FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/HMF/2024/0177**
Property	:	**Flat 27, Ajax House, Old Bethnal Green Road, London, E2 6QY**
Applicants	:	**(1) Fergus Brown** **(2) Alicia Casey** **(3) Dennis Munro**
Representative	:	**Mr. Williams (Rent Repayment Project Officer)**
Respondent	:	**(1) Mr. Anil Francis Malhotra** **(2) Mrs. Mary Gibbs**
Representative	:	**In person**
Type of application	:	**Application for a rent repayment order by tenant – sections 40, 41, 43, & 44 Housing and Planning Act 2016**
Tribunal members	:	**Judge Sarah McKeown** **Ms. Sarah Phillips MRICS**
Date and Venue of hearing	:	**18 December 2024 at 10 Alfred Place, London, WC1E 7LR**
Date of decision	:	**6 January 2024**

DECISION

<u>Decision of the Tribunal</u>

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

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

(3) The Tribunal makes a rent repayment order in favour of the Applicants against the Respondent, in the total sum of £9,370.89, to be paid within 28 days of the date of this decision. The award is apportioned between the Applicants as follows:

(a) Fergus Brown: £3,255.59;
(b) Alicia Casey: £3,171.82;
(c) Dennis Munro: £2,943.47

(d) The Tribunal determines that the Respondent shall pay the Applicants an additional £330 as reimbursement of Tribunal fees to be paid within 28 days of the date of this 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").

Application and Background

2. By an application dated 22 April 2024 (A1) the Applicants applied for a Rent Repayment Order("RRO").

3. The application was brought on the ground that the Respondent had committed an offence of having control or management of an unlicensed House in Multiple Occupation ("HMO") for failing to have an HMO licence ("licence") for **Flat 27, Ajax House, Old Bethnal Green Road, London, E2 6QY** ("the Property"), an offence under section(1) of the Housing Act 2004 ("the 2004 Act").

4. The Property is a three-bedroom flat in a purpose-built block of flats, with a living room, kitchen, toilet and bathroom.

5. The application states as follows:

6. The Respondents did not have an Additional Licence for the property in breach of s.72 Housing Act 2004. The London Borough of Tower Hamlets Additional Licensing Scheme was introduced on 1 April 2019 and includes all properties that:

(a) Three or more people living as;
(b) Two or more households and;
(c) Shared facilities such as a bathroom or kitchen;
(d) At least one of the tenants pays rent; and
(e) The property is not in the Selective Licensing areas.

7. The Additional Licensing Scheme also includes flats with five or more tenants living as two or more households in a purpose-built block with three or more flats. These properties are no longer licensable under the mandatory scheme.

8. The Applicants signed a 6-month fixed term Assured Shorthold Tenancy agreement with the Respondents (as joined landlords) in August 2022, to start on 11 January 2023. Mr. Munro and Ms. Casey were already living in the Property. Dr. Brown moved in in January 2023.

9. The joint monthly rent was £2,300. It was split between the Applicants depending on the size of their room. Mr. Munro paid £783.33 per month. He claims £8,145.33 (11 January 2023-23 November 2023). Ms. Casey paid £733.62 per month and claims £7,627.58 (for the same period). Dr. Brown paid a monthly rent of £783.33 and claims £8,136.97 (again, for the same period). The total value of the claim is £23,911.85.

10. Mr. Malhotra applied for an Additional Licence on 24 November 2023.

11. The "Expanded Statement of Reasons for the Applicant for a Rent Repayment Order" sets out some more detail in support of the application. It asserts the need for a deterrent element and to remove any financial benefit to the Respondents.

12. It is then said (really by way of a witness statement from Mr. Williams, a Rent Repayment Project Officer with the London Borough of Tower Hamlets) that the local authority received an email from Dr. Brown on 21 November 2023 (A91) stating that the Property did not have a licence but that an Additional Licence was required. He said that he had shared the Property with the other Applicants since 11 January 2023, but that another tenant had been there for 2 years and another for 5 years. Mr. Williams said that he could not locate an Additional HMO Licence for the property (A93) and referred the complaint to a Housing Standards Officer (Mr. Jones) (A92). Mr. Jones sent a warning letter to Mr. Malhotra on 22 November 2023 (A97). On 24 November 2023, a response was sent, and Mr. Malhotra said that he did not know that the Property needed a licence.

13. Mr. Williams states that Mr. Malhotra bought the Property for £110,000 in July 2021 and that it will be worth much more than this now.

14. On 5 July 2024 (A8) the Tribunal issued Directions for the determination of the application, providing for the parties to provide details of their cases and the preparation of a hearing bundle. It is noted in the directions that the Applicants seek a RRO for the periods between 11 January 2023-23 November 2023 in the total sum of £23,178.26. The issues identified were:

- Whether the tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences:

	Act	*Section*	*General description of offence*
1	Criminal Law Act 1977	s.6(1)	violence for securing entry
2	Protection from Eviction Act 1977	s.1(2), (3) or (3A)	unlawful eviction or harassment of occupiers
3	Housing Act 2004	s.30(1)	failure to comply with improvement notice
4	Housing Act 2004	s.32(1)	failure to comply with prohibition order etc.
5	Housing Act 2004	s.72(1)	control or management of unlicensed HMO
6	Housing Act 2004	s.95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	s.21	breach of banning order

- Whether, on the balance of probabilities, the landlord has a 'reasonable excuse' for having committed the relevant housing offence on which the financial penalty is based, such that they have a defence to it.
- Whether the conduct relied upon in that defence, even if not enough to establish a reasonable excuse, nevertheless justifies a reduction in the amount of the penalty to be imposed.
- Did the offence relate to housing that, at the time of the offence, was let to the tenant?
- Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
- What is the applicable 12-month period?[1]
- What is the maximum amount that can be ordered under section 44(3) of the Act?

[1] s.44(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

- What account must be taken of:
  (a) The conduct of the landlord?
  (b) The financial circumstances of the landlord?
  (c) Whether the landlord has at any time been convicted of an offence shown above?
  (d) The conduct of the tenant?
  (e) Any other factors?

