FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BJ/HMF/2024/0157**
Property	:	**2 Hearnville Road, Wandsworth, London SW12 8RR**
Applicant	:	**(1) Ms Rebecca Kong** **(2) Ms Isabella Sascha Sarah Lachecki** **(3) Ms Kayleigh Williams** **(4) Ms Jessica Smith**
Representative	:	**Mr B Leacock, Justice for Tenants**
Respondent	:	**Ms Nneka (Ojiugo) Obianyo**
Representative	:	**Ms Natalie Azimi**
Type of application	:	**Tenants' application for a Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal members	:	**Judge M Jones** **Mr A Fonka FCIEH**
Date and venue of hearing	:	**09 January 2025, 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**10 January 2025**

DECISION

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Decisions of the tribunal

(1) Pursuant to Rules 8(2), 9(7) and 9(8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("***the 2013 Rules***"), the Tribunal bars the Respondent's further participation in the proceedings, and further declines to permit Ms Natalie Azimi to cross examine witnesses or make submissions to the Tribunal at the hearing.

(2) The Tribunal orders the Respondent to repay to the Applicants the sum of £21,076.24 by way of rent repayment, allocated between them as follows:

(i)	Ms Rebecca Kong	£6,173.07
(ii)	Ms Isabella Sascha Sarah Lachecki	£2,230.54
(iii)	Ms Kayleigh Williams	£6,039.43
(iv)	Ms Jessica Smith	£6,633.20

(3) The Tribunal further orders the Respondent to reimburse the Applicants in respect of the application and hearing fees incurred by them, in the sum of £320.00, pursuant to Rule 13(2) of the 2013 Rules.

(4) The above sums, totalling £21,396.24 must be paid by the Respondent to the Applicants within 28 days of the date of this determination.

Introduction

1. By application dated 18 April 2024, the Applicants applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("***the 2016 Act***").

2. The basis for the application is that the Respondent committed an offence of having control of, and/or managing, an unlicensed house in multiple occupation ("***HMO***") which was required to be licensed, contrary to Part 2, section 72(1) of the Housing Act 2004 ("***the 2004 Act***"), which is an offence under section 40(3) of the 2016 Act.

3. The Applicants seek a rent repayment order in the sum of £30,108.91 in respect of rent paid for the period 1 May 2022 to 30 April 2023.

4. The Respondent served no statement of case, witness statement nor evidence (besides limited evidence regarding her health, addressed below) in response to the application.

5. The Applicants filed a bundle in advance of the hearing, numbering some 328 pages, augmented by a helpful skeleton argument prepared by Mr Leacock.

6. Whilst the Tribunal makes it clear that it has read the Applicant's bundle, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

7. This Decision seeks to focus solely on the key issues. The omission to refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundles or at the hearing require any finding to be made for the purpose of deciding the relevant issues in this application. The Decision is made on the basis of the evidence and arguments the Applicants presented, as clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

Preliminary Matters

8. Directions in these proceedings were given on 5 July 2024, giving the Respondent a generous compass of time, to 11 October 2024 to provide details of her case in writing, accompanied by supporting evidence.

9. The hearing date of 9 January 2025 was fixed and communicated to the parties on 6 August 2024, some 5 months in advance.

10. By amended directions issued on 4 September 2024 the time for compliance by the Respondent was extended to 1 November 2024. Those directions included at §20 (as did those previously issued on 5 July 2024) the following warning:

> *"If the **respondent** fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules."*

11. The Respondent provided no statement of case, written evidence or supporting documents. On 6 December 2024 she applied for a further extension of the deadline for submitting evidence to 3 January 2025, just 6 days before the hearing date. In formulating her request, the Respondent provided no evidence as to why she had been unable to comply with previous deadlines.

12. By emailed letter dated 31 December 2024 the Respondent apologised for missing the previous deadline, attributed to personal health issues, and provided what she termed *"supporting documentation"*, in the form of a print out record of a consultation with her general practitioner on 31 December 2024, and image of boxes of Sertraline and Amlodipine, medication used for treating depression and high blood pressure. In her letter the Respondent sought to assure the Tribunal that she was taking steps to address these challenges, and asserted a *"commitment to rectifying the situation…"*, a commitment that was reiterated in her covering email.

