FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AZ/HMF/2023/0123**
Property	**:**	**161 Waller Road, London, SE14 5LX**
Applicant	**:**	**(1) Rebecca Jane Miller** **(2) Alex Cade** **(3) Nicholas Russell**
Representative	**:**	**Mr Gyulai, Represent Law**
Respondent	**:**	**(1) Simon John Westcott** **(2) Aminatta Forna**
Representative	**:**	**Mr Hart, Freemans Solicitors**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Ms J Mann MCIEH**
Date and venue of Hearing	**:**	**4 December 2023** **10 Alfred Place**
Date of Decision	**:**	**25 March 2024**

DECISION

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Orders

(1) The Tribunal declines to make rent repayment orders.

(2) The Tribunal declines to make an order under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants fees.

The application

1. The Tribunal received an application dated 16 May 2023 under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the 2016 Act. Directions were given on 27 June 2023. The application was made by the first Applicant. The second and third Applicants were added under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules"), rule 10 following an application by directions on 26 July 2023.

2. In accordance with the directions, we were provided with an Applicant's bundle of 276 pages, and a Respondent's bundle of 408 pages.

3. The Applicant applies for an RRO relating to rent paid from 5 April 2022 to 6 November 2022.

The hearing

Introductory

4. The Applicants were represented by Mr Gyulai of Represent Law. The Respondents were represented by Mr Hart of Freeman's solicitors. All three Applicants and the Respondent gave evidence.

5. The property is a four bedroom Victorian or Edwardian terraced house, with a living room, dining room, two bathrooms and a large kitchen. There is a separate basement flat, which is also let by the Respondent.

6. The property had been the family home of the Respondents until they moved to the USA. Thereafter, it was let via an agency called Leaders firstly to families, and then, from 2017, to up to four sharers at a time.

Preliminary issue and the position of the second Respondent

7. The first and second Respondents are married. They hold the freehold jointly. The Respondents applied to strike out the case against the second Respondent on the bases that the case against her was frivolous, vexatious or otherwise an abuse of process; or that there was no reasonable prospect of the Applicants' case succeeding against her.

8. The Respondents submitted that it was the first Respondent who had organised the letting, undertaken all the management tasks that fell the Respondents, and received the rent in his bank account. The second Respondent was not involved at all. While the second Respondent's name appears on the tenancy agreements, she did not receive any of the rental income. The Respondents relied on *Rakusen v Jepsen and Others* [2023] UKSC 9, [2023] 1 WLR 1028 at para [31]. That paragraph, in full (elision shown aside) reads as follows:

> "Although perhaps not definitive in themselves, the use of the words 'repay … rent paid by a tenant' in section 40(2)(a) supports …[the superior landlord's] interpretation. Those words naturally refer to the landlord repaying the rent paid to the landlord by the tenant or, put another way, repaying the rent received directly from the tenant. Repayment of rent paid most naturally refers to a direct relationship of landlord and tenant. It is forced language to say that a superior landlord would be repaying rent to a tenant from whom it had never received any rent. In our example, Z has paid rent to Y not X and it is Y, not X, that may be required to 'repay' that rent to Z. The different word 'pay' in section 40(2)(b) does not cast doubt on the focus being on the rent payable under the direct relationship between the tenant and the landlord. Rather, the word 'pay' rather than 'repay' is used because the universal credit may have been paid to the tenant rather than to the landlord and, in any event, universal credit is paid by central government not by the local housing authority, which is the beneficiary of a universal credit RRO. It would therefore have been inappropriate to have used the word 'repay' in respect of a universal credit RRO."

9. *Rakusen v Jepsen* was concerned with the question of the proper interpretation of the term "landlord under a tenancy" in section 40(2) of the Housing and Planning Act 2016, and in particular whether an RRO can be made against a superior landlord, when an intermediate landlord receives the rent from the tenant or tenants. In the passage relied on by the Respondents, Lord Briggs and Lord Burrows, with whom the other Justices agreed, said that the notion of "repaying" rent in an RRO supported the finding that an RRO cannot be made against a superior landlord in that situation. It is not authority for the proposition that a person cannot be a landlord for the purposes of section 40 where they are the immediate landlord of the property but do not, as a matter of fact, receive rent from the tenant or tenants.

