FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/29UC/HMF/2023/0005** **CVP/video**
Property	**:**	**5 Winston Close Canterbury Kent, CT1 1FA**
Applicants	**:**	**Esther Sam** **Diane Afrane** **Beverly Egyin** **Loveta Kufuor**
Representative	**:**	**Ms A Hoxha, Represent Law Ltd**
Respondents	**:**	**Daniel Hodges** **Tracey Beaumont**
Representative	**:**	**In person assisted by Mr Reeves (lay representative)**
Type of Application	**:**	**Application for a rent repayment order**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Mrs A Clist MRICS** **Mr E Shaylor MCIEH**
Date of hearing	**:**	**30 May 2023**
Date of Decision	**:**	**19 June 2023**

DECISION

Decision of the Tribunal

1. **The Tribunal makes a rent repayment order against the Respondents jointly and severally and in favour of the Applicants jointly and severally in the sum of £9,043.48.**
2. **Additionally, the Tribunal makes an order against the Respondents jointly and severally and in favour of the Applicants jointly and severally in the sum of £300 in repayment to them of their application and hearing fees.**
3. **The total award to be paid forthwith by the Respondents is therefore £9,343.48.**

Reasons

1 The Applicants made an application to the Tribunal under section 41 of the Housing and Planning Act 2016 ("the Act") requesting a rent repayment order against the Respondents in respect of the property known as 5 Winston Close, Canterbury, Kent, CT1 1FA (the property) for the period of their occupation of the property (as detailed below) during which time the property was unlicensed.

2 The facts that the property was a licensable HMO and was for the whole period of the Applicants' occupation unlicensed were admitted by the Respondents.

3 Rent for the property was payable to the Respondents as landlords and freehold owners.

4 During their tenancy the Applicants appear to have dealt only with Mr Hodges whose principal business is as a roofer. The Tribunal was told however that in addition to his own house he owns and manages four properties including the subject property which is the only one to be an HMO and on this basis the Tribunal considers his behaviour in the context of a professional landlord acting as such.

5 The hearing of this matter took place via a CVP video link which had been agreed to or not objected to by the parties. The Applicants were represented by Ms A Hoxha of Represent Law Ltd. Mr Reeves, an associate of Mr Hodges, acted as a lay representative speaking on Mr Hodges' behalf. Mr Hodges gave oral evidence to the Tribunal. Ms Beaumont did not appear and was not separately represented.

6 An agreed bundle of documents had been filed for the hearing and, in the Applicants' case, a skeleton argument and schedule of costs were delivered to the Tribunal on the morning of the hearing. Prior to the hearing the Tribunal had read the documents supplied in the bundle. Relevant documents are referred to below by their page numbers.

7 The Tribunal understands that the subject property comprises a five-bedroomed house with two bathrooms and a communal kitchen and living room which, during the entire time to which this claim relates,

was occupied by five people from separate households who shared common facilities. It therefore meets the standard test to be a house in multiple occupation under s.254 Housing Act 2004 and is required to be licensed under the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.

8. The application, filed on 18 January 2023, is brought by four out of the five tenants who shared the house during the period 01 July 2021 to 30 June 2022.

9. Directions were issued by the Tribunal on 17 February 2023 and 04 April 2023.

10. It is common ground between the parties that the property required and did not have an HMO licence for the entire period of the Applicants' occupation between 01 July 2021 and 30 June 2022 when their tenancy came to an end.

11 A landlord who fails to obtain a valid licence is committing a criminal offence under s72(1) Housing Act 2004.

12 Owing to restrictions imposed under current Tribunal Practice Directions, the Tribunal did not carry out a physical inspection of the property but had the benefit of viewing the property and its location via Google and of photographs supplied by the parties in the bundle (see pages 89-98).

13 All four Applicants were present at the hearing and confirmed the contents of their written witness statements. Ms Egyin and Ms Kufuor were briefly cross-examined on their evidence by the Respondent's representative.

14 On the Respondent's behalf, their representative said that prior to the commencement of the Applicants' tenancy Mr Hodges had approached the Council's planning department to discuss his proposals to make alterations to the property which might require planning permission. He was told at that time that the property had been used as an HMO since 2016 and that his proposed alterations, if carried out, would require a fresh HMO licence application. The Tribunal understands this to mean that the existing licence (if any) would lapse if the property was altered as proposed and a fresh application for a new licence would be required.

15 It appears therefore that Mr Hodges was aware before the commencement of the Applicants' tenancy that the property needed a licence, even if he was confused after seeking advice from the Council. His knowledge is imputed to his co-owner. He says that he overlooked the need for a licence in this case.

16 A licence was finally obtained for the property on 10 March 2023 ie two months after the current application was filed with the Tribunal and eight months after the end of the Applicants' tenancy.

17 The Respondent said that the property had been refurbished before the Applicants' occupation and was in good order as corroborated by the fact that he had not been required by the Council to carry out any additional works as a condition of the grant of the licence. No evidence was adduced to support this contention. Photographs of the property do show it to be in good condition but are undated and so cannot be relied on to demonstrate its condition on any given date.