13. The medical evidence demonstrated an attendance upon a Dr Puvinathan on 31 December 2024, summarising the history taken by the doctor and a diagnosis of anxiety and depression. Notwithstanding those regrettable conditions, there was no evidence of any sort to demonstrate why the Respondent might have been unable to comply with the Tribunal's directions or, albeit late, to formulate some form of articulated case or evidence, or indeed to explain why she might have been unable to attend or participate in the hearing.

14. The Applicants responded by email submission dated 02 January 2025, submitting (in summary) that the Respondent had acted unreasonably in failing to comply with the Tribunal's directions and adhere to her obligation to help further the overriding objective. In consequence of such non-compliance, the Applicants submitted that the Respondent should be barred from further participation in the proceedings.

15. Whatever commitment the Respondent may have sought to articulate in her correspondence of 31 December, nothing by way of evidence was produced by her in advance of her requested extended deadline of 3 January, nor indeed by the time of the hearing at 10 am on 9 January 2025.

16. The Respondent did not attend the hearing, having previously notified the Tribunal that she did not propose to do so. Ms Natalie Azimi, who describes herself as a *"Support person"*, attended on her behalf. No prior notice of Ms Azimi's appointment was provided to the Applicants or to the Tribunal, in breach of the requirements of Rule 14(2) of the 2013 Rules.

17. At the commencement of the hearing, we considered an application by Ms Azimi, for permission to be heard on behalf of the Respondent. She explained to us that the Respondent was unwell, absent any documentary evidence over and above that which had been submitted on 31 December, and (absent any evidence) attributed the want of compliance with directions to *"miscommunication"* from the Respondent's son, who had been the property manager. Ms Azimi submitted that the Respondent herself had been unaware of the various

dates for compliance, and that the 31 December 2024 correspondence had been prepared after the Respondent had *"reached out"* to her.

18. Mr Leacock for the Applicants objected to Ms Azimi being permitted to address the Tribunal at all, pointing to Rule 14(2), and further highlighting that she was not a person 'accompanying' the Respondent who might otherwise be permitted to act as a representative or otherwise assist in presenting the Respondent's case within the meaning of Rule 14(5) of the 2013 Rules.

19. We considered Ms Azimi's application and the Applicants' application to bar the Respondent together, it appearing to us appropriate to do so where the facts and issues inherent in each were inextricably intertwined.

20. The Tribunal noted that the address for the Respondent on the medical evidence presented, 18 Osterley Gardens, was that to which the Tribunal had written to the Respondent on numerous occasions. We noted that the Respondent had corresponded with the Applicants' representatives and with the Tribunal on numerous occasions, including (but not limited to) 4 September, 27 November, 10 December, 24 December and 31 December 2024. We accordingly reject the suggestion that the Respondent was unaware of dates for compliance due to some form of *'miscommunication'*. The Tribunal then took cognisance of the fact that there had been no compliance with the Tribunal's directions whatsoever, and notwithstanding the assertions of commitment made in recent correspondence, nothing by way of evidence had been adduced in advance of the hearing. The medical evidence, such as it was, was woefully inadequate to explain the wants of compliance and the Respondent's absence from the hearing, and no other cogent explanation had been provided. Most fundamentally, there was *nothing* before the Tribunal from the Respondent to amount to any form of answer to the application, whether by way of explanation, supporting evidence or by way of a defence.

21. Taking matters together we concluded that it would cause significant unfair prejudice to the Applicants were Ms Azimi to be permitted to cross-examine witnesses or to make submissions on behalf of the Respondent, on a basis that had not been disclosed and which was accordingly wholly unknown to the Applicants, who were therefore unable to prepare or formulate any form of response to such points as might be sought to be made. Proper notice of Ms Azimi's position had not been given in accordance with Rule 14(2), and she was not a person accompanying a Respondent within the meaning of Rule 14(5) of the 2013 Rules. We therefore declined to grant permission to her to cross examine witnesses or to make submissions at the hearing.

22. While the failure to adduce evidence has done the Respondent no favours, it also makes the task of the Tribunal more difficult, in that we

are required to assess a one-sided portrayal of such evidence as might have been anticipated to be available. On the same ground of prejudice to the Applicants, together with the largely unexplained defiance of procedural directions given (save for the allegation of miscommunication, which we reject) read together with the overriding objective to deal with cases in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and resources of the parties and the Tribunal, we considered it appropriate pursuant to Rules 8(2), 9(7) and 9(8) of the 2013 Rules to bar the Respondent's participation in the proceedings. This, we considered, both reinforced and was informed by our decision to refuse permission to Ms Azimi, while also causing no *unfair* prejudice to the Respondent who had elected not to attend the hearing in any event.

