FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON00AM/HMF/2022/0200**
Property	**:**	**58 George Downing Estate, Cazenove Road, London N16 6BE**
Applicant	**:**	**Giuseppina Cammarano** **Lukas Juurlink** **Maria Luisa Villaescusa** **Thomas Costello**
Representative	**:**	**Represent Law Limited – C Barrett**
Respondent	**:**	**John Campbell** **Damaris Sanders**
Representative	**:**	**Mr Campbell in person**
Type of application	**:**	**Application for a Rent Repayment Order by tenant. Sections 40,41, & 44 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge H Carr** **Mrs L Crane MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**8th May 2024**

DECISION

Decisions of the Tribunal

1. **The Tribunal determines to make Rent Repayment Orders as follows:**

   - **Giuseppina Cammarano £4,684.03**
   - **Lukas Juurlink £3,244.03**
   - **Maria Luisa Villaescusa £2,090.02**
   - **Thomas Costello £3,625.03**

2. **The Tribunal determines to order the Respondent to reimburse the Applicants their application fees of £100 each and hearing fees of £200 (a total of £600) within 14 days of receipt of this decision.**

The application and procedural history

1. The first three applicants made applications for Rent Repayment Order on 1 September 2022. The 4th applicant was added to the application on 11th September 2022.

2. The applicants allege that the landlord has committed the offence of controlling or managing an unlicensed HMO.

3. In their application the applicants asked for RROs as follows:

   - Guiseppina Cammarano - £8,640 for the period 1st April 2021 – 31st March 2022
   - Lukas Juurlink - £6,240 for the period 18th September 2020 until 17th September 2021
   - Maria Luisa Villaescusa - £3,900 for the period 10th July 2021 until 9th January 2022

- Thomas Costello - £6,875 for the period 2nd April 2021 until 23rd March 2022

4. The Tribunal issued directions on 24th October 2022 and issued its decision on 11 April 2023.

5. The Respondent sought permission to appeal against the decision on 9 May 2023.

6. On 1st June 2023 the Tribunal agreed that it would review its decision on the basis that the Respondent had not been given sufficient opportunity to make his submissions.

7. In effect this was a decision to set aside the original decision on the basis of the tribunal considering that it was of the mistaken view that the Respondent had been given sufficient opportunity to state his case. It appeared to the Tribunal that this was not the case and the Tribunal's original decision may therefore be incorrect or based on incorrect information.

8. The matter was set down for hearing on 8th May 2024. The Respondent attended that hearing and made extensive submissions. The Applicant's representative was also in attendance and responded to the submissions made.

9. For understandable reasons the Respondent misunderstood the nature of the hearing seeing it as an application to appeal the decision. He therefore prepared submissions based on the decision, rather than on making submissions that he would have made if he had been given a longer opportunity to make those submissions.

10. Nonetheless the Tribunal has reached its current decision based on all the submissions that the Respondent has made. This is because it considers there would be some considerable overlap in the submissions the Respondent would have made if he had been given a more extensive opportunity to make submissions, and the submissions he has made in connection with the final decision. It is therefore in the interests of justice to consider all the submissions. It is also proportionate to consider the full range of submissions at this point, rather than requiring the Respondent to make further submissions if he chooses to appeal this decision.

11. It should also be made clear that as this is a new decision the full rights of appeal are available to the parties.

12. The tribunal did not rehear the evidence at the rehearing. The new matter considered derived entirely from the extended submissions of the Respondent. Those submissions are attached in full as an Appendix to this decision.

The hearings

13. The hearing of the evidence took place via video on 9th March 2023. Mr Barrett appeared on behalf of the applicants. All four applicants attended the hearing and gave evidence. The respondent appeared in person and represented himself.

14. On 9th March 2023 the tribunal dealt with two preliminary matters. The first related to late provision of documents from both parties. The applicant sought to admit documentation from the London Borough of Hackney in respect of licensing. The respondent sought to have his financial information admitted. There was no objections from either party and therefore the tribunal was content for the additional material to be considered.

15. The second matter related to question of the appropriate respondent to the application. Whilst Damaris Sanders has been the leasehold owner of the property since 2012 Mr Campbell told the tribunal that he was the beneficial owner of the property which he had temporarily transferred to Ms Sanders who was a former partner. This was to enable him to obtain a mortgage on the property he owns for himself, his partner and his children.

16. The applicants agreed with Mr Campbell that he was the landlord of the property and the appropriate respondent. Their tenancy agreements were with him, and they paid rent to him. Mr Campbell told the tribunal that a TR1 has been lodged with the Land Registry to transfer ownership back into his name.

17. At the hearing of the extended submissions on 8th May 2024 Mr Campbell sought to argue that he was incorrectly identified as the landlord of the property. He argued that Fixbrook Consultancy Limited was the landlord and that he was acting as the representative of that company. He argued that the applicants had failed to produce the countersigned contracts, and the associated deposit certificates which were all in the name of Fixbrook Consultancy Limited. They produced only the versions of the contracts which they sent to the Respondent, but not the countersigned contracts nor the deposit certificates which both show the name of the Landlord as Fixbrook Consultancy Limited.

The determination of the tribunal

18. The tribunal determined that Mr. Campbell was the appropriate respondent to these applications and struck out the application against Ms. Sanders.

The reasons for the determination of the tribunal

19. At the hearing of the evidence on 9th March 2023 the tribunal specifically asked the Respondent if he was the landlord of the property. It did this because it had noted that there was a possibility not only that Ms Sanders was the landlord but because it had noted from the documentation that there was a possibility that Fixbrook Consultancy Limited was the landlord. The Respondent told the tribunal categorically that he was the landlord.

