FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON//00AZ/HMF/2024/0058**
Property	**:**	**20 Fairlawn Mansions, New Cross Road, London SE14 5PH**
Applicant	**:**	**(1) Mr Didem Incegoz** **(2) Mr Jaza Syed** **(3) Mr Vincent Moystad**
Representative	**:**	**Peter Eliot of Justice for Tenants**
Respondent	**:**	**Mr Gulddeep Singh Mankoo a.k.a Mr Goldie Mankoo**
Representative	**:**	**Mr Karol Hart of Freemans Solicitors**
Type of application	**:**	**Application for a rent repayment order by tenant; Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal	**:**	**Tribunal Judge O'Brien, Tribunal Member S Mason FRICS.**
Date of Hearing	**:**	**11 October 2024**
Date of Decision	**:**	**28 October 2024**

DECISION

DECISION OF THE TRIBUNAL

(1) The Tribunal makes a rent repayment order against the Respondent in the following amounts

(i) £4241.41 to be paid to the First Applicant, Ms Incegoz
(ii) £2153.08to be paid to the Second Applicant, Mr Syed
(iii) £4,143.65 to be paid to the Third Applicant, Mr Moystad

(2) The Respondent must refund the fees paid by the Applicants in the sum of £540.

(3) The above sums are to be paid within 28 days of receipt of this determination.

BACKGROUND

1. The Respondent is the leasehold owner of the premises known as 20 Fairlawn Mansions, New Cross Road, London SE14 5PH (the Flat) a ground floor 4-bedroom flat in a Victorian mansion block on New Cross Road. The rooms in the flat were let to a succession of assured shorthold tenants who had shared use of a bathroom, kitchen and living room. The First Applicant moved into the Flat in May 2020 and still resides there. Throughout her occupancy of the flat the First Applicant shared the flat with 9 different people. Mr Sayed moved in in April 2022 and left on 17 April 2023. The Third Applicant Mr Moystad moved in in September 2021 and left on 19 April 2023.

THE APPLICATION

2. On 25 January 2024 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (HPA 2016) from the applicants for a rent repayment order (RRO) in respect of the rent paid from 18 April 2022 to 17 April 2023. The application initially also named a Stephanie Scott but subsequently she was removed from the proceedings at the request of her representatives. The Applicants assert that the Respondent committed an offence of having control of or managing an unlicenced house in multiple occupation (HMO) that was required to be licensed pursuant to an additional licencing scheme but was not licenced. The proceedings were brought against Goldie Mankoo and Guldeep Singh Mankoo however as the Respondent explained in his statement of case his given name is Guldeep but he is known by his tenants as 'Goldie'.

3. The Tribunal issued directions on 17 April 2024 and subsequently the Tribunal listed this matter for a face-to-face hearing on 1 October 2024. Both the Applicants and the Respondents complied with the directions.

THE HEARING

4. The Applicants attended the hearing and were represented by Mr Eliot of Justice for Tenants. The Respondent attended and was represented by Mr Hart. As the start of the hearing we noted that Mr Guldeep Singh Mankoo was the sole respondent

5. The Tribunal was provided with a 597 -page bundle prepared by the Applicants for the hearing, a 262 -page bundle prepared by the Respondent and a 36 -page

bundle filed by the Applicants in response. In addition we considered a skeleton argument filed on behalf of the Respondent.

Has an Offence been Committed?

6. In order to make a rent repayment order against a person under s.40 of the 2016 Act the Tribunal has to be satisfied to the criminal standard (beyond all reasonable doubt) that the person has committed a relevant offence (s.43 of the 2016 Act).

7. It is common ground that during the relevant period (5 April 2022 to 17 April 2023) the premises were occupied by 3 or 4 persons forming two or more households and sharing amenities such as a bathroom and a kitchen. It is common ground that the flat was the occupants' only residence during the relevant period. It is common ground that the premises were located in a ward within the London Borough of Lewisham (LBL) which was subject to an additional licencing scheme introduced on 5 April 2022. This required all Houses in Multiple Occupation, which are not otherwise subject to mandatory licencing, to be licenced pursuant to Part 2 of the Housing Act 2004. It is common ground that the premises were required to be licenced but were not licenced at any time during the relevant period relied on by the Applicants.

8. The Respondent accepts that the premises met the self-contained flat test set out in section 254(3) of the HA 2004 throughout the period from 18 April 2022 to 17 April 2023 in that it was occupied by more than three persons forming more than one household who resided there as their main residence. He accepts that it was located in an area which was subject to an additional licencing scheme. He accepts consequently it required a licence from 5 April 2022 until 17 April 2023 and was not licenced. The Respondent accepts that he was the person having control of the unlicenced HMO at all material times.

