FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AP/HMF/2021/0299**
HMCTS code	**:**	**Video**
Property	**:**	**714 Lordship Lane, London N22 5JN**
Applicant	**:**	**(1) Ms V Gal** **(2) Ms A Muller**
Representative	**:**	**Ms Sherratt (23 June 2022) and Mr Neilson (31 August 2022 and 28 September 2022), of Justice for Tenants**
Respondent	**:**	**Ms N Demeter**
Representative	**:**	**In person**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Mrs S Coughlin MCIEH**
Date and venue of Hearing	**:**	**23 June 2022, 31 August 2022 and 28 September 2022** **Remote**
Date of Decision	**:**	**11 May 2023**

DECISION

Covid-19 pandemic: description of hearing

Each of these hearings took place by remote video using CVP. A face-to-face hearing was not practicable and all issues could be determined in a remote hearing.

Orders

(1) The Tribunal makes rent repayment orders against the Respondent to each of the Applicants in the following sums, to be paid within 28 days:

Ms Gal: £3,420

Ms Muller: £3,100

(2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £300.

The application and procedural background

1. On 6 December 2021, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 3 February 2022.

2. In accordance with the directions, we were provided with an Applicant's bundle of 294 pages.

3. The application was originally scheduled for hearing on 23 June 2022. The Respondent did not provide any material in accordance with the directions. Very shortly before the hearing, the Respondent produced a statement with accompanying exhibits.

4. The Applicants were represented by Ms Sharrett. The Respondent represented herself.

5. The Respondent's material included serious allegations against the Applicants. Following discussion with the parties, it was agreed that we would consider a preliminary issue as to the identity of the landlord, and then adjourn to allow the Respondent to provide a properly organised bundle, and for the Applicants to respond.

6. When we came to consider the preliminary issue, it transpired that Ms Demeter accepted that she was the Applicants' immediate landlord for

the relevant period. Among the late papers provided by her was a tenancy agreement by which she rented the property. We accordingly removed the alternative Respondent identified in the application form (the freehold owner) by agreement. We subsequently made further directions.

7. The Tribunal reconvened on 31 August 2023. On that occasion, the Respondent explained that her young daughter had been admitted to hospital for a serious matter and was on her own while she took part in the proceedings (again remotely). We agreed with the Respondent's view that we should continue with the hearing unless and until it became necessary or desirable for the Respondent to go to her daughter. That limited the hearing to the morning.

8. We further reconvened remotely on 29 September, on which occasion the hearing was concluded.

9. The Applicants and the Respondent are Hungarian. Ms Gal and the Respondent speak English well. Ms Muller does have reasonable English, but not to the same level of fluency. For the hearing on 31 August 2023, the Tribunal was assisted by a Hungarian translator. Ms Muller was able to largely give her evidence in English, but was assisted when in doubt, or when dealing with more technical matters, by the translator. The translator was, at short notice, not able to attend on the final hearing day. Both Mr Neilson and the Respondent were content to continue in his absence.

10. The traditional Hungarian naming convention is that surnames are stated first and given names second. We established that, in general, the parties had adopted the English naming convention, and that is how we have sought to refer to them in this decision (although this may be an error in relation to Cordiu Marian). The same applies to Mr Vuksani, who is Albanian.

The hearing

Introductory

11. At the substantive hearings on 31 August and 28 September 2022, the Applicants were represented by Mr Neilson of Justice for Tenants; and the Respondent represented herself.

The alleged criminal offence

12. The Applicants allege that the Respondent was guilty of the having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 ("the 2004 Act"), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order ("RRO") under Part 2, chapter 4 of the 2016 Act.

13. The Applicants' case is that the property was situated within an additional licensing area as designated by the London Borough of Haringey ("the council"). This additional licencing scheme came into force on 27 May 2019 throughout the borough. The Applicants initially also contended that there was a breach of the mandatory licensing requirement. We approached the case on the basis of the additional scheme.

14. It was not contested that the property was within the area subject to the additional licensing scheme.

15. The property is a self-contained flat with five bedrooms, a shared kitchen, two bathrooms and two WCs. The Applicants' case is that the flat was occupied throughout the period from 24 June 2020 to 30 March 2021 by at least three occupants, in two or more separate households. Four adults occupied separate bedrooms and a couple occupied the fifth, with separate tenancies or occupation agreements. The occupants were unrelated, except that the Applicants are mother and daughter, occupying separate rooms.

