FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HB/HMF/2024/0006
Property	**:**	Flat 7 Horton House, 11 Horton Street, Bristol, BS2 0LA
Applicant	**:**	Paul Mulrennan (1) Caroline Christie (2)
Representative	**:**	Justice for Tenants
Respondent	**:**	Pejman Hafezi
Representative	**:**	None
Type of Application	**:**	Application for a Rent Repayment Order by a tenant under ss40-45 of the Housing and Planning Act 2016
Tribunal Members	**:**	Regional Surveyor J Coupe FRICS Mr J Reichel MRICS Mr M Jenkinson
Date & Venue of Hearing	**:**	10 October 2024 Bristol Magistrates' Court and Tribunals Centre, Marlborough Street, Bristol, BS1 3NU
Date of Decision	**:**	7 January 2025

DECISION

Decision of the Tribunal

(1) The Tribunal orders a rent repayment order against the Respondent in the sum of £3,843.00 to be paid to the Applicants within 28 days.

(2) The Tribunal orders the Respondent to reimburse the Applicants the application fee of £100.00 and hearing fee of £220.00 to be paid within 28 days.

The reasons for the Tribunal's decision are set out below.

REASONS

Background

1. The Applicants are former tenants of the property known as Flat 7 Horton House, 11 Horton Street, Bristol, BS2 0LA ("the property").

2. The Respondent is said to be the landlord of the property and the person to whom the rent was payable throughout the tenancy.

3. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("the 2016 Act").

4. The basis for the application is that the Respondent was controlling and/or managing a house in multiple occupation ("HMO") which was required to be licensed under Part 2 of the Housing Act 2004 ("the 2004 Act") at a time when it was let to the Applicants but was not so licensed and that the Respondent was therefore committing an offence under section 72(1) of the 2004 Act.

5. Section 55(b) and section 56 of Part 2 of the 2004 Act permits local authorities to designate the area of their district or an area within their district as subject to additional licensing provided that certain criteria, as detailed in sections 57-58 of Part 2 of the 2004 Act, are met.

6. The Applicants claim that the property was situated within an additional licensing area, that being the electoral ward of Lawrence Hill, as designated by Bristol City Council, such scheme having come into operation of 8 July 2019 for five years.

7. The Applicants' claim is for repayment of rent during the period 2 January 2022 to 1 January 2023, amounting to £6,360.00.

8. A hearing bundle, extending to 161 electronic pages, and a supplementary bundle prepared by the Respondent extending to 11 pages were provided. References in this determination to page numbers in the substantive bundle are indicated as [page number] and references to the Respondents' bundle as [R page number].

9. These reasons address in summary form the key issues raised by the parties. The reasons do not recite each point referred to in submissions but

concentrate on those issues which, in the Tribunal's view, are critical to this decision. In writing this decision the Chairman has regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

The Tenancy Agreement

10. The Applicants occupied the property by virtue of an Assured Shorthold Tenancy ("the tenancy") dated 2 December 2020, made between the Respondent as 'landlord', and the Applicants and Zita Leskovjanska as 'the tenants'. The agreement was prepared by Rent Right Limited. [12]

11. The Respondent refers to an earlier tenancy of the property, between Mr Mulrennan and another couple. That tenancy is said to have commenced on the 2 February 2018. [R4]

12. The latter tenancy agreement provides for an initial total rent of £1,025 per month, payable on the 2nd day of each month. The tenants are responsible for water and sewerage charges, utilities and council tax. [13]

13. All three tenants are said by the Applicants to have vacated the property in March 2023. A WhatsApp message between Mr Mulrennan and the Respondent, timed at 18.32 on the 2 March 2023 reads *"Okay we are ready to go. I've got pictures of the meters and I've left the keys with Billy."* [152]. The Respondent did not dispute such.

The Application

14. The application was received by the Tribunal on the 27 February 2024.

15. The property is described as a two-bedroom penthouse apartment within a four-storey converted factory.

16. Section 41(2) of the 2016 Act provides that 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 was made. The Tribunal is satisfied that, in this matter, such criteria is met.

Register of Title

17. The leasehold interest in the property, registered at HM Land Registry under Title Number BL141386, is held by the Respondent as proprietor for a term of 999 years commencing 1 January 2014. Such registration being effective from 7 March 2016. [62]

Procedural History

18. The Tribunal gave Directions on 24 July 2024 listing the steps to be taken by the parties in preparation for determination of the dispute. Dates were provided by which each party were to furnish the other side with a statement of case and any evidence relied upon, and a date for provision of the hearing bundle to the Tribunal.

