FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HMG/2024/0023**
Property	**:**	**596A High Road Leytonstone, London, E11 3DA**
Applicant	**:**	**Oleg Puskins**
Representative	**:**	**In person**
Respondent	**:**	**Ali Ahmadi-Moghaddam and Khadijeh Ahmadi-Moghaddam**
Representative	**:**	**Second Respondent in person representing both Respondents**
Type of application	**:**	**Application for a rent repayment order by tenant – sections 40, 41, 43, & 44 Housing and Planning Act 2016**
Tribunal members	**:**	**Judge Sarah McKeown** **Mr. A. Lewicki BSc(Hons) FRICS MBEng**
Date and Venue of hearing	**:**	**15 October 2024 at 10 Alfred Place, London, WC1E 7LR**
Date of decision	**:**	**17 October 2024**

DECISION

Decision of the Tribunal

(1) The Tribunal is satisfied beyond reasonable doubt that the First Respondent landlord committed an offence under Section 95(1) of the Housing Act 2004

(2) The Tribunal has determined that it is appropriate to make a rent repayment order against the First Respondent only.

(3) The Tribunal makes a rent repayment order in favour of the Applicant against the First Respondent, in the sum of £8,522.13, to be paid within 28 days of the date of this decision.

(4) The Tribunal determines that the First Respondent shall pay the Applicants an additional £300 as reimbursement of Tribunal fees to be paid within 28 days of the date of this decision.

Introduction

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") in the sum of £12,600 for the period 1 January 2022-31 December 2022.

Application and Background

2. By an application dated 24 January 2024 (A42) the Applicant applies for a Rent Repayment Order("RRO") and asserts that the Property falls within the London Borough of Waltham Forest's Selective Licensing Scheme, which requires all property to be licensed, but that it was not licensed until 28 April 2023 (albeit an application was made on 6 February 2023), which is an offence listed in s.40 Housing and Planning Act 2016 and under s.95(1) Housing Act 2004. It is said that Respondents had committed an offence of having control or management of an unlicensed House in Multiple Occupation ("HMO") for failing to have a licence for First Floor Front Flat, 596a High Road, Leytonstone, E11 3DA ("the Property").

3. The Property is a one-bedroom flat in a converted house with three self-contained flats over two floors (above the ground floor).

4. The Tribunal has seen a tenancy agreement (A51) which is dated 16 July 2018, which states that the landlord is the First Respondent and the tenant is the Applicant as well as Miss. Daniela Kinsteine. The term was given as 6 months, beginning on 16 July 2018 and the rent is £1,050 per calendar month, due on 16th day of the month. A deposit of £1,050 was payable and noted as received.

5. By 2022, the only tenant was the Applicant. There is a letter (A55) dated 12 December 2022 from the First Respondent confirming that the

Applicant lives at the Property pursuant to a tenancy agreement dated 16 July 2018, paying £1,050.

6. On 26 March 2024 the Tribunal issued Directions (A30) for the determination of the application, providing for the parties to provide details of their cases and the preparation of a hearing bundle. The directions order states that the Tribunal highlights the following facts (as asserted by the Applicant) which the parties may wish to address in their submissions:
(i) On 16 July 2018, Mr Ali Ahmadi-Moghaddam granted the Applicant an assured shorthold tenancy of the flat at a rent of £1,050 per month.

(ii) Rent payments made on 21 January to 28 July 2022 were paid to Mr Ali Ahmadi-Moghaddam.

(iii) Rent payments made on 28 August to 23 December 2022 were paid to Ms Khadijeh Ahmadi-Moghaddam.

(iv) On 6 February 2023, an application was made for a licence. A licence was granted on 28 April 2024 (should be 2023). A landlord would have a defence from the date on which an application for a licence was made (section 95(3)(b) of the 2004 Act).

7. The directions order also states the following:

(1) The Applicant has provided two title registers from "gov.uk":

(i) The Title Register for the Leasehold interest (AGL444251) records Rufaidah Bloomfield as the proprietor (Entry Date: 17 May 2018);

(i) The Title Register for the Freehold interest (AGL418952) records Khadijeh Ahmadi-Moghaddam; Ceri Hine and Carl Stimpson as the proprietor (Entry Date: 6 April 2006).

These are not Official Copy of Register of Title issued by HM Land Registry and the Applicant should seek to obtain these.

(2) From his letter of 20 January 2024, it seems that the Applicant seeks to put his case in two ways: (a) Mr Ali Ahmadi-Moghaddam was the landlord named on his tenancy agreement; and/or (b) Mr Ali Ahmadi-Moghaddam was acting as undisclosed agent for Ms Khadijeh Ahmadi-Moghaddam.

(3) The Applicant must prove that the offence was committed in the period of 12 months ending with the day on which the application was made (section 41(2) of the 2016 Act). He must therefore prove that an offence was committed on or after 25 January 2023 and that he was in occupation of the flat on those dates.

(4) Provided that the Applicant is able to prove that his application was made in time, section 44(2) of the 2016 Act affords him the choice for a RRO of "a period, not exceeding 12 months, during which the landlord was committing

the offence". The Applicant seeks a RRO for the period 1 January 2022 to 31 December 2022.

Documentation

8. The Applicant has provided a bundle of documents comprising a total of 111 pages (references to which will be prefixed by "A__"). The Applicants' bundle include: Applicants' statement of case (A3); witness statement of Ms. Richards (A210); rent calculation (A17); witness statement of Ms. Guner (A18); letter to the Tribunal (A67); witness statement of Ms. Kroll (A224). There is some "without correspondence" in the bundle. The Tribunal indicated at the start of the hearing that it had not read it. The Applicant invited the Tribunal to read it. The Second Respondent stated that her "offer" was redacted and said that the Tribunal could look at all the documents in the bundles provided.

9. The Respondents have provided a bundle of documents comprising 92 pages ("R__"). The Respondents' bundle includes the "Respondents' Joint Response to Applicant's Statement of Case" (R3); photographs of the Property (R9), licence in the name of the Second Respondent (R14), letter from the Second Respondent dated 7 March 2023 (R27) with attachments, letter to the Second Respondent dated 24 April 2024 (R40) and reply from the Second Respondent (R46) with attachments, text messages (R63-76, R82-84) witness statement of Vasil Nabolli (R85), bank statements of the First Respondent (R90-92).

