of this application were issued by Judge Hamilton-Farey on 17 November 2022. This included the standard direction, at paragraph 11, that if any witness intended to give oral evidence at the hearing from outside of the UK, they needed to follow the guidance in the "Guidance Note for Parties: Giving Evidence from Abroad" ("**the Guidance**"), which is available from the tribunal and online, and notify the tribunal within 5 days that the applicants intended to apply to give evidence from abroad, specifying the country, and saying that they would follow the procedure in the Guidance.

4. This was relevant in this case because it was apparent from the application that the applicants had moved back to and were living in Poland, and the application stated they intended to give evidence remotely from Poland. Given this indication, the case officer contacted Miss Salmon when she sent out the Directions and again when she sent out the listing details, providing the instructions which needed to be followed if either applicant wished to give evidence from Poland. These included asking the case officer to contact the Taking of Evidence Unit of the Foreign, Commonwealth and Development Office to establish if Poland had given consent to such evidence being given.

5. Miss Salmon did not respond to either of those emails and did not follow the procedure in the Guidance. At the hearing she explained that this had been an oversight on her part. At the hearing both applicants also confirmed to the tribunal that they were currently in Poland.

6. Prior to the hearing, the tribunal was able to establish from the regional judge of the FTT that Poland has given a general consent to oral evidence being given for hearings in the UK. It therefore invited Miss Salmon to apply orally for permission for her clients to give oral evidence at the hearing, which she did.

7. The tribunal granted that permission, on the basis that the applicants have now moved back permanently to Poland, which was a good reason for giving evidence from there and not within the UK; it was satisfied that Miss Salmon had simply made a mistake in overlooking the need to follow the Guidance; and because it was of assistance to the tribunal to hear from the applicants orally in addition to their written evidence. However the tribunal notes that it was only possible to give this permission at the hearing, and in the absence of an application in

accordance with the Guidance, because Poland is a country which has already given a general consent.

8. DKL has taken no active part at all in the proceedings. It filed no response to the application and did not attend the hearing.

9. The tribunal is however satisfied that all reasonable steps have been taken to bring the application and hearing details to the attention of DKL. Miss Salmon confirmed to the tribunal that she sent the application, bundle and details of the hearing to Jessica Wang, who was the representative of DKL that the applicants dealt with, at the same email address which they had used throughout their tenancy, and had received no bounce-backs. At the time of the first application she had also telephoned the number which they had for Ms Wang, and had previously used for messages. Ms Wang had responded at that time requesting more time, but Miss Salmon said that number had not worked since then and she had had no further contact from Ms Wang. Miss Salmon also confirmed that she had checked the records for DKL at Companies House, and it is still shown as an active company.

10. Notification of the issue of the application and of the hearing date (among other correspondence) was also sent by the tribunal's case officer to DKL at the email address used by Ms Wang.

11. In those circumstances, the tribunal decided to proceed in the absence of the respondent, DKL.

12. In other respects the applicants had essentially complied with the directions, and in particular had provided an electronic bundle containing all the relevant documents and evidence.

The hearing

13. The hearing took place remotely using the CVP platform. In addition to the tribunal it was attended by the applicants Mr Szabo and Mr Dzwonkowski, and their representative Miss Salmon. The hearing began at 10.10am.

14. The tribunal made it clear it had read the documents in the bundle. It then heard live evidence from Mr Szabo, who confirmed the contents of his witness statement, which was signed with a statement of truth. However, this was subject to some corrections to its contents which he subsequently made, as set out below. Mr Dzwonkowski also agreed with that evidence. The application form was signed with a statement of truth by both applicants.

15. Mr Szabo and Mr Dzwonkowski answered orally a number of questions from the tribunal about the Property, its condition, the occupation of

others at the Property, and the utility costs. Reference will be made to their answers, where relevant, in the course of this decision. They and Miss Salmon also made submissions as to the seriousness of the offence alleged against DKL and the conduct of all parties.