20. The tribunal accepted the Respondent's evidence that Ms Sanders was not the landlord and noted that the Respondent did not challenge the Applicants' arguments about the tenancy agreements and the payment of rent. The proceedings progressed on the basis that the Respondent was the landlord. It was entitled to rely on the Respondent's assertion that he was the landlord.

21. The tribunal is not at the stage of the extended submissions going to revisit the issue of the identity of the landlord when it had been told by the Respondent that he was the landlord and he failed, when he had an opportunity to do so, to challenge the Applicants' evidence that he was the landlord.

The issues

22. The issues that require to be decided by the Tribunal are:

    (a) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed the offence of being someone in control of or managing an HMO which is required to be licensed and is not so licensed?

    (b) Does the respondent have a reasonable excuse defence?

    (c) If the tribunal determines to make a Rent Repayment Order:-

    - What is the applicable 12-month period?
    - What is the maximum amount that can be ordered under s.44(3) of the Act?

- What account must be taken of the respective conduct of the applicants and the respondent and of the financial circumstances of the respondent?

The background and chronology

23. The property is a three-bedroom purpose built flat on a council estate. The living room of the property was used as an additional bedroom during the period in dispute. There is one kitchen to the property and one bathroom. The property has a garden. It is situated in the Casenove ward in the London Borough of Hackney

24. The applicants occupied the property as follows:

- Giuseppina Cammarano 1st September 2020 until 1 April 2022
- Lukas Juurlink 15th September 2020 – 18th September 2021
- Maria Luisa Villaescusa 10th July 2021 - 9th January 2022
- Thomas Costello 2nd April 2021 until 23rd March 2022

25. The London Borough of Hackney operates a borough wide additional licensing scheme and a selective licensing scheme for the Cazenove ward. The applicants say and the respondent does not disagree, that the property requires licensing on two bases. It is in the Cazenove ward and therefore is subject to selective licensing and it would require licensing as part of the additional licensing scheme as it was occupied by three or more tenants at all material times.

26. At no time during the occupation of the applicants was the property licensed as an HMO.

27. The landlord says that he made an application to licence the property on 10th September 2022. He told the tribunal that he had heard nothing from the London Borough of Hackney and there had been no inspection of the property.

Did the Respondent commit the offence of controlling or managing an unlicensed HMO?

28. The applicants assert that:

- the property was in an area of selective licensing and additional licensing.
- the applicants lived in the property as their only or principal home.
- that the property was unlicensed during the period of the applicants' occupation. An application for a licence was made on 10th September 2022.
- that the Respondent was their landlord and had management and control of the property.
- at all material times there were three or more people living at the property and that in general there were four people in the property.

29. They produced evidence from the London Borough of Hackney. This included Public Notice of the designation of an area for Additional Licensing of Houses in Multiple Occupation dated 10th May 2018. This indicated that the designation came into force on 1st October 2018. It also included an email from Property Licensing at Hackney dated 26th August 2022 confirming that the property was unlicensed, an email from Property Licensing dated 28th February 2023 confirming that the property is in the Casenove ward and that an application for an additional licence was submitted for the address on 10th September 2022

30. The respondent agreed that the property required licencing and that it was not licensed.

31. The respondent told the tribunal that he was unaware of the licensing regime until the application for an RRO was made by the first three applicants. He also noted that the tenants were unaware of the requirement for the property to be licenced until one of them went for advice about the non-return of her deposit.

The decision of the Tribunal

32. The tribunal determines that the respondent committed the offence of controlling or managing an unlicensed HMO.

The reasons for the decision of the Tribunal

33. The tribunal relies on the statements of the applicants, their supporting evidence, particularly the evidence from the London Borough of Hackney and the fact that the respondent accepted that the property required licensing.

34. The tribunal notes that there is nothing in the submissions presented by the landlord on 8th May 2024 that contradicts this conclusion.

Does the respondent have a reasonable excuse defence?

35. The respondent argues that he has a reasonable excuse which provides a complete defence to the offence.

36. He says that he bought the property in 2007 and lived there until 2013 when he moved back home and began to rent out the property. At that time there was no licensing scheme in place for the property.

37. Mr Campbell argues that the licensing requirements were not brought to his attention and there was no systematic mechanism for him to become aware of it. He saw no press coverage or local publicity. He saw no reference to it on internet landlord forums. He received no notification from the council or from the superior landlord that there was a scheme. He was not notified by his mortgage company.

38. He told the tribunal that he is a solo landlord operating directly with tenants so there was no agent to alert him. He said that he was on the mailing list of various estate agents but there was no mention of it there.

39. He says that if the tribunal does not accept this as an excuse it should be a mitigating factor.

40. The applicants say that the attempt by the respondent to place the blame for his failure to obtain a license at the property on his lack of knowledge of the licensing requirements and the implementation of the scheme is disingenuous as the respondent is a director of Hackney 4 Ltd. The nature of the business is property investment and management.

41. The respondent said that his position as a director of Hackney 4 Ltd was based upon his knowledge of property investment and management which did not include a technical expertise in the legislation regulating the private rental sector. Rather it was concerned with the purchase of freeholds and income from ground rents.

The decision of the tribunal

42. The tribunal determines that the respondent does not have a reasonable excuse defence.

The reasons for the decision of the tribunal

43. The question that the tribunal has to answer, in the context of a reasonable excuse defence, is whether the respondent's failure to obtain a licence for the property because he was ignorant of the requirement to licence is objectively reasonable taking into account his particular circumstances?

44. The tribunal concludes that his ignorance of the requirement to license was not objectively reasonable.

45. The licensing scheme has been in place since 2018 in Hackney. It may have been objectively reasonable for the respondent to be ignorant of the requirement for the first six or nine months of its implementation. It is not objectively reasonable to be ignorant of the requirements for a period of one or more years.

