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

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| **Case Reference** | **:** | **BIR/0FN/HMK/2022/0017-0022** |
| **Property** | **:** | **11 Brazil Street, Leicester, LE2 7JA** |
| **Applicant** | **:** | **Cameron Wilson, Angus Jennings, Martha Scattergood, Nicole Kubiena, Ashley Burkett and Jessica Limb** |
| **Respondent** | **:** | **Inderjit Singh Lidder** |
| **Type of Application** | **:** | **Rent Repayment Order** |
| **Tribunal Members** | **:** | **Judge C Kelly**<br>**Mr D Satchwell FRICS (Surveyor)** |
| **Date of Decision** | **:** | **23 August 2023** |

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**DECISION**

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## DECISION

1. This application is made under section 41 of The Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order. The basis of the application is said to be that the Respondent had control of, or managed, an unlicensed HMO, contrary to section 72(1) of The Housing Act 2004 ("the 2004 Act") which is an offence under section 40(3) of the 2016 Act.

2. Section 72 of the 2004 Act states:

   *"(1) A person commits an offence if he is a person having control of or managing a HMO which is required to be licensed under this part (see s.61(1)) but is not so licensed".*

3. Section 61(1) of the 2004 Act states:

   *"(1) Every HMO to which this Part applies must be licensed under this Part unless -*

   *(a) A temporary exemption notice is in force in relation to it under section 62, or*

   *(b) An interim or final management order is in force in relation to it under Chapter 1 of Part 4"*

4. The 2004 Act introduced the mandatory licensing of HMOs whilst the Licensing of Houses In Multiple Occupation Order 2006 details the criteria under which HMOs must be licensed. These criteria were later adjusted and renewed by the Licensing of Houses in Multiple Occupation Order 2018, which came into force on 1 October 2018.

5. This application for a rent repayment order is made by six individuals, each of whom were full time students engaged on a full-time course of further education. The application is made in respect of the property known as 11 Brazil Street, Leicester, LE2 7JA ("the Property").

6. The hearing took place on 9 August 2023 via remote means.

7. The Respondent is the freehold owner of the Property, together with one other. The Applicants occupied the Property as tenants pursuant to the terms of a tenancy agreement dated 28 May 2021 ("the Tenancy Agreement").

8. The Tenancy Agreement provided for a period of occupation of the Property by the Claimants between 1 July 2021 and 30 June 2022.

**Preliminary Issue – Is the Application in Time?**

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9. The application for the rent repayment order was lodged with the Tribunal on 21 November 2022. The fee, however, was only paid on 13 December 2022.

10. The Applicants accept that there is a defence to any potential offence under s.72 of the 2004 Act, with effect from 24 November 2021, which was the date at which an application for a HMO license was submitted to the local authority, and that this means they must have made their application within twelve months after that time. In other words, proceedings must have been commenced by no later than midnight on 23 November 2022.

11. All of this arises by s.41 the wording of the Housing and Planning Act 2016, which states (insofar as relevant):

    *"41. Application for rent repayment order*

    *…*

    *(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."*

12. The difficulty in this case arises by the delay in making the fee payment, because whilst the Application Notice itself was received by the Tribunal in time, the fee was paid outside of the twelve-month period.

13. The specific wording of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 ("the Procedural Rules"), state as follows:

    *26(1) An applicant must start proceedings before the Tribunal by sending or delivering to the Tribunal a Notice of Application.*

    *(2) Such an application must be signed and dated and, unless a practice direction makes different provision, include –*

    *(a) The name and address of the applicant;*
    *(b) The name and address of the applicant's representative (if any);*
    *(c) An address where documents for the applicant may be sent or delivered;*
    *(d) The name and address of each respondent;*
    *(e) The address of the premises or property to which the application relates;*
    *(f) The applicant's connection with the premises or property;*
    *(g) The name and address of any landlord or tenant of the premises to which the application relates;*
    *(h) The result the applicant is seeking;*
    *(i) The applicant's reasons for making the application;*
    *(j) A statement that the applicant believes that the facts stated in the application are true;*
    *(k) The name and address of every person who appears to the application to be an interested person, with reasons for that person's interest;*
    *…*

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*(5) The applicant must provide with the Notice of Application any fee payable to the Tribunal…"*

14. In this case, the fee did not accompany the Application Notice, as is mandated by Rule 26(5) of the Procedural Rules.

