FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/HMF/2023/0285**
Property	**:**	**Flat 3, 76 Brondesbury Road, London, NW6 6RX**
Applicant	**:**	**Ricardo William Davies and Moran Arwas**
Representative	**:**	**In person**
Respondent	**:**	**Claudia Pospischek**
Representative	**:**	**Steven Woolf, counsel**
Type of application	**:**	**Tenant's application for a Rent Repayment Order under ss. 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Tribunal Judge M Jones** **Mr S Mason FRICS**
Date and venue of hearing	**:**	**22 April 2024, 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**29 April 2024**

DECISION

Decisions of the tribunal

(1) The Tribunal orders the Respondent to repay to the Applicants the sum of £2,583 by way of rent repayment.

(2) The Tribunal declines to order the Respondent to reimburse the Applicant the application and hearing fees.

Introduction

1. The Applicants have made application dated 8 October 2023 for a rent repayment order ("***RRO***") against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("***the 2016 Act***").

2. It is asserted that the landlord committed an offence of control or management of an unlicenced dwelling contrary to section 95(1) of the Housing Act 2004, which is an offence under section 40(3) of the 2016 Act.

3. The tenants initially occupied Flat 3, 76 Brondesbury Road, London, NW6 6RX ("***the Property***") pursuant to a tenancy agreement dated 23 November 2020 for a term of 18 months at a rent of £1,400 per month. A further tenancy was granted for a term of 12 months from 26 May 2022 at a rent of £1,470 per month.

4. The tenants seek a RRO in the sum of £17,220 for the twelve months ending on 14 November 2022.

5. The Respondent served a detailed narrative statement of case in response to the application.

6. The parties each filed bundles in advance of the hearing. The Applicant's bundle numbered some 257 pages, and the Respondent's some 76 pages.

7. Whilst the Tribunal makes it clear that it has read each party's bundles, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

8. This Decision seeks to focus solely on the key issues. The omission to refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters

mentioned in the bundles or at the hearing require any finding to be made for the purpose of deciding the relevant issues in this application. The Decision is made on the basis of the evidence and arguments the parties presented, as clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

Hearing

9. This was a face-to-face hearing.

10. The Applicants each represented themselves at the hearing, and each gave evidence.

11. Mr Steven Woolf of Counsel represented the Respondent at the hearing. The Respondent gave evidence, as did her daughter Ms Sabrina Nascimbeni.

12. The parties each provided skeleton arguments, for which we are grateful. We also note that the statement of case for the Applicants includes a substantial quantity of legal references, to which we have also had regard.

The Property

13. The Property is a 1-bedroom flat situated on the first floor in a converted building containing, in total, 4 flats, in turn forming part of a Victorian terrace.

14. We did not inspect the Property, where neither party requested us to do so, and we did not consider it necessary or proportionate to do so to determine the application before us.

15. The Property was situated within a selective licensing area as designated by the London Borough of Brent (*"**LBB**"*) under s.80 of the Housing Act 2004 (*"**2004 Act**")*, which came into force on 1 June 2018, and remained in force until 30 April 2023.

Applicants' Case

16. The Applicants state that the Property did not have a licence, but required one, for the entirety of the period 14 November 2021 to 13 November 2022.

17. This was not in the event disputed by the Respondent, where Mr Woolf in his skeleton argument entirely sensibly conceded that the Property was subject to a selective licensing scheme at the relevant time, but that no licence had been applied for.

18. It was also common ground that the Respondent first applied for a licence on 14 November 2022, which was granted by LBB reasonably shortly thereafter. We find that (but for the absence of the licence itself) this establishes that there were no defects in the Property to inhibit the grant of that licence.

19. The tenants also asserted in their application that the landlord committed the offence of harassment of occupiers pursuant to section 1(3) or (3A) of the Protection from Eviction Act 1977. This was based upon an allegation that at around 18.30 on 23 November 2022, the Respondent turned up unannounced in the company of her daughter Ms Nascimbeni, attempted to force Mr Davies to sign documents without reading them and proceeded to take photos/videos of him without express permission and continued to do so when he asked them not to.