46. In the submissions hearing on 8th May 2024 the Respondent argues that the position of the Tribunal is incoherent. The Respondent maintains that if ignorance over any period is "reasonable", then it cannot be objectively unreasonable for that lack of knowledge to persist over a longer period – as it must be assumed that any publicity around the introduction of licences was focused around the time of its launch. The Tribunal does not accept the Respondent's logic. Whilst publicity may be focused around the introduction of the scheme, general knowledge amongst landlords about licensing requirements in an area grows with the length of time that licensing is in place. The longer a licensing scheme is in place the less persuasive it is that it is objectively reasonable to be ignorant of its existence.

47. Moreover the Respondent chose not to engage an agent, Undoubtedly the Respondent gained a financial advantage from not employing an agent but in making that choice he took upon himself all the responsibility for compliance with the requisite legislative and local government requirements. He failed to discharge that responsibility and that failure cannot provide a reasonable excuse defence.

48. The Respondent also argues that the Tribunal failed to take into account that the only benefit to not obtaining a licence is that he would save the £200

per year licencing fee. This he says cannot be considered a good enough incentive for licence evasion. The Respondent asserts that the property met all current licencing requirements and points out that the licence when granted on was granted without condition or recommendation.

49. The Tribunal notes the Respondent's argument that there was no incentive for him to not obtain a licence but considers it is not relevant to a reasonable excuse defence, ie to the question of whether his ignorance of the law is objectively reasonable taking into account his particular circumstances.

50. The Respondent suggested that some other agency or institution should have told him of the need to licence the property. The failure of any other agency to tell him of his responsibilities is not a circumstance which makes it reasonable for him to have failed to licence the property. There is no requirement for superior landlords or mortgagees to inform any specific landlord of the need for licensing. Moreover the tribunal notes that the property does not have a mortgage; the respondent informed the tribunal that he had a buy to let mortgage but on his family home, so it appears disingenuous to suggest that his mortgagee might have informed him. Similarly, the respondent is not the registered leaseholder of the flat, so it is difficult to understand why the respondent thinks that the superior landlord should have informed him about licensing. In any event it is difficult to see why informing leaseholders of the need to licence HMOs could in any circumstances be the responsibility of the superior landlord.

51. The applicants suggested that the Respondent's role as a manager of Hackney 4 Ltd was a relevant circumstance in any decision about the reasonableness of the excuse. The tribunal gives this factor some limited weight in that it demonstrates some knowledge of the responsibilities of property ownership, although it accepts the Respondent's argument that his role was not connected to rental properties.

52. The tribunal notes that in submissions the Respondent suggested that the Applicants had not proved that the London Borough of Hackney had complied with all the statutory requirements for implementing its additional and selective licensing scheme. The tribunal makes two points about that submission.

(i) if the respondent required the applicants to be put to strict proof of the London Borough of Hackney's compliance with the legislative requirements, he should have raised this earlier in the proceedings

(ii) the submission is not consistent with his admission that an offence had occurred.

53. The Tribunal notes the Applicants provided a copy of the public notice of the designation of the scheme.

54. The Tribunal will consider the Respondent's arguments (i) that he was ignorant of the need for a licence and (ii) that there was no incentive for him not to licence in the context of assessing the appropriate amount for the RRO, specifically the conduct of the landlord question which the statute requires that the tribunal answer.

What is the appropriate amount for the RRO?

55. The applicants argue that the applicable period i.e. the period, not exceeding 12 months during which the landlord was committing the offence, for each of the applicants is as follows:

- Giuseppina Cammarano - £8,640 for the period 1st April 2021 – 31st March 2022
- Lukas Juurlink - £6,240 for the period 18th September 2020 until 17th September 2021
- Maria Luisa Villaescusa - £3,900 for the period 10th July 2021 until 9th January 2022
- Thomas Costello - £6,875 for the period 2nd April 2021 until 23rd March 2022

56. The total amount of rent paid by each applicant in the applicable period is as follows:

- Giuseppina Cammarano - £8,640
- Lukas Juurlink - £6,240
- Maria Luisa Villaescusa - £3,900

- Thomas Costello - £6,875

57. No Universal Credit was received by any of the applicants during the applicable period.

58. The respondent raised no issue with the rent figures that the applicants relied upon.

59. However he did raise issues about the period for which the RRO was payable. He argued that the RRO could only be claimed for the period of 12 months ending with the application. He suggested that one of the applicants Mr Juurlink therefore was not entitled to any RRO at all and that the others were limited as follows:

- Giuseppina Cammarano - £5,040

- Maria Luisa Villaescusa –£2,600

- Tom Costello – £3,750

60. He disagreed with the applicants assertion that they were able to choose the period of 12 months suggesting that this was arbitrary and unfair and that he had read tribunal decisions that limited the claim to the 12 months prior to the application. He was not able to refer the tribunal to any specific decision.

61. The tribunal then heard arguments about the tenants' conduct and the respondent's conduct and the respondent provided evidence of his financial circumstances

The tenants' conduct.

62. The applicants said that they had been good tenants, although Mr Costello missed one rent payment (which has been made good through deductions from his deposit).

63. The applicants carried out a lot of the management of the property, calling plumbers, maintaining the garden and the interior decoration of the property, and arranging for new tenants.

64. The applicants accepted that there were disputes about the return of the deposit but that these were caused by excessive demands by the respondent and did not reflect their behaviour in the property.