The Property

23. The Property is an end terraced house of brick construction, situated at the junction of Hearnville Road and Chestnut Grove. However it may originally have been comprised, during the period in issue in these proceedings it contained 5 bedrooms over 3 floors, with a basement below, and included a sitting room, kitchen opening onto a rear garden, and 2 bathrooms, situated on the first and second floors. The Property has thus been converted for use as a 5-bedroom dwelling, used as a *de facto* house in multiple occupation ("***HMO***").

24. It was asserted by the Applicants, not formally disputed by the Respondent and the Tribunal finds that at all material times the Property met the criteria to be licensed as an HMO within the meaning of s.72(1) of the 2004 Act, and not being subject to any statutory exemption.

25. It was asserted by the Applicants, not formally disputed by the Respondent and the Tribunal finds that during the relevant period of 1 May 2022 to 30 April 2023 the Property was occupied by at least three persons living in two or more separate households, and occupying it as their main residence. It was, in fact, occupied by 5 separate persons between those dates, including the 3 Applicants Ms Williams, Ms Kong and Ms Smith, and by the Applicant Ms Lachecki between 17 December 2022 and 30 April 2023 (and thereafter).

Applicants' Case

26. In written submissions, the Applicants state that the Property did not have a licence, but required one, for the entirety of the period 1 May 2022 to 30 April 2023. The hearing bundle contains documents confirming that to be the case including, in particular, an email dated 9 June 2023 from Lola Adepoju, Private Sector Housing Lead Officer in the employment of the local authority, LB Merton. The Respondent raised no formal dispute of these matters and the Tribunal finds them proved.

27. The hearing bundles contain copies of the Applicants' tenancy agreements for the periods 17 September 2021 to 16 September 2022, 17 June 2022 to 16 September 2022, and 17 September 2022 to 16 September 2023, each with the Respondent named as the landlord.

28. There is a copy of the HM Land Registry title register 425347 showing a Ms Nneka Ojiugo Obianyo as the freehold proprietor of the Property, her title was registered on 20 August 1996, and her registered address for correspondence as noted in the Proprietorship Register is that noted above, viz. 18 Osterley Gardens.

29. The Applicants explain in their evidence that rent was paid by Ms Williams, to whom her housemates each paid their individual contributions, calculated as between themselves in unequal shares to reflect the different sizes and amenity of the rooms each occupied. The bundle contains copies of Ms Williams' bank statements showing the payment of rent directly to an account in the name of Nneka Obianyo, the Respondent.

30. The bundle also contains, as exhibit 'D', a most helpful series of 4 spreadsheets containing a calculation of the maximum amount of rent asserted to be repayable to each of the Applicants. The Tribunal has cross-referenced these spreadsheets with the financial information exhibited and finds them to be accurate.

31. The Applicant Ms Kong gave evidence at the hearing, albeit that Ms Azimi on behalf of the Respondent was refused permission to cross-examine her. She appeared to the Tribunal to be an honest witness, providing detailed and carefully considered responses to questions from the Tribunal, both in support of and expanding upon the contents of her witness statement. We accept her evidence in its entirety, both written and oral.

32. The Applicants (who each attested to the issues that follow in their statement of case, and witness statements) raised a series of complaints concerning the Respondent's discharge of her duties as landlord, in particular derived from her role as a property manager as defined by s.263 Housing Act 2004, including:

    (i) Following the partial collapse of the rear garden wall abutting Chestnut Grove in a storm in February 2022, and its subsequent demolition, reinstatement took something in the region of 5 months, causing inconvenience and a want of privacy, in particular where the area previously enclosed by the collapsed wall was directly opposite an off licence and general store, from which customers of alcohol and cigarettes, amongst other things, were prone to loiter and observe the tenants in and around their home, subjecting them to occasions of wolf whistling, and attracting complaints from neighbours. This caused them, all

being young women, an understandable degree of concern for their privacy.

(ii) For more than 2 years, Ms Kong suffered from poor heating in her bedroom. The radiators did not work at all unless she bled them daily, and even then would only provide moderate warmth, which was wholly insufficient to heat the room during winter, when she could see her breath in her room and was forced to sleep wearing a number of sweaters. Despite repeatedly reporting the problem to the Respondent's agent, who transpired to be her son Ike, the matter was never satisfactorily addressed.

