FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AU/HMF/2023/0273**
Property	**:**	**Flat 164 Peregrine House, Hall Street, London, EC1V 7PT**
Applicants	**:**	**Emma Kirton, Nicola Mayer and Abhinav Bajwa**
Respondent	**:**	**Charles Manning**
Representative	**:**	**Alliance East London Limited**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Tribunal Judge H Lumby** **Mr M Cairns MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**1st May 2024**
Date of Decision	**:**	**8th May 2024**

DECISION

Decisions of the tribunal

(1) The tribunal orders the Respondent to repay to the Applicants the sum of £10,941.63 by way of rent repayment (such sum being apportioned as £4,549.98 to each of Ms Kirton and Ms Mayer and £1,841.67 to Mr Bajwa), such repayment to be made within 28 days of the date of this decision.

(2) The tribunal also orders the Respondent to reimburse to the Applicants the application fee of £100 and the hearing fee of £200 (amounting to £300 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

Introduction

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**").

2. The basis for the application is that the Respondent was controlling and/or managing an HMO which was required to be licenced under Part 2 of the Housing Act 2004 ("**the 2004 Act**") at a time when it was let to the Applicants but was not so licensed and that he was therefore committing an offence under section 72(1) of the 2004 Act.

3. The Applicants' claim is for repayment of rent paid during the period from 6 January 2023 (or 6 May 2023 in the case of Mr Bajwa) to 18 September 2023, amounting to £28,166.64.

4. The Property comprises a three bedroom flat on the tenth floor of a multi storey local authority purpose built block of flats.

5. The tribunal was provided with a bundle by the Applicants running to 232 pages, a further bundle by the Respondent consisting of 182 pages and a reply bundle by the Applicants of a further 19 pages. The contents of all these documents were noted by the tribunal.

6. The hearing was held in person. Each of the Applicants attended. Ms Helena Lim-Poole from Alliance East London Limited (the Respondent's managing agents) appeared for the Respondent. Neither the Respondent nor his mother (who is the registered proprietor of the Property) attended.

Relevant statutory provisions

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

Alleged Offence

Identity of Respondent

8. Ms Kirton and Ms Mayer of the Applicants together with Mr Tan Jun Han rented the Property pursuant to an assured shorthold tenancy from 6 January 2023 for an initial fixed term of twelve months at a rent of £3,250 per month. The lease identified the Respondent as landlord and was signed by him.

9. Mr Bajwa took the place of Mr Tan Jun Han on 6 May 2023. There was no gap in occupancy and Mr Bajwa paid his share of the rent for the remainder of the term in advance. The change was recorded in an Addendum of Agreement which also identified the Respondent as landlord and was signed by him.

10. The tribunal considered as a preliminary issue whether the Respondent should be Mr Charles Manning (the identified Respondent) or his mother Mrs Sarah Manning (the registered proprietor of the Property). The Respondent's evidence stated that Mr Manning looks after his mother's affairs.

11. Ms Lim-Poole, as the Respondent's representative, explained that Mr Manning was their point of contact with the Respondent and there was no formal power of attorney. The letting agreement with the managing agent identified Mrs Manning as the owner but with Mr Manning as the point of contact. The managing agents collected the rent and paid it to an account in the name of Mrs Manning. She further explained that Mr Manning worked full time in running the family business, comprising a number of properties in Suffolk, including various entertainment and food and beverages outlets on the waterfront in Felixstowe.

12. The Applicants stated that they believed the Property was owned by him until they received the Land Registry office copy entries identifying Mrs Manning as registered proprietor; this was as part of their preparation of the case pursuant to the application. They had no direct contact from the landlord but messages passed on by the managing agents were always from Mr Manning.

13. Section 72(1) of the 2004 Act creates an offence in relation to a person being in control or managing an unlicensed HMO. It therefore needs to be determined whether Mr Manning was either in control and/or managing the Property.