16. The tribunal accepts the evidence of Mr Szabo in full, both as set out in his witness statement and application (subject to the corrections he made) and as given orally, on behalf of both applicants. The applicants were straightforward in answering the tribunal's questions, appeared simply to be doing their best to assist the tribunal, and their evidence was consistent with the available documents. Their disgust with the serious problems which became apparent with the Property, especially the bed bug infestation, mould and the electrical hazards, was manifest.

17. The tribunal notes that the bundle included a copy of an Improvement Notice served by the London Borough of Ealing on the freeholders, dated 20 October 2021, which included findings of no less than six Category 1 Hazards, including excess cold, fire risks, electrical hazards and damp and mould. The Notice was served following an inspection triggered by a complaint by the applicants about the condition of the Property. Accordingly, as confirmed by the applicants, the Notice represented the condition of the Property during the relevant period of their occupation.

18. The application for an RRO was pursued only on the basis that that DKL had committed the offence under s.72(1) of the 2004 Act, of control or management of an unlicensed HMO. While reference had also been made in the application to an offence under s.30(1) of the 2004 Act, the applicants accepted in the papers that there was insufficient evidence of failure to comply with the Improvement Notice, and Miss Salmon confirmed that this head of claim was not pursued.

The Property and its occupation

19. Mr Szabo explained orally (and in part in his application) that the Property is a 2 storey house with 4 bedrooms, which were let separately. All the occupants shared the kitchen and bathroom facilities. The applicants occupied Room 3 at the Property.

20. The bundle included the applicants' two tenancy agreements, of Room 3, the first from 24 April until 23 August 2021 and the second from 24 August 2021 to 23 February 2022. The landlord in both cases was named as Dale Key Limited, represented by Jessica Wang.

21. The rent was £640 per month. The tenancy agreement stated at paragraph 18 that this included the following utilities: water (amount not stated), electricity (£20 per room per month); gas (£20 per room per month); heating and complimentary broadband. Mr Szabo

confirmed that they had not paid anything for utilities separately because these were included in the rent. When asked by the tribunal, he said he did not know if the figures stated for electricity and gas were a reasonable representation of the actual costs.

22. Mr Szabo and Mr Dzwonkowski also confirmed that they paid the rent of £640 jointly from their own resources, with no recourse to Universal Credit. Mr Szabo paid half each month into Mr Dzwonkowski's account, who then paid the full amount to the landlord. Bank statements in the bundle demonstrated that the rent was paid on time and in accordance with the tenancy throughout.

23. Mr Szabo and Mr Dzwonkowski referred to each other as partners, and the tribunal is satisfied that the two of them were a single household, within the terms of section 258 of the 2004 Act.

24. The applicants' application for an RRO was therefore for the period from when they moved in on 24 April 2021, until 13 October 2021 (the day before DKL applied for an HMO licence, which was ultimately granted on 8 March 2022). Searches carried out by the applicants confirmed that DKL did not have a licence before that date. WhatsApp messages within the bundle confirm that the applicants moved out of the Property on 8 February 2022. They confirmed orally that they lived at the Property throughout as their home, i.e. as their only residence. (Short periods of time when the applicants, or any other occupants, had to temporarily move to a hotel when the gas boiler broke down do not affect this conclusion.)

25. During the period when the applicants were in occupation, Mr Szabo said, in oral evidence in answer to questions from the tribunal, that the occupancy of the other rooms at the Property was as follows (correcting paragraph 2 of his witness statement):

    (i) Room 1 downstairs was occupied by a woman throughout. At some point during the applicants' occupation, her boyfriend moved in to join her.

    (ii) Room 2 was occupied throughout by a woman called Susan, who lived there by herself.

    (iii) Room 4 upstairs was initially occupied by a Brazilian man. A month or two after the applicants moved in, he moved out and Susan arranged for her son to move into the room instead. He lived there on his own thereafter, although sometimes his girlfriend stayed with him. There was no period when this room was empty – Susan moved her son in as soon as it became free.

