



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

Case reference : **BIR/OOCN/HMK/2024/0025**

Property : **Flat 3
61 Sandon Road
Birmingham
B17 8DT**

Applicant : **Ho Yeung Chan**

Representative : **The Applicant was not represented
Ms Linda Liu-Braham acted as the
Tribunal Appointed Interpreter**

Respondent : **Pavan Rajput**

Representative : **Mr D Taylor (Landlords Defence Ltd)**

Type of application : **Application by Tenant for a Rent
Repayment Order**

Tribunal member : **Mr G S Freckelton FRICS (Chairman)
Mr A McMurdo MSc, MCIEH**

**Date of inspection
and place of
hearing** : **9th January 2025 by video hearing**

Date of decision : **24th January 2025**

DECISION

Background

1. By application dated 18th May 2024 Ho Yeung Chan (“the Applicant”) applied for a rent repayment order against Pavan Rajput (“the Respondent”) under the Housing and Planning Act 2016 (“the Act”).
2. The grounds of the application were that the Respondent had control of a house which was required to be licensed but was not so licensed, under section 95 of the Housing Act 2004 (“the 2004 Act”), and that they had therefore committed one of the offences listed in section 40(3) of the Housing and Planning Act 2016 (“the Act”) and that the Tribunal were therefore permitted to make a rent repayment order in his favour.
3. Directions were initially issued by the Tribunal on 24th May 2024 following which some submissions were made but those received from the Respondent were not in a single PDF bundle and did not appear to the Tribunal to have been served on the Applicant.
4. Therefore, on 9th August 2024 further Directions were issued to the parties regarding the service of bundles. No submissions were made by either party on this point.
5. A video hearing took place on 9th January 2025 without an inspection. This decision states the outcome of the application and the reasons for the order the Tribunal makes on it.

The Law

6. The relevant provisions of Part 3 of the 2004 Act, so far as this application is concerned are as follows-

79 Licensing of houses to which this Part applies

- (1) This Part provides for houses to be licensed by local housing authorities where—
 - (a) they are houses to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 85(1)).
- (2) This Part applies to a house if—
 - (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
 - (b) the whole of it is occupied either—
 - (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)...

85 Requirement for Part 3 houses to be licensed

- (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.

95 Offences in relation to licensing of houses under this Part

- (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) 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 be effective (see subsection (7)).
 - (3) In proceedings against a person for an offence under sub-section (1) it is a defence that, at the material time—
 - ...
 - (b) an application for a licence had been duly made in respect of house under section 87, and that ... application was still effective.
 - (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.
7. The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a Rent Repayment Order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
 - (a) repay an amount of rent paid by a tenant, or ...
- (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
6	Housing Act 2004	Section 95(1)	control or management of unlicensed house

41 Application for rent repayment order

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

...

43 Making of rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
 - (a) section 44 (where the application is made by a tenant);

44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
<i>an offence mentioned in row ...6... of the table in section 40(3)</i>	<i>a period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (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.

Preliminary Issue (1)

8. Immediately prior to the hearing the Tribunal was informed that the Respondent had attempted to contact the Applicant to make an offer to settle the case.
9. The Tribunal determined to proceed with the hearing but at the commencement of the hearing the Respondent made an offer to the Applicant amounting to 50% of the amount sought.
10. This was explained to the Applicant who confirmed that he was not prepared to accept any offers and wished to proceed with the Tribunal hearing.

Preliminary Issue (2)

11. The Tribunal noted that the tenancy of the property was in the joint names of Mr Ho Yeung Chan and Mr Man Ho Chang. The Tribunal asked for clarification as to the basis on which the rent repayment order was sought as it appeared from the bank statements provided that Mr Man Ho Chang had reimbursed Mr Ho Yeung Chan for part of the rental payments made.
12. It was confirmed by the Applicant that he had a Form of Authority to act on behalf of Mr Man Ho Chang as confirmed on page 4 of the Correspondence Bundle and that it was a shared tenancy and that Mr Chan and Mr Chang had agreed the settlement of any Rent repayment order made by the Tribunal between themselves.
13. The Tribunal is therefore satisfied that it is considering a single application for one rent repayment order.

