FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/HMF/2022/0061**
HMCTS	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 32 Buxton Court, Thoresby Street, London N1 7TN**
Applicant	**:**	**Georgi Kolev**
Representative	**:**	**In Person**
Respondent	**:**	**Rent Room Ltd** **Joe Uddin** **Sabina Butt** **Mohammed Tayeeb Uddin** **Jebun Nessa Ahmed**
Representative	**:**	**Stephen Woolf (Counsel) for Jebun Nessa Ahmed**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Robert Latham** **Anthony Harris, LLM FRICS FCIArb**
Date and Venue of Hearing	**:**	**15 March 2023 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**22 March 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicant provided a Bundle of Documents which extended to 291 pages.

Decision of the Tribunal

1. The Tribunal makes a Rent Repayment Order against Jebun Nessa Ahmed in the sum of £7,920.

2. The Tribunal dismisses the applications for Rent Repayment Orders against Rent Room Ltd, Joe Uddin, Sabina Butt, Mohammed Tayeeb Uddin.

3. The Tribunal determines that Jebun Nessa Ahmed shall also pay the Applicant £300 in respect of the reimbursement of the tribunal fees which he has paid.

4. The payment of the said sums are not to be enforced pending the determination of Claim No.JO2EC785 in the County Court sitting at Clerkenwell and Shoreditch.

The Application

1. By an application, dated 9 March 2022, the Applicant seeks a Rent Repayment Order ("RRO") against the Respondents pursuant to Part I of the Housing and Planning Act 2016 ("the 2016 Act") against the following: (i) Rent Room Ltd; (ii) Joe Uddin; (iii) Sabina Butt; (iv) Mohammed Tayeeb Uddin; and (v) Jebun Nessa Ahmed. The first four Respondents are described as "agents" whilst the 5th Respondent is described as "landlord". The application relates to the accommodation known as 32 Buxton Court, Thoresby Street, London, N1 7TN ("the Flat"). This is in the London Borough of Hackney ("Hackney"). The Applicant seeks a RRO in the sum of £8,800, namely the rent which he paid between 1 January and 312 December 2021.

2. On 22 September 2022, the Tribunal gave Directions, pursuant to which:

   (i) The Applicant has filed a Bundle of Documents extending to 57 pages, references to which will be pre-fixed by "A.__".

   (ii) On 10 December, Rent Room Ltd filed a Bundle of Documents extending to 29 pages, references to which will be pre-fixed by "R.__".

3. In a letter (at R.2), Rent Room Ltd describes itself as trading as "One Deal Estate". The letter is not signed. The bundle was emailed to the tribunal by "Tayeeb". The letter states that Rent Room Ltd are managing the Flat on behalf of the Landlord, who should be treated as the respondent. Rent Room state that they are responsible for "collecting the rent, protecting deposits, seeing to maintenance, as well as ensuring the properties legalities are in order which includes but is not limited to licencing the property accordingly". Rent Room Ltd apply for the case to be struck out. First, there is an appeal against a Financial Penalty imposed by Hackney. Hackney have not proved beyond reasonable doubt that an offence has been committed. Secondly, the Applicant owes arrears of £6,480.

4. On 4 October 2022, Hackney imposed a Financial Penalty on Rent Room Ltd in the sum of £11,99.70. On 14 October, Rent Room Ltd issued an appeal to this tribunal against this Penalty (LON/00AM/HNA/2022/007).

5. Procedural Judges have decided that both applications should be listed before this Tribunal and that the appeal against the Financial Penalty should be heard first. On 14 March 2022, this Tribunal heard the appeal against the Financial Penalty. We have issued a separate decision giving our reasons for upholding this penalty. We have determined the current application solely on the basis of the evidence that we heard on 15 March.

The Hearing

6. Mr Georgi Kolev, the Applicant, appeared in person. He is from Bulgaria and has been in the UK for some 13 years. He is a strategy finance advisor with the Nat West Group. He has sought advice from Shelter in making this application. He gave evidence. We have no hesitation in accepting his evidence. His Bundle (at A.21) includes a witness statement from Ms Angela Reynolds, a Private Sector Housing Officer, employed by Hackney. She was not called to give evidence.