(iv) In all cases, the rooms appeared to be the home, or primary residence of the people concerned (except for the girlfriend of the son in Room 4).

26. Accordingly, during the relevant period, the Property was occupied by a total of at least 5 people. Those 5 people lived in 4 separate households, within the meaning of section 258 of the 2004 Act.

27. The Property was located within an area designated as "Additional Licensing" by the London Borough of Ealing, for the purposes of s.55(2) of the 2004 Act. By a Notice dated 25 July 2016 and continuing until 1 January 2022, a copy of which was in the bundle, HMO licensing requirements were extended to all HMOs in the whole of Ealing which comprised 2 or more storeys and were occupied by 4 or more persons in 2 or more households. The Property fell within this extended definition at all material times.

The law

28. Extracts from relevant legislation are set out in an Appendix to this Decision.

29. The definition of HMO is set out in section 254 of the 2004 Act. The applicants' case is that the Property met the conditions for an HMO in section 254(2), referred to as the "standard test" (s.254(1)(a)).

30. By section 61(1) of the 2004 Act, every HMO to which Part 2 of the Act applies must be licensed unless it is covered by one of the exceptions in that section (none of which apply here). By section 55(2), Part 2 applies to (a) any HMO which falls within any "prescribed description" of an HMO and also to (b) any HMO which falls within an area designated as subject to additional licensing.

31. It is apparent from the evidence in the bundle that the whole of Ealing, including the Property, was designated as subject to "additional licensing" during the relevant period in 2021.

32. Sub-section 55(3) provides that the appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection 55(2). Such a description has been prescribed by the Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018/221 ("**the 2018 Order**"), which applied from 1 October 2018. By Paragraph 4, an HMO is of a prescribed description for the purposes of section 55(2)(a) if it

"(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets—

(i) the standard test under section 254(2) of the Act…"

33. Ealing's additional licensing designation extended the requirement for licensing to all 2-storey HMOs which were occupied by at least four people in at least two households.

Was the Property licensed as an HMO?

34. In their application, the applicants explained that they had conducted a search of Ealing's website which had confirmed that the Property did not have a licence. In his statement, Mr Szabo says that when he emailed Ms Wang in November 2021 asking her to confirm that it did not have a licence, she did not respond.

35. This email followed Mr Szabo's complaint to Ealing council in August 2021 about the condition of the Property, following which the Environmental Health Officer attended and inspected the Property on 22 September 2021. It appears therefore that Ms Wang was told or realised that the Property required an HMO licence at about this time.

36. More recently the applicants re-inspected Ealing's records which now show that DKL was granted a new mandatory HMO licence on 8 March 2022, for which they had applied on 14 October 2021. A copy of the relevant print out from the website was within the bundle.

37. DKL has taken no active part in these proceedings and so has not raised any issue that the Property was licensed, or that it was not a prescribed type of HMO, or that it was exempt from licensing.

38. On the basis of this evidence, the tribunal is completely satisfied that the Property did not have an HMO licence prior to 8 March 2022.

The tribunal's determination

39. The tribunal is satisfied beyond reasonable doubt, on the basis of the documentary evidence that it has seen and the oral evidence of Mr Szabo, of the following matters:

(i) The Property constituted at all material times (i.e. between 24 April and 13 October 2021) an HMO within the meaning of the "standard test", i.e. that:

(a) It consisted of one or more (here, four) units of living accommodation not consisting of a self-contained flat or flats;

(b) Each of the four bedrooms, when occupied, was occupied by a separate household (within the meaning of s.258);

(c) The living accommodation was occupied by the persons in occupation as their only or main residence;

(d) Their occupation of that living accommodation constituted their only use of that accommodation;

(e) Rents were payable by at least the applicants for occupation of their room;

(f) Two or more of those four households shared one or more basic amenities (as defined by subsection 254(8)), namely (a) a toilet; (b) personal washing facilities and (c) cooking facilities.

