



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

Case reference : **LON/00AQ/HMF/2024/0081**

Property : **59 Bessborough Road, Harrow, HA1
3BS**

Applicant : **Joanna Briggs**

Representative : **In person**

Respondent : **Vanisha Patel**

Representative : **In person**

Type of application : **Application for a rent repayment order
by the tenant: sections 40, 41, 43 and 44
of the Housing and Planning Act 2016**

Tribunal members : **Judge Tueje
Mr A Fonka FCIEH CEnvH MSc**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **1st November 2024**

Date of decision : **23rd December 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal find that the Respondent did commit an offence under section 72(1) without reasonable excuse.
- (2) The Tribunal makes a rent repayment order against the Respondent for £688.86 which is to be paid to the Applicants within 28 days of the date this Decision is sent to the parties.
- (3) The reasons for the Tribunal's decision are set out below.

The Application

1. This decision relates to an application made by the former tenant under section 41 of the Housing and Planning Act 2016 seeking a rent repayment order under sections 72 and/or 95 of the Housing Act 2004. The application claims a total of £3,500 is repaid in respect of rent for the period from 1st August 2023 to 15th November 2023, plus repayment of the deposit.
2. By an order dated 3rd May 2024 the Tribunal gave directions, including making provision for the parties to each prepare separate bundles for the hearing containing supporting documents. Subsequently, the Tribunal listed the final hearing on 1st November 2024, conducted as a remote hearing.

The Hearing

3. The parties did not request an inspection of the subject property by the Tribunal, and the Tribunal did not consider one was necessary or proportionate.
4. The Tribunal was provided with the following documents:
 - 4.1 A 44-page electronic bundle from the Applicant;
 - 4.2 A 33-page electronic bundle from the Respondent; and
 - 4.3 A 2-page bundle in reply from the Applicant.
5. Both parties joined the hearing: neither was represented, but each gave evidence and cross examined the other party.

The Background

6. This application relates to the property known as 59 Bessborough Road, Harrow, HA1 3BS (the "Property"), where the Applicant rented a room.
7. By a written agreement dated 25th July 2023 the Applicant was granted an assured shorthold tenancy commencing 1st August 2023. The tenancy was a 12-month fixed term tenancy; it expired on 31st July 2024, and the Applicant vacated around that date.

8. Before the tenancy began, Brent council e-mailed Ramesh Patel, the Respondent's father, on 5th July 2023, confirming payment of the deposit and first month's rent in advance. These payments were made by Brent's Single Homeless Prevention Service on behalf of the Applicant. The e-mail stated that the payment was to be made to the Respondent, as the landlord.
9. The written agreement states the Respondent was the landlord. By clause 9 of the written agreement, the rent payable was £700 per calendar month exclusive of utility bills. Therefore, according to the written agreement, the occupiers would pay an equal share of all utility bills, including council tax.
10. Section 9 of the application form begins:

I moved into 59 Bessborough road on the 31st July 2023¹. I signed a contract being aware that bills were not included in the rent. Monthly, the landlord (Ramesh Patel) would request all tenants to bank transfer him or his daughter money for bills. This included council tax. Though this seems strange the flat would comply, however when it came to council tax Judith made known she shouldn't be paying this bill as she is a student. Frequently, the landlord would pressurise Judith for her contribution to council tax publicly in efforts to belittle her in front of us (the flat) and have us pressure her to make payment.

11. The Respondent addresses this in her statement of case, where she says:

The tenancy agreement for Ms Judith Odidi who moved into the house on 1st July 2023 (a month earlier than Ms Briggs) explicitly states "tenants obligations" Section 5 "tenants are responsible for the council tax" ...

Additionally, Ms Judith Odidi did not disclose that she was a student. She stated that she was only employed.

12. In her statement of case, the Respondent also denied that Ms Odidi was belittled or pressurised, and states Ms Odidi had simply been asked to pay the council tax, and was informed that she was liable for this.
13. Having herself raised Ms Odidi in the application form, in her reply, the Applicant responds as follows:

The respondent makes several references to another tenant who is not part of this claim. Given this matter relates solely to myself and is not a joint claim I ask for all references to be focused on myself and the respondent.

