FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMF/2022/0087**
HMCTS code (paper, video, audio)	**:**	**V - Video**
Property	**:**	**Flat 8, Horwood House, Pott Street, London E2 0EH**
Applicants	**:**	**(1) Elena Martos Lopez** **(2) Maria Mosquera Vicente**
Representative	**:**	**Mr. C. Barrett of Represent Law Ltd.**
Respondent	**:**	**Sabour Mansour**
Representative	**:**	**Not represented**
Type of Application	**:**	**Application for a rent repayment order by tenants**
Tribunal	**:**	**Tribunal Judge S.J. Walker** **Tribunal Member Mr. C. Gowman BSc MCIEH**
Date and Venue of Hearing	**:**	**21 February 2023 – video hearing**
Date of Decision	**:**	**1 March 2023**

DECISION

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(1) The Tribunal makes Rent Repayment Orders under section 43 of the Housing and Planning Act 2016 requiring the Respondent to pay the following;

To the First Applicant £1,308.62
To the Second Applicant £4,756.60

(2) The application for an order under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the payment of costs by the Respondent is refused.

(3) The Application for the re-imbursement by the Respondent of the fees of £300 paid by the Applicants in bringing this application is granted. Payment is to be made within 28 days.

Reasons

The Application

1. The Applicants seek rent repayment orders pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act"). The First Applicant Ms. Lopez seeks an order in respect of 4 months' rent for the period from 31 December 2020 to 30 April 2021 and the Second Applicant seeks an order in respect of 12 months' rent for the period from 1 April 2020 to 31 March 2021.

2. The application was made on 13 April 2022 and so is in time, and alleges that the Respondent has committed an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act") – having control or management of an unlicensed House in Multiple Occupation ("HMO").

The Hearing

3. The hearing was attended by both the Applicants, who gave oral evidence with the assistance of an interpreter. The Tribunal was satisfied that throughout the hearing the Applicants and the interpreter understood each other. The Applicants were represented by Mr. Barrett. The Respondent did not attend.

4. The Tribunal was satisfied from its files that the Respondent had been notified of the date and time of the hearing by letter on 11 October 2022 and that joining instructions were sent to him by e-mail on 31 January 2023. It was also satisfied, having regard to the overriding objective set out in rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), that it was in the interests of justice to proceed with the hearing. It therefore proceeded with the hearing as permitted by rule 34 of the Rules.

5. The Tribunal had before it a bundle of documents provided by the Applicants which comprised 221 numbered pages and which included

witness statements made by both Applicants. All page references are to this bundle unless otherwise stated. This bundle included the only document provided by the Respondent, a two-page statement (pages 205-206). The Tribunal also had a skeleton argument from Mr. Barrett, a statement of costs, and two additional e-mails from the London Borough of Tower Hamlets.

6. Both Applicants adopted their witness statements and were asked additional questions by Mr. Barrett and the Tribunal.

7. During the course of the hearing it became clear that there were some inaccuracies in respect of the figures provided for the amount of Universal Credit paid to the Applicants. As a result, the Tribunal directed that additional evidence of these amounts should be provided by the Applicants. This additional evidence was provided to the Tribunal on 24 February 2023.

The Legal Background

8. The relevant legal provisions are partly set out in the Appendix to this decision.

9. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. These include an offence under section 72(1) of the 2004 Act. Such an offence is committed if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.

10. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description (a mandatory licence) or if it is in an area for the time being designated by a local housing authority under section 56 of the 2004 Act as subject to additional licensing, and it falls within any description of HMO specified in that designation (an additional licence).

11. In either case the building in question must be an HMO. By section 254 of the 2004 Act a building is an HMO if it meets the standard test under section 254(2).

12. A building meets the standard test if it;

> "*(a) 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 …;*
> *(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;*

(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 the 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."

13. By virtue of section 258 of the 2004 Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.

14. An offence under section 72(1) can only be committed by a person who has control of or manages an HMO. The meaning of these terms is set out in section 263 of the 2004 Act as follows;

"(1) *In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

15. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for committing it.

16. By virtue of the decision of the Supreme Court in the case of Rakusen -v- Jepsen and others [2023] UKSC 9 an order may only be made against the immediate landlord of a tenant.

17. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.

18. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period and any relevant award of Universal Credit ("UC") paid in respect of the rent under the tenancy must be deducted.

19. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

The Applicants' Case

20. The First Applicant's case, which is set out in her witness statement (pages 119 to 120) was that she became a tenant of the property under an assured shorthold tenancy which commenced on 31 December 2020 and ended on 31 March 2021 and in respect of which the landlord was the Respondent, Mr. Mansour. There then followed a statutory periodic tenancy which came to an end on 30 April 2021 when she moved out of the property.

21. It is the First Applicant's case that the property had 4 bedrooms, a bathroom, a toilet a kitchen and a living room and that she lived in the flat with 3 other people, namely the Second Applicant, Maria Vicente, and two others named Alex and Andrea. She stated that the Respondent did not live at the property. Her rent was £650 per month and this was paid to Mr. Mansour's agent KJSZ Ltd.

22. The Second Applicant's case, which is set out in her witness statement at pages 43 to 45 is that she became a tenant of the property under an assured shorthold tenancy which commenced on 10 June 2019 and ended on 9 September 2019 and in respect of which the landlord was the Respondent, Mr. Mansour. There then followed a statutory periodic tenancy which came to an end on 30 April 2021 when she moved out of the property.

23. It is the Second Applicant's case that there were always 4 or 5 people living in the property but that the Respondent did not do so. At paragraph 13 of her witness statement (page 45) she sets out who was living in the property and when they were living there. Her rent was

£650 per month and this was mostly paid to Mr. Mansour's agent KJSZ Ltd.

24. The Applicants' case is that with effect from 1 April 2019 the London Borough of Tower Hamlets adopted an additional licensing scheme which required all HMOs in St. Peter's ward which are occupied by 3 or more people in two or more households to be licensed (pages 24 to 25). The property is in St. Peter's ward and so, they argue, it needed to have an additional licence.

25. Further, their case is that evidence from the local authority shows that no licence had been issued in respect of the property (page 33). They argue that, therefore, the Respondent was guilty of an offence under section 72(1) of the 2004 Act and that, therefore an order should be made in their favour. Both Applicants accepted that the cost of utilities was included in the rent and that they had both received UC in respect of their rent during the periods in respect of which orders were sought.

The Respondent's Case

26. The only evidence provided by the Respondent was a two-page witness statement (pages 205 – 206). In this he states that the Applicants shared the accommodation with him. Secondly, and more importantly, he states that the tenancy agreements were not with him but with KJSZ Ltd. and he never received fees or rent from the Applicants. It appears, therefore, that his case is that, by virtue of the decision in Rakusen, the Tribunal has no power to make an order against him.

Issues and Findings

27. On the basis of the documents contained in the Applicants' bundle the Tribunal was satisfied that the property is located in the St. Peter's ward of the London Borough of Tower Hamlets (page 21) and that there was an additional licensing designation in place from 1 April 2019 which covered St. Peter's ward and under which all HMOs in which 3 or more people were living in 2 or more households were required to be licensed (pages 25-26).

28. The Tribunal was also satisfied that throughout the period in question the property was not licensed, though an application for a licence was made on 30 November 2022 (page 33 and the additional e-mails from Mr. Williams dated 20 February 2023). There was no suggestion from the Respondent in his statement that an application for a licence had been made during the period that the Applicants were in occupation and so there was no basis for any statutory defence under section 72(4)(b) of the 2004 Act.

29. On the basis of the Applicants' witness statements (pages 181 to 182 and 43 to 45) and their oral evidence the Tribunal was satisfied that, whilst there was a period between April 2020 and August 2020 during the lockdown when only 3 people were in occupation, there were always at least 3 people living in the property from 1 April 2020 onwards and that there were always at least 2 households living there. The Second

Applicant, Ms Vicente, had a bedroom of her own throughout and was not part of the same household as any of the other occupiers.

30. The fact that one of the occupants of a property is a residential landlord does not of itself have any bearing on the need, or otherwise, for that property to be licensed. In any event the Tribunal did not accept the assertion made by the Respondent that he was "the primary resident" of the property (page 205). Despite what is stated in the written agreements entered into by the Applicants, which suggest that they were sharing the property with the Respondent, the oral evidence of the Applicants to the effect that Mr. Mansour did not in fact live at the property was clear, cogent and credible. It was also consistent with the evidence of messages sent between the Applicants and the Respondent which would be very unlikely if he were in fact living there (for example pages 155-156).