10. There is also an "Applicant's Reply to Respondents' Statements" comprising 47 pages ("AR_") which includes, among other things, the Applicant's Defence in the possession claim (AR30) and Universal Credit documents (AR45).

11. Finally, there is a "Respondents' Second Response" comprising 30 pages ("RR_") which includes the "Respondents' Second Joint Response to Applicant's Reply" (RR3), Adjudication Decision (RR23).

12. The Tribunal has had regard to these all these documents.

The Position of the Parties

13. The Applicant's Statement of Case contends, in summary, as follows:

14. The Property is a one-bedroom flat in a house above the ground floor with three self-contained flats over two floors, sharing a common entrance. The ground floor property is a separate, independently owned, unit. The Property is in the London Borough of Waltham Forest and the street in which it is situate falls within the borough's Selective Licensing scheme, which has been in operation since 1 May 2020 and which remains in force until 30 April 2025.

15. The Applicant occupied the Property from 16 July 2018. There was no licence in place until 28 April 2024.

16. A RRO is sought from 1 January 2022-31 December 2022 in the sum of £12,600, being 12 months' rent paid at £1,050 per month.

17. The First Respondent is the Mr. Ali Ahmadi-Moghaddam, who is named as "the Landlord" in the tenancy agreement. It is said that a copy of the Office Copy Entries will be provided before the hearing (they were provided in the Applicant's Reply to Respondents' Statements (AR16-19).

18. The application states as follows:

19. Ms. Khadijeh Ahmadi-Moghaddam is the owner of the Property and acts as the First Respondent's agent (reliance is placed on the rent increase notice).

20. The First Respondent received all rent payments from the start of the tenancy, including January 2022-July 2022 and, at the First Respondent's request, the Second Respondent received all the rent payments from August 2022-December 2022.

21. The Respondents are professional landlords, letting multiple properties and they were aware of the need to licence the Property. Further. After a conversation with the local authority's Environmental Health Enforcement Officer, it appeared that of the three flats the Respondents are letting at 596A High Road, the Top Flat was licenced as required.

22. The Property is in a bad state as the Respondents did not maintain it, requiring involvements from the local authority to address the disrepair.

23. The Respondents "punished" the Applicant with "Section 21 eviction for exercising tenant's rights by asking LBWF to intervene regarding disrepairs in the property".

24. The Respondents' Joint Response to Applicant's Statement of Case states, in summary, as follows:

25. The property at 596 High Road is a freehold building split into two leasehold properties – 596a on the first and second floor and 596b on the ground floor. 596a is split into three self-contained flats, of which the First Floor Flat Front (i.e. the Property) forms part. The freehold owners of 596 High Road are Ceri Hine, Carl Stimpson and the Second Respondent. Ceri Hine and Carl Stimpson are the leasehold owners of 596b. From 1 January 2022-31 December 2022, Rufaidah Bloomfield was the leasehold owner of the Building. The Respondents acted as managing agents on behalf of Mr. Bloomfield. It is said that a RRO can only be made against the owner/immediate landlord or the property and not the managing agent – the First Respondent manages the Property on behalf of the owner; the Second Respondent jointly owns the freehold of the building but did not own the leasehold interest during the relevant period and she was not the owner/landlord of the Property. It is admitted that the Respondents managed an unlicensed property during the relevant period, but they were unaware that they were committing an offence. The legal standards of repair, maintenance and legal obligations were met. On 24 January 2023, the local authority emailed the Second Respondent informing her of the requirement for a licence and an application was made. The Second Respondent is the licence holder.

26. It is said that the failure to licence is a lesser offence that did not cause any harm to the Applicant. The Property was in good condition and not dangerous (reference it made to *Aytan v Moore* [2021] UKUT 27 (LC). The Respondents are not professional landlords or agents. On 11 January 2023 Tasha Reid from LBWF visited the Property and on the 24 January 2023 provided a post inspection report received by the Second Respondent on 15 February 2023. The Second Respondent responded on 7 March 2023. On the 13 March 2023, the local authority reinspected the Property and following that visit, on 15 March 2023, the local authority informed the Second Respondent that they "*can confirm the works have been completed and the tenants are extremely happy"*. On 24 April 2024, the local authority wrote to the Second Respondent R2detailing "*deficiencies*" but not disrepair or hazards. The Second Respondent responded on 8 May 2024. There had been no response from the local authority.

27. The Respondents then deal with the possession proceedings.

28. The document goes on to confirm that the Property did suffer from water leakage during rainy weather. It is admitted, the Applicant did report the problem. It is said that in all instances the roof was immediately inspected and remedied (except during COVID where there was a slight delay) but it took several contractors to inspect the roof and parts of the roof were replaced, this is because the Property is on the first floor, with a flat immediately above so finding the source of the leak was difficult. The rent was reduced temporarily. On 5 November 2922, the Applicant told the Second Respondent that there was no leak and he hoped it was fixed. There was then no further report. It is said that a contractor visited the Property on 19 February 2023 but access was not given and reference is made to *Awad v Hooley* [2021] UKUT 55 (LC) and *Kowalek v Hassanein Ltd* [2021] UKUT 143 (LC).

29. It is said that the gas meter is shared with the second floor flat and the electricity meter is shared with the second floor flat and the first floor flat rear. It is admitted that the Applicant has requested a separate meter be installed. It is said that this was not essential.

30. The document then details some attempts to settle the dispute.

31. In relation to quantum, the Respondents say that the Applicant is required to provide calculations of universal credit/housing benefit payments made. The Applicant's calculation is said to be inaccurate and insufficient.

32. It is said that the Applicant does not pay the water rate and has never done so since residing at the Property. The water rate payable is £561.55 per annum for the entire Building.

33. Submissions are made as to the seriousness of the offence. It is said that the Property is not a HMO. Prior to the local authority's involvement, a comprehensive fire safety system was already installed at the Property. The Property was in good condition and in a licensable. The eviction was not retaliatory and reference is made to the fact that a possession order was made.

34. It is said that there was no evidence of damp/mould.

35. Reference is made to the Applicant's failure to leave the Property after a possession order had been made.

36. The First Respondent is said to be a 74 years old man with Alzheimer's and severe diabetes, who is entirely dependent on his children and is currently in financial hardship – reference is made to the attached bank statements .

The Hearing

37. The Applicant attended and represented himself.

38. The Second Respondent attended and represented herself and also represented the First Respondent, who did not attend.

