FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/HMF/2024/0263**
Property	**:**	**(x2) Flat 402, Sulivan Court, Broomhouse Lane, London, SW6 3DL**
Applicants	**:**	**Anton Brisinger** **Charles Sayers**
Representative		**Justice for Tenants**
Respondent	**:**	**Visionnest Group Ltd, formerly known as Spot Homes Ltd**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Mr A Fonka**
Date and Venue of Hearing	**:**	**28th February 2025;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**28th February 2025**

DECISION

---

1. **The Respondent shall pay to the Applicants Rent Repayment Orders in the following amounts:**
   (a) **Anton Brisinger: £6,585.80**
   (b) **Charles Sayers: £6,894.35**
2. **The Respondent shall also reimburse the Applicants their Tribunal fees totalling £440.**

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Applicants resided at Flat 402, Sulivan Court, Broomhouse Lane, London, SW6 3DL:

   (a) Anton Brisinger from 21st September 2022 to 23rd July 2023; and
   (b) Charles Sayers from 3rd October 2022 to 3rd September 2023.

2. Mr & Mrs Hughes, who were initially named as the Second Respondents, are the leasehold owners of the property. On 23rd February 2022 they let the property to the Respondent.

3. The Applicants seek rent repayment orders ("RROs") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

4. The Tribunal issued directions on 13th September 2024. On 15th January 2025 the Tribunal held a hearing by remote video to consider a number of preliminary matters. The claim against Mr & Mrs Hughes was struck out and the title of the case was changed to reflect the change in the name of the remaining Respondent from Spot Homes to Visionnest.

5. There was a face-to-face hearing of the application at the Tribunal on 28th February 2025. The attendees were:

   - The Applicants;
   - Mr Peter Elliott, Justice for Tenants, representing the Applicants;
   - Mr Claudine Rezende-Leao, director of the Respondent; and
   - Ms Simai Torregrossa, an employee of the Respondent who assisted Mr Leao in his presentation.

6. The documents available to the Tribunal consisted of:

   - A bundle of 157 pages from the Applicants;
   - A bundle of 36 pages from the Respondent; and
   - A 10-page Response from the Applicants.

The offence

7. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicants alleged that the Respondent was guilty of having control of or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

8. The local authority, the London Borough of Hammersmith and Fulham, designated its entire area for additional licensing of HMOs with effect from 5th June 2022 until 4th June 2027. It applies to HMOs occupied by three or more persons in two or more households.

9. The property is a 2-bedroom flat but the living room was repurposed as an additional bedroom, with the kitchen, bathroom and separate WC all shared. The Applicants alleged that the property had at least three tenants at all relevant times, save for a period of 16 days at the beginning of February 2023. As well as the Applicants:

   (a) Daisy Roberts and Jake Beard lived at the Property from 19th August 2022 until 31st January 2023; and
   (b) Sener Gulkaya lived at the Property from 17th February 2023 (the reference to 2022 in the Applicants' statement of case was an error) and continued to reside at the property after the Applicants moved out.

10. Mr Leao was hampered in his presentation by his lack of knowledge of the relevant law and procedure so the Tribunal did its best to explain each element of the case which had to be addressed in order to draw his best case out.

11. Mr Leao sought to make much of the Applicants appearing to claim that Ms Gulkaya first moved into the property in 2022 but Mr Elliott conceded that it was 2023 so there was nothing in that. The Applicants' case was always that there were four people in the property until the end of January 2023 and three people after 17th February 2023 and Mr Leao eventually conceded that this was correct. He initially tried to claim that there was no evidence at all of the occupation of Ms Roberts and Mr Beard but backed down when the Tribunal pointed to the rent invoices and occupancy agreement from the Respondent contained in the Applicants' bundle.

12. Although he said legal advice had been taken, Mr Leao appeared to struggle with the concept of landlord and tenant. He thought that, because the Respondent was the tenant of Mr & Mrs Hughes, they could not themselves be landlords. The Tribunal explained that the Respondent could simultaneously be the tenant of Mr & Mrs Hughes and the landlord for the Applicants.