31. The Tribunal was similarly satisfied that the occupants of the property shared a kitchen, which is a basic amenity for the purposes of section 254 of the 2004 Act.

The Identity of the Landlord

32. The contention put forward by the Respondent in his statement appeared to be that he was not the Applicants' landlord but, rather, this was a company known as KJSZ Ltd. Indeed, he stated that the Applicants had signed lodger's agreements with that company (page 205).

33. This assertion was inconsistent with the evidence before the Tribunal. Firstly, it was satisfied that the Respondent is the registered proprietor of a leasehold interest in the property (pages 17 – 18). Secondly, the Applicants both produced written agreements, described as lodger agreements. That for Ms. Lopez is at pages 188 to 191. It is a pro-forma agreement with spaces to be completed by the parties. In it the Respondent is named as both the "householder" (page 189) and is described as the landlord (page 190), though the agreement purports to have been signed on behalf of KJSZ Ltd (page 189). The agreement also requires rent to be paid to KJSZ Ltd (page 190). The agreement for Ms. Vicente is at pages 51 to 53. It is in the same form as that of the First Applicant and the Respondent is again named as both householder and landlord, and it states that rent should be paid to KJSZ Ltd. This agreement purports to have been signed by "the Householder" who is named in the document as Mr. Mansour.

34. On the face of the documents themselves the Respondent is the Applicants' landlord and KJSZ Ltd. receive the rent on his behalf. The Respondent has not provided any evidence to show that he has created any leasehold interest in the property in favour of KJSZ Ltd, and there is no evidence that they have any proprietary interest in the property. The evidence of the Applicants was that they regarded Mr. Mansour as their landlord.

35. Taking the evidence together it was clear to the Tribunal that, regardless of who received the rent, the Applicants' immediate landlord was clearly the Respondent Mr. Mansour.

Management and/or Control

36. Having concluded that the Respondent was the immediate landlord of both Applicants, the Tribunal then considered whether he was either a person having control of the property or whether he was managing it.

37. In order to be a person in control of the property Mr. Mansour must be the person who receives the rack-rent of the premises or who would so receive it if the premises were let at a rack-rent (section 263(1) of the 2004 Act).

38. There was insufficient evidence from which the Tribunal could be satisfied that the Respondent in fact received any of the rent paid by the Applicants. The evidence was that rent was paid to KJSZ Ltd., which is what the agreements entered into with the Applicants required. There was no evidence of the rent being forwarded on to the Respondent. The Tribunal was not, therefore, satisfied that the Respondent was a person having control of the property.

39. To be a person managing the property the Respondent must be firstly, either an owner or lessee of the premises. There is no doubt that he is a lessee as shown by the registered leasehold interest.

40. Secondly, he must either receive some rent or payment from those in occupation or must be a person who would so receive those rents but for having entered into an arrangement with another person, who is not an owner or lessee of the premises, by virtue of which that other person receives the rent or payments.

41. Whilst there was insufficient evidence to show that the Respondent himself received rent, it was clear from the lodger agreements that the reason for this was that he had agreed with the Applicants that they would pay their rent to KJSZ Ltd. From this the Tribunal inferred that the Respondent must have entered into an agreement with KJSZ Ltd. for the company to receive the rent on his behalf. There was no evidence that KJSZ Ltd. was itself an owner or lessee of the property.

42. It followed, therefore, that the Respondent was a person managing the property by virtue of section 263(3)(b) of the 2004 Act.

Has an Offence Been Committed?

43. On the basis of the findings set out above the Tribunal was satisfied that for the period from the date Ms. Vicente moved into the property until the two Applicants left, on 30 April 2021, the property was an HMO which was required to have an additional licence but did not. There

was no suggestion that a licence had been applied for during that period.

44. Therefore, subject to the following paragraph, any person who was managing the property during that time was committing an offence under section 72(1) of the 2004 Act.

45. Although it was not expressly raised by the Respondent, the Tribunal nevertheless bore in mind its obligation to consider whether or not a defence of reasonable excuse applied in this case. In its view it did not. There was insufficient material in the evidence before it to suggest that there was any basis for concluding that the Respondent had a reasonable excuse for not obtaining a licence.

46. It follows therefore, that the Tribunal was satisfied that throughout the periods claimed the Respondent was guilty of an offence contrary to section 72(1) of the 2004 Act.