7. Mr Kolev accepted that Mrs Jebun Nessa Ahmed is his landlord. However, he has never met her. He has requested her address from those who manage the Flat. However, this information has been refused. Mrs Ahmed is registered at the Land Registry as the leaseholder of the Flat (see A.29-31). On 11 June 2004, she was registered as proprietor giving the Flat as her address. The Land Registry record that she paid £110k. On 26 April 2004, Hackney had granted Jebun Nessa Uddin (presumably Mrs Ahmed) a long lease, probably acquired under the Right to Buy legislation. This was a one bedroom flat. However, the living room has been divided by a partition to create two additional bedrooms.

8. Mr Kolev stated that he had joined Rent Room Ltd as a respondent to his application as it is the property agent. He had also joined (i) Joe Uddin, who he understood worked for Global Residential; (ii) Sabina Butt who also worked for Global Residential; and (iii) Mohammed Tayeeb Uddin who has worked for both Global Residential and One Deal Estate. It is

apparent that Mohammed Tayeeb Uddin ("Mr Uddin") has been the controlling mind behind the property agents. Whilst it would have been open to Hackney to impose a Financial Penalty on the property agents, including any director or officer, a RRO can only be made against a landlord (see *Kaszowska v White* [2022] UKUT 11 (LC)). Mr Kolev accepted our ruling on this point. We therefore dismissed the applications against Rent Room Ltd; Joe Uddin; Sabina Butt; and Mr Uddin.

9. Mr Stephen Woolf, Counsel instructed under the Direct Access Scheme, appeared for Mrs Ahmed. Mr Woolf has made a late appearance in these proceedings. On 12 March, the Tribunal received from Mrs Ahmed a copy of an open offer which Mr Woolf had made to Mr Kolev on 20 February. Mrs Ahmed did not provide an address. Mr Woolf stated that he had not met Ms Ahmed, but had communicated with her by email. Mr Woolf satisfied us that his Practice Manager had carried out the necessary identity checks.

10. Mr Uddin also attended the hearing. During the hearing, Mr Woolf received instructions from Mr Uddin. He took an informed decision not to call Mr Uddin to give evidence. Mr Kolev's evidence was therefore uncontradicted.

11. In the days before the hearing, by Mr Kolev and Mr Uddin had emailed further material to the Tribunal, including papers relating to proceedings pending before the County Court. This material was clearly relevant and we agreed to admit it. Neither side suggested that they would be prejudiced by the late service of the evidence. We granted a short adjournment for Mr Woolf to consider this material.

12. Mrs Ahmed has issued a claim for possession against Mr Kolev in the County Court sitting at Clerkenwell and Shoreditch (Case No. J02EC785). Mrs Ahmed asserts that there are rent arrears of £9,015. On 10 March 2023, District Judge Griffiths adjourned the claim to the 1st open day after 28 days. The purpose of this was to enable this Tribunal to determine this application, before the possession claim is determined. Mr Kolev admitted that he had withheld rent because of the problems that have arisen at the Flat. He disputes the sum claimed. He indicated that he is minded to file a Counterclaim. In these circumstances, we are satisfied that we should leave any claim relating the arrears, and any set-off, to the County Court. The Court will also need to consider whether Mrs Ahmed has complied with the statutory requirements imposed by sections 47 and 48 of the Landlord and Tenant Act 1987, which are a pre-condition to any rent becoming lawfully due.

13. Since 1 October 2014, The Redress Schemes for Lettings Agency Works and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (SI 2014 No.2359) has imposed a legal requirement on all letting agents and property managers in England to join one of two Government-approved redress schemes. The relevant local authority may

impose a monetary penalty of up to £5,000 when satisfied on a balance of probabilities that a person has failed to comply with this requirement.

14. The Tribunal is satisfied that Mr Uddin is what the legislation would categorise as a "rogue letting agent". He has sought to operate through two companies.

