FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMB/2021/0015**
Property	**:**	**Flat 4 Timor House, Duckett Street, London, E1 4SP**
Applicant	**:**	**Sadat Tafader**
Representative	**:**	**Not represented**
Respondent	**:**	**City Move Properties Limited**
Representative	**:**	**ZYBA Law**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Ms F Macleod MCIEH**
Date of Hearing	**:**	**9 June 2023**
Date of Decision	**:**	**3 July 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 Applicant the sum of £2,404.18 by way of rent repayment.

(2) The tribunal also orders the Respondent to reimburse to the Applicant the application fee of £100.00 and the hearing fee of £200.00.

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

Introduction

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

2. The basis for the application is that the Respondent committed an offence of having control of and/or managing a house in multiple occupation (an "**HMO**") which was required to be licensed but was not licensed, contrary to section 72(1) of the Housing Act 2004 ("**the 2004 Act**"). The Applicant also alleges that he was harassed by the Respondent and served with an illegal eviction notice.

3. The Applicant seeks a rent repayment order in the sum of £2,868.00 in respect of rent paid for the period 8 September 2021 to 31 January 2022.

Applicant's case

4. The Applicant states that the Property did not have an HMO licence for the entirety of his tenancy. There were 5 rooms in the Property which were occupied by 5 different people. Those people were the Applicant himself, Adrien Petho, Marcin Tarnawski, Ali Ali and Joe Faheem. The hearing bundle contains his evidence that 5 people were living at the Property throughout the period of claim. The tenants were not related to each other, and the kitchen and bathroom were shared.

5. The Applicant's evidence that the Property was not licensed includes an email from the local housing authority confirming that the Property did not have a licence plus his evidence that no licence was shown in the local housing authority's Licence Register.

6. The hearing bundle contains an email from the Respondent's agents dated 15 November 2021 purporting to terminate the Applicant's occupation of the Property on 1 month's notice, which the Applicant states is below the legal limit of 2 months. He accepts that he entered into what was described as a House Share Licence, but his view – supported by advice from Rushanara Khanom of the local housing authority – was that it was a sham licence and that legally it was an assured shorthold tenancy ("**AST**") which could not be terminated without first serving a valid notice under section 21 of the Housing Act 1988. No such notice had been served, and therefore he regarded this as an illegal attempt to evict him. Furthermore, the agents had made it clear after serving the notice that his belongings would be forcibly removed and the utilities shut down.

7. The Applicant states that the Property was never properly maintained, and he has provided copy photographs. His bedroom door was split in half and held together with a screw and had been broken since 2015. At one point his room was covered in sawdust and his possessions covered in debris. When his curtains were being fixed, the workman drilled and covered his possessions (including his laptop and desktop) in cement/brick. He also states that the Property had no fire alarms when he moved in. The kitchen was covered in mould, and this was never dealt with properly; all that happened was that someone painted over the mould. The hearing bundle contains an email chain with a sample of his dealings with the agents constantly reminding them to carry out repairs.

8. The hearing bundle also contains evidence of rental payments and a calculation of the total amount of rent paid in respect of the period of claim.

9. At the hearing, the Applicant said that the rent was £607.00 per month and that he paid for 4 full months plus the sum of £440.00 for the period 8 to 30 September. In addition to the repair issues referred to above he said that there were no fire doors and that the kitchen was unclean and contained rotten units plus freezers that did not work and continued not to work despite frequent complaints.

10. There were 5 bedrooms, but the Property did not seem to the Applicant to be designed to accommodate so many bedrooms. The bedroom doors were all made of cheap plywood. Even when work was done to fix problems at the Property, it was done poorly and a lot of mess was created. He had no privacy as his door did not shut properly. No gas safety or other certificates were ever provided.

11. In relation to the eviction notice, the Applicant said that he eventually agreed to leave on 31 January 2022 even though he did not accept that it was a valid notice. In relation to utilities, the Applicant said that he was not given a choice as to utility providers.

Respondent's case

12. The Respondent's written submissions are in the form of a witness statement from Ruzina Alam, director of the Respondent company. In that statement she accepts on behalf of the Respondent that an HMO licence was not in place for the relevant period. She states that she took over the running of the Respondent's business but was unaware that there were historical matters to resolve, including the absence of an HMO licence for the Property.

13. As regards the amount of rent that the tribunal should order to be repaid, Ms Alam states that the sum of £2,868.00 was not all retained as rent by the Respondent as it collected the rent on behalf of a separate management company which was instructed by the owner of the Property. She adds that the agreement was that the Respondent was only entitled to the remainder of any collective rent received from all occupiers of the Property once the sum of £1,950.00 per month had been deducted from the total.

14. Ms Alam has also referred the tribunal to the decision of the Upper Tribunal in *Williams v Parmar and others (2021) UKUT 244 (LC)* as authority for the proposition that the tribunal should only order repayment of 100% of the amount of rent paid in the most serious cases.

