FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AU/HMF/2024/0059**
Property	**:**	**83 Sussex Way, London N7 6RU**
Applicant	**:**	**(1) Alasdair Cannon** **(2) Nicola Cook** **(3) Hector Vidal** **(4) Jiayi Xu** **(5) Roland d'Herbemont**
Representative	**:**	**Mr Leacock, Justice for Tenants Ltd**
Respondent	**:**	**Ms Ruth Robinson**
Representative	**:**	**N/A**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Ms Rachael Kershaw BSc**
Date and venue of Hearing	**:**	**21 October 2024** **10 Alfred Place**
Date of Decision	**:**	**11 November 2024**

DECISION

Orders

(1) The Tribunal makes a rent repayment order of £5,580 against the Respondent in favour of the Applicants, to be paid within 28 days.

(2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £420.

The application

1. The Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 7 May 2024.

2. It initially appeared that the application was received on 27 November 2023, but on further investigation it became apparent that it was received in the office (by email) on Saturday 25 November 2023, and was accordingly within the time limit (section 41(2) of the 2016 Act).

The hearing

Introductory

3. The Applicants were represented by Mr Leacock, for Justice for Tenants. The Respondent did not appear (see below). The Applicants, save for Mr Vidal, attended. Mr Cannon and Ms Xu gave oral evidence.

4. The property is a four bedroom terraced town house on four floors. The ground floor consists of a large open plan room comprising dining, kitchen and sitting room areas. The first and second floors each have one large and one smaller bedroom. A shower room is located on the third, attic, floor.

Preliminary issue: application for adjournment

5. The Respondent was informed of the application in the usual way, and subsequently received the usual communications from the Tribunal and the Applicants using the same email address. There was no bounce back from the email address, but no communication was received from the Respondent until Monday 28 October 2024. On that day, the Respondent telephoned the Tribunal and spoke to the case officer. It appeared to the case officer that she wished to apply for an adjournment, so he emailed her a form Order 1 (the form to apply for interim orders).

6. The Respondent did not return the form, but did email the Tribunal on 30 October 2024 at 3.14 pm. In her email, she refers to seeing her GP "with a stress disorder". She then asks that the case be postponed until she re-commences an (undisclosed) legal action against her ex-husband. She says that she has secured legal aid for this purpose, but is trying to find a solicitor, a process that is not easy for her as she has to repeatedly relate distressing facts relating to her marriage. Finally, she suggests that some of the Applicants (who she describes as lodgers) may be connected with her ex-husband's wife, and that she lost her job as a result of malicious rumours circulated by her ex-husband.

7. In reply, the case officer passed on a direction from me (Judge Percival) that she should attend the hearing, where her application to adjourn would be considered; that she should be prepared to provide medical evidence as to any medical condition she considered relevant, and that she should be in a position to explain why she could not have made the application earlier. She replied at 5.48 pm on the 30th somewhat enigmatically, but saying that she "will send the letter asap". A reply was sent to her at 7.45 am on Thursday 31 October reiterating that she should attend the hearing at 10.00, at which time her application for adjournment would be heard.

8. The Respondent replied initially with two emails. The first, timed at 7.57, said "I cannot. I will become mentally ill if I have to attend". The second, timed two minutes later, said "A local friend [named] offered to help me with the case and then dumped when she got an offer of legal work. She works as an interpreter for the courts. My life and career have been trashed by corrupt MI5 officers like her." The case officer replied, having emailed me, that the application would be considered in her absence, and inviting her to provide any medical information or other material before 10.00.

9. The result was that she sent three further emails. The first two refer, in obscure terms, to her suffering deliberate food poisoning in a number of establishments (8.32), and her being followed and events in a café in Edinburgh and matters relating to the Security Service and her father (8.43).

10. The third email (timed at 9.43) attached a letter headed "medical report", dated 31 October 2024, from a GP, Dr Scerif of a practice in Islington. The letter reads "Miss Robinson suffers stress disorder, and it is greatly impacting her life. In view of this I am supporting her with her request to postpone her legal case against her ex-husband. I would appreciate your assistance with this."

11. The Respondent did not attend the hearing. We considered, as a preliminary matter, whether we should continue in the absence of the Respondent.