20. The documents in question transpired to be gas and electrical safety certificates, an energy performance certificate, a copy of the *'How to Rent Guide'* and similar papers, which needed to be provided to the tenants as a condition precedent of service of notice under s.21 Housing Act 1988, which followed under cover of a letter from the Respondent's solicitor dated 28 November 2022.

21. In an email sent at 9.50 am on 25 November 2022, Mr Davies complained that the incident, which he characterised as *"aggressive and illegal behaviour"* had caused himself and Ms Arwas "*...an unnecessary amount of stress and anxiety...*", that Ms Arwas (who had not been in the Property at the time) *"came home inconsolable"*, and that the couple had suffered sleepless nights in consequence.

22. The Applicants confirmed at the hearing, as previously explained in their witness statements, that they did not seek to pursue the allegation of harassment as an allegation of an additional offence, but rather requested that the Tribunal consider the allegation as part of their complaints regarding the Respondent's conduct.

23. The Applicants also complained that the Property was not subject to a gas safety inspection in the year 2021, and that a fireplace with a disconnected gas fire was not inspected in the course of an inspection in 2022.

24. Cross-examined by Mr Woolf, Mr Davies was unwilling to accept that the Respondent was entitled to attend at the building, to enter the common parts, to ring or knock on his door and hand him papers. He characterised the knocking as *"aggressive"*, and maintained that the incident on 23 November had occurred late in the evening (it was, in fact, between around 6.30 and 7 pm), and had caused him, variously, great distress, anxiety, and at least 2 sleepless nights prior to his email of 25 November. He stated on several occasions that, while the

Respondent and her daughter made no attempt to enter the Property itself, he was concerned as to what they might have done had he not been there. The entire incident, he said, had made him fear for his safety, and he and Ms Arwas thereafter found living in the Property *"very stressful and anxious"*. This mirrored the summary of the matter in the Applicants' skeleton argument: *"This incident made us feel very unsafe and unsecure in the flat."*

25. A particular feature of the breach of quiet enjoyment and (in the broad sense) harassment alleged was the taking of photographs by the Respondent and/or her daughter. Mr Davies also complained about the demand (as he characterised it) to sign various documents before he had the chance to read them, while later confirming that they were each, in fact, copies of documents previously provided to him.

26. It was put to Mr Davies that, having been served with a s.21 notice requiring possession of the Property by 6 February 2023, he and Ms Arwas remained in occupation for several months thereafter, suggesting that they were not so uncomfortable as they had alleged. Mr Davies' response, in summary, was that they had searched assiduously for substitute accommodation but found it difficult in a restricted lettings market, adding that they had been advised by the local council not to leave, as no help could be offered unless they were homeless. No documentary evidence of these matters was in the bundle, but it was common ground that Mr Davies and Ms Arwas finally moved out at the end of May 2023.

27. Mr Davies was cross-examined about an episode on Good Friday 2023, when he and Ms Arwas had accidentally locked themselves out of the Property, and the Respondent had come over from her home in Camberwell to let them in with her retained key, saving the cost and trouble of seeking to engage the services of a locksmith, doubtless at some expense on a public holiday. In what we find to have been somewhat fanciful evidence, Mr Davies sought to assert that this was in fact done for the Respondents' benefit, where she would not have wished to have had the locks changed.

28. As to quantum, the application, statement of case, and skeleton argument filed on 19 April, one working day before the hearing, each expressly sought the maximum RRO possible, being 100% of the rent paid over the relevant 12-month period in the sum of £17,220. As phrased in the concluding paragraph of the skeleton argument:

"We request that a RRO be made to the full amount applied for, ***£17220…****"*

29. Cross-examined on this issue, Mr Davies was at pains to assert that over the full duration of the tenancy, the Respondent had received over £40,000 from the Applicants by way of rent, a point that the Tribunal

did not understand: this was the rent, contractually due. He then sought to characterise the words in the skeleton argument quoted above as a mere starting point, finally accepting that this case was not in fact the most serious, and that a more realistic range of outcomes, based upon other cases he had read would be a RRO in the range of 25%-65% of the total rent paid.

30. Ms Arwas then gave evidence. Mr Woolf had no questions in cross-examination, initially. However, as she had attempted several times during Mr Davies' evidence to interject, it was apparent to the Tribunal that she had evidence she wished to give, so we permitted her to expand upon her witness statement, allowing Mr Woolf the right to cross-examine on any novel features that emerged.

