FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMF/2023/0224**
Property	**:**	**28 Osborn Street, London, E1 6TD**
Applicant	**:**	**Shai Moody**
Representative	**:**	**Clark Edward Barrett, Represent Law Limited**
Respondents	**:**	**Cherry Deals Limited (1)** **Tarsam Ram (2)** **Permjit Ran (3)**
Representative	**:**	**Did not appear and were not represented at the hearing**
Type of Application	**:**	**Rent Repayment Order under provisions of the Housing and Planning Act 2016**
Tribunal	**:**	**Judge B MacQueen** **Mrs L Crane, MCIEH**
Date and Venue of Hearing	**:**	**31 July 2024, Alfred Place London**
Date of Decision	**:**	**12 August 2024**

DECISION

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1. The Tribunal found that Tarsam Ram and Permjit Ram (2nd and 3rd Respondents) had committed the offence of failing to license a House in Multiple Occupation (HMO) under the provisions of section 72(1) of the Housing Act 2004, and that accordingly a rent repayment order in favour of the Applicant can be made. The Tribunal makes a rent repayment order of £8,415 for the period 4 March 2022 until 24 February 2023 and this must be paid by Tarsam Ram and Permjit Ram to the Applicant within 28 days of the date of this decision.

2. The Tribunal also orders the reimbursement of the Tribunal fees and this amount must be paid by Tarsam Ram and Permjit Ram to the Applicant within 28 days of the date of this decision.

REASONS

The Application

3. On 24 August 2023, Shai Moody (the Applicant) made an application under section 41 of the Housing and Planning Act 2016 for a rent repayment order in relation to 28 Osborn Street, London, E14 9TS (the Property) for the period 4 March 2022 until 24 February 2023. The Applicant occupied the Property under an agreement dated 9 February 2022 for a term of 6 months starting on 4 March 2022 and ending on 3 September 2022, then an agreement commencing on 4 September 2022 and ending on 1 December 2022, and an agreement dated 27 October 2022 for a term of 6 months starting on 2 December 2022 and ending on 24 February 2023. The Applicant left the property on 24 February 2023.

4. The offence that the Applicant alleged was control or management of an unlicensed HMO under section 72(1) Housing Act 2004.

5. The application was made in time as the offence related to the Property that, at the time of the offence, was let to the Applicant, and the offence was committed in the period of 12 months ending with the day on which the application was made (section 41(2) Housing and Planning Act 2016).

6. The Applicant initially named Cherry Deals Limited as the Respondent. However, on receipt of representations from Cherry Deals Limited asserting that they were in fact managing agents and the correct Respondents should be Tarsam Ram and Permjit Ram, these Respondents were added as 2nd and 3rd Respondents respectively by Directions made on 26 April 2024.

7. The Directions made on 26 April 2024 also required all Respondents to produce by 3 June 2024 a bundle of relevant documents for use in the determination of the application.

8. It was the Applicant's position that for the period 4 March 2022 until 24 February 2023 (the relevant period), the Applicant paid a monthly rent of £850.00 from March 2022 until November 2022, and £900.00 from December 2022 following an increase in the rent. The total amount of rent paid by the Applicant for the relevant period was stated by the Applicant as £10,350.

Documents Provided to the Tribunal

9. The Tribunal received a bundle of documents from the Applicant (consisting of 114 pages). The Tribunal also received a bundle of documents from Cherry Deals Limited (1st Respondent) (consisting of 26 pages). Additionally, the 1st Respondent sent undated correspondence setting out details of the Property ownership and selective licence.

10. No documents or correspondence were received from the 2nd and 3rd Respondents.

The Hearing

11. A final hearing took place on 31 July 2024. The Applicant attended represented by Clark Edward Barrett of Represented Law, however none of the Respondents appeared or was represented.

12. The Tribunal waited until 10.30am to allow the Respondents additional time to attend, however when the hearing reconvened at 10.30am the Respondents had not attended or provided any explanation for their non-attendance to the Tribunal.

13. The Tribunal heard representations from Clark Edward Barrett which confirmed that Represented Law had posted the Applicant's bundle and the Tribunal's Directions to Tarsam Ram (2nd Respondent) and Permjit Ram (3rd Respondent) at two addresses identified on the office copies for the Property held at the Land Registry. Additionally, Clark Edward Barrett produced to the Tribunal proof of posting.

