FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/HMF/2023/0005**
Property	**:**	**23 Wickliffe Avenue London N3 3EL**
Applicants	**:**	**(1) Leon Anthony GILROY** **(2) Anuja Meenakshi PATHAK**
Respondent	**:**	**REGAL MANAGEMENT SERVICES LIMITED**
Respondent's representative	**:**	**Mr Shafeeque of Allied Law Chambers Solicitors**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge T Cowen** **Ms Alison Flynn MA MRICS**
Date of decision	**:**	**24th July 2023**

DECISION

The Tribunal orders that:

The Respondent is required to make a rent repayment to the Applicants in the sum of **£6,960.00**

REASONS FOR ORDER

The Property

1. The Property is a six bedroom house in Finchley.

The Application

2. Section 41 of the Housing and Planning Act 2016 allows a tenant to apply to this Tribunal for a rent repayment order against a person who has committed a relevant offence. The relevant offences are listed in section 40.

3. The Applicants' application was issued on 11 January 2023. It was based on an allegation that the Respondent has committed the offence of having control of or managing an unlicensed HMO. That is an offence under section 72(1) of the Housing Act 2004 to which Chapter 4 of the Housing and Planning Act 2016 applies, pursuant to section 40(3) of that Act.

4. The application was made by both Applicants. Only the First Applicant appeared before the Tribunal and stated that he was representing both Applicants.

5. The application makes the following allegations:

   5.1. The Respondent granted a tenancy of Room 2 of the Property to the Applicants on 22 November 2019 for a fixed term of 1 year.

   5.2. The Applicants continued paying rent after the end of the fixed term under presumably a periodic tenancy and continue to occupy Room 2 of the Property.

   5.3. The Applicants were tenants at the Property during the 12 months leading up to the issue of this application (**11 January 2022 – 10 January 2023 – "the Relevant 12 Month Period"**).

   5.4. During the Relevant 12 Month Period, the Property was an HMO which was required to be licensed. In particular they allege that there were 9 occupants in the Property at the time of the application and that the number of occupants had fluctuated between 7 and 11

   5.5. The Property was not licensed during that period.

   5.6. The Respondent had control and/or was managing the Property during that period.

6. The claim is for the total sum of **£9,600**, being the total rent paid by the Applicants at **£800** per month for the Relevant 12 Month Period.

7. The Respondent denies the offence, as set out below.

The Hearing

8. The matter was heard at a face-to-face oral hearing. The First Applicant attended on behalf of the Applicants. The Respondent was represented by its solicitor, Mr Shafeeque. Also in attendance for the Respondent was Mr Jaber Abeeat, who was until 3 January 2023 (8 days before the application was made) the sole director of the Respondent company. Mr Abeeat was also the author of the only witness statement filed for the Respondent.

9. We received a bundle of documents from each side and we had the opportunity to read them before the hearing. The First Applicant presented his case and answered questions from the Tribunal. Mr Shafeeque made submissions on behalf of the Respondent. The Respondent elected not to call Mr Abeeat to give oral evidence, but relied on his witness statement.

Preliminary Issues

10. Before the First Applicant presented his case, the Respondent's representative raised some preliminary issues as follows:

Notice of Intended Proceedings

11. The Respondent submitted that the application was defective and should be dismissed, because the Applicants had failed to serve a notice of intended proceedings under section 42 of the 2016 Act.

12. Section 42(1) states:

> "Before applying for a rent repayment order a local authority must give the landlord a notice of intended proceedings"

13. The rest of section 42 prescribes the information to be included in the notice and provides that the notice must give the landlord 28 days to make representations and that the "the authority" must consider any representations made within that period. The section prohibits "the authority" from making a rent repayment order application until the 28 days has elapsed.

14. Section 41 of the 2016 Act states that "A **tenant or a local housing authority** may apply…for a rent repayment order" (our emphasis). The clear and unequivocal plain meaning of section 42 is that the requirement for a notice of intended proceedings applies only to an application made by a local housing authority and does not apply to an application by a tenant or tenants.