Documentation

15. The Applicant has provided a bundle of 116 pages (referred to as "A…").

16. The Respondent has provided a bundle of 91 pages (referred to as "R…").

17. The Respondent has provided "A Brief Response to Case Bundle" of the Respondents which comprises 2 pages, and with "Evidence to Support Brief Response".

18. The Tribunal has primarily had regard to the documents to which it was referred to during the hearing.

The Position of the Parties

19. Mr. Munro states (A83) that he lived in the Property since September 2018. He states that there were persistent issues with the Property:

    (a) Issue with the front door and some windows (some windows were replaced;
    (b) A gas leak in 2022;
    (c) A ceiling leak in 2023 (which was repaired).

20. The total rent for the material period was £2,300.

21. He states that rent was paid on time. The deposit was only protected on 4 July 2023 and Mr. Munro's name was only registered with the scheme (for a lower amount) on 27 June 2023.

22. Dr. Brown states (A85) that his tenancy started on 11 January 2023 and he paid £783.33 per month. He outlines disrepair issues:

(a) Areas of black mould in the toilet and at the front door, which they treated themselves;
(b) The front door was draughty;
(c) The shower fitting was left unrepaired for a month;
(d) There was damp in the living room from an external leak, from 22 September 2023;
(e) His room light fitting was taped together with exposed wires and not repaired for over 2 weeks;

23. He states that he did not receive an inventory, EPC, gas safety certificate or How to Rent booklet. He did not receive a tenancy agreement until after he moved in and when he did there was an issue over the deposit. The deposit was only protected on 4 July 2023 and his name was only registered with the scheme (for a lower amount) on 27 June 2023. There were no fire alarms installed until November 2023. They were served with an "invalid" s.21 notice.

24. Ms. Casey states (A88) that her tenancy started on 11 January 2021 and she paid £733.62 per month. She outlines disrepair issues:

(a) When she moved in, the windows in the kitchen and living room were all broken, causing draughts and making the Property difficult to heat;
(b) The front door had a big gap underneath.

25. She states that there were no fire alarms for almost her entire tenancy. There was a gas leak in 2022. There were issues with the deposit

26. Mr. Malhotra states (R2) in summary as follows:

27. Ms. Gibbs managed the Property from 2018-2023. There was no licence as it was not appreciated that they needed one. They checked the rules in 2018 but did not think that one was needed as they thought the tenants lived as one household. They checked again regularly after 2018 but again did not appreciate that the tenants were living as separate households. They were made aware of the need for a licence on 24 November 2023 and an application was made the same day. It was later granted (R90). They corresponded amicably about any issues that arose. The Property was compliant in respect of fire safety, gas safety (R42) and electrical safety (R43-49)). Smoke and carbon dioxide alarms were in the Property, along with a fire extinguisher and a fire blanket. They were tested most recently in January 2021 and September 2022. Annual CP12 gas safety checks were conducted as were electrical checks and the alarms were updated to interlinked heat and smoke alarms and tested on 5 December 2023. Tests were also conducted in April 2024 on the date of the start of a new tenancy. Three positive air pressure fans were installed in 2017. They take the safety, comfort and convenience of the tenants seriously. Repairs were conducted expeditiously. They do not oppose the making of a RRO but dispute the level.

28. He responds to Mr. Munro as follows:

(a) They were not aware of any discomfort and the Property had central heating, double-glazing and an average EPC rating (R50);
(b) The gap under the door was minimal and a draught excluder was provided;
(c) The windows were generally of good quality. Some hinges and handles were replaced in 2020 and 2022;
(d) The gas leak was due to an external issue. The Property had annual gas safety certificates;
(e) In 2018 there were two carbon dioxide/smoke alarms. They were tested. There was a fire blanket and an extinguisher. An additional carbon monoxide alarm was provided in September 2022. The alarms were upgraded in December 2023;
(f) There was a leak in September 2023 and the freeholder was contacted. When it reoccurred, it was chased with the freeholder. It was caused by the owner of the flat above;
(g) A hard copy tenancy agreement was provided on 11 January 2023;
(h) £1,960 of the deposit of £2,300 was registered. An amended tenancy agreement was sent out. The full deposit was only paid on 16 February 2023 (R71). The signed tenancy agreement, required for altering the deposit scheme, was only sent back on 26 June 2023. The extra deposit amount was added on 4 July 2023;
(i) A number of works were carried out to the Property.

29. He responds to Mr. Brown as follows:

(a) They were not aware of any patches of black mould. There are air vents and positive pressure fans;
(b) They attempted to arrange to fix the shower but the plumber was away over Christmas;
(c) The light fitting was fixed in about 2 weeks;
(d) There was a leak in September 2023 and the freeholder was contacted. When it reoccurred, it was chased with the freeholder. It was caused by the owner of the flat above;
(e) A hard copy tenancy agreement was provided on 11 January 2023;
(f) £1,960 of the deposit of £2,300 was registered. An amended tenancy agreement was sent out. The full deposit was only paid on 16 February 2023. The signed tenancy agreement, required for altering the deposit scheme, was only sent back on 26 June

2023. The extra deposit amount was added on 4 July 2023;

(g) In 2018 there were two carbon dioxide/smoke alarms. They were tested. There was a fire blanket and an extinguisher. An additional carbon monoxide alarm was provided in September 2022. The alarms were upgraded in December 2023;

(h) The tenants were told that they could continue to live at the property after the date in the s.21 notice;

(i) A number of works were carried out to the Property.