(i) **Rent Room Ltd**: On 12 April 2019, this company was incorporated by Md Abdul Halim who gave his correspondence address as "1a Holybush Place, Bethnal Green, London, E2 9QX". On 1 January 2020, Mr Uddin acquired the company giving his correspondence address as "1g Holybush Place". On 28 November 2022[1], the Property Redress Scheme ("PRS") terminated their membership, following Rent Room Ltd.'s "non-compliance with our decision(s) and our disciplinary process". PRS has confirmed that the company will not be permitted to re-join the scheme until any outstanding maters have been fully settled. Thereafter, the Company should not have been trading without a Redress/Ombudsman scheme in place. The Tower Hamlets Trading Standards is considering taking enforcement action. The Company has traded under the name "**One Deal Estate**".

(ii) **Joes Properties Ltd**: On 13 March 2018, this company was incorporated by Majed Rahman, who gave his correspondence address as "Global Residential, 1g Holybush Place, Bethnal Green, London, E2 9QX", On 30 September 2018, Md Abdul Halim took over control of the company. He gave the same correspondence address. On 1 July 2020, Mr Uddin took over the company, giving the same correspondence address. On 10 March 2021, the PRS terminated this Company's membership. On 25 August 2021, Mr Uddin applied to strike the company off the Register of Companies. On 7 September 2021, the strike off was suspended, an objection having been received by the Registrar. On 4 November 2021[2], Tower Hamlets Trading Standards imposed a monetary penalty of £5,000 for carrying out relevant work without redress membership. The Company has traded under the name "**Global Residential**".

15. Little is known about Mrs Ahmed, apart from the fact that she is the registered owner of the Flat. She has not provided her tenants with her name and address. The only address that she has used is that of her property agent. The comfort for Mr Kolev is that he will be able to enforce any RRO against the Flat, provided that he takes sufficient steps to safeguard his position.

16. Mrs Ahmed has adduced no evidence of her relationship with Mr Uddin. Mr Woolf has not sought to suggest that she is the innocent victim of a rogue letting agent. Mr Kolev provided an interesting insight when he described how the two tenants who were occupying the former living room were transferred to a hotel for a few days. The partition which divided the

[1] The PRS notified Mr Kolev of this action in emails dated, 13 January and 2 March 2023.
[2] Tower Hamlets notified Mr Kolev of this in an email dated, 16 December 2022.

living room to create two Room was removed. This was done to afford access for someone to value the Flat as a one bedroom unit. This could only have been done at the instigation of Mrs Ahmed. Such incidents explain why Mr Kolev has sought to suggest that the lettings were "fraudulent".

The Sole Issue in Dispute

17. At the beginning of the hearing, Mr Woolf confirmed that Mrs Ahmed accepted that the Flat was an HMO which required a licence under the Additional Licensing Scheme which Hackney had introduced in March 2018. Mrs Ahmed admitted an offence under section 72(1) of the Housing Act 2004 during the relevant period. No application has been made for an HMO licence.

18. The sole issue for the tribunal to determine is the size of any RRO, assessed under section 44 of the Housing and Planning Act 2016. This requires careful consideration of the legislation and the relevant authorities. An important role of the Upper Tribunal ("UT") is to provide guidance so that First-Tier Tribunals ("FTTs") can adopt a consistent approach in assessing RROs. The Tribunal reluctantly concludes that the most recent guidance provided by the Upper Tribunal in the recent decisions of *Acheampong v Roman and Choudhury v Razak* [2022] UKUT 239 (LC); [2022] HLR 44 ("*Acheampong*" – 5 September 2022) and *Hancher v David* [2022] UKUT 277 (LC) ("*Hancher*" – 21 October 2022) merely adds yet further confusion to an uncertain area of the law.

The Housing Act 2004 ("the 2004 Act")

19. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation.

20. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that 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."

21. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description 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 the standard test under section 254(2) of the 2004 Act. In March 2028, Hackney introduced an Additional Licencing Scheme which applies to all HMOs in the borough which are occupied by 3 or more persons occupying 2 or more households.

22. Section 72(1) creates an offence of having control and management of an unlicenced HMO. On summary conviction, a person who commits an offence is liable to a fine. An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

23. Section 263 provides:

"(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."

