FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**BIR/00FY/HMJ/2023/0005**	**(1)**
		BIR/00FY/HMJ/2023/0021	**(2)**
		BIR/00FY/HMJ/2023/0022	**(3)**
		BIR/00FY/HMJ/2023/0023	**(4)**
		BIR/00FY/HMJ/2023/0024	**(5)**
Property	**:**	**9, West Avenue, Derby. DE1 3HS**	
Applicants	**:**	**Shervin Garcia Ventura**	**(1)**
		Lewis Mark Spence	**(2)**
		Leoni Barrett	**(3)**
		Emily Frances Hirst	**(4)**
		Kayla Briony Philips	**(5)**
Representative	**:**	**Helen Hirst**	
Respondent3	**:**	**RSB Holdings Limited**	**(1)**
		K & P Bachada	**(2)**
Representative	**:**	**None**	
Type of Application	**:**	**Application for a Rent Repayment Order By the Tenant. Part 3 Housing Act 2004 Ss40, 41, 43 & 44 Housing & Planning Act 2016**	
Tribunal:		**Tribunal Judge P. J. Ellis** **Tribunal Member** **Mr R Chumley Roberts MCIEH. JP**	
Date of Hearing	**:**	**11 March 2024**	

Date of Decision : 25 March 2024

DECISION

---

1. The Respondent RSB Holdings Limited has committed a housing offence contrary to s95(1)Housing Act 2004 being a company having control of or managing a house which is required to be licensed under Part 3 but is not so licensed.

2. The Applicants are entitled to a rent repayment order against RSB Holdings Limited which has committed the offence at paragraph 1 above in accordance with ss 40 &41 Housing and Planning Act 2016.

3. The rent repayable to Shervin Garcia Ventura is the sum of £2088.17.

4. The rent repayable to Lewis Mark Spence is the sum of £878.66

5. The rent repayable to Leoni Barrett is the sum of £2088.17

6. The rent repayable to Emily Frances Hirst is the sum of £2088.17

7. The rent repayable to Kayla Briony Philips is the sum of £2088.17

8. The Respondent will also pay the issue and hearing fees of £300.00.

Introduction

1. These are applications for a rent repayment order under Part 3 of the Housing Act 2004 (the 2004 Act) and Chapter 4, s41 Housing and Planning Act 2016 (the 2016 Act). The applications were submitted to the Tribunal by email dated 1 October 2023. After delivery of further information including the tenancy agreement the applications were issued by the Tribunal. Directions for service of evidence were issued on 30 November 2023 when the applications were consolidated for hearing together.

2. These proceedings were commenced by each Applicant against Mr & Mrs Bachada and the Student Letting Guys. In December 2023 the Respondents Mr and Mrs Bachada, submitted that RSB Holdings as the named landlord and owner of the subject property should be added as a Respondent. The Tribunal made that direction on 25 January 2024 pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 further directing that at the final hearing it will consider representations from the parties as to the identity of the appropriate party should the Tribunal decide to make a repayment order.

3. The Respondents made a written submission on 18 January 2024 referring the Tribunal to *Kaszowska v White [2022] UKUT 11 (LC*) to support the contention that the responsible party is RSB Holdings Limited not the directors of whom Mrs Bachada is one.

4. The matter came on for hearing on 11 March 2024 by video without an inspection. The parties were not represented although the Respondent had obtained assistance from solicitors with the preparation of his statement of case and a bundle of documents. Mr Bachada attended on behalf of RSB Holdings. He asserted his presence was not on his own behalf because the proper Respondent is RSB Holdings Limited. Hereafter references to Mr Bachada's involvement in the proceedings mean he is speaking on behalf of the company. Mrs Helen Hirst, mother of the third applicant made representations on behalf of all applicants. Mr Ventura and Miss Emily Hirst were present. Other Applicants did not attend. Student Letting Guys did not appear and was not represented.

5. The Tribunal's determination of the party liable to make the rent repayment is set out at paragraphs 64-66

The Tenancy

6. By an Assured Shorthold tenancy agreement made 16 June 2023 between RBS Holdings and Mrs P Bachada, the landlord and the applicants Ventura, Barrett Hirst Philips and one other who is not a party to these proceedings, the property known as 9 West Avenue Five Lamps Derby DE1 3HS was let to the named applicants (the Primary Agreement). By a separate agreement between the Respondents and the second applicant Lewis Mark Spence the property was also let to him (the Subordinate Agreement).