14. The Tribunal considered rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 – hearings in a party's absence, as well as rule 3 – the overriding objective. The Tribunal was satisfied that the Respondents were aware of the hearing and had been notified of the hearing date. The reasons for this were that the 1st Respondent had provided documentation to the Tribunal and therefore was clearly aware of the proceedings and hearing date. The 2nd and 3rd Respondents had been served by the Applicant at their last known address. The Tribunal was satisfied that it was in the interests of justice to proceed with the hearing as the hearing date had been set and the Applicant had attended, was represented, and was ready to proceed. No explanation for non-attendance had been provided by any Respondent. The Tribunal was satisfied if the matter did not proceed in the Respondents' absence there would be delay, which was not compatible with the Tribunal's duty to deal with cases fairly and justly, avoiding

delay, so far as compatible with proper consideration of the issues. The Tribunal therefore proceeded in the Respondents' absence.

The Law

15. Section 41(1) Housing and Planning Act 2016 states:

> "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"

15. Section 43(1) Housing and Planning Act 2016 states:

> "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 had been convicted)"

16. Section 40(3) Housing and Planning Act 2016 defines "an offence to which this Chapter applies" by reference to a table. The offence under section 72(1) Housing Act 2004 (control or management of unlicensed house) is within that table.

Control or Management of Unlicensed HMO:

17. Section 72(1) Housing Act 2004 provides:

> "A person commits an offence if he is a person having control of or managing an HMO which is required to be licenced under this Part but is not so licensed."

18. An HMO required to be licensed, is defined in Section 55(2)(a) Housing Act 2004 as:

> "any HMO in the [local housing] authority's district which falls within any prescribed description of HMO".

The Licensing of Houses in Multiple Occupation (Prescribed Description) Order 2018/221 states:

> "An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it
>
> (a) is occupied by five or more persons;
> (b) occupied by persons living in two or more separate households; and
> (c) meets either (i) the standard test under section 254(2); (ii) the self-contained flat test under s.254(3) except for purpose-built flats situated in blocks comprising three or more self-contained flats; or (iii) the converted building test under section

254(4) of the Act, unless the HMO has a temporary exemption notice or is subject to an interim or final management order;

Finally, section 254 Housing Act 2004 defines the standard test, self-contained test and the converted building test:

Section 254 provides:

> (1)"For the purposes of this Act a building or part of a building is a "house in multiple occupation" if
> (a) it meets the conditions in subsection (2) ("the standard test")
> (b) it meets the condition in subsection (3) ("the self-contained flat test")
> (c) it meets the conditions in subsection (4) ("the converted building test").

The standard building test is defined in section 254 Housing Act 2004 as:

> (2) A building or a part of a building meets the standard test if–
> (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
> (b)the living accommodation is occupied by persons who do not form a single household;
> (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
> (d) their occupation of the living accommodation constitutes the only use of that accommodation; and
> (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.
> (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

The converted building test is defined in section 254 Housing Act 2004 as:

> (4) A building or a part of a building meets the converted building test if–
> (a) it is a converted building;
> (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
> (c) the living accommodation is occupied by persons who do not form a single household;
> (d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

Representations from Parties as to whether the Property was an HMO

19. The first question the Tribunal had to determine was whether the Property was an HMO for the Relevant Period.

20. The Applicant told the Tribunal that the Property had one staircase up to the 1st Floor from street level (the ground floor was a commercial unit). At this point the Property had two front doors, and two separate flats on the 1st floor. One of the doors led to 28a, which the Applicant had no knowledge of as this was separate, whereas she lived in 28b. The Applicant gave the following description of 28b, along with the tenants who lived at the Property for the relevant period:

1st Floor: Bedroom 1 occupied by Limnash

2nd Floor: Bedroom 2 occupied by Melody

3rd Floor: Bedroom 3 occupied by Guilherme.
Bedroom 4 occupied by the Applicant

4th Floor: Bedroom 5 occupied by Marie

21. The Applicant confirmed that in terms of shared facilities there was a communal kitchen on the 2nd floor and two communal bathrooms, one on the 2nd and one on the 3rd floor. Bedroom 5 had its own toilet, shower, and kitchen facilities consisting of a sink, microwave and hotplate. This room was accessed through the front door of the Property and each bedroom had its own locking entrance door.

22. The Applicant confirmed that throughout the relevant period there were five people living at 28b, as well as people living at 28a, and that these people were all living as separate households.

