FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/HMG/2023/0034**
Property	**:**	**16 Lydford Close, London N16 8UT**
Applicants	**:**	**Holly Nicholson, Amy Shade and Tim Thorne**
Representative	**:**	**Holly Nicholson (as lead Applicant, not as legal adviser)**
Respondents	**:**	**Umit Gorgulu (also known as Tim Gorgulu) and Zuhal Gorgulu**
Representative	**:**	**In person**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Mr M Cairns MCIEH**
Date of Hearing	**:**	**17 June 2024**
Date of Decision	**:**	**25 June 2024**

DECISION

Description of hearing

This was a remote hearing by video.

Decisions of the tribunal

(1) The tribunal orders the Respondents to repay to the Applicants jointly the sum of £12,450 by way of rent repayment.

(2) The tribunal also orders the Respondents to reimburse to the Applicants jointly the application fee of £100 and the hearing fee of £200.

(3) The above sums must be paid by the Respondents to the Applicants within 28 days after the date of this determination.

Introduction

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

2. The basis for the application is that the Respondents committed an offence of having control of and/or managing a house in multiple occupation ("**HMO**") which was required to be licensed but was not licensed, contrary to section 72(1) of the Housing Act 2004 ("**the 2004 Act**").

3. The Applicants seek a rent repayment order in the sum of £24,900 in respect of rent paid for the period 28 May 2022 to 27 May 2023.

Preliminary points established at hearing

4. At the hearing, Mr Gorgulu gave his first name as Tim but confirmed that his legal name was Umit and that he used the name Tim in England simply as an English version of his legal name. The tribunal also noted that the Applicants' tenancy agreement was with Zuhal Uludag, but Mr Gorgulu said – with the agreement of Mrs Gorgulu – that she was the named landlady herself and that Uludag was her maiden name. Finally, Mr Gorgulu confirmed – again with the agreement of Mrs Gorgulu – that although he was the sole person named as the legal owner on the registered title for the Property she (Mrs Gorgulu) was the joint beneficial owner and that in practice both of them were the landlord and therefore it was correct to name them both as joint Respondents.

5. Mr Gorgulu also confirmed (a) that the Respondents accepted that the Property required an HMO licence for the entire period of claim and did not have a licence at any point during that period (and nor was an application for a licence made prior to the end of that period), (b) that £24,900 was the amount of rent paid in respect of the period of claim and (c) the Applicants had paid for utilities and other consumable items so that the rent was all pure rent.

Applicants' written case

6. In written submissions the Applicants state that they lived at the Property between May 2021 and May 2023, occupied it pursuant to a tenancy agreement and paid rent. Proof of rental payments is included within the hearing bundle as is a copy of the tenancy agreement. The total rent paid for the period 28 May 2022 to 27 May 2023 between the three of them was £24,900. None of this was paid with universal credit or housing benefit.

7. The Applicants have also provided some evidence from the local housing authority's website to indicate that throughout the period of claim the Property needed an HMO licence, and there is also an email dated 15 June 2023 from the local housing authority's property licensing department stating that the Property did not on that date have a licence.

8. They state that Umit Gorgulu was the letting agent at Junction 75 Ltd, which trades as Courtney's Estate Agents. He showed Ms Nicholson and Mr Thorne around the Property at the viewing stage and was the main point of contact for any issues that the Applicants had. There was a Whatsapp group between Mr Gorgulu and the Applicants which they used to communicate about inspections, house issues, and routine maintenance.

9. The three Applicants – who are unrelated – shared a kitchen, bathroom, living area and WC. There were three bedrooms, one for each of them. There were therefore three occupants from more than one household sharing amenities including a kitchen and bathroom, and their understanding was that properties in the London Borough of Hackney were at the relevant time required to be licensed by Hackney Council under the Additional Licensing scheme if they were occupied by 3 or 4 people making up 2 or more households.

10. The Applicants also state that Mr Gorgulu is a professional property agent, managing a portfolio of rental properties in the London Borough of Hackney. As he is also the leasehold owner of the property, he should be considered a professional landlord.

11. The Applicants add that the Property did not comply with HMO licence requirements in that there was no fire blanket or fire extinguisher as required by the Regulatory Reform (Fire Safety) Order 2005, and there were no fire doors in the Property.