16. The Applicant provided uncontested evidence, in the form of email correspondence with officers of the local authority, that the property had not been licenced, nor an application for a licence made, during the relevant period.

17. Both Applicants moved in on 24 June 2020 and still occupied the property at the date at which the Applicants' bundle was served. The relevant period for the purposes of the application was 24 June 2020 to 30 April 2021, the latter date being that at which the Respondent relinquished her interest in the property.

18. The Applicants' case was that the property was occupied as follows:

    Room 1: Marian Claudiu, from 24 June 2020, still in occupation at the time the bundle was submitted;
    Room 2: Katalin and Tibor (with a young child), 25 June to 25 July 2020; Henrietta Vodot and Ferenc Transzfert from early August 2020 to August 2021;
    Room 3: Eva Kerezsi from 28 July 2020, still in occupation at the time the bundle was submitted;
    Room 4: Ms Muller; and
    Room 5: Ms Gal.

19. The Respondent's initial case was that the property was not licensable during the relevant period, as there were only three people resident. These were the Applicants and Vuksani Brikeno, who the Respondent described as the husband of Ms Gal. While the Respondent put her case in terms of the number of occupiers, on the basis, presumably, of the way that the Applicants had framed their case in terms of the

requirement for mandatory licencing, the same alleged facts would also negative the offence in respect of the borough's additional licencing requirement. Their relationships – mother and daughter in respect of Ms Muller and Ms Gal; husband and wife, or people living together as husband and wife, in respect of Mr Vuksani and Ms Gal – would mean that they constituted a single household (section 258 of the 2004 Act).

20. The Respondent's case was that she let the whole property to Ms Gal and Mr Vuksani. She produced a form of assured shorthold tenancy agreement naming them as tenants. We note that this agreement specifies the landlord as FirstView Properties Ltd, and the Respondent as the agent of the landlord. The same company is identified as the landlord on the tenancy agreement letting the property to the Respondent.

21. The Respondent's case developed further over time. In particular, she came to assert that others may have been in occupation during the relevant period, but, if so, that was a result of unauthorised sub-letting by the Appellants of which she was not aware.

22. We should note the circumstances in which this became an express part of the Respondent's case. During Mr Neilson's cross examination of the Respondent, he put it to her that Ms Kerezsi was occupying the property as her tenant. In her answer, she denied that Ms Kerezsi was her tenant, but equivocated as to whether she was in occupation or not, and exhibited some hesitation in her evidence. On being questioned by the Tribunal, she said that she intended to take a legal action against the Applicants, and had been advised to stick strictly to matters relating to the RRO application at this hearing. The Tribunal (Judge Percival) said to her that she was at liberty to take whatever view she wished as to her evidence, and that the Tribunal was not to be taken to be suggesting that she should ignore advise that she thought she should take. It was at that point that the Respondent said that she understood from other people that Ms Muller had been sub-letting the property.

23. A central piece of evidence provided by the Appellants was a series of screenshots from a Facebook chat group called "Lordship Lane". On its face, the chat group was created by the Respondent to facilitate communication relating to the house.

24. On the Applicants' case, the chat group showed that the occupation of the property was as they alleged.

25. The Respondent's case (as it developed) was that the chat group had been created by someone using her name and Facebook profile picture to start the group, in order to create false evidence.

26. In the following account of the evidence from the chat group, we describe what the screenshots purport to show, and refer to a user who appears as "Noemi", the Respondent's first name, or sometimes as "Noemi Demeter". The Applicants' case is that this user is the Respondent.

27. The Applicants provided 26 pages of screenshots in their initial bundle, and a further 36 in their response to the Respondent's bundle. The screenshots (most of which are from a phone screen) show the group being created by Noemi on 30 June 2020. The opening message reads "I created the group to make communication easier regarding things in the property which concerns everyone. You can still contact me in private about other things [smiley emoticon]."

28. The members are given (on an undated screenshot) as the Applicants, Mr Marian, Ms Kerezsi, "Franky Transzfer" and Henrietta Vad – ie Ferenc Transzfer and Henrietta Vadot, who, on the Appellants' case, ceased occupation in August 2021. Separate screenshots included lines of text apparently recording an operation, rather than a message from one user to others. These showed "Noemi Demeter" adding Ferenc and Henrietta (Mr Transzfert and Ms Vadot), and Ms Kerezsi.

