FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BJ/HMF/2024/0143**
Property	:	**52 Longstaff Rd, London SW18 4AY**
Applicants	:	**Laurent Akesso** **Kamil Chryscionka** **Hugo Florentino** **Kurt Pacaud** **Andreas Votourlis**
Representative	:	**In person**
Respondents	:	**(1) Pouyan Soltanpour** **(2) Radikal Property Solutions**
Representative	:	**Not in attendance**
Type of application	:	**Application for a rent repayment order by the tenant: sections 40, 41, 43 and 44 of the Housing and Planning Act 2016**
Tribunal members	:	**Judge Tueje** **Ms S Coughlin MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**26th November 2024**
Date of decision	:	**5th February 2025**

DECISION

In this determination, statutory references relate to the Housing Act 2004 unless otherwise stated.

Decisions of the Tribunal

(1) The Application for a rent repayment order against the First Respondent is dismissed.

(2) The Tribunal find that the Second Respondent did commit an offence under section 72(1) without reasonable excuse.

(3) The Tribunal makes a rent repayment order against the Second Respondent for the global sum of £25,171.79, which is to be paid to the Applicants within 28 days of the date this Decision is sent to the parties.

(4) The above sum represents a rent repayment order of 80% of the rent paid by each Applicant during the period of their award, and it represents the following amounts

(i) £3,620.59 for the period from 4th February 2023 to 6th December 2023 to Mr Pacaud;
(ii) £3,620.59 for the period from 4th February 2023 to 6th December 2023 to Mr Chryscionka;
(iii) £6,432.67 for the period from 28th January 2023 to 6th December 2023 to Mr Akesso;
(iv) £5,696.13 for the period from 3rd February 2023 to 6th December 2023 to Mr Florentino; and
(v) £5801.80 for the period from 7th December 2022 to 6th December 2023 to Mr Votourlis.

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

The Application

1. This Application for a rent repayment order is dated 24th March 2024, and is made under section 41 of the Housing and Planning Act 2016 by the Applicants who were the tenants.

2. The Application is made against the First Respondent, Mr Soltanpour, who is named in the documentation as the managing agent. Mr Soltanpour appears to have initially managed the Property through a company called My Prime Lets. Subsequently, from around 24th February 2021, it was managed by Radikal Property Solutions Limited, whose registered address was 277-279 Chiswick High Road, London, W4 4PU.

3. The Second Respondent is Radikal Property Solutions Limited ("RPS"). According to Companies House records, Mr Soltanpour was the director of RPS until he resigned on 22nd November 2024.

4. On 31st May 2024 Mr Chryscionka e-mailed the Tribunal explaining it had not been possible to e-mail a copy of the Application to RPS because it had blocked his e-mail address. The Case Officer advised him to send the Application by post. Mr Chryscionka says that he did so.

5. On 5th June 2024 the Tribunal posted a copy of the Application: the letter was addressed to "Director of Radikal Property Solutions, Pouyan Soltanpour", and sent to 86-90 Paul Street, London, EC2A 4NE an address given on the tenancy agreements.

6. Also, on 5th June 2024 the Tribunal posted a copy of the Application to Pouyan Soltanpour, sent to 277-279 Chiswick High Road, London, W4 4PU the registered office of RPS.

7. By an order dated 28th June 2024 the Tribunal gave directions, including provision for the parties to each prepare separate bundles for the hearing containing supporting documents and an expanded statement of reasons for the application. Subsequently, the Tribunal listed the final hearing on 26th November 2024.

8. On 1st July 2024 the Tribunal e-mailed a copy of the directions to Mr Chryscionka and RPS.

9. On 5th August 2024 Mr Chryscionka e-mailed the Applicants' hearing bundle to the Tribunal and the other parties, however, the message was rejected by the Second Respondent's e-mail system. Mr Chryscionka therefore re-sent the bundle by e-mail to Mr Soltanpour's e-mail address only.

10. On 1st October 2024 the Tribunal e-mailed RPS notifying it that in breach of the Tribunal's directions requiring it submit a hearing bundle by 30th August 2024 it had failed to do so.

11. On 18th November 2024 the Tribunal e-mailed the First and Second Respondents notifying them that in breach of the Tribunal's directions requiring they submit their hearing bundles by 30th August 2024 they had failed to do so.