15. Neither party was able to refer the Tribunal to any authority on this issue, as to whether the Application Notice being delivered to the Tribunal offices without a fee would constitute having started the proceedings.

16. The question, we believe, is whether the requirements of Rules 26(2) and 26(5) are in some way mandatory, such that without them being complied with, the application is not treated as being made in time as required by s.41(2)(b) the 2016 Act.

17. There is an argument that suggests that there is no difference in the requirements set out in rule 26(2), which are clearly essential to identifying the property parties to the proceedings, together with the details of the relief sought from the Tribunal, which appear not only mandatory, but essential, if there is to be any hope of identifying what the application is for, against whom it is made and the relief sought. Arguably, for example, without the names of the respondent, there can be no application made.

18. To what extent, then, is the requirement in rule 26(5), to make payment of the relevant fee, in some way different to those elements in rule 26(2)? The answer is not entirely clear, but there does appear to be a difference, in that it is entirely possible that the application can be said to have been made when the application is lodged, but that the fee, whilst it must under the Rules accompany the application under the Procedural Rules, there is a practice in situ now where the Tribunal offices permit the fee to follow separately.

19. The standard form application notice, RR01, for applications for Rent Repayment Orders, states:

*"You can now pay the fee (if applicable) by an on-line banking payment or by cheque/a postal order enclosed with the application form. To request that you should be sent details for paying by on-line banking please tick this box…"*

20. There is then, in section 10 of form RR01, a checklist, which insofar as relevant, states as follows:

*"EITHER*

*A crossed cheque or postal order made out to HM Courts and Tribunals Service for the application fee of £100 (if applicable) in enclosed. Please write your name and address on the back of the cheque or postal order. Please also send a paper copy of your application with your cheque or postal order, regardless of whether you have already emailed the application.*

*OR*

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*You have ticked the box at the top of this form to say you want the relevant regional Tribunal office to send you details on how to pay the application fee of £100 by on-line banking. The unique payment reference the Tribunal office supplies must be used when making your on-line banking payment.*

*DO NOT send cash under any circumstances. Cash payment will not be accepted…"*

21. Hence, the Tribunal office appears permits a practice which is not permitted by the Procedural Rules. Another way of reading the Rules, however, is that the request for the online unique payment reference satisfies the requirement of Rule 26(5), but that appears inconsistent with a literal reading of the Procedural Rules.

22. The representative for the Respondent argued that it was impossible to identify the actual fee, without the Tribunal identifying what sum needed to be paid, and that there was therefore a likely delay in making payment and that this should not be held against the Respondent. That is not a strong argument, because the fee to make an application of this kind (and all others before the Tribunal) are set out as a matter of law in the First-Tier Tribunal (Property Chamber) Fees Order 2013 ("the Fees Order"). The fee is not an arbitrary sum determined by a civil servant.

23. The Fees Order states at paragraph 4:

*"(1) Proceedings where fees are payable in accordance with the provisions of this Order are listed in column 1 of schedule 1 to this Order.*

*(2) The fee due is set out in column 2 of that Schedule.*

*(3) Any fee payable for an application under fees 1.1 to 1.6 is due at the same time as the application is made…"*

24. Schedule 1 sets out the various fees and at 1.1 of that schedule:

*"1.1 Where no other fee is specified, on filing an application to commence proceedings in any leasehold case or on filing an appeal or an application to commence proceedings in a residential property case £100"*

25. Hence, upon making the application, where no other fee is stated, a fee of £100 is payable.

26. In this case, the application was made via one RR01 form, and it appears that the proper fee in relation to that, was £100, and not the sum of £600 that was actually paid, being £100 for each individual tenant claimant. That is the effect of Article 8 of the Fees Order, which deals with the apportionment of fees, in the following way:

*"8(1) This article applies where a fee is payable under schedule 1 to this order.*