18 The Applicants did not agree that the house had been completely refurbished prior to their occupation but made no serious or sustained complaints about its condition whilst they were in occupation.

19 As a professional landlord the Respondents should have been aware of their legal responsibilities which include keeping the tenants' deposits in a designated deposit protection scheme. In the instant case Mr Hodges said that he had been unaware of the scheme and had kept the money in his own current account.

20 Although the Tribunal accepts that the Respondents' failure to licence was not a deliberate or malicious act it does not consider that oversight is an acceptable excuse or defence to a strict liability offence in the case of professional landlords who own and manage a number of other properties.

21 As professional landlords this conduct is unacceptable and in the Tribunal's view does not constitute a justifiable defence of reasonable excuse under s72(5) of the Act.

22 The Applicants have demonstrated to the Tribunal's satisfaction that the property required a licence during the whole period covered by this application and that it did not have one. The Respondents accept this factual situation.

23 The Tribunal was therefore, satisfied beyond reasonable doubt that the Respondents had committed an offence under section 72 (1) of the Housing Act 2004 (as amended), namely, that they had been in control or management of an unlicensed house.

24 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Housing & Planning Act 2016. The Applicants make a claim for the period 01 July 2021 to 30 June 2022. Any award made by the Tribunal could not exceed the total rent received by the Respondents for this period of time which the Tribunal calculates to be £21,950 on the basis that three of the Applicants paid £5,500 and one paid £5,450. These rent payment figures were accepted by the Respondent.

25 There was some confusion with the Applicants as to the exact amount being claimed. The total rent payable for the period claimed would be £30,000 on the basis that the house was shared by five tenants who paid equal amounts in rent. This application has been made by only four of the tenants. The fifth tenant has an independent right to pursue an order in her own name subject to the statutory limitation period.

26 Relying on the case of Sturgess v Boddy 2021 EW Misc 10 (CC) the Applicants argued that 'rent' meant 'all the rent' therefore

the Applicants could reclaim £30,000 even though they had only actually paid £21,950.

27 The Tribunal rejects this argument as a misinterpretation of the law as applied in a county court case which related to churned deposits. The cited case did not relate to a rent repayment order, is not good precedent and defies logic. It would be totally unreasonable to require the landlord to repay to the Applicants more rent than they had actually paid.

28 On that basis and taking into account that one of the Applicants had been in arrears with her rent payments, part of which had been re-couped from her deposit, the Tribunal finds that the maximum rent repayable jointly and severally to the current Applicants would be £21,950.

29 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.

30 Mr Hodges is a property professional who maintains the property and carries out routine repairs. It is not known what part the second respondent plays in this scenario but as a joint owner Mr Hodges knowledge and behaviour is imputed to Ms Beaumont. They should therefore have been aware of their responsibilities as landlords and of the need to licence the property.

31 There is no evidence that the Respondents had previous convictions of this kind or that the Council had considered the Respondents' offence to be sufficiently serious to prosecute them. However, in assessing the award to be made to the Applicants, the Tribunal does have regard to the parties' conduct.

32 Although only one of the Applicants was in arrears with her rent when the tenancy ended there is evidence from the bank statements included in the hearing bundle that rent payments from all the Applicants were spasmodic. Rent was paid but not necessarily on the contractual dates. None of the Applicants had received any universal credit during the period which is the subject of this claim.

33 The Respondents' main complaint about the Applicants' conduct was an ongoing problem with rubbish which was piled in bags in both front and back gardens and after the end of the tenancy the Respondent had to hire a skip to remove it. The Applicants said that their rubbish was not being collected by the council and they did not remember on what day the bins were required to be put out or why they were not being collected. The Applicants said they contacted the Respondent landlord who did not reply, but they also said they did not attempt to contact the Council themselves about it. The Respondent said he had acquired extra bins but these too were not collected whereas bins from other houses in the same street were collected regularly. Mr Hodges also said he had asked the Council to supply additional bins but had been told that a household of 5 occupants was not permitted to have more than two bins. The Tribunal is persuaded that the Respondents' version of events is more likely, which suggested

that the reason for the non-collection was because the bins were not put out on the correct day and were incorrectly filled, mixing recycling with land fill refuse. However, the cost of the skip had been deducted from the Applicants' returned deposits (£80 each making £400) so the Tribunal felt the skip cost should not be deducted from the rent repayment order as the cost had already been recouped by the Respondent.

34 The Respondents also asserted that the house had been left in a filthy condition when the tenancy ended and a deep clean, steam cleaning of carpets and partial redecoration had been required, the cost of which they felt should be deducted from any award made to the Applicants. The Respondents put this total figure at £2,200. Mr Hodges did however state in evidence that he would normally arrange for a deep clean and remedial decoration to be carried out during voids. This would appear to indicate that the condition of the property at the end of the tenancy was no worse than usual and the deep clean and painting was not an exceptional or special procedure necessitated by the Applicants' conduct. The Tribunal expresses the view that a deep clean and remedial decoration between tenancies is part of the normal good management of a property, the cost of which should be provided for in the amount of the tenants' rent. The cost of this procedure will not therefore be deducted from the Tribunal's award in this case.

