



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

**Case reference** : **CHI/43UM/HMG/2023/0003/BS**

**Property** : **11 Eastbrook Close, Woking, Surrey,  
GU21 5DQ**

**Applicant** : **Akbor Hossain**

**Representative** : **In Person**

**Respondent** : **Waqas Ali**

**Representative** : **In Person**

**Type of application** : **Application for Rent Repayment Order  
under the Housing and Planning Act  
2016**

**Tribunal member** : **Judge Waterhouse  
Ms Wong  
Ms Barton MRICS**

**Date and Venue of  
Hearing** : **3 May 2024 at  
Havant Justice Centre**

**Date of decision** : **10 May 2024**

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**DECISION**

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**Decision of the Tribunal**

- (1) The tribunal orders the Respondent to repay to the Applicant the sum of **£391.50** by way of rent repayment.
- (2) The tribunal also orders the Respondent to reimburse to the Applicant one half of the application fee of, £100 and the hearing fee of £200 (amounting to **£250.00** to be reimbursed in total).

## **Background**

1. The Applicant has applied for a Rent Repayment Order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. On the 27 June 2023 the tribunal’s London office received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a Rent Repayment Order (RRO) against the respondent landlord. This was then forwarded to the Southern Region Tribunal office and received on the 28 June 2023.
3. In directions dated 28 September 2023 the tribunal ordered the Applicant to provide written evidence from the local authority regarding the alleged offence by the Respondent in the form of a witness statement confirming the dates the property was without a licence and the date (if applicable) an application for a licence was made by the respondent.
4. On 10 October 2023 an email was received from Citizens Advice Bureau, Woking and copied to the Respondent attached to which was a statement from the Applicant together with the information requested above, thereby enabling further directions to be made.
5. The basis for the application is that the Respondent was controlling a property that required a licence from Woking Borough Council, under a Selective Licensing Scheme, the property not having such a licence for part of the period it was occupied by the applicant as a tenant.
6. The Applicant’s claim is for repayment of rent for the months of April to July 2022 inclusive, amounting to £3400.
7. The tribunal was provided with a bundle running to 102 pages.
8. The hearing was conducted in person at the Havant Justice Centre.

## **Relevant statutory provisions**

9. The relevant statutory provisions are set out in the Schedule to this decision.

## **Alleged Offences**

10. The parties agree the property comprises a one-bedroom flat, which was in below average condition, in a house converted into flats.
11. The Applicant rented the property from 1<sup>st</sup> February 2021 to 21<sup>st</sup> May 2023. The amounts he says that he paid during that time are not disputed by the Respondent. The tenant initially occupied the property on a

tenancy which did not have a deposit protected by an approved scheme. The subsequent tenancy commenced February 2023 for 6 months which had the deposit protected by an approved scheme.

12. By email from Anne Woodward, Housing Standards Team Leader at Woking Borough Council it was confirmed that the original licence for the property expired on 25 March 2022, an application for renewal was made on the 10<sup>th</sup> August 2022. The period without a licence was 26<sup>th</sup> March 2022 up to the day before the date of application, 10<sup>th</sup> August 2022, which was therefore 9<sup>th</sup> August 2022.
13. The Respondent therefore accepted that he was controlling a property which was required to be subject to a Selective Licensing Scheme but was not so licensed between 26<sup>th</sup> March 2022 and 9<sup>th</sup> August 2022. By admitting the offence, the tribunal determines beyond all reasonable doubt that an offence was committed, and this occurred between those dates.

### **Consideration of grounds**

14. The Respondent has accepted that he committed an offence under section 95(1) of the 2004 Act between 26 March 2022 and 9 August 2022. The tribunal is satisfied beyond all reasonable doubt that the offence was committed and that the relevant dates when the offence was committed were between 26 March 2022 and 9 August 2022.