Applicant's Submissions

14. The Applicant submitted in his written submissions and at the hearing that he rented the property with Mr Man Ho Chang during the period 22nd September 2022- 21st March 2024. The property comprises a three-bedroom apartment and during the period 5th June 2023 – 21st March 2024 it was subject to a local authority selective licensing scheme. Copies of the relevant Tenancy Agreements were submitted.
15. In accordance with the tenancy agreement the rent was paid on or before 22nd of each month to the managing agent appointed on behalf of the Respondent landlord.
16. On 5th June 2023 Birmingham City Council introduced a selective licensing scheme covering 25 wards including the ward in which the property was situated. The Respondent did not have a licence during the period of the tenancy when a licence was required and had therefore committed an offence under section 95(1) of the Act. The Respondent applied for a licence shortly after being served with notice of the rent repayment order application.
17. The Applicant submitted that any suggestion by the Respondent that he did not receive notice of the selective licensing scheme or was in any way unaware of it should be dismissed by the Tribunal. The reason for this was that The Landlords Association sent emails to landlords and there was a comprehensive marketing campaign by Birmingham City Council on its website, on buses and via leaflets sent to properties to ensure that landlords were aware of the impending scheme. In addition to this the Respondent was represented by a managing agent who would, in the opinion of the

Applicant have made the landlord aware of the scheme and the Respondent's responsibility to be compliant.

18. The Applicant submitted a letter from Birmingham City Council dated 18th June 2024 confirming that the property was unlicensed between the period 5th June 2023 (when the scheme came into force) and 21st March 2024 (when the Applicant vacated).
19. The Applicant detailed a breakdown of the rent covering the rental period concerned and sought a rent repayment order in the sum of £9,618.83. In addition to this the applicant also sought reimbursement of the application fee and hearing fee.
20. It was submitted that the property was not licensed at any point during the Applicant's period of claim. This satisfied all elements of the offence of having control of, or managing, an unlicensed property under Part 3, section 95(1) of the Housing Act 2004 which is an offence specified under section 40 (3) of the Housing and Planning Act 2016.
21. The Applicant confirmed that he was seeking a rent repayment order for the period 5th June 2023 until 21st March 2024 at a rental of £925.00 per month. The Tribunal assumes that only part of the payment made in May 2023 is claimed (5th June – 21st June inclusive). The Applicant calculates this amount as being £563.83 (17 days). It is noted that the rent increased in February 2024 to £1,095.00 per month.
22. Therefore, the Applicant calculates the rent repayment order as follows:

8 months x 995.00 = 7,960.00
 1 month x 1,095.00 = 1,095.00
17days = 563.83
 Total £9,618.83

23. The Applicant submitted copies of bank statements confirming that the following rent payments were made:

DATE	AMOUNT (£)
19/05/2023	995.00
19/06/2023	995.00
19/07/2023	995.00
21/08/2023	995.00
19/09/2023	995.00
20/10/2023	995.00
20/11/2023	995.00
19/12/2023	995.00
22/01/2024	995.00
19/02/2024	1,045.00
Total	£10,000.00

24. The payment made on 19/02/2024 was £1,045.00 as £50.00 had been deducted in respect of a previous payment made by the Applicant to the Respondent in respect of a proposed change to the tenancy which was not made. However, the full payment due for the rent was £1,095.00.