Jurisdiction to Make an Order

47. In the light of the case of Rakusen and the Tribunal's findings set out above that Mr. Mansour was the immediate landlord of the Applicants, the Tribunal concluded that it had jurisdiction to make an order under section 43 of the Act against him.

Amount of Order

48. The Tribunal therefore went on to consider the amount, if any, which it should order the Respondent to pay. In doing this it had regard to the approach recommended by UT Judge Cooke in the decision of Acheampong -v- Roman and others [2022] UKUT 239 (LC) @ para 20. The first step is to ascertain the whole of the rent for the relevant period.

Rent

49. The agreed rent for each Applicant was £650 per month. At pages 35 and 37 there are schedules of the rent paid by the Applicants. The Tribunal was satisfied that this schedule accurately reflected the documentary evidence of payment contained in the bundle.

50. From the evidence before it the Tribunal concluded that in the period from 25 December 2020 to 9 April 2021 Ms. Lopez paid a total of £2,600 in rent. This was paid in respect of her occupation during the period from 31 December 2020 to 29 April 2021. Although the first payment was made before she moved in, the Tribunal was satisfied that it could still be taken into account as the offence was already being committed before she moved in.

51. The Tribunal also concluded that in the period from 1 April 2020 to 31 March 2021 Ms. Vicente paid a total of £7,800 in rent and that this was paid in respect of her occupation in that period.

Universal Credit

52. Both Applicants were in receipt of UC during the period of their occupation. Section 44(3)(b) of the Act requires that the amount of any UC paid "*in respect of rent*" must be deducted from the total maximum payable. It follows that UC not paid in respect of rent should not be deducted.

53. When calculating entitlement to UC the DWP firstly calculate the total possible entitlement – which may include a total possible entitlement in respect of housing costs – and then make deductions in respect of actual income, producing a final figure. This final figure does not indicate how much is in respect of housing costs. This is shown in the case of Ms. Vicente in the evidence at, for instance, pages 103 to 104. UC payments are made after the monthly assessment period in respect of which they are paid (see, for instance, page 107).

54. Unfortunately, the schedule of rent payments provided on behalf of the Applicants – which also set out UC deductions – did not reflect either the figures in the evidence or the need to calculate what proportion of the payments was attributable to rent. Consequently, the Tribunal requested – and obtained – further evidence in respect of the UC payments.

55. The Tribunal considered the case of the Second Applicant first as, in her case, the evidence was more complete. Ms. Vicente's first UC payment, which was of £217.13, was paid on 5 November 2020 and was in respect of her entitlement for the assessment period beginning on 30 September 2020 and ending on 29 October 2020. Her maximum entitlement was to £409.89 – the standard allowance for a single person over 25 in the financial year 2020/2021 – and to £593.13 in respect of her housing costs – which is the maximum shared accommodation rate – making a possible total entitlement of £1,003.02 (pages 103-104). The proportion of this total sum attributable to housing costs is 59.13%. In fact, because of her earnings, her total entitlement in this period was only £217.13. In the Tribunal's view 59.13% of this sum was attributable to rent.

56. During the period in question Ms. Vicente's standard and housing allowances remained the same. It follows that in respect of each of her UC receipts, the same proportion should be deducted as being referable to her rent. The total received by her in UC during the period was £1,395 (pages 103 to 114 together with the additional evidence to show that she received no payment in April 2021). Applying the proportion of 59.13% produces a figure of £824.86. This sum must be deducted from the total rent paid, producing a maximum possible award of £6,975.14.

57. Included in the additional evidence in respect of UC was an entitlement statement for the First Applicant, Ms. Lopez, for the assessment period 3 December 2020 to 2 January 2021. This shows that her standard allowance was also £409.89 – the rate for a single person over 25 in 2020/2021. This is the same as for Ms. Vicente. Her rent was also the

same as the Second Applicant and her maximum housing costs entitlement would have been the same. It follows that the same proportion of her UC receipts is attributable to her rent.

