FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BE/HMF/2024/0132**
Property	:	**3 Acre Drive, London, SE33 9FD**
Applicant	:	**Euan McCarthy** **Hannah Kate Lewis** **Callum David Slattery**
Representative	:	**Mr. McCarthy in person (representing all Applicants)**
Respondent	:	**Frieda Hughes**
Representative	:	**In person**
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. M. Cairns MCIEH**
Date and Venue of hearing	:	**18 October 2024 2024 at** **10 Alfred Place, London, WC1E 7LR**
Date of decision	:	**23 October 2024**

DECISION

Decision of the Tribunal

(1) The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under Section 72(1) and section 95(1) of the Housing Act 2004

(2) The Tribunal has determined that it is appropriate to make a rent repayment order.

(3) The Tribunal makes a rent repayment order in favour of the Applicants against the Respondent, in the sum of £10,080, to be paid within 28 days of the date of this decision, as follows:

(a) Mr. McCarthy - £3,360;
(b) Ms. Lewis - £3,360;
(c) Mr. Slattery - £3,360.

Introduction

2. This is a decision on an application for a rent repayment order ("RRO") under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").

Documentation

3. The Applicant has provided a bundle of documents comprising a total of 90 pages (references to which will be prefixed by "A__"). The Applicants' bundle include: tenancy agreement (A22), office copy entries (A66), Letter Before Action (A74) and further correspondence (A77, A85, A89, A90).

4. The Respondent has provided a bundle of documents comprising 89 pages ("R__"). The Respondents' bundle includes the Respondent's Statement (R3); documentation about the application for a licence and notification of its grant (R19), documentation about the gas safety certificate (R25, R85), documentation about the Property costs (R34); correspondence (R58), Terms and Conditions from the agent (R80), parts of the decision in LON/00AP/HMF/2022/0280 (R82).

5. There is also an "Applicant's Reply" comprising 2 pages and a Skeleton Argument from the Applicant.

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

Application and Background

7. By an application dated 18 March 2024 (A2) the Applicants seek a RRO in the sum of £25,200.

8. The application states that the Property was occupied under an assured shorthold tenancy by Mr. Euan McCarthy, Mr. Callum David Slatterly and Ms. Hannah Kate Lewis (the Applicants) between 1 May 2021-30 April 2023. The three constituted three separate households.

9. LB of Southwark introduced additional and selective licensing on 1 March 2022. In respect of additional HMO licences, there was a requirement for a licence for shared houses occupied by three or more people forming at least two households in the LB of Southwark. The selective licensing scheme required all privately rented properties in specific wards in the borough, including the one in which the Property is situate (Goose Green) to have a licence. It is said in the application (and the Respondent accepts) that the Property required a licence under the additional and selective licensing schemes. An application for a selective licence was made on 22 May 2023 (R20) and a licence was granted on 23 October 2023 (R22 – at the time that the licence was granted, this was the only licence that the Property required, the Applicants having moved out). The Property was therefore not licensed from 1 March 2022 until the Applicants vacated the Property, including during the period of 31 March 2022-31 March 2023, which is the period for which the RRO is sought. The rent was £2,100 and the application was for a RRO in the sum of £25,200 (although this has been revised by the Applicants and they seek the sum of £10,080).

10. The Expanded Statement of Reasons for the Application (A20) repeats the above. It also goes on to assert that the Respondent is the sole owner of the Property and, whilst she employs an agent to advertise the Property and finds tenants, she manages it herself (as stated in her letter of 12 February 2024). It addresses the question of reasonable excuse.

11. On 7 June 2024 (A12) the Tribunal issued Directions for the determination of the application (A17), providing for the parties to provide details of their cases and the preparation of a hearing bundle.

<u>Respondent's position</u>

12. The Respondent's "Statement of Reasons for Opposing RRO" (R3) states, in summary:

    (a) No complaints were made about the condition of the Property;
    (b) The licensing requirements changed on 1 March 2022 and from that date the Property fell into an area governed by Additional and Selective Licensing Scheme, but previously no licence was required;
    (c) The letting agent (Acorn Group) did not inform the Respondent of this. She lives in Wales and was unaware of the need for a licence until 17 March 2023. The advertising of the need for a licence appeared to have been local, which did not reach the Respondent. She relied entirely on her agent;
    (d) She applied for a Selective licence (having decided not to re-rent it as a HMO), which was granted;
    (e) The Respondent does rent out two other properties (16 Kinver Road, SE26 4NT) and they did not require

licences until July 2024, and the Applicant's other letting agent informed her in good time;

