



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

**Case reference** : **BIR/OOFN/HMK/2023/0007**

**Property** : **21 Bruce Street  
Leicester  
LE3 0AF**

**Applicant** : **Mrs Busola Samuel-Ogundana**

**Representative** : **None**

**Respondent** : **Mr Tito and Mrs Afshan Banjoko**

**Representative** : **Set to Let Property Management**

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

**Tribunal member** : **Mr G S Freckelton FRICS (Chairman)  
Mr A McMurdo MSc, MCIEH**

**Date of inspection  
and place of  
hearing** : **7<sup>th</sup> May 2024 by video hearing**

**Date of decision** : **31<sup>st</sup> May 2024**

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**DECISION**

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## **Background**

1. By application dated 22<sup>nd</sup> July 2023 Mrs Busola Samuel-Ogundana (“the Applicant”) applied for a rent repayment order against Mr Tito and Mrs Afshan Banjoko (“the Respondents”) under the Housing and Planning Act 2016 (“the Act”).
2. The grounds of the application were that the Respondents had control of a house which was required to be licensed but was not so licensed, under section 95 of the Housing Act 2004 (“the 2004 Act”), and that they had therefore committed one of the offences listed in section 40(3) of the Housing and Planning Act 2016 (“the Act”) and that the Tribunal were therefore permitted to make a rent repayment order in her favour.
3. Directions were initially issued by the Tribunal on 22<sup>nd</sup> January 2024 following which submissions were made by both parties.
4. On 8<sup>th</sup> February 2024, the Applicant made a further application for Case Management or other interim Order.
5. The additional grounds were that the Respondents had failed to carry out repairs. In support of this the Applicant supplied a copy of a letter from Leicester City Council dated 2<sup>nd</sup> August 2023 sent to her listing the works which the local authority informed the Respondents required attention.
6. Upon considering the submissions the Tribunal issued Further Directions on 22<sup>nd</sup> April 2024. Both sets of Directions set out the information that the Tribunal required to enable it to proceed and determine the Application.
7. The case was originally listed for an inspection followed by an oral hearing by video link. As the Applicant stated in her original submissions that she was moving out of the property on 15<sup>th</sup> April 2024, the Directions of 22<sup>nd</sup> April 2024 varied the requirement for an inspection. The hearing took place on 7<sup>th</sup> May 2024 without an inspection. This decision states the outcome of the application and the reasons for the order the Tribunal makes on it.

## **The Law**

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

### **79 Licensing of houses to which this Part applies**

(1) This Part provides for houses to be licensed by local housing authorities where—

(a) they are houses to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 85(1)).

(2) This Part applies to a house if—

(a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and

(b) the whole of it is occupied either—

- (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)...

## **85 Requirement for Part 3 houses to be licensed**

- (1) Every Part 3 house must be licensed under this Part unless—
  - (a) it is an HMO to which Part 2 applies (see section 55(2)), or
  - (b) a temporary exemption notice is in force in relation to it under section 86, or...
  - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

## **95 Offences in relation to licensing of houses under this Part**

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
  - (a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still be effective (see subsection (7)).
- (3) In proceedings against a person for an offence under sub-section (1) it is a defence that, at the material time-  
  
...
  - (b) an application for a licence had been duly made in respect of house under section 87,  
  
and that ... application was still effective.
- (4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for failing to comply with the condition, as the case may be.

9. The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

#### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a Rent Repayment Order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
  - (a) repay an amount of rent paid by a tenant, or ...
- (3) A reference to ‘an offence to which this Chapter applies’ is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	Section	General description of offence
6	Housing Act 2004	Section 95(1)	control or management of unlicensed house

#### **41 Application for rent repayment order**

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if —
  - (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
  - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

...