65. In general the respondent agrees that the applicants were good tenants but he considers that the applications have been opportunistic, encouraged by the no win no fee practices of the representing solicitors. He told the tribunal that he had telephone the applicant's solicitors to find out what their commission was and how they would react to taking a case against a landlord such as himself. This led him to suggest that the solicitors were the people who were most profiting from the application.

66. He also said that there were certain failures to comply with the contractual requirements which led to the retention of monies from the deposit and were indicative of the applicants' attitude to the property.

The respondent's conduct

67. The applicants argue that the failure to licence the property was a serious failing as Mr Campbell is a property professional. He has been a director of Hackney 4 Limited a property company.

68. The applicants say that conditions in the property were poor. There was mould in the bathroom and they notified the landlord on multiple occasions but there was no response.

69. The boiler broke multiple times during the applicants' occupation and there was a period where there was no heating for two weeks in the wintertime.

70. At one time the landlord claimed that the occupiers had overused electricity and charged the tenants additional money and administration fees.

71. The landlord stored motorbikes and other equipment in the garden of the property.

72. Issues were responded to slowly.

73. When Thomas Costello told the landlord that he was planning to move out he gave a month's notice via text. Mr Costello was told to pay as usual until the new tenant was confirmed and at that point he would be given a pro rata refund. Mr Costello had a periodic tenancy and therefore was not required to do this.

74. The deposit has not been returned to Mr Costello. It appears that this is because of a dispute about the state of the garden that resulted in the respondent asking for £600 for professional gardeners. Mr Costello says that he did the garden maintenance but that the respondent produced photographs six weeks later showing that the garden was not maintained. Mr Costello says that is because there had been spring growth of the garden.

75. The applicants said that they had received no tenancy deposit protection information.

76. Ms Maria Villaescusa told the tribunal that the landlord had failed to pay the water bill to Thames Water for 2 years and the company wanted to charge her for arrears.

77. Her bedroom blind was broken and it took four months for the landlord to fix it. She confirms that the boiler broke twice during her occupancy so that the tenants were without hot water or heating for 2 weeks on 2 separate occasions once in the middle of winter. She provided messages about this in her bundle.

78. Correspondence with the deposit protection service indicates that deposit protection was not started until October 2021 despite the fact that the tenancy commenced in July 2021.

79. She agrees that her deposit was returned in full.

80. Giuseppina Cammarano confirmed the evidence of the other tenants in relation to the boiler failures. She said that the respondent was reluctant to carry out repairs to the boiler but would send them Youtube videos of how to repair it. She said this was very stressful. She also said that the internet connection was poor. She gave evidence that the kitchen equipment was old. Her deposit was not protected until December 2020 despite her tenancy commencing in September 2020. She said there was mould in the bathroom and in her room.

81. She said that conditions in the property meant that there was a constant turn over of tenants.

82. She has not had her deposit returned.

83. Lukas Juurlink told the tribunal that his deposit was not protected until several months after he moved in and that he was not provided with the prescribed information.

84. He said that there was mould everywhere, the boiler, the stove and beds broke and had to be replaced. Nothing was ever done about the mould. Replacements for broken stuff happened slowly and were not done properly.

85. The respondent denies that he has neglected the property. He says that he was in no way a 'rogue' landlord and is not an appropriate target of the legislative provisions.

86. He says that the tribunal should take into account when assessing the amount of the RRO that his mistake in failing to licence the property was a genuine mistake arising out of ignorance and not being in contact with other landlords. It has had very limited consequences.

87. He says that he believes that he met all the terms of any licence that would have been granted and that he would have obtained a licence had it been applied for.

88. He says that the breach was therefore only a technical breach which should be taken into account in assessing the level of the RRO.

89. He says that the tenants complaints are minor and that his responses to concerns were timely, proportionate and reasonable. He says that it is very far from rogue landlord territory.

90. In particular he says that the boiler repair was dealt with as promptly as possible. The delays were caused by the engineer misdiagnosing the problem initially and then a replacement part had to be ordered which took some time.

91. He says that the problems with the billing from the water company were as a result of Ms Villaecusa being on the electoral roll and therefore when there was a problem with the direct debit it caused his account to be closed, the water company pursed her. The respondent did all he could to sort this out as soon as possible.

92. He says there was no issue with mould although there was a leak from the flat above.

93. He says that he had good relations with all of the named tenants at all times.

94. The tribunal raised a number of issues with the respondent. It was concerned about the fire precautions and asked the respondent what type of fire alarm was installed. The respondent was unclear about the fire alarm, but it appears to the tribunal that it was a battery smoke alarm and not a mains wired smoke alarm that is required for HMOs.

95. The respondent said he regularly inspected the fire alarm.

96. The tribunal also asked about the size of the property. The respondent was clear that all the bedrooms were above the minimum size requirements. However, the tribunal noted that there was no communal space in the property eg. Living room, other than the kitchen, which was only 3.50 x 3.10 metres and that the third bedroom was very small. The respondent said that it was 3.06 x 2.20 metres (6.7sqm). The applicants said that the size of the room made it very difficult for them to organise its reletting.

97. The tribunal asked about the age of the boiler – it noted from the enclosures that it was a Valiant dating from 2007.

    The tribunal asked whether, when the heating was broken, the landlord had provided electric heaters. He said that he had not, and that the tribunal should note that he was not a professional landlord who had supplies of heaters etc

98. On questioning by the tribunal the respondent admitted that he had been slow to protect the tenancy deposits and that the letters saying when the deposits were protected were probably accurate.

The financial circumstances of the landlord

3. The respondent provided the following evidence of his financial circumstances

- An income tax return showing his total income of £25,000. He said in his statement that his net income was £28,938 and that he had net outgoings of £27,778.