Respondents' Submissions

25. At the request of the Tribunal the Respondent described the Property as being a self contained second floor flat.
26. The Tribunal understands that from the ground floor there is an entrance hall from which stairs give access to the second floor. The flat occupies the entire second floor and upon entering the flat itself there is a hallway which gives access to all the accommodation. This comprises of a lounge, kitchen, three bedrooms and bathroom.
27. The flat has Upvc double glazing and electric storage heaters.
28. This description was confirmed by the Applicant.
29. By written submission and that the hearing the Respondent submitted that he had been experiencing personal difficulties due to the breakdown of his marriage in March 2023 which had severely affected him physically, financially, mentally and emotionally. It has also impacted on his young twin daughters.
30. At the outset of the hearing the Respondent acknowledged that the property was required to be licenced and that he had no legal defence. It was not his intention not to have a licence and he accepted that there were consequences to him not having one.
31. The Respondent submitted that he was not a professional landlord although he was a professional person and he had entrusted the management of the property to a professional managing agent. The managing agent had completed the licence application although unfortunately, not as quickly as they should have.
32. On questioning by the Tribunal, the Respondent confirmed that there was nothing in the management agreement requiring the agent to deal with the licence application and it was fully accepted that the responsibility for such application remained with the Respondent. In mitigation, the Respondent submitted that the offence of failing to have a licence was not considered as serious as other offences specified in the Act.
33. It was further submitted that the tenant had caused issues within the flat and with the flat situated directly below the subject property which led to additional costs being incurred. In particular the fire alarm key was broken and had been taped up and the electricity standing charge should have been paid by the tenant but was actually paid by the landlord. In addition to this the shower tray had been damaged which in turn has resulted in water damage to the kitchen in the flat below. A copy of the invoice for the damaged shower tray was included in the Respondent's bundle together with photographs of the damage itself.
34. On further questioning by the Tribunal the Respondent acknowledged that:
 - a) He had agreed with the Applicant that he would pay one of the standing charges (as unusually there were two electric meters in the flat); and
 - b) He could not say how the shower tray was damaged but was of the opinion that he should have been notified of the damage earlier.
35. At this point the Applicant submitted that he did notify the Respondent regarding the damage to the shower tray in a timely manner but repairs were not always dealt with promptly.

36. The Respondent also submitted an email from his managing agent (Wentworth and Rose) which set out a time line of their involvement in the matter. This can be briefly detailed as follows:

10th June 2023 - they informed the Respondent about the selective licensing scheme.
12th August 2023 - having heard nothing they contacted the Respondent again.
26th August 2023 – the Respondent asked the Managing Agent to submit the application.
31st August 2023 – they asked for information and payment of the licence fee.
18th September 2023 – the Respondent asked if the application had been made.
19th September 2023 – they replied confirming that the Respondent had not made payment.
21st September 2023 – the Respondent made payment.
27th September 2023 – the Respondent supplied the required information.
Following this, the managing agent ‘created the application’ and submitted same on 21st May 2024.

37. The managing agent submitted that Birmingham City Council was slow in dealing with applications. For example, an application on another property submitted on 28th June 2023 was not approved until 11th January 2024. In the meantime, there was however a valid EPC and up to date gas and electrical safety certificates.

The Respondents’ financial position

38. With regard to Respondents’ financial circumstances, it was submitted that he only owned the one property which was split into four flats. It was further submitted that he was in full time employment.

General Matters

39. Following further questioning by the Tribunal the following matters were confirmed:
- a) Both parties confirmed they had a good general relationship during the period of the tenancy.
 - b) Neither Mr Chan or Mr Chang were in receipt of Universal Credit or Housing benefit during the period of the tenancy.
 - c) The Applicant had not been convicted of any offences in respect of the property and was not subject to any ongoing prosecution.
 - d) That the damage to the shower tray had been dealt with by an agreed deduction of £400.00 from the tenant’s deposit.

Discussion and Determination

40. On this application for a rent repayment order, the first issue for the Tribunal is to decide whether the Respondent has committed an offence under section 95 of the 2004 Act, namely whether the Respondent has had control of or management of a property which requires to be licensed, but which is not so licensed. No rent repayment order can be made unless this offence is established beyond reasonable doubt.
41. There are 6 elements to the offence:
- a. That the Property must be a “house”;