10. We rejected the application to remove the second Respondent on that basis.

11. However, whether a landlord who does not receive the rent is capable of committing the offence under section 72(1) if the 2004 Act is a different question. Procedurally, at the hearing we did not deal with that question as part of the preliminary issue, taking the view that it was more appropriate that we considered it substantively, rather than attempt to come to a conclusion as to whether there is no realistic prospect of success in the context of a preliminary issue.

12. However, in this decision it is more convenient to set out our conclusion at this point.

13. The offence is committed if either a "person having control" or a "person managing" an HMO is required to have license but does not have one. The meaning of those terms is given in section 263 of the 2004 Act. The second Respondent is not a "person having control", because that requires that she receives the rack rent, or would receive it if the property were let at a rack rent. There has been no suggestion that the property was not let at the full market rent, let alone less than two thirds of the full market rent, and thus was the rack rent (see section 263(2)).

14. There are two alternatives in the definition of a "person having control". To fall within the first, the second Respondent would (relevantly) have to be a person receiving rents from the occupier. The Applicants do not contest that the second Respondent did not, as a matter of fact, receive any rents.

15. To fall within the second definition, the second Respondent would have to (relevantly) not receive the rent because of an arrangement with another person who was not an owner of the property. Insofar as there was an "arrangement" that she did not receive the rents, it was an arrangement with the first Respondent, who is an owner of the property.

16. We conclude, therefore, that the second Respondent is neither a person having control nor a person managing the HMO, and accordingly cannot be guilty of the offence under section 72(1). Hereafter, we refer to the first Respondent as "the Respondent".

17. At one point, Mr Gyulai suggested that it was still the case that, even though she could not commit the offence, the second Respondent should still be liable for an RRO, if we made one. As we do not, the point is academic. But had it been otherwise, we would have rejected

this submission. A finding to the criminal standard of the commission of a relevant offence is a precondition to the making of an RRO against a person: section 43(1) of the 2016 Act.

The alleged criminal offence

18. The Applicants allege that the Respondent was guilty of the having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 ("the 2004 Act"), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.

19. The Applicants' case is that the property was situated within an additional licensing area as designated by Lewisham Borough Council ("the Council"). The scheme has been in force since 5 April 2022.

20. The Applicants allege that during the relevant period, the property was occupied by three or more tenants, in two or more households, and thus fell within the additional licensing scheme. The Respondent had not applied for a licence during the relevant period.

21. At the outset of the hearing, Mr Hart conceded on behalf of the Respondent that during the relevant period, it was agreed that the property required a licence, and that it was not licensed. Rather, the Respondent's defence was that he had a reasonable excuse for not having a license (section 72(5)). In his statement of case, the basis of the reasonable excuse is laid out. During the relevant period, and for some years previously, the Respondent had been resident in the USA, although he did return to the UK from time to time. The reasonable excuse contended for was that he was not aware of the requirement to licence the property. He had been advised by his agents, a company called Leaders, when he first agreed to let to sharers in 2017 that he could let to four people, but not five, without a licence. That was not subsequently corrected when the additional scheme came into force. He assumed that Leaders would have informed him of the need to licence the property in the event of that becoming necessary.

22. The hearing progressed to consider the issues before us – the criminal offence and, were we to find that the offence had been committed, quantum of an RRO – as a whole, rather than considering the two phases separately. Accordingly, we heard evidence from the Applicants and the Respondent before considering the parties' submissions.

23. The first Applicant was a tenant of the property (under various tenancies) from July 2018. The second Applicant became a tenant on 31 July 2021, and the third on 31 October 2021. They all ended their occupation on 6 November 2022. The history of occupation under tenancies with the Respondents is set out in the witness statements. It suffices to note that there were regular changes of tenant in what we recognise as the normal churn (cf *Sturgiss v Boddy and others* County

Court at Central London, 21 May 2021, (informally referenced as (2021) EW Misc 10 (CC)) of occupants of HMOs, but which had, at least largely, been formalised in a sequence of written tenancy agreements. During the relevant period, the tenants (of the Respondents) held on a fixed term tenancy up to 31 July 2022, and thereafter under the statutory periodic tenancy.