23. The Tribunal did not receive any representations from the 2nd and 3rd Respondent, however the 1st Respondent confirmed in their written evidence to the Tribunal that bedroom 5 on the 4th floor was a separate studio apartment. The Respondent's position was that the 5th bedroom (which the Respondent referred to as the studio loft) had no shared facilities with the rest of the premises and had separate planning and building control permissions.

24. The Applicant's position was that bedroom 5 was not a self-contained flat and the Representative for the Applicant argued that as bedroom 5 was not a separate dwelling, the standard test was applicable.

The Tribunal's Finding as to Whether or not the Property was an HMO

25. The Tribunal accepted the evidence of the Applicant that five people lived at 28b and that they all lived there as separate households. The number of people living at the property was not disputed by the 1st Respondent as their evidence to the Tribunal (page 3 of the 1st Respondent's bundle) was that for the relevant period 4 occupants resided in four rooms and that a 5th occupant lived in the 5th bedroom (a studio apartment). It was also not disputed by either the Applicant or the 1st Respondent that other people resided at 28a. The dispute was that the Respondent's position was that the studio loft was self-contained and therefore had nothing to do with the other 4 rooms in the house, meaning that the property was not an unlicensed HMO.

26. The Tribunal considered the evidence before it and identified the converted building test as the applicable test. Section 254(8) Housing Act 2004 defines "converted building" as:

> "a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed."

27. At pages 18 and 19 of the 1st Respondent's bundle were letters from Tower Hamlets relating to retrospective planning and building control for the 5th bedroom. Additionally, the Tribunal considered the photographs at pages 21 to 23 of the bundle which showed the toilet, shower and sink, and kitchen sink and microwave in the 5th bedroom. The Tribunal therefore accepted that the 5th bedroom fell within the definition of living accommodation that had been created since the building was constructed.

28. The Tribunal was therefore satisfied that the Property was a converted building and that the converted building test was applicable.

29. Having identified the relevant test as the converted building test, the Tribunal considered the test as set out in section 254(4). Dealing with each limb of the test in turn the Tribunal was satisfied that the building contained one or more units of living accommodation that did not consist of a self-contained flat or flats (whether or not it also contained any such flat or flats). The Tribunal reminded itself of the definition of a self-contained premises under section 254 Housing Act 2004 namely:

> "Self-Contained flat" means a separate set of premises (whether or not on the same floor) -
> (a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building
(c) in which all three basic amenities are available for the exclusive use of its occupants.

30. The Tribunal found that the 5th room was a self-contained flat within this Housing Act definition as it found that it formed part of the building, it was above some other part of the building and it had all three basic amenities as set out in section 254(8) namely a toilet, a shower and sink and cooking facilities in the form of a hotplate and microwave.

31. Bedrooms 1 to 4 consisted of living accommodation that did not consist of a self-contained flat or flats and bedroom 5 was self-contained. Although the Applicant was not able to provide evidence on this, it would also appear that 28a was also a flat that was separate and part of the building. The Tribunal found that the Property met the definition within (4)(a) and (b) in that it was a converted building and it "contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flats or flat)".

32. Turning to the rest of the definition the Tribunal accepted the Applicant's evidence and found each aspect of the converted building test was met under section 254(4) as follows:

- The Tribunal accepted the evidence of the Applicant that the living accommodation was occupied by persons who do not form a single household and that the accommodation was occupied by persons as their only or main residence section 254 (4)(c) and (d).
- The Tribunal considered the WhatsApp messages at pages 53 to 76 of the Applicant's bundle which demonstrated the interactions of the occupants living at the property as their only or main residence.
- The Tribunal was also satisfied that the occupation of the living accommodation constituted the only use of that accommodation (section 254(e)) and that rents were payable (section 254(f)). The Tribunal accepted the evidence of the Applicant at pages 77 to 85 showing payment of rent the Applicant had made.

33. The Tribunal was therefore satisfied that the Property was a house in multiple occupation as 5 or more people occupied it living in 2 or more separate households, the converted building test was met for the whole of the relevant period. The Property was therefore required to be licensed under the mandatory licensing regime (section 72(1)).

Licensing of the Property

34. The 1st Respondent's evidence to the Tribunal was that the Property was in fact licensed. Within their bundle was a copy of an HMO licence. This was a selective licence which was issued on 13 October 2021 for a period of five years and related to "Flat Upper Floor, 28 Osborn Street, London, E1 6TD". The licence permitted a maximum number of 4 people occupying the property as a maximum of 4 households.

