



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

Case reference : **BIR/00FY/HMJ/2023/0006**

Property : **7 Wicker Close, Nottingham NG6 0FQ**

Applicant : **Ahmed Baraka**

Representative : **Justice for Tenants**

Respondent : **Carl Wilson**

Representative : **None**

Type of application : **Application by Tenant for a Rent Repayment Order**

Tribunal members : **Judge C Goodall
Mr A McMurdo MCIEH**

Date and place of hearing : **16 January 2024 by Video Hearing Service**

Date of decision : **25 January 2024**

DECISION

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Background

1. On 10 May 2021, Mr Ahmed Baraka (“the Applicant”) entered into a shorthold tenancy agreement to rent 7 Wicker Close, Nottingham (“the Property”) for a term of 12 months starting on 28 May 2021 at a rent of £725.00 per month and with a deposit of £835.00. Mr Baraka and his wife renewed that tenancy agreement on 12 May 2022 at the same rent. They eventually left the Property in May 2023 (the exact date is not known by the Tribunal).
2. The Property was in an area designated as a selective licensing area by Nottingham City Council under a five year scheme which came into effect from 1 August 2018. It was therefore necessary for any landlord letting a property within the scheme area to hold a licence (or for a temporary exemption notice to be in force) to avoid potentially committing a criminal offence under section 95 of the Housing Act 2004 (“the 2004 Act”).
3. It is common ground that the landlord, Mr Carl Wilson, (“the Respondent”) did not hold a licence.
4. On 20 September 2023, the Applicant applied to the Tribunal under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for an order that the Tribunal should make a rent repayment order in his favour.
5. Directions were issued requiring the parties to provide statements of case and supporting documents in document bundles. The Applicant’s bundle ran to 212 pages. The Respondent’s bundle ran to 113 pages. The Applicant was permitted to file a response to the Respondent’s statement of case, which comprised a further 13 pages. Some emails which had not been included in the Applicant’s bundles were admitted in evidence (without objection) at the hearing, comprising a further 11 pages.
6. The hearing of the application took place by Video Hearing Service link on 16 January 2024. The Applicant attended, represented by Mr Jamie McGowan of Justice for Tenants. The Respondent attended without a representative.
7. This is the decision of the Tribunal on the application, with the reasons for our decision appearing in the paragraphs below.

Law

Statute

8. The relevant provisions of the 2004 Act, so far as this application is concerned are as follows-

85 Requirement for Part 3 houses to be licensed

- (1) Every Part 3 house must be licensed under this Part unless—

- (a) it is an HMO to which Part 2 applies (see section 55(2)), or
- (b) a temporary exemption notice is in force in relation to it under section 86, or...
- (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

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) 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 be effective (see subsection (7)).

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

...

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

and that ... application was still effective.

(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 The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

40 Introduction and key definitions

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

	Act	Section	General description of offence
6	Housing Act 2004	Section 95(1)	control or management of unlicensed house

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.
- (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.

...

43 Making of 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 has 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 in accordance 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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
<i>an offence mentioned in row ...6... of the table in section 40(3)</i>	<i>a period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (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.

Case Law

9. The reasonable excuse defence in section 95 of the 2004 Act has been considered on a number of occasions by the Upper Tribunal. Of particular relevance, in the case of *Aytan v Moore* [2022] UKUT 027 (LC), the Upper Tribunal was considering whether a professional landlord with some ten properties could succeed in a reasonable excuse defence where the obligation to licence the property had arisen during the tenancy and that obligation had not been drawn to the landlords notice by their agent. At paragraph 40, the Upper Tribunal said:

“We would add that a landlord’s reliance upon an agent will rarely give rise to a defence of reasonable excuse. 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; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”

10. In *Williams v Parmar* [2021] UKUT 0244 (LC), the Property Chamber President outlined the correct approach to be taken when assessing what sums Tribunals should order to be repaid on applications under the 2016 Act. The President stressed the importance of evaluating the seriousness of the offence which justified the application for a rent repayment order and using that evaluation as a factor in determining how much of the rent paid in the 12 month period (as the award always has to relate to that amount) should be repaid.
11. In *Acheampong v Choudhury* [2022] UKUT 239 (LC), Judge Cooke commended the following approach to Tribunals:
 - a. Ascertain the whole of the rent for the relevant period;
 - b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
 - c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
 - d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

The application

12. The Applicant seeks a rent repayment order of £8,700.00, being the whole of the rent paid during the period 28 March 2022 – 27 March 2023 (being a 12 month period of the tenancy during the whole of which the Respondent was committing an offence under section 95 of the 2004 Act).

