FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BC/HMF/2022/0217**
Property	:	**Flat 38 Oakside Court Fencepiece Road, Ilford Essex IG6 2PH**
Applicants	:	**Ms Zahra Iftikhar & Mr Mehran Jamil**
Representative	:	**In Person**
Respondent	:	**Mr Stephen Moore**
Representative	:	**Davis Solicitors LLP**
Type of application	:	**Application for a rent repayment order by tenants** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	:	**(1) Judge Amran Vance** **(2) Mrs S F Redmond, MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	:	**4 April 2023**
HMCTS Code	:	**CVPREMOTE**
Date of Decision	:	**19 April 2023**

DECISION

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Description of hearing

The hearing of this matter took place on 4 April 2023, by remote video conferencing (HMCTS code: Remote: CVP). The Applicants provided a hearing bundle (65 pages) in PDF format, and references in square brackets and in bold below are to page numbers in that bundle. The Respondent also provide a hearing bundle (113 pages). References in square brackets and in bold below, prefixed by the letter 'R' are to page numbers in his bundle No party objected to a video hearing.

Decisions

1. The Tribunal makes a Rent Repayment Order and orders Mr Moore to pay to the Applicants the sum of £6,480 within 28 days of the date of issue of this decision

2. Mr Moore must also pay to the Applicants, within the same 28 day timescale, the sums they paid for the Tribunal's application fee (£100) and hearing fee (£200).

Background

3. This application concerns a request for a Rent Repayment Order ("RRO") made by the current tenants of Flat 38 Oakside Court Fencepiece Road, Ilford Essex IG6 2PH ("the Property"), a 2-bedroom, second floor flat, located in a purpose built residential development comprising 50 flats in various buildings. The Applicants, Ms Zahra Iftikhar & Mr Mehran Jamil, have lived in the Property since 22 January 2020. They live in the Property with their two children, the most recent of which was born towards the end of December 2022.

4. The Applicants have entered into two 12-month Assured Shorthold Tenancy agreements for the Property. Their initial agreement is dated 22 January 2020 **[27]**, and commenced on that same date. The rent payable was £1,350 per month. Before that tenancy expired, they entered into a second agreement dated 14 January 2021 **[R62]**, which commenced on 22 January 2021. The rent payable under the second agreement was £1,300 per month. In both agreements their Landlord is specified as being Mr Stephen Moore. Both agreements were prepared by a firm of letting agents, initially called Hunters, who by the time the second agreement was entered into, had changed their name to Neon Estates. Mr Samuel Carter, an employee of Hunters signed the first tenancy agreement on behalf of the Landlord. The second agreement was signed by Mr Moore personally, who also initialled at the foot of each page of the agreement, next to the words "Landlord Initial:". Throughout their tenancy the Applicants paid their rent to the letting agents **[54]**.

5. Aside from the rent payable, the agreements appear to be in identical form in all material respects. At clause 8.5.2 the Landlord confirms that the gas appliances in the Property comply with the Gas Safety (Installation and Use) Regulations 1988, as amended in 1993. At clause 8.5.3 the Landlord confirms that the electrical appliances in the Property comply with the Electrical Equipment (Safety) Regulations 1994.

6. The freeholder owner of the building in which the Property is located is Furatto Limited, whose title is registered at HM Land Registry under title number EGL467783 **[44]**. The long leasehold interest in the Property is held by S.J. Moore (Jeweller) Limited ("the Company") under title EGL500928 **[50]**. Mr Stephen Moore is a director of the Company **[R21]**.

7. The Property is located within the London Borough of Redbridge ("the Council"). On 1 October 2018, the Council designated part of its district, including the area in which the Property is located, as subject to selective licensing under Part 3 Housing Act 2004 ("the 2004 Act"). The parties agree that at all times, from the grant of the Applicants' initial tenancy to date, the Property was required to be licensed under those selective licensing arrangements. It is also agreed that the Property was unlicensed until 22 February 2022, when a license was granted to the Company **[R36]**, following an application for a license submitted by Neon Estates **[R39]**.

8. The application for a selective licence was prompted by a letter sent by the Council to Mr Moore in February 2022. A copy of that letter has not been provided to the tribunal, but present in the Applicants bundle at **[22]** is a copy of a letter sent to Ms Iftikhar on 10 February 2022 in which the Council confirmed that no license application had been received, and that the Council would therefore be writing to "them", presumably meaning their landlord.