39. At the start. The Tribunal raised an issue in respect of A29 – Judge McKeown (sitting as a Deputy District Judge) had made an order restoring the claim for possession. Neither party had any issue with Judge McKeown continuing to sit on this application.

40. The Applicant started by referring to documents (R4, para. 16 and A69) confirming that the application for a licence was only made on 6

February 2023. It was said that this showed that, during the relevant period, the Respondents were managing an unlicensed property. Both Respondents received the rent and the First Respondent was listed as the landlord on the tenancy agreement. Both Respondents were regularly visiting all three flats in respect of maintenance issues. Both of them were involved in managing the Property.

41. It was said that the Respondents were trying to "shift" the blame for issues on to the Applicant or dismissing the local authority's complaint as irrelevant.

42. Reference was made to AR5 and it was said that selective licensing was introduced in 2015 in Waltham Forest, it was renewed in 2022 and so it should not be "new" to any landlord in the borough. The Respondents were trying to dismiss or downplay the lack of a licence.

43. The Respondents had claimed financial hardship, but had provided zero independent evidence or tax returns, so it was not verifiable.

44. In respect of Universal Credit, the Applicant referred to his calculation at A17. He said that he received about £200 in January 2023. He said that he probably received £1,400 (total) in January 2022. He referred to AR45. He said that in 2022 he received 31,049.98. He got paid in January but the payment was for December 2021.

45. The Applicant disputed the repair of the roof. In the possession claim, he tried to argue retaliatory eviction, but there was no Improvement Notice. Although it was not the first time that the local authority had attended the Property for disrepair issues.

46. The Respondents were not only managing the Property, but also the others in the building.

47. The Applicant was asked why he had not moved out of the Property when notice was served. He said that initially he wanted to show that the eviction was retaliatory. Then, after the hearing, he was not working and it took him some time to find another place to live. He was claiming Universal Credit which made it more difficult. The landlord said that the Applicant had to give notice and withheld the deposit.

48. The Applicant was asked how long the roof leak had been ongoing and what effect it had had on him. He said that his teenage niece had come to live with him for family reasons. When he was shown the Property, it was not in ideal condition, but he was told that if he needed to repair anything, he could deduct it from the rent which he did. In the autumn (2019) the leak(s) started (in the kitchen and other rooms). He reported it and it was clear that they were well aware this was an issue. When it was raining the hole would get bigger as would the streams of water. He sent videos of it, the

Respondents would send someone, a patch would be applied and sometimes it would get better for a month or two, but sometimes it did not. It went back and forth for 5 years. He said that he had to normalise the situation, so his niece did not feel he was living in a slum. She slept in the bedroom and he slept in the living room – he dealt with the leaks. In the middle of the night, he would have to get out of bed at 3am and put buckets on the sofa or some other kind of protection. He said that after a few years, he got used to it.

49. The Tribunal asked the Applicant about the deposit. The Applicant said that the decision was that the landlord could keep the deposit as he should have given notice.

50. He referred to the photographs of the leak at A108 on (and the videos, which would not play for the Tribunal).

51. The Second Respondent then asked the Applicant some questions.

52. It was put to the Applicant that he and the Respondents had not had any arguments. He said that he was told that if he complained, he would be evicted.

53. It was said that there was not leaks everywhere. It was said that at the start, there was water in the bedroom but this was fixed. The photographs were of the living room. Above the living room was another flat and to ascertain where the water was coming from was not an easy job.

54. The Tribunal asked the Second Respondent how long she said that the leaks were ongoing. She said that after Covid, the Applicant contacted the First Respondent and discussed the water leak, they employed contractors and they would be fixed and then they asked and were not there were no leaks, but after a while it came back. After Covid, they determined to fix the issue and hired several contractors and they resolved the issue. In 2022, when the Second Respondent asked the Applicant, he said that the issue was resolved and since then there had not been any complaint. When she visited in January 2023, he said that it was all fine so as far as the Second Respondent was concerned, the issue was resolved. The Applicant said that he had not reported any leak after the s.21 notice but nothing had changed.

55. The Second Respondent referred to RR16 and said that the s.21 notice was a year later. She said that as far as she and her father were concerned, the issue was fixed. The Applicant was asked in January 2023 how it was, and he said it was fine.

56. The Applicant was asked about when he started looking for an alternative property. He said initially, he did not think the s.21 notice was valid (retaliatory eviction) but he started looking when he got back from court. It took 3-4 months to find somewhere.

57. He confirmed his niece had moved out in about September 2021 but she had now come back.

58. It was put to him that, apart from the roof, he was quite happy living at the Property. He said that the local authority had multiple documents about disrepair and he had to live in those conditions until they got involved. He said the evidence showed he was not happy living there. He referred to the letter at R22. In respect of that letter, the Second Respondent relied on her response at R27.

59. It was put to the Applicant that he time to move out but did not. He said that his focus was his niece and providing stability for her.

60. The Second Respondent then made submissions as follows:

61. A RRO could only be made against the owner of a building. The Second Respondent confirmed that she received rent during 2022 but her control was directed from the First Respondent and the owner. She said that she did not do anything of her own accord. She said that she did not have full control. She said that both Respondents were managing agents for all three properties.

62. The Tribunal asked her if she/the First Respondent were being paid for their management of any of the flats. She said they were no and it was a family arrangement. She said that the First Respondent was quite elderly and she helped him out a lot. At the start of the tenancy, the Applicant dealt with the First Respondent but she helped a lot.

63. The Second Respondent was asked who she said had control of the Property. She said that it was still her father and she still went to ask him questions. She was asked if it was accepted that her father was the landlord, and she agreed that he was. She said that she agreed that she and her father did manage the Property in terms of control, and that they did both manage it, but her father controlled it. She said that the rent payments switched to her in August 2022 to reflect that she was more involved. She rent was passed on to her father, however.

64. The Second Respondent said that the Applicant lived on the first floor, there was a second floor flat and there was leaking (in 2022) but it was resolved. The local authority said that the tenant of the first floor flat was happy. That tenant had moved out and had sent a message saying she was happy with the management of her flat (the Second Respondent read a message from her). In response to that, the Applicant said that they (he and the tenant of the first floor flat) were happy that the works were done, including installation of an outside door. They had waited a long time and things were done once the local authority were involved. He said they were happy they were done. He said that he assumed the message was a courtesy as

that tenant had invited the local authority to visit to deal with the disrepair, and that was why Ms. Rei came to inspect.

