FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00FY/HMF/2023/0005 - 9**
Property	**:**	**17 Filbert Street East, Leicester, LE2 7JG**
Applicant	**:**	**Mr Dantae Mair, Mr Albert Owusu Boamah, Mr Eniola Usman, Mr Ethan Rene Ali and Mr Dev Naik**
Representative	**:**	**Justice for Tenants**
Respondent	**:**	**Mr Warwick Edward Beaumont Spearing**
Type of Application	**:**	**Application under section 41(1) of the Housing and Planning Act 2016 for a rent repayment order**
Tribunal Members	**:**	**Judge M K Gandham** **Mr A McMurdo MCIEH**
Date of Hearing	**:**	**30 May 2024**
Date of Decision	**:**	**27 August 2024**

DECISION

Decision

1. The Tribunal orders Mr Warwick Edward Beaumont Spearing ('the Respondent') to repay to Mr Dantae Mair, Mr Albert Owusu Boamah, Mr Eniola Usman, Mr Ethan Rene Ali and Mr Dev Naik ('the Applicants') each the sum of £1,563.00.

2. The Tribunal also orders, under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, that the Respondent reimburse to the Applicants an additional sum of £60.00 each (comprising their share of tribunal application fee and hearing fee, being £300.00).

Reasons for Decision

Introduction

3. By an application received by the Tribunal on 15 March 2023, the Applicants applied for a rent repayment order ('RRO') under section 41(1) of the Housing and Planning Act 2016 ('the Act').

4. The order sought by the Applicants was in respect of rent that they had paid as joint tenants of the property known as 17 Filbert Street East, Leicester, LE2 7JG ('the Property') to the Respondent, who was their landlord and owner of the freehold of the Property.

5. The Tribunal issued substantive directions on 15 June 2023 and, although the Applicants submitted a statement of case and bundle, the Respondent failed to comply with directions. On 15 August 2023, the Tribunal issued directions warning the Respondent that the Tribunal proposed barring him from taking further part in the proceedings unless he complied with the previous directions order. A further barring notice was issued on 18 September 2023. As the Respondent still failed to comply with directions, he was barred from taking any further part in the proceedings on 29 November 2023.

6. The Tribunal did not carry out an inspection of the Property and a hearing was held remotely, via the HMCTS Video Hearing Service (VHS), on 30 May 2024. Following the hearing, the Tribunal allowed the Applicants time to provide a submission regarding a legal point raised at the hearing in relation to the definition of '*occupancy*'. The Tribunal reconvened to make its decision on 24 June 2024.

The Law

7. Section 40 of the Act provides that an RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant. It confers power on the First-tier Tribunal ('the FTT') to make such an order in favour of a tenant where the landlord has committed an offence to which Chapter 4 of the Act applies.

8. The relevant offences are detailed in section 40(3) of the Act as follows:

	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*
7	*This Act*	*section 21*	*breach of banning order*

9. Section 41 of the Act details the application process and provides:

> ***41 Application for rent repayment order***
>
> *(1) A tenant … 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.*
>
> …

10. Sections 43 and 44 of the Act detail the power of the FTT to make an order and the amount of that order and, in respect of an application by a tenant, provide:

> ***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);*
>
> …

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 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 paid 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.

Hearing

11. The Applicants attended the hearing and were represented by Mr Peter Eliot from Justice For Tenants. The Respondent did not attend and was not represented.

The Submissions

12. Within their bundle, the Applicants had provided a statement giving the full details of the alleged offence together with background information relating to the application.

13. The exhibits to the bundle included a copy of two tenancy agreements made between the Applicants and the Respondent in respect of the Property, rent payment calculations and proof of payments for each of the Applicants together with witness statements from each of them.

14. The bundle also included a copy of the freehold title to the Property (which detailed the Respondent as the proprietor), correspondence with an Environmental Health Officer at Leicester City Council (which confirmed that the Respondent had applied for an HMO (House in Multiple Occupation) Licence in

respect of the Property on 5 April 2022), as well as general information regarding HMOs and guidance for RROs.

15. At the hearing, Mr Eliot confirmed that the application had been made in respect of an offence the Applicants submitted had been committed by the Respondent under section 72 of the Housing Act 2004 ('the 2004 Act'), for having control of, or managing, an unlicensed HMO.

16. Mr Eliot confirmed that the Property was a two-storey five bedroomed house and was let to the tenants, who formed five separate households, by way of two sequential tenancy agreements – the first commencing on 1 July 2020 and ending on 30 June 2021 and the second commencing on 1 July 2021 and ending on 30 June 2022.