(f) The Respondent had been assured by email that the agents could ensure she was compliant when renting the property, to avoid any potential large fines;

(g) The money claimed paid the instalments of the interest-only buy-to-let mortgage on the Property for the year in question, the letting agency fees and charges, buildings insurance, British Gas Contract and boiler maintenance fees, and income tax. There were further expenses, almost eradicating the income from the Property;

(h) The Respondent did start a company to hold a single freehold for 16 Kinver Road in order to obtain a mortgage. The tax paid by the company is £19 a year based on the ground rent paid for the Respondent's own property. The costs are detailed (R17);

(i) The Property was in good order, in a nice residential area;

(j) The Applicants paid their rent on time and the only issue was their failure to arrange a British Gas engineer for a Gas Safety Inspection;

(k) The Respondent refers to the case of LON/00AP/HMF/2022/0280.

<u>The Hearing</u>

13. The First Applicant (Mr. McCarthy) attended the hearing. He informed the Tribunal that the other Applicants did continue to pursue the application and that he was representing all the Applicants. The Tribunal noted the emails from the other two Applicants dated 16 September 2024, stating that he would be representing them.

14. The First Applicant informed the Tribunal that the application was pursued under both s.72(1) and s.95(1) Housing Act 2004 – the Property required a licence under both the additional and selective licensing schemes.

15. The First Applicant was asked if there are anything he wanted to say. He primarily relied on his Skeleton Argument. He particularly referred the sections of the Skeleton Argument in respect of the reasonable excuse defence. He said that in the cases of *Aytan* and *Hallett* (see below) the Upper Tribunal had made clear that it did not consider similar circumstances to make out the reasonable excuse defence. He said that the second main issue was the quantum of a RRO. He acknowledged that licensing offences were less serious than other offences which may give rise to a RRO, that the Property was generally in good condition and that the Respondent was responsive when repairs were needed, however, as stated in *Hallett* [37], it was said that " proper enforcement of licensing

requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licensing systems and to deter evasion". He said that, for the reasons set out in the Skeleton Argument, an order in the amount of 40% of the rent was reasonable having regard to the cases of *Hallett* and *Dowd* (see below).

16. The Respondent then asked the First Applicant questions as follows.

17. The Respondent said that the First Applicant had referred to her as an experienced landlords and she asked what he thought qualified her as experienced to such a degree that reliance on a letting agent would be unnecessary. The First Applicant said that she had stated (R66) that she had been a landlord for 10 years. He also noted that she owned three properties – the subject Property and two in Lewisham.

18. The Respondent stated that the First Applicant had referred to her having multiple properties and she asked him what constituted multiple properties. He replied that he considered that three properties would count.

19. The Respondent asked the First Applicant if, during his time at the Property, he had been at a loss and she said that, from her recollection and records, he had suffered no loss – the Property was comfortable and in a desirable area. She said that the Applicants had not suffered any of the issues which might encourage a tenant to seek a RRO. The First Applicant accepted that the Property was of a good standard and that there were no issues with the Respondent. However, he said that the Property was required to be licenced and was it was not – this was an offence which could give rise to a RRO. He said that the question of conduct was separate to that issue. He accepted that when determining the level of the RRO, the fact that the Property was habitable and good standard should be taken into account, and he said that he did not expect an award of 100% of the rent.

20. The Respondent asked the First Applicant what encouraged him to contact LB of Southwark to find out if the Property was licensed. He said that it was as he was aware of RRO schemes and, as he had set out in the application, he had made an application for a RRO in the past. He said that it was with a view to self-interest, to get some rent back, but also, as had been stated in *Hallett*, with a view to the integrity of the licensing system.

21. The Tribunal asked the First Applicant if the property in respect of which he had previously applied for a RRO was the property he had lived in immediately prior to the subject Property and he confirmed that it was. He was asked if there was a sense that he was looking for a "follow-up", i.e. another unlicensed property that he could move into. He said that he did not know whether the Property was licensed when he moved in and when he had moved in, the Property did not require a licence. He was asked if he had checked its licence-status and he said he had not, that it was only towards the end of the tenancy, in the email attached to the Applicant's Reply, that he had checked. He said that he had no desire to seek out unlicensed properties to seek to gain a benefit.

It just so happened that two properties he had lived in in a row were unlicensed. He was asked if the other two Applicants had checked in the licence-status of the Property and he confirmed that they had not. He was asked how utilities were paid and he confirmed (as agreed by the Respondent) that the Applicants had paid the utilities. He also confirmed that none of the Applicants received any Universal Credit or Housing Benefit.