#### **43 Making of rent repayment order**

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
  - (a) section 44 (where the application is made by a tenant);

#### **44 Amount of order: tenants**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

<b><i>If the order is made on the ground that the landlord has committed</i></b>	<b><i>the amount must relate to rent paid by the tenant in respect of</i></b>
<i>an offence mentioned in row ...6... of the table in section 40(3)</i>	<i>a period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
  - (a) the rent paid in respect of that period, less
  - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount, the Tribunal must, in particular, take into account—
  - (a) the conduct of the landlord and the tenant,
  - (b) the financial circumstances of the landlord, and
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

#### **Applicant's Submissions**

10. The Applicant submitted in her written submissions and at the hearing that she and her family moved into the property on 16<sup>th</sup> January 2023. She acknowledged that she had not viewed the property before agreeing to take the tenancy as she lived in Warrington but had seen on the letting agent's website that it was advertised as being newly refurbished and fully furnished. She therefore paid a holding deposit of £219.00 and four months' rent of £4,677.00 which included a deposit of £1,096.00, making a total of £4,896.00.
11. On arriving at the property, the Applicant submitted that it became obvious that the house was not the same as had been advertised. It was not in the same condition and was not fully furnished. At the same time, it was noted that ongoing repairs were required including to the kitchen floor and cabinets. Some of the heaters were not working, the washing machine was not working properly, the toilet floor was covered with a leather carpet, the house was cold and the living room and hall carpets were in poor condition.
12. In response to the Applicant's concerns the letting agent agreed to reduce the rent from £950.00 per month to £925.00 per month. At this point the Applicant refused to sign

the agreement until repairs were completed. The letting agent then threatened to throw her out of the property giving her and her family just two days to leave. The Applicant was then told that the landlord would not agree to carry out the repairs if the agreement was not signed. The Applicant signed the first page using a software package then saw that her signature had been forged on the remaining pages.

13. A week after the Applicant and her family moved into the property, they noticed mould on the bathroom wall and water on the toilet floor and wall. She was told by the letting agents that this was condensation. The Applicant had to fix the living room carpet and purchased a rug for the whole of the floor just to make the living room habitable. The letting agent was asked to carry out repairs but refused to do so. In April a contractor attended and having lifted the carpet to the kitchen and toilet the Applicant was told that repairs were required to the floor, not just the replacement of carpet. Extractor fans to the kitchen and toilet were replaced but only worked for a relatively short period of time.
14. On 16<sup>th</sup> May 2023 the Applicant paid a further two months' rent and the letting agent informed her that the condition of the property was not too bad and that she should stop complaining. The Applicant then contacted Leicester City Council. This resulted in a letter dated 2<sup>nd</sup> August 2023 being sent to the Applicant and the letting agent. The City Council followed this up in September 2023 but the Respondents and the letting agents had not been in touch and repairs had not been carried out. Photographs were included from the Applicant confirming the condition of the property.
15. In November 2023 an engineer called to inspect the heaters (radiators) but some remained inoperable.
16. It was submitted that the property was not licensed at any point during the Applicant's period of claim. This satisfied all elements of the offence of having control of, or managing, an unlicensed property under Part 3, section 95(1) of the Housing Act 2004 which is an offence specified under section 40 (3) of the Housing and Planning Act 2016.
17. At the request of the Tribunal the Applicant described the Property as being a terraced house, built up to the pavement.
18. On the ground floor the accommodation comprised an entrance lobby, two reception rooms, kitchen and bathroom. On the first floor the landing led to three bedrooms.
19. The house had double glazing and gas fired central heating. To the rear was a yard and garden area.
20. The Applicant submitted that she rented the property from 16<sup>th</sup> January 2023 until 15<sup>th</sup> April 2024
21. The further submissions from the Applicant included a copy of the Designation of an area for Selective Licensing made by Leicester City Council on 7<sup>th</sup> July 2022 which came into force on 10<sup>th</sup> October 2022. This included the subject property.
22. At the hearing the Tribunal asked the Applicant to confirm several matters that were not clear in her written submissions. These were:
  - a) What period is the rent repayment order being claimed for?

- b) How do you know that the property was unlicensed?
- c) Did Leicester City Council serve a formal Improvement Notice on the Respondents?

