FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AP/HMF/2022/0191** **LON/00AP/HMF/2023/0074** **LON/00AP/HMF/2023/0146** **LON/00AP/HMF/2023/0015** **LON/00AP/HMF/2023/0173** **LON/00AP/HMF/2023/0205**
Property	:	**North Lodge, Station Court and Emily Bowes Court, N17**
Applicants	:	**Various tenants (114)**
Respondent	:	**LDC (Ferry Lane 2) GP3 Limited**
Type of application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	:	**Judge Martyński**
Date of decision	:	**29 November 2024**

DECISION

Decision summary

1. Rent Repayment Orders are made in the sum of 65% of the rent paid by each Applicant during the relevant periods.

2. The Respondent must reimburse the Applicants the fees that they have paid to the tribunal in respect of their applications.

3. The parties must seek to agree the sums payable by the Respondent in respect of each Applicant and submit an agreed schedule to the tribunal by no later than **10 January 2025**.

Background

4. The Respondent is a nationwide provider of student accommodation. The applications covered by this decision are in respect of three blocks containing various shared flats occupied by the Applicants. Between them, the Applicants, numbering 114, occupied 39 flats.

5. The Applicants allege in each case that the Respondent was in control or management of an unlicensed HMO (s.72(1) Housing Act 2004). The flats in question were required to be licensed pursuant to an Additional Licensing Scheme introduced by the local authority on 27 May 2019 but at all material times were unlicensed.

6. On the basis of that allegation, the Applicants claimed Rent Repayment Orders pursuant to s.40 Housing Act 2016 for the time in which they were in occupation when the flats were unlicensed. The Respondent accepts that the flats required a license and were unlicensed. It is alleged that the Respondent did not make an effective application to licence until June 2024.

7. In May 2023, the tribunal issued a decision in respect of flats 201 & 601 North Lodge (which is one of the buildings involved in the current cases). The Respondent to those cases and the Respondent in these proceedings is the same company. As in the cases dealt with in this decision, the cases involving flats 201 & 601 were based on allegations that the Respondent was in control or management of an unlicensed HMO. The tribunal made the following key decisions in those cases;

    (i) Rejecting the defence of reasonable excuse advanced by the Respondent

    (ii) Making a Rent Repayment Order ('RRO') at the rate of 50%

    (iii) Not taking into account issues of conduct raised by the Applicants when considering the level of the RRO

    (iv) Making deductions from the total rent paid by Applicants in respect of costs of utilities provided by the Respondent

8. The parties appealed and cross-appealed the tribunal's decisions to the Upper Tribunal ('UT'). The UT dismissed the appeals and upheld the tribunal's decisions.

9. During the course of the proceedings leading to this decision it was confirmed by the parties that;

    (i) The Respondent will not be defending the proceedings on the grounds of reasonable excuse and will accept, in principle, that Rent Repayment Orders can be made in each case

(ii) The issue of principle in respect of deduction for utility costs, has been decided by the UT

10. During the case management phase of proceedings, given the particular circumstances of these cases, the parties agreed that the decision could be made by the tribunal on the basis of the papers alone without a hearing. The tribunal decided that, as there were common issues across all cases, it would deal with all the cases in the same decision.

11. The issues between the parties were narrowed to the following;

(a) Whether alleged conduct on the part of the Respondent should be taken into account in determining the amount of the order made (s.45(4) Housing Act 2016)
(b) The amount in which the orders should be made

12. The Applicant's representatives provided the tribunal with a bundle of documents for the final hearing. The bundle included a spreadsheet which included columns for the following matters;
(a) The name and flat number for each Applicant
(b) The period for which an order was sought
(c) The total rent paid

The spreadsheet contained hyperlinks to various documents in respect of each Applicant including their tenancy agreements and proof of rent paid.

13. The bundle included another spreadsheet dealing with the issues of alleged conduct. The columns in this spreadsheet included columns for the Applicant's name and flat number, for the 'Issues during your stay' for 'Issues details' and for 'Additional evidence'. The spreadsheet then contained columns for the Respondent's response to the Applicants' complaints. Rather than respond to every individual allegation, the Respondent used the spreadsheet to make generic responses to various categories of complaint.

