FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**BIR/00FN/HMK/2024/0022**
Property	**:**	**65, Hughenden Drive, Leicester, LE2 7PX**
Applicant	**:**	**Heba Al Radi**
Representative	**:**	**Justice for Tenants**
Respondents	**:**	**Vishal Vora and Nisha Vora**
Representative	**:**	**None**
Type of Application	**:**	**Application for a Rent Repayment Order By the Tenant. Part 3 Housing Act 2004 Ss40, 41, 43 & 44 Housing & Planning Act 2016**
Tribunal:		**Tribunal Judge P. J. Ellis** **Tribunal Member** **Mr R Chumley Roberts MCIEH. JP**
Date of Hearing	**:**	**13 December 2024**
Date of Decision	**:**	**15 January 2025**

Decision

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1 ***The Respondents are guilty of being persons having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.***

2. The Applicant is entitled to a rent repayment order.

3. The amount of rent to be repaid by the Respondents to the Applicant is £2767.30 being 30% of the total rent paid.

4.The Respondents will pay the application and hearing fees of £320.00 in addition

Introduction and Background

1. This application for a rent repayment order was issued on 18 April 2024 by Heba Al Radi who was the tenant of 65 Hughenden Drive from September 2020 until 5 April 2024 when she vacated the property. The Respondents Vishal and Nisha Vora have owned the property since September 2020.

2. Leicester City Council introduced a selective licensing scheme covering the area in which the property is situated on 10 October 2022. There had been some legal proceedings relating to the scheme which were resolved on 9 October 2022. Upon resolution of those proceedings, Leicester City Council as the local housing authority introduced a selective licensing scheme in an area of Leicester in which the subject property is situated.

3. The Respondents did not apply for their licence for reasons described in this decision until 18 March2024. The licence was issued on 12 June 2024 after the Respondents had carried out necessary work to satisfy the conditions imposed in the offer of a licence. The licence when granted took effect from 10 October 2022 until 9 October 2027.

4. The Applicant's claim is for repayment of rent for the period of twelve months from 18 March 2023 to 17 March 2024. The sum paid for rent in the relevant period is £9224.34. In addition, the Applicant claims the issue and hearing fees of £320.00.

5. The Respondents dispute the claim on the ground that the licence when issued had the effect of nullifying any entitlement to a rent repayment order as it took effect from 10 October 2022. They further allege that in any event the conduct of the tenant was such that no award should be made in her favour.

6. After issue of the proceedings the Tribunal issued directions for disposal of the claim including directing that the effect of the alleged back dating of the licence be dealt with as a preliminary issue. Directions also provided for service of statements of case and evidence. Both sides served substantial bundles of documents.

7. In the event the matter came on for hearing of all issues on 13 December 2024 by video. The Tribunal did not inspect the property. The Respondents represented themselves. The Applicant was represented by Mr Leacock, Justice for Tenants.

8. The facts of the core issue relating to the effect of the date of the licence were not disputed. The Applicant acknowledged and agreed the licence was granted from 10 October 2022 but denied the Respondent's assertion that the claim for a rent repayment was thereby nullified. There was a substantial dispute regarding the conduct of both parties giving rise to various allegations and counter allegations of relevant poor conduct.

The Submissions concerning the Licence

9. The Applicant's primary case was that from 10 October 2022 until the grant of the licence the property was unlicenced. As a result, the Respondents were guilty of an offence contrary to s95(1) Housing Act 2004 (the 2004Act) of being in control of or managing a house which is required to be licensed under this Act but is not so licensed.

10. Mr Leacock submitted the local authority cannot backdate a licence any further than the date of the application or at all. In so far as officers of the local housing authority had indicated the effect of back dating protected a licence holder from a claim for a rent repayment order they were either in

error or the assurance only applied to any claim which the local authority itself might bring for such an order.

11. Further, the offence under s95(1) was one of strict liability. The absence of a licence could not be cured by backdating. As the property was not licenced throughout the claim period the Respondent is susceptible to a rent repayment order.

