FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMF/2021/0310**
Property	**:**	**19 Halyard House, Manchester Road, London E14 3HD**
Applicants	**:**	**Abhishek Agarwal, Alba de la Cruz, Christiana Akindele, Elizabeth Doyle and Max Stevens**
Representative	**:**	**Cameron Neilson of Justice for Tenants**
Respondent	**:**	**Silverrooms Limited**
Representative	**:**	**R.P. Curtin (described in correspondence as 'Legal Consultant')**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Mr A Lewicki FRICS**
Date of Hearing	**:**	**19 May 2023**
Date of Decision	**:**	**7 June 2023**

DECISION

Description of hearing

This was a face-to-face hearing.

Decisions of the tribunal

(1) The tribunal orders the Respondent to repay to the Applicants the following sums by way of rent repayment:

- Abhishek Agarwal – £2,601.00;
- Alba de la Cruz – £4,757.45;
- Christiana Akindele – £2,414.00; and
- Elizabeth Doyle and Max Stevens (jointly) – £1,861.50.

(2) The tribunal also orders the Respondent to reimburse to the Applicants jointly the application fee of £100.00.

(3) The tribunal also orders the Respondent to reimburse to the Applicants jointly the hearing fee of £200.00.

(4) The above sums must be paid by the Respondent to the Applicants within 28 days after the date of this determination.

Introduction

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**").

2. Adam Hussey was included as an Applicant in the original application but later withdrew. Alkab Chowdhury was originally named as a Respondent, but the Applicants' representative said at the hearing that the Applicants no longer wished to proceed against Alkab Chowdhury.

3. The basis for the application is that the Respondent was controlling and/or managing a house in multiple occupation (an "**HMO**") which was required under the Housing Act 2004 ("**the 2004 Act**") to be licensed at a time when it was let to the Applicants but was not so licensed. Therefore, according to the Applicants, the Respondent was committing an offence under section 72(1) of the 2004 Act.

4. The Applicants' respective claims are for repayment of rent paid during the following periods in the following amounts:

- Abhishek Agarwal – 15.10.2020 to 14.03.2021 - £3,500;
- Alba de la Cruz – 13.09.2020 to 12.05.2021 - £6,237;
- Christiana Akindele – 30.10.2020 to 29.04.2021 - £3,320; and
- Elizabeth Doyle and Max Stevens – 26.10.2020 to 25.01.2021 - £2,430.

Applicants' case

5. The Applicants state that the Property was situated within an additional licensing area as designated by the London Borough of Tower Hamlets throughout the period of claim.

6. This licensing scheme came into force on 1 April 2019 and applies to the whole of the London Borough of Tower Hamlets apart from certain specific wards. The Property is not within any of the excluded wards. The scheme applies to all HMOs, save for some limited exceptions set out in the Notice of Designation.

7. The Applicants state that the Property was occupied by at least 3 people at all points during the relevant period of 13.09.2020 to 12.05.2021. Each single person or household occupied their own room on a permanent basis with separate occupation agreements. It was a standard HMO arrangement with communal cooking and toilet and washing facilities, and with separate households each paying rent and occupying their rooms as their only place to live.

8. Elizabeth Doyle and Max Stevens occupied Room A from 26 October 2020 to 13 January 2021. They were then replaced by Majorie and Selina (not part of this application) who moved in on 2 March 2021 and stayed until 2 May 2021. On 5 June 2021 another woman moved into Room A. Abhishek Agarwal occupied Room B from 15 October 2020 to 15 March 2021. Christiana Akindele occupied Room C from 30 October 2020 to 30 April 2021. A man moved into Room C on 22 May 2021. Adam Hussey (no longer part of this application) occupied Room D from 23 September 2020 to 23 March 2021. He was then replaced by a man who moved in on 10 April 2021. Alba de la Cruz occupied Room E from 13 September 2020 to 13 June 2021.

9. The Applicants state that no licence application was made at any point during their occupation of the Property, and they have referred the tribunal to an email from the local housing authority stating that the Respondent initially applied for a licence on 3 May 2019 but then later withdrew that application and that there was no evidence of its application having been renewed.

10. None of the Applicants were in receipt of the housing element of Universal Credit or of Housing Benefit. The Applicants have supplied a spreadsheet giving a breakdown of the amounts of rent paid together with direct proof of payment in the form of bank statements and banking screenshots.