22. The Tribunal took the First Applicant to paragraph 14 of the letter at A76 and he was asked why he had "gone down that route". He said that it was partly based on his experience in settling the previous case and as he was seeking to avoid the need for hearing in this case. He said that the offer to sign a non-disclosure agreement was an effort to indicate flexibility about such settlement. He said that he did not have a public profile, and that reputation risks may be a consideration for the Respondent with her public profile as a writer, artist and poet. He offered to sign a non-disclosure agreement and to settle as reassurance to the Respondent that any settlement would remain private.

23. The Tribunal asked the First Applicant about his submissions as to the limitation of the advice that the Respondent could expect to receive from her agent and that he had said that, on the level of contract she had with the agent, she could not expect advice. He said that this was based on the fact that the Respondent had said that the contract she had was for the agent to find tenant and on a "rent collect" basis, and on R81 and he referred to para. 48.6. He acknowledged that the Respondent had an email from the agent (R32) and he was taken to this. He was asked how he would read it. He said that it might support the Respondent's contention could she could expect advice about licensing but he referred to *Aytan* and said that the Upper Tribunal had concluded that reliance on an agent alone would rarely give rise to a reasonable excuse defence – she would need to show was that there was a contractual obligation that the agent keep her informed and show reasons to rely on the agent and why she could not keep herself informed, e.g. living abroad. He said that the Upper Tribunal had also said that investors in property could be expected to take responsibility for the leal obligations that went with the receipt of rent from tenants. Further, he said that a contractual obligation on the part of an agent was merely the basis of apportionment of responsibility between the landlord and the agent and could not absolve a landlord.

24. The Tribunal then asked the First Applicant about the fact that, in the earlier correspondence, he had suggested £24,000 as reasonable amount compared to the amount sought in the application on £25,200 and that today, the sum of £10,080 was sought. He said that as the application had progressed, he had done research into similar cases, and such a high settlement was not in line with other awards for licensing cases, which was why he said the award should be 40%. He said that having previous prof experience of negotiations (in his job), an opening offer was never a final offer and he would expect it to be negotiated down and that had been the case with the previous RRO application which had settled.

25. He confirmed that the deposit was protected and the Applicants had received the prescribed information, EPC, gas safety certificate and How to Rent booklet. He also confirmed that the rent was split evenly between the Applicants.

26. The Respondent was then asked if there was anything she wanted to say. She said that didn't rely on any particular document except to say that she had a rent collection arrangement with agent, and although she managed the Property in that she had a maintenance company that would go in and do repairs, and when necessary she could attend. She said that she had a package with the agent that included a check for legionella and all certificates and she said that she always took the package.

27. The Tribunal asked her about the fact that the agent offered three levels of service (A32). The Respondent said that the agents did not manage the Property in that if the fridge broke down, she would arrange a new fridge. She said that there was a crack in the ceiling at end of the Applicant's tenancy and it took her less than 5 days to get it repaired. She said that she prided herself on making sure that the tenants were happy, that everything was all running smoothly. She said that she was not conversant with all the legislation and she knew her limitations, which is why she employed an agent who helped her and she made sure at beginning of the tenancy she was compliant and that, if there were changed during the tenancy. She was compliant. She referred to the agent's email at R32, the agent said that they would keep her compliant. She said that she was happy with their information and treatment except for this one incident.

28. The Respondent was asked about the level of service she paid for. She said that she had "rent and collect" but that at the start of each tenancy, she took the option and paid extra for them to check the fire alarms, smoke alarms, Co2 detector, for legionella, and make sure that they tenants had an EPC and whatever was necessary.

29. The Tribunal asked her about whether the agency was to keep her advised about licensing requirements. She said that she did not pay for that, but that the agent was "very much on it". She referred to the email at A32 and the fact that they did tell her about the change in licensing requirements, although they had not told her earlier. Once she got the email, she said, she set about getting a licence.

30. She was referred A81 and particularly 47.5, 47.8, 48.2 and 48.6. The Respondent said that the agent had advised her about licensing the past. She said that she had emails (not in the bundle) showing that in 2016 they had notified her that the licensing laws had changed and she contacted the council and, although its map was complicated, she established that the licensing requirements did not affect her. She said that the agents were "on it then" and she had no reason expect them not to do it again, as they had when they sent the email at A32.

31. The Tribunal referred her to the contractual terms at A81 and pointed out that it appeared that the agents were not obliged to check licensing requirements,

nor to keep her informed of any changes to them. The Respondent said that she accepted that it was her duty to check, but she said that based on the email at A32 in which they assured her they would keep her compliant, she said that she had relied on the agent. She said that if she had expected a change to licensing requirements, it might have been easier to check LB of Southwark's website every month, but she was not expecting a change. She said that she could not look for something she did not think would be there.