31. In relation to the 23 November episode, Ms Arwas stated that she had received a call from Mr Davies who was *"distraught"*, that the incident felt *"uncomfortable and threatening"* to them both, and had occurred in the late evening (we repeat, it was between 6.30 and 7 pm). She attempted to maintain that a particularly disagreeable aspect was that the Respondent had attempted to come into her and Mr Davies' home (which the Respondent demonstrably had not, as conceded by Mr Davies), then suggesting (in response to questions from the Tribunal) that if personal service of documents was necessary, there were other options: recorded post, emails with read receipts.

The Respondent's Case

32. The case for the Respondent was to the effect that she had not obtained a licence because she did not know she had to: the selective licensing requirement was, at the commencement and renewal of the tenancy, unknown to her. She was not a professional landlord and, having instructed letting agents to arrange the successive tenancy agreements for the Property, relied on them to alert her to any regulatory issues that might arise: none were notified.

33. The second tenancy agreement contained provision for termination after 6 months. Due to a change in her familial circumstances, the Respondent wished to recover possession of the Property in January 2023, a fact communicated to the Applicants by the letting agents in a series of emails between 19 and 26 October 2022. In response to requests from the tenants for an explanation, the Respondent sent a text message on 19 October explaining that her daughter (who had lived in the Property prior to the letting to the Applicants) was in a difficult financial situation and needed to move to live there.

34. The Respondent took advice from solicitors, Landlord Action, to the effect that to regain possession she would need to serve notice under s.21 Housing Act 1988. As a condition precedent of serving a valid

notice, she needed to ensure that a suite of documents had been provided to the tenants.

35. This advice formed the background to the 23 November 2022 incident, where the Respondent's case was that she had been advised to attend and give personal service of the documents. This was not malicious, but rather acting upon advice as to the correct procedures to enable service of a valid s.21 notice, as a necessary step in seeking to recover possession so that Ms Nascimbeni could move back in.

36. Following personal service of the papers, a s.21 notice was served by Landlord Action.

37. The Respondent explained that it was Landlord Action that first alerted her to the need for a selective license to let the Property, during the process of obtaining advice regarding the matter. Having become aware of the issue, she applied in haste, on 14 November 2022. The license was granted on 2 January 2023.

38. Cross-examined by the Applicants, the Respondent confirmed that she had let the Property for a period at some point, historically, but that it had been occupied by Ms Nascimbeni immediately before the Applicants moved in. She denied an allegation that it had been used as an Airbnb, and could not be specific about the dates when the Property had been let, and had been lived in by her daughter.

39. The Respondent explained that she had attended on 23 November because the Applicants very rarely responded to correspondence in a timely manner, taking weeks or a month to respond. She had been advised that personal attendance was acceptable. She (in summary) admitted the absence of a gas safety certificate in 2021, apparently relying on the fact that there had been one in 2020, prior to or at the commencement of the first tenancy agreement, and then in 2022, either at or around the time the second agreement was signed.

40. Ms Nascimbeni gave evidence, where (with respect to her) nothing of additional significance was elicited in cross-examination.

41. Against the allegations made by Mr Davies, we would add that we found nothing particularly menacing in Ms Pospischek's or Ms Nascimbeni's demeanour, insofar as they each presented themselves to the Tribunal.

Relevant statutory provisions

42. Housing and Planning Act 2016

Section 40

(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 …

(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***
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
7	This Act	section 21	breach of banning order

Section 41

(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.

Section 43

(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 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) …

Section 44

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

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

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Housing Act 2004

Section 95

(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.

Section 263

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

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

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises – (a) receives … rents or other payments from … persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or (b) would so receive those rents or other payments but for having entered into an arrangement … with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments …

Tribunal's analysis

43. The uncontested evidence is that the Property was a dwelling which was required to be licensed but was not licensed at any point during the period of the claim. Having considered that uncontested evidence we are satisfied beyond reasonable doubt that for the whole period of the claim the Property required a licence, and it was not licensed.

