



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00BG/HMF/2022/0108**

**Property** : **1 Observatory Mews, London, E14  
3AZ**

**Applicants** : **Mr Nick Hobbs  
Mr Emmanuel Ezra  
Mr Kel Alaike**

**Representative** : **Mr Williams, London Borough of  
Tower Hamlets**

**Respondent** : **Ms Jenny Yi**

**Representative** : **In person**

**Tribunal members** : **Tribunal Judge I Mohabir  
Mr S Mason FRICS**

**Date of hearing** : **28 March 2023**

**Date of decision** : **8 June 2023**

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**DECISION**

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## ***Introduction***

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) for a rent repayment order against the Respondent in respect of 1 Observatory Mews, London, E14 3AZ (“the property”).
2. The property is described as a 5 bedroom house with some of the bedrooms being ensuite, but all of the occupants share one kitchen.
3. Each of the Applicants’ tenancies arose in the following way.
4. Mr Hobbs signed a House Share Agreement with the Respondent commencing from 19/04/2019, which was misplaced by him. She then granted Mr Hobbs a subsequent agreement dated 05/05/2022 commencing from 19/04/2019. He paid a monthly rent of £700 and claims a RRO from 16/02/2021 to 16/01/2022 amounting to £8,400.
5. Mr Alaike was granted an Assured Shorthold Tenancy agreement by the Respondent commencing from 01/05/2021 until 31/10/2021. He paid a monthly rent of £750 including utility bills and claims a RRO from 30/04/2021 to 16/03/2022 amounting to £8,637. He still resides at the property after the fixed term expired.
6. Mr Ezra was granted a one-year fixed term Assured Shorthold Tenancy agreement by the Respondent commencing from 01/07/2021 until 30/06/2022. He paid a monthly rent of £690 including utility bills and claims a RRO from 01/07/2021 to 16/03/2022 amounting to £5,831. He still resides at the property after the fixed term expired.
7. Under each of the tenancy agreements, the Respondent is expressly stated to be the landlord. However, the registered proprietor of the property is Mr Juanxin Liu who is the Respondent’s husband and resides in China. At all material times, the rent was paid by the Applicants to the Respondent. Therefore, the Tribunal was satisfied that the Respondent was the person having control or management of the property within the meaning of section 263 of the Act (see below).
8. The London Borough of Tower Hamlets, in which the property is located, has operated a mandatory licensing scheme for houses in multiple occupation (“HMO”) since 2006. However, the definition of Mandatory Licensing Scheme changed in October 2018, to include all HMOs with five or more occupiers living in two or more households who share some amenities such as a kitchen or bathroom regardless of the number of storeys.
9. It was common ground that the property was an HMO and was not licensed pursuant to the scheme at the commencement of each of the Applicants’ tenancies. It was also common ground that the property was granted an HMO licence in June 2022.
10. Subsequently, the Applicants jointly made this application dated 5 May 2022 for rent repayment orders each for the period of time the property was let as an unli-

censed private rented home.

### ***Relevant Law***

#### ***Requirement for a Licence***

11. Section 72 of the Act provides:

(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.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) ...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

12. The Housing Act 2004 Part 2 s.95(1) provides:

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

*Section 263 of the Act defines a person having control or managing as:*

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

*and includes, where those rents or other payments are received through an other person as agent or trustee, that other person.*

### ***Making of rent repayment order***

13. Section 40(1) of the 2016 Act confers the power on the First-tier Tribunal to make a rent repayment order in relation to specific offences which are listed in a table at section 40(3) of the Act. Relevant to these proceedings are offences described at row 2 (eviction and harassment of occupiers) and 5 (control or management of unlicensed house) of the table.

14. Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:

“(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 section 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);

(b) ...

(c) ...

### **Amount of order: tenants**

15. Section 44 of the Act provides:

(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***

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

***the amount must relate to the rent paid by the tenant in respect of***

the period of 12 months ending with the date of the offence

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.”

### ***Hearing***

16. The hearing in this case took place on 28 March 2023. The Applicants were represented by Mr Williams, a Rent Repayment Officer employed by the London Borough of Tower Hamlets. The Respondent appeared in person and was assisted by a Ms Sun.

### ***Was the Property an HMO?***

17. The Respondent submitted that the property was not required to be licensed from 16 February to 30 April 2021 because it was only being occupied by 3 persons during this period. However, the Tribunal accepted the evidence of Mr Williams that the London Borough of Tower Hamlets had since April 2019 imposed a selective HMO licensing requirement for properties with 3 or more occupants.

18. Based on the evidence before it, the Tribunal made the following findings of fact beyond reasonable doubt:

- (a) that the property was a house and was in the mandatory licensing area in the London Borough of Tower Hamlets , therefore, required to be licensed under section under sections 61(1) and 55 respectively in the Act.
- (b) that the property was not licensed during the Applicants' occupation, but any award is limited to a maximum of 12 months' rent received for the periods of time claimed by them. Therefore, the Tribunal was satisfied that the Respondent had committed an offence under section 72(1) of the Act.

### ***Amount of RRO?***

19. The Tribunal was satisfied that although the Respondent had resided in China during the period when the offence was committed and could not return to this country as a result of the travel restrictions imposed during the Covid-19 pandemic, this did not afford her the defence of a reasonable excuse. The Respondent could and should have applied for an HMO licence as long ago as 2019. Mere ignorance of that fact did not provide the Respondent with a valid defence.

20. As to the conduct of the Applicants, they appeared to be largely blameless save for the non-payment of rent by Mr Hobbs from July 2022 totalling £1,699. The Tribunal did not accept his evidence that he did so because he was concerned the Respondent was not his landlord. As a matter of contract, under the terms of his tenancy agreement she was.