35. The Applicant's position was that the Property required a mandatory licence rather than a selective licence and therefore it was an unlicensed HMO.

Tribunal's Finding in Relation to the Licence

36. The Tribunal accepted the Applicant's position. It was unclear as to why the 1st Respondent held a selective licence for the Property, but in any event, the Tribunal was satisfied that because the Property met the mandatory licensing requirements under section 72(1), the selective licence was not applicable to the Property. The Tribunal therefore found that the Property was an unlicensed HMO.

Person having Control/Management

37. The 1st Respondent's evidence to the Tribunal was that Cherry Deals Ltd were the managing agent for the Property and that Tarsam Ram and Permjit Ram were the Property owners and therefore the persons managing the Property.

38. The 1st Respondent stated that as managing agents they were responsible for "day-to-day operations, including tenancy management" but that the absence of an HMO licence was a matter directly related to the Property's ownership and management.

39. The Applicant accepted that the 2nd and 3rd Respondents were the relevant people.

Tribunal's Findings in Relation to Person having Control/Management

40. The section 72(1) offence is committed by the person having control/managing the property. Section 263(1) Housing Act 2004 defines "person having control" in relation to the premises as "the person who received the rack-rent of the premises (whether on his own account or as agent or trustee of another person)". Section 263(2) defines "person managing" as the person who, being an owner or lessee of the premises (a) received (whether directly or through an agent or trustee) rents or other payments (i) in the case of a house in multiple occupation,

persons who are in occupation as tenants or licensees of parts of the premises.

41. It is now well established that an RRO may only be made against the immediate landlord. The Tribunal accepted the evidence of the 1st Respondent that they were the managing agent. The Tribunal made this finding because the selective licence described Cherry Estates as the manager/managing agent whereas Tower Hamlets Council had sent a copy of the licence to Permjit Ram as the freeholder of the Property. Additionally, title number EGL243829 described Tarsam Ram and Permjit Ram as the proprietor.

42. The Tribunal noted that the status of the landlord was unclear in the tenancy agreements. The agreement dated 9 February 2022 for a period of six months from 4 March 2022 to 3 September 2022 described the landlord as "Cherry Deals", whereas the agreement dated 27 October 2022 for a term of six months starting on 2 December 2022 and ending on 24 February 2023 was described as a "lodgers agreement" with the licensor stated as being "Cherry Deals Limited". The Tribunal did not accept that this was a licence agreement and was not satisfied as to the accuracy of these agreements when describing the landlord.

43. The Tribunal therefore accepted the evidence of the 1st Respondent that they were the managing agents and that Tarsam Ram and Permjit Ram were the people having control/managing the Property and could therefore commit an offence under section 72(1).

Offence Under Section 72(1) Housing Act 2004

44. The Tribunal was not provided with any evidence that the 2nd and 3rd Respondents had been convicted of the offence of control or management of an unlicensed HMO under section 72(1) Housing Act 2004, and therefore the Tribunal had to be satisfied beyond reasonable doubt that this offence was made out before the Tribunal could consider whether or not to make a rent repayment order.

45. For the reasons set out above the Tribunal found that the 2nd and 3rd Respondents were the people having control or managing the Property, and that the Property was an HMO that did not have a licence.

46. The Tribunal therefore found beyond reasonable doubt that the Property was an HMO that required a mandatory licence but that for the Relevant Period the Property was not licensed. The 2nd and 3rd Respondents were the people in control or management and therefore the offence under section 72 (1) Housing Act 2004 was made out.

47. That being the case, the Tribunal then had to consider whether or not the 2nd and 3rd Respondents had a reasonable excuse.

Reasonable Excuse

48. The Respondents had to establish a reasonable excuse defence for having control of or managing an HMO which was required to be licensed to the lower standard of proof, namely on a balance of probabilities. Although the 2nd and 3rd Respondents had not provided any evidence to the Tribunal, the Tribunal considered whether they would have a reasonable excuse.

49. It would be possible for the 2nd and 3rd Respondents to submit that they had appointed a managing agent to make the necessary licensing arrangements. However, the 1st Respondent's evidence to the Tribunal was that they were responsible for day-to -day management and that the absence of an HMO licence was a matter related to the Property's ownership and management. The Tribunal was not provided with any agreement as to the extent of the 1st Respondent's duties, however the Tribunal accepted the evidence of the 1st Respondent and was not satisfied, on a balance of probabilities, that the 2nd and 3rd Respondents had a reasonable excuse because they had appointed an agent.