14. The Respondent's evidence that she ensured necessary documentation for the Property was obtained, such as an Electrical Installation Condition Report, gas safety and energy performance certificates, was unchallenged.

¹ As stated, the written agreement states the tenancy began on 1st August 2023, and that is the date from which rent was paid.

She also stated she had ensured there was a battery-operated smoke alarm, fire safety blanket and fire extinguisher in the Property. As to the failure to obtain an HMO licence, she says that her and her father concluded, after carrying out research online, that an HMO licence was not required for the Property. They believed an HMO licence was required for properties above 3 storeys with 5 or more occupants, and believed she was acting lawfully by allowing no more than 4 individuals to occupy the Property.

15. Day to day maintenance issues relating to the Property were dealt with by Mr Patel on the Respondent's behalf. We were told Mr Patel is not a property professional. He communicated with the occupiers via a WhatsApp group.
16. The rent for September 2023 to November 2023 was paid by the Applicant to the Respondent directly.
17. From around November 2023 the Applicant was in communication with Andrew Sedman, a Residential Licensing Enforcement Officer employed by the London Borough of Harrow. Mr Sedman inspected the Property on 7th November 2023. The Applicant's unchallenged oral evidence was that during the inspection, Mr Sedman pointed to various deficiencies such as a non-HMO compliant smoke alarm, the absence of fire doors and missing window restrictors. He explained these would need to be remedied before the Council would grant the Respondent an HMO licence. Following the inspection, Mr Sedman wrote to the Respondent by a letter dated 9th November 2023, which included the following (original emphasis):

I write to inform you that the London Borough of Harrow believes that the above property is a House in Multiple Occupation (HMO) as described under section 77 of the Housing Act 2004 (the Act). This dwelling was inspected on the 7th day of November 2023.

*The Housing Act 2004 introduced major implications for everyone involved in renting or managing privately rented properties and in particular introduced **additional** and **mandatory** licencing. The scheme applies to properties occupied by 3 or 5 or more unrelated persons, sharing facilities and residing in buildings ...*

An investigation into the occupancy of the above property owned/controlled/managed by you has revealed that it is occupied as an HMO, which is required to be licenced under the provision of the Housing Act 2004, Part II.

18. The Respondent applied to Harrow for an HMO licence on 15th November 2023. Around the same time, she began carrying out various works at the Property, including in respect of fire safety, with a view to meeting the HMO licence requirements.

19. In her oral evidence, the Applicant confirmed she was aware of the fire safety works being carried out at the Property. But she also stated that work and/or repairs were needed, including to address mould, condensation and a rodent infestation, remained outstanding even after the licence was granted. She also complained in somewhat vague terms that the Respondent and Mr Patel continued to pressurise the occupants to pay utility bills, and entered the Property without providing any or any adequate notice.
20. The Respondent maintains that the mould was addressed by builders carrying out works at the Property in late 2023/early 2024, that she engaged a pest controller to deal with the rodents, and that Mr Sedman advised the occupiers of the steps they needed to take to address condensation, and the Respondent purchased dehumidifiers for the Property.
21. It was the Respondent's unchallenged evidence that on one occasion they visited without giving a full 24 hours' notice. She explained that there was one toilet in the Property, and an occupier, Ms Ines Mazdon Delas, reported the toilet flush was defective. Due to the urgency, the Respondent and Mr Patel visited the Property to deal with this repair. The Respondent adds that Ms Delas was giving prior notice of their visit. In any event, in our judgment, while the Respondent is obliged to give notice and obtain consent before entering a tenant's room, she is not required to give the occupiers advance notice to enter the communal areas. The tenants, including the Applicant, have exclusive occupation of their rooms, but not the communal areas. The Respondent retains possession of the communal areas, and accordingly is not required to give notice before entering the communal areas. Furthermore, even if notice was required, which we consider it was not, there would be good mitigation for the Respondent entering the communal areas in the circumstances she has described.
22. The Respondent counterargues that after the council's inspection, she found the Applicant's conduct to be belligerent, and on occasion, aggressive. She complains that the tone and frequency of the Applicant's e-mails were oppressive. And describes when she visiting the Property, for instance to carry out a viewing, she found the Applicant's behaviour to be aggressive, including the Applicant recording her on her telephone.
23. In section 9 of the application form the Applicant alleges that after Harrow became involved in the letting, Mr Patel said the landlord was the Respondent, not him. She says he became aggressive, shutdown the WhatsApp group and *"He continued to conceal the nature of his renting the property and became belligerent with us frequently."*
24. We have been provided with various WhatsApp messages exchanged between Mr Patel and the occupiers, including a message sent by Mr Patel to the group on 1st December 2023 which read:

Closing this group as participants not responding- will exchange messages directly

25. The Respondent states Mr Patel closed the WhatsApp group because he was receiving treatment at the vascular ward at Northwick Hospital where doctors had advised him to limit his stress. And he also closed it because he found the occupiers were unresponsive. From the various WhatsApp messages provided to us, we see no evidence that Mr Patel was belligerent.
26. We have been provided with a series of e-mails sent by Mr Sedman on 11th December 2023 in connection with the Property.
27. The first one that is relevant is timed at 10.59am, and reads:

Thank you for your e-mail. I am sorry to hear about the situation with the bills. As it stands you have a lot on your side. The landlord should not have been renting the property illegally and has been very fortunate not to have been prosecuted, my manager was keen for me to take this case to court but I have cut a lot of slack as they applied for an HMO licence and decided not to go ahead with prosecution. You could still put in for a rent repayment order (may be an idea to remind your landlord of this) and it would be a good idea to remind your landlord of this, a rent repayment order normally takes place when there is a prosecution but there is still a possibility of achieving one (via a no win no fee law firm) which x 4 people would be a lot more outlay for your landlord than the gas bill etc. I would recommend that you continue to pay your rent though as the property is now licenced and the landlord is now empowered to serve a notice to quit in light of the fact that the property was unlicensed and also the behaviour of the landlord I will be reducing the licence to 3 years rather 5 years. I would recommend getting advice from a legal expert regarding the bills as it is a civil matter that I am not qualified to advise on, your landlord has got off very lightly and should swallow the cost of the bills as it is less than a prosecution (unlimited fine) or a minimum £5,000 civil penalty notice. I have copied in Joanna to this e-mail also. Please let me know how you get on.

28. The second e-mail that is relevant was sent to the Respondent on 11th December 2023 at 11.37am, copying in the Applicant and another tenant. The e-mail read:

Dear Mrs Patel

Having been copied into this e-mail I feel I need to respond accordingly and address this situation, I have also copied in your tenant "Ines" who was present at the time of our discussion we had when I inspected your property. As mentioned on the day of the HMO inspection the utility bills are your responsibility as an HMO landlord for the entire length of each individual tenancy. As the property was unlicensed I was under a lot of pressure to take formal action and still can in the form of prosecution

(unlimited fines previously capped at £20k) or a Civil Penalty Notice (no less than £5k).

As you were quick to apply for an HMO licence I cut some slack and did not go down the enforcement route as I am all about compliance, however we are an enforcement service and as the property was found to be unlicensed I have had no choice but to reduce the length of the licence from five years to three years (which is considerably better than prosecution or a CPN), in worst case scenarios this can actually reduced to one year but by willingly applying for a licence and being a responsible landlord I have reduced your licence term by a minimum also taking into consideration that your property is of a good standard.

As your property was unlicensed and being illegally let, no rent should have been collected and with that the tenants have a right to apply for a rent repayment order, this normally only takes place when the council had prosecuted or served a CPN on a landlord but there have been cases where law firms have been able to achieve a rent repayment order just on light of the fact that the property was proved to be unlicensed. Tenants should continue to pay rent as your property is now licenced but you will need to take care of any outstanding utility bills, effectively your tenants have also cut you some slack by not (to my knowledge) going down the rent repayment route as a responsible landlord with good tenants I hope going forward this can be resolved.