12. Mr Soltanpour responded by an e-mail sent on 19th November 2024 as follows (original emphasis):

    *I am writing regarding the recent notice and documents concerning the case for the property at **52 Longstaff Rd, London, SW18 4A** (Case Reference: **LON/OOBJ/HMF/2024/0143).***

    *Additionally, I would like to clarify that I sold the company **(Radikal Property Solutions)** in **February 2024** and am no longer associated with it. I have since moved out of the UK and no longer reside in London.*

Considering this situation, I kindly request the following:

1. ***Confirmation of responsibilities:*** *could you confirm whether I still hold any responsibilities in this matter given my sale of the company earlier this year?*

2. ***Additional time:*** *as this is my first notification, I would appreciate an extension to review the case details and seek advice on how to proceed.*

13. Judge Donegan dealt with Mr Soltanpour's above request. His decision was sent to the parties in a letter dated 21st November 2024 which stated:

    1. *The respondents seek variations to the directions and a postponement of the hearing on 26 November 2024 on the basis they have only just learned of these proceedings and Mr Soltanpour has sold his interest in Radikal Property Solutions and now resides abroad.*

    2. *The applicants contest the application and state Mr Soltanpour remains a director of Radikal Property Solutions.*

    3. *The Tribunal application names the respondent as "Pouyan Soltanpour, Director of Radikal Property Solutions". It appears the correct name of the company is Radikal Property Solutions Limited. As a limited company it has a separate legal identity to Mr Soltanpour. It is surprising Mr Soltanpour remains a director, if he has sold his interest in the company. Further, any sale of his interest would not affect the company's involvement in these proceedings.*

    4. *It is also surprising the respondents have only just learned of these proceedings, given the Tribunal and the applicant have sent them correspondence and documents by post and email.*

    5. *It is unrealistic to deal with the respondents' application in advance of the hearing on 26 November. Rather, it should be dealt with as a preliminary issue at the start of the hearing. The Tribunal can also decide who is/are the correct respondent/s and then decide whether to proceed with the full hearing.*

    6. *The parties must attend or be represented at hearing on 26 November*

    7. *The respondents must supply the Tribunal and the applicants with documentary evidence of the alleged sale of Mr Soltanpour's interest in Radikal Property Solutions Limited by midday on* ***25 November 2024****.*

14. On 25th November 2024 Mr Soltanpour e-mailed Companies House documentation to the Tribunal indicating he had transferred his shares in RPS to Hamed Raouf Belmoulaud. Mr Soltanpour also e-mailed undated text/WhatsApp exchanges in which Mr Soltanpour requested his name be removed as director. As stated, according to Mr Chryscionka, Companies House records show Mr Soltanpour as being a director of RPS up to 22nd

November 2024. Mr Soltanpour explained that he now lives in the Emirates, and asked to be provided with the relevant information to join the hearing remotely. However, he had not complied with the Tribunal's requirements to give evidence from abroad.

The Hearing

15. No party requested an inspection of the Property by the Tribunal, and the Tribunal did not consider one was necessary or proportionate.

16. The Applicants prepared a 257-page bundle for use at the hearing, which amongst other documents, contained the following:

    16.1 An expanded statement of reasons;
    16.2 Details of the alleged offence;
    16.3 The Applicants' written fixed term tenancy agreements and written confirmation of their continuing periodic tenancies;
    16.4 A company let agreement dated 19th January 2021 granting a 1-year fixed term tenancy of the Property between Fernando Gomez Pereira, stated to be the landlord, and RPS as the tenant. Mr Soltanpour signed the agreement on behalf of RPS. The term of the agreement was one year from 24th February 2023 to 23rd February 2024;
    16.5 Evidence of rental payments made by all the Applicants;
    16.6 Details of the Respondents' conduct relied on by the Applicants;
    16.7 Photographs of the Property;
    16.8 Various e-mail/WhatsApp exchanges between the Applicants and Mr Soltanpour; and
    16.9 E-mail exchanges between the Applicants and Mr Hailu, a local authority environmental health practitioner.

17. Neither Respondent prepared a bundle or witness statements; neither attended the hearing nor were they represented at the hearing.

18. Before hearing any evidence, the Tribunal dealt with Mr Soltanpour's request to postpone the hearing. The Applicants, some of whom had taken time off work to attend the hearing, opposed the request to postpone the hearing.

19. We refused Mr Soltanpour's request to postpone the hearing because we were satisfied that Mr Soltanpour and RPS had received adequate notice of the application and the hearing. In particular, we noted that Mr Soltanpour had been a director of RPS until 22nd November 2024, as such, the application posted by the Tribunal to RPS on 5th June 2024, the directions order e-mailed to RPS by the Tribunal on 1st July 2024, and the hearing bundle Mr Chryscionka re-sent by e-mail to Mr Soltanpour's e-mail address on 5th August 2024 (see paragraph 9 above) should have come to his attention. It is unclear when Mr Soltanpour relocated abroad, or whether he was still in the UK when the Tribunal posted the application to him on 5th June 2024, but he would have received the hearing bundle e-mailed to him by Mr Chryscionka on 5th August 2024, which would have contained the

directions order and notification that the hearing was listed on 26th November 2024.