*(2) Subject to paragraph (3) in article 9 (remissions) any fee payable shall be payable in equal proportions by the applicants.*

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*(3) Where proceedings are brought by a tenant or landlord of premises and the tenant is more than one person or the landlord is more than one person, the tenant shall be treated as one person and the landlord shall be treated as one person for the purposes of paragraph (2).”*

27. We have tried to consider this issue by reference to the position of a claim form when issued in the courts, there being many authorities on the issue of limitation for those purposes. The notes to the White Book 2023, at 8-3.2, state (insofar as relevant):

*“… CPR 7.2(2) states that a claim form is ‘issued’ on the date entered on the form by the court. Paragraph 5.1 of Practice Direction 7A… states that the proceedings are ‘started’ when the court issues a claim form at the request of the claimant (CR.7.2) but where the claim form is issued as received in the court office on a date earlier than the date on which it was issued by the court, the claim is ‘brought’ for the purposes of the Limitation Act 1980 and any other relevant statute on that earlier date.*

*In Dixon -v- Radley House Partnership (a firm) [2016] EWHC 2511 (TCC) it was held that where the correct fee had not been paid at the date of issue of proceedings due to the articulation of later claims alleging loss of a higher value, time nevertheless stopped running at the date of issue for the purpose of the Limitation Act 1980, provided there was no abusive intent on the claimant’s part…”*

28. Case law has established that the claim was purchased for limitation purposes when the claim form was delivered to the court office accompanied by a request to issue and the appropriate fee. There is a plethora of cases as to the position when an incorrect fee is calculated, the result seemingly is that this should not affect limitation.

29. In this instance, there was a request to determine the appropriate fee, which could be construed as an intention to them pay it.

30. In our view, we consider that the application is made in time, by delivering the Application Notice to the Tribunal and requesting a unique reference number to pay the relevant fee (once that had been advised). This amounted to an indication to pay the correct fee, and in our judgment, delivering the Application Notice was itself enough to commence the application before the Tribunal.

31. Rule 11 of the Procedural Rules states:

*“Fees: non-payment*

*11 (1) In any case where a fee is payable under an order made under section 42 of the 2007 Act (fees), the Tribunal must not proceed further with the case until the fee is paid.*

*(2) Where a fee remains unpaid for a further period of 14 days after the date on which the fee is payable, the case, if not already started, must not be started.*

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*(3) Where the case started, it shall be deemed to be withdrawn 14 days after the date on which the Tribunal sends or delivered to the party liable to make payment a written notification that the fee has not been paid."*

32. Rule 11(2) therefore envisages that a claim may have "started" by the time the fee is paid.

33. There was, in this case, a deliberate decision not to send the required fee with the Application Notice, but that is because the option of paying electronically was chosen and this required the Tribunal to provide a unique reference number. This was not conduct abusive of the Tribunal's processes.

34. Given the absence of any abusive intent on the part of the Claimants, we conclude that the application was "made" for the purposes of s.41 of the 2016 Act, in time, by the delivery of the Application Notice to the Tribunal notwithstanding that the fee was paid after the relevant deadline.

35. During the course of the hearing, the Tribunal indicated that it was minded to give permission to the Claimant to have this matter clarified by the Upper Tribunal. However, having now reviewed the position and considered the matter is greater detail, it seems that there is unlikely to be a realistic prospect that an appeal on this point would succeed and accordingly, if the Claimant wishes to seek permission to appeal, he should do so directly from the Upper Tribunal.

**Preliminary Issue – Should the Respondent be heard**

36. On 14 April 2023, Mr Ward, regional surveyor, made an order debarring the Respondent from further engagement in these proceedings, which stated:

*"2. On 19 December 2022, the Tribunal issued Directions for the determination of the applications. Paragraphs 4 and 5 of those directions instructed the Respondent to provide their statement and bundle no later than 3 February 2023, subsequently extended to 17 March 2023.*

*3. The Respondent did not comply.*

*4. On 28 February 2023, the Respondent was warned that unless they complied with paragraphs 4 and 5 of the Directions by 4.00pm on 6 April 2023, they would be automatically barred from taking part in these proceedings… the Respondent was further advised that if they were barred from taking further part in the proceedings, the Tribunal need not consider any response or other submissions made by them and the Tribunal may then summarily determine all issues raised against them (rule 9(8)).*