Facts

13. Our findings of fact are set out in the following paragraphs. They are a distillation of the oral evidence of the Applicant and the Respondent and the key material that the documents in the bundles provided establish.
14. The Property is a semi-detached dwelling-house which was at all material times in a selective licensing area and was not licensed.
15. The Applicant took a shorthold tenancy of the Property dated 10 May 2021 and commencing from 28 May 2021. The Applicant then extended the term (jointly with his wife) by a further tenancy dated 12 May 2022. The Property was vacated in May 2023.
16. The Property is owned by the Respondent, and he had been occupying it as his main residence. Then in March 2020 he took a new job as an English teacher based in Saudi Arabia. He did not immediately let the Property, but his personal circumstances were such that in spring 2021, he decided to let it out. He carried out much of the preparatory work for letting from Saudi Arabia. He realised that he was not able to manage the Property remotely and he wished to appoint a reputable agent to manage the Property for him. He did not wish to have any worries about the Property, so he required a full management service.
17. The Respondent researched suitable agents and eventually alighted upon Tristram's (sic), who are a letting and sales agent. They appeared to him to be reputable, with a physical office in the Nottingham area and a number of staff engaged on property management. They were members of trade bodies and redress schemes and had won industry awards. He had every reason to believe they were professional and competent.
18. During this preliminary period of selecting an agent, there were email exchanges between them. The initial contact was made on 1 March 2021 by an email from the Respondent to Tristram's. The subject of licensing was raised by the Respondent asking whether Tristram's could apply for a licence on his behalf.
19. The reply did not address the question about licensing, but did confirm the availability of a management package at a cost of £35.00 per month. So the Respondent emailed again (from Saudi Arabia) repeating in his email that he realised a licence would need to be applied for and asking whether Tristram's could arrange this.
20. Tristram's replied on 3 March 2021 with a reasonably full explanation of the licensing scheme. They provided a link the Nottingham City Council ("NCC") web-site information on the Selective Licensing Scheme, informed the Respondent of the fees payable for a licence (£890.00), explained that NCC offered an accreditation scheme which would require attendance at a training day and would result in a slightly reduced licensing fee. The email included the following:

"We can actually put the licence in Tristram's name, as the licence holder. For this we charge £20 plus VAT on top of our management fee (creating a total management fee of £55 + VAT per month)."

21. The Respondent replied the same day. His reply included:

“..it’s easier if you guys do the whole package, including putting the licence under your name.”
22. As well as resolving his decision about licensing, the email exchange in the period from 1 March to around mid April also discussed other regulatory obligations. The Respondent arranged (through Tristram’s) for an Electrical Installation Condition Report to be prepared, and for other practical details to be resolved, such as key availability.
23. The Respondent carried out much research and preparation from abroad but he did make a visit to Nottingham at Easter 2021 when he met his chosen letting agent.
24. Tristram’s appear to enter into contracts (or at the least obtain all the information about its management contracts) via a colourful booklet which can be completed electronically. A copy was provided to the Tribunal. The first page required selection of the applicable management service required. The Respondent has ticked the box for “Full Management” at a monthly cost of £35 plus VAT.
25. Page 2 requires detailed information which is confirmed by a series of tick boxes. Page 3 confirms the appointment of Tristram’s as the Respondents agent. He agrees to be bound by the terms and conditions of the contract and confirms various important factual information and the scope of the agent’s authority for expenditure on maintenance and repair. That page is dated 23 April 2021 and is signed by the Respondent.
26. Page 4 deals exclusively with licensing matters. The selective licensing scheme is summarised. Reference is again made to the cost of a licence. More than half of the page explains what Tristram’s would do if they were asked to obtain the licence. Their offered service includes applying for the licence, and keeping in touch with the council regarding legislative changes. It is a comprehensive and thought out process.
27. The end of the page contains two spaces for a signature. The rubric above the space for the first signature confirms that the person signing will him or herself arrange to obtain the licence. The second signature space has alternative rubric above including the words “I authorise Tristram’s Property Services Ltd to obtain the licence in the company name I accept the charge of £20+VAT per month for “Tristram’s obtaining the licence in the company name.”
28. The Respondent has signed his name in the second signature space. A date is also inserted on that page, being 23 April 2021.
29. Six pages of “small print” then follow, which include a reference to licensing. Paragraph 4.5 inserts a provision stating that it is the client’s responsibility to acquire and pay for a licence for the Property.