20. Despite this advance notice of the hearing, and Judge Donegan's direction that all parties should attend or be represented, neither Respondent attended, nor did they arrange for a representative to attend the hearing on their behalf.

21. In refusing the adjournment, we also took into account that there were five Applicants who had attended, they had complied with the Tribunal's directions, and had taken all reasonable steps to ensure both Respondents were informed about the application and the hearing. Some had taken time off work to attend the hearing. Based on the information available to us, it would not be in the interests of justice to postpone the hearing, which would cause considerable inconvenience to the Applicants, and it would not be an appropriate use of the Tribunal's resources.

22. Therefore, the hearing proceeded. We heard evidence from each of the Applicants in turn.

The Background

23. The Property is a 3-bedrrom semi-detached Victorian house, but was occupied by the Applicants using 4 rooms as bedrooms. Therefore, the accommodation comprises 4 bedrooms, one with an ensuite, a kitchen, combined bathroom and toilet, but no living room.

24. HM Land Registry records the registered owners of the freehold title to the Property as Fernando Gomez Pereira and Maria Da Conciecao Pereira.

25. The Applicants tenancy agreements in all material respects are in the same format, none of which provide the landlord's name, only the landlord's agents, are provided. Clause 3.1.4 of the tenancy agreements states that the Applicants' rent was inclusive of gas, electricity and the internet connection.

26. The Applicants' occupation is set out in chronological order below.

Mr Pacaud and Mr Chryscionka

27. Before their tenancy began, there were text messages sent by Mr Soltanpour on 25th January 2017 confirming Mr Pacaud could view the Property, and the former's confirmation that letting to two people is agreed, subject to only Mr Pacaud's name being on the agreement.

28. They began occupying room 2 by virtue of a fixed term tenancy commencing 4th February 2017, and expiring 3rd August 2017 at an original rent of £850.00 per month. The other party to the agreement was Property Realm Ltd described as an agent acting on behalf of the landlord.

Subsequently they agreed the tenancy would continue as a statutory periodic monthly tenancy.

29. In relation to payments, we have PayPal activities showing Mr Chryscionka's monthly payments to Mr Pacaud from 1st January 2023 to 28th February 2024, with each payment accompanied by the same message reading "My half of the Rent".

30. We were also provided with a printout of Mr Pacaud's bank statement showing that from 3rd February 2023 to 3rd January 2024 he paid £900 each month to Go Cardless, representing both his and Mr Chryscionka's combined rent payments.

Mr Akesso

31. Mr Akesso occupied room 1 by virtue of a written 6-month fixed term tenancy agreement for the period 28th January 2019 to 27th July 2020, at £675.00 per month. The other party to the agreement was Property Realm Ltd described as the agent acting on behalf of the landlord.

32. As to rent payments, we have been provided with a printout of Mr Akesso's bank transactions showing that from 30th January 2023 to 28th September 2023 £775.00 was debited each month to Go Cardless, and then £825 per month from 30th October 2023 to 28th December 2023.

Mr Votourlis

33. Mr Votourlis occupied room 3 by virtue of a written 6-month fixed term tenancy agreement for the period 4th May 2022 to 3rd November 2022, at £550.00 per month. The other party to the agreement was Radikal Property Solutions Ltd, described as an agent acting on behalf of the landlord.

34. Regarding rent payments, we have been provided with an e-mail from Go Cardless sent on 8th March 2024 showing Mr Votourlis paid £550 from 6th June 2022 to 3rd October 2023, on 9th October 2023 £550 was debited, described as *"Unpaid £50 extra Rent from Nov 2022 to October 2023"* and from 2nd November 2023 to 2nd January 2024 he paid £650 per month. The e-mail states these sums were paid to RPS.

Mr Florentino

35. Mr Florentino occupied room 4 by virtue of a written 6-month fixed term tenancy agreement for the period 3rd September 2020 to 2nd February 2021 at £600.00 per month, with the other party named as Radikal Property Solutions described as an agent acting on behalf of the landlord.

36. Regarding rent payments, we have been provided with a printout of Mr Florentino's bank transactions showing that from 2nd February 2023 to

2nd October 2023 £700.00 was debited each month to Go Cardless, and then £750 per month from 2nd November 2023 to 2nd January 2024.

Relevant Events During the Applicants' Occupancy

37. By an amendment tenancy agreement with effect from 24th February 2021, the landlord's agent was changed to Radikal Property Solutions Limited on those tenancy agreements were a different agent's details were entered, but all other terms of their tenancy agreements remained the same.