23. The Applicant confirmed that in her initial application she sought a rent repayment order for seven months as her initial application was made in July 2023. However, she now wished to extend this to twelve months.
24. With regard to the property being unlicensed the Applicant confirmed that she had checked on the local authority website for an application. The Tribunal does not consider that provided sufficient evidence but were assisted in this by the Respondents who acknowledged that no application for a Selective Licence had been submitted to Leicester City Council.
25. The Applicant further submitted that she did not believe that Leicester City Council had served a formal Improvement Notice on the Respondents but had only sent the letter dated 2<sup>nd</sup> August 2023 of which she had received a copy. The Respondents confirmed that they had received the letter dated 2<sup>nd</sup> August 2023, but no formal Improvement Notice.
26. The Applicant had submitted copies of screen shots confirming that the following rent/deposit payments were made:

DATE	AMOUNT
13/01/2023	£4,677.00
17/05/2023	£1,720.77
17/07/2023	£925.00
18/08/2023	£925.00
18/09/2023	£925.00
17/10/2023	£925.00
18/11/2023	£925.00
18/12/2023	£925.00
17/01/2024	£925.00
22/02/2024	£925.00
15/05/2024	£925.00
<b>Total</b>	<b>£14,722.77</b>

27. The Applicant confirmed that she was seeking a rent repayment order for the period 16<sup>th</sup> January 2023 until 15<sup>th</sup> January 2024, being a period of twelve months at a rental of £925.00 per month. The payment in May 2023 was for two months although there was an allowance to the tenant to reflect the higher monthly rent paid for four months in January 2023 and the adjustment in the amount of the deposit as a result of the lower rental. This amounted to £11,100.00.

### **Respondents' Submissions**

28. By written submission the Respondents (through its Representative Mr Neil Bharakhda of Set to Let Managing Agents), confirmed that the property was let to the Applicant in good condition. The Respondents email of 11<sup>th</sup> March 2024 contained attachments which the Tribunal could not open. The Applicant confirmed that she had been able to open the attachments and following the hearing copies were made available to the Tribunal.

29. The Respondents submitted that '*Licensing to this location is in process of preparation*'. The Tribunal assumed from this that there is at present no licence in respect of the property. The Tribunal therefore asked the Respondents to confirm the position regarding the Licence application and it was confirmed that there was no licence in place during any part of the Applicant's tenancy. In fact, an application for a Selective Licence was yet to be made (the property has been left vacant since the Applicant left), although the Respondents submitted that they had all the necessary gas and electrical safety certificates and that, as such, the Applicant was living in a safe property.
30. With regard to the allegation of being given two days to vacate, the Respondents confirmed that the Applicant was given the opportunity to vacate at the commencement as she appeared to be dissatisfied with the property. She was also given the opportunity to vacate during the tenancy. However, the Applicant had not only remained in occupation for the full twelve months of her tenancy but had also remained in occupation for a further three months. If the Applicant was so dissatisfied, she had several opportunities to terminate earlier but decided not to.
31. As detailed in paragraph 28 above, following the hearing the Tribunal were able to view the various attachments. The Tribunal asked the Applicant if she had any comments to make on them (as she had seen them beforehand) and she confirmed that she had no comments to make.
32. The attachments comprised various copy invoices and photographs of the property at the commencement of the tenancy. The Respondents commented on them as follows:
  - a) A 30 Year Guarantee from Injecta Dampcourse Company dated 1<sup>st</sup> September 2020. This showed that the property had a fitted chemical injection dampproof course to eradicate rising damp as far as was possible from the property.
  - b) An invoice from Matt Finish Decorators dated 8<sup>th</sup> January 2023 for decoration as required throughout the property, including the provision of trickle vents to each room. This showed that the property was in good decorative condition prior to the commencement of the tenancy.
  - c) An invoice from Geddes Electrical dated 30<sup>th</sup> December 2022 for carrying out various electrical works to the property including a new consumer unit and new earth bond. This confirmed that the electrical circuits were in compliant condition.
  - d) An invoice from Geddes Electrical dated 31<sup>st</sup> March 2023 for fitting Humidistat Fans to the kitchen and bathroom. This confirmed that the Respondents had responded promptly to the Applicant's request when reports of damp and mould were notified to them.
  - e) An invoice from Nationwide Property Services Ltd dated 17<sup>th</sup> January 2023 for fitting a washing machine. Again, the Respondents submitted that this evidenced the Respondents prompt attention when a fault with the washing machine was notified to them.
  - f) Two invoices from Nationwide property Services Ltd dated 5<sup>th</sup> November 2023 and 20<sup>th</sup> November 2023 in respect of repairs to the boiler and radiators. This showed, in the submission of the Respondents, that work had been promptly instructed and undertaken following receipt of the letter from Leicester City Council dated 2<sup>nd</sup> August 2023 drawing their attention to apparent defects with the heating system.