24. It is to be noted that there may be more than one person who may commit an offence under section 72 as having "control of" or "managing" an HMO. In such circumstances, it will be for the LHA to determine who is the appropriate person to hold a licence. This will normally be the landlord or the managing agent. Section 251 provides for offences by bodies corporate. It does not create a new offence, but rather allows proceedings based on existing offences to be brought against directors personally for actions by corporate bodies under their control. However, when it comes to the making of a RRO, this can only be made against the "landlord".

The Housing and Planning Act 2016 ("the 2016 Act")

25. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

26. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

27. In *Jepsen v Rakusen* [2021] EWCA Civ 1150; [2022] 1 WLR 324, the Court of Appeal first considered the 2016 Act. The issue in the appeal was whether a RRO could be made against a superior landlord. The Upper Tribunal held that it could; the Court of Appeal reversed this decision. The Supreme Court has now upheld that decision, the neutral citation being [2023] UKSC 9).

28. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

29. In the Court of Appeal, Arnold LJ endorsed these observations. At [36], he noted that Part 2 of the Act was the product of a series of reviews into the problems caused by rogue landlords in the private rented sector and methods of forcing landlords to either comply with their obligations or leave the sector. Part 2 is headed "Rogue landlords and property agents in England". At [38], he noted that the Act conferred tough new powers to address these problems. At [40], he added that the Act is aimed at "combatting a significant social evil and that the courts should interpret the statute with that in mind". The policy is to require landlords to comply with their obligations or leave the sector.

30. In the subsequent decision of *Kowelek*, Newey LJ summarised the legislative intent in these terms (at [23]):

> "It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (*Rakusen v Jepsen* [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in *Rakusen v Jepsen*, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period". Further, a landlord is encouraged to put matters

right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

31. Section 40 provides (emphasis added):

> "(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."

32. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

33. In a number of cases, Judge Cooke has suggested that FTTs should adopt a "starting point", before considering any mitigating or aggravating features. This suggests that a FTT should adopt the role of a criminal sentencer. It is difficult to reconcile this with the restitutionary remedy contemplated by the Court of Appeal in *Kowalek*.

34. In *Acheampong,* the UT suggests that a FTT is now obliged to assess the relative seriousness of seven categories of offence which "can be seen from the relevant maximum sentences on conviction" in assessing any RRO (see [36] below). She suggests that that the failure to licence an HMO should now be treated as less serious than an offence of harassment as no prison sentence can be imposed. There is nothing in the statute that indicates that a FTT should adopt such a course. Indeed, it is surprising that legislation intended to strengthen the regime of RROs should have had the opposite effect in respect of the two licencing offences under sections 72(1) and

95(1) on the 2004 Act which were the only offences in respect of which a RRO could be made.

35. Section 41 deals with applications for RROs. The material parts provide:

> "(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.

36. Section 43 provides for the making of RROs:

> "(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)."

37. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> "(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.

38. "Rent" is not defined in the Act. However, under the Rent Acts, "rent" has had a clearly defined meaning, namely "the entire sum payable to the landlord in money" (see Megarry on the Rent Acts, 11th Ed at p.519 and the reference to *Hornsby v Maynard* [1925] 1 KB 514 and subsequent cases). The meaning is the same at common law as under the Rent Acts (see the current edition of Woodfall "Landlord and Tenant" at 7.015 and 23.150). Parliament would have had this in mind in enacting the Act.

39. Section 44(4) provides:

> "(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."

40. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

41. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

> (i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
>
> (ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
>
> (iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).
>
> (iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).
>
> (v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

42. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

43. In *Acheampong*, Judge Cooke states that FTTs should adopt the following approach:

> "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."

44. In *Hancher*, Judge Cooke added two further judicial glosses:

> (i) The FTT (in LON/00AP/HMG/2021/0013) had declined to make any reduction to the rent in respect of the utility bills and council tax which had been paid by the landlady as there was insufficient evidence as to what deductions should be made. Judge Cooke granted permission to appeal on the ground that it was arguable that the FTT had failed to take into account the evidence that the landlady had paid the utility bills. However, in her decision on the substantive appeal, Judge Cooke (at [18]) declined to make any adjustment as the landlady had not adduced any evidence about the payments that she had made.

Judge Cooke did not explain why she had not made the "informed estimate" that she had directed that FTTs should make.