32. The Tribunal asked her if she had systems in place to find out about any changes, and she said that she had the agent. She was asked if she had joined any landlord's associations. She said that she did not think of herself as a professional landlord and she did not know about any associations. She said that she relied on the agents for instruction and direction: she put all trust in the agent.

33. The Tribunal asked the Respondent about her properties and when she bought them. She said that she bought them all in 2014. She was asked if she had a "model" in mind about who she would rent to, e.g. single people, families. She said that she did not want singles, but she could not get a family. She had tried and then a group of singles approach the agent (this was prior to the Applicants). In respect of that group, the people kept changing. It was not her intention, she said, to rent to a group of single people. She said it was more problematic.

34. It was pointed out to her by the Tribunal that the terms and conditions at A81 were dated 27 January 2021 and she was asked if she was aware that, in renting to single people, she was entering the territory of HMO's. She said that in 2016, the agent checked if the Property needed a licence and at that time, a HMO required five people to live there. The Tribunal informed her that, for the whole time that three people (in separate households) were living at the Property, it met the definition of a HMO (reference was made to para. 47.2 at A81) and that even before a licence was required, the Property was a HMO and therefore subject to special laws and controls. The Respondent said that she believed that 5 people were required for the Property to be a HMO. She said that when she spoke to Mr. Aziz at LB of Southwark, it was established that the Property did not need licence.

35. The Respondent was asked by the Tribunal if she had a sense of why HMO's had became a focus for legislation, what the intention of Parliament was, and why upholding the legislation was important. The Respondent said that she got the sense that it was to stop landlord's "cramming" people in.

36. The Respondent was asked why she had picked the agents she had used. She said that when she bought the Property, they sold it to her, and she was assured they could do good job. She said that the properties were going to be her pension. When asked why those agents, and whether they offered a good rate, she said that the rate seemed reasonable. The Respondent said that she was "completely green" and she went with the people she knew.

37. The Respondent was asked by the Tribunal what she thought of the Applicants putting the RRO at 40%. She said that she felt she was being "mugged". When asked why, she said that she accepted that she was responsible for not having a licence, but she had hoped, thought and believed, she had overcome that by relying on the agent. She said that that this should be the one occasion where they had let her down was ironic and tragic. She said that her trust in them would never the same again. She referred to the case of *Irving v Eren* (A82) and that the Applicants' take on the case was that, in that case, the tenants committed an illegal act and in this case the Applicants had not, so the Applicants said that there was no similarity. The Respondent, however, said that in that case, the Judge had found that the tenants had had a comfortable home and had suffered no loss and on that basis there should be no RRO made.

38. The Respondent was referred to the letter at A76 and asked how she had taken it. She said that she felt blackmailed. She was asked if she had seen a real risk. She said that she didn't feel that not having a licence when she didn't know she should - even though it was a terrible mistake which she accepted was her responsibility - and when she believed she had taken steps to make sure there would be no issue, if that "got out", it would not be the end of the world, but she did feel that the First Applicant had brought that into his letter as a personal issue -it was what she did for a living, she was not a professional landlord in the sense that she did not make her living from it. She felt it was blackmailing and coercive. She said that the tone of the letter was designed to intimidate her into an immediate payment in the 6 days she was given. She said that it came as a shock as the Applicants had had 2 years in comfortable house in a nice area.

39. The Respondent was asked by the Tribunal about her other two rented properties. She said that they were not HMO's.

40. She was also asked by the Tribunal about the effect on her if a RRO was made. She said that it would be a serious blow, and she referred to the financial information in her documents, showing her profit from the Property was £2,600. She said that her intention was to work at writing and painting and own the properties for 20 years and during that time, try to pay the mortgages down (which were interest only). She said that they were buy-to-let properties and she planned, as she got older, to try and increase the profits.

41. She confirmed that the Property was currently rented out and it was fully managed by the agency. She said that the other two properties were two flats in one house (it was already split when she bought them). She said that one was vacant and just gone under offer for sale. The other was currently occupied by a small family. She said that she never wanted to own another property again.

42. The Tribunal told the Respondent that they would not ask her any more questions about her financial circumstances as they may be personal matters, but that we could only take into account things we were aware of, so if she wanted us to take something else into account, now was the chance to mention it. She said that everything she wanted to say was in the bundle.