13. Mr Leao did not dispute that the Applicants' occupancy agreements were granted by the Respondent. Mr Elliott criticised the agreements as shams in that they purported to be licence agreements but in fact granted exclusive possession for a term at a rent and so were tenancies in accordance with the judgment in *Street v Mountford* [1985] 1 AC 809. Mr Leao did not appear to understand the difference and eventually suggested that there was none. In terms of liability and whether an offence was committed, there is no difference as licences are included within the provisions for RROs (section 56 of the 2016 Act).

14. Although Mr Leao did not raise it himself, the Tribunal explored with him whether the circumstances he raised constituted a reasonable excuse as a defence within the meaning of section 72(5) of the 2004 Act. He said that the Respondent had a big portfolio of around 70 properties, all large enough to be subject to mandatory HMO licensing. Their standard practice was to take a company let on each property and then

to refurbish it and let it out as an HMO, taking care themselves of any licensing application. The current property was introduced to them by Nick of Hume Properties, as he had done when he used to work for another agency, Bricks. He would normally indicate whether the property was likely to need a licence but did not do so on this occasion. Flat 402, Sulivan Court was too small to be subject to mandatory licensing and the Respondent was not aware of Hammersmith & Fulham's additional licensing scheme. The Respondent simply assumed, in the circumstances, that the licensing situation was covered.

15. This is not good enough, particularly for a company with such a large portfolio. The Respondent made no enquiries, with anyone, as to whether the property needed or had a licence, despite being fully aware of the role and importance of licensing of rented properties. When the Respondent finally got round to applying for a licence in October 2024, the local authority suggested that it was Mr & Mrs Hughes's responsibility, not theirs. The Tribunal does not believe this is correct but, even if it were, Mr Leao's suggestion that this excuses the Respondent's total lack of action on the subject is rejected. The offence under section 72(1) consists of letting the property when it is unlicensed and the possibility that it is someone else's responsibility to obtain the licence does not excuse going ahead with the letting while making no efforts to find out whether there were licensing requirements or whether they had been complied with.

16. Therefore, the Tribunal is satisfied so that it is sure that the Respondent committed the offence of managing and/or having control of the property when it was let as an HMO despite not being licensed.

Rent Repayment Order

17. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on this application. The Tribunal has a discretion not to exercise that power. However, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO.

18. The RRO provisions have been considered by the Upper Tribunal (Lands Chamber) in a number of cases and it is necessary to look at the guidance they gave there. In *Parker v Waller* [2012] UKUT 301 (LC), amongst other matters, it was held that an RRO is a penal sum, not compensation. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

> 53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The

landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. …

19. In *Williams v Parmar* [2021] UKUT 0244 (LC) Fancourt J held that there was no presumption in favour of awarding the maximum amount of an RRO and said in his judgment:

> 43. … "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017 … is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.
>
> 50. I reject the argument … that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

20. In *Acheampong v Roman* [2022] UKUT 239 (LC) the Upper Tribunal sought to provide guidance on how to calculate the RRO:

> 20. 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. The Applicants seek RROs for the full amount of rent they paid at the property for the period of 3rd October 2022 to 23rd July 2023, less the aforementioned period of 16 days:

(a) Anton Brisinger: £8,498
(b) Charles Sayers: £8,861

22. In relation to utilities, they were included in the rent but, despite the Tribunal's guidance in its directions, the Respondent provided no evidence as to the costs. Contrary to Judge Cooke's words in *Acheampong*, the Tribunal does not have the material to be able to make an informed estimate. Mr Leao asserted that the gas, electricity and wi-fi for the whole property cost around £350 per month but had nothing to back that up. Mr Elliott guessed from personal experience that the cost would be around £75 per month per tenant.

23. Further however, the instruction of the Upper Tribunal is to subtract any element of that sum that represents payment for utilities *that only benefited the tenant*. It cannot be assumed that the whole of the payment for utilities exclusively benefited the tenant:

(a) Landlords do not include such services in the rent out of charitable goodwill but for sound commercial reasons such as increasing the chances of achieving a letting, attracting and retaining desirable tenants, and maintaining control of the identity of suppliers to the property.
(b) Further, while the rent may be increased from what it would otherwise be if utility payments were not inclusive, there is no basis for assuming that the increase precisely matches those payments. It is possible that the rent increase exceeds the utility payments, thus earning the landlord a profit from including them in the rent.