12. The Applicants concede that the Respondents generally fixed problems quickly, but they maintain that many of the problems were due to the Respondents cutting corners. For example, the boiler broke down during December 2021 and January 2023 as a result of (in Ms

Nicholson's view) incorrectly plumbed pipes which did not comply with building regulations. In addition, the Respondents did not place the rent deposits in a deposit protection scheme. Mr Gorgulu also (in Ms Nicholson's words) "lied about" his connection with the Property and pretended to be merely acting as an intermediary with the "landlady" (i.e. his wife), telling the Applicants that he was negotiating with her on their behalf. Mr Gorgulu also entered the Property without due notice for a non-emergency reason and without getting prior permission. By contrast the Applicants state that they were polite, gracious and responsive, as shown in the WhatsApp messages contained in the Respondents' bundle, despite multiple problems in the Property including the broken boiler, a leaking bathtub and a broken fridge freezer.

Respondents' case

13. The Respondents concede that they failed to obtain an HMO licence and that they should have done so, but they maintain that their general conduct and the general condition of the Property were both good.

14. They state that in the few months leading up to the Applicants moving into the Property they carried out an extensive refurbishment including a full repaint of all surfaces, new flooring throughout, a new bathroom, a brand-new boiler (in November 2020), extensive handyman jobs and a full professional deep clean just prior to the Applicants moving in. They have included relevant photographs in their bundle.

15. They also had smoke alarms installed on each floor and a carbon monoxide alarm next to the boiler. They accommodated a request for two of the Applicants to move in initially, with the possibility of a third tenant being added later. Two days after the Applicants made their offer (but before they paid their holding deposit) the Respondents received a significantly higher offer from another group of potential tenants but they still continued with the Applicants out of goodwill. The Applicants were very happy with the work carried out both before they moved in and during their tenancy.

16. The Respondents also obtained a new energy performance certificate and a new electrical safety certificate for the Property and updated the gas safety certificate via a qualified plumber. Therefore, in terms of the fundamental compliance issues that make up the vast majority of the requirements of an additional HMO licence, these were, in the Respondents' submission, all covered during the tenancy.

17. Throughout the tenancy, the Respondents dealt with any maintenance issues raised by the Applicants either via email or via the WhatsApp group with great efficiency and courtesy whilst regularly keeping them updated, and copies of WhatsApp message trails have been included in the Respondents' bundle. It is also clear from the message trails that

the Applicants regularly thanked the Respondents for their efficient and high-quality service. In addition, Mr Thorne gave the Respondents a 5-star google review shortly after moving in and Ms Shade also gave a 5-star review but subsequently removed it. Throughout their tenancy, the Applicants had no cause for any major complaints regarding the Respondents' service as landlord or letting agent or regarding the quality of their accommodation.

18. The Respondents state that there was an issue with water drainage in the kitchen sink but that when they got it fixed by a plumber he told them that it came about as a result of the Applicants' misuse of the Property by pouring fat and oils down the sink. They asked the Applicants via email not to repeat this and said that in this instance they would not charge the plumber's fee to them. Ms Nicholson confirmed via email that they would be more careful going forward.

19. At the end of the first year of tenancy the Respondents state that they had to increase the rent due to rising mortgage costs but then agreed as a goodwill gesture to reduce the amount of the increase after Ms Nicholson came into their office *"with tears in her eyes"*.

20. On a separate point, Mr Thorne has alleged that Mr Gorgulu breached the terms of the tenancy agreement by unlawfully entering the Property without consent, but Mr Gorgulu denies this. The Applicants had raised an issue about a leak in the bathroom and Mr Gorgulu was in the area on that day with a handyman and wanted him to go around and have a look at the job and quote for it so that it could be fixed quickly. Mr Gorgulu told the Applicants via the WhatsApp group that he would be there in 15 minutes and Mr Thorne thanked him for letting them know and gave a thumbs up.

21. Also on the issue of conduct, in the weeks leading up to the Applicants vacating the Property they asked Mr Gorgulu to facilitate the sale of a piece of furniture to the incoming tenants, which he did without asking to be paid.