14. Section 263 of the 2004 Act defines the meanings of "person having control" and "persons managing" for the purposes of the 2004 Act. These definitions are set out in the Schedule to this decision. A person has control of premises if they receive the rack rent from the premises, whether on their own account or on behalf of another. They are managing the premises if they are the owner or lessee and either receive the rent or would do so but for some arrangement with a person who is not an owner or lessee of the premises.

15. In this case, it is Mr Manning who is the identified landlord in the lease. He held himself out as the landlord by signing both the lease and the addendum and by being the person who communicated with the Applicants via the managing agents. As the landlord, he is entitled to receive the rent from the tenants. Although he does not have an express lease of the Property, by virtue of the Supreme Court decision in the case of *Bruton v London & Quadrant Housing Trust* [2000] 1 A.C. 406, by holding himself out as owner, the tribunal determines that Mr Manning is deemed to have a lease by estoppell and so was entitled to receive the rent from the Applicants.

16. The fact that Mr Manning is deemed to have a lease by estoppell means that he and not Mrs Manning is the immediate landlord of the Applicants. The Supreme Court in *Rakusen v Jepsen and others* [2023] UKSC 9 determined that a rent repayment order may only be made against the immediate landlord. As Mrs Manning is not the immediate landlord, a rent repayment order cannot be made against her, only Mr Manning as immediate landlord.

17. Mr Manning was entitled to receive the rent but in practice did not do so. Instead, this was received by payment to the managing agents who paid to it to his mother pursuant to the arrangements Mr Manning entered into with them as part of managing his mother's affairs. He did not actually receive the money.

18. Having ascertained these facts, the tribunal next considered whether on the basis of the established facts he was a person in control of the Property, as defined in section 263(1) of the 2004 Act. Section 263(1) does not require a person to have an interest in the Property to be a person in control. However, and applying the decision of the Upper Tribunal in *Cabo v Dezotti* [2022] UKUT 240 (LC), money must actually come into the hands of the relevant party for him to be a person having control of the Property. In this case, the rent went to the managing agents and from there to an account in the name of his mother. Money therefore did not come into the hands of Mr Manning. As a result, the tribunal determined that Mr Manning is not a person having control of the Property for the purposes of its definition in section 263(1) of the 2004 Act.

19. The tribunal next considered whether Mr Manning was the person managing the Property for the purposes of section 263(3) of the 2004 Act. That section requires a person to be an owner or lessee of the Property. In this case, the tribunal has determined that he had a lease by estoppell and so is potentially within the definition in section 263(3).

20. That section also requires the relevant person either to receive the rent or to be entitled to receive it but for an arrangement with a person without an interest in the premises.

21. As a lessee of the premises he was entitled to receive the rent pursuant to the lease he granted to the occupiers. He would have received that rent but for the arrangement with Alliance East London Limited entered into by him on his mother's behalf. Alliance East London Limited does not have an interest in the Property. As such, this means that Mr Manning comes within the definition in section 263(3) – he is a lessee, is entitled to receive the rent and would do so but for the arrangement with a third party who do not have an interest in the Property. Accordingly, the tribunal determined that he is the person managing the Property within the definition of section 263(3) of the 2004 Act.

22. The tribunal therefore determined that Mr Charles Manning is the correct Respondent as the landlord to the Applicants and the person who managed the Property.

House in Multiple Occupation

23. The Applicants argue that the Property was an unlicenced HMO on the basis that it was rented to three or more people who form more than one household. The area in which the Property is located was designated by the London Borough of Islington as requiring additional licensing from 1 February 2021 (the "Islington Scheme"). That scheme required licensing for "All houses or flats where there are three or four unrelated people, forming two or more households, and sharing facilities such as a kitchen, bathroom or toilet."

24. The Respondent accepts that the Property was caught by the Islington Scheme and so he should have obtained a licence. He was informed by the council, via the managing agents, on 19 September 2023 that a licence was required and he applied for one on the same day. The application was made in the name of the Respondent's mother as registered proprietor of the Property.