30. He responds to Ms. Casey as follows:

(a) The windows were generally of good quality. Some hinges and handles were replaced in 2020 and 2022;

(b) They were not aware of any discomfort and the Property had central heating, double-glazing and an average EPC rating;

(c) A new boiler was installed in January 2021;

(d) The gap under the door was minimal and a draught excluder was provided;

(e) In 2018 there were two carbon dioxide/smoke alarms. They were tested. There was a fire blanket and an extinguisher. An additional carbon monoxide alarm was provided in September 2022. The alarms were upgraded in December 2023;

(f) The gas leak was due to an external issue. The Property had annual gas safety certificates;

(g) All deposits were protected and returned in full to the tenants;

(h) £1,960 of the deposit of £2,300 was registered. An amended tenancy agreement was sent out. The full deposit was only paid on 16 February 2023. The signed tenancy agreement, required for altering the deposit scheme, was only sent back on 26 June 2023. The extra deposit amount was added on 4 July 2023

31. In respect of the conduct of the Applicants he states, in summary:

(a) After November 2023, AFTER THE PERIOD OF CLAIM the tenants became hostile;

(b) A request to clear the debris on the balcony outside the front door fire escape was met with questions as to the legal requirement;

(c) There was spray foam on the walls and the floorboards were dirty and pitted;

(d) Mr. Munro failed to report a slow-leaking tap which caused damage to the worktop. It could £1,800 to replace.

32. Mr. Malhotra states that they are not professional landlords. The Property was re-mortgaged for more than 2001. After mortgage repayments, service charges and repair costs, the Property did not generate any notable income 2018-2023. Ms. Gibbs is a freelance worker and Mr. Malhotra cared for their children. He had no other income.

The Hearing

33. Mr. Williams (Rent Repayment Project Officer) represented the Applicants. Two of the Applicants attended in person (Mr. Munro and Ms. Casey). Both the Respondent's attended the hearing.

34. Mr. Williams briefly opened the case by referring to his written submissions (A21).

35. Mr. Munro then gave evidence. His witness statement is at A83. He was asked questions as follows:

36. The First Respondent asked him why the Property was described in the witness statements as a "slum" with broken windows, damp and mould, and draughts, was not the case, when he lived there for 6 years, and these things were not mentioned. Mr. Munro said that, in respect of the draughts and door, all the doors were replaced in Ajax House, but the Property door had a had gap, and the door of the Property was not replaced. He said that the heating did not circulate properly, and the Applicants had to pay more for heating. He admitted that, in respect of the other issues, if something was broken, the Respondents would attend to that. He said that the issues of the door and windows were brought up with the Respondent a few times, but there was no response.

37. The Tribunal asked Mr. Munro when the issues were raised with the Respondent. Mr. Munro said that he could not remember exactly when, but the issue of the door was raised in 2022.

38. The First Respondent asked Mr. Munro why it was only brought up in 2022, when he had lived there since 2018 and the door had not changed. Mr. Munro said that maybe it did not occur to him. He said that when doors were changed in Ajax House the tenants saw an opportunity to get new door, but the door for the Property was not replaced. The First Respondent said that they had contacted the local authority, who said that it did not need replacing.

39. Mr. Munro was then asked again why, if this was such an issue, it was not mentioned 4 years earlier as nothing had changed. Mr. Munro said

that it was mentioned but did acknowledge that they were provided with a draught excluder, but when doors were replaced.

40. The First Respondent said that he measured the door (R4) and there was a slight gap but it was normal to have slight gap to allow air flow. The gap was 2-3mm. It allowed a positive air movement system to prevent humid conditions so that there would be no damp. He said that the fans moved the air out, and the gap was under the door to allow ventilation.

41. The Second Respondent asked why, if he did not like the Property, when the third person (Perry) moved out and the Respondents wanted to rent it out through an estate agent, Mr. Munro and Ms. Casey said that they wanted to keep living there. Mr. Munro said that the housing market was in disarray, and it was very hard for them to find place. He said that work was stressful, and he was thinking about moving to Dubai. Given the amount of time they had to find a new tenant, there was some back and forth and the rent sought (£2,500) was reduced (to £2,300). He said that the issues with the Property, were manageable and it was "more" that other buildings were being repaired and the Applicants felt that they could have been given more care and attention.

42. In respect of Mr. Munro's claim that there was no free-standing alarms, he was asked if he read the tenancy agreement, which he confirmed that he did. It was pointed out to him that one of the clauses required the tenants to check the smoke alarm batteries every month. He was asked if he did and he said that he did, albeit not every month.

43. He was asked to confirm that there were smoke alarms. Mr. Munro said that he spoke to the Second Respondent and smoke alarms were sent. It was put to him that these were carbon monoxide alarms. It was put to him that Dr. Brown had said that there were no smoke alarms, but Mr. Munro admitted that he had checked them. Mr. Munro said that he may have confused the carbon monoxide alarm with the smoke alarm. He said that when Dr. Brown moved in, he made a comment that there were no smoke alarms and he contacted fire department and they sent some smoke alarms. The Tribunal asked Mr. Munro when this was, and he said it was towards the end of 2023.

44. The Tribunal asked Mr. Munro if he had noticed any smoke alarms before then. He said that his memory was not good. The First Respondent then put to him that he had said he remembered testing them. He responded that he must have been confused with the carbon monoxide alarm(s).

45. It was put to him that the alarms were dual alarms (smoke and carbon monoxide). Mr. Munro said that he remembered receiving the alarms and that they were installed and were working, but he could not remember too much from that period. He confirmed that he had received them in 2022.

46. The Tribunal asked him to confirm that there were alarms during the period for which the RRO was sought. He confirmed that they were. The Tribunal asked him if he recalled any alarms before that time. Mr. Munro said that there was nothing there and he had spoken to the Second Respondent about it.

47. It was put to Mr. Munro that he had asked for carbon monoxide alarms on 14 September 2022, that there were already two dual alarms which the Respondents had bought in 2018 and installed (which is why there was the clause in the tenancy agreement). Mr. Munro said that he remembered asking the Second Respondent to send the alarms and they installed them in the kitchen.

48. The Respondent referred to the receipt for an alarm (R7). Further, the Second Respondent referred to the photograph at R56 and said that this (which was sent to the plumber in January 2021) showed an alarm on top of the boiler (and the other was on a shelf in the hallway). Mr. Munro said that he remembered that the boiler was replaced, and that there was something on top of it. He said that he did contact the Second Respondent to get another alarm.