7. The term of both tenancies was from 1 July 2022 to 30 June 2023. The rent agreed in the Primary Agreement was £2708pcm. Gas, electricity, broadband and water were supplied as part of the agreement without additional charge although an excess usage policy was provided for. In the event the Respondent has not imposed an excess use charge.

8. The rent payable by Mr Spence was £270.00pcm. Each tenant paid their share of the rent due in the Primary Agreement at the rate of £541.60 pcm. In addition the Primary applicants paid a deposit of £1000.00.

9. In this case it is necessary to determine the identity of the landlord and thereby the responsibility for repayment of rent. For reasons given in paragraphs 64-66 the Tribunal is satisfied that RSB Holdings is the landlord of the property.

10. The Primary Agreement records the name of the landlord in this way *"RSB Holdings LTD - Mrs P Bachada"*. The address of the landlord for the purposes of s47 Landlord and Tenant Act 1987 is recorded as *"C/O The Student Letting Guys, Royal Glen Park, Unit 2 Sandleford House, Rowallen Way, Derby, DE73 5XE"*. The Primary Agreement requires payment of rent to The Student Letting Guys at their bank account.

11. Evidence of title to the property was submitted by the Respondent. The HMLR office copy showed RSB as the proprietor.

The Property and the HMO Licence

12. There was no dispute over the description of the property. It is a three bedroom terrace house. Entrance from the front door leads to a hallway with a staircase to the first floor. Two rooms on the ground floor are used as additional bedrooms. The kitchen is at the rear of the ground floor. On the upper floor there are two bathrooms and three bedrooms. Miss Hirst and Mr Spence occupied one room on the upper floor. The other rooms were each occupied by one of the remaining applicants. There was no common room.

13. On an earlier occasion in April 2022 Miss Hirst had proposed a differently constituted group of tenants comprising five potential tenants.

14. On 3 May 2022 Mr Bachada, believing that five people would occupy the property made an application for an HMO licence to Derby City Council but he withdrew it on 6 May 2022 when he learned that one of the group had dropped out. He explained the occupation level usually, is only four tenants.

15. On 16 June 2022 the tenancy was offered to applicants 1,3,4,5 and one other. Subsequently and before 1 July 2022 Mr Bachada agreed by email that Mr Spence could occupy the same room as Miss Hirst. He described the arrangement with Mr Spence as an authorised occupier of the property.

16. Although there had been an earlier application for a licence in May 2022, Mr Bachada did not make a new application in June 2022 after he agreed to the occupation of the property by six tenants. It was not until 3 March 2023 that he submitted a new application. According to Derby City Council the application was received on 14 March 2023. A licence was granted on 18 July 2023 after expiration of the tenancy. Two conditions were imposed by the licence requiring new plug sockets in two of the rooms on the upper floor.

The Sum Claimed

17. There was no dispute that each of the Applicants had paid the rent agreed throughout the tenancy. There were no arrears and there was no adjustment for

excess use of the electricity caused by leaving on the immersion water heater. The applicants claimed repayment of the total rent paid from commencement of the tenancy on 1 July 2022 until its expiry on 30 June 2023. Applicants 1,3,4,& 5 claimed £6499.20. Mr Spence claimed £3240.00.

18. The Respondents denied the full amount was payable, if any, by reason of the filing of an application for a new licence on 3 March 2022 and the payment of utility charges from the rent.

19. The sum paid for electricity and gas to 14 March 2023 when the local authority treated the application of a licence as effective was £3280.00. The broadband charge to the same date was £397.81. The rent paid by the primary applicants to the 13 March was £22823.00. The sum paid by Mr Spence was £2275.04.

20. Evidence of payment of rent by all the tenants was produced.

The Parties Submissions

The Applicant

21. Mrs Hirst with contributions from Miss Hirst described the layout of the property as recorded in this decision. Then submitted that when the tenants took possession of the property there were a few issues with its condition, but they were not major concerns. There was an ill-fitting door to a freezer. During the period of the tenancy one of the showers and a bathroom extractor fan ceased to operate.

22. In early 2023 the property was visited by a surveyor who described himself as coming from the English Housing survey although the tenants understood he had something to do with the council. As a result of that visit the tenants learned the property was susceptible of licensing but that it was not licenced. Accordingly, the tenants were entitled to seek a rent repayment order. The property remained unlicenced until 18 July 2023 after termination of the tenancy.