17. Mr Eliot stated that, although the Applicants had begun occupying the Property at various times, starting in July 2020, and had all left the Property by 27 June 2022, all five Applicants had been occupying the Property between 27 September 2020 until 4 April 2022.

18. The statement of case stated that the dates of occupation were as follows:

- Dev Naik lived in Room 1 from 27/09/2020 to 25/06/2022
- Ethan Rene Ali lived in Room 2 from 01/07/2020 to 26/06/2022
- Eniola Usman live in Room 3 from 01/07/2020 to 27/06/2022
- Albert Owusu Boamah lived in Room 4 from 23/09/2020 to 26/06/2022
- Dantae Mair lived in Room 5 from 03/07/2020 to 25/06/2022

As the Property was being occupied by five or more persons, all from separate households, Mr Eliot contended that the Property was a licensable HMO and that an offence was being committed by the Respondent from 27 September 2020 until 5 April 2022, when the Respondent made an application for a licence. As such, he stated that the Applicants were making an application for an RRO for the period 1 April 2021 to 31 March 2022.

19. As the freehold owner of the Property, and the person named as the landlord in the tenancy agreement, Mr Eliot submitted that the Respondent was the "*person having control*" of the premises, as well as the "*person managing it*", therefore, was the person eligible to have the RRO made against him.

20. In relation to the amount of the order, although the tenancy agreements stated that the amount of rent payable was £2,643.33 per month, a reduced sum of £1,321.67 was payable for the first month in each of the tenancy agreements and the sums were due in accordance with a schedule attached to the agreements. Mr Eliot confirmed none of the Applicants had been in receipt of housing benefit or universal credit and that an amount of £30,398.31 was being sought, being the rent actually paid between the period 1 April 2021 to 31 March 2022. [see schedule detailing the amounts paid over the period].

21. Mr Eliot submitted that, as per the decision of the Upper Tribunal in *Williams v Parmar & Ors* (2021) UKUT 244 (LC) ('*Williams*'), the starting point for any RRO should be the maximum amount of rent paid during the relevant period.

22. In relation to utilities, Mr Eliot submitted that, although the tenancy agreements referred to utilities [water, gas, electricity and broadband] being included within the rent, no deductions should be made from any RRO. He stated that the Applicants had not received any breakdown for the cost of the utilities and referred to the decision in LON/00BB/HMF/2023/0033, in which the FTT declined to make any deduction for utilities and were critical of the approach taken by the Upper Tribunal in *Acheampong v Roman* [2022] UKUT 239 (LC) ('*Acheampong*').

23. In relation to the seriousness of the offence, Mr Eliot stated that, although the Upper Tribunal had made it clear that licensing breaches had the potential to be less serious offences, in this case the Respondent had not just failed to obtain a licence but had shown a disregard for fire safety and his other management duties. He referred the Tribunal to the decision in *Wilson v Arrow* [2022] UKUT 027 (LC) ('*Wilson*') in which an RRO for 90% of the rent paid was made for a licensing breach when the property also lacked important fire safety features.

24. Mr Eliot stated that the Respondent in this matter had failed to take any reasonable steps to keep abreast of his licensing obligations (the Property having been without a licence for over 18 months) and that he had also failed to provide sufficient fire safety equipment, such as smoke detectors. In addition, Mr Eliot stated that the Respondent had failed to comply with other legal obligations such as providing the Applicants with a copy of gas and electrical safety certificates for the Property, an EPC or the How to Rent guide.

25. In relation to the conduct of the parties, Mr Eliot stated that there had been no poor conduct by the Applicants. With regard to the Respondent's conduct, in addition to the above failures, Mr Eliot referred to an incident which had taken place in Spring 2022, referenced by Mr Ali in his witness statement, when builders had entered the Property without notice and caused significant distress to the Applicants.

26. Accordingly, Mr Eliot submitted that the conduct of the Respondent and breaches of legislation were more serious than those referred to in the Upper Tribunal decision in *Hallett v Parker* [2022] UKUT 165 (LC) ('*Hallett*') (in which an order was made for 25% of the maximum rent) and more akin to the circumstances in *Wilson* and *Aytan v Moore* [2022] UKUT 027 (LC) (in which a 90% order was made). As such, he contended that any order made should not be for a lesser percentage than 90% of the rent paid during the relevant period.