- b. That the Property must be in area which the local authority has designated as an area of selective licensing;
 - c. That the Property is let under a single tenancy or licence that is not an exempt tenancy or licence;
 - d. That the Property is not licensed;
 - e. That the Respondent is “a person managing or having control” of the Property;
 - f. That there is no reasonable excuse for the Respondent having control of the Property without it being licensed (which has to be proved by the Respondent on the balance of probabilities).
42. The first five elements of the offence are not seriously in doubt. The Property is a building, consisting of a dwelling, which therefore falls under the definition of “house” in section 99 of the 2004 Act. The Tribunal accepts the evidence which is submitted by the Applicant and **admitted** by the Respondent that the Property was both within a selective licensing area as from 5th June 2023, and that no application for a licence was made at any time during the Applicant’s tenancy.
43. The Tribunal then proceeded to consider Section 95 of the Act. Section 95(3) confirms that *‘it is a defence that, at the material time-*
- (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)*
44. In this case, it is accepted by the Respondent that no application for a licence was made until 21st May 2024, as confirmed by Birmingham City Council. As such, the Tribunal determines that there is no statutory defence for the Respondent having control of the property without it being licensed. In particular:
- a) There was no licence.
 - b) An application for a licence had not been made.
 - c) The Respondent had received no Notice of Exemption from the local authority confirming that for any reason, the property was exempt from the requirement to have a licence.
45. A copy tenancy agreement provided to us in the bundle of documents confirms that the property is let under a single tenancy. The Respondent is managing the property as he receives (via the managing agent) the rack rent. By virtue of section 263 of the Act the managing agents are the persons in control of the Property as they receive the rent directly from the tenant. However, they only act as agents for the Respondent and are not the ultimate recipients of the rent.
46. No evidence was provided to us to indicate that the Respondent has a reasonable excuse for failing to license the Property. In fact, the Respondent admits that he has no legal excuse. We therefore find, as a matter of fact that an offence under section 95 of the 2004 Act is proved.
47. We find as a matter of fact that there was no agreement between the managing agent and the Respondent to notify the Respondent of the need to obtain a selective licence and no copy of any ‘Management Agreement’ was provided to the Tribunal.
48. However, the managing agent did inform the Respondent of the need to apply for a licence in June 2023 so in the opinion of the Tribunal, they had more than carried out

their obligations. The Respondent was slow in providing some information and payment to the managing agent but having received all the necessary information and payment it is clear that there was a delay in the application for a licence being submitted to Birmingham City Council.

49. In the recent Upper Tribunal case of *Aytan v Moore* [2022] UKUT 27 (LC), the Upper Tribunal said:

“40. We would add that a landlord’s reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”

50. There is no suggestion that the Respondent did not know of the selective licensing scheme. Indeed, his managing agent had informed him that the scheme was in place in June 2023 and that he would need to apply for a licence. It is unfortunate that the application for a licence did not have the importance attributed to it.
51. Our conclusion on the first issue is that the Respondent did commit an offence under section 95 of the 2004 Act between 5th June 2023 and 21st March 2024 during which period the Applicant was a tenant in the property. The date the Selective Licensing Scheme came into force was 5th June 2023 and it is unfortunate that they did apply for the licence until May 2024.
52. The second question for us is to determine is the maximum possible award we could make as a rent repayment order. It cannot be higher than the rent that was paid in a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) and 44(3)(a) of the 2016 Act).
53. The offence was continuing from 5th June 2023 until 21st March 2024. The Applicant is therefore entitled to a rent repayment order for this period and we have to identify both the rent paid *during* that period and the rent payable *in respect of* that period (see *Kowalek v Hassanein Ltd* [2021] UKUT 143 (LC)). The offence actually ceased when the Applicant vacated the property.
54. In *Acheampong v Roman* [2022] UKUT 239 the Upper Tribunal set out the following guidance on how to quantify the amount of a rent repayment order which, it said, 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 payments 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 relevant 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 the 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).

55. The evidence was (see paragraph 23 above) that the sum of £10,000.00 was paid as rent during the period 5th June 2023 to 21st March 2024 and that the amount of £10,050.00 was due (see paragraphs 23 and 24 above). The Applicant calculates the amount of the rent repayment order in the sum of £9,618.83 (see paragraph 22 above).

56. The Tribunal is required to satisfy itself as to the amount of the possible rent repayment order and disagrees slightly with the Applicant's calculation. The Tribunal calculates the daily rental rate as follows:

Annual rent £995.00 x 12 = £11,940.00 ÷ 365 = £32.71 per day.