12. The Respondents are members of the landlords' association, East Midlands Property Owners (EMPO). They relied upon an email sent by Mr Tony Cawthorne, Selective Licensing Manager of Leicester City Council on 15 May 2024 to Adeela Ahmed of EMPO who had advised the Respondents. Mr Cawthorne's email to Ms Ahmed stated that "*I can confirm that landlords that have made an application prior to the 10th April 2024 were in receipt of discounts and the licence will be issued providing protection from the Rent Repayment Orders as a licence application has been submitted.*" On 17 May 2024 Meeta Shingala Admin and Support Officer in Selective Licensing of Leicester City Council confirmed that "*applications made for Selective Licensing prior to 10/04/2024 will be backdated to October 2022*".

13. The significance of 10 April was that the local authority offered a discount from the fees payable under the licensing scheme for applications before that date in order to encourage landlords affected by the introduction of the scheme to apply promptly for their licences. On expiry of the introductory discount period the local authority intended to pursue and prosecute unregistered landlords.

14. Mr Vora admitted he was aware of the need for a licence. He had received advanced notice of the decision by the local authority to introduce the scheme on 10 October 2022. Also, he was aware of the time limit of eighteen months granted by the local authority for applicants to benefit from a discount from the normal licence fees. The Respondents believed they could apply for a licence at any time up to April 2024. They contended that the meaning and

effect of the correspondence described was sufficient excuse for not having a licence.

The Parties Conduct

15. This case involved allegations and counter allegations of poor conduct by both sides. The Tribunal heard evidence from the parties in addition to their written statements and submissions.

16. The Applicant occupied the property from 6 October 2020 pursuant to a tenancy agreement made on 13 September 2020. She remained in occupation under succeeding tenancy agreement until 6 April 2024. She alleged the Respondents, particularly Mr Vora, failed to attend to mould growth in the kitchen, living room and a wardrobe in a bedroom. The property suffered excessive cold. A garden fence was neglected allowing fly tipping and rodent infestation in the rear garden. The mould growth had an adverse effect on her health resulting in recent hospital treatment for breathing difficulties.

17. The Applicant alleged that mould was apparent from shortly after commencement of the tenancy. A leak from the bath had penetrated the kitchen ceiling below. Although the leak was repaired by Mr Vora himself, the damp patch became a site of mould which was never removed.

18. A toilet on the first floor developed a leak in July 2022. A plumber attended to replace the leaking toilet and while there he removed some of the accumulated mould.

19. The landlord failed to fix the fence supposedly because of a dispute relating to its ownership. He advised the Applicant to fix the problem herself. The broken fence was a severe hazard because her security was compromised. An intruder had gained access to the property through the gap in the fence.

20. A further allegation by the Applicant was that the property was cold as a result of inadequate insulation. The living room was so cold it was possible to see breath on expiration. The Applicant added extra carpets to warm the room. She complained to the agents and threatened legal action. As a result the

landlord attended to fit insulation in the loft and provide additional heating with an electric fire within three weeks of her complaint.

21. In August 2022 a letter came from the local authority notifying the intention to implement the Selective Licensing scheme from October that year. The Applicant gave it to Mr Vora who said it did not matter. In March 2023 she spoke to the Council who told her the house was not licensed.

22. In answer to cross examination the Applicant admitted the leak to the bath was fixed on the day of the complaint. She denied contending she suffered an allergy to bleach which was the suggested way of removing mould, although excessive use could cause an issue for her.

23. The Applicant admitted that she had written to the Respondents thanking them for the insulation and the electric fire and that the house is "much better now".

24. The fence panel was not removed by her. She reported it as hazardous in September 2021. Her neighbour with whom she was in a relationship at the time removed it and promised to restore it. She agreed the garden was in a good condition at commencement of the tenancy.

25. The Applicant agreed communications with the landlord had been cordial. They had not attempted to bully or abuse her apart from the fence problem in late 2023 when she was told to fix it herself. She agreed that in January 2024 she had written to the Respondents telling them they were good landlords. She agreed the landlord had supported her application for a visa permitting her mother to come to this country from her native Syria.