38. The Applicants complain about numerous matters during their occupancy. Firstly, that they were not provided with a gas safety certificate at the start of their tenancy, nor within the first 28 days, and no EICR certificate was provided between 2019 to 2023. They were concerned that works, including electrical works and boiler repairs, were carried out by the landlord's relatives who may not be accredited by a recognised body.

39. Furthermore, they complain that there wasn't a fire safety certification on all furniture provided, nor was fire-fighting equipment adequately serviced, in particular, the fire extinguisher had not been serviced since 2017, and there was no fire blanket in the Property.

40. Additionally, they point out that the front and rear entrance doors can only be unlocked from the inside using a key, and that the Property did not meet HMO regulation standards in other ways. That is because doors were not fire-rated, had gaps exceeding 4mm and they had no intumescent strips or smoke seals. They also complain that the size of some of the bedrooms and the kitchen did not meet Wandsworth's HMO standards, and there was no lockable food storage.

41. There are documented reports of mould affecting room 2's ensuite bathroom. These include reports on 12th May 2021 and 1st June 2022 e-mails from Mr Pacaud and Mr Chryscionka respectively, to RPS complaining about mould and spores to the ensuite bathroom ceiling. There are photographs in the bundle showing the mould growth complained of.

42. As RPS failed to address the mould, on 18th and 24th October 2023, Mr Pacaud and Mr Chryscionka complained to Wandsworth Council, where the matter was dealt with by Mr Hailu. Mr Hailu also began investigating HMO licensing requirements in respect of the Property. Mr Hailu refers to the complaints and his investigation in an e-mail he sent on 31st July 2024, which states:

    - *I had been a case officer responsible for conducting investigation to gather evidence required to take enforcement action for failure to licence under S72 of the above Act. This was from early October*

2023 to end of November 2023. This was following two reports received from tenants, on the 18/10/2023 and 24/10/2023. This involved communicating with the managing agent Mr Pouyan Soltanpour, Director, Radikal Property Solutions Ltd, who entered into long-term contract with the landlord, created tenancies with individual tenants and had been responsible person on matters related to the occupancy of the above property.

- *The investigation established that the property, which required a mandatory licensing, had been operating without Homes for Multiple Occupation (HMO) licence. As part of gathering evidence on occupancy, I made 2 visits to the property at the above address and established that the property was occupied by 5 persons consisting of 4 households. Such a level of occupancy requires obtaining a mandatory HMO licence from a local housing authority.*
- *Having completed case investigation, on 8/4/2024, a Financial Penalty Notice was issued due to failure to licence HMO property. Mr Soltanpour did not appeal against this decision.*

43. During his investigation Mr Hailu dealt with Mr Soltanpour. Mr Soltanpour told Mr Hailu that he was unaware that room 2 was shared by two occupants, alleging occupation by two individuals was unauthorised. However, as stated, there are text messages in the bundle from January 2017 confirming Mr Soltanpour was aware of, and agreed to, Mr Pacaud and Mr Chryscionka sharing room 2, provided only one tenant was named on the tenancy agreement

44. It was also around this time that Mr Soltanpour made repeated requests for the Applicants to sign new tenancy agreements that were exclusive of bills and with an increased rent. Despite their refusal, Mr Soltanpour instructed GoCardless to debit the unagreed increased rent from the Applicants' accounts.

45. It seems that as a result of Mr Hailu's involvement, the mould in the ensuite bathroom was addressed in around December 2023.

46. It was also around this time, on 8th December 2023, that Mr Soltanpour served the Applicants with section 21 notices, expiring on 10th February 2024. This was followed by e-mail exchanges with Mr Soltanpour, in which Mr Pacaud challenges the validity of the notice on the ground that there is no HMO licence. Mr Soltanpour responds by insisting the notice is valid. He later informed the Applicants by an e-mail sent on 17th January 2024 about the reason for serving the section 21 notices, he wrote:

Regretfully, I must inform you that Radical Property Solutions' contractual relationship with the landlord is set to terminate on the 24th of February, without the option of renewal.

47. Also, around this time, on an unknown date believed to be in December 2023, Wandsworth received an application for a Temporary Exemption Notice ("TEN") in respect of the Property. The application is dealt with in an e-mail sent by Mr Hailu on 22nd January 2024 to Mr Pacaud and Mr Chryscionka, which reads:

"… a TEN was issued on 18/01/2024. The initial decision made on 15/12/2023 refused to grant TEN. But following an appeal received on 10/01/2024, the case was reviewed by my seniors and decided to issue TEN.

However, as I made you aware the investigation of operating unlicensed HMO, an offence under the housing act 2004, is ongoing.