24. On entering into occupation, each new tenant "took over" the deposit by paying the sum it represented to the outgoing tenant. A dispute relating to the protection and return of the deposit was apparently either ongoing, or had been resolved, at the time of the hearing, the point being a similar one that that which arose in *Sturgiss*.

25. All three tenants referred in their witness statements to there being four tenants during the relevant period. The four tenants were the three Applicants and a fourth, Frankie Burrows. Each of the Applicants' witness statement gave an account of the succession of tenants who occupied the house from the time that they became tenants (that is, the churn referred to above).

26. Ms Miller's witness statement is worded so that she refers only to tenants under tenancies with the Respondent. Mr Cade's statement states, at the end of his account of the history of tenancies, "4 people lived in the property at any one point, but a total of 7 occupants lived in the property over the course of my tenancy". The seven occupants referred to are named, and all had (at one time or another) tenancies with the Respondent. Mr Russell also states in his statement that "There were always 4 people living in the property for the whole time I rented". Again, the occupants specified were those with tenancies with the Respondent.

27. The way that the payment of rent was organised was that the first Applicant paid the rent from her bank account, having collected contributions from the others. The rent was £3,125 per month in total. She produced evidence of payment of this sum to the Respondent's agent, Leaders.

28. The second and third Applicants said that their share of the rent was £711 per month in their witness statements. It transpired during oral evidence that this sum included a sum for council tax and to pay the weekly cleaner, bills which the first Applicant also dealt with.

29. At this point, the calculation of the rent to which the claim for the RRO relates is relevant. The amount originally claimed, on the application form, was £21,875. By the time of the hearing, Mr Gyulai's skeleton argument stated that the total was £13,791. The reason for this was that the original claim had been made on the basis that an RRO should relate to the total rent for which the Applicants were liable. It would therefore include rent paid by a non-applicant tenant, where the

tenants were jointly and severally liable for the whole rent. That position was disapproved in *Moreira and others v Morrison* [2023] UKUT 233 (LC), an appeal in which Represent Law represented the appellants. The Upper Tribunal found that the total rent figure in relation to the calculation of an RRO was the total rent actually paid by each applicant in respect of whom the RRO was sought during the relevant period, rather than the total potential liability, which may be for the whole rent paid by all tenants if they were jointly and severally liable for the rent.

30. Returning to the cross-examination of Ms Miller, there seemed to be a discrepancy, since the total rent paid was £3,125 per month, the second and third Applicants each paid £711 less the sums for council tax and cleaning, and the first Applicant said in cross examination that she contributed about £713. Taking account of the council tax (approximately £178 a month) and the cleaner (about 190 per month), it was therefore not clear how the total was arrived at, even including Frankie Burrows contribution. Exploring the issue in cross-examination, Mr Hart asked how much the fourth person (ie Frankie Burrows) was paying. After a short pause, the first Applicant said that the Applicants had another person contributing to the rent, a fifth person.

31. Further questioning established that a Mr Daniel D'Mello had been living in what had been the dining room for the whole of the relevant period, and that at an earlier point, a previous undisclosed, fifth occupant had lived at the property, also using the dining room as a bedroom (there had been a gap between that person's occupation and that of Mr D'Mello). Mr D'Mello was a friend of a friend of Ms Miller, and it was she who had introduced him to the property. Neither of the fifth occupants had been disclosed to the Respondents or to Leaders. Both contributed to the rent.

32. Ms Miller said that Mr D'Mello did not have a tenancy agreement. He occupied as a result of a verbal agreement with all the tenants. She said she accepted that it was wrong to do so. He occupied from September 2021.

33. Both the second and third Applicants acknowledged the existence of the fifth occupants in cross examination.

34. At the conclusion of the evidence Mr Hart made a submission on abuse of process, in advance of his submission on reasonable excuse, based on the disclosure of the fifth occupant. We should, he argued, strike out the application of under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 9(3)(d). We suggested, and he agreed, that his argument as to abuse of process could equally

apply to our decision as to whether or not to exercise our discretion to make an RRO.