29. The screenshots contain every-day communication between the Respondent and the tenants, and between the tenants, about various matters, including repairs issues, but also Noemi or a tenant asking to be let in and similar conversations. Passages in the screenshots put to the Respondent in cross examination apparently indicated exchanges involving Noemi and Mr Marian, Mr Transzfert and Ms Vadot, and Ms Kerezsi. The Respondent confirmed the accuracy of the translations provided by the Appellants on the screenshots.

30. The Respondent was cross-examined about an entry dated 12 September 2020, in which Noemi says (in English) that "[t]he electrician and Peter will be there tomorrow at 11 am The works will take 30 minutes - 1 hour". In cross examination, the Respondent said that Peter was the name of her then partner who had helped with various aspects of the management of the property; there had been frequent problems with the electricity at the property; and, while she could not be sure of the exact date, there were problems with the electricity at about that time, and Peter may have helped by accompanying an electrician.

31. Among the conversations shown in screenshots in the Appellants' reply to the Respondent's bundle was one in which Ms Muller asked Noemi what age "our flatmates" were, and how many there would be. The response from Noemi was "6 overall. In one room there will be 2 people, in all other 1 -1 person". In cross-examination, the Respondent said that this was a conversation that did indeed take place, before the Applicants moved in. While that represented her initial plan in relation

to the property, that is not what happened subsequently. On the screenshot, the conversation is dated on the screenshots as 21 June 2020.

32. The Respondent's evidence was that she did not create the group from which the screenshots were taken. She said she had created a different group to communicate with the tenants, but it was called "714 Lordship Lane". It did not include the participants as set out in paragraph [28] above. The members of the genuine group created by her were the Applicants, and, initially, Katalin and Tabor. Mr Vulksani was never a member. The opening statement in the screenshot sequence (see [27] above) was the sort of thing she would have written in her group, but not this one. She could not provide screenshots of her own group, because she left it, and as a result no longer had access. Mr Nielson put it to her that if she had left the group, she would still have access to conversations before she left. She said all she knew was that she could no longer access the group.

33. There was other evidence in relation to Ms Kerezsi.

34. Ms Demeter produced a very brief witness statement signed by Ms Kerezsi, in which she said that she did not live at the property, and gave an address in Budapest. It was explained to Ms Demeter that there were a number of requirements to be satisfied before a Tribunal would allow evidence to be given remotely from a foreign jurisdiction unconnected in international law with the UK. In particular, it was necessary for the person whose evidence was sought to be heard to write to the Tribunal stating that they wished to give evidence and were not being coerced. Our understanding is that this requirement is imposed by the Hungarian Government as a condition for allowing such evidence to be given, and thus cannot be waived by the Tribunal. No such letter was received by the Tribunal, and Ms Kerezsi did not give evidence from Hungary.

35. Ms Gal had said in her evidence that initially, Ms Kerezsi had provided the Applicants with a flat share agreement, which had been disclosed to the Respondent. At some point, Ms Kerezsi had decided that she did not want to be involved in the application, so that agreement had not been provided in the hearing bundle.

36. In cross-examination, the Respondent said that Ms Kerezsi had told her that she had been a sub-tenant (ie of the Applicants). It was put to her that the witness statement submitted by the Respondent said that she had never lived there. The Respondent said that she had contacted Ms Kerezsi after receiving the (forged) flat share agreement. Ms Kerezsi told her she was unaware of the application, and had not provided the Applicants with an agreement. The Respondent asked her to provide the witness statement, and she agreed. Then, earlier in the week of the

final hearing, she had contacted Ms Kerezsi again, and it was then that she told the Respondent that she had sub-let.

37. The Applicants produced video film evidence, which included a short film of a woman entering or leaving a room in the property. The Respondent accepted that the woman was Ms Kerezsi.

38. Ms Gal's evidence was that Mr Vuksani was her boyfriend at the relevant time, but that he did not live at the property. She explained the tenancy agreement as follows. She had asked the Respondent to put Mr Vuksani's name on a utility bill related to the house, because he needed some proof of an address in the UK, and at the same time had asked for an agreement in relation to her occupation of her room. The Respondent misunderstood the request, and provided her with a tenancy agreement with Mr Vuksani's name on it, as well as that of Ms Gal, for the flat as a whole. This was the agreement produced by the Respondent. It was dated 24 June 2020.

39. Ms Gal said the Respondent subsequently corrected the error and provided Ms Gal with a single-room agreement, and added Mr Vuksani to a water bill. The email provided by the Respondent to which the agreement was attached was dated 6 November 2020. Also produced by the Respondent was an email dated 9 November 2020, which included an attachment. The partial text of the name of the document, reproduced under the Microsoft Word logo on the digital representation of the attachment on the screenshot provided is "Room Rent …al Vivi.docx".