58. In the period from 8 January 2021 to 9 May 2021 Ms. Lopez received a total of £1,231.64 in UC. This is accepted on her behalf in a spread-sheet provided by Mr. Barrett in the additional evidence, with all but the final payment also being shown at pages 201-202. It is clear from her entitlement statement that she is paid for the periods beginning on the 3rd of each month and ending on the 2nd of the following month. It follows that the first payment of £108.75 which was paid on 8 January 2021 is only partly attributable to the period of her tenancy – namely 31 December to 2 January inclusive – a total of 3 days. The payments are monthly, so the amount paid in December 2020 amounts to £3.58 per day. Therefore, the amount of UC attributable to the period she was in occupation of the property is 3 x £3.58 = £10.74. The remaining amount of the payment on 8 January 2021 - £98.01 – must be removed from the total. Similarly, the final payment on 9 May 2021 of £251.54 includes a period in respect of 2 days after she left the property. In this case the daily rate is £8.27, so £16.54 must be deducted. It follows that the total amount of UC received by Ms. Lopez in respect of her period in occupation of the property is £1,231.64 – (£98.01 + £16.54) = £1,117.09. It follows that the proportion of UC received which was attributable to rent was £1,117.09 x 59.13% = £660.54. It follows that the maximum possible award in her case is £2,600 - £660.54 = £1,939.46.

Utilities

59. Although the agreements signed by both the Applicants stated that they were required to make additional payments for utilities, their clear evidence was that these were included in the rent. No evidence was provided by the Respondent in respect of the costs of those services. Following the approach in Acheampong the Tribunal therefore set out to make an informed estimate.

60. In reaching its conclusions the Tribunal bore in mind the following. The property comprises three bedrooms, a living room (which later became a fourth bedroom), kitchen, and bathroom. Each room has a radiator which is heated by a gas boiler, which also provides hot water. The windows are not double-glazed. The boiler was regulated by a timer, but could be turned on and off at will. The combined oral evidence of the Applicants was that the heating was on for an hour at 3.00am when one of them got up to go to work, and then for a further 2 or 3 hours in the morning. It was switched on in the evenings as necessary.

61. The Tribunal also considered that utility costs would be considerably less in the summer months as compared to the winter, as there would be far less need for space heating.

62. Taking the limited evidence as a whole and doing its best, having regard to its own expertise, the Tribunal made the following informed estimate as to the likely cost of the utilities provided by the Respondent for the benefit of the Applicants during the relevant period. It concluded that the likely costs of gas and electricity at the prices current at the time would amount to roughly £40 per month for the whole flat for the months from April to October inclusive and £80 per month in the other months. On the assumption that the bills would be shared between 4 people this would mean a reduction of £10 per month for the Second Applicant for the period from 1 April 2020 to 30 September 2020 (a total of £60) a reduction of £20 per month for the Second Applicant for the period from 1 October 2020 to 31 December 2020 inclusive (a total of £60) a reduction of £20 per month for both Applicants for the period from 1 January 2021 to 30 March 2021 (a total of £60 each) and a deduction of £10 in respect of the First Applicant for the month of April 2021.

63. This therefore reduced the total rent paid less UC and utilities to the following;
Ms. Lopez £1,939.46 – (£60 +£10) = £1,869.46
Ms. Vicente £6,975.14 – (£60 + £60 + £60) = £6,795.14

Seriousness of Offence

64. As required by the approach recommended in the case of Acheampong the Tribunal then considered the seriousness of the offence both as compared to other types of offence and then as compared with other examples of offences of the same type. From that it determined what proportion of the rent was a fair reflection of the seriousness of the offence.

65. The offence in question is one contrary to section 72(1) of the 2004 Act. This is, when compared with offences such as unlawful eviction, a more minor offence.

66. Mr. Barrett argued that the fact that KJSZ Ltd. is a company whose business is the management of residential property (page 173) and that one of the directors, Kasra Lily Mansour, was believed to be a member of the Respondent's family (page 174) entitled the Tribunal to conclude that the Respondent himself is a professional landlord. The Tribunal was not satisfied that it could do this. There was no proven relationship between him and KJSZ Ltd apart from the fact that he arranged for them to collect the rent on his behalf. There was no evidence that the Respondent had any other properties, let alone that he rented them to others.

67. Taking all the evidence as a whole the Tribunal considered that the seriousness of the offence was such that the starting point – for the purposes of paragraph 20(c) in Acheampong was 60% of the rent.

Section 44(4)

68. The Tribunal then considered whether any decrease – or increase – was appropriate by virtue of the factors set out in section 44(4) of the Act. There was no suggestion that there had been any bad conduct by the Applicants, and there was no evidence about the Respondent's financial circumstances. There was no evidence of the commission of any other offences by the Respondent.