Yours sincerely

29. In fact, despite what Mr Sedman wrote, Harrow granted a 5-year HMO licence in respect of the Property, a copy of which is in the Respondent's bundle. She says they granted a licence for the maximum duration in light of her promptly applying for a licence after the council notified her a licence was required. And also, a 5-year licence was granted as recognition of her swiftly taking the necessary steps to meet the licensing requirements.
30. There is a further e-mail from Mr Sedman to the Applicant sent on 18th December 2023, in which he reiterates his earlier advice and states:

I would advise not to withhold on any rent payments as the landlord could serve notice to quit now that she is licensed and empowered to do so, however you may be able to pursue the rent repayment order so I would advise getting some advice on that.

Yours [sic] landlord has now been issue with a defects schedule giving her three months to address all defects in the property and bring the safety standard up to that of an HMO...

31. Following Mr Sedman's advice, the Respondent took on the responsibility of paying future utility bills. Additionally, she reimbursed the tenants the sums they had already paid towards the utility bills during their occupancy.
32. The Respondent says that she experienced financial difficulties due to unplanned expenses totalling around £17,000, putting her under

considerable strain, and she had to borrow £7,000. Her financial difficulties arose because she had set the rent at a level where she expected the tenants to pay the utility bills, but following Mr Sedman's advice, she paid future bills, but these were sums she had not budgeted for. She says that in addition to paying future bills, as a goodwill gesture, and despite the express terms of the tenancy agreement, she also reimbursed the occupiers for past bills, even though Mr Sedman had not advised her to do so. She stated that as a result of the works required to the Property to meet the HMO licence requirements, and the licence application fee, she incurred yet further expenses. She also stated that having the Applicant and Ms Odidi both withholding rent at a time when she had these unplanned expenses caused her financial hardship and stress. The Respondent provided detailed spreadsheets of her expenses, but did not provide any written evidence regarding her income. When the Tribunal enquired about this, she explained she had not realised that evidence of her income was relevant, adding that she is still repaying the £7,000 loan.

33. The Applicant's reasons for withholding rent were that as a result of Harrows involvement, she learnt the Respondent had been unlawfully renting the Property without an HMO licence. Therefore, she was concerned about paying rent in respect of an unlicensed property, and said she was unaware the Respondent applied for an HMO licence in November 2023. She acknowledges Mr Sedman said the rent should be paid. However, according to her, he also said he was not an expert on these matters and that she should take legal advice. She said she spoke to the CAB who advised her to withhold the rent but to save the unpaid rent. She later obtained legal advice from her work place, which advice was that she should not withhold the rent. The Applicants says after receiving that legal advice, she paid the unpaid rent in full in February 2024.
34. The Respondent argues for a reduction on the maximum amount of a RRO on the following grounds:
 - 34.1 The Applicant and Ms Odidi withholding rent impacted the Respondent's ability to pay utility bills, HMO licencing fees and maintenance;
 - 34.2 She had not budgeted for the utility bills for the Property which she paid after being informed she was required to do so;
 - 34.3 Mr Sedman praised the condition of the Property, stating it was well maintained to a good standard, and that the Respondent was a responsible landlord;
 - 34.4 Mr Sedman did not wish to prosecute the Respondent because she had made a swift application for the HMO licence and addressing the necessary licensing requirements. She adds that she always ensured the relevant EICR, and gas and performance certificates were obtained;
 - 34.5 The Applicant withheld 3 months' rent even after Mr Sedman advised her against doing so;

- 34.6 The Applicant's rent in advance was paid by the London Borough of Brent, and so should not be included in any repayment made to the Applicant;
- 34.7 Harrow did not support the Respondent's prosecution on behalf of the Applicant, so her application for legal aid was declined;
- 34.8 The cost of utility bills quadrupled when the occupiers were informed the Respondent would be paying bills. She complains the heating was on constantly, even at times when windows were open.
- 34.9 She refunded the tenants' utility bills out of good will.

