FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMF/2023/0041**
HMCTS Code	**:**	**Face to Face hearing**
Property	**:**	**Flat 3, 93-95 Commercial Road, London, E1 1RD**
Applicants	**:**	**1. Hannah Washington** **2. Annie Winstanley** **3. Caitlin Hanlon**
Representative	**:**	**Muhammed Williams**
Respondent	**:**	**1. MPL Estates Limited (formerly known as Mohmed Partnership Limited)** **2. Wisteria Management Limited**
Representative	**:**	**No appearance**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Robert Latham** **Louise Crane MCIEH**
Date and Venue of Hearing	**:**	**31 July 2023 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**3 August 2023**

DECISION

Decision of the Tribunal

1. The Tribunal makes Rent Repayment Orders against the Respondents in the sum of £15,303, in respect of which each Respondent is jointly and severally liable. The Rent Repayments Orders are made in favour of each Applicant in the sum of £5,101. The said sums shall be paid by 31 August 2023.

2. The Tribunal determines that the Respondents shall also pay the Applicants £300 by 31 August 2023 in respect of the tribunal fees which they have paid. Again, the Respondents are jointly and severally liable for this sum.

3. The effect of joint and several liability is that each Respondent is potentially liable to pay the said RROs totalling £15,303 and tribunal fees of £300. If the Applicants decide to enforce payment against both of the Respondents, they cannot recover more than the specified sums of £15,303 and £300.

The Application

1. By an application, dated 3 February 2023, the Applicants, seek a Rent Repayment Order ("RRO") in the sum of £17,003 against the Respondents pursuant to Part I of the Housing and Planning Act 2016 ("the 2016 Act"). The application relates to Flat 3, 93-95 Commercial Road, London, E1 1RD ("the Flat"). The Applicants seek RROs in respect of the offence of control or management of an unlicenced house.

2. On 14 March 2023, the Tribunal gave Directions. The Applicants have provided a Bundle of Documents of 125 pages in support of their application. The Respondents have played no part in these proceedings. The Tribunal is satisfied that the Respondents have been given notice of these proceedings and have made an informed decision not to engage.

3. 93-95 Commercial Road, London, E1 1RD is a substantial four storey property. There are commercial premises on the ground floor. There are three flats on the first, second and third floors. The Flat is a three bedroom on the top floor. There was also a kitchen and a bathroom with a shower and toilet, but no bath. The flat benefitted from a balcony to the rear of the property.

4. The Applicants occupied the Flat pursuant to a tenancy agreement dated 30 July 2021 (at p.28-45). They were joint tenants. The term of the tenancy was twelve months commencing on 30 July 2021 to 29 July 2022. The rent was £1,700 per month. They also paid a deposit of £1,700 which was placed in a Rent Deposit Scheme.

5. The landlord is stated to be "Wisteria Management Ltd", but the "Landlord's Agent Address in England and Wales" is stated to be "Wisteria Management Ltd, Kemp House, 160 City Road, London, EC1V 2NX". Under the definitions section (at p.31) it is stated that "Landlord includes the person or persons who own the Premises, which give them the right to possession of it at the end of the Tenancy and anyone who might subsequently own the Premises".

6. The Applicants never met any representative of the landlord. They were provided with an email address: infowisteria@yahoo.com. They communicated with a man called "Adam". They never met him. It was difficult for them to communicate with the landlord. The landlord frequently left messages from a phone number to which they were unable to respond.

7. The Land Registry Official Copy of Register of Title records the freehold owner of 93-95 Commercial Road, London, E1 1RD as "Mohmed Partnership Limited (Co.Regn.No. 04992487 of 75 New Road, London E1 1HH". The First Respondent is recorded as having paid £1.23m for the property on 17 March 2008.

8. On 22 October 2013, the First Respondent changed its name from "Mohmed Partnership Limited" to "MPL Estates Limited". On 18 December 2015, it changed its registered address from "75 New Road, London E1 1HH" to "177-179 Commercial Road, London, E1 2DA". The First Respondent did not notify the Land Registry of these changes. The Land Register is intended to provide a conclusive record of title, so that there is a public record of who owns land and their address. A freeholder who does not notify the Land Registry of material changes in its name and registered office, can have no complaint when its tenants rely on the Register of Title.