65. The Second Respondent admitted there was a roofing problem but she said that there was a certain amount of exaggeration in terms of the Applicant and his enjoyment of the premises, it would have been affected but the issue was resolved as far as she was aware. She referred to the photographs taken before the Applicant moved out. She said that there were communal issues, such as the front door, but that was changed quickly and they had cooperated with the local authority.

66. The Second Respondent said that as soon as they had applied for a licence, it was given to them (A23). The condition of the Property was such that a licence was granted. Generally, Ms. Reid had no issues with the Property. There were some issues about communal areas, but they were dealt with quickly. There was an issue with an out-of-date gas certificate being provided, but this was remedied.

67. When asked why no earlier application had been made, she said that they did not know that a licence was required. The estate agent had applied for a licence for the top floor flat, the Second Respondent's brother was involved with that. There was correspondence in the Respondents' bundle between the estate agent and the local authority. The Second Respondent said that it was a "bit of a mess". She said that she was not sure what was happening. As soon as the local authority told the Respondents about the need for a licence, they applied. The Respondents had to intervene in respect of the top floor flat.

68. The Tribunal asked about the involvement of the Estate Agents. The Second Respondent said that the estate agents were managing the top floor flat and they liaised with the local authority in about 2022.

69. The Second Respondent said that generally the Property was in good condition. There was some disrepair but it was fixed when the local authority brought it to their attention. The Respondents' conduct was good. The certificates (gas, electric) were all in existence, the only think that was missing was the licence. The Respondents were up to date with the legal duties even before the local authority got involved. The only issue was with the communal area.

70. The Second Respondent relied on her response at R40 to the letter at R46.

71. The Applicant asked the Second Respondent about the inspection by the local authority (by Ms. Reid). The Second Respondent said that the local authority did not force them to do anything, if they did, they would have served a notice. It was all informal. She said that the local authority was not impartial and had its own agenda.

72. The Second Respondent agreed that she applied for a licence after the local authority came to inspect the Property.

73. The Second Respondent confirmed that her father managed the Property and she helped him – she did all the administration for him. She agreed she was at the property when the Applicant was shown around.

74. The Second Respondent was asked if the First Respondent knew of the requirement to have a licence, she said he did not, if he did, he would have told her, and she would have looked into it.

75. The Second Respondent said that the s.21 notice was not retaliatory – if it were, the Respondents would not have got a possession order.

76. The Second Respondent's rent was not increased since start of the tenancy agreement for a long period of time. If the Respondents were only interested in monetary gain, it would have been. It was only increased in line with the cost of living crisis and interest rates going up, mortgages going up. It was only increased by £50. When the increase was raised, the Applicant got upset but he did not say he would seek advice about the repairs, he said he was going to seek advice. She left it with him to come back to her. He pushed for her to serve formal notice about the increase. She did not want the "headache" so she decided to serve a s.21 notice. The rent was increased, but no by the 5% originally requested. It took so long to get possession, so a s.13 notice was served. The Applicant did not appeal it, so this implied he thought it was a reasonable rent. It was not retaliation for the repairs. At the possession hearing, the Applicant said that he had not received the gas safety certificate but he had signed it. This was what the court focused on. If the eviction had been retaliatory, the court would not have given possession.

77. In respect of the deposit, it was in a custodial scheme. It was given back to the DPS and the adjudicator agreed with the Respondents' position and ordered it to be given back to them. There was about 3331 outstanding on what the adjudicator said they were entitled to. She asked the Tribunal to deduct this from any order in favour of the Applicant – the Tribunal said that it did not have jurisdiction to order a set off (but it could take it into account in terms of conduct and in any exercise of discretion as to refund of fees). The adjudicator's response was at RR24.

78. In terms of the calculation of Universal Credit, the Applicant had not provided any statement for 2022 (only 2023). The Second Respondent questioned the Applicant's calculation and referred to Government guidance, but she could not say what her alternative figure was.

79. In summary, the Second Respondent said that the lack of a licence was an oversight. All the other documents were provided. The licence was granted quickly. The Applicant made it seem that the local authority was always at the Property – they were involved in 2023, they inspected and were

happy, there were no issue with the Property, the roofing was not addressed, the water leak was not addressed. The Applicant was just relying on deficiencies pointed out by the local authority, but they were not hazards in the way he characterised them. The role of the local authority was not as extensive as the Applicant made out.

80. In terms of the meters, it was one payment for all the flats, and there was no issue with that. The tenants did ask for separate meters and we said they were not essential, but they would consider it in the long term. There was a disputed between the Applicant and the First floor flat, and they asked everyone to pay £20 per month. The Applicant had an issue and left a hostile note. The tenants had a conversation. The tenants could calculate usage (RR29). The Applicant did raise the issue of separate electric meters before the Second Respondent explained that it was not an essential issue.

81. The Tribunal was asked if there was anything she wanted to say about financial hardship. She confirmed that the First Respondent was not in a good financial position because of illness. There was nothing official putting anyone else in control, but he relied on his children. He was no longer managing his finances. He did not receive anything apart from what his children gave him.

82. The Second Respondent owned a Property in Tower Hamlets, which did not have selective licensing. That was currently rented out at £1,800pcm. That was the Second Respondent's only income. The Property and the other two flats were not currently rented as the Second Respondent wanted to renovate them. One man was living there but he was not paying rent, he was there for safety and security.

83. The First Respondent did not own any property and he lived with family. The Second Respondent lived with her husband in a property he owned. He works.

84. The flat in Tower Hamlets was mortgaged.

85. The Applicant then asked the Second Respondent some questions as follows:

86. She was asked if all the meters were working and she said that as far as she was aware, they were.

87. She was taken to RR29 and asked about the figure on the first meter, why it was showing that amount. She said that she could not answer that. She was asked how the tenants would be able to calculate their usage. She said that even if the meters were not working, they could put a system in place to pay £20pcm which had worked without complaint for other residents.

88. The Second Respondent confirmed that she did manage the Property and receive rent but said that it was under the First Respondent's direction.

89. The Second Respondent confirmed that she was not sure how the tenants could apportion the gas usage.

90. The Second Respondent was asked why she had not provided verifiable evidence of financial hardship. She said that she did not think that it was required, and it was confidential. She said that if the Tribunal wanted to hear about it, she could give evidence about it. She said that she had provided her father's bank statements and she had access to her and her father's bank accounts.