19. On 6 August 2024 the Tribunal granted the Applicants' application under Rule 10 of the Tribunal Procedure Rules 2013 to add an alternative spelling of the Respondent's name to the application.

20. On 25 September 2024 the Tribunal refused the Respondent's case management application seeking a postponement of the hearing set down for 10 October 2024.

21. The substance of the Respondent's application was a request for additional preparation time citing late receipt of the application due to an obsolete email address. Having considered the matter carefully, a Procedural Judge decided that sufficient time remained for the Respondent to prepare a response to the application. In making his Order the Judge noted that emails sent by the Tribunal to the email address which the Respondent says he had ceased using were not returned to the Tribunal as undelivered. Furthermore, that the Respondent said he became aware of the proceedings on 4 September 2024, that being over five weeks prior to the hearing date. The Respondent's application to postpone the hearing date was dated 20 September 2024 some 16 days after he became aware he says of the proceedings. The Judge commented that once the Respondent became aware of the proceedings he did not move quickly to make his application. However, permission was granted for the Respondent, by 3 October 2024, to serve on the Applicant's representative and the Tribunal a written statement of case in response to the application and copies of all documents upon which he sought to rely. In compliance with the Order the Respondent submitted an 11-page document.

Relevant Statutory Provisions

22. The relevant legislative provisions are set out in the Schedule to this decision.

The Hearing

23. The hearing took place on the 10 October 2024 at Bristol Magistrates' Court and Tribunals Centre. The first Applicant, Paul Mulrennan, was in attendance. The second Applicant, Caroline Christie, was not in attendance, her absence explained as being due to poor health and domestic arrangements. The Applicants were represented by Mr Jamie McGowan of Justice for tenants. The Respondent, Mr Hafezi, was in attendance and represented himself. The Tribunal is grateful to both parties for the helpful manner in which proceedings were conducted.

24. As a preliminary matter, the correct spelling of Mr Hafezi's name was confirmed. It was also confirmed that Mr Hafezi is the sole Respondent in this matter.

25. It is recorded that the Respondent did not have a copy of the bundle to hand during the hearing. On occasion, when evidence or documents were referred to, Mr McGowan shared his electronic copy of the bundle with the Respondent.

26. At the end of the hearing each party confirmed to the Chairman that he had been given sufficient opportunity to present their respective case.

The Applicant's Case

27. Mr Mulrennan says that throughout the tenancy the property was occupied by three people, forming two households, that being Ms Christie and himself as partners, and Ms Leskovjanska who formed the second household.

28. Mr Mulrennan occupied bedroom 2 as his main residence for at least five years from February 2018 until 2 March 2023.

29. It is said that Ms Christie, Mr Mulrennan's partner, moved into the property in May 2018 and also occupied bedroom 2. Ms Christie left the property on 2 March 2023.

30. In October 2020, Zita Leskovjanska moved into bedroom 1. Ms Leskovjanska is said to have left the property on 2 March 2023. Previous occupiers of bedroom 1 were Peter and Olga Sobczyk (February 2018 – July 2018); Hannah Ryan (September 2018 – July 2019); Feadha Ni Chaoimhe (September 2018 – October 2020).

31. The accommodation is described as comprising a hallway, living room with kitchen area, two bedrooms and a bathroom consisting of a shower, sink and toilet. There are two balconies, one outside the front door and a second accessed through the living room.

32. During Mr Mulrennan's approximate five-year occupation of the property he says that he doesn't recall receiving an energy performance certificate, a How to Rent guide, an electrical installation condition report or a gas safety certificate, although he says there were no gas appliances in the building.

33. Mr Mulrennan describes the Respondent as slow to respond to reports of disrepair, citing a malfunctioning oven for the final year of occupation.

34. In 2018, Mr Mulrennan says that he notified the Respondent of roof disrepair which, when left untended, ultimately led to severe water ingress in both the flat and the property beneath. A replacement flat roof was subsequently installed. However, during the winter of 2022, further episodes of water ingress occurred which led to mould and dampness presenting within bedroom 2, the kitchen/living area, and in the hallway. [136-140] The Respondent allegedly refused to address the mould until the sources of water ingress was investigated and remedial works undertaken.

