



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/47UD/HMF/2024/0002**

Subject Property : **36 Millward Street
Small Heath
Birmingham B9 5BA**

Applicant : **Talat Rahman Butt**

Respondent : **Nicola Williams**

Type of Application : **Application under section 41(1) of the
Housing and Planning Act 2016 for a
rent repayment order**

Date of Hearing : **19 November 2024**

Tribunal Members : **Deputy Regional Judge Nigel Gravells
Mr Robert Chumley-Roberts MCIEH, JP**

Date of Decision : **6 December 2024**

DECISION

Introduction

- 1 This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
- 2 The Applicant is Mrs Talat Rahman Butt, the tenant of 36 Millward Street, Small Heath, Birmingham B9 5BA ('the subject property'). The application named Keith Williams as Respondent. However, the registered proprietor is Nicola Williams (the spouse of Keith Williams); and, for the reasons explained below (see paragraphs 14-20), pursuant to its power under rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal removed Keith Williams as Respondent and substituted Nicola Williams. In this decision, therefore, references to 'the Respondent' are references to Nicola Williams.
- 3 The Housing Act 2004 ('the 2004 Act') introduced licensing for certain categories of residential accommodation. Under Part 2 of the 2004 Act, licensing is mandatory for all houses in multiple occupation (HMOs) which are occupied by five or more persons forming two or more households; and local housing authorities may designate areas in their district as subject to additional licensing in relation to other HMOs not otherwise required to be licensed. Under Part 3 of the 2004 Act, local housing authorities may designate areas in their district as subject to selective licensing in relation to other rented houses not otherwise required to be licensed.
- 4 Under section 95 of the 2004 Act a person who has control of or manages a house that is required to be licensed under Part 3 but is not so licensed commits an offence.
- 5 Commission of an offence under section 95 may lead to criminal prosecution and conviction or to the imposition by the local housing authority of a financial penalty pursuant to section 249A of the 2004 Act. Furthermore, under section 43 of the 2016 Act the Tribunal may make a rent repayment order in favour of the occupier (or former occupier) if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 95 of the 2004 Act, *whether or not the landlord has been convicted of that offence*.

Background

- 6 The subject property is a terraced house with two reception rooms, kitchen, two bedrooms and a bathroom. The Applicant has occupied (and continues to occupy) the property with her husband and two young children since July 2016 – first, under a six-month assured shorthold tenancy dated 14 July 2016 (which became a monthly tenancy on 14 January 2017) and, second, under a six-month assured shorthold tenancy dated 13 November 2022 (which became a monthly tenancy on 13 May 2023). From 14 July 2016 to 13 November 2022 the landlord's agent was Property Link; and from 13 November 2022 to the present the landlord's agent has been Allied Sales and Lettings ('Allied').
- 7 The rent payable under the November 2022 agreement was £600.00 per month and increased to £675.00 per month with effect from 13 April 2023. The rent was subsequently increased (following a determination by the First-tier Tribunal) to £775.00 per month with effect from 13 June 2024.

- 8 The subject property became subject to selective licensing pursuant to a scheme introduced by Birmingham City Council with effect from 5 June 2023.
- 9 It would appear that the Respondent became aware of the requirement to obtain a licence for the subject property in the following circumstances –
- (i) In March 2023 the Respondent decided to sell the property and instructed estate agents. A purchaser was found but the Applicant refused to vacate the property. On 23 May 2023 Allied’s solicitors (on behalf of the Respondent) issued a notice under section 21 of the Housing Act 1988, seeking possession of the property. However, the county court hearing was adjourned on 26 January 2024, apparently because, since the subject property was not licensed, the section 21 notice was invalid. The hearing reconvened on 6 March 2024 but the Respondent did not attend and the possession claim was struck out.
 - (ii) Following the adjournment of the county court hearing, on 31 January 2024 the Respondent sought advice from Birmingham City Council. She was informed that the subject property was subject to selective licensing; but, given the intention to sell the property, the Council recommended that she apply for a temporary exemption notice. An application was made on 1 February 2024 but on 28 February 2024 the Council issued a Refusal Notice.
 - (iii) On 4 March 2024 the Respondent applied for a licence under the selective licensing scheme and on 9 May 2024 a licence was granted to her.
- 10 By an application dated 24 July 2024, the Applicant applied for a rent repayment order under section 41 of the 2016 Act. She alleged that from 5 June 2023 to 9 May 2024 the Respondent was controlling or managing the subject property, which, as a property subject to the Birmingham City Council selective licensing scheme, was required to be licensed pursuant to Part 3 of the 2004 Act but was not so licensed. However, the Applicant limited her claim to the ten full rental periods within those dates, namely 13 June 2023 to 12 April 2024.
- 11 On 2 August 2024 the Tribunal issued Directions for the determination of the application.
- 12 On 19 November 2024 a hybrid hearing was held. The hearing was attended remotely by (i) the Applicant, her husband and Mr Syed Sabah Uddin, of the Pro Bono Centre at BPP Law School in Birmingham, who represented the Applicant and (ii) the Respondent and her husband.