(ii) By reason of paragraph 4 of the 2018 Order, the Property constituted an HMO of a prescribed description for the whole of the relevant period, because:

(a) It was occupied by at least 5 persons, as required by paragraph 4(a);

(b) It was at all times occupied by at least two households;

(c) As set out above, it satisfied the standard test at all times.

(iii) In any event, the Property fell within the extended designation for additional licensing issued by Ealing at all material times, because it was a 2-storey house occupied by at least 4 persons in at least 2 households.

(iv) The Property was therefore an HMO falling within the prescribed description of an HMO, for the purposes of s.55(2) of the 2004 Act and so was required by section 61(1) of the 2004 Act to be licensed as an HMO.

(v) At no material time from 24 April to 13 October 2021 was the Property licensed as an HMO, and it was not until 14 October 2021 that DKL applied for such a licence. By section 72(4)(b), it is a defence to an offence under s.72 if an application for a licence has been made and that application has not yet been decided.

(vi) DKL was the applicants' landlord under an assured shorthold tenancy which commenced on 24 April 2021. Regardless of the precise nature of the relationship between DKL and the freeholders (which is not known), DKL was therefore, from 24 April 2021 until 13 October 2021, a person having control and/or management of an HMO which was required to be licensed under Part 2 of the 2004 Act, but which was not so licensed, within the meaning of section 72(1) of the 2004 Act.

40. DKL has raised no argument that it has any defence of reasonable excuse under section 72(5) of the 2004 Act, for controlling or managing the Property when it was not licensed as an HMO (or any other defence). Nor is there any material before the tribunal which it considers might raise such a defence. As set out above, DKL has a defence from 14 October 2021 when it applied for a licence. That application was still undecided at the time when the applicants moved out, on 8 February 2022.

41. The tribunal is accordingly satisfied beyond reasonable doubt that DKL has committed the offence of being a person having control of and/or managing an HMO which was required to be licensed but was not so licensed, for the period from 24 April until 13 October 2021, contrary to section 72(1) of the 2004 Act.

42. The applicants have satisfied the requirements for making a tenant's application for an RRO, as set out in section 41(2) of the 2016 Act, in that (a) the offence relates to housing which at the time of the offence was let to them, and (b) the offence (which continued until 13 October 2021) was committed during the period of 12 months ending with the day on which their application was made, which was 7 October 2022.

43. The tribunal considers that this is a case in which it should exercise its discretion under s.43 of the 2016 Act to make an RRO against DKL in favour of the applicants, there being no proper basis on which it could refuse to do so.

44. Section 44 of the 2016 Act provides that where the tribunal decides to make an RRO against a landlord in favour of a tenant, the amount is to be determined in accordance with that section. Sub-paragraph 44(2) provides that in a case concerning an offence under s.72(1) of the 2004 Act, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence. (There is no requirement that this is within the 12 months immediately before the application was issued.)

45. The period for which the applicants each seek an RRO is from 24 April to 13 October 2021. For the reasons set out above, the tribunal has concluded that DKL was committing an offence under s.72(1) for the whole of that period.

46. The evidence from the applicants, supported by copies of Mr Dzwonkowski's bank statements, is that he paid £640 per month throughout that period, and that Mr Szabo contributed half of that sum. The tribunal accepts that evidence. This was a period of 5 months 19 days, or 172 days.

47. No Universal Credit was paid to the applicants which needs to be deducted pursuant to s.44(3)(b).

48. The rent included £40 per month said to be in respect of gas and electricity and also an unspecified sum in respect of water charges. In the absence of any other evidence, and applying its expert knowledge, the tribunal has concluded that the sums for gas and electricity represent a reasonable estimation of those costs. It has further concluded that a deduction of £10 per month would be reasonable for the water charges.

49. Therefore, the tribunal has concluded that the net rent, after deduction of utilities, was £590 per month.

50. Accordingly, the amount of the rent, after deduction of utilities, which was paid by the applicants during the relevant 172 day period was £3,336 (ignoring pence). This is the maximum amount which the tribunal could order by way of a RRO (divided between the two applicants).