35. Mr Mulrennan states that he informed the Respondent on multiple occasion that fire alarms were malfunctioning. In 2021 a fire broke out in the flat beneath the property during which, Mr Mulrennan alleges, the fire alarms failed to activate. Upon attending the incident, the fire service is said to have installed smoke detectors in the subject flat. Mr Mulrennan suggests that the front door of the property, which was damaged by the fire services gaining entry to the flat [147], did not meet fire safety regulations.

36. It is claimed that the Respondent failed to undertake repairs to a leaking shower in a timely manner [151] resulting in an electrical fire hazard.

37. The Applicant suggests that he was insulted when the Respondent failed to attend the property when he moved out, instead relying on his builder to collect the keys.

38. Ms Christie, in her written statement, states that the property was her main residence from May 2018. At such time, Peter and Olga were occupying bedroom 1 and, upon vacating, were replaced by Hannah Ryan, followed by Feadha Ni Chaoimhe and latterly Zita Leskovjanska. At all times the occupiers of the two bedrooms formed two separate households.

39. Ms Christie refers to the steep staircase as being inadequately lit due to faulty lights, a factor causing difficulty to her health issues, and to a broken door entry intercom. She explains that a builder attending the faulty roof without prior notification caused her fright and that the front door was dented from police attendance when she initially moved in but, following the fire below, the door was replaced. She referred to the hallway being affected by outside lighting in the carpark. Further complaints included dampness and mould, a faulty shower, blocked drains, malfunctioning oven, delay in replacing the broken front door, and disturbance from street noise. Ms Christies says the tenants only agreed to a rent increase on the condition that repairs were undertaken. However, these were not forthcoming.

40. Ms Christie states that only some of the electric fitted heaters worked and that there was a space heater in the living area, although she doesn't say who this belonged to. Ms Christie describes the black mould in the property as "part of the layout". [153]

41. Ms Christie was not in attendance at the hearing and the Respondent was therefore not afforded an opportunity to cross examine her, nor were the Tribunal able to ask questions of Ms Christie to clarify her evidence. However, much of Ms Christie's evidence rehearsed that provided by Mr Mulrennan. The Tribunal attributed weight to that evidence which corroborated Mr Mulrennan's, but placed little weight on evidence which could not be tested.

42. The totality of the Applicants' claim for a rent repayment order is £6,360 in relation to the period 2 January 2022 to 1 January 2023.

The Respondent's Case

43. The Respondent accepted that throughout the Applicants' and Ms Leskovjanska tenancy the property was a HMO which was subject to the additional licensing requirements of Bristol City Council, and that the property, during such period, did not have an appropriate licence.

44. The Respondent further accepted that throughout the tenancy he was the competent landlord, that he received the rent and that he was in control of and managing the property.

45. Mr Hafezi describes the situation as an inadvertent and unintentional mistake. At the commencement of the initial tenancy in February 2018, that being when Mr Mulrennan first occupied the flat with another couple, he says there were no HMO additional licensing requirements applicable to the property. By the time the property was re-let to the Applicants and Ms Leskovjanska, on 2 December 2020, additional licensing requirements had come into force.

46. Whilst accepting that Rent Right Limited provided him with a tenant-find service only and were under no contractual obligation to notify him of any change to licensing requirements he had, mistakenly he now says, assumed that they would do so. Living outside of Bristol, Mr Hafezi says that he didn't receive any public notification of the licensing scheme and, whilst accepting it is his duty to keep himself informed of any regulatory and licensing requirements, his omission to do so was unintentional and not motivated by any attempt to evade regulatory compliance.

47. Mr Hafezi states that he has conducted himself as a responsible landlord and at no time was the property let in a condition that could be deemed substandard or hazardous. The Applicant's have suffered no detriment through his failure to obtain the necessary licence.

48. Mr Hafezi refutes the Applicant's description of the condition of the property and points to the Applicant's choosing to occupy the flat for five years.