91. The Tribunal said to the Second Respondent that it was for her to mention anything she wanted the Tribunal to know about financial hardship. That the Tribunal did not want to pry into private matters, but that if she wanted the Tribunal to take something into account, she had to mention it. The Applicant said that from the rent she received from the property in Tower Hamlets, she only had about £200-£300pcm over after service charges and the mortgage. The Applicant asked her if evidence about that was in the bundle and she said that she thought it was private. She said that neither she nor her father was in a position to pay any order from the Tribunal in one go or in a short period of time.

92. When asked about the rental income from the Property and other two flats in the building, the Second Respondent said: the Applicant lived at the Property from 2018 until June 2024. The top floor flat was rented from late 2022 until July 2024 at about £1,175pcm. The first floor rear flat was rented from about mid-2022 until August 2024 for £900pcm. There had been other occupants during the Applicant's time at the Property, but the Second Respondent did not have details of when.

93. The Applicant asked the Second Respondent why issues at the Property (R74) were not dealt with. The Second Respondent said that she thought that the Applicant was "having a rant".

94. Both parties were then asked if there was anything new they wanted to raise. The Second Respondent said that the property (and the building) had nothing to do with the commercial premises next door on the ground floor and that they had always cooperated with the local authority.

Statutory regime

95. Section 56 of the Housing Act 2004 enables a local authority to designate areas subject to additional licensing. There is no dispute that the

Property is in a ward of the London Borough of Waltham Forest that has been designated (and was at the material time) for selective licensing pursuant to s.80 Housing Act 2004.

96. The additional licensing criteria provided that the Property required a licence in order to be occupiable by a single household.

97. So far as is relevant to the present application, the 2016 Act provides 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 an unlicensed house
…			

98. Section 40 gives the Tribunal power to make a rent repayment order where a landlord has committed a relevant offence. Section 40(2) explains that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority).

99. Section 41(1) Housing and Planning Act 2016 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a specified offence. Section 43 permits the Tribunal to grant a RRO is satisfied beyond reasonable doubt that a landlord has committed an offence under section 72 (1) Housing Act 2004 by failing to obtain a licence.

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);

...

100. Under section 43, the Tribunal may only make a rent repayment order if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter in relation to the commission of an offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

101. It has been confirmed by case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.

102. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, s.44 applies in relation to the amount of a rent repayment order, setting out the maximum amount that may be ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the Respondents were committing the offence. This aspect is discussed rather more fully below.

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.

If the order is made on the ground that the landlord has committed	The amount must relate to rent repaid by the tenant in respect of
...	
An offence mentioned in row 3, 4, 5,	A period, not exceeding 12 months, during which the landlord was

6, or 7 of the table in section 40(3)	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 repaid 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.

Determination of the Tribunal

103. The Tribunal has considered the application in four stages-

(i) whether the Tribunal was satisfied beyond reasonable doubt that the Respondents (or either of them) had committed an offence under section 95(1) of the 2004 Act in that at the relevant time the Respondents (or either of them) was a person who controlled or managed an unlicensed house;
(ii) whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.
(iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
(iv) Determination of the amount of any order.

Was the Respondent(s) the Applicant's landlord at the time of the alleged offence?

104. It is not disputed, and the Tribunal finds as a fact, that the First Respondent was the landlord of the Applicant as the Property in respect of 16 July 2018 until he moved out in about June 2024.

105. On 16 July 2018, Mr Ali Ahmadi-Moghaddam granted the Applicant an assured shorthold tenancy of the flat at a rent of £1,050 per month. Rent payments made on 21 January to 28 July 2022 were paid to Mr Ali Ahmadi-Moghaddam. Rent payments made on 28 August to 23 December 2022 were paid to Ms Khadijeh Ahmadi-Moghaddam. On 6 February 2023, an

application was made for a licence. A licence was granted on 28 April 2024. A landlord would have a defence from the date on which an application for a licence was made (section 95(3)(b) of the 2004 Act).

106. Whilst the Second Respondent is a joint freeholder and has certainly had substantial involvement in managing the Property, taking everything into account, there is no basis for finding that the Second Respondent was the Applicant's landlord. The Tribunal will deal further with whether an order can be made against her below.

Was a relevant licensing offence committed during the period 1 January 2022-31 December 2022 and by whom?

107. The Tribunal has seen title documents (A60) showing that the registered owner of the leasehold interest of 596a High Road, London E11 3DA was Rufaidah Bloomfield. The Property Register shows that a lease was granted on 16 May 2018 between the Second Respondent and another, of one part, and Rufaidah Bloomfield. The title documents also show (A63) that the Second Respondent and two others own the freehold interest. The Office Copy Entries (AR16-19) confirm that the Second Respondent jointly has title absolute in respect of the freehold interest.

108. The Tribunal applies, as it must, the criminal standard of proof (s.43(1)).

109. Section 95(1) of the 2004 Act is one of those listed in section 40 of the 2016 Act in respect of which the First-tier Tribunal may make a rent repayment order.

110. The Respondents accept that there was no licence in place in the statement of case (R6). Given that admission, the Tribunal had no difficulty in finding that there was no licence, but in any event, on the evidence (including the email from the local authority at A59 and the letters from the local authority at A69 and R12), the Tribunal would have found (applying the criminal standard) that there was no licence in place during the material period and that an application for a licence was only made on 6 February 2023 (and a licence issued on 27 April 2023). It is clear from R12 that the current selective licensing scheme had been in place since 1 May 2020 and that, under that scheme, the Property required a licence (and this is not disputed).

111. Where the Respondents would otherwise have committed an offence under section 95(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 95(4). The standard of proof in relation to that is the balance of probabilities.

112. The offence is strict liability (unless the Respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083. The intention or otherwise of the Respondent to commit the offence is not the question at this stage, albeit there is potential relevance to the amount of any award. The case authority of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) in relation to reasonable excuse held that the failure of the company, as it was in that case, to inform itself of its responsibilities did not amount to reasonable excuse. The point applies just the same to individuals.

113. The Upper Tribunal gave guidance on what amounts to reasonable excuse defence was given in *Marigold & Ors v Wells* [2023] UKUT 33 (LC), *D'Costa v D'Andrea & Ors* [2021] UKUT 144 (LC) and in *Aytan v Moore* [2022] UKUT 027 (LC):

(a) the Tribunal should consider whether the facts raised could give rise to a reasonable excuse defence, even if the defence has not been specifically raised by the Respondent;
(b) when considering reasonable excuse defences, the offence is managing or being in control of an HMO without a licence;
(c) it is for the Respondent to make out the defence of reasonable excuse to the civil standard of proof;
(d) 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 him/herself of the licensing requirements without relying upon an agent (e.g. because the landlord lived abroad).

