



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

**Case References** : **BIR/00CT/HMK/2024/0039**

**Property** : **114 Imperial Road, Birmingham. B9 5HF**

**Applicant** : **Mohamud Haji Barow**

**Representative** : **None**

**Respondent** : **Mazhur Hussain**

**Representative** : **Mr J. Gizzain of Counsel**

**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 D Satchwell FRCS**

**Date of Hearing** : **11 February 2025**

**Date of Decision** : **25 February 2025**

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DECISION

***1.The Tribunal is satisfied to the standard required the Respondent is guilty of a housing offence namely having control or managing a house which is required to be licensed pursuant to s95(1) Housing Act 2004***

***2.The Applicant is entitled to a rent repayment order pursuant to ss43 and 44 Housing and Planning Act 2016***

***3.The sum payable by the Respondent to the Applicant is £444.83***

### **Introduction and Background**

1. This is an application for a rent repayment order pursuant to Chapter 4 ss 40-, 41,43 and 44 Housing and Planning Act 2016 (the 2006 Act) on the grounds that the Respondent has committed a housing offence namely having control or management of an unlicensed house contrary to s95(1) Housing Act 2004 (the 2004 Act)

2. The application was issued on 13 August 2024 by Mohamud Haji Farah Barow who is the tenant of 114 Imperial Road Bordesley Green Birmingham B9 5HF

(the Property) pursuant to an agreement made 1 June 2014. The Applicant remains in residence of the Property with his family being his wife and four sons three of whom are adult. The youngest is 17 years. The Respondent landlord is and was at all times Mazhur Hussain.

3. The Birmingham City Council introduced a selective licensing scheme covering the area in which the property is situated on 5 June 2023. The Respondent did not apply for a licence until 2 November 2023. A licence was issued on 5 July 2024 without conditions

4. The Applicant's claim is for repayment of rent for the period of eleven months from 13 August 2023 to 5 July 2024. The rent paid for the Property was £550.00pcm. The Applicant has claimed repayment from inception of the scheme to the date of issue of the selective licence in the sum of 7150. In addition, the Applicant claims the issue and hearing fees of £320.00.

5. The Respondent admits the Property was unlicensed for a short period after inception of the scheme but the entitlement of the Applicant to any rent repayment order ceased upon his application for a selective licence on 2 November 2023.

6. Directions for determination of the matter were issued on 27 August 2024. The matter came on for hearing on 11 February 2025. The Applicant did not have legal representation, but he was accompanied by an interpreter because of his limited understanding of English. The Respondent was represented by Mr J Gazzain of Counsel.

### **The Property and the Tenancy Agreement**

7. The Tribunal did not inspect the Property. It was described by the Applicant as having three bedrooms, bathroom, two living rooms and kitchen.

8. The tenancy agreement was made on 1 June 2014 for a fixed term of twelve months with a rent of £550.00 payable on first day of each month. It continues as a monthly periodic tenancy. The tenant is responsible for all utilities, telephone, council tax and water rates.

### **The Parties Submissions**

9. Although the Applicant relied primarily on the lack of a licence for his claim, there were issues of neglect concerning the Property which he raised. The complaints related to failure to repair a foul water pipe from the Property which results in unpleasant smells. The landlord arranges clearing of the drain but the problem soon recurs. The pipe was replaced finally at Christmas 2024 in response to request for attention to the pipe by the local housing authority. The Applicant produced photographs of debris left after completion of the work.

10. There were other complaints about lack of repairs or maintenance but in answer to questions from Mr Gazzain the Applicant admitted all repairs had received attention.

11. Communication with the landlord was through his agent but repairs were arranged by the landlord.

12. The Applicant was challenged about the description of his family. He denied misrepresenting the number of children he was bringing to the Property in 2014. He asserted he pays rent from his salary. He denied the photographs of debris did not show the remedial work carried out by the landlord and the making good of the surface.

13. The Respondent gave oral evidence in addition to his written statement. He admitted the Property was unlicensed. He left management to his agent. He relied on them to look out for regulatory matters. As soon as he learned about the licensing scheme, he made an application for a licence.

14. The work on the pipe was arranged after he received a letter from the council. He carried out the necessary work within two weeks of the letter. He did not know about debris left on site. The builder had promised to clear the site but there had been access difficulties. The debris had been cleared by the time of the hearing. The cost of repairs was £2000.00.

### **The Statutory Framework**

15. The relevant legislation comprises a comprehensive framework for identifying the offences created by the legislation and the consequences of failing to comply with it.