49. It was put to Mr. Munro that it was not the case that he had contacted the Respondent and they had not responded. Mr. Munro said that the Second Respondent had sent a carbon monoxide alarm and that Dr. Brown had contacted the fire department.

50. The Tribunal asked Mr. Munro what fire systems were in place. He said that there was a carbon monoxide alarm on the old boiler in 2021 and after the gas leak, he had contacted the Second Respondent about a new carbon monoxide alarm. He said that there was a fire extinguisher but he did not remember a fire blanket.

51. The Second Respondent asked Mr. Munro why he had contacted the fire brigade rather than contact them, when they had responded on other maters. Mr Munro said that Dr. Brown took some matters into his own hands.

52. The Tribunal asked Mr. Munro if they had raised any “fire issues” which had not been responded to. He said that he had not but that Dr. Brown had made efforts to speak to the fire department. He said that Dr. Brown may have contacted the Respondents about other matters. The First Respondent said that he had sent a text message to Dr. Brown after they had been informed they needed a licence. The First Respondent spoke to Leyton Jones on 27 November 2023 and he asked him what fire safety there was in the flat. He had described it and he said the smoke alarms needed to be changed to be interlinked – the Respondents sent a text message to Dr. Brown to say they were coming to instal a new system, and it was only at that point that he said he had contacted the fire brigade. The First Respondent said that in Dr. Brown’s statement he says there no fire safety equipment for the whole of his tenancy (11 months). Mr. Munro said that he was not away during this time,

that Dr. Brown made efforts to inspect parts of the household, and it might seem like he is just using this issue, but it was in his interest to make sure they had the right fire safety in the Property.

53. Mr. Munro confirmed that Dr. Brown had first spoken to him about this issue a few months before 5 December 2023.

54. The Second Respondent put to Mr. Munro that it was very odd that the Applicants had not requested fire alarms (if they say there were none), when they had requested a carbon monoxide alarm. Mr. Munro said that he knew they had requested a carbon monoxide alarm and that when they tested the smoke alarms, they were working.

55. The Tribunal asked Mr. Munro whether there were smoke alarms when the request for a carbon monoxide alarm was made. He said that there was one in the kitchen and a separate device in the living room.

56. Mr. Munro confirmed that there were no utilities included in the rent.

57. The Respondents confirmed that there were no rent arrears. The First Respondent said that the Applicants were not given a "How to Rent" guide or an EPC.

58. The First Respondent asked Mr. Munro if he agreed that the gas safety certificates were in a drawer in the kitchen and he said that he believed so. The Tribunal asked Mr. Munro if he agreed that gas safety inspections were done about once a year. He said that the boiler was replaced at one point and there was a gas leak (the cause was external). Mr. Munro was referred to the gas safety certificates (R42) and asked if he accepted that there were inspections in 2022 and 2023. He accepted this.

59. Mr. Munro was asked if he agreed that there were air pressure fans. He said that there was a fan in the bathroom which was fixed at one time, there was one in the toilet (he was not sure if it was running) and one in Ms. Casey's room.

60. The Tribunal asked Mr. Munro if he accepted that the deposit was protected. He said that his deposit was held from 2018, that there were issues from when he was asked to pay an extra amount in 2023 and there was a period when it was not held. He said that the deposit was protected after 6 months and he did get the prescribed information.

61. The Tribunal asked Mr. Munro about the request for the Applicants to clear items/debris as asserted by the Respondents. He said that they did keep the mop outside but that most of the time the area was clear.

62. Mr. Munro confirmed that the freeholder had on occasion been in contact with the Applicants, asked them to move items.

63. The Tribunal asked Mr. Munro about the allegation in respect of spray foam on the walls and the floorboards. He said that there was spray foam present as long as he had lived there. He confirmed that the Property was repainted in 2021.

64. The Tribunal asked Mr. Munro about the allegation that he had not reported a slow-leaking tap which caused damage to the worktop (in 2020-2021). He said that the countertop was replaced in the kitchen and that the tap was broken. He admitted that he did not report it, but said that Ricco (the plumber) would come and fix things. He said that there were a number of issues raised which was not responded to. He then confirmed that the only issues were the windows and the door. He did confirm that the handles on the windows were replaced.

65. Ms. Casey then gave evidence. Her witness statement is at A88. The Second Respondent apologised to her for taking some time to fix the handles to the windows. She said that it was around the time of Covid, and that they had tried various glaziers but had been let down. The Second Respondent said that some were fixed in 2022, and some in 2020.

66. Ms. Casey was asked about paragraph 5 of her witness statement and it was put to her that the windows were not broken (in terms of the panes), but that the issue was a couple of handles. Ms. Casey said that she would say the windows were broken as they would not close properly, the handles would not close so the windows were not sealed. She said they were not functioning.

67. Ms. Casey was asked why she had chosen to live at the Property for 3 years. She said that the housing market was bad at that time, her job was stressful, at one time she had lost her job and was on Universal Credit, and no one would take a new tenant on Universal Credit. She said she had also become friends with the other tenants. She said it was expensive to move. She said that there was damp but she had somewhere to live and she got on with her flat mates, and she could not afford to move.

68. Ms. Casey was asked about her assertion that the Respondents had taken a “hands off” approach. It was put to her that, with the exception of the windows, the Respondents always sent items to the Property or sent Ricco. Ms. Casey said that the Respondents had not come to the Property for checks between the previous tenant leaving and Ms. Casey moving in. She accepted that this was during the Covid lockdown period.

69. The Second Respondent asserted that she had gone to the Property on a number of occasions.

70. Ms. Casey said that there was an issue in that she had to take time off work to let people in for repairs to be done. She had to get cash to pay Ricco and this was a massive inconvenience. She said that it was for a landlord to do that kind of thing. She confirmed that she had not raised this as an issue with the Respondent, but she said that she assumed it would be obvious.

71. The Second Respondent said that when she was a tenant, she would prefer to let trades people in. Ms. Casey said that on one occasin, the Respondents had asked her to carry an oven with Ricco. The Respondent said that she had not asked for this.