Statutory regime

- 13 The statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act. So far as 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
...			
6	Housing Act 2004	section 95(1)	control or management of unlicensed house
...			

41 Application for rent repayment order

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

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

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

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

...

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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
...	
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.

Preliminary issue

14 As noted above, the Tribunal exercised its power under rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to remove as Respondent Keith Williams, who was named as Respondent in the application, and to substitute Nicola Williams.

15 It is not wholly surprising that the Applicant named Keith Williams as Respondent. He is the named landlord in the two tenancy agreements signed by the Applicant. However, documentation included in the parties' bundles show that Nicola Williams (i) is the registered freeholder of the subject property, (ii) was the claimant in the possession claim against the Applicant, (iii) was the applicant for the (refused) temporary exemption notice and (iv) is the licence holder under the selective licence for the subject property. She was also referred to as the landlord in a letter dated 22 March 2024 from Allied to the Applicant. In the circumstances it is not clear why Keith Williams was named as landlord in the tenancy agreements.

16 At the start of the hearing, the Tribunal raised the issue of the appropriate Respondent. Although Keith Williams has no interest in the subject property, that does not in itself preclude him from being a landlord under the tenancy agreements: see *Bruton v London and Quadrant Housing Trust* [2000] 1 AC 406. However, the difficulty for the Applicant in naming Keith Williams as Respondent is that it is far from clear that the Applicant could establish to the satisfaction of the Tribunal that Keith Williams had committed the offence relied upon by the Applicant, namely that he was a *person having control of* or a *person managing* an unlicensed house. Those terms are defined in section 263 of the 2004 Act and broadly require that the person receives rent from the property in question. In the present case the bank statements clearly show that the rent was paid by the Applicant to Allied and, after the deduction of charges, by Allied to Nicola Williams.

17 Conversely, the difficulty in naming Nicola Williams as Respondent is that she is not the landlord named on the tenancy agreements, although, as noted, Allied referred to her as the landlord in a letter to the Applicant. However, many of the documents provided by the parties clearly suggest that Mr and Mrs Williams act together in relation to the subject property. Notably, the statement of reasons for opposing the application refers with very few exceptions to what 'we' did. In the circumstances, the Tribunal invited Mr and Mrs Williams to comment on the suggestion that Mr Williams was in effect acting as agent for Mrs Williams, who was therefore an 'undisclosed principal' and the landlord of the subject property (see *Cabo v Dezotti* [2024] EWCA Civ 1358).

- 18 Mrs Williams confirmed that that was a fair analysis of the arrangements relating to the subject property.
- 19 The Tribunal explained that the Applicant could make a new application with Nicola Williams named as Respondent. Alternatively, the determination of the present application could proceed with Nicola Williams as substituted Respondent, in which case the Tribunal indicated that it would adjourn the hearing if she required further time to prepare her case.
- 20 Mrs Williams confirmed that she did not object to being substituted as landlord and Respondent and that she was content for the hearing to continue, since the Respondent's case, nominally provided by Mr Williams, applied equally to her.
- 21 The Tribunal proceeded to determine the application with Nicola Williams substituted as Respondent.