30. The Respondent having appointed Tristram's as his agent by signing the contract described above, it then arranged the letting to the Applicant referred to above.
31. During the tenancy, the Applicant paid rent of £725.00 per month. An issue was raised regarding a suggestion that rent had been paid late. The Applicant denied this. In fact, the rent had been late occasionally, and the Respondent had raised this because he received emails from Tristram's telling him of late rental payments.
32. The contractual rent payment date was the 28th day of each month. On some occasions, rent was paid later than this, but never more than six days late, and this apparently arose because of a change in the date on which the Applicant was paid. The Respondent accepted that he had in the end agreed he would not regard a change in the rent payment date due to this as a matter that he wished to raise in relation to the Applicant's conduct.
33. Full details of rental payments were provided to the Tribunal within the Applicant's bundle. We are satisfied that during the period 28 March 2022 – 27 March 2023, the sum of £8,700.00 was paid by the Applicant by way of rent in twelve monthly payments of £725.00 per month.
34. The Respondent has provided a schedule of the rent he received, and the deductions from it to cover Tristram's expenditure and fees. That schedule shows a monthly deduction of £42.00 for Tristram's fees, and then expenditure of £2,185.90 over the terms of the Applicant's occupancy for repairs and other outgoings. In evidence, the respondent confirmed that he received details of these transaction by monthly email from Tristram's.
35. The outgoings do not include any payments for utilities, which the Respondent acknowledged were the responsibility of the Applicant.
36. The Applicant has raised some issues that occurred during the tenancy as issues that are relevant to the conduct of the Respondent during the tenancy.
37. Firstly, the Applicant complained that there had been leaks from the bathroom radiator on 2 and 21 June 2021 which had caused water damage to the ceiling of the living areas. They accepted that Tristram's had sent a plumber to fix the leaks.
38. The second issue concerns an allegation that the Property was in breach of the requirements of the HHSRS system in that there was excess cold and no hot water resulting from a malfunctioning boiler.
39. The circumstances are that the Applicant reported to Tristram's on 20 February 2023 that the boiler had malfunctioned. It was displaying the error message "E113". It appears that an engineer attended the Property on 22 February 2023 but he could not fix the issue. The Applicant contacted Tristram's again by email to ask when the contractor would be returning. Tristram's replied that day to say the contractor had promised

to return that evening. The contractor did indeed return that evening (at 7.15pm) but he could not fix the problem.

40. The Applicant was not happy and told Tristram's that fixing this issue should be the contractor's first priority the next day. Tristram's replied first thing that day to say the contractor needed to contact the manufacturer (Baxi) for further details. They emailed later (at 9.10am) to say the contractor would be visiting between 3 and 5pm that day. The Applicant told Tristram's that this was not acceptable as this was an emergency. It appears that the contractor did indeed come earlier as the Applicant confirmed that the problem had been resolved in an email timed at 13.35 on 23 February.
41. There is a suggestion that, although working, there was still an issue with the boiler on 24 February, and it may be that the contractor also had to return again.
42. On 22 March 2023, the same error message was displayed on the boiler and the hot water and heating in the Property was not working. The Applicant reported this to Tristram's at 8.46pm. The following day, Tristram's contractor visited to try and repair the problem. By 3.41pm, the contractor had visited and taken care of all issues. However, the fault re-occurred, which was again reported to Tristram's. The final email in the series of emails put in evidence about this issue is timed at 1.32pm on 24 March 2023, which said that the contractor would be back in touch shortly. There are no further allegations of loss of hot water and heating at the Property.
43. The third issue relating to the Respondent's conduct concerning a fire in one bedroom on or about 21 November 2022. The circumstances were that the Applicant lit a scented candle in one of the bedrooms. A window was open and a strong gust of wind knocked the candle over. There was a perfume bottle close by and either the fumes or the liquid in it combusted and a fire resulted. The Applicant was unable to put out the fire himself and he called the emergency services. They came very quickly and put out the fire. The damage was confined to the bedroom. The Applicant appears to have accepted responsibility for the damage, and he replaced the carpet and carried out cleaning.
44. The Applicant attributes fault to the Respondent in relation to the fire because there were no fire extinguishers or fire blankets in the house, contrary to LACORS best practice guidance.
45. The extended tenancy agreement was due to end in May 2023. The Respondent had been seeking information concerning the Applicant's intentions regarding their occupation of the Property for some months (certainly from 1 September 2022), as his employment in Saudi Arabia was coming to an end. He had been led to believe that the Applicant was intending to move elsewhere some time in March 2023. His employment in Saudi Arabia ended on 23 March 2023, and he wished to return to the Property on 1 April 2023.