23. At the end of the tenancy there was a delay in repayment of the deposit as a result of a dispute over the need for cleaning which led to some cross words between tenants and landlord but eventually all but £200 of the deposit was returned,

24. If there were any problems during the tenancy the tenants notified the landlord through a website operated by the agents. Any matters reported were attended to by the landlord. There were no complaints about the conduct of the landlord during the tenancy.

25. The applicants produced documents relating to the tenancy. The deposit was lodged with the Deposit Protection Service. The property had a gas safety certificate and a satisfactory electrical installation condition report.

26. Bank statements from Applicants Spence, Ventura and Barrett all showing payments of rent to the Student Letting Guys were produced by the Applicants. There was no dispute that the tenants had paid rent without accruing arrears.

27. Also produced was an email from Mr Bachada to Mr Spence on 28 June 2022. The email came from an address with the agent Student Letting Guys. It recited that "we will be offering you the room with Emily as an authorised occupant". It then recorded the monthly payment due of £270.81 payable to the Student Letting Guys bank account.

The Respondent

28. The Respondents written submission admits that the property was unlicenced throughout the tenancy. It further admits and avers that a financial penalty was imposed on RSB Holdings Limited by Derby City Council for letting the property without a valid HMO licence until the date of application on 3 March 2023. The summary of the reasons for the penalty and the degree of culpability provides: "*the property was purchased by the landlords on 30/06/2021. The landlords are experienced landlords and agents: Paramdip BACHADA is a Director of The Student Letting Guys who are letting agents for the property. Kushwant BACHADA has a sales and lettings business: Acquire Properties. The landlords have a property portfolio that includes other licensed HMO's and are well aware of the licensing regime. A HMO Licence application was submitted for the property on 03/05/2022 but this was withdrawn 06/05/2022 and the fee refunded the same day, which Kushwant BACHADA acknowledged via email. The landlords then proceeded to let*

5 bedrooms at the property to 5+ occupiers. The tenancy agreement is dated 16/06/2022 and the tenancy commenced 01/07/2022. A new HMO licence application was not received until 03/03/2023, some 8+ months after the start of the tenancy agreement. This was prompted by the involvement of Housing Standards. LL agreed in representations that culpability was correctly assessed as Negligent."

29. By this written submission and at the hearing Mr Bachada admits the rent paid by the Applicants but refers to the filing of an application for a licence on 3 March 2023.

30. He maintained that he had attended to all matters of repair or malfunction of equipment as required. He denied he had issued any threatening texts regarding the return of the deposit. He also referred to the excessive use of the water immersion heater causing a higher than usual electricity account which he had not passed on to the tenants. He asserted that Emily Hirst had threatened that their claim would result in him losing the house.

31. The reason the council arranged an inspection of the property was because he had asked for an additional dustbin to accommodate the tenants needs. When a representative from the council attended to property to consider the request, the number of occupants and the lack of a licence came to light. Mr Bachada stated the visit was in January 2023.

32. The reason the property was unlicenced was an oversight on the part of both Mr & Mrs Bachada at a time of raised anxiety over a difficult problem with Mrs Bachada's pregnancy. As soon as the local authority drew his attention to the need for a licence Mr Bachada submitted an application for a licence on 3 March 2023. The licence was given on 18 July with only one condition related to fitting additional wall plugs in two bedrooms.

33. Mr Bachada drew the attention of the Tribunal to the decision of Derby City Council when imposing the financial penalty. Their determination was that the default was a matter of negligence. It was not a deliberate or reckless omission on his part. The penalty for negligence, according to the matrix used by the council was £7500.00. The actual penalty imposed had regard to mitigating factors including no previous

convictions or charges, the hazards remediated in a timely manner and evidence of immediate steps taken to apply for a licence. The written submission indicates the company has appealed the decision but it has not been determined.

34. In answer to questions from the Tribunal Mr Bachada described his and the company's financial circumstances. Mrs Bachada is not working. He works part time for Student Lettings Guy as a book-keeper. His wife is a director of the business which is now run by two people not involved in this case. He is not paid for his work but he receives lettings services from that company free of charge.

35. RSB limited paid the financial penalty by instalments. It owes £13000.00 to HMRC. It owns seven properties, three in Derby and four in Castle Donnington. All are let. They are subject to mortgages. He owns another four houses, in Derby and Stoke upon Trent. All are subject to mortgage charges.

The Statutory Framework

36. The Housing Act 2004 gave the First-tier Tribunal the jurisdiction to make a rent repayment order against a person who had been convicted of controlling or managing an unlicensed premises. Chapter 4 of the Housing and Planning Act 2016 replaced the jurisdiction to make a rent repayment order where a landlord has committed an offence to which the Chapter applies after 6 April 2017. The Chapter provides the framework by which decisions are made.