12. We indicated to Mr Leacock that we accepted that the first criterion for doing so in Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 34(a), that the Respondent had been notified of the hearing, was made out. Her representations made it clear that she had been receiving communications from the Tribunal at the email address that had been used by the Tribunal throughout. The question was therefore whether it is in the interests of justice to do so (rule 34(b)).

13. Mr Leacock submitted that it was. The Applicants had complied with the directions throughout, they had attended today, and would be significantly prejudiced if the application was adjourned. Mr Leacock argued that the Respondent had had ample opportunities to raise any issues she may have at a much earlier time. The letter setting this fixture was dated, he said, 21 June 2024. It was entirely inappropriate for a doctor's letter to be produced at virtually the time set for the hearing to commence.

14. We asked Mr Leacock if the content of the Respondent's emails might themselves be indicative of mental health issues. Mr Leacock said that the evidence in the substantive application showed that the Respondent was quite a character, and that she was given to dramatic exaggeration and hyperbole in order to circumvent legal requirements. We should not, he argued, draw such an inference.

15. We agree with Mr Leacock's submissions. We add that, aside from the irrelevant matter, her stated reason for asking for an adjournment was so that she could proceed with unrelated litigation against her ex-husband. This is evidently a wholly spurious reason to adjourn a hearing in an existing application at the last moment.

16. We agree with Mr Leacock that it is wholly unfair and prejudicial to allow an adjournment at such a late stage. It may indeed be that the Respondent is suffering from a stress condition, but such circumstances do not prevent people from engaging with legal proceedings, nor do they insulate them entirely from them. The Tribunal would have done what could be done to ameliorate any stress that proceedings might impose on the Respondent, but that would have required that she raise the issue in time. She has not done so.

The alleged criminal offence

17. The Applicants allege that the Respondent was guilty of having control of, or managing, an unlicensed house in multiple occupation contrary to Housing Act 2004 ("the 2004 Act"), section 72(1). The offence is set out in Housing and Planning Act 2016, section 40(3), as one of the offences which, if committed, allows the Tribunal to make a rent repayment order under Part 2, chapter 4 of the 2016 Act.

18. The Applicants' case is that the property was situated within an additional licensing area as designated by the London Borough of Islington ("the council"). The scheme came into force on 1 February 2021, and remains in force until 1 February 2026. The scheme covers the whole of the borough. It is not contested that the property is located within the area covered by the scheme. The Applicants provided the notice of the scheme's designation and implementation, and correspondence from an officer of the Council showing that the property was not licenced at the relevant time.

19. The Respondent organised the lettings, received the rent, and is shown on the Land Registry as a joint owner of the freehold.

20. The evidence as to occupation was as follows. Mr Cannon and Ms Cooke were in a romantic relationship, as were Mr Vidal and Ms Xu. We assume that the two couples each constituted a household.

21. Mr Vidal and Ms Xu moved in first, on 16 September 2022. When they moved in, the other occupants were a couple called Kenta and Andra, and a man called Renzo. References to these occupants can be seen in extracts from WhatsApp groups, screenshots of which were produced in evidence by the Applicants.

22. The Applicants evidence was that Kenta and Andra moved out on 7 October 2022, and that Renzo had moved in some time in April 2022, and remained there the whole time that the Applicants were in occupation. Mr d'Herbemont moved in on 26 September 2022, and Mr Cannon and Ms Cook on 8 October 2022. All of the Applicants moved out on 26 November 2022. As a result, after 16 September 2022, there were at all times either five or six people in occupation, in three or four households.

23. We accept the Applicants uncontested evidence. We note that their evidence is supported by the references to the non-applicant occupants in the WhatsApp groups conversations.

24. The Applicants gave evidence in their witness statements that the property was their only or main home for the duration.

25. We accordingly conclude, beyond a reasonable doubt, that the conditions for a requirement for a licence under the additional scheme were made out.

26. We considered whether it was possible that the Respondent had a reasonable excuse for not obtaining a licence (section 72(5) of the 2004 Act). For the reasons indicated above, the Respondent had not sought to make the argument herself in advance of the hearing.