*5. The Tribunal has received no documents or communication from the Respondent.*

*Decision*

*6. The Respondent has ignored the Directions of the Tribunal despite a reminder and warning of the consequences.*

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*7. The Respondent is barred from taking further part in the proceedings… under rule 9(8) the Tribunal need not consider any response or other submission made by the Respondent and may summarily determine any or all issues against them."*

37. It was technically wrong to record that the Tribunal had received no communication from the Respondent, because in the period between 17 March 2023 and 14 April 2023, the following emails had been sent to the Tribunal by the Respondent and received by the Tribunal (they were forwarded by HMCTS staff to the Tribunal during this hearing):

    (a) 17 March 2023, in which the Respondent said that he had phoned the Tribunal, but had not had a response, and that he had provided information previously about his position (the email then proceeded to set out stating that there were no major issues with the property, that he sorted out issues regarding furnishing and various other issues).

    (b) 24 March 2023, the Respondent identified that he had received a pack of documents from the Claimants, provided a photograph, and indicated he would review, and respond within 28 days, and the Tribunal was copied into this email.

38. At the hearing, in making his application, the Respondent stated that he had been extremely busy, and simply had insufficient time to be able to engage fully in these proceedings. He said he had made numerous attempts to contact the Tribunal, but the emails referenced were the only ones in the relevant time period. The Respondent was unable to identify other emails in that time period.

39. Ultimately, there had been no attempt to lodge an evidence bundle on behalf of the Respondent, and to fully set out his position, by way of resisting the application to rent repayment orders. It is notable that the directions, as initially given by Judge Barlow, on 19 December 2023, required the Respondent to take various steps, and to provide a bundle indexed and paginated and include such things as: (a) a full statement of reasons for opposing the application, (b) all correspondence relating to the application for the license granted, (c) any witness statements of fact relied upon, (d) evidence of the rent received, if the amount of the application was challenged, (e) a statement of circumstances to justify a reduction in the amount of a rent repayment order, (f) any evidence of outgoings, including utility bills, and (g) any other documents to be relied upon at the hearing.

40. None of the above has been supplied. The emails of 17 March 2023 and 24 March 2023 do not address those points and we are satisfied that an order of the same substance would likely have been made by Mr Ward had he have been aware of those two emails.

41. During the course of the hearing, the Tribunal indicated it would treat the application as being one for relief from sanction, applying principles, set out in the well known authorities of *Mitchell -v- News Group Newspapers Ltd [2013] EWCA Civ 1537 and Denton -v- TH White [2014] EWCA Civ 906*. The essence of those decisions, is that a court (or Tribunal) should adopt a three-stage test, which we do, in determining whether to grant relief from the debarring sanction:

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(1) The serious or significance of the breach. There can be no doubt that a failure to adhere to the terms of a direction's timetable, which prevents the crystallisation of the issues between the respective parties, and delays the just and expeditious conduct of the proceedings, would amount to a serious or significant breach. That is especially so, where the Tribunal has made extensions to accommodate the absence of any reply and, further, has warned the Respondent that his continued failure to engage will likely lead to him being debarred from partaking in proceedings.

(2) The reason for the failure or the default occurring. The Respondent stated that the only reason for his failure to engage, was simply the lack of time, and that he had been very busy with work. As the Court of Appeal noted in Mitchell, that one may be too busy, would not usually amount to a good reason, and we conclude that in the context of this case, this is simply not a good excuse.

(3) All the circumstances of the case. There is an unease at preventing a Defendant from engaging in proceedings especially where there is a requirement for the Tribunal to make findings as to whether the Respondent has committed a criminal offence (in this case, under section 72 of the 2004 Act). The Claimants' representative indicated that there would be prejudice in hearing evidence or submissions from the Respondent at this point, and whilst that might be so in relation to evidence, it is not so in our judgment in relation to submissions.