46. At the hearing, we were informed that as he needed to return to the Property, the Respondent requested Tristram's to serve a section 21 Notice to Quit the Property. We surmise that the Applicant sought the views of NCC, who probably told him (we have no direct evidence) that service of a section 21 Notice was not lawful if the Property was unlicensed. Thereafter, NCC became involved and Tristram's and the Respondent started discussions with NCC about applying for a licence.
47. Those discussion never progressed as the Applicant did eventually move out of the Property on some day in May 2023, at which point no licence was required. NCC, to the best knowledge of the Tribunal, have not taken any action against the Respondent.
48. At the end of the tenancy, a dispute arose between the Respondent and the Applicant regarding its condition. This was referred to the Deposit Protection Service for adjudication. The adjudicator found that the Property had not been properly cleaned on the ending of the tenancy. He allowed a deduction from the deposit of £188.75. He also found that the Applicant was responsible for decorating deficiencies in the sum of £1,000.00, partly because of smoke damage caused by the fire. As the adjudicator had no power to make any award beyond the amount of the deposit, he ordered that the whole of the deposit of £835.00 be forfeit to the Respondent's agent. But he had no jurisdiction to order payment of the balance of the liability that he had found of £353.75.
49. The Applicant's case was that the cost of the smoke damage repair should have been covered by insurance, and he had asked Tristram's to pursue a claim for that damage from the Property insurer.
50. The Respondent provided information about his financial circumstances in response to the Tribunal's enquiries. Whilst in Saudi Arabia his net monthly income had been approximately £3,600.00 per month with accommodation in Saudi Arabia also provided. His regular monthly outgoings were in the region of £1,000.00 per month, including mortgage payments on the Property. Since leaving Saudi Arabia, he had had temporary work for 8 weeks in July – Aug 2023, and 4 weeks work at minimum wage leading up to Christmas 2023. He had recently secured a new full time job at a salary of £33,000.00 per annum. He had savings of £22,000.00 in a bank account but no other capital assets.

The Issues

51. The Tribunal must determine the following issues:
 - a. Are the elements of an offence under section 95 of the 2004 Act established beyond reasonable doubt;
 - b. If so, has the Respondent made out a defence of reasonable excuse under section 95(4) of the 2004 Act;

- c. If not, what amount (using the methodology recommended in *Acheampong*) should the Tribunal award by way of rent repayment order;
- d. Should the Tribunal order that the Respondent pay the Applicants fees for bringing this action?

The Applicant's submissions

- 52. Mr McGowan said the elements of the offence under section 95 are not seriously disputed. He urged the Tribunal not to find that there was a reasonable excuse defence as:
 - a. The evidence is that whilst the Respondent may have contracted for the agent to apply for the licence, he made no payment for that service;
 - b. The Respondent made no effort to establish whether Tristram's had in fact applied for the licence, perhaps by interrogating the NCC website (where there is a public register of licences granted) or asking Tristram's what they had done;
 - c. The Respondent had no system in place to monitor whether he was complying with his obligation to licence the Property.
- 53. The period during which the offence had been committed was nearly two years, from 28 May 2021, which should be taken into account.
- 54. Mr McGowan pointed out that length of time during which the offence was committed and the lack of systems were matters that the Upper Tribunal in *Aytan v Moore* said were appropriate to take into account (see paragraph 52 of that case). He also considered that the service of an invalid section 21 notice was a serious matter to be taken into account.
- 55. It was accepted by Mr McGowan that this case was not in the most serious category, but he urged the Tribunal to order that 70-75% of the rent paid should be awarded.
- 56. He suggested that the award should be increased by virtue of the complaints made by the Applicant about the boiler breakdowns, the leaks in 2021, and the failure to provide fire protection equipment.