15. The Respondent's representative argued that since section 41 applies to both tenants and local authorities, then we should interpret section 42 to apply to tenants' applications because that must be what Parliament

intended. We reject that submission. If Parliament wanted section 42 to apply to tenants, the statute would have included references to tenants. It is clear from how it is drafted that the section only applies to local housing authorities. This is not an application by a local housing authority.

Identifying the correct Respondent

16. The Respondent's representative submitted that the application had been made against the wrong party. He submitted that the Respondent was not the "landlord" of the Property. Rather the "landlord" was Medical Team Limited, the registered freehold proprietor of the Property. He therefore submitted that the application could not succeed and should be dismissed.

17. The Respondent's case on this point was that the Respondent was a managing agent employed by the freeholder.

18. When considering this issue, it is important to keep in mind that the specific offence alleged in this case is one of "having control" or "managing" the Property, as defined in section 263 of the 2004 Act. The appropriate test is therefore whether the Respondent falls into one of those definitions, rather than whether the Respondent is "the landlord".

19. The Respondent relies on HM Land Registry Office Copy Entries for title number MX121475 which state that Medical Team Limited is the registered freehold proprietor of the Property and has been since 30 April 2018.

20. However that is not the end of the matter because, as a matter of law, the freeholder of a property is not necessarily the landlord of an occupier of part or all of that property – as for example in the case of subtenancies.

21. So it is the tenancy agreement under which the Applicants occupy which is relevant, rather than the identity of the freeholder.

22. The tenancy agreement in this case is a document headed "Room Rental Agreement" which grants the tenants the right to occupy room 2 in the Property for a term of one year commencing on 22 November 2019. The Applicants are named as the tenants in the agreement.

23. The "landlord" is identified as follows:

> "The Landlord's full name: **Regal Management and Services LTD**
>
> Landlord's address: 84 Fortune Green Road, West Hampstead, NW6 1DS
>
> Landlord's email: **info@regalletsandsales.co.uk**"

24. There is no company registered at Companies House with the name "Regal Management and Services LTD". The Respondent is registered at Companies House under registration number 11256467 as "Regal Management Services Limited. It is clear that the name listed for the landlord in the tenancy agreement is a typographical error (or at best a trading name of the Respondent). The Tribunal has the power to correct an obvious misnomer as a matter of construction (*Nittan (UK) v Solent Steel Fabrications* [1981] 1 Lloyd's Rep 633)

25. From 15 March 2018 until 3 January 2023, the sole director of the Respondent company was Mr Jaber Abeeat whose correspondence address given at Companies House is 84 Fortune Green Road, the same address as given for "the Landlord" in the tenancy agreement.

26. The tenancy agreement is signed at the end by the Applicants on 22 November 2019. Under the landlord's signature (which it is not easy to read) also dated 22 November 2019, the "Landlord's full name" is given as "Regal Management services LTD" which is the correct name for the Respondent.

27. There is no suggestion that anyone from Medical Team Limited (which has completely different directors) signed the tenancy agreement.

28. Medical Team Limited is not mentioned in the tenancy agreement. Nor is any other party. Nor is it mentioned that the Respondent is acting as agent for any other party. On the face of the agreement, the Respondent appears to be the landlord in all respects.

29. The Respondent and the freeholder are not associated companies. The freeholder has different individuals listed as directors and is registered at a different address.

30. Other than the Respondent's assertion that it was acting as the agent for the freeholder, there was no evidence of:

    (a) the legal relationship between the Respondent and the freeholder; or

    (b) the legal basis on which the Respondent had title or standing to grant the tenancy agreement.

31. As a matter of law, it is not necessary to be the freeholder in order to grant a tenancy. Nor is it even necessary to have legal or beneficial title. A complete stranger to the property can grant a tenancy to a third party and, as between those parties, there is a binding tenancy agreement which is fully enforceable, even though it may be a trespass against the true owner. That is known as a tenancy by estoppel. See *Bruton v London and Quadrant Housing Trust* [2000] 1 AC 406, HL.