37. S40(2) of the 2016 Act defines a rent repayment order as an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant, and subsection (3) provides; *"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"*

38. The following item in the table is relevant to this case:
Item 5 s72(1): control or management of an unlicensed house

39. S72 *(1)A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.*

(2)A person commits an offence if—

(a)he is a person having control of or managing an HMO which is licensed under this Part,

(b)he knowingly permits another person to occupy the house, and

(c)the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b)he fails to comply with any condition of the licence.

(4)In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a)a notification had been duly given in respect of the house under section 62(1), or

(b)an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5)In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a)for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b)for permitting the person to occupy the house, or

(c)for failing to comply with the condition,

as the case may be.

40. By s41 of the 2016 Act(*1)A tenant …. 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.

41. S43 provides that a Tribunal may make a rent repayment order only if made under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies, whether or not the landlord has been convicted.

42. By s43(3) the amount of a rent repayment order in the case of an application by a tenant is to be determined in accordance with s44.

43. S44(2) provides *(2)The amount must relate to rent paid during the period mentioned in the table.* and subsection (3) provides that where a First-tier Tribunal decides to make an order under s43 the amount to be repaid must not exceed

a. *the rent paid in respect of (the unlicensed) period, less*
b. *any award of universal credit paid (to any person) in respect of rent under the tenancy during that period.*

44. By s44(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 been convicted of an offence to which the Chapter applies*

Decision

45. In this case the Tribunal is satisfied beyond reasonable doubt the Respondent's failure acting by its director Mr Bachada, to licence is a criminal offence contrary to s72(1) Housing Act 2004. Further, Mr Bachada admits the property was not licenced as an HMO contrary to Part 2 Housing Act 2004.

46. A Tribunal should consider whether the representations made by the landlord raise the possibility that the landlord had a reasonable excuse for managing an unlicensed

property, even if the landlord does not explicitly argue the defence *IR Management Services Limited v Salford City Council [2020] UKUT 81 (LC).* The written submission of Mr Barchada prepared with the help of his solicitors refers to the filing of an application for a licence on 3 March 2023 and contends the calculation of any award must end on that date. Further the Respondent relies on *Acheampong v Roman [2022] UKUT 239 (LC)* as a reason to deduct the sum paid for gas, electricity and broadband. Mr Barchada admitted that no water rates had been paid during the tenancy.

47. The Tribunal is also satisfied there was no reasonable excuse on the part of the Respondent for failure to obtain a licence. Although the Tribunal did not inspect the property, it appears reasonable to assume had an application been made before commencement of the tenancy it would have been granted without significant conditions.

48. The Respondents explanation for the failure to obtain a licence is "crossed wires" at a time of emotional distress caused by a difficult pregnancy. The Tribunal considers this suggestion a submission for mitigation not an excuse having regard to Mr Barchada's earlier application for this property and his knowledge of the licencing scheme which applies to other properties in which he has an interest.

49. The Tribunal is satisfied the Applicant is entitled to apply for a rent repayment order.

50. In *Hallett v Parker [2022]UKUT 165 (LC)* Martin Rodger KC reminded Tribunals of the decision in *Williams v Parmar* [2021] UKUT 244 (LC) where the Tribunal (Mr Justice Fancourt, Chamber President) "*emphasised the need for tribunals making rent repayment orders to conduct an evaluation of all relevant factors before deciding on the amount of the order, rather than starting from an assumption that the full rent should be repaid unless there is some good reason to order repayment of a lesser sum."*

51. In *Williams* Mr Justice Fancourt also said:

> *"A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of*

both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

51 It seems to me to be implicit in the structure of Chapter 4 of Part 2 of the 2016 Act, and in sections 44 and 46 in particular, that if a landlord has not previously been convicted of a relevant offence, and if their conduct, though serious, is less serious than many other offences of that type, or if the conduct of the tenant is reprehensible in some way, the amount of the RRO may appropriately be less than the maximum amount for an order. Whether that is so and the amount of any reduction will depend on the particular facts of each case."

52. In *Acheampong v Roman [2022]UKUT 239 (LC)* HHJ Cooke set out a four stage approach to determining a repayment claim:

The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose 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? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

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

21. I would add that step (c) above is part of what is required under section 44(4)(a). It 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? I have set it out as a separate step because it is the matter that has most frequently been overlooked.