9. At paragraphs 8-9 of his witness statement dated 8 March 2023 **[R33]**, Mr Moore states that around this time the Applicants informed him that the Property needed to be licensed. This, he says, was the first time he became aware of the licensing requirement, following which he asked the letting agents why they had not informed him of that obligation, and asked them to take steps to apply for a license. On 22 March 2022, he sent an email to the Council's private rented sector licensing team **[R92]** querying whether, when a property is let by a letting agent, it is the agent's responsibility to apply for a licence, or the owner of the property. The Council replied the same day **[R93]**, stating that if a property is located in a licensable ward then the question of who should make the license application should be discussed between the owner and the agent before the property is let.

10. The Applicants' application to the tribunal for a RRO was made on 21 September 2023 **[3]**. In that application, they sought a RRO for the period 22 January 2020 to 21 January 2021, in the sum of £16,200, being 12-months' rent at £1,350 per month. The application was pursued on the ground that Mr Moore had committed an offence under s.95(1)of the 2004

Act, namely being in control or management of a house that was required to be licensed, but which was not so licensed.

11. The Tribunal issued directions on 4 November 2022 **[14]**, requiring the parties to serve and file hearing bundles in preparation for the final hearing. On behalf of the Respondent, Davis Solicitors LLP lodged a hearing bundle at the tribunal under cover of an email dated 10 March 2023. That bundle included a copy Notice of Acting dated 13 February 2022 **[R19]** which incorrectly named the Respondent to the application as being S.J. Moore (Jeweller) Limited, as opposed to Mr Moore. Also included in the bundle at **[R20]** was a copy of an application dated 22 February 2023 requesting that the Applicants' application be struck out on grounds that the identity of their landlord was S.J. Moore (Jeweller) Limited, and not Mr Moore. The Tribunal's case officer informs me that the Tribunal has no record of receiving any communications from Davis solicitors before its email of 10 March. As such, no directions were issued by the Tribunal in respect of the asserted strike out application.

12. At the hearing on 4 April 2023, Mr Jamil represented the Applicants. Mr Moore was present and was represented by Mr Bowles, a freelance solicitor advocate instructed by Davis solicitors.. At the start of the hearing, Mr Bowles confirmed there was no need for the tribunal to first determine the strike out application as the points advanced regarding the correct identity of the landlord would be made in his submissions opposing the Applicants' substantive application. Those submissions were largely set out in a note prepared by Mr Bowles and sent to the Tribunal and the Applicants, by email, on 3 April 2023. We agreed to have regard to Mr Bowles note which we explained to Mr Jamil was essentially a note setting out the legal arguments Mr Bowles would be advancing at the hearing, as opposed to constituting new evidence.

13. We declined to have regard to an audio recording that the Applicants had sent to the tribunal on 28 March 2023, which Mr Jamil asserted was relevant to the question of Mr Moore's conduct as it evidenced the fact that he had refused to carry out a repair in the property unless the Applicants dropped their application for a RRO. Mr Bowles objected to that recording being admitted into evidence on grounds that it was made without Mr Moore's knowledge or consent. We explained to Mr Jamil that if they had wanted to rely upon covert evidence an application to do so should have been made in advance of the hearing, on notice to the Respondent, so that the Respondent could have the opportunity to oppose the application. It was our view that a tribunal should exercise caution before granting such a request. Much will turn on the relevancy of the material, and how it was obtained. In the circumstances of this case, having listened to the recording, we were satisfied that it was only of limited probative relevance to issues of Mr Moore's conduct, and that the point being advanced could readily, and more properly, be pursued by Mr Jamil when cross-examining Mr Moore, without the need for the covert recording to be admitted into evidence.

The Law

14. Section 95(1) of the 2004 Act provides as follows:

> "A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1) but is not so licensed."

15. Subsection 95(4)(a) provides that in proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for having control of or managing the house.

16. Section 263 provides the following definitions of persons having control of, or managing, premises:

> "(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 ...
>
> (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.

17. Section 40 Housing and Planning Act 2016 ("the 2016 Act") states as follows:

> "(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."

18. Among the relevant offences is the s.95(1) licencing offence.

19. Section 43 provides that this tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that the offence has been committed, and that where the application is made by a tenant the amount is to be determined in accordance with section 44 which, in respect of the s.95(1) offence limits the amount of the award to the rent paid during a period "not exceeding 12 months, during which the landlord was committing the offence."