(ii) At [19] of the decision, The UT suggested that the FTT should have considered whether a licence would have been granted had an HMO licence been sought. The facts are not dissimilar to the current case, both cases involving a former warehouse, now let as residential accommodation. The FTT had made a finding that the staircase was not suitable and that a tenant had had a fall. An architect had identified a range of works that were required to improve the means of escape. In reducing the RRO from 100% to 65%, the UT held (at [19]) that there was no suggestion that the property would not have qualified for an HMO licence had one been sought.

45. On 7 February 2023, in *Fashade v Albustin* [2023] UKUT 40 (LC), the Deputy President, Martin Rodger KC (at [21]) summarised the approach adopted by the Chamber President in *Williams v Palmer* in these terms:

> "It was necessary in each case to consider the seriousness of the offence (a crucial element of the landlord's conduct) and to fix the amount of the order having regard to its seriousness and all other relevant considerations, including those particularly identified in subsection (4)".

The Background

46. Mr Kolev has occupied Room C at the Flat pursuant to a licence agreement, dated 3 February 2019 (at A.24-29). The landlord is given as "Jebun Nessa Ahmed" and her address as "1 G Hollybush Place, Bethnal Green, London, E2 9QH". This is the only address that has been provided. By section 47 of the Landlord and Tenant Act 1987, any written demand for rent must contain the name and address of the landlord. The address of an agent is not sufficient. In respect of an individual landlord, this must be her place or residence or place of business (see *Beitov Properties Ltd v Martin* [2012] UKUT 133 (LC).

47. Mr Kolev saw the room advertised on SpareRoom. He viewed it and then went to Hollybush Place to sign the agreement. He saw "Joe Uddin" who he has assumed was Mr Uddin's father. Mr Uddin did not acquire Joes Properties Ltd until July 2020.

48. The Flat had three bedrooms, the living room having been partitioned to create two additional Rooms. Mr Kolev occupied the bedroom and paid a rent of £845 per month. At all material times, apart from short breaks between lettings, the Flat has been occupied by three separate tenants. The three tenants shared the kitchen and the bathroom.

49. The tenancy stated that the letting agent was "Globe Residential" trading as "Joe's Properties Limited". The rent was described as £422.50 per fortnight. In practice, it was paid monthly by standing order. The agreement is headed: "All Bills Included". However, clause 7 states that the tenant is responsible for council tax and utility bills. Mr Kolev was told that the rent was inclusive. In practice, it seems that no one paid for the utilities. Gas and electricity was supplied by Bulb, which was taken over by Octopus. Mr Kolev saw bills addressed to Mrs Ahmed, the most recent being £4,807.70. There were also arrears on the water charges in the sum of some £1,600. Debt collectors attended.

50. Mr Kolev stated that the landlord agreed to clean the common parts every fortnight. However, this service lapsed after a few months.

51. Mrs Ahmed failed to comply with her regulatory obligations on the grant of the tenancy. These included (a) a failure to ensure that a gas safety certificate was in place throughout the tenancy and provided to the occupants; (b) a failure to ensure that an electrical safety certificate was in place throughout the tenancy and provided to the occupants; (c) a failure to provide a copy of their energy performance certificate to the occupants; and (iv) a failure to provide the tenants with the Right to Rent booklet. Mr Kolev was required to pay a deposit of £845. Although the agreement refers to this being protected by the Deposit Protection Service, we have seen no evidence that this occurred.

52. There were no smoke detectors, carbon monoxide alarms or fire doors. Mr Woolf suggested that the tenants had removed the alarms. Mr Kolev denied this and we accept his evidence.

53. When the 1st lockdown was imposed in March 2020, Mr Kolev discussed the possibility with the letting agent of returning to Bulgaria. Sabina Butt agreed that the rent would be reduced to £750 per month. Mr Woolf suggested that this concession would have ended when the lockdown conditions were lifted. However, we are satisfied that the concession would have continued until the landlord notified Mr Kolev that it was being withdrawn (see *Central Property Trust Ltd v High Trees* [1947] KB 130).

54. Mr Kolev claims a RRO for the rent of £8,800 which he paid between 1 January and 31 December 2021. His schedule of payments is at A.32. During this period, he was required to make his payments to four different accounts in the names of "Globe Residential"; "MG Management"; "Joes Properties Ltd"; and "Rent Room Ltd".