35. Mr Hart argued that the addition of Mr D'Mello to the occupants in the house resulted in it becoming liable for mandatory licensing from September 2021. In consequence, he submitted, Ms Miller, as the recipient of Mr D'Mello's rent and that of the other occupants, would be committing an offence under section 72(1); and the Respondent was also put at risk of committing the offence from September 2021, with the concomitant risk of a larger RRO, or financial penalty from the local authority. But even if that were not the case, the conduct of the tenants was such that the proceedings constituted an abuse.

36. In respect of reasonable excuse, Mr Hart argued that the conditions for reliance on an agent set out in *Aytan v Moore* [2022] UKUT 27 (LC), [2022] H.L.R. 29, [40] were made out. The Respondent believed that Leaders were keeping him informed of his legal obligations. As to a contractual obligation, he drew our attention to a provision in the Respondent's contract with Leaders which stated that "the Agent may take all necessary precautions to ensure the Client's compliance with all current and future statutory obligations and all costs incurred will be payable by the Client". Even if, properly construed, the term essentially allowed for Leaders to be paid for the taking of "precautions", if the agent chose to take them (rather than constituted an obligation to keep the Respondent informed), it could reasonably have been read to impose an obligation to inform.

37. As to reason to rely on an agent, the Respondent lived abroad. While we suspect that the internet may have mitigated some of the disadvantages of living abroad, that is the example quoted in *Aytan* itself.

38. That, Mr Hart argued, satisfied the three stage test approved in RRO cases in *Marigold and others v Wells* [2023] UKUT 33 (LC), quoting, at [48], *Perrin v HMRC* [2018] UKUT 156 (TCC), [81], as follows:

> 81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:
>
> (1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
>
> (2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"

39. At stages one and two, we should accept the Respondent's account of his expectations and beliefs in respect of the obligations of Leaders. At stage three, we should be satisfied that, viewed objectively, these amounted to a reasonable excuse.

40. Mr Gyulai noted in respect of Mr Hart's allegation that Ms Miller had committed the offence that the previous undisclosed occupant was in place when she moved in.

41. As to reasonable excuse, Mr Gyulai submitted that simply not knowing what his legal obligations were cannot constitute a reasonable excuse. It was not objectively reasonable (referring to stage 3 in *Marigold/Perrin*) for him not to have discovered his licensing obligation, given the length of time he had been letting the property. It had been operated as an HMO since 2017.

42. As to clause 3.10 of the contract, it had to be read in context, particularly that provided by the immediately previous term, which specifies that the client agrees "That the Client will comply with any legislation that may be introduced at any time in the future relating to residential lettings." Mr Gyulai noted that clause 3.9 specified that "the Client will" comply with legislation, whereas clause 3.10 says that "the Agent may" take precautions (for which the Client will pay). As to its more general context in the contract, while the section of which it forms part is headed "preliminary matters", the governing rubric at the start of the section is "The Client agrees with the Agent as follows". The obligations set out, as that rubric indicates, obligations of the client. They include terms requiring adherence to a number of specified regulatory obligations.

43. Our conclusions in respect of the criminal offence are as follows.

44. As a preliminary, we prefer to consider Mr Hart's abuse of process arguments in relation to our discretion as to making an RRO, rather

than striking out, for reasons we give below. That means that, in contradistinction to Mr Hart, we deal with reasonable excuse first.

45. First, it is absolutely clear that there can be no reasonable excuse after the Respondent became aware of the additional scheme. It was not contested that that happened when the Respondent received an email from Leaders telling him that the local authority now had an additional scheme, and that it included HMOs with three or four sharers.

46. Secondly, while Mr Hart makes a strong argument in favour of reasonable excuse for the period before that, on balance, we reject his submissions. As to the proper construction of clause 3.10, we prefer Mr Gyulai's submissions, given the context of the clause in the contract as a whole. Mr Hart urges on us that the Respondent nonetheless believed that the effect of clause 3.10 was to require Leaders to keep him informed, and that that was a reasonable belief for a non-lawyer to come to. In his favour, we accept that the point is legally arguable either way, and so the contrary interpretation is clearly a reasonable one for a lay person to accept. But when he was examined on the agreement with Leaders, very fairly the Respondent indicated that it was a long time ago that he had read and signed the agreement, and its actual terms were not in the front of his mind. Rather, he expressed a much more general expectation that Leaders would keep him informed. On his side of the argument, we accept that they eventually did do so, albeit very late, on 7 September 2022.