40. In both their original bundle, and in the response to the Respondent's bundle, the Applicants produced a document headed "House/flat share tenancy agreement" and dated 24 June 2020. It purports to carry a DocuSign signature of the Respondent as landlord. Ms Gal's evidence was that this was the correct room agreement that had been sent to her in the email of 9 November 2020. It was put to her that it was a forgery, which she denied.

41. Ms Muller also rejected the accusation that she had forged the similar agreement in respect of her room. She initially said that she could not remember when it had been supplied to her. Subsequently, during cross-examination, she said she believed she had asked for it in February 2021, as she needed it to apply for universal credit.

42. We mention an episode during the course of the proceedings upon which the Respondent sought to rely. At the first, non-effective, hearing, Ms Gal deleted ("unsent") a number of her messages to the Respondent on another platform, Facebook messenger. The effect of doing so is to remove the messages from being available to the recipient, as well as the sender. The Respondent provided screenshots of ribbon messages on her phone showing the fact of the deletions. The

Respondent suggested that this was to delete messages which may have been advantageous to her. In her oral evidence, Ms Gal said that the messages she had deleted were those which including her, Mr Vuksani and her mother's passport photographs, which she thought might be misused by the Respondent.

43. We were not satisfied with Ms Gal's explanation, as (as the Respondent argued), the Respondent already had screenshots of Ms Gal and Mr Vuksani's passports, and anyway there was no real explanation of how she feared the Respondent would misuse them. But equally, we were not satisfied that the Respondent had provided a plausible account of how the deleted messages would have assisted her case.

44. In the result, we do not think that this episode adds anything significant to our consideration of the issues.

45. The reliability or otherwise of the screenshots of the chat group are, however, fundamental to our decision-making on whether the criminal offence is proven, and has important effects on our other decisions.

46. We are satisfied, beyond a reasonable doubt, that the screenshots truly represent the conversations they purport to represent, and accordingly that the criminal offence is made out, subject only to a defence, which we consider below.

47. The Respondent's case was that the chat group had been created by the Applicants for the purpose of making a fraudulent RRO application. The implication of this allegation is that the group was operated by the Applicants (and, possibly, Mr Vuksani) from the outset of the tenancy, and was scrupulously maintained throughout, with repeated fraudulent uses of the Noemi/Noemi Demeter identity to create a false case.

48. Indeed, the allegation must go further than that, in that it appears that the group was created somewhat in advance of the letting to the Applicants, as evidenced by the conversation in which Ms Muller asks Noemi who the future flat mates would be, and their number. The Respondent appeared to accept the verisimilitude of the exchange, but the logic of her case is that, at the very least, it was copied or reproduced in the fake group chat.

49. This, without more, is incredible. It presupposes both knowledge of the licensing system and of RROs, and a settled, pre-planned plot formed before the tenancy started to produce fake evidence in support of the objectives of the plotters.

50. And this all in an implausible timeframe. The exchange in which Ms Muller asks the Respondent about future housemates, and which the Respondent accepts was in substance correct (although it is not clear

how she accounts for its presence in the contested chat group) is dated 21 June 2020, a date she did not contest. It is agreed that the Applicants moved in on 24 June 2020. The key purpose of the plot as alleged by the Respondent was to create false evidence that more than the Gal-Muller-Vuksani household would be resident, and the property thus would require a licence. But on 21 June, there would have been no need for the plot, as the Applicants knew that the Respondent intended to let to six people. So the existence of the fake chat group in which the 21 June exchanges were recorded would, necessarily, have been useless, at that time.

51. It is also not credible to us that the Respondent would have changed her mind about letting to six people between the 21 June and the 24 June and instead let the whole property to Ms Gal and Mr Vuksani, without any contemporaneous documentary or digital trace (recalling that it was agreed that the Gal/Vuksani tenancy agreement was only supplied in November 2020). The only explanation would have been that all of the other potential tenants dropped out during that period, when we know at least some of those who were intended to be tenants were, in fact, resident thereafter. Further, even on the Respondent's case, the couple with the young child who preceded Ferenc Transzfert and Henrietta Vodot were resident from 24 June, which is inconsistent with the letting to Ms Gal and Mr Vuksani alone (and, on its own, would have amounted to a breach of the additional licensing scheme).