55. In September 2021, Mr Kolev unilaterally reduced his monthly rent payments from £750 to £700. He stated that he had done so because the landlord was no longer providing a cleaning service. Further, there had been three occasions on which the landlord had not paid the internet bill on time as a result of which there had been no internet connection.

56. On 1 November 2021, Mr Uddin, writing in the name of One Deal Estates, emailed Mr Kolev complaining of the shortfall of £50 in his rent payments. Mr Kolev responded recording two complaints. He requested details of the letting agent's Redress Scheme. He also complained about the absence of smoke and carbon monoxide alarms.

57. There was a further exchange of emails on 1 February 2022. Mr Kolev requested the name and contact details of his landlord. He repeated his request for details of the letting agents' Redress Scheme. He raised complaints about both the gas safety and the fire safety. On 1 March, "Mrs Jebun Nessa", giving her address at 1G Hollybush Place, served a Section 21 Notice Seeking Possession. In due course Rent Room Ltd issued proceedings for possession. On 17 November, DDJ Rand struck out this claim.

58. Mr Kolev raised two further complaints:

(i) Between 18 July and 28 November 2022, the bathroom sink was blocked. The tenants were unable to use the sink. Mr Kolev had to brush his teeth in the bath. Mr Woolf suggested that the landlord had attempted to carry out repairs, but that it had proved necessary to replace the pipework. Mr Kolev denied this and we accept his evidence.

(ii) Since November 2022, he has had bed bugs. He showed us a photograph of his bedding which showed the extent to which the bugs had caused bleeding. Mr Kolev accepted that in January 2023, he had received text messages from someone whom the letting agent wanted to send to address the problem. However, this individual was unable to satisfy Mr Kolev that he had the necessary qualifications to handle poison. He has therefore sought to abate the infestation himself.

59. Mr Kolev has made a complaint under the PRS Redress Scheme. The PRS have issued their decision recommending compensation of £600. It seems that the failure of the letting agency to comply with this decision has resulted in the disciplinary action which the PRS has taken.

60. Mr Kolev admitted that he had reduced the rent payments that he has been willing to make. The landlord asserts that no rent has been paid August 2022. Mr Kolev asserts that he has a set-off for the problems that he has faced. The Tribunal is satisfied that we should leave this to be resolved by the County Court.

The Assessment of the RRO

Introduction

61. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. We are satisfied that this is an appropriate case for a RRO to be made.

62. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. Mr Kolev claiming a RRO for the period of 1 January to 31 December 2021 during which he paid rent of £8,800. He has not been in receipt of any State benefits.

Submissions of the Parties

63. Had the Tribunal been able to merely focus on the statutory criteria specified in section 44 of the 2016 Act, the assessment of the RRO would have been straight forward:

(i) The rent paid by the tenants is set out above.

(ii) There is no criticism of the conduct of the tenant, apart from the alleged arrears which we are leaving to the County Court.

(iii) The substantial issue in dispute is the conduct of the landlord.

(iv) There is no evidence of the landlord's financial circumstances.

(v) There is no evidence that the landlord has been convicted of any relevant offence.

64. Regretfully, it is now necessary for the Tribunal to address the judicial minefield which has been created by the UT.

65. The Applicant seeks a RRO in the maximum sum of £8,800. He relies on the following factors:

(i) The conditions in the Flat.

(ii) The failure of the landlord to comply with her statutory obligations at the commencement of the tenancy.

(iii) The enforcement action which has been taken by PRS and Tower Hamlets. The Redress Scheme has awarded compensation of £600. Rent Room Ltd are still managing the Flat on behalf of Ms Ahmed despite trading without being a member of a Government-approved redress scheme.

(iv) The Financial Penalty imposed by Hackney.

66. Mr Woolf rather urges the Tribunal to follow the guidance given Judge Cooke in *Acheampong* and *Hancher*:

(i) The maximum award that the Tribunal is able to award is the rent, net of utilities, namely gas, electricity, water, Wi-Fi and council tax. He suggests that a deduction of £100 per month should be made. He has adduced no evidence to support this figure. It is not part of Mrs Ahmed's pleaded case.