### **Reasonable Excuse**

15. Accordingly, having established the ground for potentially making a rent repayment order, the tribunal considered whether the respondent had a reasonable excuse for committing the offence. This would operate as a defence to the claim and mean that a Rent Repayment Order could not be made.
16. The Respondent explained that he had not applied for a licence under the Selective Licensing Scheme because, firstly he thought the tenants would be leaving and so considered he should not be required to spend an additional £500 on a new licence. Secondly that the Selective Licence Scheme itself was to come to an end at a future date.
17. The tribunal considered the Upper Tribunal guidance on what amounts to a reasonable excuse defence in the cases of *Marigold & ors v Wells* [2023] UKUT 33(LC) and *D'Costa v D'Andrea & ors* [2021] UKUT 144 (LC). The offence in question is letting a property without a licence in an area requiring Selective License. Not wanting to renew because the tenants may move out and the scheme will at some point cease, does not amount to a reasonable excuse.

### **Rent Repayment Order**

18. Section 43 of the 2016 Act provides that where a tribunal is satisfied beyond reasonable doubt that a landlord has committed a relevant offence, it may make a Rent Repayment Order. The tribunal does therefore have a discretion as to whether to make an Order although it has been established that it would be exceptional not to make a Rent Repayment Order (*Wilson v Campbell [2009] UKUT 363 (LC)*).
19. In this case, the tribunal is satisfied beyond reasonable doubt that an offence has been committed and that there is no reasonable excuse for the offence. It does not consider that there are any exceptional circumstances preventing making an Order and therefore determines that a Rent Repayment Order should be made.

### **Submissions on quantum**

20. Having determined that a Rent Repayment Order should be made, the tribunal next considered the quantum of such an Order.
21. The Applicant argued that the full rent paid by him for the months the property was let without a licence should be repaid. The Respondent contended that as the rent was paid by Universal Credit, then there should be no Order made.
22. The Respondent noted in his submission that the flat had outgoings of £ 681 pcm for mortgage and around a further £140 pcm for service charge leaving a “profit margin” of around £30 pcm.
23. The Respondent landlord noted that his employment is as a self-employed mortgage broker, and that in the last year, his earnings had been around one third of what they had been before. Additionally, the respondent noted that he was landlord to two flats, the subject property being one.

### **Method of assessing quantum**

24. Section 46 of the 2016 Act specifies circumstances where a tribunal is obliged to make a Rent Repayment Order in the maximum amount (subject to exception circumstances). These do not apply where the tenant is seeking to rely on offences under section 95(1) of the 2004 Act, as is the case here. The tribunal therefore has discretion as to the percentage of the rent it can order to be repaid.
25. Section 44 of the 2016 Act specifies the factors that a tribunal must take into account in making a Rent Repayment Order. This has been qualified by the Upper Tribunal in guidance given in the case of *Acheampong v Roman [2022] UKUT 239*, That guidance is summarised as follows:

- (i) Ascertain the whole of the rent for the relevant period

- (ii) Subtract any element of that sum that represents payment for utilities that only benefitted the tenant, e.g. gas, electricity and internet access;
- (iii) Consider how serious the offence was, both compared to other types of offence in respect of which a Rent Repayment Order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence?
- (iv) Finally, 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), namely the matters the tribunal must 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 identified in the table at section 45 of the 2016 Act.

### **Tribunal assessment of quantum**

26. The tribunal calculated the period when the offence had occurred (26<sup>th</sup> March 2022 to 9<sup>th</sup> August 2022 inclusive). This amounts to 137 days. The applicant paid £850 per month which equates to £27.42 per day for months with 31 days and £28.33 for months with 30 days. So total rent paid for this period is for; March 2022 6 days (£165.52), April 2022 30 days (£850), May 2022 31 days (£850), June 2022 30 days (£850), July 2022 31 days (£850) and August 2022 9 days (£246.78) . Amounting to £3812.30.
27. There were no utilities to deduct from this as were billed separately. Payments for utilities were outside the scope of a Rent Repayment Order and so the separate payments should not be taken into account in ascertaining the total paid for the relevant period.
28. The proportion of rent paid through Universal Credit is required to be deducted from the amount of rent paid by the tenant.
29. The tribunal is in possession of Universal Credit statements for the months of April, May, June, July and August 2022. The relevant period of time of the Rent Repayment Order is 26<sup>th</sup> March 2022 to 9<sup>th</sup> August 2022 inclusive. The tribunal does not have a statement for the Universal Credit calculation for March 2022.
30. The Universal Credit payments are calculated by The Department of Work and Pensions on a monthly basis. Each month the income from the

tenant (s) is included in the calculation along with a disregard for a fixed amount of income. The calculation produces the amount of Universal Credit for that month.