27. When asked if the property was licenced by one of the Applicants on the house WhatsApp group, shortly before moving out, the Respondent responded by saying that the Applicants had lodger agreements, not tenancies. Some of the Applicants had been issued with purported agreements for a licence to occupy, headed "lodger agreement".

28. It may be that the Respondent thought that a lodger did not count for the purposes of establishing whether a property is an HMO or not. As a matter of law, that is not the case. The definitions of HMOs (see section 254 of the 2004 Act) proceed on the basis of occupiers, not tenants. An occupier is defined to include licensees (section 262(6) of the 2004 Act).

29. Nonetheless, we considered whether this error of law – that calling an agreement a lodger agreement escaped the licensing provisions in the 2004 Act – could constitute a reasonable excuse, such that the defence in section 72(5) was made out.

30. We have concluded that it does not. There is no suggestion that the Respondent relied on a third party such as a managing agent for information or advice on her obligations as a landlord, and no evidence of what processes, if any, she relied on to inform herself. Had she engaged with the directions, and/or attended the hearing, the Respondent could have given evidence on the question, but she has not done so. The error is, in any event, an egregious one, that even a few basic google searches would correct. In these circumstances, ignorance cannot constitute a reasonable excuse (cf *Marigold* v Wells and others [2023] UKUT 33 (LC), [2023] H.L.R. 27).

31. We accordingly reject the possibility of a reasonable excuse.

The amount of the RRO

32. In considering the amount of an RRO, the Tribunal will take the approach set out in *Acheampong v Roman and Others* [2022] UKUT 239 (LC) at paragraph 20:

> "The following approach will ensure consistency with the authorities:
> (a) Ascertain the whole of the rent for the relevant period;
> (b) Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. …
> (c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made … and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that 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)."

33. We add that at stage (d), it is also appropriate to consider any other of the circumstances of the case that the Tribunal considers relevant.

34. In respect of the relationship between stages (c) and (d), in *Acheampong* Judge Cooke went on to say at paragraph [21]

> "I would add that step (c) above is part of what is required under section 44(4)(a) [conduct of the parties]. It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

35. As to stage (a), by sections 44(2) and (3) of the 2016 Act, the maximum possible RRO is the rent paid during a period of 12 months, minus any universal credit (or Housing Benefit – section 51) paid during that period.

36. The Applicants evidence was that none of them had been in receipt of the relevant benefits. The Applicants provided documentary evidence of the rent that they had paid during the relevant periods. We accept that evidence. The table below shows the rent paid by them.

Household	**Total rent paid**
Mr Cannon and Ms Cook	£ 2,000
Mr Vidal and Ms Xu	£ 4,651.61
Mr d'Herbemont	£ 1,600

TOTAL	£ 8251.61

37. At stage (b), we consider payment for utilities. The utility bills were paid by the Respondent. There was no evidence from her as to what those bills were.

38. Mr Leacock argued that we should not make a reduction in the maximum total RRO to reflect the Respondent's expenditure on utilities.

39. He argued that it was for the Respondent to provide evidence of utilities payments, and that it was only "usually" that Judge Cooke had said in *Acheampong* that utilities paid for by a landlord should be subtracted from the starting maximum ([9] and [20], and *Ball v Sefton*

Metropoitan Borough Council [2021] UKUT 42 (LC), [22]). The discretion should be exercised to reduce the maximum RRO except in the most serious cases (*Palmer v Waller* [2021] UKUT 244 (LC), [2021] 10 WLUK 68 | [2022] H.L.R. 8), and should be exercised here.

40. We reject these submissions. We assess the quantum of this RRO in the more serious category (see below), but it is not so serious as to escape the general rule set out in *Acheampong* and preceding cases. It is true that we do not have any figures provided by the Respondent, but when that is the case, Judge Cooke said in *Acheampong*, "if precise figures are not available an experienced tribunal will be able to make an informed estimate".

41. We established that the combi boiler was gas fired. The occupants used electricity for lights, television and other appliances, and cooking. None of them used additional, electric powered heating appliances. Broadband wifi was available.