- He gave oral evidence that neither he nor his wife worked and that they had to care for two small children. He said that they had made a lifestyle choice not to work. He gave evidence that he was very worried about the increase in mortgage costs and fuel costs which he is very concerned that he is not able to meet.

- He told the tribunal that he has unexpected and serious financial concerns over the coming year and two dependent children under five years old.

- He said that he received an income from his role as director of Hackney 4 Ltd of approximately £10,000.

- The rest of his income comes from the income from the subject property. He earns approximately £2000 pcm in rental.

- He bought the subject property for £325,000 with a 75% interest only mortgage The property currently has no mortgage. It is valued at approximately £500,000.

- He has no property other than the subject property and his family home. His family home is worth £1,000,000 and it has a mortgage of £600,000 on it. This is a buy to let mortgage.

99. The rent paid by the applicants included all bills. The respondent calculated that he spent approximately £1603 per year on gas and electricity, approximately £1450 per year on council tax, £280 per year on internet. £3,333 approximately on outgoings at the property.

100. The tribunal notes that the respondent is a computer professional who has in the past earned around £80,000 per annum.

Submissions of the parties

101. The applicants argued that its calculation of the applicable periods and maximum rents was accurate and that all the applications were made within the appropriate time limits.

102. They argued that the respondent has not provided a credible account of his financial situation. They argued that the respondent has considerable

amount of wealth in property and it is not appropriate for him to plead poverty.

103. They suggested that he was an unsatisfactory witness in connection with his wealth and in connection with his reasonable excuse defence. They argue that to support a £600,000 mortgage would require an income of approximately £80,000.

104. They sought to distinguish the facts of the situation from Hallett. Here they say that the respondent was a property professional who lived in London Borough of Brent and had chosen not to appoint an agent. They suggested that there had been a wanton disregard of the requirement to licence the property and that the penalty should be at the highest end of the range.

105. The respondent argued that the case arose out of one of the applicants failing to meet her contractual obligations and approaching a no-win no fee lawyer whose commission was 27% plus VAT, so the biggest winners out of the application would be the lawyers.

106. The respondent reminded the tribunal of the purposes of the statute, and that the legislation was targeted at rogue landlords and rogue property agents. He said there was no objective evidence that he was a rogue landlord. He said that there was nothing in the Act which justified targeting technical breaches of the requirements. There was no demonstration that the property was in anyway dangerous.

107. He referred the tribunal to Hansard and the purposes of the legislation as set out in the guidance

108. He said that the solicitors for the applicants had refused to meet with him to discuss settlement and that there had been a refusal to engage with the Tenancy Deposit Service.

109. He argued that he was a very good landlord who was always professional and friendly. There was no reason why he should not have obtained a licence; it would have cost no more than £200 per annum for him to comply with the requirements. He was confident that his property met the statutory requirements.

110. In his opinion the statutory objectives were not met and in the circumstances the RRO should be set at £0.

111. He referred the tribunal to *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46 and argued that his situation was on all fours with that of Mr Hallett. However he was arguing that he should pay nothing rather than the 25% that Mr Hallett was ordered to pay.

112. At the hearing on 8th May 2024 the Respondent made further submissions.

113. He argued that the Applicants, made exaggerated claims about the condition of the property – including damp, lack of deposit protection, speed of the internet etc in order to enhance the amount of the RRO. The Respondent says he has check-in and out reports from all tenants plus their NTQs. On each form they were asked comprehensive questions about the condition of everything to do with the house together with freeform text boxes. None of the tenants mentioned damp , internet speeds or anything else that they have relied on in these proceedings. Nor have any of the tenants produced any photographs or text messages about damp or mould, for example.

114. He argued that the hearing was unfair because the Tribunal had allowed too much time to the Applicants to make their case repeatedly over 6 hours and the Respondent was put under undue pressure to make his case quickly and cut the presentation of his case short.

115. He complains that all the Applicants were allowed exhaustive time to make their case, for the most part repeating the same assertions between applicants and entrenching repetition bias. He says he was allowed to cross examine the first two applicants but did not have the opportunity to cross-examine the second two applicants.

116. He suggests that in order to avoid repetition bias, the Tribunal could have asked the applicants to appoint a single spokesperson to make the case for all applicants, or else make their applications separately. At the very least, the Tribunal should have managed the time better so that the Landlord was able to present his case before 4:50pm, and without the Tribunal Chair asking how long he would take, and therefore applying undue pressure to edit and cut short the case presentation in situ.

117. The Respondent also submits that the Tribunal failed to be impartial and properly informed about the law. He argues that the tribunal failed to be impartial and erred on three points of law.

- The Respondent argues that the Tribunal was wrong to find that Mr Costello was entitled to give only one month notice of the termination of his contract. He referred the Tribunal to the Shelter website.

- He argues that the Tribunal were wrong about the minimum size requirements of rooms in HMOs.

- He argues that the Tribunal were wrong to raise issues such as the size of the rooms and the age of the boiler.

118. The Respondent also submits that the tribunal suffered from bias

- It suffered from repetition bias as it heard from all four applicants.

- It suffered from confirmation bias because it largely hears from rogue landlords it has an expectation that landlords are rogues and does not adequately take into account evidence of good conduct.

- It suffered from a lack of impartiality because Mrs Crane asked questions about matters not raised by the Applicants. He submits that Mrs Crane strayed too far from her role of independent arbiter to advocate for the Applicants.

119. The Respondent asks the Tribunal to note his good conduct:-

- in making a licensing application within 9 days of being made aware of the requirement

- in maintaining the property to a good standard, for instance installing a new bathroom in 2019

- in providing clear and precise procedures to the tenants regarding excess electricity use which are supplied at the point of signing the contract and each time an excess use notice is issued

- in providing a clear, unambiguous and flexible procedure if the tenants wish to leave

- in providing procedures to all the tenants to choose their own flatmates, including making payments to the tenants for their time and effort in this regard.