(iii) Various rooms in the Property suffered from dampness and infestations of black mould. The problem was repeatedly reported, leading to some work to pointing in 2022, but recurred during the winter of 2022-3, as we have seen in photographs of the upper bedroom occupied by Ms Kong. The Respondent's agent promised that ventilation would be installed to address matters, but this never came to pass.

(iv) Having repeatedly raised these issues with the Respondent's agent, Ike, he suggested in early 2023 that the tenants should take a holiday from the Property for several weeks to enable works to be effected. When questioned, he emailed the tenants on 31 March 2023 informing each that they had 2 months to leave the Property, causing stress

(v) The Property demonstrably did not contain fire doors to address minimum fire safety standards.

(vi) It is far from clear whether the Property contained any, or any adequate fire detection systems. This was one example where the Respondent's failure to provide evidence has caused difficulty to the Tribunal, which cannot determine whether there was, in fact, any such system in place, noting that the tenants do not provide any evidence of the system being triggered at any point during the term of their occupation.

(vii) The Respondent failed to ensure that a number of the Applicants' tenancy deposits were protected in accordance with s.213 Housing Act 2004, until the matter was raised by the Applicants in or around January 2023, long after their respective tenancies (save that of Ms Lachecki).

(viii) It was unknown whether a gas safety certificate was in place through the duration of the period in issue: the tenants could not recall ever having being provided with a gas certificate. This was another example where the Respondent's failure to provide

evidence has caused difficulty to the Tribunal, which cannot determine whether there was, in fact, no certificate, or whether it was simply not provided to the tenants.

(ix) It was similarly unknown whether an electrical safety certificate was in place throughout the tenancies.

(x) The tenants could not recall being provided with an energy performance certificate.

33. In response to questions from the Tribunal Ms Kong explained that the rent paid did not include utilities, which the Tribunal notes were expressly excluded from the rent by virtue of clause 1.5 of the successive tenancy agreements.

34. The remaining Applicants did not attend the hearing, in circumstances where the Tribunal was told by Ms Kong, and we accept, that Ms Lachecki now resides in Australia and Ms Williams in Dubai, while Ms Smith was experiencing some family issues that had called her away to her family home in the New Forest.

35. While acknowledging that the weight to be attached to such statements in the absence of the witnesses themselves may be reduced, we have had regard to the contents of the statements of Ms Lachecki, Ms Williams and Ms Smith, which appear to the Tribunal to be broadly congruent with the evidence of Ms Kong, to be corroborated in many particulars by her evidence, and by the documentary evidence adduced.

The Respondent's Case

36. As detailed above, the Respondent adduced no evidence and did not attend the hearing. Her case, whatever it may be, is unknown.

Relevant statutory provisions

37. 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	Housing and Planning Act 2016	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 72

(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 … but is not so licensed.

(5) 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) … .

Section 263

(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises – (a) receives … rents or other payments from … persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or (b) would so receive those rents or other payments but for having entered into an arrangement … with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments …

Tribunal's analysis

38. The Applicants' uncontested evidence is that the Property was a dwelling which was required to be licensed but was not licensed at any point during the period of the claim. Having considered that uncontested evidence we are satisfied beyond reasonable doubt that for the whole period of claim the Property required a licence and it was not licensed.

39. It is also clear that the Respondent was the landlord for the purposes of section 43(1) of the 2016 Act, as she was named as landlord in the successive tenancy agreements.

40. The next question is whether the Respondent was a *"person having control of or managing"* the Property within the meaning of section 263 of the 2004 Act. The evidence shows that the rent was paid to the Respondent. The Respondent has not sought to argue that she was not a person having control of or managing the Property or that the rent paid was not the *"rack-rent"* as defined in section 263. We are, accordingly, satisfied that the Respondent was the owner and that she received rent from Ms Williams, paid over on behalf of all the Applicants. The Respondent was therefore at the relevant time at the very least a person managing the Property.

The defence of "reasonable excuse"

41. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 3 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

42. In this case, the Respondent has not sought to maintain any form of defence, but it is still open to the tribunal to consider whether the circumstances of her failure to license the Property would amount to a reasonable excuse defence.