43. The First Applicant then asked the Respondent some questions, as follows.

44. The Respondent was asked if she considered any regular means, after 2016, to ensure she remained compliant with her obligations. She queried what regular means were. She was referred to the fact she had said that checking LB of Southwark's website every week/month was not viable. She said that she had three properties, in two different boroughs and she had owned them, when the requirements changed, for 8 years. She asked whether checking weekly or monthly among all of her other obligations and responsibilities was reasonable when she had employed somebody she believed would do it for her? The First Applicant said that he considered that would be reasonable if someone was deriving an income from those investments. He said that it would perhaps not be reasonable to expect the website to be checked every week, but that the LB of Southwark had complied with its obligation to consult and there had been a consultation for 19 weeks in 2021 and the Respondent only had to check once in that time.

45. The Respondent asked the First Applicant whether, if the Applicants were aware of the change in licensing requirements, whether it would have been kind to let the Respondent know. The First Applicant said that it would have been kind, but they had no legal obligation to inform her of this.

46. The Tribunal asked the Respondent if she had enquired with the local authority about being put on a list to be kept informed of licensing changes. She said that they did inform major landlords, but she was not a major landlord. She also said that it did not occur to ask about going on a list and again she said that she had an agent.

47. The First Applicant was asked about this and he said that he did look to see if there was a list and he could not find one, but that did not mean that the local authority would not have contacted the Respondent if she had requested it.

48. The First Applicant addressed the Respondent and said that she had done repairs and given that she had managed the Property remotely in this respect, why there was not ways she could have been kept informed about licensing requirements. The Respondent referred to the reasonable defence excuse and said that she lived 200 miles from the Property in a place which did consider itself to be another country. She said that legislative changes in LB of Southwark did not transmit to Wales and she said that she would have had to be actively looking for any changes and would have to have expected a change. She said it was not reasonable to expect her to monitor this for 8 years and this was why she had taken the precaution of having an agent, to inform her of any changes. She accepted that the rules in LB of Southwark were the relevant rules, but she said that was why she employed an agent.

49. The First Applicant asked why, having been told of the change on 17 March 2023, she did not apply for a licence until 17 May 2023. She said that she would need to look at her diary, but she had some personal issues at the time, and she said she did make an application for a licence.

50. The First Applicant asked her if any works were required to the Property as a condition of the grant of a licence. She said they were not.

51. The parties were then asked if they had any submissions they wanted to make. The Respondent said that she did not want to say anything further. The Tribunal said that it had some information already, but asked her if there was anything further she wanted to say about any reason why she could not have kept herself informed about licensing changes. She said that she had asked herself what she could have done and the only thing she had come up with was checking the local authority's website. She said that she had gone on the website since. She said that computers/websites were not her "remit" and she was more "paper-based". She said that when she did something like buying properties, she looked to agents. She said that she liked to think that she felt comfortable putting her faith in someone she was paying a fee for a service.

52. The Tribunal asked her if she had raised this issue with the agent. She said that they had had "words". She and they had checked their emails to see if they had sent her something in 2022, but neither of them had come up with anything.

53. The Tribunal asked her about the level of service she employed the agent to provide. She said it was rent and collect and she bought "add ons" but she did not have any further information. Both parties were asked if they objected to the Tribunal looking at the agent's website, neither objected, so the Tribunal did look it up.

54. The website states that the agency offers three levels of service. The "middle" package is "Letting & Rent Collection". None of them provide for a check on licensing or any service in that regard. The "Additional non-optional fees & charges" do include the following" "Administer HMO or local authority licence application" at an extra charge on the fully managed or "Rent Collect/Let Only" packages. It is also clear from the website that application for a licence is something the estate agent can do, but it incurs an additional charge.

55. The Tribunal asked both parties whether it was the position that neither of them raised any issue of conduct. The First Applicant said that he conceded that the initial tone of his letters were strong and that a more conciliatory tone might have elicited a more conciliatory response. He said that the Respondent's letter (R73) made a serious allegation against him, that he had broken the Civil Service code. He refer to the case of Newell v Abbott (below) and what was said about conduct and invited the Tribunal to "set aside" the conduct in the letters.

56. The Respondent said that the only "slight wrinkle" as the issue of the gas safety certificate. She said that R15 demonstrated her examples of efforts to be compliant. She said that she had Homecare and this showed she tried to employ people to help her comply with her obligations as a landlord.

57. The Applicant said, about the gas safety certificate, that the certificate did not lapse. There was some delay (R30) but they did ensure access and this was not

sufficiently serious to be taken into account. He said that the Respondent was capable of managing this actively from Wales, and this begged the question why she had no way to inform herself of the licensing requirements.