Issues

35. In light of the above, the issues for the Tribunal to determine were as follows:

- 35.1 Whether the Respondent committed an offence under section 72(1) as a result of the following:
 - (i) being in control of or managing the property;
 - (ii) the property being an HMO;
 - (iii) Whether a licence was required for the property; and
 - (iv) If so, whether there was a licence for the property.
- 35.2 If the above elements of the offence at paragraphs 35.1(i) to 35.1(iv) above are met, during the period in which the offence was committed did the Respondent have a defence to the commission of the offence under section 72(4) and/or 72(5) of the 2004 Act?
- 35.3 If an offence has been committed, the maximum amount of rent repayment order that can be ordered under section 44(3) of the 2016 Act.
- 35.4 Whether the Respondent had been responsible for the cost of any utilities at the Property.
- 35.5 The severity of the offence.
- 35.6 Any relevant conduct of the landlord, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the rent repayment order.

The Tribunal's Decision and Reasons

- 36. The Tribunal reached its decision after considering the parties' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence
- 37. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents

not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

38. The relevant legal provisions are set out in the Appendix to this decision.

Decision on the offence under section 72(1) Housing Act 2004

39. The Tribunal is satisfied beyond reasonable doubt that all elements of an offence under section 72(1) of the Housing Act 2004 have been satisfied, accordingly, we find the Respondent committed an offence under section 72(1) of the 2004 Act.

40. The Respondent has failed to show on a balance of probabilities that he had a reasonable excuse.

Reasons for the Decision regarding the offence under section 72(1)

41. Mr Sedman's e-mails and Harrow's letter dated 9th November 2023 confirm the council operated an HMO licensing scheme, that having inspected the Property the council concluded it required an HMO licence under its scheme, and that until 15th November 2023, the Respondent had not obtained or applied for an HMO licence. We consider that is sufficient to establish beyond reasonable doubt that the Respondent controlled and/or managed an unlicensed HMO. Additionally, we note that the Respondent does not deny a licence was required: her response to the application is by way of mitigation.

42. We find the Respondent had control of the property as defined by section 263(1) of the Housing Act 2004, which states a person is in control of premises where they receive the rack-rent. The Respondent is named as the landlord in the tenancy agreement and, except for council tax, even prior to November 2023 the utility bills were registered in her name. Furthermore, the Respondent confirmed the title to the Property is registered in her name at Land Registry, and as stated, she received the rent directly into her bank account. Accordingly, she is a person managing the property as defined by section 263(2) of the 2004 Act.

43. We also find that the property meets the requirements of Harrow's additional licensing scheme because according to Mr Sedman, it required an HMO licence. Furthermore, Harrow's letter dated 9th November 2023 states that a property occupied by 3 or more individuals requires an additional HMO licence, and it is common ground that the Property was let to 4 occupiers.

44. Having reminded ourselves the Respondent needs to prove the defence of reasonable excuse on the balance of probabilities, we consider that neither the mitigation (dealt with below) nor any other arguments made by the

Respondent amounts to a reasonable excuse. Therefore, we consider the Respondent has failed to show on the balance of probabilities, that she had a reasonable excuse for operating an unlicensed HMO.

Amount of the Rent Repayment Order

45. In its decision in *Acheampong v Roman and others [2022] UKUT 239 (LC)*, the Upper Tribunal recommended a four-stage approach to determine the amount of the rent repayment order, that approach is summarised as follows:

- 45.1 Ascertain the whole of the rent for the relevant period;
- 45.2 Subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;
- 45.3 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 compared to other examples of the same type of offence; and
- 45.4 Consider whether any deduction from, or addition to, that figure should be made pursuant to section 44(4) of the 2016 Act in the light of the parties' conduct, the landlord's financial circumstances and whether the landlord has previously been convicted of an offence to which Chapter 4 of the 2016 Act applies.