51. Sub-section 44(4) provides that in determining the amount of the RRO, 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 Chapter of the 2016 Act applied.

52. DKL has not been convicted of any such offence, so (c) does not apply. Nor, so far as the tribunal is aware, has the local authority imposed any financial penalty on it under s.249A of the 2004 Act.

53. In his decision in *Williams v. Parmar* [2021] UKUT 0244 (LC), the then Chamber President of the Upper Tribunal, Mr Justice Fancourt gave guidance as to the approach which the FTT should take to assessing the amount of an RRO awarded under s.44 (not being an order following conviction under s.46). In summary, the guidance in that case was as follows (with reference to paragraph numbers of that decision):

    (i) The terms of s.46 show that in cases where that section does not apply, there is no presumption that the amount ordered is to be the maximum that the tribunal could order under s.44 [23];

(ii) S.44(3) specifies that the total amount of rent paid is the maximum amount of an RRO, and s.44(4) requires the FTT in determining the amount of the RRO to have particular regard to the three factors specified in that sub-section. However the words of that sub-section leave open the possibility of there being other factors that, in a particular case, may be taken into account and affect the amount of the order [24];

(iii) The RRO must always "relate" to the amount of the rent paid in the period in question. It cannot be based on extraneous considerations or tariffs. It may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid is not a starting point in the sense that there is any presumption that that sum is to be the amount of the order in any given case nor even the amount of the order subject only to the factors specified in s.44(4) [25].

54. Subsequently in the Upper Tribunal case of *Acheampong v Roman* [2022] UKUT 239 (LC), Judge Elizabeth Cooke gave further guidance as to the approach which the tribunal should take to assessing the quantum of a RRO:

"20. 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."

55. The Upper Tribunal has subsequently affirmed the approach set out in *Acheampong* including in *Fashade v. Albustin* [2023] UKUT 40 (LT) and *Hancher v. David* [2022] UKUT 277 (LC).

56. Applying the approach in *Acheampong*, the total rent under (a), after making the deductions under (b), is £3,336 (ignoring pence).

57. As to (c), the seriousness of the offence in this case, the tribunal has reached the following conclusions:

    (i) The condition of the Property was extremely poor, as demonstrated by the photographs within the bundle, and the terms of the Improvement Notice, which listed 6 separate Category 1 hazards. All of the evidence suggests these problems were longstanding and continued throughout the period with which the tribunal is concerned (which ends on 13 October 2021). From the descriptions and photographs, the electrical hazards were a clear danger. In addition, there was a waste-pipe running at about knee-height across the fire exit, rendering it very difficult to use safely. The tribunal also accepts the applicants' evidence that there was serious infestation of bed-bugs, originating from within the walls and/or ceiling, and that the mould in the downstairs bathroom was so bad as to render it unusable. Further there were periods in October 2021 when there was no effective heating, as the gas boiler was not working.

    (ii) It accepts the applicant's evidence that although the landlord's agent, Ms Wang attended and examined the problems in a cursory way when they complained, she failed to engage competent or properly qualified workmen to deal with them. This ultimately led to the report to Ealing council and the service of the Improvement Notice. It was the applicants themselves who resolved the bed bug problem, by fumigating the room and purchasing and installing a new carpet.

    (iii) It is very unlikely that the Property would have been granted an HMO Licence before at least the hazards in the Improvement Notice had been resolved. *Williams* indicates that this is an important factor.

(iv) This is therefore in the tribunal's view a case which was at the upper end of seriousness.

58. As to step (d), considering then the other factors in section 44(4), especially 44(4)(d), the tribunal has concluded as follows:

(i) Since DKL has taken no active part in this application, the tribunal has no evidence before it as to its financial circumstances.