25. It is accepted that there were three people in occupation of the Property throughout the period of the Applicants' claim and that they formed three separate households at all times during that period. It is also agreed that the tenants shared kitchen facilities and that Ms Kirton and

Ms Mayer shared a bathroom. There was no dispute that the Applicants paid rent, occupied the Property as their main residence, that their occupation was the only use, they were not students and did not receive universal credit.

26. The parties and the Tribunal were satisfied that the Property and its occupation satisfied the requirements to be an HMO for the purposes of section 254 of the 2004 Act, as a self-contained flat. They were all also satisfied that the Property required to be licenced pursuant to the Islington Scheme.

27. The Respondent accepts that he did not have an HMO licence at any time during the Applicants' occupation of the Property and in particular between 6 January 2023 and 18 September 2023. The Applicants accepted that by applying for a licence on 19 September 2023, the Respondent had from that date a defence to a claim of controlling or managing an HMO without licence. The Applicants' claim therefore is limited to the period of their occupation prior to that date.

28. The Respondent therefore accepted that he was controlling and/or managing an HMO which was required to be licenced under Part 2 of the 2004 Act by virtue of the Islington Scheme but was not so licensed between 6 January 2023 and 18 September 2023 and that he was therefore committing an offence under section 72(1) of the 2004 Act during that period.

29. The amounts the Applicants say that they paid during the term are not disputed by the Respondent.

30. The Respondent did not receive a financial penalty from the local authority as a result of his offence. He has not previously been convicted of an offence identified in the table in section 45 of the 2016 Act.

Reasonable excuse

31. 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.

32. The Respondent explained that the failure to obtain a licence was an oversight by the both the Respondent and the managing agents. It was argued that the need for a licence rose from a 2020 rule change and the introduction of the Islington Scheme in 2021. The council did not inform the Respondent or the managing agents until 19 September 2023, upon which a licence was applied for on the same date. By

reacting so quickly, the council had not imposed any sort of penalty on the Respondent.

33. Ms Lim-Poole was asked as managing agent why they had not informed the Respondent as to the need for a licence. She explained that the managing agents were based in Tower Hamlets and were well aware of the licensing requirements there. She explained that the Property was the only premises they managed in Islington and it had been agreed with the Respondent that they had all overlooked the need for a licence. She argued that, in her opinion, licensing was often focused on crime and anti-social behaviour; this was more of an issue in Tower Hamlets than Islington and so had not been something that they had considered. She accepted that the Respondent was guilty of not having a licence he was required to have but argued for leniency.

34. 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 here is managing or controlling an HMO without a licence, not the failure to apply for a licence. Mistake as to what constitutes an HMO will rarely if ever amount to a reasonable excuse, although may impact on the level of any subsequent rent repayment order.

35. As a result, the tribunal finds that the Respondent does not have a reasonable excuse to the offence.

Consideration of grounds

36. The Respondent has accepted that he committed an offence under section 72(1) of the 2004 Act between 6 January 2023 and 18 September 2023. 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 6 January 2023 and 18 September 2023.

Rent Repayment Order

37. 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* [2019] UKUT 363 (LC)).

38. 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 it making an order and therefore determines that a rent repayment order should be made.

Submissions on amount of order

39. Having determined that a rent repayment order should be made, the tribunal next considered what the amount of such order should be.

40. The Applicants argued that by virtue of the decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC), the appropriate amount payable by the Respondent was 100% of the rents paid in relation to the relevant period.

41. The Applicants also argued that the Respondent's conduct was such that no adjustment to a 100% repayment order was appropriate, referring in particular to fire risk and mould issues, the quality of the Property when they moved in, the failure to respond to and address issues that arose during the tenancy and the issue with bed bugs. Each of these issues were considered in turn.