43. We have no evidence as to the circumstances in which the Respondent failed to license the Property. We find that it was the Respondent's responsibility to obtain a licence and there is nothing before this Tribunal which in our view is sufficient to amount to a defence. In particular, there is nothing to suggest that the matter was wholly outside the Respondent's control or that she was relying on somebody else to take appropriate steps in circumstances where it was reasonable to do so.

44. The purpose of the licensing regime is to try to ensure – insofar as is reasonably possible – that properties which are rented out are safe and of an acceptable standard, and it would frustrate that purpose if landlords could be excused compliance simply because their personal circumstances caused them to neglect to apply for a licence.

45. Ultimately, we can only conclude that the Respondent required a license, and for reasons unknown appears neither to have obtained, nor to have sought one. That does not constitute a reasonable excuse.

46. The Tribunal therefore concludes, beyond reasonable doubt, that the Respondent had no reasonable excuse for failing to seek the necessary licence.

The offence

47. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. An offence under section 72(1) of the 2004 Act is one of the offences listed in that table.

48. Section 72(1) states that *"A person commits an offence if he is a person having control of or managing a HMO which is required to be licensed under this Part … but is not so licensed"*.

49. For the reasons given above we are satisfied (a) that the Respondent was a "person managing" the Property for the purposes of section 263 of the 2004 Act, (b) that the Property was required to be licensed throughout the period of claim and (c) that it was not licensed at any point during the period of claim.

50. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. On the basis of the Applicants' uncontested evidence on these points we are satisfied beyond reasonable doubt that the Property was let to the Applicants at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which the Applicants' application was made.

Process for ascertaining the amount of rent to be ordered to be repaid

51. Based on the above findings, we have the power to make a rent repayment order against the Respondent.

52. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of housing benefit or universal credit paid in respect of rent under the tenancy during that period.

53. In this case, the Applicants' claim relates to a period not exceeding 12 months, from 1 May 2022 to 30 April 2023, the latter being the date Ms Kong left the Property, followed by the other Applicants on various dates in May 2023.

54. There is no evidence to suggest that the rent paid by Ms Williams on behalf of the Applicants, and reimbursed to her by them was not paid, and as we have observed above, the evidence as to payment entirely supports the spreadsheets provided. These total £30,108.91, apportioned between the Applicants in the following sums:

(i)	Ms Rebecca Kong	£8,818.67
(ii)	Ms Isabella Sascha Sarah Lachecki	£3,186.48
(iii)	Ms Kayleigh Williams	£8,627.76
(iv)	Ms Jessica Smith	£9,476.00

55. We are satisfied on the basis of this uncontested evidence that the Applicants were each in occupation for the whole of the period to which each individual rent repayment application relates and that the Property required a licence for the whole of that period. Therefore, the maximum sum that can be awarded by way of rent repayment is the sum of £30,108.91, this being the amount paid by the Applicants by way of rent in respect of the period of claim.

56. Under sub-section 44(4), in determining the amount of any rent repayment order 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 the relevant part of the 2016 Act applies.

57. The Upper Tribunal decision in ***Vadamalayan v Stewart (2020) UKUT 0183 (LC)*** is one of the authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. In her analysis in ***Vadamalayan***, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted.

58. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases where the landlord's good conduct or financial hardship will justify an order less than the maximum.

59. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in ***Ficcara and others v James* (2021) UKUT 0038 (LC)** and ***Awad v Hooley (2021) UKUT 0055 (LC)***. In ***Williams v Parmar & Ors [2021] UKUT 244 (LC)***, Mr Justice Fancourt stated that the FTT had in that case taken too narrow a view of its powers under section 44 to fix the amount of the rent repayment order. There is no presumption in favour of the maximum amount of rent paid during the relevant period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.

60. Mr Justice Fancourt went on to state in ***Williams*** that the FTT should not have concluded that only meritorious conduct of the landlord, if proved, could reduce the starting point of the (adjusted) maximum rent. The circumstances and seriousness of the offending conduct of the landlord are comprised in the "conduct of the landlord", and so the FTT 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 was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise.

61. In ***Hallett v Parker and others [2022] UKUT 165 (LC)***, the Upper Tribunal did not accept a submission that the fact that the local authority has decided not to prosecute the landlord should be treated as a "credit factor" which should significantly reduce the amount to be repaid.