58. The Respondent said that he relied on para. 5 of his Skeleton Argument.

Statutory regime

59. The statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act.

60. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rouge landlords and agents and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are set out in sections 40-46 Housing and Planning Act 2016 ("the 2016") Act, not all of which relate to the circumstances of this case.

61. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. Licensing is mandatory for all HMO's which have three or more storeys and are occupied by five or more persons forming two or more households. "House in Multiple Occupation" is defined by s.254 Housing Act 2004. The Licensing of Houses in Multiple Occupation Order 2006 details the criteria under which HMOs must be licensed. The criteria were adjusted and renewed by the Licensing of Houses in Multiple Occupation Order 2018 which came in force on 1 October 2018 and since 1 October 2018 the requirements that the property must have three or more storeys no longer applies. The Local Authority may designate an area to be subject to additional licencing where other categories of HMO's occupied by three or more persons forming two or more households are required to be licenced.

62. So far as is relevant to the present application, the 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
…			

5	Housing Act 2004	Section 72(1)	Control or Management of an unlicensed HMO
6	Housing Act 2004	Section 95(1)	Control or Management of an unlicensed house
...			

63. 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).

41 Application for a 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
...

64. Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a specified offence, if the offence relates to housing rented by the tenant(s) and the offence was committed in the period of 12 months ending with the day on which the application is made.

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);
...

65. 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.

66. 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.

67. 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, 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 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.

<u>Determination of the Tribunal</u>

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

(i) whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) and/or section 95(1) of the 2004 Act.
(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 the Applicant's landlord at the time of the alleged offence?

69. It is not disputed, and the Tribunal finds as a fact, that the Respondent was the landlord of the Applicants. The Tribunal has seen a tenancy agreement (A22) which states that the Respondent is the landlord and the tenants were the Applicants, and that the Property was let to the Applicants at a rent of £2,100 per month, from 1 May 2021 until 30 April 2023.

Was a relevant licensing offence committed during the period 5 April 2022-6 November 2022 and by whom?

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

71. It is not in dispute that, during the relevant period(s), the Property was subject to both a selective and an additional licencing scheme, that it was a "HMO" (s.254-259) and, pursuant to the Housing Act 2004 ("the 2004 Act") and the regulations made under it, the Property required a licence in order to be occupiable by three or more persons living in two or more separate households. It is also not disputed that the Property was, at the material times, occupied by three people living in more than two separate households.

72. Section 72(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. The section provides that:

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

73. Section 95(1) of the 2004 Act is also one of the offences listed in section 40 in respect of which the Tribunal may make a RRO. The section provides that:

"A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) buy is not so licensed.

74. The Respondent accepts that there was no licence in place in the statement of case during the material period. The Tribunal finds (applying the criminal standard) that there was no licence in place during the material period.

75. Where the Respondent would otherwise have committed an offence under section 72(1) or 95(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 72(5) or, as applicable, section 95(4). The standard of proof in relation to that is the balance of probabilities.

76. The Respondent does seek to raise a reasonable excuse defence.

77. 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.

78. 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).

79. In *Newell v Abbott* [2024] UKUT 181 (LC), the issue of reasonable excuse was raised on appeal. The landlord, a solicitor (who only let one property), was unaware that a selective licensing scheme had been introduced. Information about the scheme was sent to his address shown in the register of title for the Flat at HM Land Registry, but Mr Newell had not kept that address up to date

and the information did not reach him. Nor did any information about the scheme which may have been sent by the Council to the Flat itself. He did not employ an agent. He was alerted to the possibility of a licence being required and he attempted to get in touch with that the local authority, but the first Covid-19 lockdown had been introduced and he received no response. He did not apply for a licence. The Upper Tribunal referred to the case of *Marigold v Wells* [2023] UKUT 33 (LC) on the approach to a reasonable excuse defence:

"(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"

14. The Tribunal then made some observations about cases in which the reasonable excuse relied on was simply that the taxpayer or landlord, as the case may be, did not know of the particular requirement that had been breached. It gave no weight to the maxim that "ignorance of the law is no excuse", and acknowledged that ignorance of the law could indeed form the foundation of the defence:

"Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long."

80. The Upper Tribunal said that the “FTT was clearly right to have in mind the standard of management which is reasonably to be expected of landlords or property managers generally. It is not enough for a landlord to show that they made an honest mistake in failing to obtain a licence. To be reasonable, an excuse must be objectively reasonable, and the standards which landlords are generally expected to achieve are an important measure of what is objectively reasonable in a particular case”. It was also said that it was not suggested that the local authority had failed to advertise the scheme as it is required to do before it commences and that the FTT was entitled to be critical of the landlord

for his indifference to sources of information which would have kept him better informed. It was said that, as a solicitor (albeit not one specialising in housing law) the landlord was better equipped than many landlords to keep himself informed of his responsibilities and of the relevant regulatory environment. He did not do so and the FTT was entitled to find that he had no reasonable excuse defence.