42. The occupants were not able to say whether the water was metered or not. If water is not metered, then consumption does not affect the cost of water rates, and accordingly it does not stand to be deducted at this stage. The landlord would pay the water rates whether the property was occupied by tenants or licensees or not. Since we have no basis to include the cost of water without evidence from the Respondent, and she has chosen not to provide such evidence, it is appropriate to assume that the water is not metered.

43. We estimate that we should allow £75 per person per month, so a total of £375 per month, for the Applicants collectively on gas and electricity, plus £30 per month for broadband. We intend to express the RRO as a global total. We have therefore worked out the average per household occupation period as two months. We will therefore reduce the global total by £810.

44. At stage (b), the maximum RRO is £7,441.61.

45. In assessing the seriousness starting point under stage (c), there are two axes of seriousness. The first is the seriousness of the offence, compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account (see *Ficcara v James* [2021] UKUT 38 (LC), paragraphs [32] and [50]: *Hallet v Parker* [2022] UKUT 239 (LC), paragraph [30]; *Daff v Gyalui* [2023] UKUT 134 (LC), paragraphs [48] to [49] and the discussion in *Newell v Abbott and Okrojeck* [2024] UKUT 181 (LC), paragraphs [34] to [39]).

46. We turn to the seriousness of the offence committed by the Respondent compared to other offences against section 72(1). In doing so, we will not draw a distinction between this aspect of *Acheampong* step (c) and the conduct of the parties under step (d). We note above that Judge Cooke referred to the close proximity of the two elements. In this case, in particular, the seriousness of the offence and the conduct of the parties are largely mixed and it makes sense to deal with them both at the same time.

47. We do so mindful of the strictures in *Newell* at paragraph [61]. Our focus should be

> "on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two."

We are not "required to treat every such allegation with equal seriousness or make findings of fact on them all".

48. The Applicants complained that the boiler malfunctioned intermittently. A plumber attended, but the problem persisted. We do not think this goes beyond the scope of the "occasional defaults and inconsequential lapses … typical of most landlord and tenant relationships" that would not "move the dial" (*Newell* [61]). The same is true of the problems with the doors (considered as disrepair) described in the Applicant's evidence.

49. As to the mould growth on the bathroom ceiling eventually dealt with by Mr Cannon using a proprietary spray, we consider that, again, falls within the same category. It was satisfactorily dealt with by Mr Cannon. We add that it is often difficult for a Tribunal to come to a conclusion as to who is responsible for mould growth.

50. The Applicants evidence was that the Respondent had not provided copies of a gas safety certificate, an electrical safety certificate, an energy performance certificate or a How to Rent Guide. The failure to provide these breached various regulatory requirements. We do not know, however, whether the gas and electrical safety certificates in particular, being those with significant safety implications, had in fact been secured, and merely not provided to the Applicants, or not obtained at all. We do not think we can infer that they had not been obtained. The documents should, of course, have been provided, but the significance of the breach is considerably lower if it is only a failure to disclose rather than a failure to obtain, and we cannot exclude that that is the case.

51. We considered the evidence in relation to fire safety. Mr Cannon said in his evidence that there was one smoke alarm in the kitchen, but other

than that he did not recall seeing any other smoke alarms in the property. There was no fire blanket or fire extinguisher.

52. As our professional member pointed out to Mr Cannon, the photographs presented in the Applicants' bundle show two alarms in the large communal room, one in the kitchen area and another in the dinning area. Without being overly determinate, the alarm in the kitchen area looks more like a heat sensor than a smoke alarm, while that in the dinning area looks like the latter.

53. We do not consider that we can attach a great deal of weight to Mr Cannon's mere lack of recollection of seeing other smoke alarms, a conclusion reinforced by his failure to notice that in the dinning area (we say this without any suggestion that Mr Cannon was being dishonest – on the contrary, he appeared to us to be a conspicuously honest and helpful witness).

54. It seems likely to us that the alarms in the communal room are reasonably modern ones, from what (comparatively little) we can see of their appearance, and from the modern decorative state of the room. We think that on the balance of probabilities, it is likely that there are alarms on the two hallways that would require them, on the first and second floors; or, at the very least, we are not prepared to proceed on the basis that there are no such alarms. We do not think we can go so far as to assume that the alarms are interlinked, and cannot come to a factual conclusion on that issue. On balance, we do not think it likely that each bedroom had an alarm - it is much more likely that one of the Applicants would notice an alarm in their bedroom than it is that they would notice them in the hallways.