20. Section 43(4) says as follows:

(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

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

21. Guidance on how this tribunal should approach quantification of the amount of a RRO has been provided by the Upper Tribunal in *Williams v Parmar* [2021] UKUT 244 (LC) and, more recently, in *Acheampong v Roman* [2022] UKUT 239. We refer to that guidance below when deciding how much to order by way of a RRO.

The Applicants' Case

22. In witness statements, signed jointly by both Applicants dated 16 December 2022 **[8,58]** they assert that:

(a) the extractor hood to their kitchen cooker performed poorly, resulting in smoke from cooking triggering a smoke alarm. They say despite repeated calls to Mr Moore, the problem has not been resolved;

(b) Mr Moore uses family members to address problems with equipment in the Property rather than trained professionals;

(c) they have not been provided with a copy of an annual gas safety certificate, apart from the one given to them when they first rented the Property;

(d) no portable appliance testing ("PAT testing") has been carried out at the Property during their tenancy;

(e) since late 2022, they have experienced black mould in the shower room due to a defective extractor fan. They assert that on 13 December 2022, Mr Moore inspected the shower room and said that he would only replace the fan if the Applicants dropped their RRO application.

The Respondent's Case

23. In his witness statement, Mr Moore stated, amongst other matters, that:

(a) the Company previously traded in Tottenham as a jewellers and pawnbrokers until the shop from which it traded was destroyed during the riots in August 2011. After a number of years some compensation was paid which was used to purchase the Property;

(b) acting on behalf of the Company, he then approached Hunters, and entered into an agreement with them to let the Property, whereby they took over the responsibility for all aspects of its management, although if the need for any repairs arose, they would contact him so that he could instruct someone to carry out the work required. In oral evidence he said that he used his brother to carry out repairs as he had a lot of relevant experience;

(c) he was unaware that the Property needed to be licensed. This was something that the letting agents should have dealt with;

(d) the Applicants paid their rent to the letting agents who, after deducting charges of £90 per month, paid the remaining balance into the Company's account;

(e) the Applicants started complaining about alleged disrepair in the Property within two months of moving in and those complaints become increasingly frequent;

(f) there had been complaints about the attitude of the Applicants, who had refused to allow workmen into the Property to carry out a gas safety inspection; and

(g) as a result of solicitors writing to the Applicants, stating that the landlord named in their tenancy agreements was incorrect, the Applicants have stopped paying their rent until the identity of their landlord is clarified.

24. In oral evidence to the tribunal he confirmed that after the letting agents paid the net rent into the Company's bank account it then "came to him", although over the last two years he arranged for it to be paid to his daughter by way of a wage, as she is employed by the Company.

25. Mr Bowles' first submission was that the application for an RRO should have been brought against the legal owner of the Property, namely the Company, and not Mr Moore, who has no legal or beneficial interest in it. He said that the tenancy agreements prepared by the letting agents had erroneously specified Mr Moore as being the Applicants' landlord, despite this not being his intention.

26. Secondly, he submitted that Mr Moore was neither a person having control of, or a person managing a house, for the purposes of s.263. He was neither an owner or a lessee of the Property, and nor did not receive the rent paid by the Applicants. That rent, said Mr Bowles, was paid to the agents who, after deducting their fees, paid the rent into the account of the Company . At no stage in this process were rental payments made to Mr Moore in a personal capacity.

27. Further and in the alternative, he contended that Mr Moore could avail himself of the statutory defence in s.95(4) of the Housing Act 2004. Mr Moore's evidence, it was suggested, was that he was unaware of the need to licence the Property until it was drawn to his attention in February 2022, whereupon he acted promptly to ensure an application was made. He is not a professional landlord, and this is the only property owned by the Company. Mr Moore's evidence was that he relied upon the agents, a reputable local letting agency, to run and manage the property for him. Those agents, it was said, should have been aware that the Property was in a selective licensing area, and should have advised him to apply for a licence.

28. Finally, if the Tribunal was satisfied that the offence had been committed, Mr Bowles advanced several points in mitigation as to the amount of the RRO. We address those points below.

Reasons for Decision

Who is the Applicants' landlord?

29. We are entirely satisfied that the Applicants' landlord has, at all times, been Mr Moore, and not the Company. When prompted by us, Mr Bowles correctly conceded that Mr Moore did not need a proprietary interest in the Property in order to create a binding tenancy agreement between him and the Applicants. That this this is correct as a proposition of law was established in *Bruton v London & Quadrant* [2000] 1 AC 406, 415. However, he contended that Mr Moore had no intention to grant a direct tenancy with the Applicants, naming himself as the landlord. This was the agent's mistake, and their mistake vitiated the contract.