27. With regard to costs, Mr Eliot requested that the Tribunal make an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, as he submitted that, if an RRO was made, it would be appropriate for the Applicants to be reimbursed both their application fee and their hearing fee.

28. The statement of case within the bundle also referred to the policy justifications behind the regime of RROs, the increased hazards and fire safety risks associated with HMOs and the need to remove any financial benefits to deter landlords operating unlicensed HMOs. The bundle also included witness statements from each of the Applicants, who all gave oral evidence at the hearing.

29. Both in their written statements and whilst giving oral evidence, the Applicants stated that they could not recall being given a copy of the gas and electrical certificates, EPC, and the How to Rent guide. Mr Mair even commented in his witness statement that he found it alarming that he could not recall receiving such documents. The Applicants could not, however, explain, when questioned by the Tribunal, as to why they had signed both the original and the subsequent tenancy agreements which clearly stated that they would be provided copies of the certificates and had received the How to Rent guide. In addition, they all confirmed that they had not queried the lack of this information with the managing agent – Arch Living - at any point.

30. In relation to fire detection, all the Applicants stated that there was only one smoke alarm at the Property – in the kitchen – despite signing both tenancy agreements which referred to there being smoke alarms on each floor. Their oral testimony suggested that the alarm was in good working order and had sounded when one of the Applicants had burnt their food. Most Applicants were less certain about the presence of other fire safety features, such as fire doors, blankets and extinguishers.

31. Again, despite Mr Mair referring in his written statement as being "*dismayed*" throughout his occupation at the lack of fire safety equipment, he confirmed that he had not reported any concerns about fire safety to the managing agent at any point, including before signing the second tenancy agreement for the Property.

32. With regard to any other problems with the condition of the Property, the Applicants could not recall any other matters, other than Mr Boamah who stated that there might have been a "*bit of mould*" in the living area, although he did not consider this to have been a serious issue.

33. The Applicants did refer to some difficulties with receiving unsolicited calls from a debt collection agency, which they dealt with themselves, and the incident when builders came into the Property without having given prior notice at 6am to carry out some work to the Property in May or June 2022. Mr Ali stated that the builders left as soon as they were asked to, although one gentleman came back into the Property, so Mr Boamah called the police and the managing agent. The Applicants were unsure who this gentleman was and, although they were not sure exactly what works the builders came to do, they believed it related to a fire door.

34. The Applicants confirmed that an Environmental Health Officer from Leicester City Council visited the Property in May 2022, and it was then that they were made aware that the Respondent did not have an HMO licence.

35. Although all the other the Applicants had stayed at the Property for most of the time during their tenancies, including when COVID restrictions were in place, Mr

Naik confirmed, whilst giving his evidence, that he returned to his parental home on 5 December 2020 and "*moved back*" to the Property on 21 September 2021. Mr Naik confirmed that this was, in part, due to the COVID-19 restrictions but also due to the death of his grandfather. He stated that he had been able to continue his studies 'online' whilst at home and confirmed that he had intended to return to the Property at some point and had left some furniture and clothes in his room,

36. As the information regarding Mr Naik's absence from the Property for a period of over nine months only became apparent at the hearing, and as this could have had an important bearing upon whether he was *occupying* the Property during the relevant period, the Tribunal allowed Mr Eliot an opportunity after the hearing to provide any legal submissions regarding this particular point.

37. By way of a written submission dated 4 June 2024, Mr Eliot submitted that Mr Naik was still an "*occupier*" for the purposes of section 262(6) of the 2004 Act during his absence from the Property. Mr Eliot submitted that the form of words "*occupies the premises as a residence*" used in section to 262(6) of the 2004 Act replicated the wording in section 1(1) of the Protection from Eviction Act 1977, which in turn had its origins in section 2 of the Rent Act 1977.

38. He stated that, due to the rules of statutory interpretation, where an Act uses a form of words with previous legal history, there is a presumption that the legislature intended to use the term in the sense given by this earlier history (Halsbury's Laws of England/Statutes and Legislative Process (Volume 96 (2018) paragraph 734). As such, he stated that caselaw decided under the Protection from Eviction Act and Rent Act could be used in deciding what constitutes '*occupation*' under the 2004 Act.