69. In their witness statements the Applicants complained of problems at the property with bed bugs and their documentary evidence showed that they had complained about problems with the washing machine and the heating. However, in their oral evidence they also accepted that the Respondent had taken at least some steps to rectify the problems. The landlord's response – or lack of it – to problems which arise at a property is more significant than the fact that problems arise. The Tribunal did not attach significant weight to these issues.

70. Far more importantly, and an issue on which Mr. Barrett placed great emphasis, was the fact that the Respondent had, on the face of it, entered into sham agreements with the Applicants and had persisted in asserting that he was a resident landlord when he was not. The Tribunal considered that this was a serious aspect of the case, especially the continued assertion in his witness statement that Mr. Mansour was the primary resident. As explained above, it was satisfied that the Respondent was not in fact living at the property, whereas the agreements he had entered into were clearly drafted to suggest that he was a resident landlord and that the Applicants were mere lodgers. It accepted that this had the potential effect of depriving the Applicants of the legal rights afforded to tenants and amounted to reprehensible conduct by the Respondent.

71. Taking this poor conduct into account the Tribunal concluded that it was necessary to increase the amount of the order to be made to 70% of the possible maximum rather than 60%.

72. It follows that in the case of each Applicant the total sum to be ordered to be paid is 70% of the total rent paid (as determined above) less the amount of UC and utilities (also as determined above).

73. This results in the following.
Ms. Lopez - £1,869.46 x 70% = £1,308.62
Ms. Vicente £6,795.14 x 70% = £4,756.60

74. The Tribunal therefore decided to make rent repayment orders in those amounts

Costs

75. The Applicants also sought an order under rule 13(1)(b) of the Rules for the payment of their costs on the basis that the Respondent had acted unreasonably in defending the proceedings. Mr. Barrett argued that the unreasonable conduct consisted of the Respondent's pursuing a

defence which had no prospect of success and also in his failure to attend the hearing.

76. When considering applications for costs the Tribunal is required to adopt a three-stage process. The first step is to consider whether or not on an objective basis a party has acted unreasonably.

77. The Tribunal bore in mind the leading case of Willow Court Management Co (1985) Ltd v Alexander [2016] UKUT 0290 (LC). In that case the Upper Tribunal quoted with approval the following definition from Ridehalgh v Horsefield [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G;

> "*Unreasonable" … means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable*"

78. The Upper Tribunal in Willow Court went on to say:

> "*An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in Ridehalgh at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?*
>
> *We … consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense*".

79. The Respondent was not represented. The Tribunal considered that lack of legal representation is relevant when considering whether or not there has been unreasonable conduct.

80. The Tribunal also reminded itself that the question of unreasonable conduct relates to the conduct of the proceedings themselves. Unreasonable behaviour outside the scope of the proceedings is not relevant.

81. The Tribunal was not satisfied that the Applicants had crossed the very high bar of establishing that the Respondent was unreasonable in the sense of displaying conduct which was designed to harass, rather than being merely over-enthusiastic or inefficient. It seemed to the Tribunal, having considered the Respondent's witness statement, that he (albeit wrongly) believed that the fact that rent was paid to KJSZ Ltd. afforded him a defence to the proceedings. In the absence of any evidence to show that he had been advised to the contrary – there is not even a letter from the Applicants pointing out the error and reminding him of the possibility of a costs sanction – the Tribunal was not satisfied that it was unreasonable for him to persist in defending his case.

82. On the other hand, the Tribunal was satisfied that, given the Applicants' success, it was just and equitable to make an order under rule 13(2) of the Rules requiring the Respondent to re-imburse the Applicants with the hearing fee of £300.

Name: Tribunal Judge S.J. Walker **Date:** 1 March 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if–

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

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

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

(3) A person commits an offence if–

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

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

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

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

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

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

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

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

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

(c) for failing to comply with the condition,

as the case may be.

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

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

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

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

(1) 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.

(2) 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.

(3) 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).

263 Meaning of "person having control" and "person managing" etc.

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the

premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to *"an offence to which this Chapter applies"* is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	section	general description of offence
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers

3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

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

Section 41 Application for rent repayment order

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

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

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

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

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

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

(b) the authority has complied with section 42.

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

Section 43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

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

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

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.

Section 52 Interpretation of Chapter

(1) In this Chapter—

"offence to which this Chapter applies" has the meaning given by section 40;

"relevant award of universal credit" means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

"rent" includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

"rent repayment order" has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.