49. Mr Hafezi says that he responded proactively to the Applicant's reports of disrepair, citing an initial instruction to Davey Roofing to undertake investigations and roof repairs in October 2019 which were partially successful, followed by further instructions to the firm in regard to balcony and roof repairs. He states that balcony works were completed on 10 December 2019 at a cost of £4,914 [R6] and that the main roof replacement was completed in January 2020 at a cost of £7,644. [R6]

50. Further signs of dampness, including surface mould, became evident during the COVID-19 lockdown, during which time he says access to suitably qualified tradesmen was severely limited. As a mitigation measure and whilst investigations were undertaken, the Applicants were advised to increase ventilation and maintain indoor temperatures.

51. Mr Hafezi says he is confused and disappointed at the Applicants allegations in this matter. He considered the parties to have enjoyed a positive and professional relationship, and referred the Tribunal to a thread of electronic messages between himself and Mr Mulrennan, dating from 29 November 2022 to 30 September 2024, during which various matters were discussed in constructive and friendly dialogue. It is recorded that this was fresh evidence adduced at the hearing. Having taken instructions, Mr McGowan agreed that the evidence be admitted and was afforded an opportunity to cross examine Mr Hafezi on the contents.

52. Responding to the bathroom issues cited by the Applicants, Mr Hafezi states that these were rectified promptly. He further points to the installation of a replacement shower base, doors and tiling in the bathroom during 2021, and a further refit in 2022 due to a cracked shower

base.

53. On three occasions Mr Hafezi agreed to a friend of Mr Mulrennan, a suitably qualified plumber, carrying out repairs in the property for which he was financially compensated. WhatsApp communication in such regard was evidenced [R7].

54. Mr Hafezi says that the building is equipped with a compliant fire alarm and emergency lighting system, managed by A. Nightingale Electrical Contractors. A certification inspection was conducted in July 2021, one month prior to a fire incident in the lower flat. A copy of the inspection certificate was provided [R9]. Smoke detectors within the flat and the building's fire alarm and emergency lighting systems were concurrently tested. Mr Hafezi denies that the fire service was required to install fire alarms as none existed.

55. Following the fire, during which the fire service damaged the front door in gaining access to the flat, the door was secured temporarily whilst a replacement was sourced. An FD30-rated self-closing fire door with smoke seals was installed a short time after. A photograph of the replacement door was provided at [R10].

Reasons for Decision and Findings of Fact

Was the Respondent the Applicant's landlord at the time of the alleged offence?

56. The Tribunal has before it a copy of the tenancy agreement between the parties and Ms Leskovjanska, and evidence of rent payments. Furthermore, the Respondent accepts that he was the Applicants landlord throughout their tenancy. Accordingly, the Tribunal is satisfied that the Respondent was the Applicant's landlord at the time of the alleged offence.

Applying the criminal standard of proof, is the Tribunal satisfied beyond reasonable doubt that the alleged offence has been committed?

57. The Tribunal is satisfied that the property was a HMO during the period of the alleged offence.

58. Uncontested evidence was before the Tribunal of a tenancy agreement with three named tenants, forming two separate households. The tenancy agreement commenced on the 2 December 2020, and the Respondent did not challenge the Applicant's assertion that all three tenants left the property on the 2 March 2023.

59. The Tribunal is satisfied that the property is situated in a ward of Bristol that was subject to the additional licensing requirements of Bristol City Council during the relevant period. Evidence of such was produced in the hearing bundle and was not challenged by the Respondent.

60. The Tribunal is satisfied that the property required, but did not have, a relevant licence during the relevant period. Evidence of such was produced in the hearing bundle and was not disputed by the Respondent.

61. The Tribunal is satisfied that the Respondent was a landlord having control of or managing an HMO that was required to be licensed but which was not. Evidence of such was produced in the hearing bundle and was not disputed by the Respondent.

62. The Tribunal finds that the offence of controlling and/or managing an HMO which was required to be licensed under Part 2 of the Housing Act 2004 but was not so licensed contrary to section 72(1) of the 2004 Act is made out.

63. The Tribunal next turned its attention as to whether the Respondent had a reasonable excuse defence for his failure to licence the property.

64. To his credit, the Respondent did not deny that the property was a HMO, or that it required and did not have the appropriate licence, nor that he was the competent landlord. The Respondent had explained that when the property was first let it did not require an additional licence and that he was simply unaware when such requirements changed. He claimed it was an innocent mistake, from which the Applicants suffered no detriment.