- In either testing personally or asked to be tested, the smoke alarm at least 8 times during a 12 month period. The landlord has in his possession test certificates from various tenants during the period.

- In inspecting the property several times a year, and being on friendly terms with all the tenants, regularly asking if there is anything that needs doing.

120. The Respondent asks the Tribunal to take into account the following points about his financial circumstances

- He only has an income interest in the property. The capital interest is with another party.

- He only has an income of £25000 per annum as demonstrated in his tax return. If the tribunal do not consider that this is credible then they exceed their jurisdiction unless they have evidence.

- . His large mortgage reflects his financial situation 10 years ago. His only current obligation to his mortgage situation is to pay his interest, which he has explained and documented. This has been the Respondent's financial situation for the last 5 years, and it is irrelevant whether the Respondent chooses to work or stay at home to home educate or spend more time at home with his young children. Therefore these matters should not be taken into account when considering his home situation.

The decision of the Tribunal

121. The Tribunal determines deductions of £69.44 per month for each tenant for outgoings and an award of an RRO at 60% of the rent paid in the applicable period for each applicant. It therefore awards RROs as follows:

1. Giuseppina Cammarano: £8,640 – £833.28 = £7,806.72

60% = £4,684.03

2. Lukas Juurlink: £6,240 - £833.28 = £5,406.72

60% = £3,244.03

3. Maria Luisa Villaescusa: £3,900 - £416.64 = £3,483.36

60% = £2,090.02

4. Thomas Costello: £6,875 - £833.28 = £6,041.72

60% - £3,625.03

The reasons for the decision of the Tribunal

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

123. It may be helpful for the parties to know that the tribunal has taken into account a very recent decision of the Upper Tribunal (issued 19kth June 2024) in which the principles upon which the amount of rent to be awarded by the tribunal were revisited – Newell v Abbot and Okrojek Case No: LC 2024-48, Neutral Citation Number [2024] UKUT 181 (LC).

124. The tribunal disagrees with the position of the respondent on the meaning of the 12 months requirement. There is a requirement that the application must be brought within 12 months of the commission of the offence. This limitation period is in s.41 (2) (b) of the Act. In this case the offence ceased to be committed on 10th September 2022. The first three applicants made applications for Rent Repayment Order on 1 September 2022. The 4th applicant was added to the application on 11th September 2022.

125. All the applications were therefore brought within 12 months of the commission of the offence.

126. However the respondent argued that the RRO can only be for an amount of rent relating to the 12 month period ending with the date of the application. This would mean that the applicants were limited to claiming a RRO for

the period from 11th September 2021. That is not correct. As long as the application is brought within 12 months of a relevant offence, the RRO can then be made in respect of a period of up to 12 months during which the offence was being committed. This means that the 12 month period ends when the offence ceases to be committed and not when the application is submitted. It also means that the applicants can choose the 12 month period they claim an RRO .

127. In the circumstances of this case, the tribunal accepts the position of the applicants and determines that the maximum amount for the RRO for each applicant is as follows:

- Guiseppina Cammarano - £8,640 for the period 1st April 2021 – 31st March 2022
- Lukas Juurlink - £6,240 for the period 18th September 2020 until 17th September 2021
- Maria Luisa Villaescusa - £3,900 for the period 10th July 2021 until 9th January 2022
- Thomas Costello - £6,875 for the period 2nd April 2021 until 23rd March 2022

128. The tribunal accepted that the respondent paid out approximately £3,333 annually on outgoings on the property. This equals approximately £277.75 pcm. The tribunal therefore determines to deduct £69.44 pcm from each of the applicants for outgoings.

129. Therefore Giuseppina Cammarano, Thomas Costello and Lukas Juurlink will each have £833.28 deducted from the maximum RRO that can be awarded and Maria Villaescusa will have £416.64 deducted from the maximum RRO that she can be awarded.

130. Therefore the tribunal calculates the maximum RROs payable as

- Giuseppina Cammarano - £8,640 - £833.28 =£7,806.72
- Lukas Juurlink - £6,240 - £833.28 = £5,406.72
- Maria Luisa Villaescusa - £3,900 - £416.64 = £3,483.36
- Thomas Costello - £6,875 - £833.28 = £6,041.72

131. The tribunal then must take into account the conduct of the parties in assessing the amount of the RROs to be awarded.

132. The tribunal finds that the tenants conduct was good. They were responsible tenants throughout the tenancy. The tribunal found the evidence of the applicants to be reliable and thoughtful. Despite what the Respondent says the tribunal did not consider the evidence to have been exaggerated or schooled by their representative. There may have been problems around the return of the deposit and one applicant admits that he missed a rent payment, but the respondent's evidence demonstrated no serious concerns with the applicants' behaviour.

133. The tribunal notes that the respondent says that he is not a rogue landlord and is not the proper target of the legislation. The tribunal also notes that the landlord says he had good relations with the applicants. Nonetheless tribunal is very concerned by aspects of the landlord's conduct.

134. First there was a serious lapse in professional standards in failing to licence the property.

135. The second concern of the tribunal in connection with the professional standards and management of the property is that the respondent limited his responsibility for managing the property by delegating several management responsibilities to the tenants. The respondent appears to have used the tenancy conditions to ensure that the property was properly run. The tenants found new tenants, they replaced kitchen equipment, they maintained the garden – including it appears carrying out tree surgery, they painted rooms, they maintained the boiler. They bore the market risk of the property since they were required to pay rent until replacements could be found. This meant for instance that the relative unattractiveness of the smallest bedroom did not impact upon the respondent's profits from the property. The way the property was run meant that the landlord seldom had voids thus his income was guaranteed. On the other hand the constant occupation of the property meant conditions in the property were not effectively managed.