Determination of the Tribunal

22 The Tribunal considered the application in four stages –

- (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 95(1) of the 2004 Act in that at the relevant time the Respondent was a person in control of or managing a house that was required to be licensed under Part 3 of the 2004 Act but was not so licensed.
- (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.

Offence under section 95(1) of the 2004 Act

Prima facie offence

23 In accordance with section 43(1) of the 2016 Act, the Tribunal was satisfied beyond reasonable doubt that, subject to the establishment of a reasonable excuse defence (see paragraphs 29-40 below), the Respondent, as landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 95(1) of the 2004 Act, which provides –

A person commits an offence if he is a person having control of or managing a house which is required to be licensed under [Part 3] ... but is not so licensed.

- 24 The Tribunal was satisfied that from 5 June 2023 the subject property was a house subject to selective licensing under Part 3 of the 2004 Act and that the property was not licensed.
- 25 The Tribunal was satisfied that at all material times the Respondent was the landlord of the subject property (and that Keith Williams was her agent).
- 26 The Tribunal was satisfied that at all material times the Respondent was the person managing the subject property within the meaning of section 263(3) of the 2004 Act: she was the owner of the property and received (whether directly or through an agent) rent from persons in occupation of the property.

- 27 While it was not disputed that the offence commenced on 5 June 2023, when the selective licensing scheme came into effect, the parties adopted different positions on when the offence ceased. The Applicant argued that the offence only ceased when the licence was granted on 9 May 2024. The Respondent argued that the offence ceased when she applied for a temporary exemption notice on 1 February 2024, although she extended the date to the end of the current rental period (13 February 2024).
- 28 Neither party is correct. On the one hand, an application for a temporary extension notice does not suspend the offence of managing an unlicensed house. The requirement of a licence is only removed when the temporary exemption notice is actually served and during the period for which the notice is in force: see section 86(3) of the 2004 Act. On the other hand, an application for a licence ‘duly made’ and ‘still effective’ does suspend the offence (or provide a defence): see section 95(3)(b) of the 2004 Act. Since it is not disputed that the Respondent’s application was ‘duly made’ and ‘still effective’, it follows that the offence commenced on 5 June 2023 and ceased on the day before the Respondent applied for a licence (4 March 2024).

Reasonable excuse defence

- 29 Although the Respondent did not expressly raise a defence of reasonable excuse under section 95(4), the substance of her representations require the Tribunal to consider whether the Respondent might have such a defence: see *IR Management Services Limited v Salford City Council* [2020] UKUT 81 at paragraph 40.
- 30 Section 95(4) provides –
- In proceedings against a person for an offence under subsection (1) ... it is a defence that he had a reasonable excuse -
- (a) for having control of or managing the house in the circumstances mentioned in subsection (1)
- 31 Although the Tribunal must be satisfied beyond reasonable doubt as to the element of the offence listed in section 95(1), the standard of proof in relation to the defence in section 95(4) is the balance of probabilities.
- 32 The Respondent referred to representations made to her by Allied and by Birmingham City Council. While the representations made by Allied potentially give rise to a reasonable excuse covering the entire period 5 June 2023 to 3 March 2024, the representations made by Birmingham City Council can only potentially give rise to a reasonable excuse covering the period 1 February 2024 to 3 March 2024.
- 33 The Respondent stated that she and her husband were not professional landlords but were letting the subject property in order to keep what had been Mr Williams’ family home within his family. They instructed Property Link to manage the property. In December 2022 Property Link informed Mr and Mrs Williams that the management of a portfolio of rental properties, including the subject property, would be merged with Allied (although, as noted above, the Applicant’s second assured shorthold tenancy was dated 13 November 2022). According to the Respondent, Allied did not advise her that the subject property would be subject to the selective licensing scheme that Birmingham City Council proposed to introduce. However, the Respondent

also said that she was verbally advised by Allied that the issue of the section 21 notice removed the need to license the subject property.