55. Mr Cannon told us that as far as he was aware, the (one, on his evidence) alarm, that in the kitchen area, had never been tested or sounded.

56. From Mr Cannon's description of the doors to the bedrooms, we doubt that they were fire doors.

57. We accept Mr Cannon's evidence that there was no fire blanket in the kitchen. Opinions vary as to the wisdom of providing fire extinguishers in HMOs, and we would place no weight on the lack of a fire extinguisher.

58. The issues with the front and back doors did not undermine fire safety, as in both cases, it was entering, not exiting, the house that presented problems.

59. Overall, it seems likely that the alarm system was at least just adequate. There were other inadequacies in the fire safety provision, particularly

the (apparent) lack of fire doors. However, the property is not in the most dangerous category of HMO in terms of fire safety, and we conclude overall that, while there were defects, they were far from the seriously dangerous deficiencies that appear in some other HMOs, including those considered in the reported Upper Tribunal decisions. The dial moves, but only marginally.

60. More serious is the Respondent's treatment of the Applicants' deposits. The Applicants' evidence was that they had never received notification of the tenancy deposit scheme with which their deposits had been lodged, or any associated documentation, and that the Respondent had not returned the deposits, and given no explanation for not doing so. From this they ask us to infer that the deposits have not been safeguarded at all, and have been improperly retained. There is some evidence in the WhatsApp conversations that at one time the Respondent contemplating or referring to the possibility of using the deposits to pay the mortgage on the property.

61. We accept the invitation to make that inference. We think it close to inconceivable that the deposits were protected, but somehow the normal notification etc process was not completed in relation to any of the Applicants.

62. We regard both the failure to protect, and the withholding without express justification, to be serious breaches of a landlord's legal duties as to how deposits are to be handled.

63. We also think that the conduct of the Respondent in her relationship with the Applicants towards and at the end of their occupation to be a significant matter.

64. The Applicants document, and support with screenshots of the WhatsApp groups, examples of upsetting, threatening, offensive, abusive and on occasions bizarre behaviour towards them by the Respondent.

65. The evidence was that the Respondent had visited the property four times in November (but not, it appears, earlier). On one occasion, she objected to some dishes present in the kitchen. From the screenshot she sent to the WhatsApp group it appears her concern related to a handful of used cups and spoons and one or two other items, and a larger number of clean saucepans and dishes being left to drain by the sink in the kitchen. According to both Ms Xu and Mr Cannon, who heard what happened, the Respondent lost her temper and ferociously shouted at Ms Xu for a significant amount of time, despite Ms Xu explaining that she was not, in fact, responsible for the dishes. In doing so, she referred to "house rules", a concept that the Applicants were unaware of.

66. Subsequently, and the Applicants thought as a result, the Respondent gave Ms Xu and Mr Vidal two weeks notice to leave under the "lodger agreements" the Applicants had been given (see below).

67. The Respondent then "invited" the Applicants to share a meal with her in a local restaurant, but in order to secure their attendance, she told Mr Cannon, Ms Cook and Mr d'Herbemont that, if they did not attend, she would evict them. During the relevant WhatsApp exchanges, she referred to the house rules and the importance of obeying them. The dinner, at which she again referred to the rules, appears to have been embarrassing for the Applicants but not overtly hostile.

68. The Applicants then agreed amongst themselves to leave together (which they did on 26 November 2022). In WhatsApp exchanges after the Respondent was informed, she used derogatory and insulting terms about most of the Applicants, variously calling Mr Cannon a prick, a dickhead, the meanest, nastiest little creep, and a hysterical idiot. She referred to both Mr Cannon and Ms Cook as assholes, fake, stupid, and the most idiotic couple she had ever met. She called Ms Cook a fcuking [sic] anorexic, a selfish bitch and cold blooded. She also appeared to be seeking to threatening Mr Cannon by referring to Australian contacts of hers.