65. The Tribunal is not satisfied that such grounds constitute a reasonable excuse in so far as extinguishing the Respondent's culpability. The Respondent failed to demonstrate that he had taken any steps to inform himself about the law or licensing requirements. Instead, he had relied on the goodwill of a letting agent who was under no contractual obligation to advise him of such requirements. Furthermore, the Respondent was unable to refer to any professional landlord organisation to which he either belonged or sought advice. The Tribunal finds that ignorance of the licensing requirements does not, in this instance, constitute a reasonable excuse and, accordingly, the defence of reasonable excuse is not made out. However, it is recorded that the Tribunal found the Respondent a credible witness throughout the hearing, who provided measured and well-reasoned responses to the Tribunal's questions. Whilst determining that the Respondent did not have a reasonable excuse for the offence, the Tribunal is satisfied that his submissions on the point go towards later mitigation.

66. Having established that an offence was committed the Tribunal finds that the offence occurred for the whole of the relevant period.

<u>Exercising its discretion, should the Tribunal make a Rent Repayment Order?</u>

67. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies. The Tribunal is satisfied that, in this instance, the offence has been made out and considers it is appropriate to make an order.

<u>Determining the amount of the Rent Repayment Order</u>

68. In determining the quantum of an Order, Section 44 of the 2016 Act requires the Tribunal to have regard to specific factors. In particular, Section 44(4) refers to the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has at

any time been convicted of an offence to which this Chapter applies.

69. In *Acheampong v Roman* [2022] UKUT 239 the Upper Tribunal provided guidance on how to calculate the appropriate Order. In summary, the Tribunal is advised to:

i. Ascertain the whole of the rent for the relevant period;
ii. Subtract any element of that sum that represents payment for utilities that only benefitted the tenant;
iii. Consider how serious the offence was and what proportion of the rent, after deductions, is a fair reflection of the seriousness of the offence;
iv. Finally, consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4) and as referred to in paragraph 64 above.

70. Taking each in turn.

71. The period of claim is 2 January 2022 to 1 January 2023. During the first 3 months of this period the total monthly rent payable for the flat was £1,025. Thereafter and for the next 9 months the total monthly rent payable was £1,150. Such figures include Ms Leskovjanska's contribution.

72. The total rent due from the Applicants during this period, excluding Ms Leskovjanska's contribution, was £6,405. However, the rent actually paid, as evidenced by a 'proof of rent spreadsheet' was £6,360 [19]. The difference is accounted for as monies owed by the Respondent to Mr Mulrennan for remedial costs incurred. Section 52(2) of the 2016 Act provides that an amount paid by a tenant not as rent, but which is offset against rent, is treated as having been paid as rent for the purposes of a rent repayment order. The Tribunal therefore finds the rent paid by the Applicants to be £6,405. It is recorded that this figure was agreed by the parties during the hearing.

73. The Tribunal is satisfied that the Applicant's paid all utility and similar expenses directly to the service providers. No deduction in this regard is therefore warranted.

74. The Tribunal is next required to decide how serious the offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and when compared to other examples of the same type of offence. From there, the Tribunal will consider what proportion of the rent is a fair reflection of the seriousness of this offence.

75. Turning to the former of these two points the Tribunal reminded itself of the guidance provided by the Upper Tribunal in *Newell v Abbott & Okrojek* [2024] UKUT 181 (LC), where, at paragraph 38, the Upper Tribunal referenced previous Tribunal guidance handed down within *Acheampong* and in *Hallet v Parker* [2022] UKUT 165 (LC) commenting that, in a list of housing offences which includes the use of violence to secure entry, unlawful eviction and failure to comply with an improvement notice, a licensing offence is relatively of lesser seriousness.

76. In *Daff v Gyalui* [2023] UKUT 134 (LC) the Upper Tribunal went further and, at paragraph 48 and 49 of the decision, the Deputy Chamber President attempted to rank the housing offences by reference to their general seriousness. At paragraph 49, Judge Martin Rodger KC refers to the offence of controlling or managing an unlicensed HMO as *"generally of a less serious type. That can be seen by the penalties prescribed for those offences which in each case involve a fine rather than a custodial sentence."* Judge Rodger KC continues *"Although generally these are lesser offences, there will of course be more or less serious examples within each category."* The Tribunal reminded itself that circumstances pertaining to a licensing offence may vary significantly.