53. In *Hancher v David [2022] UKUT 277 (LC)* the four steps were affirmed including the importance of consideration of the seriousness of the offence. HHJ Cooke said at paragraph 19:

"Next the Tribunal has to consider the seriousness of the offence and the appropriate percentage of the rent to reflect that seriousness, in order to generate a starting point. The offence under section 72(1) of the Housing Act 2004 is not one of the more serious of the offences for which a rent repayment order can be made. And this is not one of the most serious examples of the section 72(1) offence; in particular, whilst some improvements were clearly needed at the property there is no evidence of fire hazards, for example, and no suggestion that the property would not have qualified for an HMO licence had one been sought".

Ms Hancher chose not to apply for a licence even though she had been told by her architect that she needed one.

54. In *Acheampong,* at paragraphs 16 and 17, HHJ Cooke gave some examples of how the degrees of seriousness of the relevant offence:

16. So in a case where the landlord of several properties had no HMO licence and whose eventual application for a licence was rejected on the basis of the fire hazards at the property, and who nevertheless failed to remedy those defects for over a year, the Tribunal ordered repayment of 90% of the rent (Wilson v Arrow and others [2022] UKUT 27 (LC)) ; in a case where the landlord was letting just one property through an agent, and might reasonably have expected the agent to warn him that a licence was required, and the condition of the property was satisfactory, the Tribunal ordered repayment of 25% of the rent (Hallett v Parker [2022] UKUT 165 (LC)).

17. There are no rules as to the amount to be repaid; there is no rate card. But it is safe to say that if the landlord is ordered to repay the whole of the rent (after deduction of any payment for utilities), without consideration of the seriousness of the offence, or in a case that is far from the most serious of its kind, it is likely that something has gone wrong and that the FTT has failed to take into consideration a relevant factor.

In *Hancher* a repayment of 65% of the rent was appropriate to reflect the seriousness of the offence.

55. In *Dowd v Martins [UKUT]249 (LC)* HHJ Cooke said at paragraph 26 "*it is not appropriate to regard the full rent claimed by a tenant as the starting point for quantification, in the sense that the only flexibility the FTT can have is to make deductions from that figure in the light of good conduct by the landlord or poor conduct by the tenant*. Instead, as the Tribunal put it in paragraph 21 of *Acheampong*, the FTT should follow the four steps identified in that case as set out above.

56. In *Kowalek v Hassanein Limited [2021] UKUT 143 (LC))* the Upper Tribunal observed "*unlicensed accommodation may provide a perfectly satisfactory place to live, despite its irregular status, and the main object of rent repayment orders is deterrence rather than compensation.*" No evidence was adduced to suggest that had the Respondent made a timely application for a licence it would not have been granted or granted with conditions. In fact it was granted with minor conditions.

57. The Tribunal has already referred to the comment of HHJ Cooke in *Hancher v David [2022] UKUT 277 (LC)* at paragraph 48 regarding the relative seriousness of offences under s72 of the 2004 Act which the Tribunal respectfully adopts in connection with an offence under s95. The offence under s95 is not one of the more serious offences for which a rent repayment order can be made.

58. In this case the total sum paid by each Applicant and the cost of the utilities are known. The Tribunal agrees that the end date of the offence is 3 March 2023 as determined by the Derby City Council being the date of an effective application for a new licence. On reviewing the evidence of payments by the applicants it was noted that there were minor variations from the actual sum payable resulting from occasional late payments. The total sum paid by each Applicant to 3 March 2023 together with apportioned share of the utilities is set out in the

table below. The apportionment of utility bills includes a sum for the sixth tenant who is not part of these proceedings:

APPLICANT	PAYMENTS	SHARE OF UTILITIES	RENT BEFORE ADJUSTMENT	ORDER: 55% REPAYABLE
Ventura	4385.21	588.54	3796.67	2088.17
Spence	2186.13	588.54	1597.59	878.68
Barrett	4385.21	588.54	3796.67	2088.17
Hirst	4385.21	588.54	3796.67	2088.17
Philips	4385.21	588.54	3796.67	2088.17
6th Tenant	n/a	588.54		

59. The Tribunal has reviewed the full circumstances of this case. It is satisfied the conduct of both parties was consistent with a generally satisfactory relationship. Mr Bachada agreed the Applicants had been good tenants. Mrs Hirst conceded that the issues identified at commencement of the tenancy did not amount to a major issue. The Tribunal does not consider there was misconduct on either side affecting its award.