114. The Respondents do refer to be being unaware of the need to have a licence. This does not, however, amount to a reasonable excuse.

115. The Second Respondent was involved in the application for a licence for the top floor flat, but it was the Respondents who were managing the Property (indeed, it has been admitted that they were managing all three flats). The Respondents did not assert that they used the estate agent as agent in respect of the Property. It appears that the First Respondent did rely upon the Second Respondent to act on his behalf, but taking everything into account, there is nothing which the Tribunal found to demonstrate a reasonable excuse.

116. Therefore, the Tribunal determines that the failure to hold a licence at the time of the material tenancy do not objectively amount to a reasonable excuse and so do not provide a defence to the licensing offence, which the Tribunal finds beyond reasonable doubt to have been committed.

117. The Tribunal finds that the offence was committed during from the start of the Applicant's tenancy until 6 February 2023 (which is when the application for a licence was made).

118. The next question is by whom the offence was committed? The Tribunal determines that the offence was committed by the First Respondent. He was the Applicant's landlord and had control/management of the Property (and, as stated above, was managing all three flats) – he received the rent directly until August 2022; after that time the rent was passed on to him; it is asserted by the Second Respondent that she acted under his direction. He was a person within the meaning of s.95(1) Housing Act 2004, who had control or was managing the Property during the material time.

119. As set out above, at the hearing, the Second Respondent accepted (on behalf of both Respondents) that the First Respondent was the Applicant's landlord, that she and her father did manage the Property in terms of control.

120. The Tribunal therefore finds that the First Respondent was committing an offence during the period for which a RRO is sought.

121. In terms of the Second Respondent, the Tribunal determines that, whilst on the facts, she was a person being in control or management of the Property, the Tribunal cannot make an order against her. Section 40 and s.43 refers to an order against a landlord. The Applicant has cited the case of *Golsborough & Anor v CA Property Management Ltd & Ors* [2019] UKUT 311 (LC). It is noted that this was decided before *Rakusen v Jepsen* [2023] UKSC 9. In any event, it was said in *Goldsborough* at [14] that an order is made against a landlord. It is made clear that s.73 Housing Act 2004 only applies in Wales [18] and [20]. The Upper Tribunal held that there was no basis for importing the definition of "appropriate person" from the 2004 Act into the 2016 Act [29] and that [31] a managing agent that does not have a lease of the property cannot be a landlord. It does say that the landlord does not have to be the landlord of the occupier [32]-[33], i.e. an immediate landlord. In *Rakusen v Jepsen* [2023] UKSC 9 it was held that, on a true construction of s.40(2) of the 2016 Act , the "landlord under a tenancy of housing", against whom a rent repayment order might potentially be made, could only be the landlord under the tenancy which governed the relevant rent, namely the rent that was to be repaid (in a case falling withins.40(2)(a) or the rent in respect of which universal credit had been paid (in a case falling within s.40(2)(b; that, therefore, where a tenant applied under s.41 for a rent repayment order, the order could not be made against a superior landlord, who by definition was higher up the chain of tenancies than the immediate landlord under the tenancy which generated the relevant rent; that such a conclusion followed from a straightforward interpretation of s.40(2) , but was also supported by, or was at least consistent with, additional relevant interpretative factors, namely (i) the previous law on rent repayment orders under the Housing Act 2004, (ii) the purpose of, or policy behind, rent repayment orders, which was to provide an effective sanction against rogue landlords who directly benefited from the payment of rent or universal credit paid in respect of rent, (iii) the

possibility of rogue landlords avoiding rent repayment orders by interposing landlords between themselves and their tenants, (iv) the practical complexity of rent repayment orders against superior landlords, (v) other relevant statutory provisions, (vi) the consultation paper that led to the relevant parts of the 2016 Act and the Explanatory Notes to the Housing and Planning Bill as introduced in the House of Commons and (vii) the principle of statutory interpretation that a person should not be penalised except under clear law; and that, accordingly, the Court of Appeal had been right to strike out the tenants' application for a rent repayment order against the superior landlord.

122. The Applicant has also relied on *Taylor v Mina An Ltd* [2019] UKUT 249 (LC) but, having considered this case, it does not, in the view of the Tribunal, find that an order can be made against a freeholder who is not an immediate landlord and, in any event, was decided before to be the landlord of the occupier [32]-[33], i.e. an immediate landlord. Again, it was decided before *Rakusen v Jepsen*, which is a Supreme Court decision.

Should the Tribunal make a RRO?

123. Given that the Tribunal is satisfied, beyond reasonable doubt, that the First Respondent committed an offence under section 95(1) of the 2004 Act, a ground for making a rent repayment order has been made out.

124. Pursuant to the 2016, a rent repayment order "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in the *London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) as follows:

"I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order".

125. The very clear purpose of the 2016 Act is that the imposition of a rent repayment order is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

126. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making a rent repayment order.

The Tribunal determines that it is entitled to therefore consider the nature and circumstances of the offence and any relevant conduct found of the parties, together with any other matters that the Tribunal finds to properly be relevant in answering the question of how its discretion ought to be exercised.

127. Taking account of all factors, the evidence and submissions of the parties, including the purpose of the 2004 Act, the Tribunal exercises its discretion to make a rent repayment order in favour of the Applicant.

The amount of rent to be repaid

128. Having exercised its discretion to make a rent repayment order, the next decision was how much should the Tribunal order?

129. In *Acheampong v Roman* [2022] UKUT 239 (LC) at [20] the Upper Tribunal established a four-stage approach for the Tribunal to adopt when assessing the amount of any order:

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element that represents payment for utilities;
(c) consider the seriousness of the offence, both compared to other types of offences in respect of which a rent repayment order may be made and compared to other examples of the same type of offence. What proportion of the rent is a fair reflection of the seriousness of this offence? That percentage of the total amount applies for is the starting point; it is the default penalty in the absence of other factors, but it may be higher or lower in light of the final step;
(d) consider whether any deductions from, or addition to, that figure should be made in light of the other factors set out in section 44(4)".

130. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act. Therefore, the amount ordered to be repaid must "relate to" rent paid in the period identified as relevant in section 44(2), the subsection which deals with the period identified as relevant in section 44(2), the subsection which deals with the period of rent repayments relevant. The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.