52. However, we consider it would be fair to test not just the allegation made by the Respondent, but also, as an alternative, that the group chat produced by the Applicants is not a false group running in real time, with accurate date and time markings, but rather is a post-hoc forgery. The Tribunal understands that apps to facilitate the forgery of exchanges on various platforms are reasonably readily available on the internet. We do not know, and had no evidence, in relation to this particular platform, but proceed on the basis that there is no technical obstacle to such a forgery.

53. With that in mind, we have read and carefully considered the exchanges provided to us (which, as we understand it, in any event amount only to a sample of the exchanges in the chat group). The exchanges exhibit all the qualities of genuine, natural conversations between tenants and a landlord. The internal evidence of the exchanges in the chat group is enough to persuade us to the criminal standard that it is genuine. To have fabricated it would have require a remarkable level of skill and imagination and a command of realistic dialogue rare in fiction.

54. In addition, we thought that the fact that the Respondent's evidence effectively endorsed the likelihood of the exchanges in relation to the visit of an electrician accompanied by Peter was telling.

55. We accordingly reject this possibility, in addition to that relied on by the Respondent.

56. We find that the group chat provided is genuine, and as a result that the occupation of the property was as described by the Applicants. An HMO licence was required.

57. The Respondent did not raise the issue of reasonable excuse (section 72(5) of the 2004 Act). That was no doubt inevitable given the nature of her case. We have, however, considered whether such a defence is available to her. Potentially relevant is her experience in relation to FirstView and HMO licensing.

58. The Respondent's evidence had been that she had worked for FirstView, who were her superior landlord of the property. When she relinquished the tenancy, it reverted to the company. She had worked for FirstView for about four or four and a half years from autumn 2013. While doing so, she dealt with HMO licence applications (on behalf of FirstView, who were the landlords of the properties concerned).

59. The Respondent said that, in respect of this tenancy, she relied on her previous knowledge of HMO licensing. She was not a member of a landlord's association. She did receive email updates from some websites that she had in the past subscribed to, but she agreed that she was not really up to date with her obligations. That was the case because she did not consider the property required a licence because of the number of occupants. When she took the tenancy, she asked the agency if it had an HMO licence, and was told that it did not, but if one was necessary, it would not be a problem.

60. We do not think that, on these facts, it is possible for the defence to be made out. In *Aytan v Moore* [2022] UKUT 27 (LC), [2022] H.L.R. 29, at paragraph [40], the Upper Tribunal explained that it would be rare for a landlord to be able to rely on assurances from a managing agent that a licence was not necessary, and a precondition for such reliance would be evidence of a contractual obligation on the part of the managing agent to tender such advice. In this case, although FirstView were referred to as "the agents" by all witnesses in the hearing, they were not, in this case, acting as an agency at all, but were the Respondent's superior landlord. It is difficult to imagine circumstances in which reliance on a superior landlord's advice could possibly amount to a reasonable excuse. We are confident that it did not in this case. We also note that even on the Respondent's evidence, FirstView's statement to her was that the property did not have a licence, not that it did not require one.

61. We did not consider that the evidence presented any other potential basis of a reasonable excuse.

62. We accordingly find, on the criminal standard of proof, that the Respondent committed the criminal offence contrary to section 72(1) of the 2004 Act.

The amount of the RRO

63. In considering the amount of an RRO, the Tribunal will take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC), a case recently reported when the final hearing took place, and to which we were referred by Mr Nielson. At paragraph [20], the Upper Tribunal said the following:

> "The following approach will ensure consistency with the authorities:
> (a) Ascertain the whole of the rent for the relevant period;
> (b) Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. …
> (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 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)."

64. We add that at stage (d), it is also appropriate to consider any other of the circumstances of the case that the Tribunal considers relevant.

65. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]

> "I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

66. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.

67. The possible RRO claimed by the Applicants were, respect of Ms Gul, £5,850, and for M Muller, £5,600.

68. Two issues arose in relation to Ms Muller.

69. The first was that she was two weeks in arrears of rent when the tenancy came to an end. However, the evidence from the Applicants was that they had paid a deposit of two weeks rent to the Respondent when they entered into the agreements. When the Applicant relinquished the tenancy, she paid the deposits over to FirstView, but it was agreed that she would retain the two week deposit paid by Ms Muller to cover the arrears of rent, rather than hand it over. Ms Muller subsequently rebuilt her deposit by paying two weeks additional rent to FirstView.