39. Accordingly, Mr Eliot referred to the decision in *Schon v London Borough of Camden* (1986) 18 HLR 341 ('*Schon*'), in which the Divisional Court was satisfied that, where a tenant leaves a property to go on holiday, provided they kept their belongings at the property and intended to return to it, they were still considered to be occupying the premises:

> *"However, as Mr. Slowe points out, that is a strong argument to the effect that in the Protection of Eviction Act, the phrase "occupying the premises as a residence" has the same meaning as in the 1977 Rent Act . If that is right, there is a long line of authority for the proposition that under the Rent Acts,* ***a person may occupy premises as his residence although he is physically absent from the premises, provided that, to put it broadly, the absence is not, and is not intended to be, permanent and either his spouse or some other member of his family is physically in occupation or, at the very least, his furniture and belongings remain in the premises****. Thus, to give an easy example, if a statutory tenant of the premises goes away on holiday for a month and leaves his premises empty, but with all his furniture and belongings there, he continues to be a residential occupier. He continues to occupy the premises as his residence. If he goes on a business trip for a long time, the same is true. It becomes a question of fact for the court, in the particular circumstances, as*

to when or what particular events constitute a cessation of occupation as a resident." [*emphasis added by Mr Eliot*]

40. Mr Eliot confirmed that in the recent decision by the FTT in LON/00BE/HMF/2022/0044, the tribunal considered the test in *Schon* to be the appropriate one and deemed the tenants in that matter to be in occupation despite having left the property for extended periods as:

> *"it was satisfied that in each case they had neither intended to leave permanently nor in fact left permanently. In each case they intended to, and did, return and as evidence of this they had all left their belongings in the property while they were away"* [74].

41. As such, Mr Eliot submitted that as Mr Naik left his belonging in the Property whilst visiting home; continued to pay rent during this period; the extenuating circumstances of COVID-19 restrictions and the death of his grandfather; and the fact that he had given evidence to confirm that he intended to return to the Property sooner but for these events, so his absence was not intended to be as prolonged or permanent; the Applicant was *occupying* the Property at all points throughout the relevant period of the claim.

The Tribunal's Deliberations

42. In reaching its determination the Tribunal considered the relevant law, in addition to all of the evidence submitted, briefly summarised above.

43. Prior to being able to make a rent repayment order under the Act, the Tribunal must be satisfied "*beyond reasonable doubt*" (under section 43) that the Respondent had committed one or more of the offences referred to in section 40(3) of the Act.

44. The Tribunal was satisfied that, when the Property was being occupied by all five Applicants, the Property was a licensable HMO. The Tribunal was also satisfied that the Respondent was the landlord and the person in control of the Property in accordance with section 263 of the 2004 Act.

45. Based on the email from Leicester City Council, the Tribunal accepted that the Property was without a licence at the beginning of the Applicants' tenancies and that an application for an HMO licence was not made until 5 April 2022. Accordingly, the Tribunal found that it could make an RRO, having been satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act for, at least, certain periods of time over the two years the Applicants rented the Property.

Was Mr Naik in occupation throughout the period of the claim?

46. It was not in dispute that Mr Naik had been living at home from 5 December 2020 until 20 September 2021, the question for the Tribunal was whether, during this period, he was still an "*occupier*" of the Property for the purposes of section 262(6) of the 2004 Act. If he was not, the Property would have only had four

occupiers during this time, so would not have been subject to mandatory licensing – so the Respondent would not have been committing an offence – until Mr Naik's occupation recommenced.

47. Under section 254(2)(c) of the 2004 Act, a building is an HMO if it is living accommodation "*occupied*" by persons who do not form a single household "*as their only or main residence or they are to be treated as so occupying it*". Section 259(2)(a) of the 2004 Act confirms that a person is to be "*treated as so occupying a building*" if it is occupied by the person "*as the person's residence for the purpose of undertaking a full-time course of further or higher education*". As such, the 2004 Act specifically makes provision for students undertaking university courses.

48. As Mr Naik confirmed that his course converted to online studies during the pandemic, and that from December 2020 until the end of that academic year he was studying whilst residing at home, the Tribunal found that section 259(2)(a) did not further Mr Naik's case.

49. The Tribunal noted that Mr Naik did continue to pay rent for the Property during his absence, but his lawful tenancy of the Property was not in dispute. As the Applicants' written submissions had stressed in some detail, the HMO licensing scheme rules are more stringent to take into account the increased risks associated with living with people from separate households. As such, it is the *occupation* of the property which is important rather than how it is legally held. Parliament has legislated that a mandatory licence is required if there are five or more people *occupying* a property from separate households. Conversely, Parliament must consider there to be a lesser risk if the number of occupiers is less than five.