81. The Tribunal finds that the Respondent was a conscientious landlord, who, on the information she had, did not expect any change to licensing requirements and who honestly believed that she had employed agents who would advise her if there were any changes in this regard. It is not the case that Respondent did not intend the Property not to be licensed where it was required to be. The Respondent simply did not realise that a licence was needed – the requirements in this regard having changed.

82. The test the Tribunal must apply, however, is that set out in the cases above.

83. The difficulty the Respondent has is that, considering the agents contractual obligations, there was no contractual obligation on them to inform her of any change to the licensing requirements. They state, as follows (R81):

47 HOUSES IN MULTIPLE OCCUPATION

…

47.4 Additional Licensing is when a council can impose a licence on other categories of HMO in its area which are not subject to mandatory licensing.

47.5 If the Landlord is not sure if their Property falls into the category of a HMO or if a licence is required, it is the Landlord's duty to contact the local authority responsible for the area the Property is in. The Landlord may be required to submit an application to the council even when it is not clear whether a licence is needed so that the council can check the facts of the case. More information about licensing is available on the government website [website provided]

…

47.7 If the Agent is providing a Management Service, the Agent will take the necessary steps with the Landlord's authorisation to comply with the Landlord's obligations….

…

47.9 The Agent cannot accept liability if the Landlord fails to comply with the regulations or fails to renew a licence

....

48 SELECTIVE LICENSING

48.2 If the Landlord is not sure if their Property falls within a selective licensing scheme, it is the Landlord's duty to contact the local authority responsible for the area the Property is in and, if applicable, to complete any licensing application.

...

48.4 If the Agent is providing a Management Service, the Agent will take the necessary steps with the Landlord's authorisation to comply with the Landlord's obligations....

...

48.6 The Agent cannot accept liability if the Landlord fails to comply with the regulations or fails to renew a licence

....

84. The estate agent was not providing a "management service".

85. The Tribunal also notes the contents of the estate agents' website as set out above.

86. There was, therefore, no contractual obligation on the part of the agents to keep the Respondent informed of licensing requirements.

87. The Tribunal notes that the estate agents did email the Respondent on 26 February 2021 stating that it was their job "to ensure you are compliant with renting your property with us to avoid any potential large fines". The estate agent did notify the Respondent of the change in respect of licensing requirements(R33), albeit late. This, unfortunately, does not change the fact that, under the terms of the contract she had with the estate agents, the onus was on her to be aware of any licensing requirements. Further, for the same reason, there is no evidence that the Respondent had a good reason to rely on the competence and experience of the agent.

88. For this reason, on the case law, the defence of reasonable excuse must fail.

89. Therefore, the Tribunal determines that the circumstances of the Respondent's failure to hold an HMO 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 offences (under s.72(1) and s.95(1)), which the Tribunal finds beyond reasonable doubt to have been committed during the period of 1 May 2021-30 April 2023.

90. The next question is by whom the offence was committed? The Tribunal determined that the offence was committed by the Respondent, being a person within the meaning of s.72(1) and section 95(1) Housing Act 2004, being the person who had control or was managing the Property during the material time.

<u>Should the Tribunal make a RRO?</u>

91. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondent committed an offence under section 72(1) and section 95(1) of the 2004 Act, a ground for making a rent repayment order has been made out.

92. 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".

93. 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.

94. 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.

95. 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 Applicants.

The amount of rent to be repaid

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

97. 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)".

98. 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.

99. 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".

100. 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.

101. 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."

102. 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."

103. The Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period (ignoring for these purposes a provision about universal credit not of relevance here). 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.

104. 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).

105. In *Newell v Abbott* the Upper Tribunal also address the issue of quantum. It said

"34. Since its decision in *Ficcara v James* [2021] UKUT 38 (LC) the Tribunal has emphasised the seriousness of the offence which has been committed as a significant factor to be taken into account when determining how much of the rent paid by a tenant should be ordered to be repaid. At paragraph [32] of that decision, I said this about the factors identified in s.44(4) 2016 Act, as those which the FTT must in particular take into account:

"First amongst those relevant factors is the conduct of the landlord, which must include the conduct which amounts to the relevant housing offence or offences. One would naturally expect that the more serious the offence, the greater the penalty."