42. During the course of a short adjournment, the Tribunal identified the case of the Financial Conduct Authority -v- London Property Investments and Others [2022] EWHC 1041 (Ch). The judgment in that case refers to earlier authorities such as Times Travel -v- Pakistan International Airline Group [2019] EWHC 3732 (CH), in which it was referenced that the overriding principle that a barring order should mean what it says, and that there should be no participation in the proceedings in a way which undermines the purpose of that debarring order. The authorities discussed a residual discretion on the part of the trial judge to consider submissions, such as in relation to costs and the terms of any order that may be made.

43. In the circumstances of this case, given the lack of substantive engagement by the Respondent until this hearing, including the absence of any attempt to challenge the debarring order prior to this hearing, we take the view that the debarring order should indeed mean what it says, and that there should be no scope for intervention into these proceedings by the Respondent. The Respondent did, however, remain online throughout, and watched the balance of the proceedings.

44. Therefore, the Respondent's application to be heard at the final hearing is refused.

**The Rent Repayment Order Application**

45. Each of the Claimants provided *evidence*, by way of witness statement, which they verified to the Tribunal that they believed to be true and accurate. The only exception was in relation to Martha Scattergood, who was unable to provide evidence, given that she was now relocated in France. It appears that an attempt had been made to secure permission for Ms Scattergood to give evidence from

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Franchise, by her representatives requesting it of the Tribunal, but there was no trace on the Tribunal's files of that request having been addressed. Fortunately, an adjournment was unnecessary as there was little that could be added by Ms Scatergood's evidence that could not have been addressed by the other witnesses who were in the present and in the jurisdiction.

46. Five of the Claimants therefore gave evidence, which was unchallenged, and which the Tribunal therefore accepts, the essence of which was as follows:

(1) That the total sum paid in the rental period 1 July 2021 to 23 November 2022, in respect of all of the Claimants totalled £8,346.42;

(2) That there were a number of defects in relation to the Property, which ought to be considered by the Tribunal in the exercise of any discretion when determining whether to make, and in what sum a rent repayment order should be made.

47. The Application Notice is premised upon there being an offence contrary to section 72 of the 2004 Act, namely the unlicensed use of a HMO that was required to be licensed. It is therefore necessary for the Tribunal to make findings as to the commission of that offence to the criminal standard - beyond reasonable doubt.

48. The relevant definition of a HMO, as per the standard test, which applies in this instance, is that set out in section 254(2) of the 2004 Act. Working through each of those requirements as follows, and based upon the evidence provided in this case, the findings of this Tribunal makes to the criminal standard are as follows:

(a) That the property consists of one or more units of living accommodation not consisting of a self-contained flat or flats (section 254(2)(a)).

Each of the Applicants in this case have confirmed that they had their own rooms and have described the location of those rooms in the property. The Tribunal is satisfied that each of those rooms rented by the Applicants were units of living accommodation which were not self-contained flats.

(b) That the living accommodation is occupied by persons who do not form a single household (section 254(2)(b)).

The Applicants have confirmed how they came to meet each other, and that they are not part of the same single household. Each of the Applicants gave details as to having met online or through a university context, which the Tribunal accepts. Accordingly, we have no doubt that the Applicants are not part of a single household.

(c) That the living accommodation as occupied by those persons as their only or main residence or that they are to be treated as so occupying (section 254(2)(c)).

Each of the individuals gave evidence that they were engaged in a course of full-time further education, and that whilst a number of them were engaged in placement years with third party companies, that formed part of a four-year

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overall degree course at university. Accordingly, by reason of section 259(2)(a) of the 2004 Act, the Tribunal is required to treat those individuals as residing at the Property as their only or main residence and therefore does so.

(d) That the occupation of the individuals in the living accommodation constitutes the only use of that accommodation (section 254(2)(d)).

There is a picture of the front of the Property, and each of the witnesses have described its layout and use as accommodation. The Tribunal accepts that the Property was used by the individuals for living accommodation and this was its sole use.

(e) That rents were payable, or other consideration provided, in respect of at least one of the persons in occupation in the living accommodation (section 254(2)(e)).

Numerous bank statements have been provided, together with the witness evidence from the Claimants, showing payments made as required by the terms of the tenancy agreement referenced above. The Tribunal has no hesitation in concluding that this requirement is met.