The Respondent's submissions

- 57. The Respondent asked the Tribunal to find that he had a reasonable excuse for not having obtained a licence as he had contracted with Tristram's for them to do so. He had been abroad, and it was clearly evident that he realised he could not manage the Property himself and therefore appointed a reputable agent to do so on his behalf.
- 58. If the Tribunal were minded to make a rent repayment order, he asked that we take into account his positive conduct both during the tenancy and

afterwards. He had been full and frank with the Tribunal. All he had wished to do was let his Property whilst he was abroad. He was not a professional landlord.

59. The Applicant's conduct, particularly relating to the condition of the Property at the termination of their tenancy should be taken into account in any award the Tribunal made.

Discussion

60. The Tribunal is satisfied that all the elements of the section 95 offence are proved beyond reasonable doubt. The Property is clearly a house, which was let to the Applicant whilst requiring a licence but not in fact being licensed. The Respondent was the ultimate recipient of the rent and so was a person in control of or managing it.
61. We are in no doubt that the Respondent entered into a contract with Tristram's and that they agreed to obtain the required licence. The document dated 23 April 2021 is clearly a contractual document, and there is a very clear express provision in it whereby Tristram's offered to obtain the licence themselves, in their company name, which the Respondent clearly accepted.
62. Had these proceedings taken place reasonably shortly after the Applicant took possession, the reasonable excuse defence would, in our view, have been particularly strong and likely to succeed. We have paid great attention to paragraph 40 of *Aytan v Moore*. The first two elements (contractual obligation of agent and reasonable selection of a reputable agent) are in our view satisfied in this case. We cannot see what more the Respondent could or should have done in selecting an agent over and above the actions that he did take which are set out above.
63. The Respondent's difficulty is the third element of not being able to inform himself of the licensing requirements, for example because he was abroad. We do not consider that it is correct to read *Aytan v Moore*, however, as if it were a statutory provision. In any event the third element related to the circumstances particularly of that case. Here, the question is not whether the Respondent could have kept himself informed of the licensing requirements; he already knew what they were before the tenancy started. The question is whether he should have taken steps to make sure that Tristram's in fact did obtain a licence.
64. What *Aytan v Moore* requires, in our view, is that in the circumstances of *this* case, we focus on the duration of the period during which it was reasonable for the Respondent to rely on the agent's contractual obligation to apply for and obtain the licence in terms of what the Respondent could have done whilst abroad to ensure he was not committing an offence. We consider that the length of that period has a shelf life. There will come a point when the reasonable landlord would question whether the agent actually did make the application for a licence,

in the knowledge that unless it did, the landlord was committing an offence.

65. We do not go so far as to suggest that the Respondent should have had a system, or process for checking, as urged upon us by Mr McGowan. That may be appropriate for a landlord such as the one in *Aytan v Moore*. But for a single individual who had simply let his own property and left it in what he reasonably regarded as capable hands, we do not think a system or process was required.
66. However we do consider that, whether there was a system or not, at some point the Respondent ought reasonably to have reflected on what he had left behind and checked the licensing situation. That would have been very straight forward – a simple enquiry to his agents by email (to which he had ready access) would have resolved the question.
67. We then need to add to our thinking the fact that in our view a reasonable landlord would have had a high degree of awareness of the financial impact of the letting and would have spotted at some point (and we think well within a year from the start of the tenancy) that he was not being charged for the additional fee increment arising from Tristram’s contractual obligation to obtain the licence, in the form of the monthly additional fee and the fee for the licence itself.
68. We consider that by March 2022 what might have at first been a reasonable excuse had become unreasonable, and we are therefore unable to determine that there is a reasonable excuse for failure of obtain a licence. We determine that we are satisfied that the offence under section 95 of the 2004 Act has been committed.
69. We therefore need to turn to determination of the amount of rent that we should order be repaid. We follow the *Archeampong* methodology. The whole of the rent for the relevant period is £8,700.00 and there are no deductions for utility costs borne by the Respondent.
70. A section 95 offence is of course serious, but it is at the lower end of the range of offences for which rent repayment orders may be made. To that, we need to add the following factors:
 - a. The Respondent is a first offender with no relevant convictions.
 - b. The Respondent is not a professional investor. Indeed he is not even an amateur investor. All he has done is let out his own house whilst he went abroad. He is an amateur landlord in effect only by default, as are all persons who temporarily live elsewhere intending to return to their own properties and let their properties in the meantime.
 - c. The Property had no serious deficiencies.
 - d. In our view, prior to letting the Property, the Respondent did everything right. He appointed an agent who he had every reason to