77. Turning to the circumstances of this case. The Respondent says that at the time of offence he was the proprietor of three rental properties and, having recently acquired a second property in this block, now owns four residential buy-to-let properties, none other of which are HMO's. As such the Tribunal considers Mr Hafezi to be a professional landlord, albeit with a small portfolio. Mr Hafezi sought professional lettings advice at the outset of the tenancy but thereafter failed to keep himself informed of licensing requirements. The Tribunal finds no evidence that the letting agent was under any contractual obligation to provide ongoing advice to the Respondent. The Tribunal does not find the Respondents omission to obtain the required licence to have been a deliberate act. However, as the Respondent acknowledged, it is incumbent on any landlord to keep abreast of statutory and regulatory requirements. In omitting to obtain the necessary HMO licence the Respondent failed to keep abreast of such requirements. The Tribunal accepts Mr Hafezi's evidence that the oversight was inadvertent, although the Tribunal finds it irrelevant that Mr Hafezi claims the Applicants suffered no detriment from his failure. Once the issue was brought to the Respondent's attention he took immediate steps in contacting the local authority and ensured the property was re-let only to a single household.

78. The Tribunal finds no evidence that had a licence been applied for it would not have been granted, nor that a licence would only have been granted subject to additional work.

79. The Applicants allege that, in August 2021, a fire broke out in the flat beneath the property. A copy of a news article dated 26 August 2021 reporting the attendance of the fire crew was provided [142], along with an undated photograph of smoke escaping from a first-floor window in the building [143] and a photograph of internal fire damage to the flat below [145]. A form of alarm system record was provided at page [144] of the bundle. However, this appears to refer to a smoke alarm "in room of origin of fire", i.e. the flat beneath the property. The Tribunal finds no evidence that any smoke detector in the property, nor the fire alarm in the main building failed to activate. By contrast, the Respondent adduced evidence of a Fire Detection and Alarm Installation Completion Certificate dated 4 July 2021 stating to inspect "all communal + habital [sic] areas in flats". [R9].

80. Mr Mulrennan alleges that the fire service installed new fire detectors within the property, a statement the Respondent denied. However, when questioned on the point by the Tribunal, Mr Mulrennan was unable to

recall where in the property the fire service had installed detectors or in which rooms the faulty detectors had been located. The Tribunal finds no reliable evidence on this point from which a finding of fact can be made and therefore attributes no weight to the allegation. In regard to the damaged front door, the Tribunal prefers the Respondent's evidence that, following damage of the door by the fire service, a replacement and safety compliant door was fitted. The Tribunal finds no evidence that the existing door did not meet the required safety standard. The suggestion that the fire service was allegedly able to break into the flat easily does not prove that the door was necessarily inadequate. Emergency services will use whatever degree of force is required to gain emergency access and no findings can be made on the adequacy or otherwise of the door without evidence on the point.

81. The Tribunal finds that sometime around 2018/2019 the flat roof failed, resulting in water ingress which, in turn, led to damp and mould issues within the flat. The Tribunal finds that remedial works to the balcony were carried out in December 2019 and the flat roof was replaced in January 2020, both at cost to the Respondent. The Tribunal finds that the Respondent acted with reasonable response although his efforts were, to a degree, hampered by the COVID-19 lockdown. The Tribunal accepts the Applicant's suggestion that living with damp and mould is neither ideal nor healthy. However, the Tribunal finds no evidence that the Respondent failed to act or intentionally delayed matters. Mr Hafezi explained to the Tribunal that in addition to being the registered proprietor of the flat he was also a joint shareholder in the freehold of the building. Deliberately delaying works, in the knowledge that conditions would only deteriorate and ultimately cost more both in time and money to rectify would therefore not be in the Respondent's interest.

82. In conclusion on this point, the Tribunal is satisfied that a fire occurred on an unknown date in August 2023 which originated in the flat beneath the property. The Tribunal is further satisfied that the building and flat were protected by a fire alarm system that was certified as in good working order some one month previously. The Tribunal find that the emergency services used a degree of force necessary to gain entry to the flat, thereby damaging the front door. The Tribunal find that the Respondent secured the front door and replaced it thereafter. The Tribunal finds that on multiple dates the flat roof and balcony surfaces failed resulting in water ingress, damp and mould. The Tribunal finds no evidence that the Respondent failed to undertake remedial works in a timely manner.