47. But it was clear from the Respondent's evidence that, at least by the relevant period, Leaders were essentially acting only as letting agents. The management of the house was something he undertook himself.

48. Applying the objective perspective required by stage 3 of the *Marigold/Perrin* approach, we do not think that a generalised expectation of accurate information from a letting (not a managing) agent, not backed up by (on its true interpretation) a contractual requirement, is sufficient to amount to a reasonable excuse. We also note that no positive case was really put that the criterion in *Aytan* that there should be evidence that the landlord had good reason to rely on the competence and expertise of the agent was met.

49. Thirdly, we turn to the argument for striking the application out on the basis of the revelation relating to the fifth occupant. As stated, think that it is more appropriate, at this late stage in the proceedings, to consider our discretion as to whether to make an RRO, rather than the strike out jurisdiction provided by rule 9 of the 2013 Rules.

50. Section 44 of the 2016 Act specifies that (emphasis added) "The First-tier Tribunal *may* make a rent repayment order ...". As a result, we have a discretion as to whether to make an order or not, even where the criteria for making an order are made out. It is, however, a discretion to be used to deny an RRO only very rarely: L*ondon Borough of Newham v Harris* [2017] UKUT 264 (LC); *Ball v Sefton Metropolitan Borough Council* [2021] UKUT 42 (LC).

51. This is one of those very rare occasions. Our conclusions rely on what we consider to be the deceitful conduct of the Applicants.

52. In the first place, the Applicants deceived the respondent. The Respondent told us in re-examination that, had a request been made for the addition of a further tenant, he would have refused it. He considered it a four bedroom house, which should be occupied as such. The Applicants hid the undisclosed occupants from both the respondent personally and from Leaders, removing from the Respondent the opportunity to exercise his right to object to that level of occupation. We have no doubt that the Applicants did so deliberately and for their own financial benefit. That would be true, even if that benefit amounted to only "reducing their costs", the explanation that Ms Miller gave in her evidence.

53. In fact, we think it goes rather further. Had the respondent decided to let another bedroom, it is highly probable that his total rent would have been higher than the total rent for four tenants, even if the increase in occupation resulted in some diminution of the rent of each individual occupant.

54. In sum, to say, as Ms Miller did, that they were not "making money" is disingenuous.

55. Further, the applicants were deceitful towards the tribunal. Miss Millers' witness statement, in which she referred to tenants, as opposed to occupants, was clearly misleading. It misled both members of the tribunal, for sure, into assuming that all the occupants were tenants. The same cannot be said of the witness statements of the other two applicants. Both expressly say that there were four people *living* there. We cannot do otherwise than characterise that as a lie.

56. Neither did Ms Miller or her representative volunteer the information that there was an undisclosed fifth occupant. It was only on cross-examination by Mr Hart on the calculation of the maximum RRO that Ms Miller, with what we consider to be a clear show of reluctance, admitted the presence of Mr D'Mello.

57. It is some mitigation that the applicants did not seek to inflate the sum they sought to claim as an RRO by including Mr D'Mello's rent as if they had paid it. Indeed, it was their failure to do so that led to the identification of the undisclosed occupier. However, not committing an egregious fraud is small mitigation. We note in passing that if their original position, as advised, that the RRO should be worked out on the basis of the rent for which the tenants were (jointly and severally) liable, their deceit would not have been appreciated.

58. If, however, we are wrong in our conclusion that this is that very rare case in which we should exercise our discretion not to make an RRO, we would, for the same reasons, have accepted the Respondent's submission that we should strike the application out under rule 9. While no doubt more appropriate to an earlier stage in proceedings, there is nothing in rule 9 itself that prevents the Tribunal from striking out an application at any time before it is concluded. In this case, the facts founding the submission only became apparent at the hearing itself. On the hypothetical basis that we should not exercise the discretion, in such circumstances there would be no way for the Tribunal to take account of the lately revealed abuse of process if striking out was not available to us at this stage.

59. If we are wrong about striking out, then there is one further possibility to reflect our acceptance that the proceedings were an abuse of process, and that is to make an RRO, but in a derisory sum (say, £1). We hesitate to consider that as a proper way forward. On the hypothesis that neither exercise of our discretion or striking out were available to us, a derisory RRO seems to us to be reinstating one or other of those approaches, only through the back door. However, should the Upper Tribunal disagree with us on appeal on each of the discretion, striking out *and* that a derisory RRO is not a proper approach, that option would then be available.

60. If we are wrong on all counts, and we should have made an RRO on the merits, it may be of assistance if we indicate what finding we would have made.

61. We would have considered the quantum of an RRO on the basis set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 20:

> "The following approach will ensure consistency with the authorities:
>
> (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. …
>
> (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. 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).

62. We would also note the point made by Judge Cooke in [21] that, insofar as it concerns the conduct of the landlord, there is potential overlap between stages (c) and (d).

63. The parties assisted us in coming to agreed figures in respect of (a) and (b), given developments at the hearing. The total relevant rent was £13,125, and the figure to be deducted for utilities paid by the landlord was £1,250, giving a post stage (b) figure of £11,875.

64. At stage (c), we would have concluded that the seriousness of the offence, before consideration of conduct, was low. We would have accepted Mr Hart's submission that the case was close to that of *Hallett v Parker and others* [2022] UKUT 165 (LC). The Respondent was not an exploiting rogue landlord, and we would have been "aware of the risk of injustice if orders were made which are harsher than is necessary to achieve the statutory objectives" ([26]). The statutory objectives, as the Deputy President demonstrates in the passage from [22] to [26], are posed in terms of combatting rogue landlordism. So at stage (c), we would have arrived at a figure of 25%.

65. At stage (d), for the same reasons as motivated our conclusions above, we would have found that the conduct of the tenants towards the landlord in allowing undisclosed occupants in was deplorable, and should be given considerable weight.

66. As to the Respondent, as we have noted, he was not a rogue landlord, but nonetheless his conduct was not flawless. The only criticism of him made in advance in the Applicants' witness statements was that he asked them to forward mail to him in the USA, and, when in the UK, visited the property to pick up mail, sometimes unannounced. The

extent of the mail forwarding was contested, and we would be inclined to believe the Respondent's account that it was infrequent and only applied to a small number of letters not addressed to him or his wife by name which were not picked up by the Royal Mail redirection service they paid for.

67. However, at the hearing (and to a degree pre-figured in the application), other complaints were made. These included the failure to fix a broken pane of glass for a long period, and delays in dealing with leaks and other moderate disrepair issues. None of the matters complained of were in themselves of a high level of seriousness, and there was no suggestion that, for instance, there was any problem with the fire precaution provision.

68. However, the evidence did show that the Respondent relied on the tenants themselves to arrange repairs, either by themselves identifying glaziers or other craftsmen/women, or by using the (extensive and expensive) insurance scheme he provided. This is not a proper way for a landlord to conduct the management of a rented property. It is, of course, entirely appropriate for a landlord to self-manage a property. But if distance, or any other factor, makes this difficult or impossible, it is incumbent upon a landlord to ensure that he or she has proper local management arrangements in place. Such arrangements should also include periodic agreed inspections – had such inspections been carried out, it is likely that the presence of the undisclosed occupants would have been revealed (even when the Respondent did attend the property, he did not personally inspect). Proper arrangements for managing the property would also have ensured that the landlord was complying with regulatory obligations. These would include not just licensing, but also matters such as compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006. The Respondent said in cross-examination that he was unaware of these regulations.

69. No doubt the Respondent thought he was being easy-going. We think he was slack.

70. Having said that, the misconduct of the tenants overwhelmingly out-weighs the conduct of the landlord. At stage (d), we would have arrived at a figure for an RRO at 10%. That would have resulted in an RRO which we would have rounded to £1,200.

Reimbursement of Tribunal fees

71. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we decline the application.

Rights of appeal

72. 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 London regional office.

73. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

74. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

75. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 25 March 2024

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

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

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.

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	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

	Act	*section*	*general description of offence*
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.

(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.

(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.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

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);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

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 this 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 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,

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