26. When the Applicant left the property in April 2024 the landlord did not ask for the rent due in the remainder of the term nor did they apply the clause entitling the landlord to charge the costs of seeking another tenant. She had

not wanted to complain about the property or the Respondents because she needed a reference for another tenancy.

27. In answer to questions from the Tribunal the Applicant explained the property is fitted with gas central heating with a thermostat in the kitchen which the tenant operated. The boiler had been replaced during her occupation. There are radiators in all rooms as well as the first-floor landing and the entrance hallway.

28. The Respondents in their evidence stated they have two other properties which are let but they regard themselves as amateurs in the property letting market. They are both teachers. They have had multiple domestic issues to deal with since first learning of the proposal to implement a licensing scheme. They understood from their enquiries that there was no need to hurry to make an application because they would be given eighteen months to make applications. They had made a Freedom of Information request of the local authority to ascertain the take up of applications from which it appeared to them that other landlords were making applications across the grace period.

29. The Respondents maintained that they have tried to be good landlords complying with a duty of care to their tenant. They tried to help the tenant. On commencement of the tenancy Mr Vora had assisted the Applicant with the installation of her washing machine. He had responded promptly to calls to repair or replace items when required such as the damaged bath pipe and the insulation including supplying the electric fire as supplemental heating. When the Applicant gave notice of her intention to leave the property they did not pursue her for rent due in the unexpired term or the cost of finding a new tenant.

30. The damaged or removed fence panel was a matter for the tenant or the local authority who own the adjoining property and have responsibility for that boundary fence. It was reported to the local authority in October 2021 but no action was taken.

31. The property was acquired shortly before the tenant moved in. They were not aware the loft was not properly insulated. As soon as the lack of insulation was known the loft was properly insulated. Although the property has full gas central heating the Respondents supplied the electric fire to help the tenant.

32. The Respondents maintained that mould developed as a result of the tenant's use of the property by drying clothes indoors and failing to adequately ventilate the rooms. There is no trace of mould in the property under the current occupancy. There had been no mould in this property at commencement of the tenancy. The area of mould identified following the bathroom pipe leak was no more than 10 x 30cms. It did not constitute a health hazard.

33. As far as the allegation of cold was concerned the Respondents dealt with the matter when raised with them by the tenant. They were not threatened with legal action. Their response was not as a result of a complaint to their agent, Connells.

34. The Respondents were unaware of the rodent infestation until Mr Vora attended the property to look at the fence. He noted that the garden was devasted. The tipped rubbish was not on land owned by the Respondents. It was reported to the council which had not removed it. He also noticed some trees at the end of the garden had been cut back without his permission or any consultation. It was his understanding that the neighbour would replace the fence as he had removed it.

35. The Respondents produced a schedule with the dates of each call out and the action taken by them to resolve the matter or issues raised. The Applicant did not substantially challenge the accuracy of the schedule.

36. They denied they had ever been abusive of the tenant or ever said anything derogatory about her to any person. They have always been polite to her. The messages produced in evidence shows the tenant was happy with the property and her tenancy.

37. The Respondents asserted that an application for a licence was submitted on 18 March 2024. It would have been submitted on 8 March 2024 but for a computer problem encountered by the local authority following a hack. The local authority required some work which the Respondents consider minor and were carried out without delay so that the licence could be granted on 12 June 2024. It was back dated as expected to 10 October 2022. The Respondents admitted that a letter from the local authority of 11 March 2024 referred to damp and mould at the property, but the Respondents asserted by the time the property was inspected following making their application these matters were resolved and were not mentioned as works required as a condition of the offer of a licence.

38. In answer to questions from the Tribunal the Respondents admitted they had not attended any training courses for landlords because of the domestic matters and their full time occupation as teachers.

39. The Respondents called Tracey Pallett of Connells to give evidence on their behalf. Connells are not managing agents, they are retained to let the property. When the property was offered again upon it becoming vacant it was in good and lettable condition. They received multiple offers for it. Connells have worked with the Respondents since 2017. They have all certificates usually required for letting a property. If there are complaints they are referred to the Respondents. There were no notes of any complaints from the tenant on her files.