50. In relation to considering the definition of *occupancy*, the Tribunal did accept Mr Eliot's submission that caselaw decided under section 1(1) of the Protection from Eviction Act 1977 and section 2 of the Rent Act 1977 might provide helpful guidance.

51. Although Mr Eliot emphasised in his submission the passage from *Schon* which referred to a person's intention with regard to returning to a premises and whether furniture and belongings remained in the premises, the Tribunal noted that the Divisional Court confirmed that it was a "*question of fact for the court, in the particular circumstances*" to decide whether a cessation of occupation had occurred.

52. In this matter, although the Tribunal accepted that some COVID-19 restrictions had been in force during the period covered by the claim, the Tribunal noted that Mr Naik's housemates continued to live in the Property during this time. In addition, in the LON/00BE/HMF/2022/0044 decision referred to by Mr Eliot, which also related to students occupying a property whose occupation was in part disrupted by COVID-19 restrictions, the absences were only for a period of up to two months. The Tribunal accepted that Mr Naik's grandfather had also passed away during this time, however, the Tribunal did not accept that the combination

of these two events would have prevented Mr Naik from returning to the Property for over nine months.

53. As to Mr Naik's intention to return, the Tribunal accepted that Mr Naik had left some of his clothes and furniture at the Property, although from his oral evidence he had removed some of it. As Mr Naik had signed a new tenancy agreement in January 2021 for the following academic year, it was unsurprising that he chose not to remove all his belonging from the Property and had intended to return to the Property at some point in the future.

54. The Tribunal accepted that temporary absences from a property for holidays, business trips and due to extenuating circumstances (including due to the pandemic) for periods of up to two months, would not have constituted a cessation of occupancy from a property. In this case, however, having considered all of the evidence, and noting that Mr Naik was not living at the Property for a period of over nine months, choosing not return to the Property until the start of the next academic year, the Tribunal found that this was more than a temporary absence and did constitute a break in his occupancy.

55. Accordingly, over the period of time covered by the claim, the Tribunal found that Mr Naik was not an "*occupier*" of the Property for the purposes of section 262(6) of the 2004 Act from 1 April 2021 until 20 September 2021 and, consequently, the Property was only being occupied by four people during this time so would not have required an HMO licence. The Tribunal found that this conclusion supported the intention of the legislation as, during the nine months he was absent from the Property, the risks associated with having an additional person living at the Property were lessened.

Amount of the Order

56. Taking into account the guidance given by the Chamber President, The Hon Mr Justice Fancourt, in *Williams*, the Tribunal noted that the correct approach when considering what amount of repayment order is reasonable in any given case was for the FTT to consider "*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*". The Tribunal also noted that the decision confirmed that the FTT should have particular regard to the conduct of both parties (including the seriousness of the offence committed as underlined in *Acheampong*), the financial circumstances of the landlord, whether the landlord had at any time been convicted of a relevant offence and "*any other factors that appear to be relevant*" [paragraph 50].

57. As the Tribunal found, for the reasons stated above, that the offence was only being committed for 192 days (from 21 September 2021 to 31 March 2022) over the period for which the RRO was being claimed, the amount paid by the Applicants during this time amounted to £16,685.57 (192 days at £2,643.33 per month).

58. Although Mr Eliot contended that an amount for utilities should not be deducted from the rent paid and referred the Tribunal to a decision by the FTT where such an approach was taken, the Tribunal found that this was inconsistent with Upper Tribunal decisions on this point.

59. The Tribunal noted, and pointed Mr Eliot to, the recent decision of the Upper Tribunal in *LDC (Ferry Lane) GP3 Ltd v Garro and Ors* [2024] UKUT 40 (LC), in which the Deputy Chamber President, Martin Rodger KC, expressed surprise at views which suggested that the approach explained in *Acheampong*, in particular the deduction of costs of utilities or services, were inconsistent with section 44 of the Act. At paragraph 80 of the decision, he stated:

> "*The statutory direction is that the amount of a rent repayment order must relate to the rent paid; that means it must relate to the whole of the rent. But the statutory direction also necessarily requires that the assessment take account of other relevant circumstances, one of which will often be that the landlord has paid the cost of utilities consumed by the tenant. The decision maker is entitled to take account of that expenditure when determining the amount to be repaid and is encouraged by this Tribunal's guidance to do so. That has now become the settled approach amongst FTT panels. Mischaracterising it as "disregarding part of the rent" and suggesting that there is no basis in law or practice for it is a misinterpretation of section 44 and is inconsistent with Williams v Parmar and the subsequent Upper Tribunal cases."*

60. As both tenancy agreements provided that the Respondent was liable for certain outgoings, including for the use of water, gas, electricity and broadband, the Tribunal considered that a deduction from the rent was appropriate. As the Respondent had not provided details of such outgoings, taking into account its own expertise and experience, the Tribunal considered that a sum of £2,000.00 per annum, amounting to a sum of £1,052.00 for the 192 days the offence was being committed over the period claimed, was an informed estimate.