44. While Ms Nascimbeni is the registered proprietor of the long leasehold title to the Property, it is also clear that the Respondent was the landlord for the purposes of section 43(1) of the 2016 Act, as she was named as landlord in the tenancy agreement. Again, this was undisputed.

45. The next question is whether the Respondent was a *"person having control of or managing"* the Property within the meaning of section 263 of the 2004 Act. The evidence shows that the rent was paid to the Respondent. The Respondent has not sought to argue that she was not a person having control of or managing the Property or that the rent paid was not the *"rack-rent"* as defined in section 263. We are, accordingly, satisfied that the Respondent received rent from the Applicants. The Respondent was additionally and in any event at the relevant time a person managing the Property.

The defence of "reasonable excuse"

46. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 3 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

47. In this case, the point is conceded: Mr Woolf did not seek to advance the defence.

The offence

48. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied.

49. An offence under section 95 of the 2004 Act is one of the offences listed in that table. Section 95 states that "*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…"*

50. For the reasons given above we are satisfied (a) that the Respondent was a "person managing" the Property for the purposes of section 263 of the 2004 Act, (b) that the Property was required to be licensed throughout the period of claim and (c) that it was not licensed at any point during the period of claim.

51. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was

let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. On the basis of the uncontested evidence on these points we are satisfied beyond reasonable doubt that the Property was let to the Applicants at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which their application was made.

Process for ascertaining the amount of rent to be ordered to be repaid

52. Based on the above findings, we have the power to make a rent repayment order against the Respondent.

53. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenants in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of housing benefit or universal credit paid in respect of rent under the tenancy during that period.

54. In this case, the Applicant's claim relates to the periods 14 November 2021 to 13 November 2022

55. The Applicants seek a rent repayment order in the total sum of £17,220, being the entirety of the rent paid to the Respondent during the relevant period. For all that Mr Davies sought to resile from this high-water mark in evidence, such was their case as expressed in the application, in the statement of case, and repeated in the skeleton argument filed one working day before the hearing.

56. We are satisfied on the basis of the uncontested evidence that the Applicants were in occupation for the whole of the period to which this rent repayment application relates and that the Property required a licence for the whole of that period. Therefore, the maximum sum that can be awarded by way of rent repayment is the sum of £17,220, this being the amount paid by the Applicant by way of rent in respect of the period of claim.

57. Under sub-section 44(4), in determining the amount of any rent repayment order 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 the relevant part of the 2016 Act applies.

58. In its decision in *Acheampong v Roman and others [2022] UKUT 239 (LC)*, the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which is paraphrased below:-

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

(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;

(c) consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made and compared to other examples of the same type of offence; and

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

59. Adopting the *Acheampong* approach, the whole of the rent in this case means the whole of the rent paid by the Applicants out of their own resources, which (where we have been unable to discern any relevant components of Universal Credit) is £17,220.

Utilities

60. We accept that the Applicants were solely responsible for payment of utilities. We have considered the evidence of expenses incurred by the Respondent, but conclude that each of these was incurred in relation to her obligations as landlady and in relation to necessary acts to let the Property, as opposed to being payments for utilities that only benefitted the tenants. Accordingly, no reduction applies under this head.

Seriousness

61. In *Acheampong* at §20(c), Judge Cooke held that the Tribunal must consider how serious the housing offence forming the basis of the application is, both compared to other types of offences in respect of which a rent repayment order may be made, and compared to other examples of the same offence. As the issue was put in §21 of the judgment, this *"…is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence?"*

62. As Ms Arwas was at considerable pains to remind us in her somewhat fervent closing submissions, failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license have an important deterrent effect on future offending as well as encouraging law-abiding landlords to continue to take the licensing system seriously and to inspire general

public confidence in the licensing system. In addition, there has been much publicity about licensing of privately rented property, and there is an argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence. Furthermore, even if it could be argued that the Applicants did not suffer direct loss through the Respondent's failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

63. Nevertheless, the seriousness of the offences can be ascertained by comparing the maximum sentences upon conviction for each of them. Deploying this hierarchical analysis, the offence of having control of, or managing an unlicensed dwelling is generally less serious than other offences. This is, we find, particularly so in the case of a flat occupied by a couple, by contrast to the very many sub-standard unlicensed Houses in Multiple Occupation we encounter in London.