14. After the bundle (prepared by the Applicants' representative) was submitted, the tribunal received an email, dated 14 November 2024, from the Respondent's representatives. It was said that the bundle had been filed without first obtaining the Respondent's comments. The Respondent complained that the 'Additional evidence' column had been added after the Respondent had inserted its responses to the conduct allegations. The Respondent pointed out that the tribunal had not given permission to the Applicants to add to the spreadsheet after it had been completed by the Respondent. The Respondent asked the tribunal to ignore this column when making its decision.

15. The Respondent's email went on to point out that the tribunal's directions had not afforded the opportunity to the Respondent to submit any evidence regarding the cost of utilities provided to each flat/Applicant. The email went on to give figures for the costs of those utilities.

Upper Tribunal decision in Flats 201 & 601 North Lodge (12.2.24) – LDC (Ferry Lane) GP3 Ltd v Garro & others [2024] UKUT 40 (LC)

16. As stated above, this case dealt with the same building and same issues as are involved in this decision. The decision confirmed that the flats in North Lodge were subject to additional licensing and were not licenced during the periods for which a Rent Repayment Orders were sought.

17. The tribunal concluded that, in respect of the alleged offence committed by the Respondent under s.72(1) Housing Act 2004, the First-tier Tribunal ('FTT') was right to reach the conclusion that the matters put forward by the Respondent did not amount to a defence of 'reasonable excuse'. This decision dealt with the only issue raised in the appeal by the Respondent.

18. The tenants who were the Respondents to the appeal, sought permission to cross appeal the FTT's decisions to;

    (a) Refuse to adjust the RRO awards upwards to reflect behaviour on the part of the Respondent
    (b) Reduce the RRO awards to take account of utilities paid for the Respondent
    (c) Treat the offence of failing to obtain an HMO licence as not being at the most serious end of the scale
    (d) Not take account of the Upper Tribunal's guidance that higher awards should be made in cases involving professional landlords

    At the final hearing, ground (c) above was not pursued. The tribunal only gave permission to appeal on ground (b) above and refused permission on the other remaining grounds.

19. In refusing permission, the tribunal commented as follows:

> 49……The FTT formed a negative view of the respondents' case about the condition of the flat and the various other allegations of "misconduct" levelled against their landlord and there is no basis on which this Tribunal, which has not heard the evidence or been taken through the relevant written records, could reach a different conclusion. The FTT also took account of the scale of the landlord's business. When a tribunal makes an assessment involving a large number of different considerations, unless an appellant can point to some clear error such as a failure to take account of something relevant, or taking account something irrelevant, or a result which falls outside a rational range, it is not for this Tribunal to interfere with that assessment simply because more weight might have been given to one factor or another.

20. As to the appeal in respect of utility bills, the tribunal concluded as follows:

80…….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.

The FTT decision in Flats 201 & 601 North Lodge (11.5.23) – LON/00AP/HMF/2022/0183
LON/00AP/HMF/2022/0168

21. The relevant parts of this decision read as follows:

8. The Applicants argue that the Respondents should have been well aware of the need to license the flats. They are a large national organisation that lets properties to students, some of which are HMOs. The Applicants listed other properties owned by the Respondents that had already been licensed.

9. The Applicants also argued that the failure to license offence was aggravated by various factors relating to the Respondents' alleged conduct. Thes can be broadly summarised as follows:

a) Inadequate support of the Applicants during the pandemic
b) Poor waste management
c) Lack of fire safety training
d) Unlawful entry by security staff
e) Poor response to maintenance requires
f) Flat 601 being excessively hot
g) An infestation of flies in Flat 601

13. In relation to quantum the Respondents argue that a reduction for utilities should be made to reflect the cost of utilities of £588.14 per annum per student which is included in the rent. They also say the offence if there is one is at the low end of seriousness.

14. In response to the allegations about their conduct the Respondents say they followed government guidance during the pandemic and provided support that was possible; they say that the tenancy agreement allows access without notice to the flats depending on the circumstances; they say the Applicants should have deal with the fly infestation themselves; finally they deny that they did not respond to maintenance issues.

41. The Tribunal were largely unimpressed by the Applicants' argument on conduct which appeared to have been formulated to try and boost the penalty rather than based on genuine complaint. To suggest that the Respondents had special duties during the

pandemic is unrealistic. The argument about incursions by security guards was largely based on innuendo rather than direct knowledge The arguments about alleged fly infestation and heat in the property were equally unimpressive.

45. The offence is not considered at the serious end of the scale either comparing the offence to other offences or other cases of the same offence. The Respondents should have been aware of the need to license but this was not a deliberate breach. Hopefully they will ensure that they don't fall foul of the law again. No additional is made for conduct for the reasons already given. We consider that a 50% penalty is appropriate.