I understand that the notice was served prior to 18/01/2024, before TEN was granted. In this case, you may need to seek legal advice from Shelter or other advice agency on the validity of the notice. A temporary exemption does not cover the period of running unlicensed HMO property retrospectively, but it is used for an interim period to allow time to a landlord to take necessary steps to bring the property outside of the HMO regulations."

48. A copy of the TEN is in the bundle: it's dated 18th January 2024, and is addressed to Mr Soltanpour as director of RPS.

49. Pursuant to the section 21 notices served on the Applicants, their tenancy agreements ended. However, most of the tenants remained at the Property and entered into a new tenancy agreement with Mr Pereira directly.

The Issues

50. In light of the above, the issues for the Tribunal to determine are as follows:

51. Whether either or both of the Respondents committed an offence under section 72(1) as a result of the following:
    (i) Being in control of or managing the Property;
    (ii) Whether either or both Respondents were the immediate landlord(s);
    (iii) Whether the Property was an HMO;
    (iv) Whether a licence was required for the Property; and
    (v) If so, whether there was a licence for the Property.

52. We need to determine whether we were satisfied beyond reasonable doubt that all the elements of the offence at paragraphs 51.1(i) to 51.1(v) above are met, during the period in which the offence was committed. We also need to consider whether we are satisfied on the balance of probabilities whether any guilty party has a defence to the commission of the offence under section 72(4) and/or 72(5) of the 2004 Act?

53. If an offence has been committed, the maximum amount of rent repayment order that can be ordered under section 44(3) of the 2016 Act.

54. Whether the guilty party or parties had been responsible for the cost of any utilities at the Property.

55. The severity of the offence.

56. Any relevant conduct of the guilty party or parties, their financial circumstances, whether they have any previous convictions of a relevant offence, and the conduct of the Applicants to which the Tribunal should have regard in exercising its discretion as to the amount of the rent repayment order.

The Tribunal's Decision and Reasons

57. The Tribunal reached its decision after considering the Applicants' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence

58. As appropriate, and where relevant to the Tribunal's decision the evidence is referred to in the reasons for the Tribunal's decision.

59. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

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

The offence under section 72(1) Housing Act 2004

61. The Tribunal is satisfied beyond reasonable doubt that all the elements of the offence under section 72(1) are proved against RPS as set out at paragraphs 62 to 76 below.

Control of the Property

62. We find that RPS had control of the Property as defined by section 263(1), which states a person is in control of premises where they receive the rack-rent. All the Applicants paid their rent through the GoCardless payment system, which confirmed in its 8th March 2024 e-mail to Mr Votourlis that his payments were made to RPS. We are satisfied that RPS was the recipient of all payments made by the other Applicants via GoCardless, and we have not been provided with any evidence to the contrary.

The Applicants' Immediate Landlord

63. We also find that RPS was the Applicants' immediate landlord. There was no consensus amongst the Applicants as to whether it was Mr Soltanpour or RPS who was their landlord. Furthermore, we have not been provided with any document that identifies the Applicants' immediate landlord: their tenancy agreements were all signed by Mr Soltanpour, which are purportedly signed as an agent for the (unidentified) landlord.

64. Despite the absence of any documents expressly identifying the Applicants' immediate landlord, we have concluded RPS was their landlord for the reasons set out below.

65. The Applicants occupied the Property by virtue of their respective initial written agreements, which were all expressed to be tenancy agreements. It follows, that they all had a landlord.

66. The freehold of the Property is registered at Land Registry under title number SGL405638, which states Fernando Gomes Pereira and Maria Da Conciecao Pereira are the registered owners.

67. The Applicants' bundle contains a Company Let Agreement dated 19th January 2021 between Mr Pereira as the landlord, and RPS as the tenant. The agreement is expressed to be for a term of one year from 24th February 2023 until 23rd February 2024. The agreement is signed on behalf of the tenant, by Mr Soltanpour, in his capacity as director of RPS, RPS being the tenant company.

68. The date of the agreement suggests that Mr Pereira and RPS may have first entered into a Company Let Agreement in at least January 2021, and that the written agreement provided may be a renewal agreement, but the original date of 19th January 2021 has not been amended/updated. That is consistent with the Applicants being informed that with effect from February 2021, RPS was taking over management of the Property.

69. The written notification and amendment of the Applicants' tenancy agreements to reflect that RPS would be the landlord's agent with effect from February 2021 is also consistent with RPS being the Applicants immediate landlord. It's unusual to formally amend a tenancy agreement to merely reflect that the landlord's agent has been replaced.

70. But as to the Applicants' immediate landlord as at the date of the offence. Based on the available evidence, we are satisfied that Mr Pereira was the superior landlord, who entered into a company let agreement with RPS, which subsequently sublet the Property to the Applicants, and so RPS was their immediate landlord.