35 The Respondents also requested that interest only mortgage payments should be deducted, as these benefited tenants rather than the landlord as no capital was being repaid. The Tribunal did not accept these to be payments which should be deducted from a rent repayment order, as they are not utility costs which exclusively benefit the tenants.

36 The Applicants made a number of criticisms of the Respondents' maintenance of the property eg a defective exterior door handle (which Ms Egyin said was never fixed and was a security risk), a faulty dishwasher, lack of hot water and heating for a brief period, a smoke alarm which did not work. The Respondent claimed that he had organised repairs to the door handle and the dishwasher and had installed a new boiler, but had not produced any receipts or other documentary evidence to support this claim. As far as the smoke alarm is concerned, the Applicants' only evidence that it was not working was that it did not activate when they burnt food whilst cooking. They did not otherwise test it and there was no evidence presented of any fault showing on the control panel. The Respondent said in evidence that the smoke alarms were wired in, were supplemented by emergency lighting and that there was no evidence that the alarm was faulty and that no fault had been reported to him.

37 The majority of the repair requests mentioned by the Applicants related to minor repairing issues and the Tribunal gained the impression that the property was generally in good condition and well maintained. Whilst there was contradictory evidence given as to whether repairs were in fact carried out, the Tribunal

found that any poor conduct on the part of the Respondent landlords in this respect, and any poor conduct on the part of the Applicant tenants' mismanagement of their domestic refuse, do in effect cancel each other out. The Applicants also asserted that the Respondent spoke down to them in a disrespectful manner. The Respondent explained he recalled advising the tenants that their residence was "a house not a hotel", which the Tribunal took to mean that he wanted the tenants to be more responsible for looking after the house.

38 For the Respondents it was emphasised that no harm had been suffered by the Applicants through the lack of a licence and that the seriousness of the offence was low grade, and the Respondents were not rogue landlords. They conceded that a rent repayment order should be made but suggested that the starting point for the assessment of the award should be about 50% of the possible total award.

39 The Tribunal notes however, that the offence had been continuing for nearly two years and might have continued longer had the Applicants not brought it to the Respondents' attention by making an application to the Tribunal.

40 The Tribunal also noted the policy objectives of the legislation relating to this offence which are at least in part to provide a disincentive to unsuitable landlords by depriving them of the profit which they make out of poorly equipped and maintained property.

41 In assessing the award the Tribunal also had regard to the guidelines set out in E Acheanpong v Roman & Others [2022] UKUT 239 (LC).

42 The period for which rent must be repaid by the Respondent is 01 July 2021 to 30 June 2022 (12 months). This amounts to a maximum award of £21,950 taking into account the arrears of rent incurred by one Applicant.

43 Taking these issues into account the Tribunal considers that the offence, while not ranking among the most grave of offences, should still be considered serious having been committed by professional landlords who were not unaware of the need to obtain a licence. It considers therefore that a reasonable starting point for assessing the amount of the penalty should be 50% of the maximum total award ie £10,975.

44 The Respondents accepted that their outgoings on the property were not deductible from any potential award but had provided a list

of regular outgoings. Mortgage payments, whether on repayment or interest only loans are not a deductible expense.

45 The sums cited by the Respondents as expenses were not supported by bills or receipts but it appears from Mr Hodges's bank statements that there were regular utility outgoings on the subject property the costs of which were included in the Applicants' rent. The Respondents said these amounted to £1,931.52 for the 12 month period and the Tribunal assessed this to be reasonable for the size of house so this sum will be deducted from the award giving a net award of £9,043.48 to be divided between the Applicants in the proportions in which they paid the rent.

46 For the Respondents a request was made that any award should be payable in instalments over an extended period so as not to cause financial hardship. The Tribunal does not have jurisdiction to defer the award nor to order payment in instalments. No formal plea of financial hardship was made on behalf of the Respondents.

47 The Applicants also requested the Tribunal to order the Respondents to repay their application and hearing fees (£300). This application is granted.

48 On behalf of the Applicants a request for costs under Rule 13 of the Tribunal Rules of Procedure was made. This was supported by a schedule of costs which had been received by the Tribunal only on the morning of the hearing.

49 The Tribunal explained that its jurisdiction was normally costs neutral and an award under Rule 13 would be exceptional. Such applications were normally made separately after the decision on the main issue had been promulgated to the parties. The Applicants' representative accepted the Tribunal's suggestion that any Rule 13 application should be deferred until after the parties had received the Tribunal's decision at which point it could be re-submitted to the Tribunal if the Applicants thought it appropriate to do so.

50 Relevant Law
Making of rent repayment order**.**

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)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).

Amount of order: tenants

16. 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."

Name:	Judge F J Silverman as Chairman	**Date:**	19 June 2023

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the Second-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to rpsouthern@justice.gov.uk.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.