30. Mr Bowles placed considerable emphasis on the fact that the Marketing Agreement entered into with Hunters stated, on its first page, that the landlord was the Company. He also pointed out that the license that was eventually granted by the Council, was issued to the Company, and not Mr Moore.

31. However, the problem with Mr Bowles submission, is that nowhere in Mr Moore's witness statement does he suggest that the agents made a mistake when naming him as the Applicants' landlord in the tenancy agreements. He does not say anything about entering into the Marketing Agreement and nor does he suggest that he instructed them to name the Company as the landlord in either of the tenancy agreements. In oral evidence he said that it was he who made a mistake in signing what Hunters told him was a standard form tenancy agreement. Mr Moore's evidence does not support Mr Bowles' submission.

32. We place little significance in the fact that the Marketing Agreement named the Company as the landlord on the first page, given that at the final page of the agreement the landlord is named as Mr Moore and Mrs Susan J Moore, both of whom signed the agreement as individuals, and not on behalf of the Company. Further, even if the agent's incorrectly named Mr Moore in the initial tenancy agreement, there is no explanation at all as to why Mr Moore then went on to personally sign the second tenancy agreement, which again named him as the landlord, and in which he initialled every page of the agreement. If he genuinely believed that a mistake had been made as to the identity of the landlord in the first agreement, we would have expected him to correct the position when the second was prepared.

33. The available evidence suggests to us that either Mr Moore instructed the agents to draft the agreements with him specified as landlord, or he was indifferent, or careless, as to whether he was so named, instead of the Company. In any event, whatever the factual circumstances, both tenancy agreements named Mr Moore as the landlord and that, in our determination, is conclusive as to the identity of the Applicants' landlord. We find that both tenancies created were tenancies by estoppel, in other words, tenancies created despite the fact that the person who granted them had no legal right to do so.

34. Mr Bowles suggestion that the contractual position entered into was vitiated by mistake is not tenable. In a contractual context, the doctrine of mistake operates as a defence to claims in contract where a mistake as to the factual circumstances preclude the formation of any contract in law. This application is quasi-criminal in nature and is not a claim in contract. Nor does there appear to be any mistake as to the factual circumstances that would render the contract unenforceable. Furthermore, this is not a situation where a mistake was made by one party to a transaction regarding the identity of the other, which might vitiate any agreement formed.

35. The fact that the Council, granted a license to the Company does not detract from the fact that Mr Moore was the Applicants' landlord. The Council had

to be satisfied that the Company was a fit and proper person to hold the licence, but there was nothing preventing the Council from granting a license to the legal owner of the Property even though Mr Moore is named personally as the landlord under the applicants' tenancy agreement.

36. We therefore find that Mr Moore was, at all material times, the Applicants' landlord.

Was Mr Moore a person managing the house for the purposes of s.*263(3)?*

37. In order to fall within the definition in s.263(3), Mr Moore needed to be either the owner of the Property, a lessee of the property, or, alternatively, a trustee or agent who received the rent. Mr Moore is not the legal owner, and there is no evidence to suggest that he is a lessee of the Property. As such, he cannot fall within either s.263(3)(a) or (b). As a director of the Company, he acts as the Company's agent when conducting business on its behalf, but the evidence here does not suggest that he received rent as an agent or trustee of the Company. We find that Mr Moore was not a person managing the house for the purposes of s.263(3).

Was Mr Moore a person having control of the house for the purposes of s.*263(1)?*

38. In contrast to a person managing, a person having control does not need to be an owner or lessee of the house. They must, however, be in receipt of the rack rent of the property. We are satisfied, beyond reasonable doubt, that these requirements were met.

39. Firstly, there can be no doubt that the rent paid by the Applicants was the rack rent given that it was marketed by Neon Estates at a rent of £1,300 per month **[R95]**.

40. Secondly, we find that the rent paid by the Applicants to the letting agents was paid to Mr Moore, and not to the Company. We acknowledge that there is no documentary evidence before us to show which account the agents paid the net rent into, but the only person who could have provided such evidence was Mr Moore. The Applicants are not in a position to do so, and as Mr Jamil made clear at the hearing they, quite understandably, believed that Mr Moore was their landlord, and that the rent they paid to the letting agents was passed on to him.