136. The tribunal is also concerned about the respondent's relaxed attitude to the protection of the applicants' deposits. It notes the dates of the letters from the DPS and that in all cases they were some months after the commencement of the tenancies.

137. The tribunal notes that the Respondent says that he is honest and transparent. However it notes that there has been a lack of transparency over the ownership of the property and over the identity of the landlord.

138. It finds that relationships between the applicants and the respondent were good as long as the applicants accepted the responsibilities that the respondent insisted upon. From the correspondence in the bundle (see for instance the WhatsApp messages on pages 350 onwards) it appears that the respondent's response to any problem was to suggest that it was caused by the tenants and only after discussion does he accept his responsibility. The tribunal is concerned by the tone of some of the communications in connection with the deposit.

139. The tribunal has serious concerns about the landlord's conduct in relation to standards in the property. It accepts the evidence of the applicants in relation to the conditions. In its opinion the applicants were honest about those conditions.

140. The problems with the boiler seem to to have been caused by its age. At the original hearing the Respondent told the tribunal that the boiler was 15 years old and a Valliant model ecoTEC pro 24. In the submissions hearing the Respondent says that the boiler was installed in 2013. which is a boiler from the lower end of the market. The tribunal accepts that the boiler was not as old as it was first informed. Nonetheless the condition of the boiler impacted upon the tenants as they had periods without heating and hot water. They also had to carry out maintenance of the boiler. The Respondent says that this was limited to topping up the water pressure levels under instruction and to help diagnose faults and that maintenance was only carried out by responsible persons. Nonetheless the applicants clearly found this stressful and considered they were under pressure to sort the boiler problems out themselves. It was clear that the boiler was not functioning well, perhaps taking into account the number of people who were using it in the property and the tribunal considers the responsible action would have been to replace the boiler; it had clearly come to the end of its useful life. The tribunal was surprised that the landlord did not do this, nor did he provide electric heaters for when the boiler was not working even though this included winter periods. The landlord rejects the argument that the boiler should have been replaced saying that repair is more responsible and rejects that electric heaters should have been provided. The Tribunal disagrees; The persistent problems with the boiler were not taken sufficiently seriously by the Respondent and he had some responsibility to deal with the lack of heating in the property during the cold months of the year whilst waiting for spare parts.

141. The tribunal rejects the submission that it was inappropriate of the Tribunal to ask questions about the boiler and about replacement heating when these issues were not raised by the Applicants. That submission is based on a misunderstanding of the role of the Tribunal which is to assess the amount of the RRO payable taking into account inter alia the landlord's conduct. The responsibilities of the landlord are complex and set out in detailed statutory and regulatory provisions. It is therefore appropriate for the Tribunal to ask questions about these so that it can provide a proper assessment of the conduct of the landlord.

142. The tribunal also has concerns about the persistent damp and the presence of mould. It accepted the evidence of the Applicants that damp and mould were problems in the property. It is difficult for the tribunal to work out the causes of the problem. The landlord suggests it related solely to a leak from the upstairs flat.

143. In connection with the evidence from the Applicants about the damp and mould, the Respondent says that there is a lack of documentary evidence and that repetition bias (each of the four applicants repeating the same misdiagnosis) affects the finding of the Tribunal.

144. The Tribunal rejects any allegation of repetition bias. Each Applicant provided his or her account of the conditions of the property and the Tribunal weighted up that evidence and the credibility of the witness before reaching its conclusion. If the Applicants had each given different evidence about the damp and mould that would have impacted upon the credibility of the evidence, but in the circumstances of this case, where the Applicants were in agreement about the conditions, the Tribunal is entitled to take this into account when reaching its conclusions.

145. The size of the accommodation is also a major concern. The tribunal notes that the respondent said that all the rooms were above the minimum standards for room sizes. However there was no communal space other than the kitchen and it seems unlikely to the tribunal that the property will be licenced for four separate households once it is inspected by London Borough of Hackney. The size of the accommodation has serious impacts upon the experience of occupiers making for a higher turnover of occupiers and intensive wear and tear.

146. In his additional submissions the Respondent argues that the Tribunal was wrong about the minimum size requirements. He says that this represents a serious gap in the Tribunal's knowledge. The additional submissions were made subsequent to the grant of the licence. The London Borough of Hackney issued a licence for 4 people, without qualification. The

Respondent also referred to the national HMO standards and Hackney's guidance on size. He argued that the national standard for a kitchen for 4 persons is 7sqm and that the kitchen in the property is 10.9sqm. 8

147. He points out that no national standard for communal space exists, however the council may consider additional facilities such as gardens. The Tribunal must consider the extensive private gardens available to the tenants, which are about 300 square meters, and provide significant amenity to the tenants.

148. The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 sets a statutory minimum room size of 6.51sqm for one person. Therefore the third bedroom is very close to this figure being 6.7sqm. The London Borough of Hackney's standards for houses in multiple occupation state 8.5sqm for 1 person in HMOs where there are shared kitchen facilities. Whilst the third bedroom is below this standard, the Tribunal note that in his submissions the Respondent states he has now received a license from the local authority, it states the small size of the room but issued the license without condition.

149. It repeats its point that the Tribunal is entitled to ask questions about complex statutory provisions so that it can reach an appropriate conclusion on the landlord's conduct.