- 34 In a series of decisions the Upper Tribunal has indicated that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse: see *D'Costa v D'Andrea* [2021] UKUT 144 (LC), *Aytan v Moore* [2022] UKUT 027 (LC), *Marigold v Wells* [2023] UKUT 33 (LC). 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 himself/herself of the licensing requirements without relying upon an agent (for example, because the landlord lived abroad).
- 35 In the view of the Tribunal the Respondent has failed to bring herself within the scope of the reasonable excuse defence based on the verbal advice given by Allied.
- 36 As noted above, on 31 January 2024, following the adjournment of the possession proceedings, the Respondent sought guidance from Birmingham City Council in relation to the proposed sale of the property, the section 21 notice and licensing requirements. The Respondent produced a copy of an email dated 1 February 2024 from Tracey Ball, Private Rented Sector Licensing Officer with Birmingham City Council. The email stated -
- If your property falls within one of the selected licensing wards, a licence will be required. ...
- I can confirm that landlords are legally obligated to apply for a licence, and failing to do so constitutes a criminal offence. ...
- However, as you are in the process of selling the property, I would recommend applying for a Temporary Exemption Notice (providing a valid reason and as much detail as possible). This way you are given 3 months after the date of issue where you are exempt from this scheme. If after 3 months your tenants are still present, you would need to apply for another extension of 3 months (before the initial 3 months period is over), this will give you a total of 6 months. After this period (6 months) a licence will be required if you still have tenants. ...
- You can submit a request for a temporary exemption notice
- Please provide a valid reason and as much information to support your request as possible, the temporary exemption notice will give you a 3-month period where you will not require a licence, however you will need to apply/apply [sic] for an extension before this notice expires. ...
- Once the application is made, the legal duty on the landlord has been fulfilled. You can also serve a section 21 notice (a section 21 notice is not valid until an application has been made).
- You will need some documents and other information before you apply for a licence
- Importantly, you won't face penalties as long as you've submitted an application, even if it hasn't been issued yet.
- 37 While Ms Ball doubtless wanted to assist the Respondent, the email is not well written and could have been expressed more clearly (and accurately). Someone conversant with the licensing regime would understand the separate issues of licensing and temporary exemption notices and the different

consequences for the requirement to license the subject property. By contrast, it is far from clear that the email would have provided a layperson such as the Respondent with that same understanding.

- 38 Presumably in response to the email, the Respondent immediately applied for a temporary exemption notice but, for reasons not disclosed to the Tribunal, on 28 February 2024 Birmingham City Council issued a Refusal Notice. On 4 March 2024 the Respondent applied for a licence under the selective licensing scheme and on 9 May 2024 a licence was granted.
- 39 The question for the Tribunal is whether the Respondent had a reasonable excuse for managing an unlicensed house between 1 February 2024 and 3 March 2024. If she had applied for a licence (rather than a temporary exemption notice) on 1 February 2024, she would have had a defence under section 95(3)(b) of the 2004 Act from that date. However, it is far from clear that the Respondent would have been willing to pay the not-insignificant application fee for a licence if she assumed that a temporary exemption notice (for which no fee is payable) would be served.
- 40 The Tribunal is not satisfied on a balance of probabilities that, based on the email exchange between the Respondent and Birmingham City Council, the Respondent had a reasonable excuse for managing an unlicensed house during the period 1 February 2024 to 3 March 2024.
- 41 In the absence of the defence of reasonable excuse, the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 95(1) of the 2004 Act during the period 5 June 2023 to 3 March 2024 (inclusive).
- 42 However, in the view of the Tribunal, the matters referred to above do constitute mitigation and therefore a reason for reducing the amount of any rent repayment order.

Entitlement of the Applicant to apply for a rent repayment order

- 43 The Tribunal determined that the Applicant was entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the subject property was let to the Applicant throughout the period that the Respondent was committing the relevant offence; and the offence was committed in the period of 12 months ending with the day on which the application was made (24 July 2024).

Discretion to make rent repayment orders

- 44 Since the Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under section 95(1) of the 2004 Act, a ground for making a rent repayment order has been made out.
- 45 Even if the Tribunal finds that a relevant offence has been committed, it has a discretion not to make a rent repayment order (see section 43(1) of the 2016 Act). However, in the decision of the Upper Tribunal in the *London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) Judge McGrath stated –

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 ... then the Tribunal should be reluctant to refuse an application for rent repayment order.

- 46 The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.