The Applicants' Statement of Case - *Quantum*

General

22. The Applicants argued for an award in a range of 80-90% of the rent paid.

23. In support of this figure, the Applicants referred to the Upper Tribunal decision in *Newell v Abbott* [2024] UKUT 181 [LC]. They argued that in this case, the UT made an award of 60% on the basis that the offence of failure to licence an HMO was made by the landlord of a single property and was the result of inadvertence and the accommodation provided was of a generally good standard. The UT commented that, a prolonged failure to obtain a licence merits a higher penalty. The Applicants argued that the base of the award must start at 60%.

24. The Applicants went on to refer to the review of awards made in *Newell* of other cases where awards of much higher percentages were made as a result of aggravating features such as poor condition of property and prolonged unlicensed period.

25. The Applicants argued that there are aggravating circumstances in these cases being; (a) a very prolonged failure to licence, and (b) the Respondent being a professional very large landlord letting in the region of 70,000 beds nationally.

26. Further, the Applicants stated that they had identified 55 blocks run by the Respondent '*that we considered needed licensing and for which we could only find 14 where licences had been applied for.*' They also state that the Respondent has had RRO awards made against it in Liverpool and Coventry and had settled cases in Oxford.

Behaviour

27. The following broad categories of behaviour are alleged by the Applicants.
(a) Ongoing re-cladding works to Emily Bowes Court resulting in noise, dust, light reduction caused by scaffolding and tarpaulins
(b) Fly, bedbug, silverfish and other infestations

(c) Persistent plumbing problems
(d) Excessive heat
(e) Frequent breakdown of lifts
(f) Poor security to entrance of block
(g) Flats dirty at outset of tenancies
(h) Mould in flats

The Respondent's Statement of Case - *Quantum (excluding behaviour)*

General

28. The Respondent pointed out that in *Garro & others*, which is the case regarding 201 & 601 North Lodge, the UT had not interfered with the FTT's award of 50%. The Respondent made the point that the cases involved in this decision and the issues involved are very similar to those in *Garro*.

29. Reliance was placed on the comments of the UT in *Newell v Abbot* [2024] UKUT 181 (LC) at paragraph 61 as follows:

> ….that should not be taken as an invitation to landlords and tenants to identify every possible example of less than perfect behaviour to add to the tribunal scales in the hope of increasing or reducing the penalty……increasingly, the evidence in rent repayment cases (especially those prepared with professional or semi-professional assistance) has come to focus disproportionately on allegations of misconduct….. The focus should be on conduct with serious or potentially serious consequences…… Conduct which, even proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two.

30. As to the alleged failure to obtain licences, the Respondent stated that 1500 + applications were individually uploaded to the local authority's portal by March 2023, with the council requesting payment on 17 July 2023 and payment being made on 12 September 2023.

31. The Respondent stated that the issues raised by the Applicants in relation to 'landlord of a single property' and 'inadvertence' were previously raised in *Garro*, and there is no basis on which to depart from the conclusions in *Garro* that permission to appeal as to the percentage of the award should be given.

32. As to the allegation that the Respondent had committed repeat offences in relation to licensing, it would be wrong in principle to bring such an allegation into the reckoning. 'Conduct' in s.44(4)(a) is not conduct in relation to other tenancies. Further, the failure to obtain licences at other properties within the same timeframe does not amount to a repeat offence.

Behaviour

33. The Responses to the allegations of behaviour can be summarised as follows;
    (a) All students were aware of the re-cladding works prior to signing their contracts
    (b) Infestations of flies in shared kitchens is not uncommon and could be caused by the actions of tenants
    (c) Plumbing problems will inevitably occur from time to time
    (d) Excessive heat – hot year and very few complaints
    (e) Lifts break down from time to time and the Respondent has a maintenance contract with a 3rd party
    (f) Security – there are adequate security arrangements but there are a large number of flats in each block and a large number of residents with guests coming and going
    (g) Flats dirty at outset of tenancies
    (h) Mould – the Respondent does not have any records of complaints from the Applicants and in any event has a policy to deal with such issues

Conclusions on the award excluding behaviour

34. I note that, in identical circumstances involving the same Respondent, an FTT felt the appropriate percentage award was 50% and this was an award which the UT refused to revisit.