Further discussion at hearing

22. At the hearing, Ms Nicholson said that the Respondents were professional landlords. Mr Gorgulu was running a property letting agency and should have known the HMO licensing rules. Regarding fire safety, she said that there were no fire doors and there was no fire blanket or fire extinguisher. Mr Gorgulu also failed initially to protect the rent deposit and again should have known that this was a legal requirement.

23. In answer to questions from the tribunal Ms Nicholson accepted that Mr Gorgulu had been a responsive landlord and that the Property had

fire alarms and safe electrics and gas. In relation to the internal doors, she said that they fitted well but seemed lightweight. As regards Mr Gorgulu's own status, she said that he had given the impression that he was merely the agent and was negotiating with the landlady on the Applicants' behalf, whereas the reality was that Mr Gorgulu was joint landlord with his wife and Ms Nicholson felt that it was a betrayal to mislead the Applicants in this way.

24. Mr Gorgulu in response said that the Respondents had spent a lot of money refurbishing the Property. Not only was he very responsive to the Applicants' needs but – contrary to what had been suggested by the Applicants – he did not cut corners. There was much evidence that the Applicants had been very happy at the Property. As regards his relationship with the named landlady – Mrs Gorgulu – the tenancy agreement expressly stated that there was a relationship between the agency and the named landlady.

25. In answer to questions from the tribunal, Mr Gorgulu accepted that he had not carried out a fire risk assessment and that the Property would require some further fire safety measures to meet HMO licensing requirements. He also said that he was not a member of any landlord forums or organisations, but he did subscribe to a law firm's newsletter and was a member of certain WhatsApp groups.

26. Mr Gorgulu said that he missed the HMO licensing issue partly because of the Covid-19 pandemic which had caused him various difficulties. Likewise, he initially overlooked the deposit scheme issue but then protected the deposit later and returned the deposit promptly (less the cost of cleaning). He told the tribunal that he owned 3 other rental properties and managed about 35 other properties, 5 or 6 of which were HMOs.

27. There was a general discussion about the drainage and boiler issues, with each party placing primary blame for the problems on the other party.

Relevant statutory provisions

28. Housing and Planning Act 2016

Section 40

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to – (a) repay an amount of rent paid by a tenant …

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	***section***	***general description of offence***
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Section 41

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if – (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) …

Section 44

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

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

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

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

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

Housing Act 2004

Section 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 premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

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

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

Tribunal's analysis

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

30. The Respondents also concede that they were joint landlords of the Property for the purposes of section 43(1) of the 2016 Act. In addition to their acknowledgement that they were joint landlords, Mrs Gorgulu was named as landlady in the tenancy agreement, Mr Gorgulu was the registered owner of the Property, and Mr Gorgulu confirmed – with the agreement of Mrs Gorgulu – that Mrs Gorgulu was the joint beneficial owner.

31. The next question is whether each Respondent was a "person having control of or managing" the Property within the meaning of section 263 of the 2004 Act. The Respondents have not denied that they both had control of and managed the Property, and having considered the definitions contained in section 263 we are satisfied that each Respondent was both a "person having control" and a "person managing" in respect of the Property at the relevant time, not least because the evidence indicates that they jointly received or at least were entitled to receive the rent from the Property.

The defence of "reasonable excuse"

32. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing an HMO which is licensable under Part 2 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

33. In this case, the Respondents have stated that the failure to license was an oversight. However, as explained at the hearing, a mere oversight particularly on the part of a professional landlord/letting agent is insufficient to count as a reasonable excuse. Therefore, on the facts of this case there is no basis on which the tribunal could reasonably conclude that the Respondents had a reasonable excuse for the purposes of section 72(5) of the 2004 Act.

The offence

34. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. An offence under section 72(1) of the 2004 Act is one of the offences listed in that table. Section 72(1) states that *"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"*, and for the reasons given above we are satisfied beyond reasonable doubt (a) that each Respondent was a "person having control" of and a "person managing" the Property for the purposes of section 263 of the 2004 Act, (b) that the Property was required to be licensed throughout the period of claim and (c) that it was not licensed at any point during the period of claim.

35. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. On the basis of the Applicants' uncontested evidence on these points we are satisfied beyond reasonable doubt that the Property was let to the Applicants at the time of commission of the offence and that the offence was committed throughout the period of 12 months ending with the day on which their application was made.