31. The calculation for the Universal Credit deduction varies each month and therefore is calculated afresh for each month.

Month	days	Total days
March 2022	26 <sup>th</sup> , 27 <sup>th</sup> , 28 <sup>th</sup> , 29 <sup>th</sup> , 30 <sup>th</sup> and 31 <sup>st</sup>	6 days
April 2022	all	30 days
May 2022	all	31 days
June 2022	all	30 days
July 2022	all	31 days
August 2022	1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> , 6 <sup>th</sup> , 7 <sup>th</sup> , 8 <sup>th</sup> and 9 <sup>th</sup>	9 days

March 2022 – Calculation of proportion of Universal Credit attributed to rent - No submissions received so adopt April 2022 figure of £15.60 per day

April 2022- Calculation of proportion of Universal Credit attributed to Rent

<b>Total benefit claimed</b>		
Couple allowance	£509.91	
Rent	£850.00	
Child	£237.08	
<b>Total</b>	<b>£1596.99</b>	
Rent as proportion of benefit claimed	£850/ £1596.99  Which gives 53%	
Total benefit received	£ 883.00	
Proportion of benefit received attributed to rent	£883.00 x 53%	£467.99 or £ <b>£15.60 per day</b>

May 2022- Calculation of proportion of Universal Credit attributed to Rent

<b>Total benefit claimed</b>		
Couple allowance	£509.91	
Rent	£850.00	
Child	£237.08	
<b>Total</b>	<b>£1596.99</b>	
Rent as proportion of benefit claimed	£850/ £1596.99  Which gives 53%	
Total benefit received	£ 1010.00	
Proportion of benefit received attributed to rent	£1010.00 x 53%	<b>£535.30 or £ £17.27 per day</b>

June 2022- Calculation of proportion of Universal Credit attributed to Rent

<b>Total benefit claimed</b>		
Couple allowance	£525.72	
Rent	£850.00	
Child	£244.58	
<b>Total</b>	<b>£1620.30</b>	
Rent as proportion of benefit claimed	£850/ £1620.30  Which gives 52.5%	
Total benefit received	£ 882.00	
Proportion of benefit received attributed to rent	£882.00 x 52.5%	<b>£463.05 or £ £15.44 per day</b>

July 2022- Calculation of proportion of Universal Credit attributed to Rent

<b>Total benefit claimed</b>		
Couple allowance	£525.72	
Rent	£850.00	
Child	£244.58	
<b>Total</b>	<b>£1620.30</b>	
Rent as proportion of benefit claimed	£850/ £1620.30  Which gives 52.5%	
Total benefit received	£ 1024.00	
Proportion of benefit received attributed to rent	£1024.00 x 52.5%	<b>£537.60 or £ £17.34 per day</b>

August 2022- Calculation of proportion of Universal Credit attributed to Rent

<b>Total benefit claimed</b>		
Couple allowance	£525.72	
Rent	£850.00	
Child	£244.58	
<b>Total</b>	<b>£1620.30</b>	
Rent as proportion of benefit claimed	£850/ £1620.30  Which gives 52.5%	
Total benefit received	£ 967.00	
Proportion of benefit received	£967.00 x 52.5%	<b>£507.68 or £ £16.38 per day</b>



attributed to rent		

Offsetting rental cost with amount of rent paid by Universal Credit

Month	Rent per day	Universal Credit per day	Balance x number of days
March	£27.42	£15.60	£70.92 ( 6 days)
April	£28.33	£15.60	£381.90( 30 days)
May	£27.42	£17.27	£314.65 (31 days)
June	£28.33	£15.44	£386.70 (30 days)
July	£27.42	£17.34	£312.48(31 days)
August	£27.42	£16.38	£99.36 (9 days)
Total			£1566.01

Total rent paid by the tenant during period of no licence 26<sup>th</sup> March 2022 to 9<sup>th</sup> August 2022 inclusive net of Universal Credit **£ 1566.01**