15. In relation to the Applicant's allegations about the Respondent's conduct, she disputes that the Respondent issued sham licences. Her understanding is that where services such as broadband and cleaning are provided the correct document is a licence, not an AST. She also states that the issue of the bedroom door was not as long-standing as the Applicant suggests. In relation to the mess left by contractors, she apologises for this and states that the Respondent would not approve of such conduct. In relation to the fire alarms, she states that battery powered fire alarms had been fitted but had gone missing. She states that the mould was treated and then painted with anti-mould paint. She has also included as an attachment to her witness statement some evidence of maintenance being undertaken and of safety checks being made. In addition, the Respondent has not previously been convicted of a relevant offence.

16. In relation to possible deductions from the amount of rent that would otherwise be repayable, Ms Alam states that for the relevant period the Respondent paid £271.25 for gas, £223.72 for electricity and £308.49 for water. In addition, £1,076.72 was paid for Council Tax and £180.00 for broadband. She proposes that the aggregate of these figures be divided by 5 to reflect the fact that there were 5 occupiers and that the resulting figure should be deducted from the starting point for the rent repayment.

17. Regarding the Respondent's financial circumstances, Ms Alam states that the company is currently running at a loss, and she has provided a copy of what she describes as the last company accounts by way of evidence.

18. The Respondent was neither present nor represented at the hearing.

Discussion at hearing

19. The tribunal cross-examined the Applicant on his evidence at the hearing in order to test the strength of that evidence. The tribunal also asked him questions on Ms Alam's written witness evidence.

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.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises – (a) receives … rents or other payments from … persons who are in occupation as tenants or licensees of parts of the premises … .

Tribunal's analysis

21. The Applicant's uncontested evidence is that the Property was an HMO which was required to be licensed but was not licensed at any point during the period of the claim. In addition, the Applicant's uncontested evidence is that there were 5 occupiers throughout the period of claim, that the occupiers did not form a single household and that the occupiers shared one or more basic amenities. It is also not disputed that all occupiers occupied the living accommodation as their only or main residence. Having considered that uncontested evidence we are satisfied beyond reasonable doubt that for the whole period of claim that the Property required an HMO licence and that it was not licensed.

22. We now turn to the question of whether the Respondent was the landlord for the purposes of section 43(1) of the 2016 Act and whether it was a "person having control of or managing" the Property within the meaning of section 263 of the 2004 Act. First of all, the Applicant entered into agreements with the occupiers which were called house

sharing licences, 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 Applicant's evidence and submissions we accept that the Applicant had exclusive possession at a rent and that he had a tenancy and not merely a licence, notwithstanding the label given to the document that he signed. Ms Alam's suggestion that it was a licence because broadband and a (common parts) cleaning service were provided is incorrect in law.

23. 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 this had been a genuine licence the tribunal would still have the power to make a rent repayment order.

24. We turn now more directly to the question of whether the Respondent is a "landlord" for the purposes of section 43(1) of the 2016 Act. 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.

25. 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 sublease by the registered leasehold owner, Mohammed Rahman. However, it is clear is that the Respondent has granted the Applicant a right to occupy under what is described as a licence but which we are satisfied is in fact a tenancy for the reasons already given above. In addition, the Respondent has not made any submissions on the question of whether it was entitled to grant that tenancy 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.

26. 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 2004 Act. 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.

The defence of "reasonable excuse"

27. 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.

28. 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. Even if Ms Alam's comment that she was personally unaware of the circumstances was intended as a defence and even if she was the sole person in charge of the Respondent's business affairs, mere ignorance of the position is not sufficient to amount to a reasonable excuse defence.

The offence

29. 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. Section 72(1) states that *"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"*, and for the reasons given above we are satisfied (a) that the Respondent was a "person having control" of the HMO for the purposes of section 263 of the 2004 Act, (b) that the HMO was required to be licensed and (c) that it was not licensed.

30. 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. On the basis of the Applicant's uncontested evidence on these points, we are satisfied beyond reasonable doubt that a room within the Property was let to the Applicant 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 his application was made.

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

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

32. 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.

33. In this case, the Applicant's claim relates 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 Applicant. Ms Alam does state that the Respondent did not retain all of that rent, but even if that is true it is not relevant for the purposes of assessing the amount of rent repayment as there was a tenancy agreement in place between the Applicant and the Respondent pursuant to which the Applicant paid the sums claimed to the Respondent as rent. What the Respondent did with that money on receipt is a separate matter.

34. We are satisfied that the Applicant was in occupation for the whole of the period to which his rent repayment application relates and that the Property required a licence for the whole of that period. Therefore, the maximum sum that can be awarded by way of rent repayment is the sum of £2,868.00, this being the amount paid by the Applicant by way of rent in respect of the period of claim.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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).