42. The Applicants identified in their application two issues with fire safety, being the lack of provision of fire blankets and the door to the kitchen not being fire resistant (although the Applicants accepted that it was heavy). In response to questions from the tribunal, it was also ascertained that the smoke alarms in the Property were not hardwired and the grille in front of the entrance to the Property did not have a thumb turn key. The tribunal noted that these would all be non-compliant with the requirements of the Islington Scheme.

43. The Applicants had also referred to the presence of mould in the Property, mostly in one of the bathrooms. The Respondent argued that this was not present when the original tenants moved in as it was not referred to in the check-in inventory; it was also contended that this was caused by lack of ventilation by the tenants and it was in any event very small in scale. The Applicants responded by pointing out that the bathroom in question had a fan which came on when the lights were on and the Property was kept well ventilated by them at all times.

44. The Applicants argued that the Property was not properly furnished when the original tenants moved in, with one bed missing, another broken and the mattresses in a stained condition. The couch and microwave requested as a condition of them taking the tenancy had not been provided. The Respondent agreed with these issues but contended that they were addressed promptly; it was explained that the furniture could not be ordered until the tenancy was signed and the initial funds paid by the tenants, which were only received on 4 January 2023 (as opposed to the initial deposit paid by the tenants on 1 December 2022). The Applicants agreed that the missing items were provided and that

the stained mattresses were replaced promptly after the issue was raised.

45. The Applicants submitted that repair issues raised by them were dealt with slowly or not at all. They referred specifically to a toilet seat that was not repaired, a failure to deal with an issue with the curtain in one bedroom, a bathroom handle that was not repaired and the three weeks it took to respond to a complaint in relation to a bed. The earliest response was three days, the latest months down the line. The Respondent argued that response times were prompt, that the Applicants made numerous requests and should have been more self-sufficient. Ms Slim-Poole contended that the managing agents could only act when given authority by the Respondent but faced the issue of the shortage of labour, meaning that there was always a time lag in any event. The Applicants asserted that they were self-sufficient and didn't report many issues.

46. The Applicants also raised the issue of bedbugs. When Mr Bajwa moved in on 6 May 2023, he was affected by bedbugs, having between 40 to 50 bites, causing him substantial pain and giving him sleep issues for four months. He argued that this was not an issue where he was living before and he had not just returned from travel abroad. It was confirmed that the previous occupier of the room had not complained of bedbugs, although Mr Bajwa said that an inspector later found a bedbug trap between his bed frame and mattress; the mattress was one of the new ones supplied after the initial mattresses were rejected. There were no reports of infestations elsewhere in the block as far as they were aware and the infestation was initially restricted just to his room. The Applicants did not raise the issue with the Respondent until 4 July 2023, when an inspector confirmed there was an infestation and that an exterminator should be deployed as soon as possible. The Applicants went ahead and hired an exterminator to deal with the infestation.

47. The Respondent argued that the bedbugs were not his responsibility as they had been introduced by the Applicants, who in turn alleged that they could have been present in the Property already. They contended that the Respondent should in any event have addressed the issue, citing an email from the council in support. This was consistent with the Islington Scheme, which placed responsibility for dealing with infestations on landlords. The Respondent contended that, whilst it may have had the responsibility to deal, the Applicants had proceeded to deal with it without his authority so he should not be liable for any failure to act. In addition, whilst he may have responsibility to deal, he argued that this did not relieve the Applicants from the obligation to pay for the treatment.

48. The Respondent admitted that he was guilty of not having a licence when required but reiterated that this was inadvertent and applied for

as soon as the issue was raised by the council. Ms Lim-Poole argued that the Property was in good condition when let to the original tenants, having been professionally cleaned, as evidenced by the check-in report. She reiterated the plea for leniency.

49. The Applicants argued that their own conduct had been good, with which the Respondent agreed. The Respondent pointed to broken furniture and a missing dining set and the taking of actions by the tenants without consent. The Applicants acknowledged that there had been breakages but these were addressed through deductions from their deposits when they left.