46. We have adopted the approach recommended in *Acheampong v Roman and others* in reaching our decision as to the amount of the rent repayment order.

47. In the application form the Applicant is seeking repayment of the totality of the rent that was paid to the Respondent during her tenancy, including the first month in advance, paid on her behalf by the London Borough of Brent.

48. She also claimed the deposit, which was again paid on her behalf by Brent. However, by the date of the hearing, the Applicant had vacated the Property, and had been reimbursed for the deposit, so did not pursue an order for repayment of the deposit. A rent repayment order is exactly that, it does not apply to any deposit paid in respect of the letting. Accordingly, if the Applicant was still pursuing payment of the deposit, the Tribunal would not have the authority to direct repayment of the deposit.

49. By section 44(3)(b) a rent repayment order made in favour of a tenant cannot include any sums paid on behalf of a tenant, for instance, by universal credit.

50. In total, the Applicant originally claimed £3,500 broken down as follows:

Deposit:	£700
August 2023 rent:	£700
September 2023 rent:	£700
October 2023 rent:	£700
November 2023 rent:	£700

51. In fixing the appropriate sum the Tribunal had regard to *Acheampong v Roman and others* and the decision in *Hallett v Parker [2022] UKUT 165 (LC)*. We have also taken into account that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of the licensing system and to deter evasion.

52. We find the period of the offence was 1st August 2023 when the Applicant's tenancy began, until 14th November 2023, being the day before the Respondent applied for an HMO licence on 15th November 2023. The rent paid by the Applicant in respect of that period was:

August rent:	£0 (the Applicant did not pay rent; it was paid on her behalf by Brent)
September 2023 rent:	£700
October 2023 rent:	£700
November 2023 rent:	£322.14 (being £700 x 12 months/ 365 days x 14 days)

53. The above amount, totalling £1,722.14, would be the maximum amount of a rent repayment order made under section 44(3) of the 2016 Act.

54. Under the tenancy agreement, the rent was exclusive of bills. Although the Respondent subsequently paid these bills, the written agreement was not amended. It therefore means the £700 paid by the Applicant was in respect of rent only, and so no deduction for utilities will be applied to that figure.

55. Regarding the seriousness of the offence in this application, namely being in control of or managing an unlicensed property, we find this is towards the lower end when compared to other offences for which a rent repayment order may be made. However, we take into account that additional licensing is introduced where the local authority considers a significant proportion of HMOs are being managed ineffectively.

56. Aside from not having an HMO licence, we are satisfied the Respondent was a good landlord. Even before Harrow inspected the Property, there were some fire safety measures, and she had obtained an EICR as well as gas safety and energy performance certificates.

57. We note the Applicant has complained about the condition of the Property, but we find Mr Sedman's e-mails do not support those complaints. Having inspected the Property, Mr Sedman reported it was in good condition, and he describes the Respondent as a responsible landlord. His various e-mails do not report any disrepair such as mould, nor does he mention

condensation or a rodent infestation. Therefore, we are satisfied that when these issues arose, the Respondent dealt with them appropriately and in a timely manner, as she stated in her evidence.

