



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

Case reference : **LON/00AB/HMG/2023/0012**

HMCTS code : **V:Video**

Property : **4(A) Farm Close Dagenham Essex RM10 9TX**

Applicants : **Louise Nicholls and John Nicholls**

Representative : **Louise Nicholls**

Respondent : **Gurbachan Matharu**

Representative : **In person**

Type of application : **Application for a Rent Repayment Order by tenants**
Sections 40, 41, 42, 43 and 45 Housing and Planning Act 2016.

Tribunal members : **Judge Pittaway**
Mr S Mason BSc FRICS

Date of Hearing : **30 November 2023**

Date of decision : **1 December 2023**

DECISION

Decisions of the Tribunal

- 1. The Tribunal find that the Respondent committed an offence under section 95(1) of the Housing Act 2004 without reasonable excuse.**
- 2. The Tribunal makes a Rent Repayment Order in favour of the Applicants jointly in the sum of £1,814.35.**
- 3. The reasons for the Tribunal decisions are given below.**

The Hearing

4. By Directions dated 12 May 2023 the Tribunal directed that the application be heard at a face-to-face hearing on a date to be determined. The date of the hearing was subsequently fixed for 30 November 2023.
5. On 28 November Mr Matharu advised the Tribunal that he had COVID and would not be able to attend the hearing at Alfred Place.
6. The Tribunal therefore suggested to the parties, given that its overriding objective is to deal with cases fairly and justly, that the Hearing be converted from a face-to-face hearing into a Video Hearing if that enabled Mr Matharu to attend. Mr and Mrs Nicholls and Mr Matharu all confirmed that they would be content for the Hearing to proceed by way of a video hearing.
7. The form of remote video hearing was V:CVPREMOTE.
8. Mrs Nicholls represented herself and her husband at the Hearing and Mr Matharu appeared in person.
9. The Tribunal had before it an Applicants' bundle, 39 pages and a Respondent's bundle of 6 pages. At the start of the Hearing Mrs Nicholls indicated that she was uncertain whether she had received the Respondent's bundle. To ensure that the Applicants had a copy of this before them Mr Matharu e mailed it to them again and they confirmed that they now had it in front of them.
10. The Tribunal heard evidence and submissions from Mr Matharu and Mr and Mrs Nicholls.
11. Both the Applicants' bundle and the Respondent's bundle contain their respective statements of case. Neither contained A Statement of Truth but Mrs Nicholls and Mr Matharu both confirmed to the Tribunal the truth of the statements made in those statements of case.

The background

12. The tribunal received an application from the Applicants dated 15 April 2023 under section 41 of the Housing and Planning Act 2016 (“**the 2016 Act**”) for a rent repayment order in the sum of £13,800 in respect of 4(A) Farm Close Dagenham RM10 9TX (‘the **Property**’). The period in respect of which the application was made was 30 July 2021 to 29 June 2022. The amount of rent sought was amount sought was twelve months’ rent (at £1150 per month).
13. The grounds for making the application were that the Respondent had been found guilty in a magistrate’s court of failing to licence a Property which requires a licence under s95(1) Housing Act 2004 (the ‘**2004 Act**’)

The Property

14. The Property is described in the application as a or 2 bedroom flat in a converted house with three flats.
15. Mr Matharu gave evidence that the house is a BISF (British Iron and Steel Federation) house, which is steel framed, the lower part being rendered and the upper part clad. The roof is metal sheeting, which had the appearance of roof tiles.
16. No party requested an inspection and the tribunal did not consider that one was necessary.
17. Mr Matharu is the registered proprietor of the freehold of the Property, having bought it (according to the official copy entries in the Applicants’ bundle) in 2005.
18. Mr Matharu gave evidence that he converted the house into three flats. On 6 October 2021 he applied for a Lawful Development Certificate (Existing Use) for the conversion of 4 Farm Close into three 2 bedroom flats and a single storey extension, which was validated on 12 October 2021.
19. Mr Matharu let the property to Mr and Mrs Nicholls under an AST dated 30 April 2021 for an initial term of six months commencing on 1 May 2021. Mr and Mrs Nicholls remained in occupation of the Property until 19 July 2022 when it burnt down along with a number of other buildings in Farm Close.

The Licence

20. The relevant local housing authority is the London Borough of Barking and Dagenham. Its Selective Licensing Scheme applies to all privately rented

properties in the borough in which one or two people live as a single household, and which is not an Additional or Mandatory HMO.

21. The Applicants' bundle contained a copy of the Memorandum of an entry entered in the Register of the North East London Magistrates' Court dated 21 March 2023 against Mr Matharu which stated that it had been proved in his absence that between 21 April 2022 and 19 July 2022 he had controlled or managed 4 Farm Close, between 1 May 2021 and 19 July 2022 he had controlled or managed 4A Farm Close and between 25 May 2022 and 19 July 2022 he had controlled or managed 4B Farm Close which were required to be licensed under Part 3 of the Housing Act 2004 but which were not so licensed.
22. Mr Matharu gave submitted that he would have attended the court hearing if he had been aware of it. He gave oral evidence that he had not been notified of the hearing and had been abroad at the time.