- g) A copy of the photographic schedule of condition of the property when the Applicant moved in. The Respondents submitted that this showed the property to be in good condition, and not as described by the Applicant.
33. The Respondents also submitted, in response to the Applicant's allegation that her signature had been forged, that the signature was entered by the Applicant through the 'Goodlord' portal. This allowed tenants to create their own accounts, view documents and sign them electronically. The Respondents had no access to the Applicant's account on this portal. The Applicant acknowledged she had signed it once, at the end of the tenancy agreement but that her signature had then appeared at the bottom of each page. This was not, in the submission of the Respondents a forgery but the online portal transcribing her signature to the various pages it was required to be on.
34. The Respondents were questioned by the Tribunal and admitted that the property did not have a licence but that applications for licences were still being accepted by the local authority. The Respondents accepted that the property was in an area where a licence was required but did not accept that in not having a licence, an offence had been committed. They admitted that they had received no advice that a licence was not required and were not advised that they could let the property without a licence. They had been informed by the local authority that they would need to obtain a licence (which they intended to do), but not that they needed a licence to be able to let the property.

#### *The Respondents' financial position*

35. With regard to Respondents' financial circumstances, it was submitted that they only owned the one property. It was further submitted that Mr Banjoko worked full time and that Mrs Banjoko had a part time job. It was understood that they had children but no further details were available to the Tribunal.

#### **Discussion and Determination**

36. On this application for a rent repayment order, the first issue for the Tribunal is to decide whether the Respondents have committed an offence under section 95 of the 2004 Act, namely whether the Respondents have had control of or management of a property which requires to be licensed, but which is not so licensed. No rent repayment order can be made unless this offence is established beyond reasonable doubt.
37. There are 6 elements to the offence:
- a. That the Property must be a "house";
  - b. That the Property must be in area which the local authority has designated as an area of selective licensing;
  - c. That the Property is let under a single tenancy or licence that is not an exempt tenancy or licence;
  - d. That the Property is not licensed;
  - e. That the Respondents are "a person managing or having control" of the Property;
  - f. That there is no reasonable excuse for the Respondents having control of the Property without it being licensed (which has to be proved by the Respondents on the balance of probabilities).

38. The first five elements of the offence are not seriously in doubt. The Property is a building, consisting of a dwelling, which therefore falls under the definition of “house” in section 99 of the 2004 Act. The Tribunal accepts the evidence which is submitted by the Applicant and admitted by the Respondents that the Property was both within a selective licensing area as from 10<sup>th</sup> October 2022, and that no application for a licence was made at any time during the Applicant’s tenancy.
39. The Tribunal then proceeded to consider Section 95 of the Act. Section 95(3) confirms that *‘it is a defence that, at the material time-*
- (b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection 7)*
40. In this case, it is accepted by the Respondents that no application for a licence has been made. As such, the Tribunal determines that there is no reasonable excuse for the Respondents having control of the property without it being licensed. In particular:
- a) There was no licence.
  - b) An application for a licence had not been made.
  - c) The Respondents had received no Notice of Exemption from the local authority confirming that for any reason, the property was exempt from the requirement to have a licence.
41. A copy tenancy agreement provided to us in the bundle of documents confirms that the property is let under a single tenancy. The Respondents are managing the property as they receive (via the managing agent) the rack rent. By virtue of section 263 of the Act the managing agents are the persons in control of the Property as they receive the rent directly from the tenant. However, they only act as agents for the Respondents and are not the ultimate recipients of the rent.
42. No evidence was provided to us to indicate that the Respondents have a reasonable excuse for failing to license the Property. Indeed, the Respondents (through their Representative) do not accept that an offence has been committed under section 95 of the 2004 Act. In this, the Tribunal disagrees with them and we find, as a matter of fact that an offence under section 95 of the 2004 Act is proved.
43. We find as a matter of fact that there was no agreement between the managing agent and the Respondents to notify the Respondents of the need to obtain a selective licence and no copy of any ‘Management Agreement’ was provided to the Tribunal.
44. In the recent Upper Tribunal case of *Aytan v Moore* [2022] UKUT 27 (LC), the Upper Tribunal said:
- “40. We would add that a landlord’s reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”*