58. We also consider the Respondent's failure to obtain a licence prior to letting the Property was out of ignorance rather than a deliberate attempt to evade these requirements. We consider it is a landlord's responsibility to be familiar with any relevant legal requirements. Nonetheless, we accept her evidence that she carried out online research, and wrongly concluded a licence was not required. We take into account that neither she nor her father are property professionals.
59. It is relevant that the Respondent applied for an HMO licence promptly after Harrow informed her a licence was required. She also carried out the necessary works to ensure the Property was HMO compliant in good time. Mr Sedman explains this is the reason why he decided not to prosecute, and this is further reflected by her subsequently being granted a 5 year licence.
60. We have details regarding the Respondent's expenditure, but when asked about her income, we were simply told that she was unaware that was relevant and reiterated that she had experienced financial hardship. Despite only having general evidence of the Respondent's income, we have sufficient oral evidence that she experienced financial hardship. In particular, she had calculated the rent payable based on the occupiers paying utility bills, but then subsequently was advised she must pay this, which she hadn't budgeted for. Mr Sedman advised the Respondent to pay outstanding utility bills. He noted she was liable for utilities throughout the tenancy, but he did not advise her to reimburse the occupiers for previous bills already paid by them. We therefore accept her evidence that in respect of past bills, it was a goodwill gesture to repay the tenant for these, which would have added to her financial difficulties. We also take into account that she is still repaying the £7,000 she borrowed.
61. We do not consider the Respondent and/or her father tried to conceal that the Respondent was the landlord as she was named as such in the documentation and/or communications that we have been provided with. Brent's e-mail to Mr Patel sent on 5th July 2023 named the Respondent as the landlord, and the Applicant was copied into this e-mail. The Respondent is also named as the landlord on the written agreement. Furthermore, the Applicant paid her rent to the Respondent directly.
62. For the reasons stated at paragraph 21 above, we do not consider the Respondent or her father failed to provide adequate notice of visiting the Property. As explained, we do not consider notice to inspect the common parts was required, we understand at least one occupier was in any event given notice, and they visited the Property to address urgent an urgent repair issue.

63. The Respondent's unchallenged evidence is that she has not previously been convicted of an offence under Chapter 4 of the 2016 Act.
64. We consider the above factors are relevant to the amount of a rent repayment order.
65. As to the Applicant's conduct, it is common ground that she did not pay the rent for December 2023, January 2024 or February 2024 when these amounts fell due. We consider that conduct justifies a reduction in the amount of the rent repayment order, and we do not accept the reasons given by the Applicant provide a satisfactory explanation.
66. The Applicant states that she was unaware the Respondent applied for the licence in November 2023 and was concerned about paying rent in respect of an unlicensed property. However, we note in all his e-mails referred to at paragraphs 27, 28 and 30 above, Mr Sedman advises a licence application has been made. Furthermore, in the e-mails he sent to the occupiers (paragraphs 27 and 30), he advises the rent should still be paid and not withheld. Contrary to the Applicant's assertion, Mr Sedman did not say he was unqualified to advise on withholding rent, that comment was made in his e-mail sent on 11th December 2023 (at paragraph 27 above), and related to the advice about the utility bills.
67. The Applicant says she was advised by the CAB to withhold rent. We find it surprising that the CAB would give such (incorrect) advice, and if they had done so, it is unclear why the Applicant sought further advice from her work.
68. The Applicant was aware that the works being carried out in respect of the Property, which related to the works required to bring the Property to HMO standards as advised by Mr Sedman during his inspection on 7th November 2023. So in addition to being informed by Mr Sedman that the Respondent had made the licence application, the Applicant could see the works Mr Sedman recommended were being carried out.
69. The Applicant rented the Property expecting to pay £700 per month plus a share of the utility bills. In the end, she was reimbursed for the cost of bills she had paid, and did not have to pay future bills, so she was in a better financial position than she would have expected at the start of her tenancy.
70. Finally, as regards the Applicant's conduct, we consider it was inappropriate for her to record the Respondent on occasions; an allegation which the Applicant did not dispute.
71. Based on the Respondent's mitigation and the Applicant's conduct we consider a 60% reduction on the maximum amount of a rent repayment order is just in all the circumstances.
72. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that we consider should be made in light of

factors to which we must have regard under section 44(4) of the 2016 Act, we make a rent repayment order against the Respondent of £688.86.

73. The Tribunal would remind the parties that it does not have the power to order the payment of the rent repayment order. It can only determine the amount of the rent repayment order.

Name: Judge Tueje

Date: 23rd December 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of Relevant Legislation Housing Act 2004

72 Offences in relation to licensing of HMOs

- (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.
- (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either –
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are –
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “*relevant decision*” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

Housing and Planning Act 2016

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
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

- (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 to that landlord.

<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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 a 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 had 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>
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an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
 - (a) the rent paid in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
 - (a) the conduct of the landlord and the tenant,
 - (b) the financial circumstances of the landlord, and
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.