11. In relation to the Respondent's conduct, the Applicants state that in breach of sections 7 and 8 of The Management of Houses in Multiple Occupation (England) Regulations 2006 ("**the 2006 Regulations**") the refrigerator did not close properly and was very dirty, the cupboards in the kitchen were full of out-of-date food, only one of the freezers was usable, and the wooden cabinet over the kitchen sink was rotting. In addition, the Respondent did not comply with the legal duties of a landlord to ensure that gas and electrical safety certificates were in place throughout the tenancy and provided to the occupants, nor did it comply with the legal duties requiring a landlord to provide a copy of their Energy Performance Certificate to their tenant.

12. The Applicants occupied rooms within the Property pursuant to documents described as Licences to Occupy, but they contend that these were sham licenses rather than the Assured Shorthold Tenancies (ASTs) that should have been granted, and they state that there were no services provided which required a landlord to have unrestricted access to the Property, no occupiers exchanged rooms, and all occupiers had exclusive possession of their room in exchange for rent for a delineated period of time.

13. At the hearing, Mr Neilson for the Applicants said that the Respondent was the one who granted the licences to occupy and was therefore the landlord for the purposes of Chapter 4 of the 2016 Act. He submitted that the Respondent was in receipt of the rack-rent of the Property and was therefore a "person having control" of the Property as defined in section 263 of the Housing Act 2004. He also referred to the decision of the Upper Tribunal in *Cabo v Dezzoti (2022) UKUT 240 (LC)* as authority for the proposition that a person does not need to have an interest in land to be able to grant a lease. Mr Neilson also drew the tribunal's attention to clause 3.3 of the licences to occupy which dealt with the payment for utilities.

14. Mr Neilson said that an aggravating factor in this case was that the Respondent is a professional landlord and therefore a higher standard is expected of it. He also said that the Respondent had used sham licences to occupy as a way of trying to deprive tenants of certain rights. However, he accepted that there was no evidence of any previous convictions and said that the Applicants had no information on the Respondent's financial circumstances.

Witness evidence

15. The hearing bundle contained witness statements from Abhishek Agarwal and Alba de la Cruz, and the tribunal asked them questions about their evidence. Both said that there was no attempt to move them from one room to a different room at any point, and Ms de la Cruz said that the Respondent avoided dealing with any expensive problems during her occupancy.

Respondent's case

16. The Respondent has made no written submissions in defence of its position, and it was neither present nor represented at the hearing.

17. There has, though, been some correspondence with the Respondent's representative, R.P. Curtin. The representative notified the tribunal of their appointment on 9 August 2022. On 22 August 2022 the representative (inter alia) objected to the part of the tribunal's directions which required the parties each to file a bundle containing their statement of case and the documents on which they wished to rely, stating that it would be better for there to be an agreed bundle. On 2 September 2022 the tribunal wrote to the Respondent's representative stating that the parties were required to comply with the directions and noting that the Respondent had yet to file its bundle.

18. However, no bundle was received from or on behalf of the Respondent despite more than 9 months having elapsed between the date of the representative's appointment and the date of the hearing. Even if there was any merit in the Respondent's decision to object to and then fail to follow the tribunal's directions, it is difficult to understand why its representative felt that it was in the Respondent's best interests not to offer any written submissions. This is especially surprising given that the distinction between there being separate bundles and there being a single bundle is largely a procedural one, and this should not have prevented the Respondent from making written submissions.

19. It is clear from correspondence that the Respondent's representative was aware of the date of the hearing.

Relevant statutory provisions

20. Housing and Planning Act 2016

Section 40

(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 …

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

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

7	This Act	section 21	breach of banning order

Section 41

(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.

Section 43

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

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

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) …

Section 44

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

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

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Section 56

In this Part …

"tenancy" … includes a licence …

Housing Act 2004

Section 72

(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 … but is not so licensed.

(5) 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 in the circumstances mentioned in subsection (1) … .

Section 263

(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.

Tribunal's analysis

21. The Applicants' uncontested evidence is that the Property was not licensed at any point during the period of the claim. A licence was required, according to the Applicants, because the Property was in an additional licensing area as designated by the local housing authority and it met the requirements for it to need a licence.