9. The registered address of Wisteria Management Limited, the Second Respondent, is 128 City Road, London, EC1V 2NX. It is apparent that there is a close connection between the two companies. Shakeel Saeed Mohmed is a director of both companies, albeit that his correspondence address is recorded variously as "177-179 Commercial Road, London, E1 2DA" (for the First Respondent) and "128 City Road, London, EC1V 2NX" (for the Second Respondent). Saeed Yusuf Mohmed is both the company director and a director of the First Respondent. He gives his correspondence address as "91 Claremont Road, Forest Gate, London, E7 0QA".

The Hearing

10. Mr Muhammed Williams appeared for the Applicants. Mr Williams is a housing adviser in the Environmental Health and Trading Standards department of the London Borough of Tower Hamlets ("LBTH"). Section 49 of the Act permits a local housing authority to help tenants apply for

RROs. This affords access to justice for tenants who would otherwise be unable to navigate the legal complexities of the relationship of landlord and tenant and the licencing regime.

11. Ms Hannah Washington and Ms Caitlan Hanlon attended the hearing. Ms Annie Winstanley was unable to attend as she has obtained employment in the USA. The three Applicants have made a joint statement (at p.76-77). Ms Washington gave evidence and was asked a number of questions by the Tribunal. She is an underwriter for an insurance firm. The three Applicants were friends who were living in the Wirral and were looking for accommodation in London. Ms Hanlon also offered to answer questions from the Tribunal. However, she did little more than confirm the evidence given by Ms Washington. The Tribunal has no hesitation in accepting the evidence from both tenants. They gave their evidence in a careful and thoughtful manner.

12. There was no appearance from either of the Respondents who have taken no part in these proceedings. The Tribunal needed to satisfy ourselves that they had been given notice of the application and of the hearing pursuant to rules 29 and 32 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). We were satisfied that they had. In their application form, the Applicants gave two addresses for the First Respondent, namely (i) 75 New Road, London, E1 1HH (the freeholder's address which is recorded at the Land Registry) and (ii) Kemp House, 160 City Road, London, EC1V 2NX (the address for service on the landlord's agent which is specified on the tenancy agreement). Two addresses were given for the Second Respondent: (86F Greenfield Road, London, E1 1EJ (the address at which the Applicants had signed their tenancy agreement) and (ii) 128 City Road, London, EX1V 2NX (its registered address at Companies House). They also provided an email address, namely infowisteria@yahoo.com (the email address given to the Applicants so they could contact their landlord).

13. The Tribunal gave the Respondents the following notice of the proceedings and the hearing:

(i) On 14 February 2023, the Tribunal posted a copy of the application to the Respondents at the four addresses and emailed it to them at infowisteria@yahoo.com.

(ii) On 14 March 2023, the Tribunal posted a copy of the directions to the Respondents at the four addresses and emailed it to them at infowisteria@yahoo.com.

(i) On 5 May 2023, the Tribunal notified the Respondents of the arrangements for the hearing by posting it to the four addresses and emailing it to them at infowisteria@yahoo.com.

14. The only reasonable conclusion is that the Respondents have taken an informed decision not to engage with these proceedings.

The Housing Act 2004 ("the 2004 Act")

15. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an unlicenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

16. By section 80, a local housing authority ("LHA") may designate a selective licencing area. Section 95 specifies a number of offences in relation to the licencing of houses. The material part provides (emphasis added):

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

17. Section 263 provides:

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

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

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

18. It is to be noted that there may be more than one person who may commit an offence under section 95 as having "control of" or "managing" a house. In such circumstances, it will be for the LHA to determine who is the appropriate person to hold a licence. However, when it comes to the making of a RRO, this can only be made against the "landlord".

The Housing and Planning Act 2016 ("the 2016 Act")

19. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

20. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. In the recent decision of *Kowelek v Hassanein [2022] EWCA Civ 1041; [2022] 1 WLR 4558,* Newey LJ summarised the legislative intent in these terms (at [23]):

> "It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (*Rakusen v Jepsen* [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in *Rakusen v Jepsen*, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair),

the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

21. Section 40 provides (emphasis added):

> "(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—
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> (a) repay an amount of rent paid by a tenant, or
>
> (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

22. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The seven offences include the offence of "control or management of unlicenced house contrary to section 95(1) of the 2004 Act.