21. As to the conduct of the Respondent, save for not applying for an HMO licence and failing to protect the tenancy deposit, she appeared to have discharged her obligations as the landlord in a responsible way. The Tribunal found that:

- (c) there was no evidence to support the Applicants' assertion that the Environmental Health Officer had concerns about the property.
- (b) there was no evidence of any (significant) disrepair to the property. This was consistent with the Respondent's evidence that only fire doors had to be installed before the HMO licence was granted.
- (c) the (unchallenged) evidence of the Respondent was that she had provided amenities for the Applicants (and other occupants) in the form of payment of the utility bills, free Wi-Fi and cleaning of the

communal parts. The latter only ceased because of the limitations imposed by the Covid-19 pandemic.

22. The Tribunal then turned to assess the quantum of the rent repayment order that should be made against the Respondent.
23. Guidance was given by the Upper Tribunal in ***Vadamalayan v Stewart*** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. It was held in that case the starting point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matters set out in section 43(4).
24. This decision was followed by the Upper Tribunal decision in the case of ***Williams v Parmar*** [2021] UKUT 244 (LC) where the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed at section 44(4) of the Act.
25. The Upper Tribunal held that "*there is no presumption in favour of the maximum amount of rent paid during the period*". It was noted that when calculating the amount of a rent repayment order the calculation must relate to the maximum in some way. Although, the amount of the rent repayment order can be "*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*". Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the Act.
26. The Upper Tribunal further went on to highlight that the Tribunal is not limited to those factors referred to in section 44(4) and that circumstances and seriousness of the offending landlord comprise part of the "*conduct of the landlord*" and ought to be considered. The Upper Tribunal considered that the Tribunal had taken a very narrow approach of section 44(4)(a) by stating "*meritorious conduct of the landlord may justify a deduction from the starting point*". It concluded that the Tribunal may in appropriate cases order a lower than maximum amount if the landlord's conduct was relatively low in the "*scale of seriousness, by reason of mitigating circumstances or otherwise*".
27. The Upper Tribunal went on to lower the amount of the rent repayment orders made by the Tribunal by applying a reduction of 20% and 10% on the basis that whilst the landlord did not have any relevant previous convictions, she was also a professional landlord who had failed to explain why a licence had not been applied for and the condition of the property had serious deficiencies.
28. The Upper Tribunal also confirmed that in cases where the landlord is a professional landlord, and the premises has serious deficiencies more substantial reductions would be inappropriate even if the landlord did not have any previous convictions.

29. This decision highlights that there is no presumption that rent repayment orders will be for maximum rent, and that while the full rent was in some sense still the “starting point” that did not mean that the maximum rent was the default. The amount of the rent repayment order needs to be considered in conjunction with section 44(4) factors and the Tribunal is not limited to the factors mentioned within section 44(4). This means that even if a landlord is guilty of an offence, if their offence is not a particularly serious one, they will expect to be ordered to repay less than the full rent paid during the relevant period.
30. Further guidance has been given by Judge Cook in the Upper Tribunal at paragraph 20 in [Acheampong v Roman](#) [2022] UKUT 239 about determining the amount of an RRO. Adopting that approach, the Tribunal determined:
- (i) the starting figure for the assessment of the RRO was the sums claimed by each of the Applicant set out application for the periods of time in respect of which the property was unlicensed;
  - (ii) then subtracted any element of that sum that represented payment for utilities that only benefited the tenant, e.g. gas, electricity and internet access;
  - (iii) whilst the Respondent was culpable by not applying for an HMO licence, the Tribunal was satisfied that it was not a deliberate act on her part. As stated earlier, the Tribunal did not consider the Respondent to be a rogue landlord. Her failure to obtain a licence for the house was inadvertent and she, therefore, bore a lower level of culpability.
  - (iv) the relevant conduct on the part of both parties has already been considered above.
  - (v) the financial circumstances of the Respondent are unknown. As the Tribunal understands it, the Respondent has not been convicted of any offence.
31. Accordingly, taking these mitigating considerations into account, the Tribunal made a rent repayment order in favour of the Applicants for the total rent (including any arrears) paid by them for the period in respect of which the property was unlicensed less the cost of the amenities provided by the Respondent. This was calculated to be £5,9138.85 per annum of £492.82 per month. Apportioned as between the 5 tenants, gives a figure each of £98.56 per month. The award was then further reduced by 50% to reflect the Respondent’s level of culpability.
32. Therefore, the Tribunal’s calculation of the RRO order made in respect of each Applicant is:



Mr Hobbs

Total rent claimed:	£7,700
Less	
Rent arrears	£1,699
Cost of amenities	£98.56 x 11 = 1,004.16
Less	<u>4996.84</u>
50%	<u>2,498.42</u>
<b>Total</b>	<b>£2,498.42</b>

Mr Ezra

Total rent claimed:	£5,831
Less	
Cost of amenities	£98.56 x 8.5 = 837.76
Less	4,993.24
50%	2,496.62
<b>Total</b>	<b>£2,496.62</b>

Mr Alaike

Total rent claimed:	£8,637
Less	
Cost of amenities	£98.56 x 10.5 = 1,034.88
Less	7,602.12
50%	<u>3,801.06</u>
<b>Total</b>	<b>£4,801.06</b>

33. The total amount of the rent repayment order is payable by the Respondent within 28 days of this decision being issued to the parties.
34. In addition, the Respondent is ordered to reimburse the Applicants the fees of £150 paid to the Tribunal to have the application issued and heard on the basis that the application has only succeeded in part. This sum is also to be paid by the Respondent within 28 days of this decision being issued to the parties.

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).