50. The Tribunal also considered that the Property did have a selective licence, albeit that this was the incorrect licence. Whilst the Tribunal acknowledged that licensing can be complex, it would be for the 2nd and 3rd Respondents to be satisfied that they had the required licence for the Property. The Tribunal was therefore not satisfied on a balance of probabilities that the 2nd and 3rd Respondents had taken sufficient steps. The Tribunal noted that no matter how genuine a person's ignorance of the need to obtain a licence is, unless their failure was reasonable in all the circumstances, their ignorance cannot provide a complete defence. The Tribunal therefore did not accept that sufficient inquiry had been made to determine the correct licence for the Property and therefore found that a reasonable excuse was not made out.

Should the Tribunal Make a Rent Repayment Order (RRO)?

51. Section 43 Housing and Planning Act 2016 provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO award is therefore discretionary. However, because the offence was established the Tribunal found no reason why it should not make an RRO in the circumstances of this application against the 2nd and 3rd Respondents.

Ascertaining the Whole of the Rent for the Relevant Period

52. The Applicant was seeking to recover rent paid of £10,350 for the period between 4 March 2022 to 24 February 2023. The Tribunal accepted the Applicant's evidence of payment set out at pages 77 to 85 of the Applicant's bundle.

Deductions for Utility Payments that Benefit the Tenant

53. The Applicant told the Tribunal that she paid rent and did not pay any separate utility bills. When determining the amount of a RRO, the Tribunal has a discretion whether or not to make a deduction for utility payments. Acheampong v Roman [2022] UKUT 239 confirmed that it will usually be appropriate to deduct a sum representing utilities.

54. The Tribunal did not have before it any evidence as to the amount of utility payments that were made for the Property. The Tribunal therefore used its expertise and determined that given the number of people sharing the Property, a deduction of £1,000 would be a reasonable amount for utility payments in the absence of any other information.

Determining the Seriousness of the Offence to Ascertain the Starting Point

55. The Tribunal had to consider the seriousness of the offence compared to other types of offences for which a RRO could be made, and also as compared to other examples of the same offence.

56. In determining the seriousness of the offence, the Tribunal adopted Judge Cooke's analysis in Acheampong v Roman [2022] that the seriousness of the offence could be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house would generally be less serious. However, the Tribunal had to consider the circumstances of this particular case as compared to other examples of the same offence.

Conduct of Landlord and Tenant

57. The Applicant identified the following issues as relevant considerations for the Tribunal namely:

    1. Fire within the Property
    2. Carbon Monoxide
    3. Rodents at the Property
    4. Issues with boiler and hot water.
    5. Deposit protection
    6. Leaks and mould

Fire at the Property

58. The Applicant gave evidence to the Tribunal that on 23 February 2024 a fire broke out in flat 28a of 28 Osborn Street. The Applicant was in the Property at the time and had to escape from the 3rd floor using the only route available, which took her to the source of the fire in the flat

below as there were no other fire escape routes. The Applicant told the Tribunal that in the fire she lost 90% of her belongings and found this to be an extremely distressing event.

59. The Applicant produced within her bundle a report from the London Fire Brigade which confirmed that the fire was caused by an electric bike charger in flat 28a. At pages 99-101 of the bundle the Applicant produced a prohibition notice issued by the London Fire Brigade. The notice listed many serious fire safety breaches which therefore meant that it was unsafe for the Property to be occupied. The prohibition notice listed the following issues:

- fire separation between floors is insufficient
- the means of escape is inadequate
- fire protection for the means of escape is insufficient
- the means of giving warning in case of fire is insufficient
- escape routes are blocked or obstructed by combustible materials
- quick and safe evacuation is compromised because occupants have to pass through areas of high fire risk
- quick and safe evacuation is compromised by the presence of highly combustible materials.

The occupation of the Property was prohibited until the issues were rectified because of the seriousness of the breaches.

60. The Applicant in her evidence to the Tribunal confirmed that this incident had left her feeling very frightened and caused her significant stress and anxiety. Additionally, the Applicant confirmed that when the fire broke out only one smoke detector worked and after the fire when she returned to the Property, she found that the smoke detector in her room had fallen to the floor. Additionally, none of the smoke detectors were still working at the point the fire was extinguished. Following the fire, the Applicant was no longer able to live at the Property which meant that she lost her home.