57. However, the Tribunal is only able to take account of the rental payments actually made during the period of the Application. We calculate this as follows:

8 months x £995.00	=	£7,960.00
1 month x £1,095.00	=	£1,095.00 (£1,045.00 paid + £50.00 fee)
<u>17 days x £32.71</u>	=	<u>£556.07</u>
Total		£9,611.07

Therefore, the starting point for the maximum award we can make is £9, 611.07.

58. The third question for us is to determine is the amount we are willing to order, taking into account the factors we are obliged to consider contained in section 44(4) of the 2016 Act. We may also take into account any other factors we consider are relevant (see paragraph 50 of *Williams v Parmar* [2021] UKUT 0244 (LC)).

59. Having regard to *Acheampong v Roman* we therefore take into account the following:

- a. This is the Respondents first offence;
- b. We find, as a matter of fact that the Respondent was notified in June 2023 of the need to obtain a licence.
- c. We have not been provided with copies of gas or electrical safety certificates. The Respondent submits via his managing agent that he has them and this has not been challenged by the Applicant.
- d. The Respondent took all reasonable steps to manage the property through a professional agent.
- e. It is clear from '*Ayton*' and other Upper Tribunal cases that the intention of Parliament with this legislation was to target "rogue" landlords and the Respondent clearly does not fall within that description;
- f. The Respondents' financial circumstances. We are satisfied on a balance of probability that the Respondent is able to afford the full amount of the rent repayment order we make.

60. We do not give any weight to the following factors:

- a. The fact that any rent repayment ordered may be considered by some to be an underserved windfall for the tenant. This is not a factor we are able to take into account.
 - b. The alleged damage to the shower tray and the alleged delay in reporting it by the Applicant or repairing it by the Respondent. This matter has been agreed between the parties with a deduction of £400.00 from the Applicant's Deposit.
61. We therefore follow the decision in *Acheampong v Roman*. Our view is that it would be unjust not to make a discount to the maximum sum we can order as a rent repayment balancing all the factors listed above.
62. As we have previously determined the starting point for our award is £9,611.07 (paragraph 57).
63. We further determine that the offence of not having a selective licence is not unduly serious on its own when taking account of the range of potential offences for which rent repayment orders are available, such a harassment or unlawful eviction. Therefore, we do not accept that this is an appropriate starting point and balancing all the factors listed above, our view is that 40% of this amount (£9,611.07) is appropriate. This gives a maximum potential award of £3,844.43.
64. The purpose of a rent repayment order is to deter landlords from the unlawful action of operating without a licence when required and to prevent repeat offences. In this case it is evident that the Respondent has only one property (although it comprises 4 flats). Despite the Respondent's submission, the Tribunal is of the opinion that the Respondent is a 'Professional Landlord'.
65. However, it is clear to the Tribunal that he has taken reasonable steps to arrange for the property to be professionally managed and to keep it in good condition. It was submitted that that the managing agents had arranged for an EPC and for an electrical safety certificate to be obtained. At the same time the application for a licence (although submitted well after the commencement of the licensing scheme) had been approved.
66. We also have regard to the submissions of the Respondent regarding his personal circumstances in March 2023 (paragraph 29 above) and that he was distracted by the attention required by his young daughters during the breakdown of his marriage. The Tribunal also finds as a matter of fact that there was no evidence of a deliberate intention on the part of the Respondent not to apply for a licence. Given the circumstances of this case the Tribunal determine that a further deduction of 10% from the maximum amount detailed in paragraph 62 is appropriate. This leaves a maximum award of £3,459.99.
67. We therefore, then take into account the Respondents' financial circumstances as detailed in 44(4)(b) of the Act and detailed in paragraph 36 of this decision. The Respondent confirms that he owns the four flats in this building and is in full time employment. We therefore make no further allowance to reflect the financial circumstances of the Respondent.
68. We order that the Respondent must pay a rent repayment order to the Applicant in the sum of £3,459.99.

69. We further order that the Respondent must reimburse to the Applicant the Application Fee (£100.00) and the Hearing Fee (£200.00) making a total of £300.00.

Appeal

70. 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.

Graham Freckelton FRICS
Chairman. First-tier Tribunal (Property Chamber)