32. Even if the Respondent was (as it says) acting as agent for the freeholder, it cannot claim that the real landlord is an undisclosed principal. It seems to us that the reasoning in *Hanstown Properties v Green* (1977) 246 EG 917 (which made that ruling in relation to the tenants purporting to be agents of an undisclosed principal) applies equally to a landlord.

33. On any basis therefore the Respondent is the landlord under the tenancy agreement in all respects and we so find.

34. But we must go further. As mentioned above, the correct test under the offence alleged is whether the Respondent is a person controlling or managing the Property within the definition prescribed by section 263 of the 2004 Act. The relevant parts of that definition are as follows:

> "(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) …"

35. "Person managing" is defined by section 263 as follows:

> "(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; …
>
> (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 another person as agent or trustee, that other person."

36. There is no evidence that the Respondent is an owner or lessee of the Property. The Respondent therefore cannot come within the definition of a "person managing" the Property.

37. The evidence did however show that the rent reserved under the tenancy agreement was payable to Regal Management Services Limited and the First Applicant's bank statements for the relevant period show that rent was actually paid to Regal Management Services Limited. Using our

experience and expertise, we are satisfied that the rent reserved under the tenancy agreement was a rack rent for the purposes of the Act.

38. We have therefore decided that the Respondent is a "person having control" of the Property as is therefore correctly named as the Respondent.

39. We have, in addition, considered the authority of *Rakusen v Jepsen* [2023] UKSC 9 in which the Supreme Court held that rent repayment orders could not be made against a superior landlord. They could only be made against the immediate landlord under the tenancy which generated the rent which is the subject of the application. That decision also seems to point to the Respondent as being the correct respondent for the application, rather than the freeholder.

40. Finally on this issue, the Respondent relies on the fact that the application names "Regal Lets and Sales" as the Respondent. The application in fact does not name Regal Management Services Ltd at all.

41. The Respondent argues that, for this reason, the application should be struck out under rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, because the application named the wrong party as the Respondent.

42. Regal Lets & Sales Limited is a company registered at Companies House under number 10739221 of which Jaber Abeeat is currently a director. It is also (confusingly) the name of the email address listed for the landlord on the tenancy agreement, as noted above. The witness statement of Jaber Abeeat stated that Regal Lets and Sales Limited took over the management of the property from Regal Management Services Limited in November 2022.

43. As a result of both of those features, it is understandable why the Applicants (who are not legally represented) would have mistakenly named Regal Lets and Sales Limited as the Respondent in January 2023.

44. By 19 January 2023, it is clear that someone (it is not clear who it was from the papers we have seen) had spotted and corrected the error. We know this because the Tribunal's directions of that date name Regal Management and Services Limited as the Respondent.

45. Since that date Regal Management Services Ltd has been named as Respondent on all Tribunal documents and neither Regal Management Services Ltd nor (since April 2023) its solicitors have objected.

46. As we have found, Regal Management Services Limited is the landlord under the tenancy agreement and was the person in control of the Property at the time of the alleged offence. Regal Management Services Limited is the correct Respondent, but was not named on the application.

47. In considering the Respondent's application to strike out under rule 9, we therefore take the following factors into account:

    47.1. The Respondent has been treated as the respondent since it was listed as Respondent on the directions order on 19 January 2023.

    47.2. The Respondent has not previously applied for strike out on the grounds that the application form named the wrong party as the Respondent.

    47.3. The Respondent (who is the correct respondent as discussed above) has had notice of the hearing, has prepared for the hearing and has attended the hearing through its director and solicitor.

48. The Respondent would not be prejudiced by continuing to be treated as the respondent. The correct parties were in front of the Tribunal at the hearing.