Issues

23. The Respondent having agreed that he had committed an offence he under section 95(1) of the Housing Act 2004 (the '**2004 Act**') (controlling or managing an unlicensed house which is required to be licensed) the issues before the tribunal to determine were;
 - During the period in which the offence was committed did the Respondent have a defence to the commission of the offence under section 95(4) of the 2004 Act?
 - If an offence has been committed the maximum amount of RRO that can be ordered under section 44(3) of the 2016 Act.
 - Whether the Respondent had been responsible for the cost of any utilities at the Property
 - The severity of the offence
 - Any relevant conduct of the landlord, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

The tribunal's decision and reasons

24. The Tribunal reached its decision after considering the witnesses' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence
25. As appropriate, and where relevant to the tribunal's decision these are referred to in the reasons for the tribunal's decision.

26. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.
27. The relevant legal provisions are set out in the Appendix to this decision

The offence under section 95(1) Housing Act 2004

28. Mrs Nicholls gave evidence that she and her husband were contacted by a housing enforcement officer for Barking and Dagenham after the fire who told them that he believed that their landlord did not have a licence to rent out private property in the borough. This was subsequently confirmed to them. They were told that the council would be taking their landlord to court and were told after the court case that the landlord had been found guilty and that they were able to apply for a RRO. Ms Nicholls submitted that this was why she and her husband had applied for the RRO.
29. Mr Matharu agreed that the Property was one for which a selective licence was required.
30. The issues before the Tribunal were therefore the period during which such offence was committed and whether Mr Matharu had a reasonable excuse for the commission of the offence.
31. The Tribunal find that the period in respect of which the Applicants have made the application is the period from 30 July 2021 to 29 June 2022, being the period referred to in their application.
32. Mr Matharu submitted that he had a licence for 4 Farm Close but that it was not possible to obtain a selective licence for Flat 4(A) until the Property was registered on the council tax system, which did not occur until 19 July 2022, the day it burnt down. He gave evidence that he had telephoned the council on at least three occasions to advise the council that the Property was not on the council's drop down menu. The council had said it would get back to him but had not done so.
33. A landlord may rely on a defence of reasonable excuse under section 95(4) of the 2004 Act.
34. The Tribunal find on the evidence before it that Mr Matharu was aware of the need for a selective licence. It accepts that he contacted the council on a number of occasions to resolve the absence of Flat 4(A) from the drop down list through which applications for licences was obtained, and the failure of the council to respond, however the absence of a licence continued for the whole of the relevant period.

35. The Tribunal find, that the fact that Flat 4(A) was not on the drop down list might have provided a reasonable excuse to Mr Matharu initially but that the more time elapsed the less reasonable it became for Mr Matharu to rely upon the absence of substantive response to his telephone calls. Mr Matharu should have taken a more proactive response to the council's failure to respond to him.
36. The Tribunal therefore find that Mr Matharu may not rely upon the defence of reasonable excuse, however the position in which he found himself is considered by the Tribunal as relevant to the factors considered by the Tribunal below in determining the amount of the RRO.

Amount of the RRO

37. In its decision in *Acheampong v Roman and others* [2022] UKUT 239 (LC), the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which may be summarised as follows

(a) ascertain the whole of the rent for the relevant period; (b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant; (c) consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made and compared to other examples of the same type of offence; and (d) consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

38. The Tribunal have adopted the approach recommended in *Acheampong v Roman and others*
39. The Applicants are seeking repayment of the totality of the rent they paid during the period in which the offence was committed, which the Tribunal have found the period from 30 July 2021 to 29 June 2022.
40. The Tribunal asked Mrs Nicholls to explain why the period for which the RRO was claimed was eleven months, but that the claim was for twelve months' rent. Mrs Nicholls explained that during the period in question they had made twelve payments, because payments were sometimes not made on the 1st day of every month as required by the AST. The evidence of rent payments in the Applicants' bundle confirmed that twelve rent payments had been made during the period between 30 July 2021 and 29 June 2022.
41. The amount of any RRO is determined in accordance with section 44 of the 2002 Act. Section 44 (3) provides that the amount repaid in respect of a period must not exceed the rent paid in respect of that period.
42. The Tribunal find that some of the rent paid in the period between 30 July 2021 and 29 June 2022 must have related to rent due in respect of a period outside those months. It finds that the whole rent for the relevant period was ten

months at £1150 and 29/30ths of the rent paid for June 2022, £12,611.67 in total.