131. At [31] of *Williams v Parmar* [2021] UKUT 244 (LC) it was said:

"… [the Tribunal] is not required to be satisfied to the criminal standard on the identity of the period specified in s.44(2). Identifying that period is an aspect of quantifying the amount of the RRO, even though the period is

defined in relation to certain offences as being the period during which the landlord was committing the offence".

132. The Tribunal is mindful of the various decisions of the Upper Tribunal in relation to rent repayment order cases. Section 44 of the 2016 Act does not, when referring to the amount, include the word "reasonable" in the way that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) that there is no longer a requirement of reasonableness. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on landlords and to operate as a fierce deterrent. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid and not simply any profit element which the landlord derives from the property, to which no reference is made in the 2016 Act. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. However, the Tribunal could take account of the rent including the utilities where it did so. In those instances, the rent should be adjusted for that reason.

133. In *Vadamalayan*, there were also comments about how much rent should be awarded and some confusion later arose. Given the apparent misunderstanding of the judgment in that case, on 6th October 2021, the judgment of The President of the Lands Chamber, Fancourt J, in *Williams v Parmar* [2021] UKUT 0244 (LC) was handed down. *Williams* has been applied in more recent decisions of the Upper Tribunal, as well as repeatedly by this Tribunal. The judgment explains at paragraph 50 that: "A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions."

134. The judgment goes on to state that the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal "must, in particular take into account". The Tribunal is compelled to consider those and to refer to them. The phrase "in particular" suggests those factors should be given greater weight than other factors. In *Williams*, they are described as "the main factors that may be expected to be relevant in the majority of cases"- and such other ones as it has determined to be relevant, giving them the weight that it considers each should receive. Fancourt J in *Williams* says this: "A tribunal must have particular regard to the conduct of both parties includes the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence, The Tribunal should also take into account any other factors that appear to be relevant."

135. The Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period. That is

entirely consistent with the order being one for repayment. The provision refers to the rent paid during the period rather than rent for the period.

136. It was said, in *Williams v Parmar*, by Sir Timothy Fancourt [43] that the *Rent Repayment Orders* under the Housing and Planning Act 2016: Guidance for Local Authorities identifies the factors that a local authority should take into account in deciding whether to seek a Rent Repayment Order as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. It was indicated [51] that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent. It was also said that a full award of 100% of the rent should be reserved for the most serious of cases (see also *Hallett v Parker* [2022] UKUT 165).

137. The Tribunal has carefully considered the amount of the rent for the relevant period of the licencing offence that should be awarded.

<u>Ascertain the whole of the rent for the relevant period</u>

138. The relevant rent to consider is that paid during "a period, not exceeding twelve months, during which the landlord was committing the offence".

139. The Tribunal has seen bank statements (A56) showing payments on, among the following:

21/01/22	£1,050
01/03/22	£840 (agreed that £210 could be deducted for a washing machine)
28/03/22	£1,050
28/04/22	£1,050
27/05/22	£1,050
28/06/22	£1,050
28/07/22	£1,050
28/08/22	£1,050

29/09/22	£1,939 (agreed that £20 could be deducted for cutting new key)
28/10/22	£1,050
29/11/22	£955 (agreed that £55 could be deducted for fixing leaks on bedroom ceiling)
23/12/22	£1,050

140. The deductions were, by agreement, compensation for issues concerning the condition of the premises and were applied by way of set-off. The rent paid was therefore 12 x £1,050 = £12,600. There was, however, Universal Credit paid. The Tribunal does not accept the Applicant's calculation in respect of this. On the evidence given at the hearing, a payment of the housing element of Universal Credit was paid in January 2022. The Tribunal does not have the documentation in relation to this, and must do the best it can on the documents it has. Using the document from the payment on 11 January 2023 (AR45), Universal Credit was paid in the sum of £1,049.98. This was paid in 2022 and so this is the figure that should be used – it is the rent paid in the material period. In any event, even if the Tribunal is wrong about this, it is using the same figure as for the payment in January 2023, which covered part of the rental period in 2022.

141. The whole of the rent for the relevant period is therefore £12,600 less £1,049.98 = £11,550.02.

Deductions for utilities?

142. No utilities were included within the rent save that the Respondent asserts (R7) that the Applicant did not make direct payment for water. At the hearing, the said that he was content for the water bill to be divided by 3 and an appropriate reduction made. The Respondent states (R7) that the water bill was £561.55. A third of this is £187.18 and so this amount is deducted from the total rent, leaving £11,362.84.

Seriousness of the offence

143. In *Williams v Parmar* [2021] UKUT 244 (LC) it was said that "the circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord', so the First Tier Tribunal 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 is relatively low in the scale of seriousness of mitigating circumstances or otherwise".

144. As the Upper Tribunal has made clear, the conduct of the Respondent also embraces the culpability of the Respondent in relation to the offence that is the pre-condition for the making of the Rent Repayment Order. The offence of controlling or managing an unlicensed HMO is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not regarded as the most serious of the offences listed in section 40(3).

145. In *Daff v Gyalui* [2023] UKUT 134 (LC) it was highlighted that there will be more and less serious examples within the category of offence: [49].

146. The First Respondent does not owe the Property, or any other property, and it is the Second Respondent who owns another property in Tower Hamlets. It is noted that the property is one of three Flats. It is noted that the First Respondent was also managing the other two flats and that whilst this was said to be a "family arrangement" he was in receipt of rent from all three properties.

147. The Tribunal determines that the relatively less serious offence committed by the Respondent should be reflected in a deduction from the maximum amount in respect of which a RRO could be made.

148. The Tribunal notes the Applicant's submissions at A9, but it finds that a licencing offence is at the lower end of the offences that may be subject to a RRO. The failure to have an selective licence is less serious than a failure to have a mandatory licence. The Tribunal notes, however, that it was incumbent on the First Respondent to have sufficient knowledge of the legislative and licensing requirements.

149. The Tribunal notes the Applicant's reliance on the cases of *Vadamalayan*, *Williams*, *Chan v Bilkhu*, *Hallett v Parker, Simpson House 3 Ltd v Osserman & Ors* [2022] UKUT 164 (LC), *Hancher v David & Ors* (2022) UKUT 277 (LC) (in which it was said that the offence under section 72(1) of the Housing Act 2004 is not one of the more serious of the offences for which a rent repayment order can be made) and *Acheampong v Roman* [2022] UKUT 239 (LC).