Other Factors

64. The most notable factor in dispute, to which the majority of the evidence at the hearing was directed, related to the conduct of the parties.

65. By way of preamble, we find that the Property was in a very good state of decoration and repair, that the tenants were provided with all necessary documentation at the commencement of their tenancy, that their deposit was appropriately protected, and we note the agreed fact that at the conclusion of their tenancy the deposit was returned in full. We find that the very few instances of repairs for which the landlord was responsible were attended to very promptly.

66. We find that the Respondent was very responsive to her tenants' concerns, as particularly manifested by her conduct on Good Friday 2023, long after the period of possession sought by the s.21 notice had expired. This, we find, was based upon commendable concern for her tenants' welfare - even after they had failed to vacate in compliance with the s.21 notice - and we reject (as frankly, absurd) the Applicants' efforts to characterise this conduct as in some way selfishly motivated.

67. Setting aside the harassment allegation, the complaint of failure to inspect an unconnected (former) gas appliance in 2022 is incomprehensible. We do take note of the absence of a gas safety inspection in 2021, but also note that no defects were noted in

inspections in 2020, and 2022. We consider this an oversight, and find the Applicants' expressions of grave concern as to the potential threat to their health and safety to have been exaggerated, most particularly in light of our findings below.

68. Turning to the harassment allegation, we reject the Applicants' contentions that the Respondent was a bad landlady who harassed them on 23 November 2022.

69. We find that on 23 November 2022, the Respondent attended at the Property in the company of her daughter, to ensure that the Applicants received a series of documents necessary to ensure the validity of an anticipated s.21 notice, which was in itself an entirely valid means of terminating the tenancy. She was, in effect, making personal service of those documents.

70. We find that the Respondent, in the company of Ms Nascimbeni, entered the common parts of the building, as she was entitled to do, and knocked and/or rang on the door of the Property to attract the attention of the occupier. Such is an entirely reasonable means of seeking to communicate with an occupier. Mr Davies answered, and was given the documents.

71. As to the number of photographs taken, we cannot be sure: we do, however, accept the evidence of Ms Nascimbeni that only one was retained, being that at page 55 of the Respondent's bundle. This shows approximately half of Mr Davies' torso and right leg (as he admitted), but not his face, holding some or all of the papers. We reject the Applicants' claims that this amounted to a grievous breach of his privacy: as evidence of service, the taking of a photograph or, indeed, several, appears to us perfectly acceptable. The Tribunal has judicial notice of professional process servers taking video or photographic evidence of service, frequently (now) by use of body-worn cameras. We reject the strident allegations of a breach of privacy: rhetorically, how else was the Applicant to establish that service had been effected?

72. As to the complaint that Mr Davies was asked to sign documents, noting the nature of the documents served, we find that this was no more than a request for signatures to seek to ensure that receipt could not be subsequently denied.

73. While the visit was doubtless unwelcome to Mr Davies, we find nothing unreasonable in the Respondent's (or Ms Nascimbeni's) conduct, and absolutely nothing to justify the assertion in the application that this amounted to harassment of occupiers pursuant to section 1(3) or (3A) of the Protection from Eviction Act 1977. That allegation was wholly unsupportable.

74. We then come to the allegations made by the Applicants that this episode was so traumatic as to cause stress, anxiety, sleepless nights, to leave them feeling *"very unsafe and unsecure in the flat…"* and so forth, while remaining *in situ* for a further 6 months, the latter 3 in defiance of the requested dated for possession in the s.21 notice. We particularly note that latter fact as against the perorations of each of the Applicants as to the moral and legal necessity of complying with regulations, notices and the like.

75. Insofar as it conflicts with that of Ms Pospischek and Ms Nascimbeni, we reject Mr Davies' and Ms Arwas' evidence relating to this issue.

76. We find that the Applicants were upset by the knowledge that the Respondent wished to terminate their tenancy so that the Property could be available for occupation by her daughter, as communicated in the email and text exchanges in October 2022.

77. We find that the Respondent did no more than attend in the company of her daughter, gain access to the common parts of the building (as they were perfectly entitled to do), make her/their presence known by knocking and/or ringing the doorbell, and provide a series of entirely anodyne documents, which had already been provided, and seek to obtain evidence that they had been served. It was entirely reasonable - and within her legal rights - to do so.