23. Section 41 deals with applications for RROs. The material parts provide:

> "(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 —
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> (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
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> (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

24. Section 43 provides for the making of RROs:

> "(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)."

25. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> "(3) The amount that the landlord may be required to repay in respect of a period must not exceed—
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> (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.

26. Section 44(4) provides:

> "(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."

27. Section 47(1) provides that an amount payable to a tenant under a RRO is recoverable as a debt.

The Background

28. On 3 February 2016, LBTH approve a selective licencing scheme which applies to all rented properties in the wards of Whitechapel, Spitalfields & Banglatown and Weavers areas of the borough excluding those needing a licence under the mandatory scheme. On 1 October 2016, the selective licencing scheme came into effect for a period of five years (p.122). On 28 April 2021, LBTH agreed to extend it for a further five years. The public notice for the extended scheme is at p.118-120. Mr Williams has explained the policy objectives behind this scheme at p.18-27. He describes how since the demand for private sector accommodation in Tower Hamlets is so high, property owners confidently market dangerous and overcrowded accommodation in the knowledge that rental income is high with minimal risk of discovery by the local authority. It is also a cause of anti-social behaviour. LBTH is a poor and financially stretched authority with limited resources to take enforcement action.

29. In September 2020, the Flat was first brought to the attention of LBTH. It is situated in Whitechapel and required a licence. On 4 September 2020, Mr Syed Rizvi sent a first warning letter advising the First Respondent that it would face sanctions if an application was not made for a licence (at p.89-90 and 93-94). On 16 November 2020, Mr Rizvi sent a second warning letter (at p.102-7 and 106-7). There was no response from the First Respondent. However, LBTH failed to follow up on the action that it had threatened. This may have been a consequence of the Covid-19 infection.

30. In June 2021, the three Applicants were looking for accommodation in London. They were friends and were living in the Wirral. Ms Washington saw the Flat advertised on Gumtree. It was being marketed by Claremont Estates. The Applicants made an appointment to come to London to view the Flat. However, the agent did not show up. A further viewing was arranged and they agreed to take the flat. On 2 July, Ms Hanlon paid a holding fee of £394. On 12 July 2021, she paid a further £1,568. Although the tenancy agreement is dated 1 July, it would seem that they signed it some days before this. Their deposit was paid into a rent deposit scheme.

31. The Applicants faced problems from the first day of the tenancy. They were not provided with a "How to Rent" booklet. Neither were they provided with a gas safety certificate. There was no carbon monoxide alarm, and the tenants eventually had to purchase one themselves.

32. On moving into the Flat, the tenants found that there was no heating or hot water. There was an ongoing problem to do with the water pressure. It may be that this was due to a leak somewhere in the system. They contacted the landlord, "Adam". The landlord had a maintenance team led by "Earl". The hot water was fixed on the following day. However, there was no heating until 2 September. The tenants were told that they had to regularly check the pressure of the system and increase the pressure when it was low. The problem existed throughout the tenancy.

33. The tenants asked for gas and electrical safety reports. These were provided after some two months. There were a number of occasions when the lock to the front door did not work and the tenants were either locked inside, or were unable to enter the Flat. Various attempts were made to ease the lock. The tenants argued for a new lock. The landlord was not willing to install this.

34. There were ongoing problems of anti-social behaviour in the flat below. They had late night parties. The lock on the front entrance door was regularly broken. The three Applicants felt insecure. The landlord resolved these problems after some 3 to 4 months. Mr Williams attributes such problems of antisocial behaviour to an unregulated private rented sector.

35. The landlord was not willing to spend money on the Flat. There was an infestation of flies in the chimney. Rather than deal with this, the landlord put a piece of wood over the grill.

36. In January 2022, it was apparent that water was leaking from the Flat into the flat below. There was mould growth and the tenants in Flat 2 complained of chest infections. The landlord took ineffective steps to abate the problem. The landlord was willing to install a new bathroom in the Flat, but insisted that the tenants should use the bathroom in Flat 2 whilst the works were executed. The Applicants were not willing to share toilet and bathroom facilities with strangers.