72. The First Respondent asked Ms. Casey what he meant by gas alarms (when she said there were none). She said something to pick up a gas leak and that there was a gas leak (with an external cause).

73. Ms. Casey accepted that there were gas safety inspections.

74. Ms. Casey was asked if she accepted that there were carbon monoxide detectors. She said that there was one but it did not seem to work as it had not detected the gas leak. The First Respondent said that it would not detect natural gas.

75. The Second Respondent asked Ms. Casey about her assertion that there was "over-sharing" of information. The Second Respondent said that the Applicants were paying below market rent, they had been hoping to rent the Property via an estate agent, and when the Applicants protested about the rent increase, the Respondents described their financial situation. Ms. Casey said that they were the clients, it was a professional relationship and the Respondents should not have divulged personal information.

76. Ms. Casey was asked why she had not gone to the Tribunal if she did not accept the rent increase. She said that she was not aware that she could, and there was "back and forth" and they hoped to come to an agreement and it felt inappropriate for the Respondents to bring up personal and financial information.

77. Ms. Casey said that they were given 4 hours to decide on a new rent, and it was a Sunday and her birthday and that this was not professional conduct. It was confirmed that there was reference to this at R89 but no supporting evidence (such as messages) in either bundle.

78. The Second Respondent said that when a person moved out, it was not the landlord's responsibility to find a replacement tenant – when the tenancy came to an end, everyone moved out. Ms. Casey said that in every rental property she had been in, when someone left the tenancy, the other tenants would find a replacement.

79. The Second Respondent said that she had hoped that they would all have a "two-way" conversation about the rent and that it was reasonable for the Respondent to explain their financial position. Ms. Casey said that if the Respondents had really wanted to rent through an estate agent, they should have done it.

80. It was put to Ms. Casey that she could have chosen to move out. She said that the market was really bad at the time.

81. Ms. Casey confirmed that there was a fire extinguisher and a fire blanket in the Property.

82. Ms. Casey said that there was damp – the issue was the flat above and damp was coming through the fireplace in the property. Ms. Casey said that the Applicants had had to deal with it and they raised it with the local authority. She said that Dr. Brown had contacted the local authority. It was put to her that the freeholder had sent an emergency plumber. Ms. Casey said that she was not aware of that. She said that the issue did recur but that they were moving out.

83. Ms. Casey confirmed that the deposit was protected and prescribed information was given after 6 months.

84. The Tribunal asked Ms. Casey about the issue of the debris. She said that it was just a bin that had been washed and turned up to dry. She said that napkins had blown about. There was also a mop. She said that she would not say that they were blocking the fire exit and she was not aware it was a fire exit.

85. Ms. Casey said that she was not aware of any spray foam.

86. Mr. Williams then re-examined both Applicants. Mr. Williams asked Mr. Munro if he remembered the fire service delivering alarms, and he said that he was away. He was asked about the deposit and he said that his initial deposit was protected within a few weeks. He confirmed that there was a rent decrease during Covid, and then five rent increases. He said that the main dispute was at the end of 2022 and they were given a short time to make a decision and find a tenant in one day.

87. Mr. Munro confirmed that the tenancy came to an end with the service of a s.21 notice and a rent increase notice. The Applicants had left on 11 February 2024.

88. The First Respondent then gave evidence. His witness statement is at R2.

89. Mr. Williams asked whether the First Respondent had known of the additional licensing scheme. He said that he knew of the licensing scheme from 2018, and he had checked it before Mr. Munro moved in, but at that point it only applied to 5 or more people living on two or more floors. He said they checked again a year later, that the rules changed, and a licence was required for a property having 3 or more people living in 2 or more households,, but they misunderstood the meaning of household. When they had lived in Bethnal Green with friends, they had considered themselves as one household. They incorrectly thought the Property did not need a licence. They thought the tenants were one unit, there were no locks on the doors, it was not a bedsit, hey did not pay bills separately. The Respondents had checked every year (apart from during Covid). When they got a letter on 24 November 2023, they immediately applied for a licence.

90. The First Respondent was asked why they had not used an agent. He said that they wanted to, at the end of each tenancy, but that Mr. Munro wanted to stay on, and pleaded, saying he had a friend who could move in.

91. The First Respondent said that they were not professional landlords, but they regard the safety and comfort of their tenants as very important. He said that there were oversights (not providing the "How to Rent" booklet, nor the EPC certificate), but they looked after the Property very well. The Property was safe and warm and all necessary safety certificates were obtained. There were fire safety provisions, the alarm got tested every year and the tenants had to check the batteries. The stand-alone alarms were updated to interlinked, but this was the only measure necessary for a licence to be granted. He said there were alarms in the hallway and on top of the boiler.

92. The First Respondent said that they needed a new tenancy agreement for the "extra" deposit to be protected in 2023. All of the deposit was returned to the Applicants at the end of the tenancy.

93. The Tribunal asked the First Respondent about any "reasonable excuse". He said that it was a simple misunderstanding, they did not know what they did not know. He said that they would have preferred to have used an estate agent and this would not have happened. He said they did not raise any reasonable excuse defence and they accepted they had made a mistake.

94. The First Respondent confirmed that the Property is currently rented. The Respondents manage the day to day issues, but the initial tenant pack, including the inventory, fire safety report, gas safety documents, EPC, How To Rent booklet and EICR were provided by an external company.

95. The First Respondent then set out their financial circumstances. He said that he did not have an income apart from the income from the Property. They had two children. He said that every month was a struggle if the rent was not paid on time and they had no money to pay the mortgage. He produced a print-out showing the income and costs in respect of the Property.

He said that at one stage, during Covid, he thought the Property was making a loss. The Second Respondent said that she was a graphic designer and her work was cyclical. The Property is currently rented for £2,900 per month.