35. I am of course not bound by the FTT's decision in the cases involving 201 & 601 North Lodge and am required to make my own assessment in these cases bearing in mind the principles laid down by the UT.

36. I start with the principle that an offence of a failure to licence is of the less serious type of offence contemplated in the making of Rent Repayment Orders - *Daff v Gyalui* [2023] UKUT 134 (LC).

37. On the evidence before me, the failure to licence can be characterised as inadvertent (as opposed to deliberate). It was the failure of a large company to properly regulate its procedures and processes. That failure is serious given that the Respondent's business is the provision of providing housing to students in shared accommodation. Another side of this factor is of course recognising that the Respondent is by no means a 'single' or 'small' or amateur landlord.

38. As to the alleged aggravating factor of prolonged failure to obtain a licence, There is no doubt that the Respondent should have been aware of the need to licence at the outset, that is, when the additional licensing scheme came into effect in May 2019. The Respondent did not contact the local authority regarding licensing until July 2022. Most of the tenancies concerned in the applications before me commenced in September 2021. So, the Respondent should have been aware of the need to licence before the tenancies were granted and did nothing about it for nearly a year when it approached the local authority in July 2022. Another eight months expired

before the Respondent managed to send its licence applications to the council. Events after this time become a little confused. For the purpose of this decision, it is sufficient to note the unlicensed periods mentioned above.

39. As to the argument raised by the Applicants that the Respondent is a repeat offender, I think that it is sufficient to conclude that, because of its size and the corporate failure to recognise the need to licence, the Respondent has found itself in the position of facing a number of different actions in various locations regarding the failure. It is not clear to me that this is a case where, after realising the need to licence, the Respondent has gone on to continue to deliberately repeat the offence.

40. Bearing in mind the above, and looking at *Newell*, it is difficult to conclude that 50% is the appropriate level of for the cases before me. *Newell* itself was a case which involved the landlord of a single property where the UT concluded that 60% was appropriate. The cases before me concern a very large landlord that should have realised the need to licence and which had the resources to make sure that it complied with the law. In Newell, the UT surveyed various awards approved/awarded by the UT in respect of RROs based on failure to licence. As a distillation of that survey, I set out the following;

    80% - Substantial landlord, prolonged period of failure to licence, finding that the property would not have been licensed given its poor condition (*Williams*)
    85% - Substantial landlord, prolonged period of failure to licence (there was in addition, evidence that the landlord knowingly let the property to 3 persons with a restriction in the contract to 'single occupation – in its decision the UT referred to taking a 'serious view of the landlord's conduct') (*Aytan*)
    90% - Smaller landlord but property lacked important fire safety features (*Wilson*)
    80% - Substantial landlord, clear evidence of specific incidents of bad behaviour (*Simpson House 3 Ltd*)
    75% - Failings in fire safety, deposit not protected, failure to obtain gas or fire safety certificates (*Choudhury*)
    45% - Owner of 4 properties one of which was an HMO (*Dowd*)
    65% - Substantial landlord, deliberate offence, evidence that licence would not have been granted without improvements (*Hancher*)
    75% - Substantial landlord, deliberate offence (*Irvine*)

41. Taking the summary as a rough guide (bearing in mind the difficulty to trying to distinguish between the varying facts in each case), the award merited in the cases before me should be based on; Substantial landlord, prolonged period of failure to licence, but not deliberate, and no evidence that licences would not have been granted if applied for; I consider that aggravating features like deliberate offending and safety risks in a property would warrant a substantial increase in the percentage award. Neither

factor is present here. Accordingly it seems to me that 65% is the appropriate award (before taking into account behaviour).

Conclusions as to behaviour allegations

42. There is a real danger that allegations of behaviour can swamp the other issues to be decided in RRO cases and that they will take up vast amounts of the tribunal's time in hearing cases and in making decisions.

43. The allegations in the cases before me were presented in their own unwieldy spreadsheet containing over 40 columns and 98 rows. Within the entries in the spreadsheet are Hyperlinks taking one to further detail on the Applicants' allegations.

44. As previously stated, in an email dated 14 November 2025 (sent to the tribunal after the Applicants' representatives had submitted the bundle for the decision), the Respondent's representatives complained that after the parties had completed the 'behaviour' spreadsheet with details of Applicants' allegations and the Respondent's response to those allegations, the Applicants had inserted an 'Additional evidence' column. The Respondent pointed out that there had been no direction from the tribunal allowing such further evidence to be adduced. I have therefore not taken account of any comments set out in the 'Additional evidence' part of the spreadsheet.