41. It is Mr Moore who has sought to argue that he does not fall within the definition of a person having control of the Property on grounds that he did not receive the rent. The point was taken for the first time in Mr Bowles' note, received the day before the hearing. As a director of the Company, Mr Moore could have provided us with copies of its bank statements evidencing how the rent was treated. He did not do so. He could also have provided us with copies of the Company's accounts, given his oral confirmation to us that the rent received from the agents was shown in those accounts. Again, he did not so. Mr Moore has had the benefit of legal representation in these proceedings, and it would have been a straightforward matter for such

documentary evidence to be provided. The only person who was contractually entitled to receive the rent for the Applicants' tenancy was Mr Moore, and not the Company. We did not find Mr Moore to be a convincing or reliable witness. Below, we explain why we found his evidence regarding the terms on which he engaged the letting agents to lack credibility. Similarly, we find his uncorroborated evidence that the agents paid the net rent into the Company's bank account, and not to him, to also lack credibility. We infer from the lack of corroboratory evidence supporting Mr Moore's bare assertion, and given our conclusion that his evidence was unreliable, that the rent was paid by the agents to him, and not the Company.

42. Even if that conclusion is wrong, and the rent was first paid by the agents into to the Company account we find, in the alternative, that a landlord, who is the only person contractually entitled to receive rent under a tenancy, but who enters into an arrangement with letting agents in which he instructs them to pay the rent to a company of which he is a director, rather than himself, and who then arranges for the rent monies received to then be paid from the company account to him, or to his daughter, constitutes a person who was in receipt of the rent of the premises for the purposes of s.263(1). At all material times Mr Moore, as a director of the Company, was able to control and direct where the rental income was to be paid and how it was to be distributed. He therefore remained in receipt of the rent throughout that process. In our view, sums paid out of the Company's account to Mr Moore or his daughter maintained their characteristic of being 'rent' given Mr Moore's evidence that the Company's only income throughout the relevant period was the rental income from the Property.

43. If our conclusion in the previous paragraph was incorrect, it would mean that an unscrupulous landlord, who is a licensee of an unlicensed property, as opposed to an owner or lessee, could avoid a RRO by simply appointing a letting agent to manage a property and instructing them to pay the rent received to a third party. Such an interpretation of s.263 cannot, in our view accord with the statutory purpose underlying RROs which is to tackle problems caused by rogue landlords in the private rental sector.

44. We are therefore satisfied, beyond reasonable doubt that the whole of the net rent, being the rack rent, was paid to Mr Moore throughout the relevant period and that he was a person having control of the house for the purposes of s.263(1).

Does Mr Moore have a reasonable excuse defence under s.95(4)?

45. Mr Moore's reasonable excuse defence was advanced on grounds that it was the letting agents responsibility to advise him to apply for a selective license and that they should have, but did not, advise him of this obligation. It was his evidence that other than carrying out repairs, everything else to do with management of the Property was the agent's responsibility, including any issues relating to licensing, and any certification requirements required concerning the gas and electrical installations at the Property

46. We are thoroughly unpersuaded that argument. On the facts, we find that the agents were under no such obligation. The agent's Terms of Business, signed by Mr Moore, are in stark contrast to his evidence. Not only is there no contractual obligation on the agent to keep the landlord informed of licensing requirements, paragraph 6.12 states completely the opposite. It reads as follows:

> "6.12 Certain types of properties required licence before they can be let. These properties are primarily Houses in Multiple Occupation ("HMO's") occupied by 3 or more people who are not related but in some areas of the country licences can be required for other types of property as well. It is your responsibility to determine whether you need a licence for the Premises and it is your responsibility to provide the agent with any licence that is required...."

47. In addition, paragraph 7.2 makes it clear that responsibility for checking all electrical installations are safe and checked regularly rests with the landlord. Paragraph 7.3 states that a gas safety certificate needs to be renewed at 12-monthly intervals and sent to the tenant on renewal. On the final signature page of the Terms of Business, signed by Mr Moore, he acknowledges his obligations under the Gas Safety Installation and Use) Regulations 1998 and the Electrical Equipment (Safety) Regulations 1994, and accepts and confirms that he has full responsibility to ensure compliance with those requirements both, before and during the letting of the Property.

48. The Terms of Business agreement is clearly a standard form document which can be adapted depending on the type and extent of services to be provided by the agent. Page 1 sets out the fees and costs payable to the agents. The agreement has three check boxes on page 1, which can be ticked to indicate whether the agents are to provide a fully managed service, a rent collection service, and/or an introduction service. In the agreement signed by Mr Moore the only box that has been ticked is the Rent Collection service box, next to which has been inserted, in manuscript, a fee of 6% plus VAT. The "Fully Managed" box is unticked.