96. The First Respondent then made some final submissions. He said that he apologised that there was no licence in place but the Property was safe from a gas, fire and electrical point of view, and they were tested as required. He said they provided a comfortable, safe environment to live in, at below the market rate. He said they were approachable for discussions on everything. He said that Dr. Brown had brought the case because of the rent increase. He said that the Applicants had nothing to back up their statements, but this did not excuse the fact that they should have had a licence. He said he was in favour of licensing.

97. The Second Respondent said that they had kicked themselves about the misunderstanding, and they knew they would have to pay penalty. She said they rented properties in Tower Hamlets for years. They cared about the Property which was the first home they owned. She confirmed the Property was the only one they rented out. She said they had not scrimped on quality and spent £1,000's ever year to keep things good. She said they had made a mistake but had now joined the Landlords Association and she checked every Monday for changes.

98. Mr. Williams said that he relied on his Expanded Statement of Reasons. He said that if the Respondents had let the Property though an agency, it would have been managed well.

99. The Tribunal asked Mr. Williams for the % figure he had in mind for any award. He said he would leave it to the Tribunal. The Respondents, when asked, referred to the case of *Hallett v Parker* (see below).

100. Mr. Williams confirmed that the rent statements in the Applicant's bundle should be used by the Tribunal as the basis for the rent paid during the relevant period.

101. Mr. Williams asked for a refund of the Tribunal fees of £330. The Respondents did not say anything in relation to this.

Statutory regime

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

103. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. The Local Authority may designate an area to be subject to additional licencing where other categories of HMO's occupied by three or more persons forming two or more households are required to be licenced.

104. Section 40 of the 2016 Act gives the Tribunal power to make a RRO where a landlord has committed a relevant offence. Section 40(2) explains that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority).

105. Section 72(1) Housing Act 2004 states:

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

106. Section 61(1) provides:

(1)Every HMO to which this Part applies must be licensed under this Part unless—

(a)a temporary exemption notice is in force in relation to it under section 62, or

(b)an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

107. Section 55, among other things, provides:

(1)This Part provides for HMOs to be licensed by local housing authorities where—

(a)they are HMOs to which this Part applies (see subsection (2)), and

(b)they are required to be licensed under this Part (see section 61(1)).

(2)This Part applies to the following HMOs in the case of each local housing authority—

(a)any HMO in the authority's district which falls within any prescribed description of HMO, and

(b)if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

108. Section 41 of the 2016 Act permits a tenant to apply to the First-tier Tribunal for a RRO against a person who has committed a specified offence, if the offence relates to housing rented by the tenant(s) and the offence was committed in the period of 12 months ending with the day on which the application is made.

41 Application for a rent repayment order
(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
(2) A tenant may apply for a rent repayment order only if-
(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
(b) the offence was committed in the period of 12 months ending with the day on which the application is made
…

109. Under section 43 of the 2016 Act, the Tribunal may only make a RRO if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter in relation to the commission of an offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

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);
…

110. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, s.44 applies in relation to the amount of a RRO, setting out the maximum amount that may be ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the Respondents were committing the offence. This aspect is discussed rather more fully below.

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	The amount must relate to rent repaid by the tenant in respect of
…	
An offence mentioned in row 3, 4, 5, 6, or 7 of the table in section 40(3)	A period, not exceeding 12 months, during which the landlord was committing the offence
…	

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

(a) the rent repaid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account-

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

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

111. Because cases have to be proved to the criminal standard of proof, the burden is on the tenant to establish that an offence has been committed. The landlord has the right to silence. There is no provision for judgment by default. Where a tenant has established a prima facie case, it may be appropriate in some cases to draw an inference from the landlord's failure to adduce evidence, but this cannot reverse the burden of proof. As in contempt proceedings, "the burden of proof remains on the Claimant throughout, to the criminal standard, and the Claimant can invite the Court to conclude, on the basis of all the evidence in the case, that the Defendants [are in breach]. If the contemnor chooses to remain silent in the face of that dispute, the Court can draw an adverse inference against him, if the Court considers that to be appropriate and fair, and recalling that silence alone cannot prove guilt": *VIS Trading Co Ltd v Nazarov* [2015] EWHC 3327 (QB), [2016] 4 WLR 1 at [31], approved by the Court of Appeal in *ADM International SARL v Grain House International SA* [2024] EWCA Civ 33 at [91].

112. It has been confirmed by case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal

drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.

Determination of the Tribunal

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

(i) whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time the Respondent was a person who controlled or managed an HMO that was required to be licensed under Part 2 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.

Was the Respondent the Applicants' landlord at the time of the alleged offence?

114. The Property was let to the Mr. Munro, Ms. Casey and Dr. Brown (tenancy agreement - A27). This states that Mr. Malhotra and Ms. Gibbs are the landlords of the Property and let it to the Applicants for a term of 6 months from 11 January 2023 at a rent of £2,300 per month.

115. The Office Copy Entry (A30) shows that Mr. Malhotra holds the title absolute in respect of the Property and has done since 6 August 2001.

116. The Tribunal finds as a fact, that the Respondents were the landlords of the Applicants as the Property was let to the Applicants during the period 11 January 2023-23 November 2023.

Was a relevant HMO licensing offence committed during the period 1 June 2022 to 31 May 2023 and by whom?

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

118. The Tribunal finds that, during the relevant period(s), the Property was a "HMO" (s.254-259) and the implementation of the additional licensing scheme by the London Borough of Tower Hamlets, the Property required a licence in order to be occupiable by three people living in two or more separate households. The Tribunal finds that the Property was, at the material time, occupied by three people living in at least two separate households.

119. On the evidence, the Tribunal finds (applying the criminal standard) that no licence was in place during the material time.

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

121. The offence is strict liability (unless the Respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083. The intention or otherwise of the Respondent to commit the offence is not the question at this stage, albeit there is potential relevance to the amount of any award. In of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) it was held that the failure of the company, as it was in that case, to inform itself of its responsibilities did not amount to reasonable excuse. The point applies just the same to individuals.