45. One of the problems with the allegations of behaviour is that they are presented as comments, statements and video clips by the Applicants. Outside of these RRO proceedings, if the Applicants wished to claim compensation (or a set-off against their rent) in respect of complaints against the Respondent, they would have to issue court proceedings. The court process would require them to set out a legal cause of action and to evidence their complaints with detailed witness statements and expert evidence where necessary. The RRO process in the FTT does not allow for such formality and detail, behaviour being simply an adjunct of the claim for an RRO.

46. The problems in making a detailed investigation and assessment of the complaints become evident if we look in a little more detail at some of the complaints raised by the Applicants.

47. *Infestations*: A civil claim for damages would involve expert evidence as to the source and extent of the infestation to establish liability on the part of the landlord. There is no such evidence in these proceedings.

48. The same can be said for the allegations of mould, plumbing and lift issues.

49. *Ventilation/construction/light*: These are set out as separate complaints, but all derive from the complaint that building works that were being carried out to the exterior of the buildings. In a civil action for damages, there would have to be pleaded a cause of action, i.e. nuisance or breach of

covenant for quiet enjoyment supported by detailed relevant witness evidence.

50. *Security*: This appears to be a claim possibly in respect of breach of covenant for quiet enjoyment. I refer to my comments above.

51. An example of the evidence provided to the tribunal from the various Applicants is as follows:

> I had experienced a number of issues whilst living in Emily Bowes Court. First of all my safety was compromised with a number of people from the public being able to enter the building easily. I can recall a time during first year when an older male came into the building which was frightening. I also experienced issues with maintenance my toilet would be blocked or the cleaning tools such as the hoover would be broken for the entire year with no replacement. Although we reviewed a deduction in rent for the building works, ventilation was not taken into account especially in the warmer periods of the year. Due to works being done and dust being produced from the works, I was not able to open my window for fresh air. Overall there was a lot of problems and compromises on my safety which arguably made it a place not suitable for anyone to live in especially as a first year student.

This evidence is in the most general of terms dealing with a number of different issues, each of which would require substantial and detailed evidence (possibly supported by expert evidence) in order to be properly assessed.

52. All of the allegations, in order to properly adjudicate upon them, would require a level and detail of evidence that; (a) is not present in these proceedings, and; (b) would not be appropriate in these proceedings because the allegations would then, in terms of issues, evidence and time, dwarf the issues, evidence and time taken up by the main application.

53. An award in respect of behaviour in RRO proceedings is only realistically possible in circumstances where there is clear compelling or irrefutable evidence in respect of specific actions or failings on the part of one of the parties. Examples of such circumstances in allegations against a landlord could be where, in a case based on failure to licence, there is a report from an Environmental Health Officer showing significant issues with the property, or where there is clear evidence of specific incidents of harassment with no real or credible defence to the allegations.

54. Accordingly I decline to carry out a detailed assessment of the behaviour allegations.

Deductions for utilities

55. The Respondent's representative's email of 14 November 2024 also pointed out that the tribunal's directions had failed to provide for the Respondent to provide details of the costs incurred by the Respondent in respect of the utilities provided for each flat during the claim periods. The email gave headline figures and a breakdown (electricity, heat, water,

internet, contents insurance) for the flats in the blocks. The headline figures, per tenant, for the academic year 2021/22 are;

North Lodge: £628.17
Station Court: £533.17
Emily Bowes Court: £638.17

There has been no response from the Applicants to challenge these figures.

56. In the UT decision regarding Flats 201 and 601 North Lodge, the tribunal specifically dealt with the treatment of utilities. The tribunal referred to and approved its previous decision in *Acheampong v Roman* [2022] UKUT 239 (LC) in which it was stated that the correct approach to the landlord's payment for utilities was to subtract any element of the rent that represents payment for utilities that only benefitted the tenant, giving examples of such payments as gas, electricity and internet.

57. The Rent Repayment Orders that I make are therefore reduced by the sums detailed by the Respondent and set out above.

Disposal

58. The parties should now be able to agree the exact amounts of the Rent Repayment orders in respect of each Applicant, and I invite the parties to seek to agree the individual amounts and to send to the tribunal a schedule setting out the amounts payable by the Respondent in respect of each tenant.

Deputy Regional Tribunal Judge Martyński

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).