41. In *Williams v Parmar & Ors [2021] UKUT 244 (LC)*, a case quoted on behalf of the Respondent, 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.

42. 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.

43. 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.

44. 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).

45. Adopting the *Acheampong* approach, the whole of the rent in this case means the whole of the rent paid by the Applicant out of his own resources, which is the whole of the rent in this case as no part of the rent was funded by housing benefit. The Respondent has, though, provided some evidence that part of the rent represented payment for utilities. The Applicant has not disputed this point, although he states that he was not given a choice of utility providers. However, this lack of choice of utility provider is not relevant to the *Acheampong* principle that the amount paid by the landlord for utilities that only benefited the

tenant should be deducted from the amount of rent that is repayable. The issues are how much was paid by the landlord for utilities and is there any reason not to give full credit for that amount, for example because the amount is unreasonable.

46. Ms Alam was not available to be cross-examined on the amounts of the utility payments, but in the absence of a specific challenge by the Applicant and as the figures quoted by her do not look unreasonable to the tribunal we are content to rely on her figures. However, Council tax payments are not deductible as they do not constitute utilities. Ms Alam's figures are £271.25 for gas, £223.72 for electricity, £308.49 for water and £180.00 for broadband. This amounts to £983.46 in aggregate and then, as Ms Alam concedes, it needs to be divided by 5 as there were 5 occupiers. This gives a figure of £196.69 to be deducted from the figure of £2,868.00, which gives a revised figure of £2,671.31.

47. As regards the seriousness of the type of 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.

48. Furthermore, the Respondent did not merely fail to obtain an HMO licence in this case. In addition, it granted the Applicant a sham licence which as a matter of law was a tenancy (specifically an AST). As regards the Applicant's claim of unlawful eviction, we find the Applicant's evidence on this point much more persuasive than that of the Respondent and we are satisfied that the Respondent either attempted to evict or succeeded in evicting the Applicant unlawfully by giving him insufficient notice, by failing to comply with section 21 of the Housing Act 1988 and then by placing unlawful pressure on him to leave.

49. Taking the above factors together, we consider that the starting point for this offence should be 80% of the maximum amount of rent payable.

50. As for the seriousness of the offence in this particular case compared to others of the same type, in our view it was at the serious end of the scale. Again, we find the Applicant's evidence considerably more persuasive than that of the Respondent. He was available to be cross-examined on his evidence and we found him to be a very credible witness. Ms Alam, by contrast, did not attend the hearing and could not be cross-examined on her witness statement. In addition, her witness statement at best shows a serious lack of involvement in – and concern about – the management of the Property. Her comments about the fire alarm seems to be no more than convenient speculation, and the correspondence in the hearing bundle and the Applicant's very credible submissions between them indicate a pattern of failure to deal with repairing issues well or at all coupled with a cavalier attitude towards the Applicant's safety, comfort and privacy. Furthermore, the Respondent is a property company, not merely a private individual letting out a single property, and therefore more is to be expected of it: see for example Judge Cooke's remarks in the Upper Tribunal decision in *Chan v Bilkhu (2020) UKUT 0289 (LC)*.

51. On the basis of the above aggravating circumstances in this particular case, we consider that the starting point of 80% needs to be increased to 90%.

52. 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

53. There is no evidence before us that the Applicant's conduct has been anything other than good.

54. The Respondent's conduct has been very poor, for the reasons referred to above, and there is also the failure to obtain a licence over a considerable period of time with no proper mitigating circumstances. However, there is a big overlap between the circumstances of the offence and the Respondent's conduct in this case, and it would be inappropriate to penalise the Respondent further by increasing the percentage payable on the basis of its conduct as that would constitute double counting.

Financial circumstances of the landlord

55. The only evidence before us regarding the Respondent's financial circumstances is Ms Alam's statement that the company is currently running at a loss, together with a copy of what she describes as the last company accounts. However, those accounts are from 2021 and therefore do not show the Respondent's current financial circumstances, which may have improved considerably since 2021.

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

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

Other factors

57. 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. However, in this case we are not aware of 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

58. 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 £2,671.31. As for the third stage, namely the seriousness of the offence, this reduces the amount to 90% of that sum, subject to any adjustment for the section 44(4) factors referred to above.

59. There is nothing to deduct for the Applicant's conduct as that has been good. Whilst the Respondent's conduct has been poor, as noted above no increase is appropriate as that would constitute double-counting. 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* (see above) that this by itself should not be treated as a credit factor. The evidence that we have regarding the Respondent's financial circumstances is out of date and therefore unpersuasive. Consequently, there is nothing further to add or deduct.

60. Therefore, taking all of the factors together, we consider that the rent repayment order should be for 90% of the maximum amount of rent payable, after deducting an appropriate amount for utilities. The amount of rent repayable is therefore £2,671.31 x 90% = £2,404.18.

Cost applications

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

62. As the Applicant's claim has 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:** 3 July 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.