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

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

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

38. In this case, the Applicants' claim relates to a period not exceeding 12 months. The evidence before us indicates that no part of the rent was covered by the payment of housing benefit, and the Respondents have not disputed that the rental amounts claimed were in fact paid by the Applicants.

39. We are satisfied on the basis of their uncontested evidence that the Applicants were in occupation for the whole of the period to which their rent repayment application relates and that the Property required a licence for the whole of that period. Therefore, the maximum sum that can be awarded by way of rent repayment is the sum referred to in paragraph 3 above (i.e. £24,900), this being the amount paid jointly by the Applicants by way of rent in respect of the period of claim.

40. Under sub-section 44(4), in determining the amount of any rent repayment order the tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which the relevant part of the 2016 Act applies.

41. The Upper Tribunal decision in *Vadamalayan v Stewart (2020) UKUT 0183 (LC)* is one of the authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a

rent repayment order if satisfied that an order should be made. Importantly, it was decided after the coming into force of the 2016 Act and takes into account the different approach envisaged by the 2016 Act.

42. In her analysis in *Vadamalayan*, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted. She departs from the approach of the Upper Tribunal in *Parker v Waller (2012) UKUT 301*, in part because of the different approach envisaged by the 2016 Act, *Parker v Waller* having been decided in the context of the 2004 Act. Judge Cooke notes that the 2016 Act contains no requirement that a payment in favour of a tenant should be reasonable. More specifically, she does not consider it appropriate to deduct everything that the landlord has spent on the property during the relevant period, not least because much of that expenditure will have repaired or enhanced the landlord's own property and/or been incurred in meeting the landlord's obligations under the tenancy agreement. There is a case for deducting utilities, but otherwise in her view the practice of deducting all of the landlord's costs in calculating the amount of the rent repayment should cease.

43. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases where the landlord's good conduct or financial hardship will justify an order less than the maximum.

44. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James* (2021) UKUT 0038 (LC) and *Awad v Hooley (2021) UKUT 0055 (LC)*. In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (FTT) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal's focus in that case was on the relevance of the amount of the landlord's profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.

45. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4).

46. In *Williams v Parmar & Ors [2021] UKUT 244 (LC)*, Mr Justice Fancourt stated that the FTT had in that case taken too narrow a view of its powers under section 44 to fix the amount of the rent repayment order. There is no presumption in favour of the maximum amount of

rent paid during the relevant period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.

47. Mr Justice Fancourt went on to state in *Williams* that the FTT should not have concluded that only meritorious conduct of the landlord, if proved, could reduce the starting point of the (adjusted) maximum rent. The circumstances and seriousness of the offending conduct of the landlord are comprised in the "conduct of the landlord", and so the FTT may, in an appropriate case, order a lower than maximum amount of rent repayment if what a landlord did or failed to do in committing the offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise.

48. In *Hallett v Parker and others [2022] UKUT 165 (LC)*, the Upper Tribunal did not accept a submission that the fact that the local authority has decided not to prosecute the landlord should be treated as a "credit factor" which should reduce the amount to be repaid.

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

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;
(c) consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made and compared to other examples of the same type of offence; and
(d) consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

50. Adopting the *Acheampong* approach, the whole of the rent means the whole of the rent paid by the Applicants out of their own resources, which is the whole of the rent in this case as no part of the rent was funded by housing benefit.

51. In relation to utilities, the Respondents accept that the Applicants paid all of these themselves, and therefore no deduction should be made from the rent repayment sum for utilities.

52. As regards the seriousness of the type of offence, whilst it could be argued based on the maximum criminal penalty available that there are offences covered by section 40(3) of the 2016 Act which can give rise to a greater criminal sanction, a failure to license is still a serious offence. Failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license

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

53. In the light of the above factors, we consider that the starting point for this offence should be 70% of the maximum amount of rent payable.

54. As for the seriousness of the offence in this particular case compared to others of the same type, there are various factors of relevance to the level of seriousness in this case. On the negative side, whilst the Respondents are not large institutional landlords they are professional landlords. By Mr Gorgulu's own admission at the relevant time they owned between them 3 other rental properties and managed about 35 other properties, 5 or 6 of which were HMOs. Also, in addition to the failure to license they were in breach of certain fire safety requirements relevant to HMOs and initially failed to protect the deposit. Their excuse for all of these failures was simply one of oversight and Mr Gorgulu claimed that it was in part due to the Covid-19 pandemic, but that particular excuse is easy to claim and he has provided no supporting evidence.