49. Therefore, to the extent that the Applicants' application form is wrong when it names Regal Lets and Sales Limited as the Respondent, we will treat the application as if it named the correct landlord (as did the Judge who made the directions herein). If necessary, we will allow an amendment to the application form accordingly and dispense with the need for re-service.

50. We therefore reject the Respondent's submission that the application is defective for naming the wrong Respondent. We regard Regal Management Services Limited as the landlord under the tenancy agreement and as the person in control of the property within the meaning of s263.

51. That concludes our consideration of the preliminary issues raised by the Respondent's representative. We now turn to the alleged offence.

The Alleged HMO Offence - the elements of the offence

52. We have outlined above the elements of the offence as alleged by the Applicants. In summary, they are as follows:

    52.1. The Property was an HMO which was required to be licensed during the Relevant 12 Month Period.

    52.2. The Property was not licensed during that period.

    52.3. The Respondent had control of and/or was managing the Property during that period.

    52.4. The Respondent granted a tenancy of Room 2 of the Property to the Applicants on 22 November 2019 for a fixed term of 1 year,

which continued as a periodic tenancy up to and beyond the date of this application.

52.5. The Applicants were therefore tenants at the Property during the Relevant 12 Month Period.

53. We shall consider each of those allegations in turn.

Was the Property an HMO during the Relevant 12 Month Period?

54. The relevant starting point is the "standard test" in section 254(2) of the Housing Act 2004:

> "A building or a part of a building meets the standard test if–
>
> (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
>
> (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
>
> (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
>
> (d) their occupation of the living accommodation constitutes the only use of that accommodation;
>
> (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
>
> (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

55. The evidence of the Applicants was that there were between 7 and 11 people staying in the house during the Relevant 12 Month Period. The evidence of the Respondent was that there were between 5 and 7 people staying in the house during that time. In answer to a question from the Tribunal, the Respondent's representative confirmed that there were never fewer than 5 people living the Property at that time.

56. There was no evidence about whether or not the two Applicants constituted a single household by themselves. But it was clear that other people were coming and going on a frequent basis and there is no reason to believe that all of those people formed a single household with the Applicants within the meaning of section 258 of the Housing Act 2004.

57. It is therefore clear beyond reasonable doubt that there was more than one unit of accommodation in the Property and that the units were occupied by persons who did not form a single household and that the house

contained more than two people (and is therefore not exempt under paragraph 7 of Schedule 14). The Property was therefore an HMO during the Relevant 12 Month Period because it satisfied the "standard test" above.

Is it the type of HMO which requires a licence?

58. Not every HMO is required to be licensed. In the absence of additional licensing, only an HMO of "prescribed description" is required to be licensed (see section 55 of the Housing Act 2004). Para 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221 provides that an HMO is of a "prescribed description" if it is occupied by five or more persons throughout the relevant period.

59. As stated above, even though the parties in the present case differ as to the exact number of people occupying the Property at any particular time, it is common ground that there were never fewer than 5 people in occupation at any time during the Relevant 12 Month Period.

60. We are therefore satisfied beyond reasonable doubt that the Property was required to be licensed as an HMO of a prescribed description for the whole of the Relevant 12 Month Period.

Was the Property licensed?

61. The Respondent's representative conceded that the Respondent did not hold an HMO licence during the Relevant 12 Month Period.

62. There was evidence that the Respondent had applied for an HMO licence by application form dated 9 January 2023. The Respondent ceased to be regarded as committing an offence from the date when that application is made and while it is pending. As at the date of the hearing before us, no licence had yet been granted pursuant to that application. In any event, the Respondent's licence application was made after the period during which the offence is alleged for the purposes of this application, so it makes no practical difference. We will, however, take it into account generally on the question of the landlord's conduct overall.

Person having control

63. We have already decided above that the Respondent was a "person having control" of the Property throughout the Relevant 12 Month Period, within the meaning of section 263 of the Housing Act 2004.

Elements of the Alleged Offence

64. We have therefore found that all of the elements are in place for a finding that the Respondent is guilty of the offence as alleged during the Relevant 12 Month Period. Before deciding whether it actually committed the offence, we need to consider whether there is a defence of reasonable excuse.