49. The costs of optional additional fees are also set out on page 1 of the document and are identified as "if required". They include fees for obtaining a Gas Certificate (£70), and an Electrical Certificate (£90). Those options have not been selected in the agreement signed by Mr Moore and, instead the letters "LL" have been inserted in manuscript next to each, indicating, we find, that it was the landlord's responsibility to arrange the same, and not the agents.

50. Mr Moore's oral evidence to us regarding his entry into the Terms of Business was inconsistent and unconvincing. When we suggested that the document indicated that he had opted for a rent collection only service, rather than a fully-managed service, his response was first to deny this was

the document he had signed, even though it was his solicitors that had included it in his hearing bundle. Next, he suggested that the agents must have modified the agreement after the event, as he would never have agreed to a rent collection only service. Then he said that he was not in possession of the Terms of Business before signing the agreement, even though it is obviously all one document. Finally, he said that he may have just flicked through the agreement before signing it.

51. Mr Moore's evidence concerning the level of services to be provided by the agents also contrasts with the Applicants' understanding of the position, gathered from their communications with the agents. In their Reply they stated that they were advised from the start of their tenancy that the agents provided a rent collection only service. This is corroborated by the contents of two emails from Jason Markham at Neon Estates to Mr Jamil, copies of which were annexed to the Applicants' Reply. In the first, dated 14 March 2022, Mr Markham states that the agents do not manage ,or get involved in, any maintenance issues at the Property as they only provide a rent collection service for the landlord. In the second, dated 27 January 2023, he confirms that the agents do not, and have never, managed the Property and that they were instructed by Mr Moore to collect the rent only.

52. We reject Mr Moore's evidence on this point as unreliable, and find that the service he instructed the agents to provide was for rent collection only. This is abundantly clear from the Terms of Business that he signed in which the fully managed check box was unticked, and from the emails sent by Mr Markham. In our experience as a specialist tribunal we are also of the view that a fee for a fully managed service is likely to be significantly greater than the 6% charged by the agents, the fee charged, being consistent with what we would expect for a rent collection only service.

53. We also find that it was Mr Moore's responsibility to ensure that he obtained a selective license for the property, and not the agents. That it was his obligation was clearly set out at paragraph 6.12 of the Terms of Business . We find that it was not a task he delegated to the agents, and that the agents had no contractual obligation to advise him of the need for a licence, or to apply for one on his behalf. We accept Mr Moore's evidence that this is the only property he lets out, but even so, he has not shown any good reason why he could not have informed himself of the licensing requirements before letting it. Considered objectively, we consider there is no good reason for Mr Moore failing to identify the need to obtain a licence for the Property and that this was the case throughout the relevant period. The fact that Neon Estates paid the license fee on behalf of Mr Moore, and then billed him for it on 24 February 2022, does not detract from that conclusion. Mr Markham said in his email of 14 March 2022 that the agents only applied for the licence when the landlord asked them to do so. We accept that as true, and find that this was a request for an additional service on top of the rent collection service provided to Mr Moore.

54. In our determination, Mr Moore cannot avail himself of the reasonable excuse defence. We are therefore satisfied, beyond reasonable doubt, that

Mr Moore committed the s.95(1) offence from 22 January 2020, until early February 2022 when the Company applied for a licence.

Should the tribunal make a RRO?

55. Section 43(1) of the 2016 Act provides that the tribunal may make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed a prescribed offence, including the s.95(1) offence, whether or not the landlord has been convicted of that offence. Given Mr Moore's failure to comply with the important obligation to ensure that the Property was licensed we are satisfied in the circumstances, that an RRO should be made.

The amount of the RRO

56. In *Williams v Parmar* the Chamber President said [50] that when quantifying the amount of a RRO:

> " A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant."

57. In *Acheampong v Roman* Judge Cooke said [15] as follows:

> "*Williams v Parmar* did not say in so many words that the maximum amount will be ordered only when the offence is the most serious of its kind that could be imagined; but it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it. It is beyond question that the seriousness of the offence is a relevant factor – as one would expect from the express statutory provision that the conduct of the landlord is to be taken into consideration. If the tribunal takes as a starting point the proposition that the order will be for the maximum amount unless the section 44(4) factors indicate that a deduction can be made, the FTT will be unable to adjust for the seriousness of the offence (because the commission of an offence is bad conduct and cannot justify a deduction). It will in effect have fettered its discretion. Instead the FTT must look at the conduct of the parties, good and bad, very bad and less bad, and arrive at an order for repayment of an appropriate proportion of the rent."