40. Adeela Ahmed of East Midlands Property Owners gave evidence. Ms Ahmed had met with council officers about implementation of the scheme. She understood from those meetings the local authority wanted to work with landlords and tenants to implement the scheme. Any unlicensed landlords after April 2024 will be the subject of prosecution. Ms Ahmed had received the email from Mr Cawthorne regarding back dating and its intended effect. She had shown it to the Respondents. As far as she was aware, backdating the

licence was to match licences with the overall duration of the Selective licensing scheme.

The Statutory Framework

41. S40 Housing and Planning act 2016 provides:

(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 by that landlord.

(the general description of offences has been omitted)

Act	*Section*
1 Housing Act 2004	*95(1)*

42. By s41 of the 2016 Act*(1)A tenant …. 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.

S43 provides "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).

42. By s85 Housing Act 2004

(1)Every Part 3 house must be licensed under this Part unless—

(a)it is an HMO to which Part 2 applies (see section 55(2)), or

(b)a temporary exemption notice is in force in relation to it under section 86, or

(c)a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

(2)A licence under this Part is a licence authorising occupation of the house concerned under one or more tenancies or licences within section 79(2)(b).

(3)Sections 87 to 90 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4)The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of houses in their area which are required to be licensed under this Part but are not so licensed.

(5)In this Part, unless the context otherwise requires—

(a)references to a Part 3 house are to a house to which this Part applies (see section 79(2)),

(b)references to a licence are to a licence under this Part,

(c)references to a licence holder are to be read accordingly, and

(d)references to a house being (or not being) licensed under this Part are to its being (or not being) a house in respect of which a licence is in force under this Part.

43. *S95(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 (see section 85(1)) but is not so licensed.*

(2)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 90(6), and

(b)he fails to comply with any condition of the licence.

(3)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 86(1), or

(b)an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).
(4)In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,
as the case may be.
(5)A person who commits an offence under subsection (1) is liable on summary conviction to a fine.
(6)A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Discussion and Decision

44. At the case management conference of this case the Tribunal directed that the effect of the decision to back date the Selective Licence issued to the Respondents on 12 June 2024 be considered as a preliminary issue. The parties have equal and opposite views of the effect. The Respondent relies upon the email of Mr Cavanagh and the evidence of Ms Ahmed in support of the proposition that the grant of the licence nullifies the offence under s95(1) 2004 Act of control or management of an unlicensed house.

45. The Applicant submits the local housing authority has no power to back date a licence, although no authority was presented to the Tribunal to support that claim. Mr Leacock, on the Applicant's behalf, relied on *R (On behalf of Mahomed) v Waltham Forest LBC [2020] EWHC 1083 (Admin)* in which the Court clarified that the offence of managing or having control of an unlicensed house in multiple occupation (HMO), contrary to s.72(1) of the 2004 Act, is a strict liability offence, which does not require proof of a defendant's mens rea.

46. The provision of s95(1) is substantially the same as s72(1). The Tribunal accepts the Applicant's argument that there is no distinction between the two provisions sufficient to dilute the relevance of this case, as maintained by Mr Vora.

47. Having seen the email from Leicester City Council's Selective Licensing manager (Mr Cawthorne) relied upon by the Respondent and heard Ms Ahmed, the Tribunal is not satisfied the meaning of the statement of Mr Cawthorne was an attempt to override the terms of s95(1) 2004 Act. The local authority made two important statements a) that any licence would be back dated to the commencement of the scheme i.e. October 2022 and b) that back dating would protect the licensee from an RRO. It is not necessary for the Tribunal to determine the legitimacy of the first statement because the Tribunal does not accept the claim that backdating will indemnify the Respondent.

48. Mr Cavanagh did not attend to give evidence. Apparently, he has left the employ of the local authority which has a power to prosecute unlicensed landlords. Ms Ahmed presumed the second statement relieved her members from the risk of any action but the local authority cannot relieve a litigant from liability in private right actions. The Tribunal is satisfied the extent of the indemnity offered by Mr Cavanagh ends with council prosecutions. It does not extend to claims by tenants against their landlord with a claim for their right to a rent repayment order.