believe was competent and reputable. He specifically contracted with them to obtain a licence. He also arranged compliance with all other landlord's obligations for the period he was to be away.

- e. We found the Respondent to be open, honest, and his evidence to be entirely credible. Under *Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities*, the policy reason for the provisions in the 2016 Act are to deter rogue or criminal landlords who knowingly rent out unsafe and sub-standard accommodation. We consider that the Respondent is about as far away from being this type of landlord as the Tribunal is likely to see.
71. Our view is that the proper proportion of the whole of the rent for which a rent repayment order may be made is 25%. That produces a starting point of £2,175.00.
 72. We are then required to make any adjustments we consider necessary arising from section 44(4) of the 2016 Act.
 73. We do not consider that we should make any adjustments arising from the financial circumstances of the Respondent. His income and outgoings do not cause us to consider him as particularly rich, nor particularly poor. But he has savings that will enable him to afford any rent repayment order we make without any particular hardship.
 74. We are entirely unpersuaded that there is any merit whatsoever in the Applicant's claims that the Respondent's conduct justifies an increase in the award. Boiler breakdown or radiator leaks are a common peril. We regard as fanciful any suggestion that the Respondent has conducted himself inappropriately by providing a house in which occasional breakdowns occur. These things happen to the best of us. In any event, the agents appointed by the Respondent dealt with all those problems quickly and efficiently.
 75. As to the suggestion that the Respondent's conduct should be taken into account because no fire blanket or extinguisher was provided, we were not provided with any evidence that the Respondent was obliged to provide them. We cannot take into account conduct whereby the Respondent did not provide equipment he was under no obligation to provide.
 76. On the other hand, we do take into account what we regard as unacceptable conduct by the Applicant. He failed to leave the Property in the condition in which it should have been left contractually. Of course he then forfeited his deposit, but that still left a shortfall on the sum the adjudicator had determined would be recoverable of £353.75. In our view it would be entirely unfair and unjust to order that the Applicant be repaid rent without that liability being taken into account. We therefore deduct that sum from the starting point sum of £2,175.00. This results in a rent repayment sum of £1,821.25.

77. We do not accept that the Respondent's loss arising from the fire damage should have been covered by insurance. It appears to us that the Applicant correctly realised that he was liable for the losses arising from the fire. If the Respondent's insurer had paid the Respondent, it would, in theory, have a right of subrogation enabling it to pursue the Applicant anyway for the loss. As no evidence was adduced on the terms of the Respondent's insurance policy or on whether there had been a claim, we do not consider it right to speculate on recoverability under the Respondent's insurance policy. The loss should lie with the Applicant, who accepted liability.

Decision

78. Pursuant to section 44 of the 2016 Act, we order that the Respondent must repay the sum of £1,821.25 to the Applicant by way of a rent repayment order.

Fees

79. The Applicant has asked that the Tribunal order the Respondent to reimburse his tribunal fees of £300.00. We have an unfettered discretion to make such an order. In our view, as a rent repayment order is not compensatory and must be regarded as a windfall, the fee may legitimately be regarded simply as a cost the Applicant had to incur in order to bring his case. We certainly do not regard it as inevitable that a partially successful application (as the Applicant was seeking the repayment of the whole of the rent paid) should always result in a fee reimbursement order.
80. Our view is that the right order is that both parties should share the cost of the fees. We order the Respondent to reimburse the sum of £150.00 towards the Applicants fees.

Appeal

81. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)