Reasonable Excuse

65. Pursuant to section 72(5), it is a defence if the Respondent had a reasonable excuse for managing the house without a licence or for permitting the Applicants to occupy the house.

66. The Upper Tribunal stated in relation to an HMO case in *IR Management Services Limited v Salford City Council* [2020] UKUT 81 at paragraph 40 that "the issue of reasonable excuse is one which may arise on the facts of a particular case without [a respondent] articulating it as a defence (especially where [a respondent] is unrepresented). Tribunals should consider whether any explanation given … amounts to a reasonable excuse whether or not [the respondent] refers to the statutory defence".

67. The particular terms of the reasonable excuse defence in section 72(5) came under scrutiny in *Palmview Estates Limited v Thurrock Council* [2021] EWCA Civ 1871. In that case, the Court of Appeal (at paragraphs 33 and 34) made the following important points:

    67.1. Section 72(1) creates an offence of strict liability. That means that it does not matter whether the Appellant knew that the property they had control of was an HMO which required to be licensed. That strict liability nature of the offence is part of the statutory context in which the reasonable excuse defence should be construed and applied.

    67.2. The defence of reasonable excuse is not framed in terms of failure to apply for a licence - it is framed expressly in terms of the offence itself. In other words: "a person may have a perfectly reasonable excuse for not applying for a licence which does not (everything else being equal) give that person a reasonable excuse to manage or control those premises as an HMO without that licence." (paragraph 34 of *Palmview*)

68. Is there a defence of reasonable excuse in this case? The Respondent's former director, Jaber Abeeat, gave evidence in his witness statement of his belief that the real landlord was Medical Team Limited. We have already decided that this belief was erroneous.

69. His evidence is that he was not instructed by Medical Team Limited to obtain an HMO licence. He said, "we were informed by [Medical Team Limited] there was no need for HMO licence." Mr Jabeeat chose not to give oral evidence to be questioned on that statement. There was some discussion in submissions whether the implication of that statement was (a) that Mr Jabeeat was being told that an HMO licence was not required at all or (b) that he was being told that an HMO licence was not required because Medical Team Limited already had one.

70. In our judgment, it does not matter for present purposes which of those is correct. Either way it does not amount to a reasonable excuse under

section 95 in our judgment. The Respondent is listed at Companies House as a company which deals in "Residents property management" and the Respondent stated (through its representative at the hearing) that it manages about 10 properties.

71. It is not a reasonable excuse for any Respondent to accept the word of the freeholder that the Property does not require a licence, without making any further enquiries. It is something which the Respondent should at least make efforts to ascertain for itself.

72. It also would not be sufficient for the Respondent to accept the word of the freeholder that the Property already has a licence. The Respondent should at least ask to see the licence to ensure that it is still current, in whose name it was granted, that it is the right licence for the property and to check whether there are any conditions on the licence which need to be complied with.

73. Simply accepting the word of the freeholder that "there was no need for HMO licence" is not a reasonable excuse in these circumstances.

74. We therefore reject the defence of reasonable excuse.

The Alleged HMO Offence: Conclusion

75. It follows that the Respondent committed the offence as alleged under section 72 of the Housing Act 2004 during the whole of the Relevant 12 Month Period leading up to the date of this application. We so find beyond reasonable doubt.

Rent Repayment Order – whether to make an order

76. As a result of all of the above, the Tribunal may make a rent repayment order in this case (see section 43 of the 2016 Act).

Rent repayment order – amount of the order

77. The steps to be taken by the Tribunal in assessing the amount of the rent repayment order to be paid under section 44 of the 2016 Act was recently set out by the Upper Tribunal in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraph 20 of the judgment as follows:

> "a. Ascertain the whole of the rent for the relevant period;
>
> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

> 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 whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
>
> d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4)."

We shall go through each of those steps as follows.