49. The relevance of the statement is in determining whether the Respondents have a reasonable excuse for having control of or managing the house in the circumstances mentioned in s95(1) as provided by s95(4)2004 Act.

50. In *D'Costa v Andrea* [2021] UKUT 144 (LC) the Upper Tribunal held that a statement by the local housing authority that the relevant property did not require a licence could be the basis of the defence under section 72(5). HHJ Cooke said "*It is difficult to understand why a landlord would not have the defence of reasonable excuse to the offence created by section 72(1) of the 2004 Act where he or she has been told by a local authority employee that their property does not need an HMO licence and that they will be told if that situation changes, and I find that Ms D'Costa had that defence. She therefore*

did not commit the offence and no rent repayment order can be made against her."

51. This case differs from the proceedings before HHJ Cooke in that the relevant statement was not made to the Respondents. It was not made with the specific facts of the case before Mr Cawthorne. It was part of a general attempt on the part of the local authority to ensure compliance by landlords with the new licensing scheme. The Tribunal will not presume any additional comments which Mr Cawthorne might have made but the Respondents were taking a risk in deciding to wait before making their application. Moreover, the significance of running the licence from October 2022 was to ensure new licences issued for a period of five years were co-terminus with the scheme itself.

52. On 22 October 2022 when the Selective Licence Scheme was introduced the property was unlicensed. The Applicant was a tenant of an unlicensed property and a right of action for a rent repayment order accrued in her favour.

53. Therefore, the Tribunal determines these proceedings were properly brought and may not be struck out summarily. Throughout the tenancy until 18 March 2024 the property was unlicensed. The Respondents were aware of the licensing scheme but elected not to make an application for their licence and were accordingly guilty of an offence of managing or controlling an unlicensed house contrary to s95(1) 2004 Act.

54. The Tribunal being satisfied that an offence under s95(1) 2004 Act has occurred, it is also satisfied there was no reasonable excuse on the part of the Respondent for failure to obtain a licence. It is a defence to the section 95(1) offence of having control of or managing an unlicensed house for the person concerned to show that they had a reasonable excuse for doing so (section 95(4)(a), 2004 Act). In *Marigold v Wells [2023] UKUT 33 (LC)* , Martin Rodger KC Deputy Chamber President drew attention to guidance given by the Upper Tribunal, Tax and Chancery Chamber, on how tribunals should approach a reasonable excuse defence.

"(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question *"was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"*

55. In *D'Costa v Andrea [2021] UKUT 144 (LC)* the Upper Tribunal held that a landlord could rely on the assurance of an official of a local authority that a licence was not required.

56. The Respondents rely upon the messages from the local authority addressed to Ms Ahmed as their excuse for not having or applying for a licence. The Tribunal is not satisfied on the balance of probability that the relevant comments were made with a view to the situation which prevailed in this case. In the absence of evidence from Mr Cawthorne or any other person from the local authority it is not appropriate for the Tribunal to impute the meaning and effect of the comments asserted by the Respondents. In any event the Tribunal is not satisfied the local housing authority can extinguish a private right once it has accrued by back dating a licence.

57. The Respondents also described various domestic issues relating to the health of family members as another reason for failing to attend to the implications of the licensing scheme. However, as no application for a licence was made until shortly before the fee discount period the Tribunal is not satisfied these difficulties amount to a reasonable excuse under s95(1) of the 2004Act.

58. However, the Respondents are not rogue landlords, but they did know of the introduction of the scheme. They may regard themselves as amateurs but there is still an obligation to comply with the rules. They should have applied for a licence when notified of the scheme. Domestic problems or inaction by other landlords to make an application for a licence are not excuses. If as the Tribunal determines Cawthorne's statement applies only to the local authority, then there is no reasonable excuse under s 95.