(ii) As to the conduct of the applicants, all the evidence is that they have been exemplary tenants. They paid their rent promptly throughout (despite the condition of the Property), save that they asked for the last month to be taken from their deposit, to which Ms Wang agreed. They communicated appropriately with their landlord. As noted above, they dealt with the bed bug infestation and replaced the carpet themselves. There was no complaint as to the condition in which they left the Property.

(iii) There is evidence of poor conduct by DKL, in relation to management of the condition of the Property, but this has already been considered above under seriousness. In addition, DKL has failed to take any part in these proceedings. Given that there is good evidence that significant efforts have been made to draw Ms Wang's attention to them, and she did initially respond, the tribunal considers that it is most likely that she, on behalf of DKL, has decided to ignore this application and not to take an active part in it.

59. The tribunal also bears in mind, in its capacity as an expert tribunal, that HMO licensing was introduced with the aim of improving the quality and safety of private rented accommodation occupied by multiple households. It notes the legislation is intended to assist local authorities to locate and monitor HMOs and also improve the standard and management of this sector. Multi-occupied property has historically contained the most unsatisfactory and hazardous living accommodation with particular concerns about inadequate fire safety provision and poor management. Against this background the failure to license is potentially extremely serious - hence the significant associated penalties and forfeit of rents sanctioned by the legislation. In addition, good landlords who license promptly may otherwise feel that those failing to license would gain unfair benefit by dodging licensing costs and associated improvement expenditure if licensing were not heavily incentivised. There are therefore sound public policy reasons for the provisions.

60. The tribunal takes into account this punitive purpose of this jurisdiction, and the importance of the aim of enforcing a licensing

regime which is intended to raise the standards of privately rented HMOs.

61. Given its conclusion that this case falls at the upper end of seriousness, by reason especially of the condition of the Property, and in the absence of any evidence or submissions from DKL as to factors said to point to reducing the award, and taking into account all of the factors referred to above, the tribunal has concluded that the appropriate award in this case is the full amount of the rent for the relevant period, that is £3,336. In a very real sense, the condition of this Property meant that the applicants did not get what they were paying for.

62. Since the evidence is that Mr Szabo and Mr Dzwonkowski contributed to the rent equally, the tribunal awards an RRO to each of them in the sum of £1,668, being half of £3,336.

63. In view of its findings, and the fact the applicants could not have obtained relief without pursuing this application, the tribunal further makes an order under rule 13(2) of the 2013 Rules, that DKL shall within 14 days reimburse the application fee of £100 and the hearing fee of £200 paid by the applicants. The order is made by the tribunal on its own initiative under rule 13(3).

Name: Judge Nicola Rushton KC **Date:** 23 February 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where–

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority–

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority....

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless–

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

(3) Sections 63 to 67 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of HMOs in their area which are required to be licensed under this Part but are not.

(5) The appropriate national authority may by regulations provide for–

(a) any provision of this Part, or

(b) section 263 (in its operation for the purposes of any such provision),

to have effect in relation to a section 257 HMO with such modifications as are prescribed by the regulations. A "section 257 HMO" is an HMO which is a converted block of flats to which section 257 applies.

(6) In this Part (unless the context otherwise requires)–

(a) references to a licence are to a licence under this Part,

(b) references to a licence holder are to be read accordingly, and

(c) references to an HMO being (or not being) licensed under this Part are to its being (or not being) an HMO in respect of which a licence is in force under this Part.

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine .

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England). 12

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);

(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or

part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

"basic amenities" means–

(a) a toilet,

(b) personal washing facilities, or

(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.

258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless–

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if–

(a) those persons are married to [, or civil partners of, each other or live together as if they were a married couple or civil partners]1 ;

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes–

(a) a "couple" means two persons who [...]2 fall within subsection (3)(a) ;

(b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

Housing and Planning Act 2016, Chapter 4

41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42. 13

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to the rent paid during the period mentioned in the table.

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

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence, or

(b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is *"no prospect of appeal"* , in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.

Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221

4. Description of HMOs prescribed by the Secretary of State

An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets—

(i) the standard test under section 254(2) of the Act;

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act.