16. S40 Housing and Planning Act 2016 (the 2016 Act) contains the key definition and confers a power on the First-tier Tribunal to make an order requiring the landlord under a tenancy to repay an amount of rent where a landlord has committed an offence. The table in subsection 3 lists offences to which this applies. Seven offences are listed which the Deputy President in *Daff v Gyalui* [2023] UKUT 134 (LC) where, at paragraphs [48]-[49], tried to rank by references to their general seriousness. The offence under s95(1) Housing Act 2004 (the 2004 Act) was among the offences he described as “generally of a less serious type”.

17. By s95(3)(b) of the 2004 Act in proceedings against a person for an offence under subsection (1) 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,

18. Moreover, by s95(4) 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),

19. By s43 of the 2016 Act “(1)The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence (whether or not the landlord has been convicted).The amount of a rent repayment order under this section is to be determined in accordance with section 44 which directs that the amount must relate to rent paid during the period not exceeding 12 months during which the landlord was committing the offence.

20. It goes on to provide *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.*

### **Discussion and Decision**

21. Both parties agreed that the primary issue in this case is the consequence of the Respondent’s omission to apply for a selective licence upon introduction of the licensing scheme but the local housing authority on 5 June 2023. The Applicant was plainly troubled by some issues relating to drainage of the house which the landlord or his agent may have failed to deal with in good time but this matter and other relatively minor matters concerning the condition of the Property did not amount to misconduct of the type envisaged by the legislation. Part 2 of the 2016 Act which

includes the relevant sections set out above is explicit at s13(i) is explicit in that this Part “is about rogue landlords and property agents”. The Respondent is not a “rogue landlord”.

22. Although the landlord has admitted the failure to obtain a licence the Tribunal has considered whether the reliance on the agent was a reasonable excuse. The management agreement between Agent and landlord was not produced. There was evidence that the Applicant paid his rent in cash to the agent who passed on messages regarding the condition of the Property if any. The Applicant said he mentioned matter to the agent, the Respondent said he was unaware of any problems until he received notice of work needed to the drain.

23. The Tribunal is not satisfied that the evidence presented is sufficient to excuse the admitted failure to licence. The Respondent is guilty of the offence of having control of a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

### **Quantum**

24. These proceedings were issued on 13 August 2024. The offence was being committed for a period of time from 13 August 2023 to the date of the application for a licence on 2 November 2023 which had the effect of terminating the offence by reason of s95 (3)(b) of the 2004 Act.

25. The period of compensable time during which the offence was being committed was 82 days. Rent paid in that period was £1482.74 (82 days at 18.01pd).

26. The maximum rent repayable is only awarded in exceptional circumstances. In Acheampong v Roman [2022] UKUT 239 (LC) at paragraph 15, the Tribunal (Judge Cooke) concluded in the light of a review of decisions on awards of rent repayment that “*an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it*”. This is not such a case.

27. Also, in *Acheampong* the Upper Tribunal directed a step-by-step approach to determining an award when HHJ Cooke stated “*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.*

28. In this case the Tribunal has calculated the rent paid in the relevant period was £1482.74. There are no subtractions for utilities. The next step is to consider the seriousness of the offence. The Tribunal has already referred to the classification of this offence as being in the less serious group of offences listed in section 40(3) 2016 Act. Mr Gazzain contends that 25% of the rent is a fair reflection of the seriousness of the offence.

29. The Tribunal had the benefit of hearing Mr Hussain give his evidence. He did not put his financial circumstances in issue, He has one other property which is let to a tenant. He is not a professional landlord, but neither is he a total beginner. Mr

Gazzain relied upon *Hallett v Parker* [2022] UKUT 165(LC) which was summarised by the Deputy President in *Newell v Abbott* [2024] UKUT 181 (LC) as “a private individual had let his former family home while he was working abroad. In his absence it was relet by an agent in circumstances which required that it be licensed as an HMO, but the agent did not advise the landlord of that fact and no licence was obtained by the landlord for seven months. The property was in fairly good condition and a licence was granted without the need for improvements as soon as the landlord became aware that it was necessary. In those circumstances the Tribunal ordered repayment of 25% of the rent received”

30. This case is similar in some respects, but Mr Hussain has another property. He has taken on property letting as a source of income. He relied on his own judgment and awareness of the responsibilities of being a landlord and overlooked the implementation of the scheme. The Tribunal considers a fair reflection of the circumstance of this case is an award of 30% of the rent being the sum of £444.83.

### **Appeal**

31. 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.