78. None of this could have caused persons of reasonable firmness, as we find the Applicants to be, or indeed anybody, to have suffered the traumatic consequences they now allege. Mr Davies' email of 25 November 2022 was, we find, an artfully created and deliberate overreaction, for purposes of seeking to put pressure on the Respondent and seek to provide ammunition for the Applicants in the forthcoming dispute as to possession that they, by then, anticipated.

79. In the context of a lady and her daughter entering the common parts of the building, at or around 6.30 pm to ensure that essential documents were provided to the Respondents, the characterisation of the incident by the Applicants, their reaction and consequent evidence has been, as we find, deliberately dishonest.

80. We find that the Applicants, and each of them, have deliberately and dishonestly exaggerated the effects of what was an entirely justifiable action on the part of their landlord. The only purpose, objectively judged, must have been to seek to enhance their application, as to liability and quantum.

81. In his closing submissions, Mr Woolf for the Respondent characterised the exaggeration as having no regard to reality and, to employ his word, *"embarrassing"*.

82. We agree.

83. **Financial Circumstances of the Landlord**

84. We are also required to consider the financial circumstances of the landlord under section 44(4).

85. We take note of what is said in the evidence of the Respondent, and Ms Nascimbeni of their limited means to meet any award, which will ultimately (if made) have to be met by the latter.

Whether the Landlord has at any time been convicted of a relevant offence

86. The Respondent has not been convicted of a relevant offence.

Decision

87. The Tribunal deplores the approach of the Applicants, who have dishonestly sought to misrepresent the effects of an entirely anodyne encounter, and through unjustifiable pious recitations (as we find) of housing policy consultation material have persisted until being challenged at the hearing in seeking a windfall of £17,200 for accommodation that appears to have been entirely satisfactory.

88. We have had regard to various cases cited by the parties, some of them of higher judicial authority and some from this Tribunal, of persuasive effect only.

89. While very case is infinitely fact-sensitive, we have derived the most significant assistance from the decision of the Upper Tribunal (Lands Chamber) in the case of *Hallett v Parker* [2022] UKUT 165. Against the observations of the learned Deputy President in that case, we find:

    93.1 This was a case of technical, accidental as opposed to intentional breach.

    93.2 The Applicants enjoyed accommodation of a high standard.

    93.3 But for one missed Gas Safety check, which in the event caused no lack of (actual) safety, all necessary checks and safety provisions were provided.

    93.4 Until it was intimated that possession of the Property would be required for occupation by Ms Nascimbeni, very good relations subsisted between the Applicants and the Respondent.

93.5 We find no aggravating features whatsoever as against the Respondent; we find that the Applicants have dishonestly exaggerated beyond any semblance of logical scrutiny their allegations of harassment, and its effects.

93.6 The Respondent is not a professional landlady, and received no advice at the time of the letting as to the need for licensing. Upon being advised, she applied immediately.

93.7 There is no evidence of repeat offending.

90. Taking account of the factors above, the Tribunal determines that this licensing offence was and is the least serious it has considered under the 2016 Act. We have had regard to all the other the various authorities and comparators advanced by the parties.

91. We find the additional factor in this case that merits the order we make, to be the deplorable conduct of the Applicants that we have identified.

92. Taking all of the findings explained above into account, the Tribunal finds that we reduce the rent repayment figure by 85%, and we therefore order that the Respondent pay to the Applicants the sum of £2,583.

Reimbursement of Tribunal Fees

93. The Applicants have applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse their application fee of £100.00 and the hearing fee of £200.00.

94. The Tribunal considers the application to have been wholly disproportionate, and to have been based upon evidence which was (at best) grievously exaggerated and (at worst) dishonest, which is to be deplored.

95. While the Applicants' claim has been in very small part successful, the decision of this Tribunal awards them 15% of the sums claimed in their application.

96. In the circumstances, we do not consider it appropriate to order the Respondent to reimburse these fees.

Name: Judge M Jones **Date:** 29 April 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

(A) If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

(B) The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

(C) If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

(D) The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

(E) If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).