22. Having considered the Notice of Designation in the hearing bundle we are satisfied that the Property was within the area of designation and that it will have needed an HMO licence if and for so long as it was being occupied by at least 3 people in 2 or more households. Having considered the Applicants' uncontested evidence, including the witness statements and other material contained in the hearing bundle, we are satisfied beyond reasonable doubt that for the whole period of claim there were at least 3 occupiers, that the Property required an HMO licence and that it was not licensed.

23. We now turn to the question of whether the Respondent was the landlord for the purposes of the 2016 Act and (to the extent relevant) whether it was a "person having control" of the Property within the meaning of section 263 of the 2004 Act. First of all, the Applicants all entered into agreements called licences to occupy, but it has been settled law since the decision of the House of Lords (as it then was) in *Street v Mountford (1985) AC 809* that simply describing an agreement to occupy property as a licence does not necessarily make it a licence in law, and that an agreement which gives an occupier exclusive possession at a rent is likely to constitute a tenancy. On the basis of the Applicants' uncontested evidence and submissions, we accept that the Applicants all had exclusive possession at a rent and that they all had tenancies and not merely licences to occupy, notwithstanding the label given to the documents that they signed.

24. But in any event, for the purposes of the rent repayment legislation "tenancy" includes a licence. Section 40(2) of the 2016 Act states that *"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 …"*, and section 56 states that *"tenancy"* for the purposes of the part of the 2016 Act dealing with rent repayment orders *"… includes a licence …"*. Therefore, even if these were genuine licences to occupy the tribunal would still have the power to make rent repayment orders.

25. In *Cabo v Dezzoti (2022) UKUT 240 (LC)*, the question arose as to whether to be a "landlord" for the purposes of the rent repayment legislation a person or company needs to have an interest in land in relation to the property in question. The Upper Tribunal in that case

held that a person or company with no proprietary interest in land can grant a tenancy of that land and can be a landlord. Its authority for that proposition was the decision of the House of Lords (as it then was) in *Bruton v London & Quadrant (2000) 1 AC 406*, a case which concerned a licence agreement by which a housing trust had the use of a block of flats to provide temporary housing accommodation. The local authority which owned the block of flats would have been acting ultra vires if it had granted the trust a tenancy. The licence agreement also prohibited the trust from granting tenancies. The trust then allowed Mr Bruton to occupy a flat in the block under an agreement which was called a weekly licence. The question was whether that agreement created a tenancy. Lord Hoffman giving the lead judgment in that case stated that a "lease" or "tenancy" is a contractually binding agreement, not referable to any other relationship between the parties, by which one person gives another the right to exclusive possession of land for a fixed or renewable period or periods of time, usually in return for a periodic payment in money. The fact that the trust had agreed with the local authority that it would not grant tenancies did not make the agreement to grant exclusive possession to Mr Bruton something other than a tenancy. It was also irrelevant, Lord Hoffmann explained, that the trust did not have a legal estate.

26. In the present case, we have no direct proof before us that the Respondent has an interest in land in respect of the Property, for example by having been granted a lease by the owner Alkab Chowdhury. However, it is clear is that the Respondent has granted the Applicants licences to occupy which we are satisfied are in fact tenancies for the two reasons already given above. In addition, the Respondent has not made any submissions on the question of whether it was entitled to grant those tenancies or on the question of whether it has an interest in land or on the question of whether a rent repayment order can properly be made against the Respondent. Furthermore, Alkab Chowdhury – who has been notified of the present application – has not made any submissions either and in particular has not suggested that the Respondent has no authority to grant tenancies or licences to occupy.

27. In addition, the evidence indicates that the Respondent received the rack-rent of the Property and was therefore a "person having control" for the purposes of section 263 of the Housing Act 2004. We are therefore satisfied that the Respondent was the landlord for the purposes of the 2016 Act and was a "person having control" of the Property within the meaning of section 263 of the 2004 Act.

<u>The defence of "reasonable excuse"</u>

28. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 2 of the 2004 Act had a reasonable

excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

29. In this case, the Respondent has not argued that it had a reasonable excuse, and we see no reason to conclude that it did on the evidence before us.

The offence

30. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of control or management of an unlicensed HMO under section 72(1) of the 2004 Act is one of the offences listed in that table.

31. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. Having determined that the Respondent did not have a reasonable excuse for failing to license the Property, we are satisfied beyond reasonable doubt that an offence has been committed under section 72(1), that rooms within the Property were let to the Applicants at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which the application was made.

Process for ascertaining the amount of rent to be ordered to be repaid

32. Based on the above findings, we have the power to make a rent repayment order against the Respondent.

33. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of housing benefit or universal credit paid in respect of rent under the tenancy during that period.

34. In this case, the Applicants' claims relate to a period not exceeding 12 months. There is no evidence that any part of the rent was covered by the payment of housing benefit and the Respondent has not disputed that the rental amounts claimed were in fact paid by the Applicants.

35. We are satisfied that the Applicants were in occupation for the whole of the period to which each one of their rent repayment applications relates and that the Property required a licence for the whole of that period. Therefore, the maximum sums that can be awarded by way of rent repayment are the sums set out in paragraph 4 above, these being the amount paid by the Applicants by way of rent in respect of their respective periods of claim.

36. Under sub-section 44(4), in determining the amount of any rent repayment order the tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which the relevant part of the 2016 Act applies.

37. The Upper Tribunal decision in *Vadamalayan v Stewart (2020) UKUT 0183 (LC)* is one of the authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. Importantly, it was decided after the coming into force of the 2016 Act and takes into account the different approach envisaged by the 2016 Act.

38. In her analysis in *Vadamalayan*, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted. She departs from the approach of the Upper Tribunal in *Parker v Waller (2012) UKUT 301*, in part because of the different approach envisaged by the 2016 Act, *Parker v Waller* having been decided in the context of the 2004 Act. Judge Cooke notes that the 2016 Act contains no requirement that a payment in favour of a tenant should be reasonable. More specifically, she does not consider it appropriate to deduct everything that the landlord has spent on the property during the relevant period, not least because much of that expenditure will have repaired or enhanced the landlord's own property and/or been incurred in meeting the landlord's obligations under the tenancy agreement. There is a possible case for deducting utilities, but otherwise in her view the practice of deducting all of the landlord's costs in calculating the amount of the rent repayment should cease.

39. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases where the landlord's good conduct or financial hardship will justify an order less than the maximum.

40. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James* (2021) UKUT 0038 (LC) and *Awad v Hooley (2021) UKUT*

0055 (LC). In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

41. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4).

42. In *Williams v Parmar & Ors [2021] UKUT 244 (LC)*, Mr Justice Fancourt stated that the FTT had in that case taken too narrow a view of its powers under section 44 to fix the amount of the rent repayment order. There is no presumption in favour of the maximum amount of rent paid during the relevant period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.

43. Mr Justice Fancourt went on to state in *Williams* that the FTT should not have concluded that only meritorious conduct of the landlord, if proved, could reduce the starting point of the (adjusted) maximum rent. The circumstances and seriousness of the offending conduct of the landlord are comprised in the "conduct of the landlord", and so the FTT may, in an appropriate case, order a lower than maximum amount of rent repayment if what a landlord did or failed to do in committing the offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise.

44. In *Hallett v Parker and others [2022] UKUT 165 (LC)*, the Upper Tribunal did not accept a submission that the fact that the local authority has decided not to prosecute the landlord should be treated as a "credit factor" which should significantly reduce the amount to be repaid.

45. In its decision in *Acheampong v Roman and others [2022] UKUT 239 (LC)*, the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which is paraphrased below:-

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;

(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; and
(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).

46. Adopting the *Acheampong* approach, the whole of the rent in this case means the whole of the rent paid by the Applicants out of their own resources, which is the whole of the rent in this case as no part of the rent was funded by housing benefit. There is, though, evidence of part of the rent representing payment for utilities. Clause 3.3 of each licence to occupy sets out an amount for electricity usage and for gas usage which is included in the rent. Whilst this is not perfect evidence of the amount expended by the Respondent on utilities, it is the best evidence available to us. On the basis of the contents of clause 3.3 of each licence and on the broad-brush working assumption that the undefined word 'summer' in clause 3.3 of each licence refers to the period from the beginning of June to the end of August, the following sums represent the Respondent's payment for utilities in respect of each Applicant:

Abhishek Agarwal – £440;

Alba de la Cruz – £640;

Christiana Akindele – £480; and

Elizabeth Doyle and Max Stevens (jointly) – £240.