70. It appears to us, therefore, that the two weeks arrears was effectively discharged at the point at which the tenancy was relinquished. The funds were in the hands of the Respondent, and count as rent paid from the time that it was agreed that they be retained to discharge the arrears. We did not have evidence of exactly when that time was, but consider it is more likely than not that it was before the moment when the tenancy came to an end. There is therefore no warrant to reduce the maximum RRO in this respect.

71. We note that this transaction suggests that deposits were taken but not protected as required by law. However, we were not provided with direct evidence to this effect, and as no point was taken about tenancy deposit protection by the Applicants, we take no further account of the point.

72. Secondly, the rent calculation does not take account of any Universal Credit payments to Ms Muller. The evidence was, however, that she was in receipt of the benefit at a certain point. It was not, however, clear exactly when. Given the lack of clarity, we asked the Appellants to produce evidence of payment after the hearing concluded. This consisted of a screenshot of an official website showing that, for the period 17 April to 16 May 2021, Ms Muller had received £720 in Universal Credit. Another screenshot showed that she did not receive any benefit for the previous period.

73. It is agreed that the end date for the claim is 30 April. The basis Universal Credit was therefore paid in respect of 13 days before the end of the relevant period. The information provided did not break down the extend to which the benefit was in respect of rent. We have accordingly assumed that all of the rent was covered, and thus deduct the rent attributable to those days. The is sum of £278.57.

74. The total possible RRO at this stage for Ms Gal is £5,850. The total possible RRO for Ms Muller is 5,321.43

75. Turning to stage (b), the room occupation agreement provided states that "bills are included in the Price".

76. We did not receive any evidence as to actual expenditure on utilities in advance of the hearing. At the hearing, the Respondent told us that "bills" amounted to £200 per month. This included council tax as well as utility bills, but not (so we understood) water rates and electricity. We estimate council tax at £126 per month, by using the local authority website. There was no evidence that the water was metered, so we discount water rates, as not being a charge that related to the tenants' use.

77. It is clear that council tax should not be included in the utility expenditures which fall to be deducted from the RRO, therefore we deduct that sum from the figure to be deducted at stage (b).

78. We received no direct evidence in relation to charges for electricity. However, it was clear from exchanges in the group chat, which we have found to be genuine, that electricity was paid by means of a pre-payment card held by the tenants. In these circumstances, it is more probably than not that the tenants themselves paid for the electricity.

79. Accordingly, the full amount attributable to relevant utilities is £74 a month, which amounts to £764.67, for the relevant period. We conclude that the appropriate way to allocate this sum between tenants is to work on a per-room basis, rather than by rent (as to which we have limited information) or person.

80. The utility reduction in relation to the Applicants is therefore £153 each.

81. We accordingly reduce the maximum RROs by that amount, as required by *Acheampong*. The maximum figure for Ms Gal is £5,697, and that for Ms Muller £ 5,168.43.

82. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account. However, it is also the offence which is by far the most frequently encountered by the Tribunal considering RROs.

83. We turn to the seriousness of the offence committed by the Respondents compared to other offences against section 72(1).

84. The Applicants submitted that we should consider the Respondent to have been a professional landlord. Mr Nielson cited *Ayton v Moore*, in which, in the conjoined appeal of *Wilson v Arrow*, a landlord of a single property was found to be a professional landlord. In doing so, he relied on the Respondent's previous professional experience of dealing with HMO licencing when she worked at FirstView, as outlined above.

85. We do not think that this is an appropriate approach. In the first place, when considering small scale landlords, it is not obvious that distinguishing between professional and non-professional landlords as a simple binary is all that helpful to the Tribunal in determining the seriousness of an offence contrary to section 72(1).

86. What matters is the particular facts of the case. We broadly accept the Respondent's account of her engagement with the property. She is a single mother of a young child (her daughter had just started school by the time of the last hearing date). Otherwise, she works as a beautician, in pursuit of which she owns a company. In passing, we reject Mr Neilson's submission that simply being a company owner is an indication of material substance. It appears that the Respondent simply uses a corporate vehicle to undertake what is essentially a self-employed, and not particularly well paid, occupation.

87. The Respondent said that she took on the property from FirstView as a way to secure some extra income, but that she was not successful in doing so, and so relinquished the tenancy early. While she provided some minimal evidence in the form of bank statements, we accept that she did not provide comprehensive evidence of her financial position (see below at paragraph [101]). However, we consider this broad trajectory to make sense of her engagement with the property, and see no reason to disbelieve it.