(f) That two or more of the households share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

We are satisfied on the evidence from the Claimants that there was a shared kitchen, and two bathrooms. We are satisfied, therefore, that this requirement is met.

49. Accordingly, the Tribunal has no hesitation in concluding beyond all reasonable doubt that the Property is an HMO.

*Was the Property required to be licensed?*

50. Section 55 of the 2004 Act requires HMOs to be licensed where they are a type of HMO to which part 2 of the 2004 Act applies, namely (a) any HMO in a local authority's district which falls within any prescribed description of an HMO, or (b) where there is in force a designation as regards additional licensing under section 56.

51. It is only the requirement under (a) with which the Tribunal is concerned in this case. Section 61 of the 2004 Act requires HMOs to be licensed less the property concerned is exempt by reason of a temporary exemption notice or an interim or final management order in place. There is no evidence, nor any suggestion, that the exemptions apply in this case.

52. The prescribed description may be found in the licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221. It essentially prescribes an HMO for the purposes of the licensing requirement in section 55(2)(a) as being one that satisfies the following requirements:

(a) Is occupied by five or more persons;

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(b) Is occupied by persons living in two or more separate households; and

(c) Meets the (i) the standard test, (ii) the self-contained test, or converted building test under section 254(4).

53. There were six Claimants at all material times, and at least five or more persons in the Property. We are satisfied that it was occupied by persons living in two or more separate households for the reasons given above. The standard test is met.

54. In the circumstances, therefore, the Property was required to be licensed as an HMO.

*Has an offence been committed?*

55. The Property, being an HMO, was required to have a license pursuant to section 72 of the 2004 Act. It states:

*"(1) A person commits an offence if he is a person having control of or managing an HMO which is required to licensed under this Part (see section 61(1)) that is not so licensed"*

56. The local authority has confirmed in writing that the Property was subject to an application for an HMO license on 23 November 2021.

57. The Applicants have identified, by way of Office Copy Entries, that the Respondent is a freehold owner (together with one other) of the Property. The Respondent is named as the landlord in the tenancy agreement. The relevant payments of rent, were paid to a managing agent, "Key West".

58. Tribunal is required to consider section 263 of the 2004 Act which states, insofar as relevant:

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

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

*(3) In this Act 'person managing' means, in relation to premises, the person who, being an owner or lessee of the premises –*

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

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

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*(ii) In the case of a house to which part 3 applies… 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 pursuant to the court order or otherwise) with another person who is not the owner or lessee of the premises by virtue of which that other person receives the rents or other payments…"*

59. The Tribunal is satisfied beyond reasonable doubt that the Respondent is a person that has control of the Property: he is the named person under the tenancy agreement as the landlord and thus, entitled to receive the rack-rent or who would do so if the premises were let at a rack-rent.

60. We are further satisfied beyond reasonable doubt that is "*a person managing*" the Property, being the owner of the Property, who received the rent from an agent paid by the tenant occupiers.

*Potential Defences*

61. The Tribunal has taken account of whether there is any evidence, on the balance of probabilities, of a potential defence of reasonable excuse under section 72(5) of the 2016 Act. That provision states as follows:

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

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

*(b) For permitting the person to occupy the house, or*

*(c) For failing to comply with the condition,*

*As the case may be"*

62. The only real basis of defence that comes across from any of the paperwork is that an independent professional agency had been instructed on behalf of the Respondent to manage the Property and ensure compliance with the relevant legislation.

63. In *Aytan -v- Moore [2022] UKUT 27*, the Upper Tribunal noted that reliance upon an agent by a landlord will rarely give rise to the defence of reasonable excuse. The Upper Tribunal noted, that at the very least, the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements and there would need to be evidence that the landlord had a good reason to rely upon the competence and experience of the agent, in addition there would generally be a need to show a reason why the landlord cannot inform themselves of the licensing requirement without reliance upon the agent (for example, because the landlord lived abroad).

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64. There are no such contractual requirements in the tenancy agreement in this instance, nor is there any evidence as to why the Respondent need not take account of changes in legislation in the UK and ensure he was kept abreast of licensing requirements.