58. She then said at [20] that the following approach would ensure consistency with previous legal 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)."

59. Those two decisions are binding on this tribunal and we bear both in mind when calculating the amount of the RROs to be made in this case. In respect of the s.95(1) licensing offence committed by the First Respondent, the amount of an RRO this tribunal can award is limited to the amount of rent paid during a period "not exceeding 12 months, during which the landlord was committing the offence."

60. The Applicants have provided bank statements confirming they paid rent totalling £16,200 during the relevant period. This has not been disputed by Mr Moore. The terms of their tenancy agreements provided that all utility costs were to be paid by the Applicants, and so nothing falls to be deducted from that figure for utility costs.

61. We then turn to the seriousness of the offence. A local authority can impose a selective licensing designation if the area to which it relates is experiencing: low housing demand (or is likely to become such an area); a significant and persistent problem caused by anti-social behaviour; poor property conditions; high levels of migration; high level of deprivation; or high levels of crime. The object is to tackle such problems by encouraging the provision of decent quality accommodation. A failure to obtain a

selective licence is a serious offence, but in our view it is considerably less serious than the offence of control or management of an unlicensed House in Multiple Occupation ("HMO") under s.72(1) given the emphasis in the HMO licensing regime of improving housing standards for vulnerable people in our society who often occupy properties that were not built for multiple occupation, and where the risk of overcrowding and fire can be greater than with other types of accommodation. It is also significantly less serious than other offences identified in s.40(3) such as using violence for securing entry, eviction or harassment of occupiers, and failing to comply with improvement notice or prohibition order.

62. In our view the seriousness of Mr Moore's failure to licence warrants the making of RROs of 40% of the rent paid for the relevant period, subject to the remaining s.44(4) factors.

63. Turning to those factors, we consider only one aspect of the landlord's conduct to be relevant, namely Mr Moore's failure, in 2021 and 2022, to comply with the Gas Safety (Installation and Use) Regulations 1988, as amended, which required him to ensure that an annual safety check is carried out and a copy of the safety check record provided to the Applicants. We reject his evidence that this was the letting agent's responsibility. The contrary is stated in both the Terms of Business and the two tenancy agreements entered into by Mr Moore. We find his evidence to lack credibility and find that compliance was his responsibility.

64. No breach of the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 occurred because Mr Moore obtained an Electrical Installation Condition Report (EICR) before the Property was let to the Applicants **[R74]** and a reinspection is only required every five years. Nor is there evidence of a breach of the Electrical Equipment (Safety) Regulations 1994 which requires that all electrical appliances provided as part of a tenancy to be safe when they are first supplied for use.

65. The Applicants complain that Mr Moore has not carried out portable appliance testing (PAT) on electrical appliances that he has provided, however this is not an obligation on landlords under the 2020 Regulations, although it is recommended guidance (see www.gov.uk/government/publications/electrical-safety-standards-in-the-private-rented-sector-guidance-for-landlords-tenants-and-local-authorities/guide-for-landlords-electrical-safety-standards-in-the-private-rented-sector). It might, as the Applicant suggests be a breach of the Company's licence obligations with the Council but that is not relevant to this application.

66. We do not consider the Applicants' complaints regarding the cooker hood to be sufficiently serious to warrant consideration when considering Mr Moore's conduct. The invoices provided in the Respondent's bundle **[R101-111]** show that Mr Moore attempted to address issues relating to the cooker. We accept the Applicants evidence that this has been unsuccessful and that on occasions the smoke alarm can be triggered when they are cooking. This

would undoubtedly be inconvenient, but it is not, in our view, a significant safety issue.

67. We accept that there is an issue of black mould in the shower room. However, we have no evidence before us as to whether this is due to an ineffective extractor fan as the Applicants' assert, or as Mr Moore contends, that the mould has resulted from condensation due to the tenants not using the extractor fan. We consider tenant neglect to be highly unlikely, but as Mr Jamil confirmed that the issue only started in December 2022, this is a recent issue that we do not consider should be taken into account when considering the amount of the RRO Mr Moore is to pay. We note that the Applicants have stopped using the shower room and are instead using the separate bathroom, so whilst clearly inconvenient, they still have access to bathing and washing facilities. Mr Jamil informed us that he is pursuing the matter with the Council's Environmental Health department and that appears to be an appropriate course of action.