62. In its decision in ***Acheampong v Roman and others [2022] UKUT 239 (LC)***, the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which is paraphrased below:-

    (a) ascertain the whole of the rent for the relevant period;

    (b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;

    (c) consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made and compared to other examples of the same type of offence; and

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

63. Adopting the ***Acheampong*** approach, the whole of the rent in this case means the whole of the rent paid by the Applicants out of their own resources, which is the whole of the rent in this case being £30,108.91.

Utilities

64. In relation to utilities, we repeat the evidence summarised under §33 of this decision. Nothing falls to be deducted under this head.

Seriousness

65. In ***Acheampong v Roman*** at §20(c), Judge Cooke held that the Tribunal must consider how serious the housing offence forming the basis of the application is, 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 offence. As the issue was put in §21 of the judgment, this *"…is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence?"*

66. Failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license have an important deterrent effect on future offending as well as encouraging law-abiding landlords to continue to take the licensing system seriously and to inspire general public confidence in the licensing system. In addition, there has been much publicity about licensing of privately rented property, and there is an argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence. Furthermore, even if it could be argued that the Applicants did not suffer direct loss through the Respondent's failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

67. Against that expression of policy concerns, it is nevertheless the case that the offence under s.72(1) of the 2004 Act is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account, following the guidance the Upper Tribunal in ***Dowd v Martins [2023] HLR 7***, where offences of failing to licence in accordance with section 72(1) of the 2004 Act were expressed as being "*…generally less serious than others for which a rent repayment order can be made."*

68. The nature of a landlord has been held to be relevant to the seriousness of the offence. In some cases, it has been argued that there is a distinction to be drawn between "professional" and "non-professional" landlords, seriousness being aggravated in the case of the former. The proper

approach is as set out by the Deputy President in ***Daff v Gyalui [2023] UKUT 134 (LC)***, at paragraph 52:

"The circumstances in which a landlord lets property and the scale on which they do so, are relevant considerations when determining the amount of a rent repayment order but the temptation to classify or caricature a landlord as "professional" or "amateur" should be resisted, particularly if that classification is taken to be a threshold to an entirely different level of penalty. … The penalty appropriate to a particular offence must take account of all of the relevant circumstances."

69. In the present case, we simply have no evidence whatsoever as to the Respondent's circumstances as a landlord.

70. As to the condition of the Property, we consider that it suffered through the relevant period with problems of damp, water ingress, mould and significant defects to the heating system, particularly in Room 5 occupied by Ms Kong. While the significant delay in repairing the external wall was not an internal feature of the Property, we find this to be symptomatic of the approach of the Respondent via her son and agent, who while responsive in the sense of acknowledging complaints from tenants, was extremely tardy in instructing contractors or otherwise taking steps actually to seek to resolve matters. We note in particular that Ms Kong's problems with an absence of proper heating continued for a period on excess of 2 years, never being satisfactorily resolved.

71. In the absence of any evidence of an application for a licence it is impossible to know whether the Property is of a standard that would lead to a licence being granted, without further works being necessary. The absence of fire doors as a minimum might suggest otherwise, but we make no finding in this regard.

72. We consider a further issue under stage (c) (but note the close proximity between stages (c) and (d), where this issue could be categorised as allegations concerning the landlord's conduct under stage (d)). Whether by her son and agent or otherwise, we find that the Respondent was a generally unresponsive landlord, failing to address legitimate concerns raised by the Applicants and otherwise not acting as a responsible landlord should.

73. The Upper Tribunal decision in ***Newell v Abbot [2024] UKUT 181 (LC)*** was an appeal with a number of at least superficially material similarities to the instant case. In ***Newell***, the appropriate starting point was determined to be 60% of the rent paid. The tribunal took into account that:

    (i) The Respondent was an amateur as opposed to a professional landlord.

(ii) The breach which occurred was inadvertent.

(iii) The property was in good condition; and

(iv) A licencing offence was committed (section 95(1), HA 2004).

74. The Applicants submit, and we accept, that the present case is somewhat more serious than the factual matrix in ***Newell****, inter alia* where:

(i) The Respondent failed to protect the tenants' deposits in accordance with s.213 Housing Act 2004, until directly challenged on the point;

(ii) The damp and heating issues in the Property were only partially addressed, after considerable inconvenience was caused to the tenants;

(iii) The Property suffered from mould and dampness, continually;

(iv) The Property did not contain fire safety doors.