47. Therefore, after going through the first two stages of the *Acheampong* approach the figures are reduced as follows to reflect the proportion of the rent attributable to utilities:

Abhishek Agarwal – £3,060;

Alba de la Cruz – £5,597;

Christiana Akindele – £2,840; and

Elizabeth Doyle and Max Stevens (jointly) – £2,190.

48. As regards the seriousness of the offence, whilst it could be argued based on the maximum criminal penalty available that there are offences covered by section 40(3) of the 2016 Act which can give rise to a greater criminal sanction, a failure to license is still a serious offence. Failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license

have an important deterrent effect on future offending as well as encouraging law-abiding landlords to continue to take the licensing system seriously and to inspire general public confidence in the licensing system. In addition, there has been much publicity about licensing of privately rented property, and there is an argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence. Furthermore, even if it could be argued that the Applicant did not suffer direct loss through the Respondent's failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

49. As for the seriousness of the offence in this particular case compared to others of the same type, in our view it was reasonably serious but far from being the worst of its type. There is no evidence of serious failings relating to safety, nor of the Property being in bad condition, although there is credible evidence of problems with the kitchen and failure to provide certain documents.

50. Taking the above factors together, we consider that the starting point for this offence should be 75% of the maximum amount of rent payable.

51. As regards the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

Conduct of the parties

52. There is no evidence before us of the Applicants' conduct having been anything other than good.

53. As regards the Respondent's conduct, there is the failure to obtain a licence over a considerable period of time, and no mitigating circumstances that have been brought to our attention. There is also no evidence that the Respondent takes licensing issues seriously, and the Respondent has completely failed to engage with these proceedings. The Respondent is also a professional landlord, and the case law supports the proposition that more is expected of a professional landlord and that therefore the conduct of such a landlord in failing to obtain a licence is more reprehensible. In the Upper Tribunal decision in *Chan v Bilkhu (2020) UKUT 0289 (LC)* Judge Elizabeth Cooke

stated, in relation to the issue of the landlord's conduct: *"I do take into consideration that a landlord with a portfolio of properties is to be expected to keep abreast of their professional and legal responsibilities"*. In addition, we take into account in the present case the Respondent's poor conduct in granting to the Applicants what we consider on the evidence before us to be sham licences to occupy.

Financial circumstances of the landlord

54. There is no evidence before us regarding the Respondent's financial circumstances.

Whether the landlord has at any time been convicted of a relevant offence

55. The Respondent has not been convicted of a relevant offence.

Other factors

56. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, in particular, take into account" the specified factors. We are not persuaded that there are any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

Amount to be repaid

57. The four-stage approach recommended in *Acheampong* has already been set out above. The amount arrived at by going through the first two of those stages is set out at paragraph 47 above. As for the third stage, namely the seriousness of the offence, this reduces the amount to 75% of that sum (see paragraph 50) – subject to adjustment for the section 44(4) factors referred to above.

58. There is nothing to deduct for the Applicants' conduct as there is no evidence before us that the Applicant's conduct was anything other than good. The Respondent's conduct has been poor, for the reasons set out in paragraph 53 above. In our view, the Respondent's poor conduct justifies increasing the repayment award from 75% to 85% of the maximum amount payable.

59. The Respondent has not at any time been convicted of a relevant offence, but it is clear from the Upper Tribunal decision in *Hallett v Parker* that this by itself should not be treated as a credit factor. We have no evidence regarding the Respondent's financial circumstances.

60. Therefore, taking all of the factors together, we consider that the rent repayment order should be for 85% of the maximum amount of rent payable, after deducting an appropriate amount for utilities. The final amounts are therefore as follows:

Abhishek Agarwal – £2,601.00;

Alba de la Cruz – £4,757.45;

Christiana Akindele – £2,414.00; and

Elizabeth Doyle and Max Stevens (jointly) – £1,861.50.

Cost applications

61. The Applicants have applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse their application fee of £100.00 and the hearing fee of £200.00.

62. As the Applicants' claims have been successful, albeit that there has been a deduction from the maximum payable, we are satisfied that it is appropriate in the circumstances to order the Respondent to reimburse these fees.

Name: Judge P Korn **Date:** 7 June 2023

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

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

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.