68. The other complaints made by the Applicants concerning alleged disrepair, including a defective thermostat to the oven and loose handles to the balcony doors are minor issues that, again, we do not consider to be relevant when considering their landlord's conduct under s.44(4). We note that Mr Moore arranged for the oven to be replaced, three months after the Applicants' initial complaint **[R106]**. The evidence does not suggest that the Property is in significant disrepair. Overall it appears to be in good condition. We also accept that Mr Moore has attempted to address the disrepair complaints raised by the Applicants, although we accept as credible the Applicants' assertions that he has been slow to respond, and that repairs have sometimes been ineffective. We do not, however, agree with the Applicants assertion that his conduct as a landlord has been very poor.

69. As to the remaining s.44 factors, there is no suggestion that Mr Moore has been convicted of a relevant offence. Nor has he provided any evidence as to his financial circumstances.

70. We do not consider there to be any relevant issues of conduct by the Applicants to be taken into account. We reject the suggestion in Mr Moore's witness statement that their complaints about disrepair have been unmeritorious and dishonest. The issues raised appear to us to be genuine concerns which Mr Moore has, to his credit, made some attempt to address, as shown by the invoices he has provided. We do not accept his allegation that the Applicants' refused to allow workmen into the Property to carry out a safety inspection. He suggests, at paragraph 7 of his witness statement that access was refused because a gas engineer arrived 20 – 30 minutes late. The negative Google review left by Mr Jamil **[R113]** evidences, in our view, no more than a misunderstanding as to the time slot booked for the visit.

71. Also without merit, in our view, is the suggestion that there had been complaints about the attitude of the Applicants. Mr Moore relied upon a letter from Warmans Asset Management, who manage the building, dated

30 August 2022, addressed to the leaseholder/tenant of the Property, complaining about washing lines being strung across a couple of balconies, and a bicycle being chained to banisters. We accept Mr Jamil's evidence that the Applicants do not dry their washing on the balcony and that they have no need to do so as they have a washer/dryer. As to the allegation regarding the bicycle, it is unclear why the writer believed it to be the Applicants' child's bicycle. Later emails to Mr Moore dated 7 September 2022 which refer to Mr Jamil's child's bicycle being left under the stairwell and to Mr Jamil referring to the large amount he pays by way of service charge are confusing. As Mr Jamil pointed out, he pays no service charge at all. In any event, we do not consider these accusations to be proved so as to be matters we should have regard to under s.44. We heard no direct evidence on the point and the documents relied upon are inconclusive.

72. We do not consider the Applicants withholding of their rent to be a matter we should have regard to under s.44. They stopped doing so very recently, in February 2023, because of the issue raised by the Respondent concerning the identity of their landlord. We appreciate why the Applicants did so, but as we have now resolved the question of the identity of their landlord they should resume payment of their rent and pay the arrears due.

73. As to the points raised by Mr Bowles in mitigation, we have considered, but reject the suggestion he was poorly advised and assisted by the letting agents upon whom he relied in relation to the management of the property. For the reasons given above, it was Mr Moore's obligation, and not the agents, to ensure that the Property was licensed. The fact that he has not been convicted of any other housing offence is not a point in mitigation of this offence. The suggestion that his failure to obtain a licence was born out of ignorance as to the need for one, rather than a deliberate act of non-compliance with the regulations is not, in our view a significant mitigating factor. We accept that this is the only property Mr Moore rents out, but he was alerted to his potential obligation to obtain a license in the agent's terms of Business and a responsible landlord should have both read those Terms and checked whether a licence was required.

74. We accept that a significant mitigating factor is that Mr Moore applied for a licence promptly after the need for one was drawn to his attention in about February 2022. We accept, on the balance of probabilities, that he was not aware of the need to do so before that date.

75. In our assessment Mr Moore's failure to ensure that an annual gas safety check was carried out, and the mitigating factor that he applied for a licence promptly when he was notified of the obligation to do so broadly balance themselves out when considering the quantum of the RRO.

76. Taking all these matters into account we determine that the appropriate order in this case is for the repayment of 40% of the rent paid. We therefore make RROs in the sum of £6,480 and order Mr Moore to reimburse the Applicants for the £300 they paid to the tribunal for the application and hearing fees.

Amran Vance

Date: 19 April 2023

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. 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 date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking.