



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

Case reference : **BIR/41Uc/HMK/2023/0025**

Property : **126 Waterloo Street
Burton on Trent
Staffordshire
DE14 2NF**

Applicant : **Zachery Morritt**

Representative : **None**

Respondent : **VC9 Limited**

Representative : **The Smith Partnership and
Mr G Leckey (Counsel)**

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

Tribunal member : **Mr G S Freckelton FRICS (Chairman)
Mr R Chumley-Roberts MCIEH. JP**

**Date and place of
hearing** : **8th April 2024 by video hearing**

Date of decision : **17th April 2024**

DECISION

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Background

1. By application dated 3rd October 2023 Mr Zachery Morritt (“the Applicant”) applied for a rent repayment order against VC9 Limited (“the Respondent”) under the Housing and Planning Act 2016 (“the Act”). The application was received by the Tribunal on the same day.
2. The grounds of the application were that the Respondent had control of a house which was required to be licensed but was not so licensed, under section 95 of the Housing Act 2004 (“the 2004 Act”), and that it had therefore committed one of the offences listed in section 40(3) of the Housing and Planning Act 2016 (“the 2016 Act”) and that the Tribunal were therefore permitted to make a rent repayment order in his favour.
3. Directions were issued by the Tribunal on 23rd October 2023 following which submissions were made by both parties.
4. The case was listed for oral hearing by video link. The hearing took place on 8th April 2024. This decision states the outcome of the application and the reasons for the order the Tribunal makes on it.
5. The Directions issued by the Tribunal confirmed that the Applicant’s statement of case was included with his application but that any further submissions should be made by 14th November 2023. The Respondent was to submit their statement of case by 28th November 2023.
6. Further Directions were issued by the Tribunal extending the period for the Respondent to submit its statement of case until 20th December 2023.
7. Following receipt of the Respondents Statement of case the Applicant submitted a further statement dated 16th January 2024. He stated that the reason for this was that he wished to comment on the Respondents statement. The Respondent objected to the inclusion of this additional statement of case as it was not directed by the Tribunal. The Tribunal determined to consider this as a preliminary issue at the Hearing.

The Law

8. The relevant provisions of Part 3 of the 2004 Act, so far as this application is concerned are as follows-

79 Licensing of houses to which this Part applies

- (1) This Part provides for houses to be licensed by local housing authorities where—
 - (a) they are houses to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 85(1)).
- (2) This Part applies to a house if—

- (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
- (b) the whole of it is occupied either—
 - (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)...

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.

6. 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.

Preliminary Issue

7. As detailed in paragraph 7 of this decision the Tribunal determined to first determine if it would admit the additional evidence submitted by the Applicant on 16th January 2024.
8. The Applicant submitted that he wished to correct some submissions included in the Respondent’s statement of case.
9. The Respondent submitted that if the additional evidence was submitted it would place them at a disadvantage as they had not had an opportunity to comment on it.

10. Having carefully considered the submissions of the parties the Tribunal determined that it would admit the additional evidence submitted by the Applicant. The reason for this was that although the statement was not made in accordance with the Tribunal's Directions, the only relevant information it contained were matters of clarification which the Tribunal would have questioned the Applicant about and which he could have verbally submitted at the hearing itself.
11. Similarly, the Respondent had the opportunity at the hearing, to make any further comments it wished.

Applicant's Submissions

Proving an offence under section 95 of the 2004 Act and calculating the maximum amount of rent paid that may be the subject of a rent repayment order

12. In his written submissions and at the hearing the Applicant submitted that the Respondent had conceded in their submission that the property was required to have a selective licence and that it did not have one.
13. The Applicant further submitted that the property was not licensed at any point during the Applicant's period of claim. This satisfied all elements of the offence of having control of, or managing, an unlicensed property under Part 3, section 95(1) of the Housing Act 2004 which is an offence specified under section 40 (3) of the Housing and Planning Act 2016.
14. At the request of the Tribunal the Applicant described the Property as being a terraced house, built up to the pavement.
15. On the ground floor the front door led straight into the living room. There was then a partition with staircase leading to the first floor and rear dining room. The dining room led directly into the kitchen
16. On the first floor there was no landing but at the head of the stairs access to a front bedroom 1 and rear bedroom 2. Access to the bathroom was directly off the rear bedroom.
17. The house had double glazing and gas fired central heating. To the rear was a yard and garden area.
18. The Applicant submitted that he rented the property from 8th February 2021 until 7th November 2023. The property was purchased by the Respondent on 25th October 2021 although he was not notified of the change of ownership.
19. On 12th September 2022 East Staffordshire Borough Council introduced a selective licensing scheme which included the property. The Respondent made an application for a licence on 6th December 2022 but on 20th December 2022 the application was denied. On 22nd August 2023 a further application for a licence was made and accepted by the local authority.

20. On 22nd August 2023 the Applicant sent an email to the Selective Licensing Department at East Staffordshire Borough Council confirming that he was renting the property and asking for advice regarding an application for a rent repayment order.
21. The Applicant confirmed in his application that he was seeking a rent repayment order in the sum of £6,600.00 being 12 months' rent at £550.00 per month. In his detailed statement of case, he confirmed that he was now seeking a rent repayment order to cover the period's 12th September 2022 – 5th December 2022 and 21st December 2022 – 21st August 2023. He calculated this at £5957.74 as per the schedule provided on page 37 of his submission.
22. In addition to the absence of a selected licence the Applicant referred to other issues he had with the property and the Respondent:
 - 1) VC9 (the Respondent) had failed to notify him of the change of ownership when they purchased the property contrary to section 3(1) of the Landlord and Tenant act 1985.
 - 2) On 21st December 2022 the property was inspected by a gas engineer but no gas safety certificate was provided until 25th August 2023 following a complaint by the Applicant to the local authority.
 - 3) During the course of the tenancy the Applicant had been unable to reliably lock the rear door and the kitchen floor had been damaged by the gas engineer.
 - 4) One wall had been damaged by a neighbour carrying out internal works and there was further evidence of damp to the living room together with mould to the kitchen due to a leak from the bathroom. The Respondent had shown no interest in rectifying any of these defects.
 - 5) There were no fences fitted to the boundaries when he moved in and the shed was in a state of disrepair.
 - 6) There was a water leak into one of the bedrooms in October 2021. A contractor visited the property in March 2023 but the roof above the bedroom still leaked.

Copies of various emails regarding some of the works were included with the Applicant's statement of case.

23. By email dated 23rd October 2023 the Selective Licensing Department of East Staffordshire Borough Council confirmed to the Applicant that they had received the licence application on 6th December 2022 and that it had been reviewed on 20th December 2022. The application was certified as having been completed on 22nd August 2023.
24. In the Applicant's further statement of case an email from East Staffordshire Borough Council Selective Licensing Department confirming the detailed timeline of the application. This was confirmed as follows:

6th December 2022 – Application received

20th December 2022 – Application reviewed and letter sent to agent requesting additional information

1st February 2023 – Information received from agent

2nd February 2023 - Email to agent requesting further information

22nd August 2023 - Email to agent chasing outstanding information

22nd August 2023 –Email from agent providing information and providing a copy of an email dated 5th February 2023 that the Selective Licensing Department did not receive. Had the email of 5th February 2022 been received then the application would have been complete.

22nd August 2023 – Application complete

10th October 2023 – Invoice sent to the Respondent for the licence fee

12th December 2023 – Payment submitted

12th December 2023 – Application valid

The email notes that no communication between the parties took place between 2nd February 2023 – 22nd August 2023. However, the Tribunal also noted that the Respondent sent an email to the local authority on 5th February 2023 which, the local authority did not receive.

25. In support of his application the Applicant submitted various bank statements which showed the following payments had been made during the relevant period.

Date	Amount (£)
08/09/2022	£550.00
10/10/2022	£550.00
08/11/2022	£550.00
08/12/2022	£550.00
09/01/2023	£550.00
08/02/2023	£550.00
08/03/2023	£550.00
11/04/2023	£550.00
09/05/2023	£550.00
08/06/2023	£550.00
10/07/2023	£550.00
08/08/2023	£550.00
Total	£6,600.00

26. With regard to the financial circumstances of the Respondent, the Applicant submitted that the Respondent was a professional landlord as evidenced by the fact that he had set up a limited company for the sole purpose of renting out the property. He reiterated that repairs had not been dealt with promptly and submitted that there was a delay in him receiving the return of his deposit. The Tribunal noted that the Respondent had submitted a copy of its Accounts for the year ending 31st March 2023. These had not been sent to the Applicant.
27. In the further statement of case the Applicant submitted that the Licence Application Form sent by the Respondent was clearly not complete and could not reasonably be considered to have been 'duly submitted' on 6th December 2022.

28. The Applicant also requested reimbursement of the hearing and application fee in the sum of £300.00 under rule 13 (2).

Respondent's Submissions

29. By written submission the Respondent enclosed a copy of the Application for A selective Licence submitted to East Staffordshire Borough Council on 6th December 2022.
30. At the hearing the Respondent (through its Representative) accepted that the Selective Licensing Scheme came into effect of 12th September 2022 and that the application for a licence was not submitted until 6th December 2022.
31. The Respondent submitted that there was no evidence that the application submitted on 6th December 2022 was 'denied' on 20th December 2022. As stated by the local authority, the application was 'reviewed' on 20th December and additional information requested. It was submitted that the email of 5th February 2022 sent by the Respondent to the local authority was missed by them. However, there was no further communication from the local authority until 22nd August 2023.
32. The Respondent submitted that the limited company was owned and operated by a sole Director who is a senior officer in the Royal Marines. He was overseas in September 2022 and was not aware that the licence application was not made until 6th December 2022. A letter from the Directors Commanding Officer was submitted as proof that he was required to go on overseas operations at short notice.
33. The Respondent further submitted that the Tribunal could not be satisfied beyond reasonable doubt that an offence under Section 95(1) of the Act had been committed for both periods (12/09/2022–05/12.2022 and 21/12/22–21/08/2023). The Respondent admitted that the property was not licensed from 12th September 2022 to 6th December 2022 but the Respondent relied entirely on its agent who drafted the licence on 25th October 2022 but did not submit it until 6th December 2022.
34. The Respondent submitted that the application was therefore effective from 6th December 2022 (being the date it was acknowledged to have been received by the local authority) for the purposes of Section 95(3) of the Act as it had not been withdrawn, nor had the local authority made a decision to either grant a temporary licence or to grant the licence.
35. The Respondent therefore submitted that the application remained valid after 6th December 2022. There was no error in the completion of the Application Form although on questioning by the Tribunal the Respondent admitted that there were sections of the Application Form which had not been fully completed.

The Respondents financial position

36. With regard to property companies' financial circumstances the Respondent submitted that it had made a profit of approximately £100.00 per month from the subject property, which is the only one the company owns or manages.

37. It had relied on its agent and as the sole Director was away, he did not receive correspondence sent to his Registered Office address promptly. The Respondent asked that the nature of the Directors employment should be taken into account and that any repayment order the Tribunal saw fit to make should be limited to the period 12th September 2022 to 6th December 2022, less any deductions the Tribunal saw fit to make.
38. The Tribunal questioned the Respondent over its current financial circumstances and it was submitted that the subject property had been relet from February 2024 at an increased rental of £650.00 per month.

Discussion and Determination

39. On this application for a rent repayment order, the first issue for the Tribunal is to decide whether the Respondent has committed an offence under section 95 of the 2004 Act, namely whether the Respondent has had control of or management of a property which requires to be licensed, but which is not so licensed. No rent repayment order can be made unless this offence is established beyond reasonable doubt.
40. There are 6 elements to the offence:
 - a. That the Property must be a “house”;
 - b. That the Property must be in area which the local authority has designated as an area of selective licensing;
 - c. That the Property is let under a single tenancy or licence that is not an exempt tenancy or licence;
 - d. That the Property is not licensed;
 - e. That the Respondent is “a person having control” of the Property;
 - f. That there is no reasonable excuse for the Respondent having control of the Property without it being licensed (which has to be proved by the Respondent on the balance of probabilities).
41. The first five elements of the offence are not seriously in doubt. The Property is a building, consisting of a dwelling, which therefore falls under the definition of “house” in section 99 of the 2004 Act. The Tribunal accepts the evidence which is admitted by the Respondent that the Property was both within a selective licensing area as from 12th September 2022, and that no application for a license was made until 6th December 2022.
42. There is an issue as to the validity of the application for a licence. The Applicant says the application was ‘denied’ by the local authority on 20th December 2022 whereas the email from the Selective Licensing Department clearly states that ‘Further information’ was requested.
43. The first matter for consideration by the Tribunal is the date the application for the Selective Licence became valid. It is not in dispute that the application was made on 6th December 2022. The dispute is whether the application became ‘valid’ on that date, or, as the Applicant submits, on 12th December 2023, when the local authority had received all the relevant information and payment of the licence fee.

44. Section 87 of the Act (as far as is relevant to this case) states:
- 1) *An application for a licence must be made to the local housing authority.*
 - 2) *The application must be made in accordance with such requirements as the authority may specify.*
45. The Tribunal considers that the fact that sections of the application were not completed could imply that it was not ‘*made in accordance with such requirements as the authority may specify*’. As such, the Tribunal has some sympathy with the Applicant’s submission on this point.
46. The Tribunal then proceeded to consider Section 95 of the Act. Section 95(3) confirms that ‘*it is a defence that, at the material time-*
- (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)*
47. Subsection 7 of Section 95 as far as it affects this application states:
- 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-*
- (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....*
48. In this case the local authority did not grant a licence, refuse a licence or serve a temporary exemption notice. Neither was the application withdrawn. As such the application was still valid from 6th December 2022, and in the absence of any other decision by the local authority was considered to be ‘duly made’ despite any omissions by the Respondent on the initial application.
49. Therefore, it follows that although the Tribunal has some sympathy with the Applicant it does not agree with his submission that on 20th December 2022 the licence application was ‘denied’ or became in any way ‘invalid’. The Tribunal accepts the submission of the Respondent that once submitted the application is valid under Section 95(3) of the Act until it is either withdrawn or a temporary or full licence is granted. The Tribunal also accepts that the licence application as submitted is acceptable as it was not refused by the local authority despite the obvious omissions and shortcomings contained in it.
50. A copy tenancy agreement provided to us in the bundle of documents confirms that the property is let under a single tenancy. The Respondent receives (via the managing agent) the rack rent, meaning that by virtue of section 263 of the Act it is the person in control of the Property.
51. There is, though, an issue concerning whether the Respondent has a reasonable excuse for failing to licence the Property. The submission made is that the sole Director was

overseas and did not receive correspondence promptly and that the Respondent relied on the managing agent to make the application.

52. We find as a matter of fact that there was no agreement between the managing agent and the Respondent to notify the Respondent of the need to obtain a selective licence. At the hearing the Respondent submitted, on being questioned by the Tribunal, that due to the sole Directors many absences abroad, it had a 'Full Management Agreement' with the managing agent. However, no copy was provided to the Tribunal that this 'Agreement' included notifying the Respondent of the need to obtain a licence.
53. The same is true of the inability of the sole Director to collect mail in a timely manner. The Director was well aware that the nature of his employment was such that he was likely to be unavailable for indefinite periods of time and at short notice. Under these circumstances, he should have made alternative arrangements for mail to be collected. At the hearing the Respondent confirmed that the postal address of his company was his mother's home address.
54. In the recent Upper Tribunal case of *Aytan v Moore* [2022] UKUT 27 (LC), the Upper Tribunal said:

"40. 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."
55. There is no suggestion that the Respondent did not know of the selective licensing scheme. Indeed, its managing agent was in the process of preparing the licence application in October 2022 and had it been submitted at that time this Tribunal would have accepted a slight delay was probably inevitable and acceptable. It is unfortunate that the Respondent did not submit the licence application until 6th December 2022. In this respect, the managing agent has, in the opinion of the Tribunal, been remiss, but that is not a matter in which the Tribunal has jurisdiction.
56. Our conclusion on the first issue is that the Respondent did commit an offence under section 95 of the 2004 Act between 12th September 2022 (when the scheme came into effect) and 6th December 2022 (when the application was made).
57. The second question for us is to determine is the maximum possible award we could make as a rent repayment order. It cannot be higher than the rent that was paid in a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) and 44(3)(a) of the 2016 Act).
58. The offence ceased in this case when the application was made. The offence occurred from 12th September 2022 to 5th December 2022 inclusive (the application being made on December 6th). The Applicant is therefore entitled to a rent repayment order for the

period 12th September 2022 to 5th December 2022, and we have to identify both the rent paid *during* that period and the rent payable *in respect of* that period (see *Kowalek v Hassanein Ltd* [2021] UKUT 143 (LC)).

59. In *Acheampong v Roman* [2022] UKUT 239 the Upper Tribunal set out the following guidance on how to quantify the amount of a rent repayment order which, it said, 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 payments 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 relevant 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 the 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).

60. The evidence was (see paragraph 18 above) that the sum of £1,650.00 was paid as rent during the period 12th September 2022 and 5th December 2022 inclusive. However, the Tribunal is only able to take account of the rental payments actually made during the period of the Application. In this case the total period of the offence was 85 days. We calculate this at £1,536.80 (£6,600.00 per annum ÷ 365 = £18.08 x 85 = £1,536.80). Therefore, the maximum award we can make is £1,536.80.

61. The third question for us is to determine the amount we are willing to order, taking into account the factors we are obliged to consider contained in section 44(4) of the 2016 Act. We may also take into account any other factors we consider are relevant (see paragraph 50 of *Williams v Parmar* [2021] UKUT 0244 (LC)).

62. Having regard to *Acheampong v Roman* we therefore take into account the following:

- a. This is the Respondent's first offence;
- b. From the evidence the property was in need of some ongoing repairs and although these are not on the face of it unduly serious there was a lack of commitment in arranging for them all to be dealt with in a timely manner;
- c. We note the leak to the roof above the bedroom and damp/mould to the kitchen caused by a leak from the bathroom;

- d. We have evidence that the Respondent has not complied with all statutory requirements to ensure the health and safety of the Applicants. In particular the provision of a gas safety certificate in a timely manner. We do however know that the gas certificate was provided later and we are not aware of any problems with the gas supply. So, although the certificate was not provided the Applicant was not at any risk;
 - e. Although the gas safety certification was not sent to the Applicant, this would not necessarily have had an adverse effect on a selective licence being granted for the property. It is not realistically possible for local authorities to inspect all properties before granting a licence and there is no requirement in the legislation requiring a landlord to provide copies of gas (and electrical) safety certificates at the outset. It is often the practice for local authorities to grant a licence, conditional on copies of the necessary certificates being provided at a later date.;
 - f. The Respondent took all reasonable steps to manage the property through a professional agent;
 - g. It is clear from *Ayton* and other Upper Tribunal cases that the intention of Parliament with this legislation was to target “rogue” landlords and the Respondent clearly does not fall within that description;
 - h. The Respondent’s financial circumstances. We are satisfied that the Respondent is unable to afford the full amount of the rent repayment order sought. Both in the Respondent’s written submissions and at the hearing it was confirmed that the Respondent made a profit of approximately £100.00 per month. However, as the property has now been relet at a higher rental, this profit will have increased. The Tribunal therefore takes into account the Respondent’s financial circumstances as it is obliged to do under section 44(4)(b) of the Act.
63. We do not give any weight to the following factors:
- a. The alleged late repayment of the deposit;
 - b. Any effect upon the amount of any order we make as a result of the Respondent’s financial circumstances. We are satisfied that the Respondent is able to afford the amount of rent repayment that we order, and neither so wealthy as to justify an enhanced amount, or so poor as to justify a further reduced amount;
 - c. The fact that any rent repayment ordered may be considered by some to be an underserved windfall for the tenant. This is not a factor we are able to take into account.
64. We therefore follow the decision in *Acheampong v Roman*. Our view is that it would be unjust not to make a discount to the maximum sum we can order as a rent repayment balancing all the factors listed above.

65. As we have previously determined the maximum amount, we can award is £1,536.80. However, we do not accept that this is an appropriate starting point and balancing all the factors listed above, our view is that 60% of this amount (£1,536.80) is appropriate. This gives a maximum potential award of £922.08.
66. We determine that the offence of not having a selective license is not unduly serious on its own when taking account of the range of potential offences such a harassment or unlawful eviction and given the circumstances of this case determine that the 40% deduction detailed in paragraph 66 is appropriate. This leaves an award of £922.08.
67. There are no further matters we consider merit taking into account and we do not consider that our overall award should be adjusted further except our consideration of the Respondent's financial circumstances.
68. We therefore, then take into account the Respondent's financial circumstances. It is submitted to us (and we fully accept) that the Respondent's sole Director is in employment, but this action is against VC9 Limited and it is submitted to us that the profit amounts to approximately £100.00 per month (£1,200.00 per annum), although it will have subsequently increased.
69. The purpose of a rent repayment order is to deter landlords from unlawful action and to prevent repeat offences. In this case it is evident to us that the Respondent only has one property and although the Tribunal agrees with the Applicant that the Respondent is a 'professional landlord', the company is relatively new and therefore inexperienced. It does not have access to large cash reserves and our view therefore, is that a discount of 20% is appropriate.
70. We order that the Respondent must pay a rent repayment order to the Applicants in the sum of £737.66
71. The Applicant also seeks reimbursement of the hearing and application fee in the sum of £300.00 under rule 13(2) as this cost would not have been incurred but for the offence committed by the Respondent.
72. We agree with the Applicants and order that the Respondent must reimburse the hearing and application fee of £300.00 to the Applicant.

Appeal

73. 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.

Graham Freckelton FRICS
Chairman. First-tier Tribunal (Property Chamber)