55. On the positive side, the fire safety issues were not nearly as serious as portrayed by the Applicants, as the Property had fire alarms and safe electrics and gas. In addition, the Property was generally in good condition and by the Applicants' own admission the Respondents were responsive landlords. It is also the case that two of the Applicants stated in writing that the Respondents had been good landlords, although it appears that one of them later retracted her statement. The Property appears to have been generally compliant aside from the specific issues identified, and Mr Gorgulu has given some uncontested examples of specific good conduct on his part to assist the Applicants.

56. In relation to the boiler and drain issues, we note the comments made by both parties but do not consider that there is sufficiently compelling evidence either way to apportion blame with any degree of certainty. In

relation to the alleged unlawful entry by Mr Gorgulu, we are more persuaded by Mr Gorgulu's evidence on this point than by the Applicants' evidence. On the other hand, whilst we consider it to an overreaction for the Applicants to feel 'betrayed' by Mr Gorgulu giving the impression that he was merely the agent, particularly as this point is covered to some extent in the tenancy agreement, nevertheless we do consider Mr Gorgulu's actions in this regard to have been misleading and therefore to have constituted poor conduct. However, overall we consider that the Applicants have significantly overstated the position when complaining about the Respondents' alleged poor conduct.

57. In our view, on the facts of this case the Respondents' conduct has generally been good. Therefore, if this had been a case of a landlord who was not a professional and who did not own any other properties, this case would be well towards the lower end of the scale and we would reduce the amount of the award (subject to any other relevant factors) to something in the region of 15% to 20%. However, as the Respondents between them are professional landlords/letting agents, the matter is more serious. Whilst Mr Gorgulu has sought to argue that the Respondents only fell down on two or three points, these were all significant issues and are not matters that would generally be overlooked by a responsible professional landlord or letting agent. In the circumstances, we consider that a rent repayment order for 50% of the maximum would be appropriate in this case, but this is subject to the matters listed in section 44 of the 2016 Act referred to below to the extent that they affect the amount payable in this case.

58. Turning then to the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

Conduct of the parties

59. There is no evidence before us that the Applicants' conduct has been anything other than satisfactory. The Respondents' own conduct has already been referred to above in the context of the seriousness of the offence, and it would not be appropriate to change the amount of the rent repayment further to reflect that conduct as this would constitute double counting.

Financial circumstances of the landlord

60. The tribunal is required to take the Respondents' financial circumstances into account when making its decision. However, in this case neither party has supplied any evidence of the Respondents' financial circumstances. Mr Gorgulu said at the hearing that the Respondents were struggling financially but provided no supporting

evidence. Equally, whilst we note that he owns 4 rental properties in total and manages about 35 others (assuming that this information is accurate), the owned properties could be heavily mortgaged and the business might not be making a significant profit. In this case, therefore, we have insufficient information to justify adjusting the amount of the award either upwards or downwards to reflect the Respondents' financial circumstances.

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

61. There is no evidence before us that the Respondents have previously been convicted of a relevant offence, although it is clear from the Upper Tribunal decision in *Hallett v Parker* (see above) that this by itself should not be treated as a credit factor.

Other factors

62. It is apparent from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, in particular, take into account" the specified factors. However, in this case we are not aware of any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

Amount to be repaid

63. The four-stage approach recommended in *Acheampong* has already been set out above. The amounts arrived at by going through the first three of those stages is to reduce them to 50% of the maximum amount payable to the Applicants, subject to any adjustment for the section 44(4) factors referred to above.

64. As noted above, in part to avoid double-counting, there is nothing to add or subtract for any of the other section 44(4) factors.

65. Therefore, taking all of the factors together, the rent repayment order should be for 50% of the maximum amount payable, namely £12,450.

Cost applications

66. The Applicants have applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse their application fee of £100 and the hearing fee of £200.

67. As the Applicants' claim has been successful, albeit that there has been a deduction from the maximum payable, we are satisfied that it is appropriate in the circumstances to order the Respondents to reimburse these fees.

Name: Judge P Korn **Date:** 25 June 2024

RIGHTS OF APPEAL

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

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

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

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