(a) Ascertain the whole of the rent

78. The amount stated to be payable as rent in the tenancy agreement in this case is the sum of £800 per month, giving a potential maximum claim of **£9,600** (being £800 x 12). That is the amount of the claim in the application. There is evidence, as stated above, that the Applicants have paid that sum in respect of the Relevant 12 Month Period.

(b) Subtracting element of utilities from the rent

79. The rent repayment order can relate only to amounts paid as rent. The rent in this case is expressed in the tenancy agreement to include "utilities". These are not specified or itemised in the tenancy agreement.

80. The only evidence in relation to utilities was in the statement of Jaber Abeeat. He stated that "in relation to, the utility bills including gas, electric, water, council tax, cleaning charges, management charges, it amounts to around £200 per month". There was no documentary evidence of any of those amounts. None of them was itemised. The Respondent's representative told us that £200 per month was the pro rata sum attributed to the Applicants' room. We had no way of checking how this sum was calculated.

81. The Applicants raised a question about whether the utility bills were actually paid by the Respondent. That is not a relevant factual dispute for us to resolve. It is our job to isolate, as best as we can, the amount payable as rent. It is a matter between the Applicants and the Respondent and the utility companies as to whether the actual utility invoices (none of which we have seen) are paid.

82. In the absence of any credible evidence as to the amount allocated for utilities, we need to decide what to do. According to the *Acheampong* case

(above), we must make an informed estimate. We are however not persuaded that £200 per month is a realistic figure. It is much too high, because it would mean that the rent element was £600 per month and that the utilities and council tax element amounted to as much as 1/3 of that sum.

83. We will also not deduct cleaning charges or management charges, because the tenancy agreement does not say that those are included in the rent in the first place.

84. Using our specialist knowledge and expertise, we have arrived at a figure of £75 per month to represent the element of the monthly £800 which is attributable to utilities and council tax.

85. There is no evidence of any award of universal credit paid in respect of rent in this case.

86. That gives a maximum monthly award of £725, which translates to a maximum total award of **£8,700** (being £725 x 12).

(c) Ascertain the seriousness of the offence

87. In considering the seriousness of the offence itself, the Upper Tribunal in *Acheampong* gave the following additional guidance at para 21:

> "It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

88. With that approach, we take the following factors into account when considering the seriousness of the offence:

88.1. The Respondent is a company which specialises in lettings and property management. It handles at least 10 properties.

88.2. The Respondent was clearly aware that the Property might have needed an HMO licence.

88.3. The Respondent failed to carry out any of its own checks as to whether the Property required a licence. It simply started letting the Property on the word of the freeholder that a licence was not needed.

88.4. The Respondent eventually applied for a licence, but only after neighbours called the local authority with complaints of excess rubbish at the Property.

89. In our view, as a result of the above, the Respondent's commission of the offence displays a recklessness which puts it towards the serious end of the scale.

90. We regard 70% of the rent as an appropriate penalty to reflect the seriousness of the offence itself.

(d) Other section 44(4) factors

91. We now need to consider whether to make any additions or deductions to that figure, taking into account all the factors in s44(4).

(d) Other section 44(4) factors: Conduct

92. We are required by section 44(4)(a) of the 2016 to take account of the conduct of the landlord and the tenants.

93. The Applicants made the following allegations of relevant poor conduct on the part of the Respondent:

    93.1. Fire extinguishers and smoke alarms were missing from the Property.

    93.2. There were instances of electrical disrepair which led to electrical shorting and were therefore potentially hazardous.

    93.3. At one point during the colder months, the heating stopped working at the Property for a period of one week, during which time the Respondent (or its agents) failed to respond to the Applicants' calls.

    93.4. The Applicants' evidence included a gas safety warning notice showing signs of spillage of carbon monoxide from the boiler in 2021.

94. All of these allegations were in the Applicants' application.

95. It was a notable feature of this case that the Respondent submitted a witness statement from its former director, but that witness statement did not address (and it particular did not deny) any of those allegations by the Applicants.