88. Having said that, she either knew that a licence was necessary, and did not obtain one, or she failed to make any proper effort to inform herself of her responsibilities. In respect of the former possibility, we observe that the law in relation to HMO licensing was significantly different during the period in which she was professionally involved with it. Nonetheless, whether she counts as a professional landlord or not, she took on the tenancy of the property with a view to making a profit out of the business of providing homes for others, and she did not properly discharge her responsibilities.

89. The Applicants submit that there were deficits in the fire safety arrangements in the property. The evidence on this was limited. What is clear, however, is, first, that there were smoke alarms (according to the Applicants' own evidence). There was no evidence one way or the other as to a heat sensor in the kitchen or the presence of fire doors. There was no equipment in the form of fire blankets or fire extinguishers. The evidence as to signage was in conflict. The

Applicants said there was none, the Respondent thought that there was. The Applicants produced a helpful video film of the property (in, we think, early 2022), which does not show any fire escape signs.

90. There was no express claim in respect of the lack of a fire safety assessment, so we do not consider that we can come to a conclusion as to whether one was procured or not, such as to take into account its absence against the Respondent. That does present some difficulties, in that, in truth, a proper assessment of the adequacy of fire safety arrangements should be based on such an assessment.

91. However, doing the best we can, our assessment in respect of fire precautions is that the single most important element – smoke alarms – were present. We cannot conclude that there were no fire doors or heat sensor. The absence of a fire blanket in the kitchen is a serious matter, kitchens being a major source of domestic fires. The absence of fire extinguishers is not necessarily material, as we are aware that there is a body of opinion that they encourage dangerous attempts to put a fire out rather than escape, and should not be provided without training. As to signage, in the light of the video film, we prefer the Applicants' evidence.

92. Thus there were important defects in the fire safety arrangements, but we cannot conclude that they were thoroughgoing or of the worst kind.

93. The evidence was that a gas safety certificate was in place for most of the relevant period, but not for two to three months at the beginning of 2021. There was a domestic electrical installation condition report, but it recorded the general condition of the system as unsatisfactory. There was no evidence of whether the problems were rectified. No certificates (gas safety, electricity safety, EPC) were provided to the tenants.

94. These matters – fire safety and the certificates – also amount to breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006, as Mr Neilson argued.

95. As to disrepair, there were limited allegations. Specifically, it was said that it took an excessive amount of time to replace a malfunctioning washing machine and to fix a latch on the door from the kitchen onto the terrace (from which access to the garden was provided), that for a period the internet connection was inadequate, and that the garden was un-usable until cleared by the tenants themselves. There was also a complaint that locks had not been fitted to the individual rooms.

96. The Respondent argues that remedying the complaints about the washing machine and the latch were delayed in part because of pandemic regulations.

97. We broadly accept that the problems identified by the tenants existed, but consider them to amount to only moderate evidence of disrepair, in the context of the Tribunal's experience of disrepair in other cases. We do not discount it, but it is towards the lower end of the spectrum of seriousness. The appellants agreed that the condition of the property was broadly the same as shown in their video film at the relevant time. The film shows a flat with communal facilities in a reasonable state, as were the two rooms shown by Ms Muller (who took the video film).

98. In order to assess the starting point at stage (c), we take account of the now substantial guidance in case law from the Upper Tribunal, including cases in which the Upper Tribunal has substituted its own assessments. In particular, we have considered *Acheampong* itself, *Williams v Parmar and Others* [2021] UKUT 244 (UT), [2022] H.L.R. 8; *Aytan v Moore* [2022] UKUT 27 (LC); *Hallett v Parker* [2022] UKUT 239 (LC); *Hancher v David and Others* [2022] UKUT 277 (LC); and *Dowd v Martins and Others* [2022] UKUT 249 (LC). The range of percentage of the maximum possible RRO awarded range from 25% to 90% (ie at stage (d) – most of the cases precede *Acheampong*).

99. Given our conclusions above, we have found *Dowd v Martins and Others* of particular assistance. In that case, rather similar considerations, except in relation to fire safety, led the Upper Tribunal to assess the proportion of the maximum at stage (c) at 45%. In the light of the fire safety issues in this case, we add 5%. Had they been more serious, a larger addition would have been necessary.

100. At stage (d), we must consider what effect the matters set out in section 44(4) have on our conclusions so far. Section 44(4) provides that in determining the amount of an RRO, within the maximum, the Tribunal should have particular regard to the conduct of both parties, and to the financial circumstances of the landlord. We must have particular regard to these matters, but we may also have regard to such us matters as we consider relevant in the circumstances.