37. On 18 February, a water tank fell off the roof onto the balcony of the flat. It seems that the tank was redundant, but had been left on the roof. Over time, it slipped to the edge of the roof, and finally fell. The tenants had reported this hazard to the landlord on a number of occasions. The tank fell as Ms Winstanley was bringing in some washing. The incident was extremely frightening for her.

38. The landlord eventually agreed to provide temporary accommodation for seven days whilst a new bathroom was installed. The Applicants were first accommodated in a service apartment in Commercial Road for two days. They were then moved to a hotel for two nights where the three of them shared a double bedroom. They were then transferred to a guest house some distance from the Flat. The Applicants did not feel safe and chose to stay with friends.

39. On about 10 March, after 9 days, the Applicants returned to the Flat. A new bathroom had been installed. However, no flooring or tiling had been installed. The flooring on the landing had been ripped up. The balcony was unusable. The workmen had left site, leaving their tools in the Flat. The Flat remained in this condition until the end of the tenancy.

40. Clause 8.2 of the tenancy permitted the tenants to terminate the tenancy by giving 2 months' notice after 6 months expiring on the last day of a month. On 19 April 2022, Ms Washington sent the landlord an email (to infowisteria@yahoo.com) stating that they would be exercising their right to terminate the tenancy on 30 June. There was no response from the landlord. The tenants made their last payment of rent on 31 May 2022. They moved out on 21 June. They formally vacate on 30 June when they left their keys in their Flat. In due course, they recovered their deposit.

Has an Offence been Committed?

41. A RRO can only be made against a "landlord". In *Rakusen v Jepson* [2023] UKSC 9, the Supreme Court confirmed that a RRO can only be made against the tenant's immediate landlord. It cannot be made against a superior landlord.

42. However, the situation is different in the current case. The Tribunal is satisfied that the Second Respondent is an undisclosed agent for the First Respondent who is the principal. The tenancy agreement makes express provision for this by proving that the expression "Landlord" includes the person or persons who own the Premises, which give them the right to possession of it at the end of the Tenancy and anyone who might subsequently own the Premises.

43. The circumstances in which a tenant is entitled to seek a RRO against both an agent and the undisclosed principal was considered by Martin Rodger KC, the Deputy President, in *Cabo v Dezotti* [2022] UKUT 240 (LC). In *Bruton v London & Quadrant* [2000] 1 AC 406, the House of Lords held that it is open to a landlord to create an interest in land, albeit that holds no interest in land itself. Thus, in the current case, it is open to the Applicants to seek RROs against both the Second Respondent, who seem to have no legal interest in Flat, and the First Respondent as the undisclosed principal.

44. The Tribunal is satisfied beyond reasonable doubt that an offence has been committed under section 95(1) of the 2004 Act:

(i) On 1 June 2016, LBTH introduced a Selective Licencing Scheme that applied to the Flat.

(ii) No application had been made for a licence.

(iii) The offence was committed from 31 July 2021 to 30 June 2022, namely the whole period of the tenancy.

45. The offence is committed by the person(s) who had “control of” and/or had been “managing” the unlicenced house (see section 263 of the Act at [17] above). The Tribunal is satisfied beyond reasonable doubt that:

(i) The First Respondent is the "person managing" the Flat, in that it receives rent through an agent from persons in occupation of the Flat. Alternatively, it would have received the rents but for the agreement he had reached with his agent.

(ii) The Second Respondent is the "person having control" in relation to the Flat, in that it receives the rack rent as agent for the First Respondent.

The Assessment of the RRO

46. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. We are satisfied that this is an appropriate case for a RRO to be made.

47. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit.

48. Having determined the maximum award, section 44(4) of the 2016 Act requires us to take into account the following factors:

> (a) the conduct of the landlord and the tenant,
>
> (b) the financial circumstances of the landlord, and
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> (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

49. However, before applying the statute, we are now required to apply the judicial gloss applied to it by the Upper Tribunal in *Acheapong v Roman* [2022] UKUT 239 (LC); [2022] HLR 44. In a number of recent decisions, the Upper Tribunal has caused uncertainty for both tribunal judges and the parties who appear before this tribunal which this tribunal discussed in *965 Fulham Road, SW6 5JJ* (LON/HMG/2022/0018). Until the matter is reviewed by the Court of Appeal, we are obliged to have regard to the guidance provided by Judge Elizabeth Cooke at [18] to [21]:

> "18. It is easy to say what the FTT should not do: it should not take the whole rent (less any payments for utilities) and regard that as the starting point subject only to deductions made in light of the factors in section 44(4) of the 2016 Act.
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> 19. What should it do instead?
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> 20. The following approach will ensure consistency with the authorities:
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> a. Ascertain the whole of the rent for the relevant period;
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> 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).