75. In the absence of conclusive evidence we make no findings as to whether the Property did, or did not have extant electrical and gas safety certificates, or a fire detection system.

76. Subject to that, in the light of the above factors, we consider that the starting point for this offence should be 70% of the maximum rent payable.

Mitigation

77. While we have evidence of ill health suffered by the Respondent, for which we sympathise, we cannot conclude that such personal circumstances in December 2024 amount to relevant mitigation of the offence.

78. As regards the further matters listed in section 44, the Tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will consider each in turn.

Conduct of the Parties

79. We find the Applicants' complaints regarding the Respondent's conduct to be made out, as discussed above.

80. Insofar as there may be some elision between the tests at (c) and (d), we are mindful of the risk of 'double-counting' in relation to the Respondent's conduct as landlord. We therefore propose to make no revision to the 70% starting point summarised in §76.

81. Had we not taken account of the landlord's conduct issues in alighting upon a starting point at (c), we would have applied the same at stage (d) to arrive at the same proportion of 70%.

82. We consider that there is nothing in the conduct of the Applicants to cause us to make any adjustment to the level of the rent repayment order. There is no evidence to suggest that they were anything other than good tenants, who paid their rent and complied with the terms of their tenancy agreements.

Financial Circumstances of the Landlord

83. We are also required to consider the financial circumstances of the landlord under section 44(4).

84. The Respondent elected to provide no evidence of her circumstances, from which we conclude that the Respondent provided no evidence of financial hardship, or any other circumstances that would lead the Tribunal to conclude that she would or might find it difficult to meet any financial order that this Tribunal might make. Therefore, there is nothing to take into account in relation to its financial circumstances that would require any adjustment to the appropriate percentage.

Whether the Landlord has at any time been convicted of a relevant offence

85. We have no evidence that the Respondent has ever been convicted of a relevant offence, but it is clear from the Upper Tribunal decision in ***Hallett v Parker*** (see above) that this by itself should not be treated as a credit factor.

Other Factors

86. It is apparent from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal *"must, in particular, take into account"* the specified factors. However, in this case we are not aware of any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

Determination

87. The Tribunal determines that it is satisfied beyond all reasonable doubt that the Respondent was controlling and/or managing an HMO which was required to be licensed under Part 2 of the 2004 Act but was not so licensed between 1 May 2022 and 30 April 2023, and that she was therefore committing an offence under section 72(1) of the 2004 Act during that period. It also determines that the Respondent had no reasonable excuse for that offence.

Amount to be Repaid

88. The four-stage approach recommended in *Acheampong* has been set out above. The amount arrived at by considering the first stage is £30,108.91.

89. Deducting the sums required by stage (b) does not reduce that figure.

90. Considering the further matters required by stages (c) and (d), the Tribunal's conclusion is that the appropriate amount is reduced to 70% of that sum, and there is nothing further to add or subtract for any of the other s.44(4) factors.

91. Accordingly, taking all of the factors together , the rent repayment order should be for 70% of the maximum amount of rent payable, with no deductions for utilities and services. The amount of rent repayable is, therefore, £30,108.91 x 70% = £21,076.24.

92. As against the sums paid by way of rent by each of the Applicants, that total sum should be apportioned between them as follows:

(i)	Ms Rebecca Kong	£6,173.07
(ii)	Ms Isabella Sascha Sarah Lachecki	£2,230.54
(iii)	Ms Kayleigh Williams	£6,039.43
(iv)	Ms Jessica Smith	£6,633.20

93. Accordingly, the Tribunal orders the Respondent to repay to the Applicants the sum of £21,076.24 by way of rent repayment, such repayment to be made within 28 days of the date of this decision.

Reimbursement of Tribunal Fees

94. The Applicants also apply under paragraph 13(2) of the 2013 Rules for an order that the Respondent reimburse their application fee of £100 and hearing fee of £220, totalling £320.

95. As the Applicants have been successful in this claim, the Tribunal is satisfied that it is proper to order reimbursement of these fees.

96. The Tribunal therefore orders the Respondent to reimburse to the Applicants the application fee of £100 and the hearing fee of £220, amounting to £320 to be reimbursed in total, such repayment to be made within 28 days of the date of this decision.

Name: Judge M Jones **Date:** 10 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.

(A) 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.

(B) 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.

(C) 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.

(D) 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.

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