122. The Upper Tribunal gave guidance on what amounts to reasonable excuse defence was given in *Marigold & Ors v Wells* [2023] UKUT 33 (LC), *D'Costa v D'Andrea & Ors* [2021] UKUT 144 (LC) and in *Aytan v Moore* [2022] UKUT 027 (LC) including the following:

(a) the Tribunal should consider whether the facts raised could give rise to a reasonable excuse defence, even if the defence has not been specifically raised by the Respondent;
(b) when considering reasonable excuse defences, the offence is managing or being in control of an HMO without a licence;
(c) it is for the Respondent to make out the defence of reasonable excuse to the civil standard of proof;

123. The Tribunal considered whether any issue of reasonable excuse could arise, but taking everything into account, there is nothing which the Tribunal found to demonstrate a reasonable excuse.

124. The Tribunal is satisfied that the offence was committed from 11 January 2023-23 November 2023.

125. The next question is by whom the offence was committed? The Tribunal determined that the offence was committed by the Respondents,

being the people who had control or was managing the Property (within the meaning of s.72(1) and s.263 Housing Act 2004) during the material time.

Should the Tribunal make a RRO?

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

127. A RRO "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in the *London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) as follows:

"I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order".

128. The very clear purpose of the 2016 Act is that the imposition of a RRO is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

129. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making an RRO. The Tribunal determines that it is entitled to therefore consider the nature and circumstances of the offence and any relevant conduct found of the parties, together with any other matters that the Tribunal finds to properly be relevant in answering the question of how its discretion ought to be exercised.

130. Taking account of all factors, including the purpose of the 2004 Act, the Tribunal exercises its discretion to make an RRO in favour of the Applicants.

The amount of rent to be repaid

131. Having exercised its discretion to make a RRO, the next decision is how much should the Tribunal order?

132. In *Acheampong v Roman* [2022] UKUT 239 (LC) at [20] the Upper Tribunal established a four-stage approach for the Tribunal to adopt when assessing the amount of any order:

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element that represents payment for utilities;
(c) consider the seriousness of the offence, both compared to other types of offences in respect of which a rent repayment order may be made and compared to other examples of the same type of offence. What proportion of the rent is a fair reflection of the seriousness of this offence? That percentage of the total amount applies for is the starting point; it is the default penalty in the absence of other factors, but it may be higher or lower in light of the final step;
(d) consider whether any deductions from, or addition to, that figure should be made in light of the other factors set out in section 44(4)".

133. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act. Therefore, the amount ordered to be repaid must "relate to" rent paid in the period identified as relevant in section 44(2), the subsection which deals with the period identified as relevant in section 44(2), the subsection which deals with the period of rent repayments relevant. The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.

134. At [31] of *Williams v Parmar* [2021] UKUT 244 (LC) it was said:

"… [the Tribunal] is not required to be satisfied to the criminal standard on the identity of the period specified in s.44(2). Identifying that period is an aspect of quantifying the amount of the RRO, even though the period is defined in relation to certain offences as being the period during which the landlord was committing the offence".

135. The Tribunal is mindful of the various decisions of the Upper Tribunal in relation to RRO cases. Section 44 of the 2016 Act does not, when referring to the amount, include the word "reasonable" in the way that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) that there is no longer a requirement of reasonableness. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on landlords and to operate as a fierce deterrent. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid and not simply any profit element which the landlord derives

from the property, to which no reference is made in the 2016 Act. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. However, the Tribunal could take account of the rent including the utilities where it did so. In those instances, the rent should be adjusted for that reason.

136. In *Vadamalayan*, there were also comments about how much rent should be awarded and some confusion later arose. Given the apparent misunderstanding of the judgment in that case, on 6th October 2021, the judgment of The President of the Lands Chamber, Fancourt J, in *Williams v Parmar* [2021] UKUT 0244 (LC) was handed down. *Williams* has been applied in more recent decisions of the Upper Tribunal, as well as repeatedly by this Tribunal. The judgment explains at paragraph 50 that: "A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions."

137. The judgment goes on to state that the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal "must, in particular take into account". The Tribunal is compelled to consider those and to refer to them. The phrase "in particular" suggests those factors should be given greater weight than other factors. In *Williams*, they are described as "the main factors that may be expected to be relevant in the majority of cases"- and such other ones as it has determined to be relevant, giving them the weight that it considers each should receive. Fancourt J in *Williams* says this: "A tribunal must have particular regard to the conduct of both parties includes the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence, The Tribunal should also take into account any other factors that appear to be relevant."

138. The Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period, less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period (s.44(3) 2016 Act). That is entirely consistent with the order being one for repayment. The provision refers to the rent paid during the period rather than rent for the period.

139. It was said, in *Williams v Parmar*, by Sir Timothy Fancourt [43] that the *Rent Repayment Orders* under the Housing and Planning Act 2016: Guidance for Local Authorities identifies the factors that a local authority should take into account in deciding whether to seek a RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. It was indicated [51] that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent. It was also said that a full award of

100% of the rent should be reserved for the most serious of cases (see also *Hallett v Parker* [2022] UKUT 165).

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

Ascertain the whole of the rent for the relevant period

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

142. As stated above, the Tribunal has found that the Respondent committed the offence from 11 January 2023-23 November 2023. The Tenancy Agreement confirms that the rent was £2,300 per month. The Tribunal has seen evidence of payments in the Applicant's bundle.

143. The Applicants have also provided rent statements showing that during the material time, the following was paid: Dr. Brown (A80) - £8,138.97; Ms. Casey (A81) - £7,929.58; Mr. Munro (A82) - £7,358.67. The total amount said to have been paid is therefore £23,427.22.

144. It is not disputed that the full rent was paid during the material period.

145. None of the Applicants claimed the Housing Element of Universal Credit.

146. The whole of the rent for the relevant period is therefore £23,427.22.

Deductions for utilities?

147. The Applicants were liable for all charges in respect of supply and use of utilities, and so no deduction for utilities is made.

Seriousness of the offence

148. In *Williams v Parmar* [2021] UKUT 244 (LC) it was said that "the circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord', so the First Tier Tribunal may, in an appropriate case, order a lower than maximum amount of rent repayment, if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness of mitigating circumstances or otherwise".