69. The evidence was that this experience induced anxiety in Mr Cannon and, particularly, in Ms Cook, whose mental health was subsequently adversely affected.

70. At around the same time, the Respondent also belittled Ms Xu's use of English (something which had also occurred earlier), and seemed to raise odd questions about Ms Xu's ethnicity or origin. Ms Xu told us that at some point she appeared to be suggesting that Ms Xu was linked in some underhand way with the Chinese Communist Party. We add that at the hearing, Ms Xu's English was fluent.

71. An isolated expression of anger or even the use of insulting or derogatory terms on one occasion might be passed over as unfortunate but not of great significance. That does not, we consider, apply to what the evidence showed amounted to a sustained campaign of abusive conduct against the Applicants, or some of them. We regard this a course of conduct that is effective to move the dial in favour of a higher RRO.

72. Finally, we also take account of the nature of the agreements that the Respondent gave to Mr Vidal and Ms Xu, and to Mr d'Herbemont. Mr Cannon and Ms Cook were not given an agreement at all.

73. The lodger agreements presuppose a resident landlord, and asserts that it does not grant an assured or assured shorthold tenancy for that reason. It makes provision for two weeks' notice of termination.

74. Mr Leacock submitted that the agreements were clearly a sham, as the Respondent did not live at the property. The purpose of the agreements, he argued, was to evade regulatory requirements, such as the assured shorthold tenancy notice period, a covenant of quiet enjoyment, or the requirement for 24 hours' notice of an inspection.

75. We agree with Mr Leacock. Considered objectively, the basis upon which the Applicants lived in the property almost certainly amounted to a substantive grant to them of exclusive possession of their rooms for a term at a rent. That the Respondent claimed the agreements in aid of her apparent position that she was not legally required to protect the deposits reinforces the impression that evasion of regulation was her motive for using them. They also clothed her unlawful act in giving two weeks' notice to Mr Vidal and Ms Xu with an illusion of regularity.

76. We note in passing that even if the Respondent had been resident in addition to the occupiers, or even in substitution for one or two of them, that would not effect the requirement for licensing as an HMO and hence the liability for an RRO. Paragraph 6 of schedule 14 to the 2004 Act excludes from the requirement for an HMO licence properties occupied by the owner of the freehold (or long leasehold) interest, members of their family, and *up to two other occupiers* (for the number of occupiers, see Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, regulation 6(6)). An occupier is someone who occupies premises as a residence, and includes licensees as well as tenants (section 262(6) of the 2004 Act).

77. The use of these sham agreements shows that the Respondent was deliberately seeking to avoid regulatory requirements on landlords. Whether she specifically had in mind the avoidance of licencing obligations we cannot know, but we can infer at the very least a wilful blindness to her legal obligations.

78. The nature of a landlord has been held to be relevant to the seriousness of the offence. We know little about it in this case. We know that the respondent had at an earlier period lived in the house, and she is reported as telling one of the Applicants that at one point she was living there with "lodgers" resident as well. Taking into account the circumstances of which we are aware, we consider it unlikely that the Respondent owns other rental properties, so treat her as a landlord of this house alone.

79. In some cases, it has been argued that there is a distinction to be drawn between "professional" and "non-professional" landlords, seriousness

being aggravated in the case of the former. The proper approach is as set out by the Deputy President in *Daff v Gyalui* [2023] UKUT 134 (LC), at paragraph 52

> "The circumstances in which a landlord lets property and the scale on which they do so, are relevant considerations when determining the amount of a rent repayment order but the temptation to classify or caricature a landlord as "professional" or "amateur" should be resisted, particularly if that classification is taken to be a threshold to an entirely different level of penalty. … The penalty appropriate to a particular offence must take account of all of the relevant circumstances."

80. We turn to conduct of the Applicants. There is nothing in the evidence we have been presented with to suggest that there is anything in their conduct that should be effective to reduce the RRO.

81. As to the proportion of the maximum RRO we should award, we agree with Mr Leacock's suggestion that the Deputy President's redetermination in *Newell* of an RRO at 60% provides a useful starting point.