32. The tribunal did not consider that the offence was at the serious end of the scale. The landlord has two leasehold properties subject to tenancies, of which the subject premises is one. The tribunal noted that certain aspects of the subject property's tenancy had not been managed to a satisfactory standard. For example, at the time of the lapsed licence the Landlord had not placed the deposit in a recognised protection scheme. Subsequently, from February 2023 the Landlord renewed the tenancy but did then place the deposit in an appropriate protection scheme. The tenant gave notice under the new tenancy to leave the premises within the contractual 6-month period of the second tenancy. The landlord retained the tenants deposit for breaking the tenancy early.
33. The landlord conceded that the smoke alarm in the property, whilst present had passed its expiry date. Fire protection in domestic property is a serious responsibility. It is noted that the landlord subsequently renewed the smoke alarm rectifying the issue when brought to his attention, although such replacement should be done proactively rather than reactively. However, there were two other issues noted, the cover of the electrical inlet box was missing, and there was a gap next to the oven where food and debris could gather. It is understood that the cooker gap

issue was brought to the attention of the landlord by social services and that the landlord rectified. Finally, the oven in the property broke and was replaced by the landlord. Later, as an interim measure the tenant was provided by electrical hot plate by the landlord. During this time, it is understood the rent was reduced. This occurred subsequent to the period being considered for the Rent Repayment Order.

34. The tribunal considers the failure to protect the deposit through the approved scheme relevant to landlord behaviour as with the more serious expired smoke alarm. The repairing matters are considered by the tribunal to fall under day-to-day maintenance, which is required for a flat which is dated inside, and which is let at a rent that reflects this.
35. The tenant had the benefit and use of the flat that was liveable condition, even if dated, and the landlord had reduced the rent to fairly reflect the dated but liveable condition of the place. The tribunal found also that though the landlord had been found to have unwisely not renewed the licence for their own reasons, and some minor omissions, he was not unreasonable in his conduct toward the tenants. The tribunal taking into account these aspects applies 25% to the rent paid as the proportion that reflects the nature of the offences, which are lack of licence and other omissions by the landlord.
36. The tribunal also considered the Respondent's financial circumstances, noting their role as a mortgage broker and landlord of two leasehold flats. There was no specific evidence which warranted the amount of the Rent Repayment Order to be reduced.
37. Finally, the tribunal noted that the landlord had not been convicted of an offence identified in the table in section 45 of the 2016 Act (which is set out in the Schedule to this decision).
38. Taking all these factors into account, the tribunal determined that the amount payable by the Respondent should be reduced by 75 % leaving the amount to be paid as **£391.50**.

### **Tribunal determination**

39. The tribunal determines that it is satisfied beyond all reasonable doubt that the Respondent was letting an unlicensed premises within a Selective Licensing Scheme area which was required to be licenced under Part 2 of the 2004 Act but was not so licensed between 26<sup>th</sup> March 2022 and 9<sup>th</sup> August 2022 inclusive and that he was therefore committing an offence under section 95 (1) of the 2004 Act during that period. It is also determined that the Respondent had no reasonable excuse for that offence.
40. The tribunal has determined that it should make a rent repayment order for it and has calculated the quantum of that order as **£391.50**
41. Accordingly, the tribunal orders the Respondent to repay to the Applicant the sum of **£391.50** by way of rent repayment.

### **Cost applications**

42. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £100 and the hearing fee of £200.
43. As the Applicant has been partially successful in this claim, the tribunal is satisfied that some level of reimbursement of these fees should be made.
44. The tribunal therefore orders the Respondent to reimburse to the Applicant 50% of the application fee of £100 and the hearing fee of £200, amounting to **£250.00** to be reimbursed in total, in addition to the Rent Repayment Order of **£391.50**.

**Judge Richard Waterhouse**  
**10 May 2024**

### **Rights of appeal**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

### SCHEDULE

#### Relevant statutory provisions

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.

	<b>Act</b>	<b>Section</b>	<b>General description of offence</b>
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 and 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 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....but is not so licensed.

(4) In proceedings against a person for an offence under subsection (1) ...it is a defence that he had a reasonable excuse...for having control of or managing the house in the circumstances mentioned in subsection (1).....