101. The Respondent provided limited bank accounts to show that she was paying rent each month to FirstView as superior landlord. She did not advance either significant documentary or oral evidence of her financial circumstances, and did not submit that we should reduce the RRO in the light of them.

102. As Judge Cooke noted in *Acheampong*, there is a close relationship in terms of conduct, at least of the landlord, between stages (c) and (d). Insofar as we have already made findings in relation to stage (c) which may also be said to relate to the conduct of the Respondent, we do not double count them in considering the section 44(4) matters.

103. We do not consider that the conduct of the Applicants can be seriously impugned. To the extent that there were short periods during which

there were small amounts in arrears on Ms Muller's account, we consider them trivial.

104. As to the Respondent, the matters dealt with under stage (d) above aside, we do not consider that there was any other conduct during the currency of the tenancy that provides any basis for increasing the percentage of the RRO at stage (d).

105. However, Mr Neilson submits that we should take account of her conduct of these proceedings. He argued that "the conduct of the landlord and the tenant" in section 44(4) was not limited to conduct during the relevant period in respect of which the RRO was claimed. He cited *Kowalek v Hassanein Ltd* [2021] UKUT 143 (LC), where, at paragraph [38], the Deputy President said that in the subsection,

> "[n]o limit is imposed on the type of conduct that may be considered, and no more detailed guidance is given about the significance or weigh to be attributed to different types of conduct in the determination. Those questions have been left to the FTT to resolve."

106. *Kowalek* concerned the tenants' conduct in failing to pay the rent. It appears that the arrears of rent that were in issue as conduct did in fact occur during the relevant period (although it is not altogether clear whether they continued after it as well, and if so, whether that was taken into account by the FTT). However, in the appeal of that decision ([2022] EWCA Civ 1041, [2022] 1 W.L.R. 4558), the Court of Appeal quotes with approval the Upper Tribunal in *Awad v Hooley*. The passage quoted is from paragraph [36], where Judge Cooke said this:

> ""The circumstances of the present case are a good example of why conduct within the landlord and tenant relationship is relevant; it would offend any sense of justice for a tenant to be in persistent arrears of rent over an extended period and then to choose the one period where she did make some regular payments—albeit never actually clearing the arrears—and be awarded a repayment of all or most of what she paid in that period."

107. Thus in *Awad*, it was exactly the conduct of the tenant at times other than the relevant period that justified a reduction in the RRO. The conduct (in this context) of the tenant in both cases was a failure to pay rent, but as is evident from the broad statement made by the Deputy President in *Kowalek* quoted above, there is no limit to the conduct to which we should have regard, and there is no suggestion that non-payment of rent falls into a special category of conduct that may be taken into account outside the relevant period.

108. Neither do we think that the conduct of proceedings should fall into a special category that *may not* be taken into account. To do so would be

to read the words in section 44(4) to mean "the conduct of the landlord *other than in conducting the proceedings*" (cf paragraph [29] of *Kowalek* in the Court of Appeal).

109. No doubt there could be no question of taking into account the conduct of a landlord who failed in his or her argument that the criminal offence was not committed, or in submissions as to the amount of the RRO. We do not think it would be right, either, to take into account the conduct of a landlord where the Tribunal found the landlord to be an unsatisfactory witness, or where the Tribunal preferred the evidence of the tenant to that of the landlord in relation to a factual matter.

110. But neither of those are this case. In this case, the very foundation of the Respondent's case was an accusation of lying and outright forgery by the Applicants, which would, if true, constitute the criminal offence of fraud, and other criminal offences besides. On the evidence available to us, we have found those accusation to be false. In these extreme circumstances, we think it would – in Judge Cooke's words – offend any sense of justice if we did not take it into account.

111. Accordingly, we consider it appropriate to add 10% to the starting point, meaning that the final proportion is 60% of the maximum RRO in each case. The final order rounds the sums to the nearest £10.

Reimbursement of Tribunal fees

112. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

113. 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 London regional office.

114. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

115. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

116. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 11 May 2023

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

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

Housing and Planning Act 2016

40 Introduction and key definitions

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

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

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

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

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

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house

	Act	*section*	*general description of offence*
7	This Act	section 21	breach of banning order

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

41 Application for rent repayment order

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

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

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

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

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

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

(b) the authority has complied with section 42.

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

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a rent repayment order

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

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

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

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

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

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

44 Amount of order: tenants

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

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

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

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

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

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

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

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

(b) the financial circumstances of the landlord,

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