106. It determined that the FTT had erred and went on to make a determination. It noted the importance of promoting consistent decision making and referred to the cases of *Williams v Parmar*, *Aytan v Moore*, *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC), *Hallett v Parker*, *Dowd v Martins* [2022] UKUT 249 (LC), *Hancher v David* [2022] UKUIT 277 (LC), *Daff v Gyalui* and *Irvine v Metcalfe* [2023] UKUT 283 (LC).

107. The Upper Tribunal went on to say [57] that award 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 where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work 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. In that case, the Upper Tribunal made an award of 60% of the rent received. It said that had the offence been committed for a much shorter period the penalty it would have imposed would have been equal to 50% of the rent, but the effective operation of selective licensing schemes depends on landlords keeping themselves properly informed and a prolonged failure to obtain a licence therefore merits a higher penalty.

108. The Tribunal has also had regard to the case of *Irving v Eren* LON/00AP/HMF/2022/0280, particularly [48]. It was noted in that case that the Respondent's offence was not deliberate. That was, however, a different case in that the Applicant had committed a criminal act and sought a RRO "simply on the basis that the Respondent has adopted the Applicant's criminal act": [52].

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

Ascertain the whole of the rent for the relevant period

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

111. The Tribunal has seen evidence of payments (A70) of £2,100 from 7 June 2021-3 April 2023.

112. No Universal Credit or Housing Benefit was received by the Applicants during the applicable period.

113. The whole of the rent for the relevant period is therefore £25,200.

Deductions for utilities?

114. The Applicants were liable for all charges in respect of supply and use of utilities, as accepted by the Respondent and so no deduction for utilities is made.

Seriousness of the offence

115. 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".

116. 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).

117. 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].

118. 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.

119. The Tribunal notes that this case concerns additional and selective licensing for a HMO occupied by three friends. A licencing offence is at the lower end of the offences that may be subject to a RRO. The failure to have an additional and selective licence is less serious than a failure to have a mandatory licence.

Conduct

120. The Tribunal notes that the deposit was protected and all necessary documentation was provided at the start of the tenancy. The Respondent was also assiduous in ensuring that the gas safety certificate was renewed.

121. There were no major allegations in respect of conduct from either side. The Tribunal notes some issues in respect of access on the part of the Applicants for the purpose of the gas safety certificate and the admission on the part of the First Applicant that he could have adopted a more conciliatory tone in his initial correspondence. Overall, however, the Tribunal determines that such behaviour cannot be regarded as sufficiently significant to warrant further adjustment of the amount of the Rent Repayment Order.

122. The Tribunal has taken into account the fact of its findings above, that the Respondent was a conscientious landlord, that all other obligations were complied with, that there were no complaints about the condition of the Property and, when an issue in that regard was raised, it was dealt with swiftly. Even taking this into account the Tribunal takes the view that the percentage asked for by the Applicants (40%) is a reasonable one. The Tribunal makes clear that the conduct of the Respondent had been exemplary in every other respect, and had this not been the case, the Tribunal would have been minded to make a higher award.

Whether the landlord has been convicted of an offence?

123. 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

124. The Tribunal takes account of the financial circumstances of the Respondent, as set out in the documentation and as told to the Tribunal.

125. It is clear that the Respondent has spent a great deal of money on the Property, including nearly £3,000 to the agent. In *Vadamalayan v Stewart* it was made clear that a RRO is about repayment of the rent, not the repayment of the profit.

126. The Tribunal has taken into account (and accepts) the Respondent's assertion that the making of a RRO would be a "serious blow" to her. It does have to note, however, that, in addition to the property in which the Respondent lives, she (currently) owns two houses (one split into two flats), including the Property.

127. Taking everything into account, the Tribunal makes no deduction, taking account of the financial circumstances of the Respondent.

The amount of the repayment

128. The Tribunal determines that, in order to reflect the factors discussed in above, the maximum repayment amount (of the whole of the rent for the relevant period of £25,200) should be discounted by 60% (i.e. the RRO is 40% of the rent paid in the material period). The Tribunal therefore orders under s.43(1) of the 2016 Act that the Respondent repay the Applicants the total sum of £10,080, to be apportioned as follows:

(a) Mr. McCarthy - £3,360
(b) Ms. Lewis - £3,360
(c) Mr. Slattery - £3,360

129. The Tribunal has had regard to all the circumstances in setting a time for payment, including the amount of the RRO. The Respondent said that the amount could be paid within 28 days and so the Tribunal orders repayment in 28 days from the date of this decision.

Application for refund of fees

130. No application was made for a refund of Tribunal fees.

Judge Sarah McKeown
23 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).