71. Additionally, when explaining the section 21 notices given to the Applicants, Mr Soltanpour states in his 17th January 2024 e-mail that they were served because the contractual relationship between RPS and "the

landlord" was ending. Logically, the contractual relationship referred to is a reference to the Company Let Agreement between RPS and Mr Pereira, which was due to end in February 2024. If that is the case, it is consistent with RPS being the tenant under the Company Let Agreement, and RPS seeking to end its sub-tenancy with the Applicants to coincide with the termination of its tenancy with Mr Pereira.

72. Our conclusion is further supported by Mr Hailu's e-mail of 31st July 2024, who, having investigated this matter, he concluded that:

"… the managing agent Mr Pouyan Soltanpour, Director, Radikal Property Solutions Ltd, … entered into long-term contract with the landlord, created tenancies with individual tenants and had been responsible person on matters related to the occupancy of the above property."

73. Mr Hailu's e-mail suggests it was RPS that *"created tenancies with individual tenants",* and it also suggests the Financial Penalty Notice issued in respect of the failure to obtain an HMO licence, was issued against RPS. Although Mr Hailu does not expressly say so, that is the implication, and it's also implied that Mr Soltanpour did not appeal against it in his capacity as director of RPS.

74. While some of these factors are more persuasive than others, in light of the weight of the above evidence, in our judgment, RPS was both the agent and the principal. Therefore, while Mr Soltanpour has signed the Applicants' tenancies on behalf of RPS as the landlord agent, we find RPS is in fact also the Applicants' landlord. Having regard to the five categories of agency listed in *Siu Yin Kwan v Eastern Insurance Co Ltd [1994] 2 AC 199* (see page 207), we consider the facts support the legal conclusion that while RPS represents itself as the agent, it is *"the true and only principal."*

Whether the Property is an HMO

75. We are also satisfied beyond reasonable doubt that the Property meets the standard test, and is therefore an HMO as defined by section 254(2), for the following reasons:

75.1 The Property is a semi-detached house;

75.2 According to the Applicants and Mr Hailu it was occupied by individuals who do not all form part of the same household;

75.3 The Applicants' evidence is that the 5 of them occupied the Property during the relevant period, which is supported by Mr Hailu's record of his visits and evidence of rent payments made;

75.4 The Applicants' evidence was that they formed two or more households, which is also supported by Mr Hailu's findings when he visited;

75.5 The Applicants' evidence is that they occupied the Property as their only or main residence;

75.6 Their occupation of the Property was the only use of the Property;

75.7 They all paid rent; and

75.8 As there was one kitchen in the Property which was shared by all of the tenants. Mr Pacaud and Mr Chryscionka shared a bathroom which was ensuite to their room. The other three tenants shared a second bathroom.

Was a Licence Required

76. As an HMO, the Property required a licence under section 61. In his e-mail sent on 31st July 2024, Mr Hailu concluded the Property required a licence, and Wandsworth issued a Financial Penalty Notice due to the failure to obtain a licence in respect of the Property. Furthermore, there was no appeal against that Financial Penalty Notice. Therefore, in addition to being satisfied the Property required a licence, we are also satisfied that it did not have a licence.

Reasonable Excuse

77. RPS had not submitted any documents or witness statements in response to the application, nor did anyone from the company attend the hearing. The documents we had do not disclose any factors which could amount to a reasonable excuse. Accordingly, the Respondent has failed to establish on the balance of probabilities that it has a defence to the application.

78. In the circumstances, having found that RPS committed an offence under section 72(1), we also find it is appropriate to exercise our discretion by making a rent repayment order, there being no exceptional circumstances that would justify refusing to make the order.

The Case Against the First Respondent

79. The application was made against Mr Soltanpour in a personal capacity. However, we do not find sufficient evidence to support him acting in a personal capacity. Although he had day-to-day dealings with the Applicants regarding the management of the Property, and signed their tenancy agreements, we find these activities were conducted in his capacity as the director of RPS. It is expressly stated in the tenancy agreements that he was acting on behalf of RPS. While we have determined that RPS was

both the principal and agent, and thus the Applicants immediate landlord, there is no evidence indicating that Mr Soltanpour was involved in the letting in a personal capacity.

Amount of the Rent Repayment Order

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

    80.1 Ascertain the whole of the rent for the relevant period;

    80.2 Subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenants;

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

    80.4 Consider whether any deduction from, or addition to, that figure should be made pursuant to section 44(4) of the 2016 Act in the light of the parties' conduct, the landlord's financial circumstances and whether the landlord has previously been convicted of an offence to which Chapter 4 of the 2016 Act applies.