61. The Tribunal found this fire and the lack of fire safety at the Property to be a significant aggravating factor. Whilst all of the tenants who were in the Property at the time of the fire were able to leave, it was clearly a very distressing situation which would have had a lasting impact on the occupants. The prohibition notice issued by the London Fire Brigade and the multiple breaches of fire safety regulations meant that the lives of all those occupying the Property were put at serious risk.

Carbon Monoxide

62. The Applicant referred to WhatsApp messages sent on 3 January 2023 which referred to the Applicant contacting the 1st Respondent to say that an engineer came to check the alarms and CO levels and explained that the engineer had left a note for the 1st Respondent as further

investigation was needed as to why the alarm went off. It was not until 5 January 2023 that a message from the Applicant confirmed that the boiler and cooker had been checked and seal on the CO extractor was replaced.

63. The Tribunal found this to be an aggravating factor given the danger of carbon monoxide being undetected in premises.

Rodents at the Property

64. The Applicant gave evidence to the Tribunal that mice and rats were present in the kitchen for most days during her tenancy. When she reported this to the 1st Respondent she was told to buy a mouse trap. The Applicant did so but was not reimbursed for the cost of the trap.

65. The Tribunal found this to be an aggravating factor and one that should have been dealt with by the Respondents.

Issues with Boiler and Hot Water

66. The Applicant gave evidence to the Tribunal that there was an intermittent water supply which often didn't work at all or was very low pressure. Additionally, it was either boiling hot or freezing cold. The Applicant exhibited Whatsapp messages which detailed the many messages that had been sent that related to the boiler not working.

67. The Tribunal accepted the Applicant's evidence and found that the issues with the boiler and hot water were aggravating factors.

Deposit Protection

68. Whilst the Applicant confirmed that she did receive her deposit back 24 hours after she requested it; however, her deposit had not been protected and she did not receive any deposit protection information. The Tribunal accepted this evidence and found that this was an aggravating factor.

Leaks and Mould

69. The Applicant confirmed that she experienced multiple leaks from the ceiling in her room from the balcony above. Included within the Applicant bundle at pages 110 and 111 were photographs of the water leak. The Applicant told the Tribunal that although she reported this she was told by the 1st Respondent not to worry. Additionally, she stated that she reported mould multiple times but no action was taken by the Respondents and she was left to treat the mould herself.

70. The Tribunal accepted the evidence of the Applicant and found that these were aggravating factors.

Financial Circumstances of 2nd and 3rd Respondents'

71. The Tribunal was not presented with any evidence as to the 2nd and 3rd Respondent's financial circumstances.

Whether the 2nd and 3rd Respondents' have been convicted of offence

72. No evidence was presented to the Tribunal that the 2nd and 3rd Respondents had any convictions identified in the table at section 45 Housing and Planning Act 2016.

2nd and 3rd Respondents' Conduct

73. The Respondents did not provide any evidence to the Tribunal and therefore the Tribunal was limited in its analysis. The Tribunal recognised that the Applicant was provided with living accommodation however, this had to be seen in the context of the findings in this decision.

Applicant's Conduct

74. The Tribunal was satisfied that the Applicant had paid rent on time and dealt appropriately with any issues that she needed to raise about the Property.

Quantum Decision

75. Taking all of the factors outlined above into account, the Tribunal found that this licensing offence was not the most serious under the 2016 Act. The Tribunal concluded that the starting point for an offence of this nature would be 60%. However, taking the factors of this particular case into account, and in particular the fire which ultimately led to the London Fire Brigade issuing a prohibition Notice to prevent the Property from being occupied, the Tribunal increased this amount to 90%.

76. The Tribunal therefore reduced the rent repayment figure by 10% and ordered that the Respondent pay 90% of the amount claimed, less a deduction for utilities of £1,000.

Total Claim - £10,350
Less utilities - £ 1,000

90% of which gives a **total amount of £8,415**

77. The Tribunal ordered that the payment be made in full within 28 days.

Application Fees

78. Given that the Tribunal made a RRO, the Tribunal exercised its discretion to order that the Respondent must pay the applicant £320 in respect of Tribunal fees. This amount was to be paid within 28 days.

Judge Bernadette MacQueen **Date: 12 August 2024**

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.

2. 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.

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

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.