150. The final serious concern about the standards in the property was the lack of an appropriate fire alarm. The landlord was evasive about the calibre of the fire alarm and the tribunal preferred the evidence of the applicants that only a battery smoke alarm was provided in the property. One of the benefits of the licensing system is that local authorities pay close attention to fire precautions. Operating without a licence puts occupiers at serious risk of fire.

151. The landlord in his additional submissions argues that the Hackney HMO guidance (and national statute) states that a "smoke alarm" is required on every floor, but they do not specify whether it should be battery or mains wired. In addition mandatory licence conditions - include conditions requiring the licence holder – (a) to ensure that smoke alarms are installed in the house and to keep them in proper working order. He also asks the tribunal to note that he either tested or ensures that the tenants tested the smoke alarm on a regular basis.

152. The Tribunal has considered the Respondent's allegations carefully. It notes that Fire safety precautions in HMOs are assessed using the Housing Health and Safety Rating System and the LACORS Housing Fire Safety

guidance which helps provide the detail for those precautions required in the different style of property. For properties containing self contained flats a fire alarm system in the communal staircase of the block is required which would have an interlinked heat alarm in the room/lobby of the individual flat, that opened onto the escape route. In addition for this property, a flat in multiple occupation, an interlinked mains wired smoke alarm in the flat is required in the internal hallway and a heat alarm located in the kitchen.

153. As the property is within a purpose-built block of flats, there is additional guidance produced by the Home Office - Fire Safety in purpose built blocks of flats.

154. The Respondent quoted the mandatory licence conditions that are within the Housing Act 2004 Schedule 4 which states that a smoke alarm is installed on each storey and is kept in proper working order. However, Local Authorities can add their own license conditions to those specified within the Housing Act 2004. Having looked at the Hackney website it appears that Hackney do have a mandatory and additional licence condition document which tells licence holders to ensure smoke alarms are installed in accordance with the LACORS guidance. In addition Hackney's Licensing Accommodation standards that applies to all types of privately rented accommodation, states under fire safety and smoke detection that:

"as a minimum standard, hard wired mains operated smoke alarms with battery backup should be provided to the ceiling in the dwelling hallway"

155. The legislation Mr Campbell quoted to support that there is no requirement for mains wired smoke alarms is the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 which were then amended in 2022. These regulations were introduced to require smoke alarms in all rented accommodation and to require the installation of carbon monoxide detectors initially where there was a solid fuel appliance and then amended to included fixed combustion appliance other than a gas cooker. These regulations do not require a mains wired smoke alarm, but they cannot be looked at in isolation as the guidance and licensing conditions mentioned above apply to HMOs.

156. The Tribunal therefore remains concerned by the limited fire protections provided despite the evidence that the Respondent, or his tenants, regularly checked the smoke alarm.

157. The tribunal notes that the points it has raised about the health and safety conditions within the property may well suggest that category 1 hazards under the Housing Act 2004 exist at the property. The elimination of hazards is one of the aims of the London Borough of Hackney licensing provision and their potential existence concerns the tribunal. However it also takes into account that the Respondent says that the licence was granted by Hackney without any conditions. The Tribunal has not had sight of the correspondence between the Respondent and the London Borough of Hackney, and it remains concerned that the size of the small bedroom is below minimum requirements, but the Respondent's additional submissions have been taken into account in assessing the level of the RRO to be awarded.

158. The Tribunal also notes that the landlord has no criminal convictions, and that whilst the living conditions were poor and cramped, and there are serious concerns about damp, heating and hot water provision and the level of fire precautions, the conditions were not amongst the worst conditions in the private rental sector. It also notes the additional submissions that the landlord made about his conduct.

159. It notes the submission of the respondent that the decision in *Hallett i*s relevant to the tribunal's decision about amount and that the Deputy President of the Upper Tribunal has suggested that a maximum award be reserved for the worst case scenario. Whilst it cannot accept that the situation that this case is similar to Hallett it does agree that the conditions in the property are not the worst in the sector.

160. It does not however agree with the respondent that the nature of his mistake means that the amount of the RRO should be minimal. The information on licensing is available on the Hackney council website. Additional licensing requirements are frequently discussed in local landlord forums etc. The tribunal cannot accept that what the landlord says is an innocent mistake should result in a minimal order being made when the mistake arises from the landlord remaining isolated from the professional landlord community. This is particularly so when the landlord does not engage a manager and therefore retains full responsibility for the management of the property.

161. Moreover the Tribunal considers the fact that the landlord says he had limited incentive not to licence the property as the cost of the licence is very low as of minimal significance in assessing the conduct of the landlord.

162. Taking all of the concerns about the landlord's conduct into account, in particular the cramped nature of the accommodation, the conduct of the

landlord in pushing important responsibilities such as choice of tenants and testing of smoke alarms onto the tenants, and the evidence of damp and mould, and the limited fire protections, and reflecting on the seriousness of the offence, the tribunal determines to make an award at 60% of the rent paid in the appropriate period. Therefore the applicants will be awarded

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- Lukas Juurlink -60% x £5,406.72 =£3,244.03
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- Thomas Costello - 60% x £6,041.72= £3,625.03

163. The tribunal notes the respondent's evidence and additional submissions about his financial circumstances. However it also notes that the respondent has no mortgage on the property and that he has made a lifestyle choice to not work but care for his children alongside his wife. He told the Tribunal that he had previously had earned around £100,000. Whilst the Tribunal makes no judgement on the decision of the Respondent, and indeed accords it respect, it does not seem appropriate to the Tribunal that the Applicants should receive a lower RRO because of such a decision.

164. In the light of the findings above the tribunal also orders the respondent to reimburse the applicants for the application fee and hearing fee, totalling £600.

Name: Judge H Carr Date: 22nd July 2024

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.