65. Accordingly, we are not satisfied, on the balance of probability, that there is in fact a reasonable excuse defence.

66. Accordingly, we are satisfied that an offence has been committed contract to section 72 of the 2004 Act by the Respondent.

**Should the Tribunal make a Rent Repayment Order and if so, in what amount?**

67. The Tribunal considers it appropriate to make a rent repayment order in this case. There are no factors or circumstances of which the Tribunal is aware that would cause it to exercise its discretion not to make a rent repayment order. The policy objective of the legislation to ensure a coercive approach to compliance against landlords, and its deterrence approach more generally, ought to be furthered by the making of a rent repayment order in this case.

68. Section 44 of the 2016 Act states:

*"(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.*

*(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 amounts 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 anytime been convicted of an offence to which this chapter applies. "*

69. There is no evidence of the Respondent having been convicted of an offence to which the Chapter applies.

70. Further, there is no evidence of the financial circumstances of the landlord, and there is although there is some evidence of the conduct of the landlord and the tenant.

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71. The starting point, is that the maximum award the Tribunal can make, which as is this an offence listed in row 5 of the table in section 40(3) of the 2004 Act, permits the Tribunal to make an order for a period not exceeding 12 months, during which the landlord committed the offence in question.

72. As indicated above, the occupation of the tenants commenced on 1 July 2021, and continued thereafter, as an unlicensed HMO, until an application was submitted by or on behalf of the landlord on 24 November 2021. It is recognised by the Claimant that the claim cannot be made for any period beyond the date of submission of the application for the license, notwithstanding the license was not granted until March 2022.

73. The Tribunal is satisfied that on the evidence before it, the total rent paid by the Claimants for the period in question amounts to £8,346.42. That is broken down as follows:

    (1) Cameron Wilson - £1,228.57
    (2) Angus Jennings - £1,228.57
    (3) Martha Scattergood - £1,228.57
    (4) Nicole Kubiena - £1,553.57
    (5) Ashley Burkett - £1,553.57
    (6) Jessica Limb - £1553.57

    Total: £8,346.42

74. We follow the approach set out by the Upper Tribunal in *Acheampong -v- Roman [2022] UKUT 239 (LC)*, in terms of assessing quantum, which is broadly as follows:

    (a) Ascertain the whole of the rent for the relevant period;

    (b) Subtract any element of the sum representative of payment of utilities solely benefitting the tenants;

    (c) Consider the seriousness of the offence, compared with other offences in respect of which a RRO might be made and other examples of the same type of offence, and consider what proportion of the rent was a fair reflection of the seriousness of the offence; and

    (d) Consider whether any deduction from, in addition to that figure should be made in light of the other factors set out in section 44(4).

75. The total amount of rent for the relevant period is as set out above. From that, there are no sums to be deducted in respect of utilities for which the tenant received the sole benefit, liability for such sums being placed solely upon the tenants pursuant to the tenancy agreement.

76. We consider the seriousness of the offence itself. The first point to note, is that the tenancy agreement permitted occupation from 1 July 2022, and that by the time of the application being made, on 24 November 2021, some five months had passed. That is not an especially long period of default.

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77. There are a number of issues of importance, identified by the Claimants, which they wished the Tribunal to take account of. They are set out within the details of the various witness statements, and without wishing to restate them all in this judgment, they included such things as:

    (1) There were no fire doors within the Property, and that the door between the hallway and the kitchen was removed completely and propped up against the wall upon their arrival.

    (2) Whilst there were fire alarms in the Property, there was no centralised fire detection system, and the fire alarms in the hallways and the upstairs landing needed replacing.

    (3) Water pipes behind the kitchen sink were not attached properly, and would leak into the cupboard.

    (4) The ground floor toilet was not properly attached to the wall and would tilt with pipes in the bathroom having once leaked water which flooded the bathroom, utility room and kitchen.

    (5) The light switch in the utility room was coming off the ceiling, and the tenants had to be careful about pulling on it.

    (6) The sofas had rips in it.