81. The Tribunal has adopted the approach recommended in *Acheampong v Roman and others*.

The Relevant Period

82. We find the relevant period for which a rent repayment order may be made was the 12-month period prior to RPS's application for a TEN. However, the exact date of the TEN application is not expressly stated in the evidence. Mr Hailu's 22nd January 2024 e-mail confirms the initial TEN application was refused on 15th December 2023. Therefore, the TEN application must have been made on or before that date. We find it is highly unlikely the council would have considered and refused the application on the same day it was received, making it unlikely the application was made on 15th December 2023.

83. Absent any other evidence regarding the date of the TEN application, we find it was made on 7th December 2023. This is the day before Mr Soltanpour sent the section 21 notices to the Applicants. We reach this conclusion on the basis of Mr Soltanpour's assertion that the section 21 notices were valid, notwithstanding the absence of an HMO licence. The only scenario in which Mr Soltanpour's assertion would be correct is if he had already made the TEN application prior to serving the section 21 notices. We are satisfied that, as a professional managing agent, Mr

Soltanpour would be aware that a section 21 notice served in respect of an unlicensed property would be of no effect unless an HMO licence or TEN application had already been submitted. Accordingly, we conclude the relevant period is 7th December 2022 to 6th December 2023.

The Amount Being Claimed

84. The Applicants are seeking repayment of the total amount of rent paid to RPS during the relevant period, having provided proof of rent payments as set out at paragraphs 27 to 36 above. We note that pursuant to clause 3.1.4 of their tenancy agreements, their rent was inclusive of gas, electricity and the internet connection.

85. Mr Votourlis, who has provided evidence of rental payments from June 2022 to January 2024, Mr Akesso has provided evidence of payments from January 2023 to January 2024, and Mr Pacaud who paid the rent on behalf of himself and Mr Chryscionka, and Mr Florentino, have provided evidence of rent payments to RPS from February 2023 to January 2024. Therefore, while Mr Votourlis's rent repayment order can be calculated for the whole of the relevant period, Mr Akesso's will be calculated from January 2023, the remainder will be calculated from February 2023.

86. Based on the evidence of rent payments that have been provided for the relevant period, the Applicants claim the sums set out below.

87. Mr Pacaud, whose rent was due on the 4th of each month, has a claim for:

His share of the room 2 rent was £450 per month.
This equates to a daily rent of £450 x 12 months/365 days = £14.79
4th February 2023 to 6th December 2023 is 306 days
£14.79 x 306 days = £4,525.74

Total = £4,525.74

88. Mr Chryscionka, whose rent was due on the 4th of each month, claims:

His share of the room 2 rent was £450 per month.
This equates to a daily rent of £450 x 12 months/365 days = £14.79
4th February 2023 to 6th December 2023 is 306 days
£14.79 x 306 days = £4,525.74

Total = £4,525.74

89. Mr Akesso, whose rent was due on the 28th of each month, claims:

His monthly rent was £775 from 28th January 2023 to 27th October 2023
This equates to a daily rent of £775 x 12 months/365 days = £25.48

28th January 2023 to 27th October 2023 is 272 days
£25.48 x 272 days = £6,930.56

It was £825 per month from 28th October 2023 to 6th December 2023
This equates to a daily rent of £825 x 12 months/365 days = £27.12
28th October 2023 to 6th December 2023 is 39 days
£27.12 x 39 days = £1,057.68

Total (£6,956.04 + £1,084.80) = £8,040.84

90. Mr Votourlis, whose rent was due on the 4th of each month, claims:

His monthly rent was £600 from 7th December 2022 to 3rd Nov 2023
This equates to a daily rent of £600 x 12 months/365 days = £19.72

7th December 2022 to 3rd November 2023 is 332 days
£19.72 x 332 days = £6,547.04

It was £650 per month from 4th November 2023 to 6th December 2023
This equates to a daily rent of £650 x 12 months/365 days = £21.37
4th November 2023 to 6th December 2023 is 33 days
£21.37 x 33 days = £705.21

Total (£6,547.04 + £705.21) = £7,252.25

91. Mr Florentino, whose rent was due on the 3rd of each month, claims:

His monthly rent was £700 from 3rd February 2023 to 2nd Nov 2023
This equates to a daily rent of £700 x 12 months/365 days = £23.01
3rd February 2023 to 2nd November 2023 is 273 days
£23.01 x 273 days = £6,281.73

It was £750 per month from 3rd November 2023 to 6th December 2023
This equates to a daily rent of £750 x 12 months/365 days = £24.66
3rd November 2023 to 6th December 2023 is 34 days
£24.66 x 34 days = £838.44

Total (£6,281.73 + £838.44) = £7,120.17

Utilities

92. Having calculated the whole of the rent paid during the relevant period as evidenced by each Applicant, the next issue is what sum, if any, is to be deducted for utilities. Following the decision regarding deductions in *Vadamalayan v Stewart and others [2020] UKUT 183 (LC)*, the Upper Tribunal in *Acheampong v Roman* stated (at paragraph 9):

…where the rent includes payments for utilities (which the tenant consumes and which do not benefit the landlord) it will usually be appropriate to deduct a sum representing that payment; a sum the tenant pays the landlord for utilities is not really rent.