61. In relation to the conduct of the Respondent, the Tribunal considered the decision in *Hallett*, in which the offence also related to a failure to obtain an HMO licence and found that the failure to obtain a licence was not the most serious type of offence. The Tribunal accepted, however, that licensing requirements were necessary and that an order ought to be made to deter evasion. The Tribunal also noted that the Property should have been licensed when all five Applicants originally took up occupation of the Property in September 2020 and that, although the Tribunal found that Mr Naik was not an "*occupier*" of the Property from 1 April 2021 until 20 September 2021, the Respondent would have been unaware of the same.

62. The Tribunal found no evidence to suggest that the Respondent had been convicted of a relevant offence and, unlike the landlord in *Aytan*, there was no evidence submitted to indicate that the Respondent was either a professional landlord or let several properties.

63. The Tribunal noted that the Applicants had not referred to any particular issues with regard to the structural or decorative condition of the Property and found that there was insufficient evidence to corroborate that the Applicants had not been forwarded copies of the gas and electrical safety certificates, EPC or the How to Rent guide at the beginning of their tenancies. The Tribunal also considered that the unsolicited calls and disturbance by the builders for a single day was not sufficient evidence of poor conduct so as to affect the amount of any order.

64. With regard to fire safety, the Tribunal accepted that there appeared to have only been one smoke alarm at the Property, located in the kitchen, but noted that most of the Applicants had been less certain regarding the absence of other features. In addition, although the builders had attended the Property soon after the application for a licence had been made (which indicated that some adaptions may have been required), it was unclear what work was going to be carried out.

65. Taking into account the above, and noting that the premises was a two-storey house with exits to the front and rear, the Tribunal found that there was insufficient corroborating evidence to indicate that the Property was comparable to the property in *Wilson*, in which it was stated that a "*compelling factor*" in the amount of order awarded was the "*absence of important fire safety features*" which would have prevented the Property from receiving an HMO licence.

66. As such, considering all of the evidence submitted, the Tribunal considered that a 50% deduction in the maximum rent repayable was appropriate.

67. As the Tribunal had no information regarding any poor conduct by the Applicants or anything to suggest that the Respondent's financial circumstances should be taken into account, the Tribunal determined that the amount to be repaid to the Applicants was £7,816.79, say £1,563.00 each.

Order under Rule 13

68. The Tribunal can, under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, "*make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party…*". In this matter, the Applicants had paid an application fee of £100.00 and a hearing fee of £200.00.

69. Having found that the Respondent had committed an offence and had no reasonable excuse to do so, the Tribunal finds it appropriate to make an order under Rule 13(2) and orders the Respondent to reimburse to the Applicants the sum of £300.00.

Appeal Provisions

70. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM
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Judge M K Gandham

Schedule

Tenant Name	Date of Payment	Rental Period	Amount paid	Total Reclaimable	Notes
Dev Naik	11.01.2021	01/01/2021 - 30/04/2021	£ 10,573.30	£ 2,643.33	Dev Naik paid rent on behalf of all tenants. The payment schedule on the tenancy contract required paying lump sumps of rent on particular months. The monthly value owed was £2643.33 as can be seen from both tenancy contracts. The period of claim begins on 01/04/2021: £2,643.33
Dev Naik	04.05.2021	01/05/2021 - 30/06/2021	£ 5,286.66	£ 5,286.66	
Dev Naik	01.07.2021	01/07/2021 - 31/07/2021	£ 1,321.67	£ 1,321.67	Second tenancy began and £1,321.67 as the first payment due.
Dev Naik	12.08.2021	01/08/2021 - 30/09/2021	£ 5,286.67	£ 5,286.67	
Dev Naik	02.10.2021	01/10/2021 - 31/12/2021	£ 7,929.99	£ 7,929.99	
Dev Naik	20.01.2022	01/01/2022 - 30/04/2022	£ 10,573.32	£ 7,929.99	The period of claim ends on 31/03/2022: £2,643.33 * 3 months = £7929.99
		Total Reclaimable Rent:		**£ 30,398.31**	