43. The Tribunal heard evidence from Mrs Nicholls that the Applicants paid for the electricity at the Property. Mr Matharu gave evidence that he paid the water rates and for the gas consumed. These were charged to the house as a whole, not apportioned between the three flats. There was no evidence of the sums involved in the bundles before the Tribunal but Mr Matharu said that water was £490 per annum and gas around £1200 per annum.
44. The Tribunal found Mr Matharu to be a credible witness and these sums were not challenged by the Applicants. It therefore attributes costs of utilities of £516 to Flat 4(A), being 11/12ths of one third of the above amounts, which subtracted from £12,611.67 gives a figure of £12,095.67.
45. In fixing the appropriate sum the Tribunal has had regard to *Acheampong v Roman and others* and also the decision in *Hallett v Parker* [2022] UKUT 165 (LC) and have taken into account that that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licensing system and to deter evasion, and the seriousness of the offence.
46. From the evidence before it the Tribunal finds that Mr Matharu did not seek to evade the system, he tried to apply for a licence but was stymied by the council's system which had not been updated to reflect that the building was now three flats not one house. It was unfortunate that the London Borough of Dagenham did not respond more speedily to his telephone calls.
47. The offence in this application was failure to obtain a selective licence.
48. The Tribunal find that the offence of failing to obtain a selective licence is not of the most serious type of offence for which a RRO may be sought. Mr Matharu submitted that he had obtained all relevant electrical and gas certificates for the Property, and that it had a smoke alarm and carbon monoxide detector, and this was confirmed by the Move in Checklist included in the Applicants' bundle.
49. Section 44(4) provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.
50. Mr Matharu submitted that the Applicants had been good tenants and Mrs Nicholls confirmed that Mr Matharu had been a good landlord. Mr Matharu invited the Tribunal to note that the tenants of the other flats in the building had told him that they did not intend to apply for RROs.

51. Mr Matharu has been convicted of an offence to which the relevant Chapter of the 2016 Act applies, however the Tribunal have had regard to his evidence that he was not advised of the hearing which he would otherwise have attended and that he told the Tribunal that he had not appealed the decision on the basis that he had been advised that the cost of doing so might exceed the fine the magistrates had imposed. The Tribunal notes that the fine was levied in respect of 4 Farm Close and no additional fine was levied in respect of the Property.
52. There was no specific evidence in the bundles before the Tribunal as to Mr Matharu's financial circumstances. The circumstances of this case are unusual in that the Property has been destroyed by fire so that neither it nor the other two flats in the building are any longer available to the Respondent to let. The Tribunal heard evidence from Mr Matharu that his insurers are currently resisting paying out on his insurance policy by reason of the unusual construction of the building. From the official copies it is clear that the Property is mortgaged and Mr Matharu stated that his mortgage repayments had increased from £400 per month to £1100 per month, in part because of the interest rate rises and in part because the Property is not currently mortgageable. He said that he has had to rent his own house to cover the payments, and is living with his parents rent free. He stated that his current income derived from working as a shop assistant in his brother's DIY shop, and from managing six properties for five landlords. He placed his current annual income in the region of £15,000.
53. Mr Matharu also referred to the fact that he has had to reach a payment plan with the court to pay the fine of £5,660.
54. Mrs Nicholls submitted that she was not in a position to comment on the Respondent's financial circumstances. Mr Nicholls referred to Mr Matharu having previously referred to having other properties outside the borough. Mr Matharu said that he had not owned these properties, he had managed them.
55. For a Tribunal to take the landlord's financial circumstances into account it would normally expect to see independent evidence of earnings and outgoings. It is however also mindful of the exceptional circumstance of the Property and the other two flats in the building also having been destroyed with a total loss of income to the Respondent.
56. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that it considers should be made in light of factors to which the Tribunal must have regard under section 44(4) of the 2016 Act, the Tribunal makes a Rent Repayment Order against the Respondent in the sum of £1,814.35, being 15% of the adjusted rent paid for the relevant period.
57. The Tribunal would remind the parties that it does not have the power to order the payment of the RRO. It can only determine the amount of the RRO.

Name: Judge Pittaway

Date: 1 December 2023

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).

Appendix of Relevant Legislation

Housing Act 2004

95 Offences in relation to licensing of houses under this Part

(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.

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

(b) he fails to comply with any condition of the licence.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,

as the case may be.

(7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

1. (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
2. (b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

3. (a) that the period for appealing against the decision of the authority not to serve

or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
4. (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –
 - (a) repay an amount of rent paid by a tenant, 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.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry

	<i>Act</i>		<i>section</i>	<i>general description of offence</i>
2	Protection from Eviction Act 1977	from	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004		section 30(1)	failure to comply with improvement notice
4			section 32(1)	failure to comply with prohibition order etc
5			section 72(1)	control or management of unlicensed HMO
6			section 95(1)	control or management of unlicensed house
7	This Act		section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

- (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.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority’s area, and
- (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

43 Making of a rent repayment order

- (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 had been convicted).

- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined with –
 - (a) section 44 (where the application is made by a tenant);

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed

the amount must relate to rent paid by the tenant in respect of

an offence mentioned in row 1 or 2 of the table in section 40(3)

the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

a period, not exceeding 12 months, during which the landlord was committing the offence

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

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