Amount of rent repayment order

- 47 In accordance with section 44(2) of the 2016 Act, the amount of an order must relate to rent paid in a period, not exceeding 12 months, during which the landlord was committing an offence under section 95(1) of the 2004 Act ('the relevant period').
- 48 In accordance with section 44(3) of the 2016 Act, the amount that the landlord is required to repay in respect of the relevant period must not exceed the rent paid by the tenant in respect of that period less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- 49 Both the Applicant and her husband were in receipt of universal credit.
- 50 The Applicant provided a schedule showing for each month from June 2023 to March 2024 (i) the housing element of universal credit for the subject property, (ii) the nominal universal credit entitlement, (iii) the actual amount of universal credit paid after deductions, (iv) the percentage of the nominal universal credit paid, (v) the amount of the housing element paid and (vi) the net rent paid by the Applicant. For the full ten-month period of the Applicant's claim, the scheduled showed a gross rental figure of £675.00 x 10 = £6,750.00 and payments of £2075.00 for the amount of the housing element of universal credit, resulting in the figure of £4,675.00 for the net rent paid by the Applicant.
- 51 The Respondent did not challenge – and (subject to paragraph 52 below) the Tribunal accepted - the Applicant's schedule and its methodology.
- 52 The Tribunal has determined the relevant period during which the Respondent was committing the offence under section 95(1) of the 2004 Act to be 5 June 2023 to 3 March 2024, a period of nine months less one day (see paragraphs 28 and 41 above). The rent payable during that period was £675.00 x 9 less, say, £25.00 = £6,050.00. The amount of the housing element of universal credit paid in the months June 2023 to February 2024 inclusive was £1,786.73. The total net rent paid in the relevant period was £6050.00 less £1786.73 = £4263.27, which is therefore the maximum amount of a rent repayment order.
- 53 In accordance with section 44(4) of the 2016 Act, in determining the amount of any rent repayment order, the Tribunal must, in particular, take into account the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.
- 54 The proper approach that the Tribunal is required to take at the final stage of the determination of the amount of any rent repayment order has been considered by the Upper Tribunal (Lands Chamber) in a series of recent decisions: see *Vadamalayan v Stewart* [2020] UKUT 183 (LC), *Ficcara v James* [2021] UKUT 38 (LC), *Awad v Hooley* [2021] UKUT 55 (LC), *Williams*

v Parmar [2021] UKUT 244 (LC), *Aytan v Moore* [2022] UKUT 27 (LC), *Acheampong v Roman* [2022] UKUT 239 (LC), *Dowd v Martins and others* [2022] UKUT 249 (LC).

55 In *Dowd v Martins and others*, the Upper Tribunal endorsed the approach summarised in paragraph 21 of the decision in *Acheampong v Roman*. The FTT should:

(a) Ascertain the whole of the rent for the relevant period.

(b) Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

(c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step.

(d) Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

56 Applying steps (a) to (d) above to the present case, the Tribunal has already determined step (a): see paragraphs 47-52 above.

57 Step (b) is not relevant in the circumstances of the present case.

58 Turning to step (c), the Upper Tribunal has made it clear that in applying section 44(4)(a) of the 2016 Act, the conduct of the Respondent landlord also embraces the seriousness of the offence committed by the Respondent landlord that is the pre-condition for the making of a rent repayment order. The offence of managing an unlicensed house is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not normally regarded as the most serious of the offences listed in section 40(3): see *Daff v Gyalui* [2023] UKUT 134 (LC) at paragraphs 48-49 and *Irvine v Metcalfe* [2023] UKUT 283 (LC) at paragraph 72. The Tribunal determines that the relatively less serious offence committed by the Respondent should be reflected in a deduction from the maximum amount of the rent repayment order identified in paragraph 52 above.

59 Turning to step (d), the Applicant raised a number of issues in relation to the conduct of the Respondent. She asserted (i) that the Respondent and Allied had conducted themselves poorly throughout the tenancy, (ii) that the property had been rented in poor condition, (iii) that the Respondent had failed to meet her statutory repairing obligations, (iv) that the property suffered from mould in the kitchen and bathroom, (v) that the garden and garden fence were in need of maintenance and repair and (vi) that Allied had displayed threatening and aggressive behaviour towards the Applicant.