82. Common to that case and to this is the fact that the landlord was not a professional landlord in the sense of someone with a significant portfolio of properties operated on a commercial basis. We have noted above that there is not a sharp binary distinction between the two categories, but the Respondent can properly be said to be at the less professional end of spectrum, even if it is the case that she was providing a home for the Applicants for profit.

83. Another similarity is that the property was in good condition. We have referred to the disputes that we do not consider move the dial above. Otherwise, the property appears to be an attractive and adequately maintained property.

84. However, there are also important differences. First, the failure to licence in Newell was a matter of inadvertence. That cannot be said here. The Respondent organised her letting in a way designed to get round regulatory obligations (albeit her method was strictly ineffective). In that context, as we have found, she exhibited what was at best, a wilful blindness to licensing obligations in a wider context of deliberate regulatory evasion.

85. More generally, the Respondent imposing purported, sham lodger agreements in an attempt to exclude the occupants from their legal protections. That is seriously poor conduct in a landlord, regardless of her attitude to HMO licensing specifically.

86. In *Newell*, there was a complaint that deposits were not safeguarded, but, as the Deputy President explained, that was essentially a technical deficiency in the context of informal exchanges of deposits between tenants in the context of tenancy churn (cf *Sturgiss v Boddy*, county court 19 July 2021, available under the unofficial citation [2021] EW Misc 10 (CC)). The failure to protect, and the subsequent withholding, of deposits was a quite different matter here. The Respondent deliberately sought to evade her legal duties to safeguard the deposits. And withholding the deposits in these circumstances is exactly the sort of conduct that legal regulation of deposits was introduced to stop.

87. Unlike the "respectfully distanced" landlord in *Newell*, the Respondent engaged in the deliberately abusive conduct we describe above. That properly moves the dial on, increasing the RRO.

88. The other element at stage (d) of *Acheampong* is the financial circumstances of the Respondent.

89. The Respondent has not provided any evidence as to her financial circumstances. We do know that at some point in the past, she lost a job (which she refers to in one of the emails sent on the morning of the hearing, for which she blamed her ex-husband). We don't know if she has secured another job, or if she should be able to do so.

90. The house had last been sold in 1997, when the purchasers were the Respondent and her ex-husband. The charges register shows a mortgage taken out in 2015. We do not know how much equity there is in the property, nor its treatment in the divorce. On the face of it, one might expect that, given the level of house price inflation in the last 27 years, it would constitute a considerable asset, but we can put little weight on that assumption.

91. We rehearse what little we know about the Respondent's financial circumstances to come to the conclusion that it is not possible for us to move the dial downwards on the basis of such little knowledge. The lack of information about the Respondent's financial circumstances is something for which she is responsible.

92. Having started with 60%, we think the additional serious features outlined above determine a final figure of 75%. We do not consider we have enough information on the Respondent's financial circumstances to reduce that percentage.

93. We have checked this conclusion against the very useful brief summaries of the key cases set out in Newell at paragraphs [47] to [57]. We think it is right to position this case above *Hancher v David and Others* [2022] UKUT 277 (LC) (65%), and it looks similar in overall seriousness to *Choudhary v Razak* (heard with *Acheampong*), albeit

the components making up the same figure of 75% are different in the two cases.

94. We accordingly make a global RRO in the sum of £5,580.

95. The rent was paid on a household basis. The global sum should be distributed to the Applicants on the same basis, that is (rounding to full percentage points), 56% to Mr Vidal and Ms Xu; 24% to Mr Cannon and Ms Cooke; and 20% to Mr d'Herbemont, unless the Applicants collectively and unanimously decide otherwise.

Reimbursement of Tribunal fees

96. The Applicant applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

Rights of appeal

97. 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 London regional office.

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

99. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

100. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 11 November 2024

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

Housing and Planning Act 2016

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(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 to that landlord.

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

	Act	*section*	*general description of offence*
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

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

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if –

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

(2) A notice of intended proceedings must—

(a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,

(b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days ("the notice period").

(3) The authority must consider any representations made during the notice period.

(4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a 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 had 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 with –

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

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 this table.

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

(3) The amount that the landlord may be required to repay in respect of a period must not exceed –

(a) the rent 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,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.