149. As the Upper Tribunal has made clear, the conduct of the Respondent also embraces the culpability of the Respondent in relation to the offence that is the pre-condition for the making of the RRO. The offence of controlling or managing an unlicensed HMO is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not regarded as the most serious of the offences listed in section 40(3).

150. In *Daff v Gyalui* [2023] UKUT 134 (LC) it was highlighted that there will be more and less serious examples within the category of offence: [49].

151. The Tribunal determines that the relatively less serious offence committed by the Respondent should be reflected in a deduction from the maximum amount in respect of which a RRO could be made. It is noted that a failure to have an additional licence is less serious than a failure to have a mandatory licence.

152. The starting point for the Tribunal, taking account of this, is that a RRO should be made, reflecting 60% of the total rent paid for the relevant period.

Conduct

153. The Tribunal had regard to the allegations made by the Applicants as to the conduct of the Respondent, what information it has about the financial circumstances of the Respondent and whether the Respondent has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies when considering the amount of such order. Whilst those listed factors must therefore be taken into account, and the Tribunal should have particular regard to them, they are not the entirety of the matters to be considered: other matters are not excluded from consideration. Any other relevant circumstances should also be considered, requiring the Tribunal to identify whether there are such circumstances and, if so, to give any appropriate weight to them.

154. The Tribunal is satisfied that there were failings on the part of the Respondent – the ones which the Tribunal takes account of the following:

(a) No EPC was provided to the Applicants (s.6 The Energy Performance of Buildings (England and Wales) Regulations 2012) - but it is noted that there was one (R50);
(b) No How to Rent guide was provided to the Applicants (s.39 Deregulation Act 2015).

155. It is, however, noted that gas safety certificates were provided (s.36 The Gas Safety (Installation and Use) Regulations 1998. Although there were some issues with the deposit, it was protected and the prescribed information was provided.

156. The Tribunal has also had regard to the allegations made about the condition of the Property. The Tribunal also has regard to the fact that the condition of the Property, generally, was very good. The Respondents responded to issues raised by the Applicant and in respect of the windows, the delay was not due to inaction by the Respondents, but the fact that they had issues getting a glazier to do the work. The gap in respect of the door was minimal and the Respondents were told by the local authority that it did not need replacing. The Respondents ensured that dual smoke/carbon monoxide alarms were provided, as was a fire blanket and an extinguisher. They Property was repainted in 2021. There was negotiation about rent increases, but ultimately, new rents were agreed – the Property is now being rented out for £600 per month more than under the last tenancy. The Tribunal takes no issue with the Respondents disclosing some financial matters to the Applicants during rent negotiations. Ultimately, the Tribunal accepts that the Respondents were conscientious landlords and the failure to have a licence was based on a misunderstanding and not wilful default. They applied for a licence as soon as they were notified of the requirement and acted promptly to instal an interlinked system when told it was a requirement of a licence (which was subsequently granted).

157. The Tribunal has had regard to the case of Hallett v Parker [2022] UKUT 165 (LC) in which it was said, among other things, that:

(a) It was relevant to mitigation that the landlord was a small landlord, letting out a single property;
(b) The Tribunal accepted that the landlord was unaware of the need to obtain a licence;
(c) A small landlord, who fails, through ignorance, to comply with a regulatory requirement might be thought to deserve some leeway;
(d) The Tribunal found that the property was in a fairly good condition, which was capable of providing mitigation;
(e) If a landlord has provided accommodation of a decent standard, despite failing to obtain a necessary licence, the punishment appropriate to the offence ought to be moderated;

(f) The offence was not of the most serious type;
(g) The landlord applied for a licence as soon as he became aware that one was required and a licence was granted;
(h) This was the first occasion on which the landlord had let the property to a group of tenants who did not form a single household and hence the first occasion when a licence was required;
(i) The landlord was not alerted to the need for a licence by his agent.

158. In that case, a RRO of about 25% was made.

159. In the instance case, the Tribunal finds that the first 7 factors ((a)-(g)) apply. The last two do not. It is also noted that the Property was rented out for a considerable period without a licence when was one required, although it is also noted that those were done by liaising with Mr. Munro, and "replacement" tenants being found, rather than the Property being re-let each time to an entirely new group of people.

160. In summary, the Tribunal made an adjustment of the amount of the RRO (referred to in paragraph 152), in the amount of 20%, i.e. deciding that a RRO should be made, reflecting 40% of the total rent paid for the relevant period.

Whether the landlord has been convicted of an offence?

161. Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the Respondent has at any time been convicted of any of the offences listed in section 40(3). The Respondents have no such convictions.

Financial circumstances of the Respondent

162. The Tribunal noted what was said by the Respondents (orally and in writing – including the document produced at the hearing). The Tribunal takes all of this into account but makes no deduction in respect of the financial circumstances of the Respondent. The Respondents have made a profit from the Property and the rent has ensured that the mortgage has been paid on a valuable asset.

The amount of the repayment

163. The Tribunal determines that the maximum repayment amount identified in paragraph 76 above should be discounted by 60% (i.e. the RRO is 40% of the rent paid in the material period). The Tribunal therefore orders under s.43(1) of the 2016 Act that the Respondent repay the Applicants (jointly) the sum of £9,370.89. The total award is apportioned between the Applicants as follows:

(1) Fergus Brown: £3,255.59;
(2) Alicia Casey: £3,171.82;
(3) Dennis Munro: £2,943.47.

164. The Tribunal has had regard to all the circumstances in setting a time for payment, including the amount of the RRO. The Tribunal orders repayment in 28 days from the date of this decision.

Application for refund of fees

165. The Applicants asked the Tribunal to award the fees paid in respect of the application should they be successful, namely reimbursement of the £110 issue fee and the £220 hearing fee. The Tribunal does order the Respondent to pay the fees paid by the Applicants, in the sum of £330.

Judge Sarah McKeown

6 January 2025

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).