45. There is no suggestion that the Respondents did not know of the selective licensing scheme. Indeed, its managing agent accepted at the hearing that it was aware of the scheme and that it would need to apply for a licence in due course. It is unfortunate that the application for a licence did not have the importance attributed to it that it should have.
46. Our conclusion on the first issue is that the Respondents did commit an offence under section 95 of the 2004 Act between 16<sup>th</sup> January 2023 and 15<sup>th</sup> January 2024 during which period the Applicant was a tenant in the property. The date the Selective Licensing Scheme came into force was 10<sup>th</sup> October 2022, which gave the Respondents a period of just over three months to submit the Licence Application prior to the Applicant moving in. It is unfortunate that they did not do so.
47. The second question for us is to determine is the maximum possible award we could make as a rent repayment order. It cannot be higher than the rent that was paid in a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) and 44(3)(a) of the 2016 Act).
48. The offence was continuing from 16<sup>th</sup> January 2023 to 15<sup>th</sup> January 2024. The Applicant is therefore entitled to a rent repayment order for the period 16<sup>th</sup> January 2023 to 15<sup>th</sup> January 2024, and we have to identify both the rent paid *during* that period and the rent payable *in respect of* that period (see *Kowalek v Hassanein Ltd* [2021] UKUT 143 (LC)). The offence actually ceased when the Applicant vacated the property but the relevant 12 month period expired on 15<sup>th</sup> January 2024.
49. In *Acheampong v Roman* [2022] UKUT 239 the Upper Tribunal set out the following guidance on how to quantify the amount of a rent repayment order which, it said, will ensure consistency with the authorities:
  - a) Ascertain the whole of the rent for the relevant period;
  - b) Subtract any element of that sum that represents payments for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate;
  - c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relevant seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that the term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step;
  - d) Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44 (4).
50. The evidence was (see paragraphs 26 and 27 above) that the sum of £11,100.00 was paid as rent during the period 15<sup>th</sup> January 2023 and 15<sup>th</sup> January 2024. However, the Tribunal is only able to take account of the rental payments actually made during the period of the Application. In this case the total period of the offence was 12 months.

We calculate this at £11,100.00 (£925.00 per month x 12 = £11,100.00). Therefore, the maximum award we can make is £11,100.00.

51. The third question for us is to determine is the amount we are willing to order, taking into account the factors we are obliged to consider contained in section 44(4) of the 2016 Act. We may also take into account any other factors we consider are relevant (see paragraph 50 of *Williams v Parmar* [2021] UKUT 0244 (LC)).
52. Having regard to *Acheampong v Roman* we therefore take into account the following:
  - a. This is the Respondents first offence;
  - b. From the evidence the property was in need of some ongoing repairs. However, looking at the photographs taken immediately prior to the commencement of the tenancy and those provided by the Applicant, there is no doubt that the internal condition of the property has deteriorated considerably during the Applicant's occupation.
  - c. We note the various reports and invoices provided by the Respondents and find, as a matter of fact that the property was in relatively satisfactory condition prior to occupation by the Applicant as evidenced by the Dampproof Course Guarantee and invoices from the electrician and decorator. The main exception to this is the kitchen cupboard doors below the sink unit which are in very poor condition.
  - d. We find, as a matter of fact that the Respondents carried out their best endeavours to respond to complaints by the Applicant as evidenced by invoices for repairs to the washing machine and, following the letter from Leicester City Council dated 2<sup>nd</sup> August 2023 to attend to the boiler and radiators.
  - e. We find, as a matter of fact that the Respondents were only ever sent a letter detailing repairs required to the property on 2<sup>nd</sup> August 2023 and that at no time was a formal Improvement Notice Served.
  - f. We find, as a matter of fact that the Respondents offered to release the Applicant from the Tenancy Agreement at the start of the tenancy and at various times throughout. In this we prefer the evidence of the Respondents to that of the Applicant. We also note that the Applicant eventually remained in occupation for fifteen months, having stayed beyond the end of the initial tenancy period. We agree with the Respondents that had the Applicant been so dissatisfied with the property, she could have left at an earlier date. We also note that the Respondents reduced the rental at the outset to reflect the Applicant's concerns.
  - g. Despite the submissions of the Applicant, we find, as a matter of fact that the property was not in such poor condition as was submitted to us. We were not shown any evidence to indicate that the property as shown to her was not the same as advertised and it is quite evident to the Tribunal that the majority of the 'defects' were in some way related to damp, and in most of those cases to mould which are most likely to have been caused by condensation. The Tribunal accepts that this could have been exacerbated by the defective radiators.

- h. We have not been provided with copies of gas or electrical safety certificates. The Respondents submit that they have them and this has not been challenged by the Applicant.
- i. The Respondents took all reasonable steps to manage the property through a professional agent.
- j. It is clear from *Ayton* and other Upper Tribunal cases that the intention of Parliament with this legislation was to target “rogue” landlords and the Respondents clearly do not fall within that description;
- k. The Respondents’ financial circumstances. We are satisfied on a balance of probability that the Respondents are unable to afford the full amount of the rent repayment order sought. However, insufficient information was submitted for the Tribunal to make any further allowance from the amount it awards as it is obliged to do under section 44(4)(b) of the Act.

53. We do not give any weight to the following factors:

- a. The alleged forgery of the Applicant’s signature. The Tribunal accepts as a matter of fact, the Respondents submissions that the Applicant signed the documentation via the ‘Goodlord’ portal and that her signature was then transcribed onto all the relevant parts of the Tenancy Agreement. Although the signature on the bottom of the various pages is very small it is obvious to the Tribunal that this is the same signature that appears on the bottom of the Agreement. The Tribunal also accepts that once the Applicant had signed to accept the Tenancy Agreement, it was appropriate that this same signature would be transcribed to the various pages as required. An Audit Trail was provided to show when the documents were reviewed and signed by the Applicant and this is accepted by the Tribunal.
- b. The fact that any rent repayment ordered may be considered by some to be an underserved windfall for the tenant. This is not a factor we are able to take into account.

54. We therefore follow the decision in *Acheampong v Roman*. Our view is that it would be unjust not to make a discount to the maximum sum we can order as a rent repayment balancing all the factors listed above.

55. As we have previously determined the maximum amount, we can award is £11,100.00. We further determine that the offence of not having a selective licence is not unduly serious on its own when taking account of the range of potential offences such a harassment or unlawful eviction. Therefore, we do not accept that this is an appropriate starting point and balancing all the factors listed above, our view is that 40% of this amount (£11,100.00) is appropriate. This gives a maximum potential award of £4,440.00.

56. The purpose of a rent repayment order is to deter landlords from unlawful action and to prevent repeat offences. In this case it is evident that the Respondents only have one property and although the Tribunal is of the opinion that the Respondents are ‘Professional Landlords’ it is clear that the Respondents have taken reasonable steps to place the property in good condition prior to the tenancy and have responded to

requests for repairs in a timely manner. Given the circumstances of this case the Tribunal determine that a further deduction of 10% from the maximum amount detailed in paragraph 55 is appropriate. This leaves an award of £3,996.00.

57. There are no further matters we consider merit taking into account and we do not consider that our overall award should be adjusted further except our consideration of the Respondents' financial circumstances.
58. We therefore, then take into account the Respondents' financial circumstances. As detailed in paragraph 32, the Respondents did not furnish the Tribunal with any meaningful submission regarding their financial circumstances. We therefore make no further allowance to reflect the financial circumstances of the Respondents.
59. We order that the Respondents must pay a rent repayment order to the Applicant in the sum of £3,996.00.

### **Appeal**

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

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