Method of assessing amount of order

50. 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 72(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 be repaid.

51. 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 benefited 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 amount of order

52. As referred to above, the Applicants argued that by virtue of the decision in the *Vadamalayan* case, the appropriate order should be for 100% of the rents paid in relation to the relevant period. However, subsequent cases have rowed back from the conclusions in that case and there is no presumption that the order should be for the maximum amount (see for example *Williams v Parmar and others* [2021] UKUT 244 (LC)). The current position is that *Vadamalayan* is authority for the proposition that a rent repayment order is not limited to landlord's profit but is not authority that the maximum amount must be ordered subject only to limited adjustment. The Applicants' argument is therefore not accepted and the tribunal has instead followed the guidance in *Acheampong v Roman*.

53. The Applicants' claim is for £28,166.64, comprising £9,750 paid by each of Ms Kirton and Ms Mayer and £8,666.64 paid by Mr Bajwa. The claims included all rent paid by them during the period from 6 January 2023 until 18 September 2023, being the period when the Property was unlicensed. This included sums in respect of the period after 18 September 2023; in the case of Ms Kirton and Ms Mayer, that was because the paid a month's rent in advance on 6 September 2023 and, in the case of Mr Bajwa, because he had paid all of his share of the rent from 6 May 2023 until the end of the fixed term in advance on 6 May 2023.

54. The tribunal considered whether payments during the unlicensed period but in respect of periods after it could be claimed under a rent repayment order. Section 44(3) of the 2016 Act makes it clear that a landlord cannot be obliged to repay more than the rent paid in respect of that period. On this basis, claims for rent in respect of a different period cannot be claimed and are not payable. It therefore determines that only the rent paid in respect of the period from 6 January 2023 until 18 September 2023 could be claimed. The Respondent had

confirmed that all rent due in respect of that period had been paid and therefore the full rent for that period should be taken into account.

55. On that basis, the tribunal calculated that the rent paid for the period when the offence had occurred (6 January 2023 and 18 September 2023) amounted to £21,883.26. This was calculated on the basis of two thirds of the rent paid in respect of the period from 6 January 2023 until 5 May 2023 (because Mr Bajwa was not in occupation during that period) and all the rent paid in respect of the period from 6 May 2023 until 18 September 2023 (Mr Bajwa also being in occupation during that period). The Respondent applied for an HMO licence on 19 September 2023, so 18 September was the last day that could be claimed. The total rents paid in respect of that period by each of the Applicants was £9,099.97 in the cases of Ms Kirton and Ms Mayer and £3,683.32 in the case of Mr Bajwa.

56. The Respondent confirmed that the tenants were responsible for paying utilities and that there were no further services paid for by the Respondent. The Applicants confirmed that none of them had received universal credit. Accordingly, no deductions should be in made in respect of these items.

57. The tribunal did not consider that the offence was a serious one, compared to the other offences in respect of which a rent repayment order could be made. It had occurred inadvertently, due to an oversight by the Respondent and its managing agents. As soon as the agents were informed of the error, they had applied (on the same day) for a licence. Although the Respondent with his activity in the property market and the agents as professional agents should both have been aware that the Property might need to be licensed, it is accepted by the tribunal that the failure to obtain one was inadvertent rather than deliberate. The tribunal therefore considered that a substantial discount to the amount to be repaid was appropriate. It noted the case of *Hallet v Parker* [2022] UKUT 165 (LC); in that case, the tribunal made a rent repayment order equal to 25% of the total rent paid where this was a first offence by the landlord, in circumstances where the landlord was not told by his agent he needed to be licensed and applied immediately on being told of the issue. The key difference between that case and this is that the landlord in *Hallet* only had one property whereas the Respondent here is much more experienced, having a portfolio of properties in Suffolk. As a result, an order higher than 25% is appropriate.