150. The starting point for the Tribunal, taking account of all the facts, is that a RRO should be made, reflecting 65% of the total rent paid for the relevant period, i.e. £7,385.85.

Conduct

151. The Applicant states that the First Respondent refused to install individual energy meters for each flat. It is said that the Applicant asked the First Respondent to address the issue an replace the shared Pay As You Go electricity and gas meters with individual meters for each flat (A97). The letter from the local authority dated 24 January 2022 (R22) does state that the issue about the meters was a deficiency and requires attention. The Second Respondent's response was that it would be "looked into". It does not appear that any action was taken by the local authority in respect of the deficiencies and its response at R38 is noted.

152. The Applicant alleges disrepair. It is accepted that there was a leak at the Property. The Tribunal notes the witness statement of Tahsin Guner (A18) as well as the letter from the local authority dated 24 January 2022 (R22) -

153. The First Respondent (through the Second Respondent) did make some efforts to carry out works: in October 2020 (A95-96, A99) but that it was still an issue in 2022 (R68-69 and the Second Respondent said at the hearing that it was confirmed on 15 March 2023 that the tenants were happy with the works. The Tribunal also notes the witness statement of Mr. Nabolli (R85).

154. The letters from the local authority dated 24 January 2022 (R22) and 24 April 2024 (R40) do mention smoke and carbon monoxide detection, fire safety equipment, emergency contact details, pests, shared street level front entrance door, communal hallways and staircases, ceilings (no ongoing leak was noted, the issue was damp plaster), external works. It also notes the response from the Second Respondent (R27) dated 7 March 2023: that smoke alarm detections were already installed and a fire alarm certificate of maintenance was attached; there was already an extinguisher on each floor in the common parts and one was installed in the Property as well, a further fire blanket had been provided; the emergency contact details would be provided (the Second Respondent told the Tribunal that it had been done); pest reports had been provided and a further one was attached; the front entrance door would be replaced/repaired (and the Second Respondent told the Tribunal that this had been done); the issues about the communal hallways and staircases would be addressed; the Applicant had said no works were required to the ceilings; the Applicant had confirmed that the leak had ceased and the paving would be replaced. The Tribunal also notes the Second Respondent's response at R46.

155. The Tribunal also notes the letter from the local authority dated 24 April 2024 (A19 – although it does not state that there is any damp or mould growth), but there was an issue, and the Tribunal has seen photographs of the

ceiling (A108-110) - it is noted that this is some time after the period for which an order is sought.

156. The Applicant alleges that the First Respondent did not fit imperforate separation between the commercial and residential properties. The Tribunal accepts what the Second Respondent says, that the commercial property is separate from the Property (R9).

157. The Tribunal notes some issue about mice at the Property (A98) but it also notes the pest reports provided.

158. The Tribunal notes that the Applicant was provided with an EPC (A77), Gas Safety Certificate (A76) and How to Rent Guide (A73, A81). The Tribunal also notes the fire certificates (R29, R49), pest report (R33), EICR (R56) and that the deposit was protected.

159. The Tribunal does not accept that the service of a s.21 notice and the seeking of a possession order by the Respondent was "retaliatory", not least as clearly that contention was rejected by the County Court in making a possession order.

160. The Tribunal does not make any adjustment in terms of the fact that the rent was not increased for most of the tenancy and that a s.13 notice was served. The First Respondent chose not to increase the rent for most of the tenancy, and then was entitled to serve a s.13 notice (A72).

161. Taking all of the above into account, the Tribunal does adjust the amount of the RRO to reflect the First Respondent's conduct, by increasing the award by 10% - i.e. the amount of the RRO will be 75% of the total rent paid for the relevant period, i.e. £8,522.13.

162. In respect of the Applicant's conduct, it is noted that he did not move out of the Property after receipt of the s.21 notice, but his tenancy did continue, he did seek to defend the proceedings (albeit unsuccessfully) and his failure to give notice was compensated in terms of the deposit. It is noted that an allegation of hostility was made. It is also said that access was not given on an occasion - the Second Respondent claims that the Applicant declined inspection of the Property in January 2023, but, without any notice, the Second Respondent knocked on the Applicant's door, accompanied by a handyman, asking to enter the Property, the Respondent was ill and asked to arrange the in inspection. The Tribunal notes the Applicant's explanation – AR8). Overall, the Tribunal does not find that there was any conduct on the part of the Applicant which would warrant adjustment of the award to be made.

<u>Whether the landlord has been convicted of an offence?</u>

163. Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the Respondent has at any time been convicted of any of the offences listed in section 40(3). The Respondent has no such convictions.

Financial circumstances of the Respondent

164. In terms of the financial circumstances of the Respondent, the Tribunal noted the matters set out above, including the fact that the First Respondent does not own a property, the rental income he will have received in the past (but none is being received now), the fact that it is said that currently he only has what he receives from his children. The Tribunal notes the bank statements provided (R90-92), but also has to note that little, other than these and the assertions made in the documents and orally at the hearing, have been provided. Taking all of this into account, the Tribunal makes no deduction, taking account of the financial circumstances of the Respondent.

The amount of the repayment

165. The Tribunal determines that, in order to reflect the factors discussed above, the maximum repayment amount identified in paragraph 150 above should be discounted by 25% (i.e. the RRO is 75% of the rent paid in the material period). The Tribunal therefore orders under s.43(1) of the 2016 Act that the First Respondent repay the Applicant the sums of £8,522.13. The Tribunal does not have any jurisdiction to order payment in instalments, but in any event, the Tribunal would not order payment by instalments even if it could, given that the Applicant would have to take action in the County Court to enforce this decision, which will take time. The Tribunal therefore orders payment of the RRO within 28 days of the date of this decision.

Application for refund of fees

166. The Applicant asked the Tribunal to award the fees paid in respect of the application should they be successful, namely reimbursement of the £100 issue fee and the £200 hearing fee. The Tribunal does order the First Respondent to pay the fees paid by the Applicants, in the sum of £300. The Second Respondent says that the Applicant still owes money (R81 – the deposit was awarded and will have discharged some of what is said to have been owed). A costs order was made in the possession claim (R77) and this has been taken into account (although the Tribunal cannot order any set off). It also takes account of the decision of the adjudicator in respect of the

deposit. Taking everything into account, including the RRO that has been made, the Tribunal does order reimbursement of the fees of £300.

Judge Sarah McKeown
17 October 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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

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

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

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