21. I would add that step (c) above is part of what is required under section 44(4)(a). 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."

50. In the recent decisions of *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC) and *Hallett v Parker* [2022] UKUT 165 (LC), the Deputy President distinguished between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (25%).

51. The Applicants paid rent of £17,003 during the eleven months of the tenancy (see p.75). The Applicants have provided bank statements confirming these payments. Each of the tenants contributed to the rent. None of the tenants were in receipt of universal credit or any other benefits.

52. The monthly rent of £1,700 included gas, electricity and water. The Applicants argued that no deduction should be made for these utilities. It is for a respondent to plead and adduce evidence of the sums that they have expended on utilities. The Respondents have decided not to engage with these proceedings. Further, the Applicants were unable to make any informed estimate of what deduction should be made.

53. We agree that no reduction should be made for the utilities. Firstly, the Respondents have not adduced any evidence of the sums that they have expended on utilities. Secondly, whilst FTTs are Expert Tribunals, an assessment of utility bills is outside our expert knowledge, particularly at a time of rampant inflation in fuel charges.

54. We are comforted in this view by the subsequent decision of the Upper Tribunal in *Hancher v David* [2022] UKUT 277 (LC). The FTT had declined to make any reduction to the rent in respect of the utility bills and council tax which had been paid by the landlady as there was insufficient evidence as to what deductions should be made. Judge Cooke granted permission to appeal on the ground that it was arguable that the FTT had failed to take into account the evidence that the landlady had paid the utility bills. However, in her decision on the substantive appeal, Judge Cooke (at [18]) declined to make any adjustment as the landlady had not

adduced any evidence about the payments that she had made. Like us, she accepted that she was not in a position to make such an assessment.

55. We have decided to make a RRO in the sum of £15,303, namely 90% of the rent of £17,003. In adopting this figure of 90%, we have regard to the following:

(i) We assess the seriousness of this offence at the top end of the scale. We are dealing with rogue landlords. They knew that a licence was required. No application has yet been made for a licence. This tenancy was granted in cynical disregard of the legislation. The tenants were not provided with the "How to Rent" booklet or a gas safety certificate. There was no carbon monoxide alarm. The Flat was in disrepair throughout the tenancy. The tenants were required to move into temporary accommodation for a period of nine days. They returned to find that the Flat was a building site. They had no option but to exercise the break clause and leave the Flat at the earliest opportunity. As an Expert Tribunal we are aware of the importance of selective licencing schemes in protecting the health and safety of tenants. We have due regard to the policy objective behind the LBTH Selective Licencing Scheme. The demand for private sector accommodation in Tower Hamlets is so high, that property owners such as the Respondents confidently market dangerous and overcrowded accommodation in the knowledge that rental income is high, with minimal risk of enforcement action being taken by the local authority. We would have been minded to make a RRO in the sum of 100%, but are satisfied that this would be inconsistent with the recent guidance from the Upper Tribunal.

(ii) There is no criticism of the conduct of the Applicants.

(iii) The conduct of the landlord: we have considered this above.

(iv) No evidence has been adduced as to the financial circumstances of the Respondents.

(v) There is no evidence that either Respondent has been convicted of any offence. However, we give limited weight to this. LHAs are under considerable financial pressures and are only able to take action in limited cases. A conviction would rather have been an aggravating factor.

56. The Applicants have paid tribunal fees of £300. We are satisfied that this sum should be refunded to the Applicants by the Respondents.

57. We are making the Respondents jointly and severally liable for these sums. The RROs are made in favour of each Applicant in the sum of £5,101. The effect of joint and several liability is that each Respondent is potentially liable to pay the said RROs totalling £15,303 and tribunal fees of £300. If

the Applicants decide to enforce payment against both of the Respondents, they cannot recover more than the specified sums of £15,303 and £300.

Robert Latham
3 August 2023

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.