59. The Applicant is entitled to a rent repayment order pursuant to s43 Housing and Planning Act 2016 (the 2016 Act).

Decision

60. The present statutory arrangements are designed to drive out rogue landlords by imposing penalties for the commission of housing and criminal offences. The regime introduced by Chapter 4 of Part 2 Housing and Planning Act 2016 is described as *"intended to deter landlords from committing the specified offences"*.

61. Although the parties described respective examples of poor conduct by the other the Tribunal does not consider the Respondents are rogue landlords. Their primary occupation is in teaching. They admit their amateur status in the housing market but their aim is to provide decent accommodation at reasonable rents. They have two other properties, both let, all with mortgages. They manage this small portfolio themselves. The decision not to retain Connells or any other professional organisation as their managing agents has resulted in their misunderstanding of the obligations of a landlord under current legislation.

62. The Applicant raised a number of complaints regarding the state of the property. She described mould growth but the Tribunal is satisfied her own occupation of the property contributed to its presence by failing to adequately ventilate the premises. The rear fence was damaged or removed. There was a dispute over the cause of the damage and its consequences but having examined the title plan of the property the Respondents are correct in

asserting it was the responsibility of the council as owner of the adjoining property. The complaint of cold was not adequately demonstrated. In any event the Respondents acted promptly to cure the problem of inadequate insulation by installing some as well as supplying an electric fire as additional heating equipment. In summary it appeared to the Tribunal there was some exaggeration of issues of poor conduct by the Applicant to enhance the claim. The Tribunal noted emails illustrating good relations between the parties including gratitude by the Applicant to the Respondents for their response to her issues. The Respondents adduced a schedule of calls made by the Applicant seeking attention to various matters and the action taken by the Respondents to deal with them.

63. The Respondents complained about the Applicant's neglect of the garden, the removal or reduction of trees without permission, the removal of a fence panel causing an issue which was difficult to resolve because of inaction by the neighbouring owner. Further complaints related to the Applicant's neglect of adequate ventilation creating a problem of mould growth and exaggeration of the extent of the mould in any event.

64. Having heard both sides at length on the allegations of respective poor conduct, the Tribunal does not consider this is a matter in which conduct of either side is sufficiently serious as to affect the determination of any rent repayment order.

Quantum

65. Although the Tribunal did not inspect the property, it appears reasonable to assume that had an application for a Selective Licence been made it would have been granted without conditions after completion of relatively minor works to satisfy local authority licence conditions. Also, it is agreed the sum claimed is the total rent paid in the relevant period of commission of the offence.

66. In *Hallett v Parker [2022]UKUT 165 (LC)* Martin Rodger KC reminded Tribunals of the decision in *Williams v Parmar* [2021] UKUT 244 (LC) where

the Tribunal (Mr Justice Fancourt, Chamber President) "*emphasised the need for tribunals making rent repayment orders to conduct an evaluation of all relevant factors before deciding on the amount of the order, rather than starting from an assumption that the full rent should be repaid unless there is some good reason to order repayment of a lesser sum.*"

67. In Acheampong v Roman [2022]UKUT 239 (LC) HHJ Cooke set out a four stage approach to determining a repayment claim:

The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

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

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

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

21. I would add that step (c) above is part of what is required under section 44(4)(a). It 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? I have set it out as a separate step because it is the matter that has most frequently been overlooked.

68. In *Hancher v David [2022] UKUT 277 (LC)* the four steps were affirmed including the importance of consideration of the seriousness of the offence. HHJ Cooke said at paragraph 19:

"Next the Tribunal has to consider the seriousness of the offence and the appropriate percentage of the rent to reflect that seriousness, in order to generate a starting point. The offence under section 72(1) of the Housing Act 2004 is not one of the more serious of the offences for which a rent repayment order can be made. And this is not one of the most serious examples of the section 72(1) offence; in particular, whilst some improvements were clearly needed at the property there is no evidence of fire hazards, for example, and no suggestion that the property would not have qualified for an HMO licence had one been sought".

69. However, it is clear from the FTT's findings about credibility that the offence was committed deliberately. Ms Hancher chose not to apply for a licence even though she had been told by her architect that she needed one.