60 In relation to the condition of the subject property, the Respondent asserted that the property had been let in good condition and that no issues with the condition of the property had been raised, either directly with the Respondent or indirectly through Allied, until the service of the section 21 notice in May 2023. Specifically in relation to the mould, Allied had visited the property

and had found wet clothes on every radiator but no open windows to provide ventilation.

- 61 There also appeared to be some dispute as to the garden. The Respondent produced photographs showing that the garden was in good condition when the Applicant moved in. Although it appears that under the tenancy agreement the Applicant was responsible for the maintenance of the garden, the Applicant asserted that garden was largely used by the Respondent's uncle, who occupied the neighbouring property, to store construction materials and other belongings. However, according to the Respondent, the Applicant had given the Respondent's uncle permission to use the garden.
- 62 The Applicant asserted that the cellar of the property was in very bad condition. However, the Respondent states that the cellar had been locked but that the Applicant had removed the padlock. The Respondent also asserted that the Applicant had removed smoke alarms installed in the property.
- 63 In seeking to resolve the conflicting evidence presented by the parties, the Tribunal notes that, when the Applicant referred the proposed increase in rent to the Tribunal in 2024 (see paragraph 7 above), the Tribunal, in determining the rent, deducted £125.00 from the 'starting figure' of £900.00 per month to reflect the Respondent's responsibility for the poor condition of the property both internally and externally.
- 64 The Tribunal determines that it would be appropriate to make an upward adjustment of the amount of the rent repayment order.
- 65 Section 44(4)(b) of the 2016 Act requires the Tribunal to take into account the financial circumstances of the landlord. The Respondent asserted that she and Mr Williams did not have surplus cash to make a repayment of the amount claimed; and that she would have to obtain a loan. However, in response to questions from the Tribunal, the Respondent stated that both she and her husband were in full-time employment of a type that, in the view of the Tribunal, would be reasonably well paid. The Tribunal determines that it would not be appropriate to make any further adjustment of the amount of the rent repayment order to reflect the financial circumstances of the Respondent.
- 66 Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the landlord has at any time been convicted of any of the offences listed in section 40(3). The Respondent has no such convictions.
- 67 As Sir Timothy Fancourt stated in *Williams v Parmar* (at paragraph 24), the wording of section 44(4) leaves open the possibility of there being factors other than those expressly referred to in paragraphs (a) to (c) that, in a particular case, may be taken into account and affect the amount of the rent repayment order.
- 68 As noted above, the Tribunal determines that, although the Respondent has failed to establish the defence of reasonable excuse, the matters relied upon do constitute mitigation and therefore a reason for reducing the amount of the rent repayment order.
- 69 Finally, the Tribunal notes (i) the reminder from Sir Timothy Fancourt in *Williams v Parmar* (at paragraph 43) that *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; and (ii) the clear indication (at paragraph 51) that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent.

- 70 The Tribunal determines that, in order to reflect the factors discussed in paragraphs 53-69 above, the maximum repayment amount identified in the paragraph 52 above (£4263.27) should be discounted by 55 per cent.
- 71 The Tribunal therefore orders under section 43(1) of the 2016 Act that the Respondent repay to the Applicant the sum of £1,918.47, say £1,900.00.

Reimbursement of fees

- 72 The Applicants applied under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Tribunal to make an order requiring the Respondent to reimburse to the Applicant her application fee (£110.00) and the Tribunal hearing fee (£220.00).
- 73 Since the Tribunal has made a rent repayment order in favour of the Applicant, albeit in a lesser amount than that applied for, it is appropriate that she should have her fees reimbursed.

Summary

- 74 The Tribunal orders under section 43(1) of the 2016 Act that the Respondent repay to the Applicant the sum of £1,900.00 not later than 10 January 2025.
- 75 The Tribunal orders under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse to the Applicant £110.00 in respect of the application fee and £220.00 in respect of the hearing fee not later than 10 January 2025.

Appeal

- 76 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 77 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 78 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(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 79 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

6 December 2024

Professor Nigel P Gravells
Deputy Regional Judge