58. The tribunal considered the conduct of the Respondent. It determined that there were a number of issues with the Respondent's conduct as landlord, especially in relation to the check in process with two of the beds not being available until later and the mattresses being stained. There were also concerns about fire safety in relation to the Property

and a fire risk assessment should have been carried out. There were also delays in responding and dealing with issues.

59. The Applicants have placed store on the issue of the bedbugs as a conduct factor. It is noted that the Islington Scheme requires a landlord to address an infestation as soon as he is aware of it. However, a landlord cannot be held responsible for failing to address an issue if not informed of it – the Applicants knew about the issue (if not the cause) from early May 2023 but did not inform the landlord until 4 July 2023. By the time the landlord was informed, the tenants were proceeding with remedial action so it was too late for the landlord to address the issue, leaving only the issue of cost. Given the localised nature of the infestation at first and the fact that there was no evidence of this until May 2023, the tribunal finds on the balance of probabilities that the infestation occurred after the start of the lease. As a result, the tribunal considers that a claim by the Applicants to recover the cost of the infestation extermination was more likely to fail than succeed.

60. Overall, the tribunal considered that there was evidence of poor conduct but it was certainly not in the most serious categories. In this regard, the tribunal noted the case of *Dowd v Martins* [2002] UKUT 249 (LC), where a similar level of poor conduct led to an order of 45% of the total rent as the rent repayment amount. The tribunal considers that an order around this level would be appropriate here but with a slight increase to reflect the fire safety issues.

61. The tribunal noted that there was evidence of breakages by the Applicants but, as these had been addressed through deductions from their deposit, did not feel it was appropriate to make any adjustments as a consequence.

62. No evidence was received or submissions made in relation to the Respondent's financial circumstances. The Property was not subject to any mortgages. The tribunal therefore concluded that no adjustments for his financial circumstances were appropriate.

63. The tribunal noted that the Respondent had not previously 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). No adjustment for this was therefore appropriate.

64. The tribunal also noted the case of *Hancher v David* [2022] UKUT 277 (LC) where an order for rent payment of 65% of the rent paid was ordered in a case where the landlord had deliberately and knowingly not applied for a licence, despite being told by a professional adviser one was required. The breach here was inadvertent and so an order lower than 65% is appropriate.

65. Taking all these factors into account, the tribunal determined that the amount payable by the Respondent should be reduced by 50%, leaving the amount to be repaid as £10,941.63.

Tribunal determination

66. The tribunal determines that it is satisfied beyond all reasonable doubt that the Respondent was managing an HMO which was required to be licenced under Part 2 of the 2004 Act but was not so licensed between 6 January 2023 and 18 September 2023 and that he was therefore committing an offence under section 72(1) of the 2004 Act during that period. It also determines that the Respondent had no reasonable excuse for that offence.

67. The tribunal has determined that it should make a rent repayment order in respect of that offence and has calculated the amount of that order as £10,941.63.

68. Accordingly, the tribunal orders the Respondent to repay to the Applicants the sum of £10,941.63 by way of rent repayment (such sum being apportioned as £4,549.98 to each of Ms Kirton and Ms Mayer and £1,841.67 to Mr Bajwa, such repayment to be made within 28 days of the date of this decision.

Cost applications

69. 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 the application fee of £100.00 and the hearing fee of £200.00.

70. As the Applicants have been successful in this claim, the tribunal is satisfied that reimbursement of these fees should be made.

71. The tribunal therefore orders the Respondent to reimburse to the Applicants the application fee of £100 and the hearing fee of £200 (amounting to £300 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

Name: Judge H Lumby **Date:** 8th May 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.

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.

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.

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.

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.

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

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.

	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	***the amount must relate to rent paid by the tenant in***

committed	***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 72

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

(5) 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) … .

Section 263

(1) In this Act "person having control", in relation to the 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.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises –

(a) receives (whether directly or through an agent or trustee) rents or other payments from –

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises …

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) 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