70. In Acheampong, at paragraphs 16 and 17, HHJ Cooke gave some examples of how the degrees of seriousness of the relevant offence:

16. So in a case where the landlord of several properties had no HMO licence and whose eventual application for a licence was rejected on the basis of the fire hazards at the property, and who nevertheless failed to remedy those defects for over a year, the Tribunal ordered repayment of 90% of the rent (Wilson v Arrow and others [2022] UKUT 27 (LC)) ; in a case where the landlord was letting just one property through an agent, and might reasonably have expected the agent to warn him that a licence was required, and the condition of the property was satisfactory, the Tribunal ordered repayment of 25% of the rent (Hallett v Parker [2022] UKUT 165 (LC)).

17. There are no rules as to the amount to be repaid; there is no rate card. But it is safe to say that if the landlord is ordered to repay the whole of the rent (after deduction of any payment for utilities), without consideration of the seriousness of the offence, or in a case that is far from the most serious of its kind, it is likely that something has gone wrong and that the FTT has failed to take into consideration a relevant factor.

In Hancher a repayment of 65% of the rent was appropriate to reflect the seriousness of the offence.

71. In *Dowd v Martins [UKUT]249 (LC)* HHJ Cooke said at paragraph 26 "*it is not appropriate to regard the full rent claimed by a tenant as the starting point for quantification, in the sense that the only flexibility the FTT can have is to make deductions from that figure in the light of good conduct by the landlord or poor conduct by the tenant.*" Instead, as the Tribunal put it in paragraph 21 of *Acheampong*, the FTT should follow the four steps identified in that case as set out above.

72. In this case as far as the first two steps go the parties agree that the sum of £9224.34 was paid for rent. All other expenses relating to occupation and use of the property were paid by the tenant, as provided for by the tenancy agreement.

73. In *Kowalek v Hassanein Limited [2021] UKUT 143 (LC))* the Upper Tribunal observed "*unlicensed accommodation may provide a perfectly satisfactory place to live, despite its irregular status, and the main object of rent repayment orders is deterrence rather than compensation.*" No evidence was adduced to suggest that had the Respondent made a timely application for a licence it would not have been granted or granted with conditions.

74. The Tribunal has already referred to the comment of HHJ Cooke in *Hancher v David [2022] UKUT 277 (LC)* at paragraph 48 regarding the relative seriousness of offences under s72 of the 2004 Act which the Tribunal respectfully adopts in connection with an offence under s95. The offence under s95 is not one of the more serious offences for which a rent repayment order can be made. During the tenancy the parties were on cordial terms with one another. The Tribunal accepts the Respondents statement that they intended to offer good accommodation in a good city centre location.

75. Mr Leacock suggested the Tribunal should determine that 70% proportion of the rent is a fair reflection of the seriousness of this offence. However, the Tribunal determines the starting point for determination of the order is 60% that is £5534,60. In coming to this decision, it has had regard to the Respondents' failure to follow the implications of their knowledge of the scheme;

the probability of a licence had one been applied for one; the degree of seriousness of the offence and that this is a first offence by a small naive landlord.

76. The final step involves considering whether there should be any departure from that assessment considering the factors in s44(4). The Respondents had not supplied any evidence of their financial circumstances making it necessary for the Tribunal to apply an inquisitorial approach and follow *Daff v Gyalui [2023] UKUT 134* where the Tribunal (the Deputy President, Martin Rodger KC) referred to the need in some cases for the FTT to take an "inquisitorial approach" and question a landlord about their financial circumstances.

77. The Respondents are teachers, not professional landlords. Their portfolio comprises only three properties of which this property is one. The rental income and their salaries do not enable them to accumulate significant savings. The Applicant is a single parent in employment as an architectural technologist.

78. Having heard the parties and considering the written submissions the Tribunal is satisfied the Applicant substantially contributed to the various issues rehearsed at the hearing. The Tribunal awards the Applicant 30% of the total rent paid £2767.30 (9224.34 x 30%). In addition, the Respondent will also pay the issue and hearing fees of £320.00.

Appeal

79. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.
Tribunal Judge Peter Ellis