9. Consequently we are satisfied beyond reasonable doubt that the Respondent was a person in control of an unlicenced HMO and is guilty of an offence under s.72(1) of the HA 2004.

Reasonable Excuse

10. It is a defence to proceedings under s.72(1) if the person had a reasonable excuse for being in control of or managing an unlicenced HMO (s.72(5) of the 2004 Act). The Respondent submits that he failed to obtain a licence through oversight but does not seek to argue that this amounted to a reasonable excuse within the meaning of s.72.

Quantifying the RRO

11. The remaining issues which we therefore have to determine are;
    (i) The maximum RRO for each applicant;
    (ii) The appropriate percentage in this case.

12. Section 44(2) of the HPA 2016 provides that the RRO must relate to a period not exceeding 12 months during which the Landlord was committing the offence. Section 44(3) provides that the RRO must not exceed the rent paid during that 12-month period less any relevant award of universal credit paid to the tenant during that period.

13. The leading authority on the correct approach to quantifying a RRO is ***Acheampong v Roman* [2022]**. The Upper Tribunal established a four-stage approach which this Tribunal must adopt when assessing the amount of any order (at paragraph 20):

    a. Ascertain the whole of the rent for the relevant period.
    b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal is expected to make an informed estimate where appropriate.
    c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) an compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That percentage of the total amount applied for is then the starting point (in the sense that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
    d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4)."

14. Section 44(4) of the 2016 Act provides;

    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.

15. In *Kowalek v Hassanian Ltd [2021] UKUT 143 (LC)* the Upper Tribunal confirmed that in order to be taken into consideration when calculating the maximum RRO, the payment must both relate to the period in which the offence was committed and be made at a time with the offence was committed.

16. In *Newell v Abbot [2024] UKUT 181 (LC)* the Upper Tribunal having reviewed a number of recent authorities on the correct approach to quantification, observed at para 57

> *"This brief review of recent decisions of this Tribunal in appeals involving licencing offences illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately or by a commercial landlord or an individual with a larger property portfolio or whether the tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors which tend to justify lower penalties include inadvertence on the part of the smaller landlord, property in good condition such that a licence would have been granted without one being required and mitigating factors which go some way to explaining the offence without excusing it such as the failure of a letting agent to warn of the need for a licence or personal incapacity due to poor health"*

17. In that case the Upper Tribunal noted that the landlord was not a professional landlord and that he had had committed the offence of controlling an unlicenced HMO through inadvertence rather than deliberately. The property was in reasonably good condition during the tenants' occupation. It made a RRO equating to 60% of the net rent paid.

18. Turning to the facts of this case- The Applicants statement of case asserts that none of them were in receipt of housing benefit however at the start of the hearing the First Applicant clarified that she had received the housing element of Universal Credit for part of the 12-month period she relied on. Mr Sayed told us that he had also received Universal Credit but not the housing element. In the course of the hearing Mr Eliot provided the Tribunal with calculations showing that the First Applicant had received £1351.78 of relevant Universal Credit payments during the relevant period. He provided a calculation from the Department of Work and Pensions confirming that Mr Sayed had not received the housing element of Universal Credit during the period over which he claims a RRO. He accepted that a payment of rent made before the offence was committed could not be included in the RRO. We have made adjustments to the maximum RRO in respect of the Second Applicant as £900 of the claimed RRO related to rent he paid prior to the offence being committed.

19. The Respondent paid all gas, electric and water bills in respect of the property during the relevant period. He also paid the council tax. He also reimbursed the First Applicant for the cost of broadband connection which was used by all the tenants. He calculates that the cost of utilities and council tax for the period was £5624.77 and the cost of broadband was £567. The total for each tenant therefore is £2063.92

20. The Applicants disputed this calculation on the grounds that it was not clear that the bills supplied all related to this property, noting that this is not the only property that Mr Mankoo rents out. Mr Mankoo's response was that while he does have other tenanted properties, this is the only one where he paid any utilities or other such outgoings. We accepted his evidence.

21. The applicants also sought to argue that the Respondent's decision to pay the utilities was also of benefit to him as well as to the tenants and subsequently no deduction should be made. Mr Eliot sought to persuade us that the arrangement benefited Mr Mankoo. We to not consider that the fact that the arrangement may have made it easier for Mr Mankoo to administer the letting of the flat means that the utilities were not for the exclusive benefit of the tenants.

22. Consequently the maximum RRO in respect of each applicant is

    (i) £7069.02 in respect of the First Applicant
    (ii) £3588.46 in respect of the Second Applicant Mr Syed
    (iii) £6,906.08 in respect of the Third Applicant Mr Moystad

23. Mr Mankoo was first alerted to the need for a licence on 20 January 2023 when he received a letter from LBL alerting him to the need for a licence. He responded initially that he did not believe that the property was a HMO. LBL sent him a chaser email on 28th March 2023. He submitted the application on 25 April 2023. By that stage the premises were occupied by Ms Incegoz alone.