(ii) The offence of control or management of an unlicenced HMO is much less serious than the five other offences in respect of which RROs can now be made. No prison sentence can be opposed. The "starting point" for a licencing offence should therefore be 50% of the net rent.

(iii) In considering the seriousness of this particular licencing offence, we should have regard to the fact that it is probable that an HMO licence would be granted were one to be sought.

(iv) The landlord had taken reasonable steps to address the maintenance problems that Mr Kolev had raised.

(v) We should have regard to the fact that there are rent arrears of £9,015.

The Tribunal's Assessment of the RRO

67. Section 44(4) of the 2016 Act provides that the maximum RRO that it is open to this Tribunal to make is the rent paid by the tenants over the relevant period of up to 12 months. Having determined the maximum award, section 44(4) of the 2016 Act required us to take into account the following factors:

(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.

68. In considering the conduct of the tenant, we would normally have regard to any rent arrears. However, in the current case, we are satisfied that this is a matter for the County Court which is already seized with this matter. It is accepted that Mr Kolev paid rent of £8,800 between the relevant period of 1 January to 31 December 2021.

69. We find the following matters are relevant to the conduct of the landlord:

(i) The Flat has been let and managed by a "rogue property agent". Mrs Ahmed must accept responsibility for the conduct of her agent. We are particularly concerned that Mr Uddin has sought to operate through a web of two companies each of which has adopted a different trading name. There has been a total lack of transparency. Mrs Ahmed has kept well in the background and has failed to provide her address. We have particular regard to the enforcement action taken by the London Borough of Tower Hamlets. The Flat continues to be managed by letting agents who have not signed up to a government-approved redress scheme.

(ii) Apart from her failure to licence the Premises, Ms Ahmed failed to comply with a range of her statutory obligations. She did not provide any of the tenants with an EPC, a gas safety certificate, a record of the electrical inspections or the "How to Rent" checklist. Their deposits were not placed a Rent Deposit Scheme.

(iii) We have regard to the conditions in the property. The bathroom sink was blocked for a number of months. This is a particular problem when three people are sharing one bathroom. There have been bed bugs. There have been no adequate fire precautions. We do not accept that the landlord has taken any adequate steps to address this problem.

(iv) We have regard to the Financial Penalty which has been imposed by Hackney on Rent Room Ltd. However, we do not consider that this is a factor for either increasing or decreasing the RRO.

70. Ms Ahmed has adduced no evidence that any RRO should be reduced on grounds of her financial circumstances. There is no evidence that Ms Ahmed has been convicted of an offence to which the Chapter applies. However, we give limited weight to this. LHAs are under considerable financial pressures and are only able to take action in limited cases. A conviction would have been an aggravating factor. However, given the circumstances of this case, we make no reduction for the absence of any conviction.

71. We are considering a restitutionary remedy. Our first reaction was to make RRO at the maximum level of 100% of the rent paid by Mr Kolev over the relevant period of 12 months. We believe that this is the award that Parliament would have expected us to make given the social evil at which this legislation is directed. This is not only addressed as "rogue landlords", but also the "rogue property agents" who may be used by landlords.

72. However, the Deputy President has indicated in his most recent decisions that a maximum award should be reserved for the worst case (see [42] above). Whilst the current case is extremely bad, we are reluctant to put it in the worst category. We therefore make an award of 90% of the relevant rent.

73. We must then turn to the guidance in *Acheampong* and *Hancher*. First, we must consider whether the maximum award should be the "net rent", making deductions for utilities paid by the landlord. We decline to do so as we are satisfied that "rent" should be construed as it has been understood for the last 100 years, namely "the entire sum payable to the landlord in money" (see [38] above). We do not consider that Judge Cooke's suggestion (at [9] of *Acheampong*) that "a sum the tenant pays the landlord for utilities is not really rent" is a sufficient justification to depart from this established jurisprudence.

74. If we are wrong on this, there is no sufficient evidence before us to make any assessment of the "net rent":

(i) Ms Ahmed has not adduced any evidence of the sums that she has paid for utilities. The Directions gave her ample opportunity to do so. Mr Woolf has adduced no evidence on behalf of Mrs Ahmed. Mr Woolf has produced no evidence to satisfy us that a reduction of £100 per month should be made.