96. In addition, although the Respondent has never expressly admitted those allegations, the Respondent's representative did not address them at all during the hearing, despite the First Applicant referring to them in his oral submissions and despite the Tribunal checking more than once whether the Respondent's representative wanted to make any more submissions.

97. The inescapable inference is that the Respondent was not able to contest those allegations of poor conduct and we therefore find, on the balance of probabilities, that they are true.

98. We have no evidence to suggest that there is anything to criticise about the Applicants' conduct.

99. There was no evidence of any good conduct on the part of the Respondent, save for the fact that the Respondent did eventually apply for a licence.

100. Taking into account all of the above, we have decided that the penalty should be increased from 70% to 80% to reflect the conduct factors we have identified. We are particularly influenced in that decision by the fact that the sorts of problems identified by the Applicants (eg fire safety, gas safety and excess waste) reflect some of the important policy reasons for why licensing of HMOs is so important.

(d) Other section 44(4) factors: Landlord's financial circumstances

101. We are required to take into account the landlord's financial circumstances under section 44(4)(b) of the 2016 Act. There is no statement or evidence at all of the financial circumstances of the Respondent.

102. In *Daff v Gyalui* [2023] UKUT 134 (LC) the landlord had stated her income and expenditure and had provided some limited evidence of those items. She gave oral evidence to the First-tier Tribunal, but was not questioned about her financial circumstances. The First-tier Tribunal in that case decided that she had "made no financial disclosure". In overturning that decision, the Upper Tribunal said at paras 26-27:

> "…Any court or tribunal asked to make a decision on the basis of material which it considers to be incomplete is entitled to put questions of its own to the witnesses who give evidence before it. Where one or more of the parties is without professional representation, the tribunal's role in eliciting the information necessary to enable it to make a fair decision is doubly important.
>
> 27. Mr Neilson submitted that it would be inappropriate for the FTT to question a landlord about their financial circumstances where no documentary evidence of those circumstances had been provided. I entirely accept that self-serving oral evidence which is unsupported by corroborative material may be of very limited assistance, but that does not discharge the FTT from the responsibility imposed on it by section 44(4)(b) to consider the financial circumstances of the landlord. In this case Ms Daff had provided substantial information including details of her financial commitments, a statement that she had been unable to work since 2014 due to her serious illness, a detailed medical

history following her most recent discharge from hospital, and evidence of significant outgoings associated with her continuing poor health. If ever there was a case for the FTT to adopt an inquisitorial approach, it was this one."

103. In this case:

103.1. The Respondent is legally represented.

103.2. There was no evidence or statement of any kind before the Tribunal about the Respondent's financial circumstances. The evidence was therefore not "incomplete", rather it was entirely absent.

103.3. Nobody gave oral evidence for the Respondent, so there was no-one to whom the Tribunal could direct questions to elicit any evidence.

103.4. There was no material upon which the Tribunal could have exercised an inquisitorial approach without positively inviting the legally represented Respondent to give completely fresh evidence at the hearing for which the unrepresented Applicant would have been unprepared. That, in our view, would have been unjust and unfair, contrary to the overriding objective in rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and contrary to the principles of natural justice. So we dis not do so.

104. Therefore, in taking account of the landlord's financial circumstances, we have decided that there is nothing to warrant any adjustment to the amount of the rent repayment order under this heading.

(d) Other section 44(4) factors: Previous convictions

105. We have no evidence that the Respondent has been convicted of any offence to which Chapter 4 of the 2016 Act applies, for the purposes of section 44(4)(c) of the 2016 Act.

Amount of rent repayment order: Discussion and Conclusion

106. We have decided in the light of all of the above that the correct level for the rent repayment order would be 80% of the rent.

107. The figure we have arrived at is therefore 80% of £8,700 which amounts to **£6,960** payable by the Respondent to the Applicants.

Dated this 24th day of July 2023

JUDGE TIMOTHY COWEN

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).