24. We bear in mind that, as in *Newell v Hallett* this is a licencing offence. It was committed over a relatively short period just over 1 year. Mr Mankoo was not aware of the licencing requirements. He told us that he did let out two other properties but these are let to single households and do not require a licence. He did not act with alacrity when first alerted for the need for a licence. When he did apply for a licence it was granted albeit subject to conditions. We consider that the appropriate starting point in this case would be 55%.

25. As regards the fourth stage of the test and particularly matters of conduct, there is a marked difference of opinion between the parties as to whether the Respondent was a good landlord and whether the property was in good condition. When asked if the Respondent was a good landlord Mr Moystad response was 'mixed at best' . Ms Ingcegoz's response to the same question was 'there were times he was good and there were times he was not'. The Applicants complain that the old sash windows were extremely draughty and the stripped wooden floorboards were uneven and had gaps in them. There evidence was that the tiling in the bathroom was not in a good state of repair causing dampness in the walls. They complained about mice entering the flat through the gaps in the floorboards. They accept that the Respondent was quick to react to smaller matters, and allowed them to have the heating on as much as they wanted, but submit that he did nothing to address the main issue in the property which was the poor condition of the windows and the floorboards. Mr

Eliot drew our attention in particular to the lack of mains wired fire alarms in the property and the lack of a door between the hallway and the kitchen. While there were battery operated fire alarms fitted in the kitchen and hallway, these had been removed some point prior to 2023.

26. As far as the Respondent is concerned, he let out a period property at below market rates. He considers that he reacted swiftly to any reports of disrepair. He told us that he tried to fill the gaps in the floorboards with filler with partial success. He considered that the condition of the windows and the floorboards was as to be expected in a period property. He accepts that there was dampness in one of the bedrooms and the bathroom due to defective sealant around the bath.

27. As regards the conduct of the Applicants, the Respondent sought to argue that the First Applicant had behaved poorly by refusing to grant him access to carry out works of repair while issuing proceedings in the county court against him seeking damages for disrepair. He asserted that the refusal of access had prevented him from carrying out the works which were required pursuant to the conditions attached to his licence and consequently had resulted in lost revenue in the sum of £68,000. He also asserted that the behaviour of the First Applicant had led to another tenant moving out of the property.

28. The First Applicant's evidence to us that she only refused access for a very limited amount of time leading up to and following the birth of her baby via caesarean section in June 2023. By this stage the Second and Third Applicants had moved out and she was living alone in the property. She denies refusing access at any other time.

29. Included in the Applicant's supplemental bundle is a series of emails passing between the First Applicant's solicitors in her disrepair claim and solicitors instructed by the Respondent. It indicates that in September and October 2023 the First Applicant's representatives twice asked when the outstanding repair works would be done so she could arrange for access. It is common ground that they received no substantive response. The Respondent accepted that there has been no direct refusal of access since mid-2023. He blamed his solicitors for not informing him that the First Applicant was willing to grant access for the necessary repairs to be carried out.

30. In our view the Respondent displayed a lackadaisical approach to his responsibilities as landlord. He attitudes to the complaints regarding the flat were in effect that such defects are to be expected in a period property such as this and seemed to regard the letting as being on a 'sold as seen' basis. Taking the windows as an example; Mr Mankoo asserted that he could not change the sash windows without his freeholder's consent and that they were an integral to the 'look' of the property. While we accept that one cannot expect single glazed Victorian sash windows to be as thermally efficient as modern windows, in a rented property they should be at least weatherproof.

31. We are not satisfied that there was anything in the conduct of any of the applicants which merits a reduction in the RRO. We do not accept that there has been any refusal of access since mid-2023 when the First Applicant was either about to have her baby or was recovering from a c-section. In the circumstances it was not unreasonable for her to ask her landlord to arrange to have the repairs carried out at a later date.

32. The respondent did not argue that his financial circumstances were relevant to the RRO. He accepted that he committed the offence. While the credit that a respondent might expect for admitting a strict liability offence is limited, we consider that respondent does deserve some credit for accepting the offence without reservation.

33. Taking all of this into consideration we consider that an award of 60% of the maximum would be appropriate in this case.

34. The Applicants have also requested an order that the Respondents do reimburse the hearing and application fees under rule 13(2) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. As they have succeeded in their application we are satisfied that such an order is justified.

Name Judge N O'Brien Date x October 2024

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 Tribunal 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 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.

4. 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.