83. With the exception of the damp and mould issues, caused by water ingress to the flat roof and balcony, the Tribunal do not find that the additional events add to the level of seriousness of the offence of controlling or managing an unlicensed HMO. The Tribunal finds that the Respondent made an error in failing to keep himself informed of licensing requirements but that this was an inadvertent error The Tribunal finds that repairs were undertaken in a timely manner whenever possible but that damp and mould was evident within the property for prolonged periods. Having regard to the totality of the evidence the Tribunal finds that the offence is at the lower end of the range of seriousness covered by section 40(3) of the 2016 Act.

84. Next, turning to the latter of these two points, that being that having determined the offence is at the lower end of the range of seriousness, what proportion of the rent is a fair reflection of the seriousness of the offence.

85. Having taken all of the above points into consideration, and in particular that this offence was committed by a landlord with a small portfolio of rental properties, including no other HMO's, and that the offence was the result of inadvertence, or lack of attention, rather than being deliberate, and that the tenants chose to stay in the property for around five years with apparently a good professional relationship between parties, but also having regard to the prolonged period over which the offence occurred, the Tribunal determine that the appropriate order is for the repayment of 60% of the rent received.

86. Finally, turning to those factors set out in s.44(4) of the 2016 Act the Tribunal finds that no addition or deduction to the rent award is warranted.

87. At paragraph 61 of the decision in *Newell* the Martin Rodger KC said:

> "The Tribunal has said in the past that it is not possible to be prescriptive about the sort of conduct which might potentially be relevant under section 44(4), 2016 Act (*see Kowalek, at paragraph [38]). But that should not be taken as an invitation to landlords and tenants to identify every possible example of less than perfect behaviour to add to the tribunal scales in the hope of increasing or reducing the penalty. When Parliament enacted Part 2 of the 2016 Act it cannot have been intended tribunals to conduct an audit of the occasional defaults and inconsequential lapses which are typical of most landlord and tenant relationships. The purpose of rent repayment orders is to punish and deter criminal behavior. They are a blunt instrument, not susceptible to fine tuning to take account of relatively trivial matters. Yet, increasingly, the evidence in rent repayment cases (especially those prepared with professional or semi-professional assistance) has come to focus disproportionately on allegations of misconduct. Tribunals should not feel that they are required to treat every such allegation with equal seriousness, or to make findings of fact on them all. The focus should be on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two."*

88. The Applicants aver that the Respondent failed to respond to reports of disrepair in a timely manner and suggested that the relationship between the parties was poor. Mr Mulrennan suggested that he may not have received required documentation at the outset of the tenancy but when questioned on the point was unsure. By contrast, the Respondent expressed surprise at the allegations directed at him, having previously considered that the landlord/tenant relationship had been a positive one. Mr Hafezi referred the Tribunal to a thread of WhatsApp messages which did not support the Applicant's allegations of hostility or poor relations. Rather, coupled with additional communication exchanges between the parties included in the bundle, showed a typical landlord/tenant relationship. The Tribunal's findings on the condition of the property and the 'fire' incident are not repeated, suffice to say that, in tandem with the findings above, led the Tribunal to the conclusion that there was no conduct, on either side, which warranted an adjustment to the order

determined.

89. In regard to his financial circumstances, Mr Hafezi stated that the property is mortgaged and that he is liable for service charges. No further information was forthcoming and neither was any degree of hardship pleaded. The Tribunal finds no adjustment for the financial circumstances of the landlord is warranted.

90. There was no evidence before the Tribunal that the Respondent had at any time been convicted of a relevant offence.

91. On that basis the Tribunal determines that an appropriate order is 60% of the rent paid and makes an order for £3,843.00 (Three thousand, eight hundred and forty three pounds) to be payable within 28 days of the date of this decision.

92. The Tribunal further orders that the Respondent reimburses the Applicants the £100 application fee and £220 hearing fee within 28 days of the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

SCHEDULE

Relevant statutory provisions

Housing and Planning Act 2016

Section 40

(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 …

(3) A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	***section***	***general description of offence***
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

Section 41

(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.

Section 43

(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 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) …

Section 44

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

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

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed – (a) the rent paid in respect of that period, less (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account – (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

Housing Act 2004

Section 95

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

(4) In proceedings against a person for an offence under subsection (1) … it is a defence that he had a reasonable excuse … for having control of or managing the house in the circumstances mentioned in subsection (1) … .