60. Failure to obtain an HMO licence has been described as "*not one of the more serious of the offences for which a rent repayment order can be made*". The local housing authority determined the failure to licence was a matter of negligence with mitigating factors including good record keeping and prompt attention to the application when the default was recognised. The tenants were aware of the lack of a licence from or about January 2023 yet remained in occupation. Although the house was crowded, it was the tenants choice to live

together in that property. There was no suggestion the state of the property hazardous.

61. Nevertheless, the Respondents as owners of other properties with HMO licences and familiarity with the obligations of a landlord of a property in multiple occupation, did not have sufficient regard to the obligation of licencing. It is surprising that an application was filed and withdrawn in May 2022. Pursuing the application at that time would have prevented the problem. Having regard to the circumstances of this case the Tribunal determines the Applicants are entitled to a rent repayment of 55% of the net sum paid as rent between 1 July 2022 and 3 March 2023.

62. The Tribunal has considered whether there should be an adjustment pursuant to s 44(4). Mr Barchada did not present any adequate evidence of the financial circumstances of either himself or RSB Holdings Limited with his submissions notwithstanding a direction to do so. At the hearing he gave some information as set out above. He described himself as being engaged in property acquisition and letting. There are other properties in his name and also in the name of RSB Holdings. Conduct of the parties in this case is not of such a degree when compared with the types of conduct envisaged by the legislation to affect the sum repayable. RSB Holdings has paid a financial penalty but neither the company nor Mr & Mrs Bachada have been convicted of an offence under Chapter 4 Housing and Planning Act 2016.

63. The Tribunal makes no adjustment to the determination of the sum payable as appears in the Table above.

The Landlord

64. Mr Bachada at the hearing and in the Respondents' submissions asserted the party responsible for any repayment order is the freehold proprietor RSB Holdings Limited. Mr and Mrs Bachada are its directors. The tenancy agreement named the company as landlord but added the name of Mrs Parminder Bachada in the description of the landlord. Derby City Council named RSB Holdings as the party responsible for the failure to obtain a

licence until 3 March 2023. The licence was not produced but the evidence of payment for the licence indicate the payment was made by Mr Bachada. Electricity and broadband accounts were produced. Electricity is in the name of RSB, broadband is in the name of Mr Bachada. Rent was paid to Student Letting Guys on behalf of the landlord. Mrs Bachada is director of that company according to evidence given at the hearing. Mr Bachada told the Tribunal he works part time for it dealing with its accounts. Mr Bachada was the person who arranged for work to be done at the property. He was the author of the email to Mr Spence of 28 June offering him the authorised occupation of a room. It came from a Student Letting Guys email account but it was written by Mr Bachada.

65. This confusion of roles is not uncommon. The White case upon which the Respondents rely followed *Rakusen v Jepson [2021] EWCA Civ 1150, a case involving the liability of a superior landlord where Lord Justice Andrews said "section 40(2) is construed as a whole, whether the applicant for the RRO is a tenant or a local authority, the tenancy of housing contemplated but not yet identified in the opening words of that section is the tenancy under which the tenant's rent has been paid, or in respect of which universal credit has been paid, and the landlord who is the target of the RRO must be the direct landlord irrespective of whether the application is made by the tenant under subsection (a) or the local authority under subsection (b)."*

66. White was specifically concerned with the liability of a director of a landlord. In his decision Martin Rodger KC Deputy Chamber President said "

The only person against whom section 40(2) permits a rent repayment order to be made is a landlord. Had it been intended to extend the scope of rent repayment orders to company directors Parliament would surely have said so in explicit terms. 24. The other parts of the statutory scheme confirm that an order may only be made against a landlord. Section 40(1) explains that Chapter 4 confers power to make a rent repayment order "where a landlord has committed an offence to which this Chapter applies" and section 40(3) explains that such an offence is one of those listed "that is committed by a landlord in

relation to housing in England". Section 42(1) requires a local housing authority to "give the landlord a notice of intended proceedings" before making an order. The matter of which the First-tier Tribunal must be satisfied before it makes an order is that "a landlord has committed an offence" (section 43(1)).

67. The tenancy agreement names RSB Holdings as the landlord and recipient of rent through its agent Student Letting Guys. The local housing authority imposed the financial penalty on RSB Holdings. For these reasons after considering the relevant sections of the statutory framework, the Tribunal determines the landlord is RSB holdings and it is liable to the Applicants for the repayment of rent found due.

Appeal

68. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Tribunal Judge P. J. Ellis