93. While noting it will usually be appropriate to do so, we do not consider this is authority a deduction must be made in every case where the landlord pays for utilities. And we note in *David v Hancher [2022] UKUT 277 (LC),* the Upper Tribunal declined to make any deduction for utilities where the landlord had failed to provide any information regarding the amount spent on utilities. Similarly, in this case, no information has been provided regarding utilities. So we have no evidence as to what was paid, therefore we do not know what amount should be deducted, and accordingly we make no deduction for utilities.

The Appropriate Amount of the Rent Repayment Order

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

95. Regarding the seriousness of the offence in this application, namely being in control of or managing an HMO without a licence, we find this is at the lower end when compared to other offences for which a rent repayment order may be made.

96. We have also considered the seriousness of the offence compared to other cases of the same offence.

97. We consider there are a number of aggravating features in this case.

98. Firstly, RPS is a professional landlord, it had been managing the Property since February 2022 and it should have been aware of the need to obtain a HMO licence. Secondly, there was a conspicuous absence of any direct reference to RPS being the Applicants' immediate landlord. That the tenancies agreements were signed by RPS, allegedly as an agent on behalf of the landlord, but with the weight of evidence indicating that RPS was the immediate landlord, this leads us to conclude that the failure to obtain a licence was deliberate, and RPS also deliberately sought to insulate itself from liability for that failure. Moreover the strategy of allowing a double occupancy of room 2 but only naming one tenant on the tenancy agreement confirms that the landlord was aware of the significance of letting to 5 tenants and was trying to ensure that there was no documentary evidence of this level of occupation.

99. RPS was responsible for other regulatory deficiencies, for instance the failure to comply with the requirement to provide gas safety certificates,

and EICR report, and the fact that the Property failed to meet HMO licensing standards are all relevant aggravating features. There is a serious failing in respect of fire safety, the lack of internal fire doors, the missing fire safety blanket, the overdue service of the fire extinguisher, and external doors which could not be opened without a key so that the property fell well below appropriate fire safety standards.

100. The Applicants unchallenged evidence is that RPS sought to unilaterally alter the terms of their tenancies, including by raising the rent. The timing of service of the section 21 notices is consistent with these being served in response to the Applicants' complaint to the local authority. Mr Soltanpour did not appropriately engage with the investigation, by falsely claiming that two occupants in room 2 was unauthorised. Finally, the long term mould in the ensuite bathroom, which was only addressed after the local authority became involved.

101. No mitigation has been put forward on behalf of RPS.

102. The Applicants paid their rent each month, the photographs of the Property indicate they kept the Property clean and tidy, and we have not been presented with any evidence suggesting they behaved in a way that would justify a reduction in the amount awarded.

103. Having noted that being in control of a property without a licence is one of the less serious offences for which a rent repayment order may be made, we consider this case is a serious example of one of the less serious offences. In deciding the amount of the rent repayment order we have also had regard to the case of *Newell v Abbott [2024] UKUT 181 (LC)*.

104. Having regard to the severity of the offence, the adjustments that we consider should be made in light of factors to which the Tribunal must have regard under section 44(4) of the 2016 Act, the Tribunal makes a rent repayment order against RPS at 80% of the rent payable for the relevant period.

105. We take into account that some of the aggravating features may have had a different impact on the individual Applicants, but we consider a 80% rent repayment order appropriately reflects the relevant factors in this case that we are required to have regard to.

106. In light of the above, we make rent repayment orders in favour of each Applicant as follows:

Mr Pacaud	£4,525.74 x 80% = £3,620.59
Mr Chryscionka	£4,525.74 x 80% = £3,620.59
Mr Akesso	£8,040.84 x 80% = £6,432.67
Mr Votourlis	£7,252.25 x 80% = £5,801.80
Mr Florentino	£7,120.17 x 80% = £5,696.13

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

Name: Judge Tueje **Date: 5th February 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.

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

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

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

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

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

Appendix of Relevant Legislation Housing Act 2004

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

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

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for

certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) *"relevant decision"* means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –

(a) repay an amount of rent paid by a tenant, or

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

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

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

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

41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

43 Making of a rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with –
(a) section 44 (where the application is made by a tenant);

44 Amount of order: tenants

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

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

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.