(ii) We reject the suggestion that a FTT should make "an informed estimate". We do so for two reasons. First, any litigant should plead in their Statement of Case any factors that they require the tribunal to take into account in assessing a RRO. Secondly, whilst FTTs are Expert Tribunals, an assessment of utility bills payable in respect of these Premises is outside our expert knowledge, particularly at a time of rampant inflation in fuel charges. We have not inspected the Flat. We note that in *Hancher*, Judge Cooke decided not to make "an informed estimate". We are satisfied that she was correct to take this course.

(iii) Whilst the tenancy agreement provided that the landlord should be responsible to the payment of utility bills, Mrs Ahmed has made no payment towards the gas, electricity or council tax. The tenants have lived in fear that the gas and electricity would be disconnected. Mr Kolev suggested that the reason that this had not occurred was because of the confusion that had arisen after Bulb had been placed in administration.

75. The UT suggests that, before applying the statutory criteria in section 44(4), we should adopt a "starting point". We should make a significant reduction as an offence of failing to licence an HMO under section 72(1) is less serious than the other offences specified in section 40 as no term of imprisonment can be imposed. We find it impossible to accept that in passing the 2016 Act, parliament intended to ratchet down the level of RROs that FTTs should make in respect of licencing offences.

76. We are comforted that under Hackney's "Guide to Applying the Civil Penalty Fee Matrix", Hackney put licencing cases into their most serious category.

77. We are further comforted that our view is reflected in the judgment of the Deputy Chamber President, Martin Rodger KC, in *Global 100 Limited v Jiminez* [2022] UKUT 50 (LC); [2022] HLR 25 in which he noted at [14]:

> "In *Rogers v Islington LBC* [1999] 32 HLR 138, 140 Nourse LJ referred to research illustrating the poor quality of many HMOS: in 1993 four out of ten HMOs were found by the English House Condition Survey to be unfit for human habitation; other studies showed that residents of HMOs were at a far greater risk of death or injury from fire than residents of other dwellings. Norse LJ continued:
>
> > "HMOs can also present a number of other risks to the health and safety of those who live in them, such as structural instability, disrepair, damp, inadequate heating, lighting or ventilation and unsatisfactory kitchen, washing and lavatory facilities. It is of the greatest importance to the good of the occupants that houses which ought to be treated as HMOs do not escape the statutory control."

78. The UT then requires us to consider the seriousness of this offence compared with other licencing offences. It is unclear whether this is intended to be an additional and separate exercise from considering the conduct of the landlord. This would require an element of double counting and the somewhat semantic exercise of seeking to distinguish which factors in [69] above relate to the "seriousness of the offence" and which to "conduct of the landlord".

79. Finally, the UT now requires us to consider whether a licence would be granted were an application to be made. We would not wish to usurp the statutory function that the 2004 Act has bestowed on LHAs. We note that despite the involvement of the local housing authority, Ms Ahmed has yet to apply for a licence. A one bedroom flat converted to create a three bedroom unit creates particular difficulties. It does not seem that there are adequate fire precautions. It is most unlikely that Hackney would consider the current proper agent to be a fit and proper person to hold a licence. Nothing is known about Ms Ahmed.

Conclusions

1. The Tribunal makes a Rent Repayment Order against Jebun Nessa Ahmed in the sum of £7,920, namely 90% of the maximum rent of £8,800.

2. The Tribunal dismisses the applications for Rent Repayment Orders against Rent Room Ltd, Joe Uddin, Sabina Butt, Mohammed Tayeeb Uddin. A RRO can only be made against the relevant landlord.

3. The Tribunal determines that Jebun Nessa Ahmed shall also pay the Applicant £300 in respect of the reimbursement of the tribunal fees which he has paid.

4. The payment of the said sums are not to be enforced pending the determination of Claim No.JO2EC785 in the County Court sitting at Clerkenwell and Shoreditch. We are satisfied that the County Court is the appropriate forum to determine the issue of any outstanding arrears of rent and any set-off.

Judge Robert Latham
22 March 2023

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.