78. An offence under s.72 is not the most serious of those issues identified as offences giving rise to the entitlement to make a rent repayment order. But, a failure to ensure appropriate safety measures exist in the Property is something of significance, and the Tribunal pays particular regard to the two especially important failures at paragraphs 76(1) and (2) above. This is likely to have amounted to a breach of the Housing, Health and Safety Rating System, as indeed, may some of the other issues.

79. Ultimately, the Tribunal makes an assessment from the evidence before it, of this particular offence under section 72 by reference to other examples of the same types of offence as this and the state of some properties.

80. It is additionally perhaps worth noting, in light of the various issues said to have arisen by the claimants, that when the local authority did grant the licence for a HMO, it backdated it to the date of application, and did so without imposing any conditions or stipulations, implying that measures were not considered necessary by the local authority to address any of the issues identified.

81. The Tribunal heard from the Claimants that no substantive repairs were carried out in the period between the application being made in 24 November 2021 and the grant date in March 2022. This reinforces the Tribunal's view that the matters complained of were not considered significant by the local authority and, save for the two issues we refer to above, we do not consider them to be the most serious of failures.

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82. We have set out that there is no evidence of the Respondent's means nor is there evidence of any prior conviction. The Respondent did send through to the Tribunal after the hearing a copy of a financial penalty document imposed by the local authority, suggesting he had paid a penalty of £10,000 – this document was not seen by the Claimants and we do not take it into account.

83. As to conduct, there is a suggestion by the Claimants that no repairs were carried out promptly and we take account of this in light of the nature of the issues identified.

84. Considering the four stages therefore in *Acheampong*, this Tribunal concludes that and does so such with a deduction from the total amount in the relevant period of 60%. It therefore awards 40% of the sums claimed for the relevant period, which is the exercise of its discretion having applied the four stage test set out above.

85. The rent repayment orders, therefore, are made in the following amount for each of the Claimants as follows:

(1) Cameron Wilson - £491.43
(2) Angus Jennings - £491.43
(3) Martha Scattergood - £491.43
(4) Nicole Kubiena - £621.43
(5) Ashley Burkett - £621.43
(6) Jessica Limb - £621.43

86. The final issue to consider, is whether the Claimants should receive an award for their fees of commencing these proceedings, and indeed, the hearing fee for listing the hearing on 9 August 2023.

87. Our approach, is that the relief sought in these proceedings could not have been obtained but for the application having to be made, which necessitates the payment of a fee. Similarly, the hearing would not have proceeded, but for the payment of the hearing fee. There can be no doubt that it is appropriate therefore to award the Claimants the hearing of £200. The position on the issue fee, is slightly different.

88. Whilst there should, in principle, be an issue fee awarded, the question of what that is, is perhaps more difficult. As indicated above, in relation to the preliminary issue, the appropriate fee appears to be £100. It was not, as actually paid in this case, the total sum of £600. It would appear in this case that there has been an overpayment by the Claimants of the fee to make this application. The Respondent should not be held responsible for the Claimants' failure to pay the correct fee, especially given that this is readily available by reference to the Fees Order.

89. We should say, however, that these proceedings appear to have taken six different case numbers, but that need not have been the position, and this appears to have been an administrative decision of the Tribunal. The Application Notice we have seen contains the names of all Applicants, and whilst an order was subsequently made consolidating those claims, we query whether that was either necessary or appropriate, and in fact whether six claim numbers were necessary. In any event, these are in our judgment administrative decisions on the commencement of the

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application and in our judgment, are divorced from the issue of what fee is properly payable.

90. In the circumstances, therefore, we consider it just to award the Claimants the sum of £100 in respect of the application fee. In total, therefore, including the hearing fee, the sum of £300 is payable for the Tribunal fees by the Respondent to the Applicants.

91. As such, the final position is that the following total sums must be paid by the Respondent to the Applicants as follows within 14 days of receipt of this decision:

    a. Cameron Wilson - £541.43
    b. Angus Jennings - £541.43
    c. Martha Scattergood - £541.43
    d. Nicole Kubiena - £671.43
    e. Ashley Burkett - £671.43
    f. Jessica Limb - £677.43

Tribunal Judge Kelly
23 August 2023

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