24. The Upper Tribunal has also provided little guidance as to what its rationale is for making any deduction at all for utility payments. It cannot be that they do not count as rent because "rent" has a clearly defined meaning in the law of landlord and tenant, namely "the entire sum payable to the landlord in money" (see *Megarry on the Rent Acts*, 11th Ed at p.519 and *Hornsby v Maynard* [1925] 1 KB 514). *Woodfall: Landlord and Tenant* states at paragraph 7.015 that, "At common law, the whole amount reserved as rent issues out of the realty and is distrainable as rent although the amount agreed to be paid may be an increased rent on account of the provision of furniture or services or the payment of rates by the landlord."

25. Judge Cooke's reasoning in paragraph 16 of *Vadamalayan v Stewart* suggests that, as a matter of fact, not law, the consumption of utilities is

something that the landlord does not benefit from. However, in addition to the points in paragraph 23 above, the same could be said of other matters, such as the provision of furnishings and some repairs or improvements, but they are excluded from this category of deductions. The 2016 Act has no provision which suggests that payments made by a landlord should be deducted if they benefit the tenant beyond a certain degree. The Upper Tribunal in *Vadamalayan v Stewart* also made it clear that deducting a landlord's expenses was an approach to be confined to the period before the 2016 Act amended the law.

26. In the absence of a clear rationale from the Upper Tribunal for the deduction of utilities, and doing the best the Tribunal can with the lack of any useful information, the Tribunal deducts £75 per month from each Applicant's claimed figure to reflect the relevant costs.

27. The next step is to consider the seriousness of the offence relative both to the other offences for which RROs may be made and to other cases where the same offence was committed. In *Daff v Gyalui* [2023] UKUT 134 (LC) the Tribunal sought to rank the housing offences listed in section 40(3) of the 2016 Act by the maximum sanctions for each and general assertions, without reference to any further criteria or any evidence, as to how serious each offence is. The conclusion was that licensing offences were generally lesser than the use of violence for securing entry or eviction or harassment, although circumstances may vary significantly in individual cases.

28. It is important to understand why a failure to licence is serious, even if it may be thought lower in a hierarchy of some criminal offences. In *Rogers v Islington* LBC (2000) 32 HLR 138 at 140, Nourse LJ quoted, with approval, a passage from the Encyclopaedia of Housing Law and Practice:

> … Since the first controls were introduced it has been recognised that HMOs represent a particular housing problem, and the further powers included in this Part of the Act are a recognition that the problem still continues. It is currently estimated that there are about 638,000 HMOs in England and Wales. According to the English House Condition Survey in 1993, four out of ten HMOs were unfit for human habitation. A study for the Campaign for Bedsit Rights by G Randall estimated that the chances of being killed or injured by fire in an HMO are 28 times higher than for residents of other dwellings.

29. He then added some comment of his own:

> The high or very high risks from fire to occupants of HMOs is confirmed by the study entitled "Fire Risk in HMOs" … HMOs can also present a number of other risks to the health and safety of those who live in them, such as structural instability, disrepair, damp, inadequate heating, lighting or ventilation and unsatisfactory kitchen, washing and lavatory facilities. It is of the

greatest importance to the good of the occupants that houses which ought to be treated as HMOs do not escape the statutory control.

30. The process of licensing effectively provides an audit of the safety and condition of the property and of the landlord's management arrangements, supported wherever and whenever possible by detailed inspections by council officers who are expert in such matters. Owners and occupiers are not normally expert and can't be expected to know how to identify or remedy relevant issues without expert help. It is not uncommon that landlords are surprised at how much a local authority requires them to do to bring a property up to the required standard and, in particular, object to matters being raised about which the occupiers have not complained.

31. If a landlord does not apply for a licence, that audit process never happens. As a result, the landlord can save significant sums of money by not incurring various costs which may cover, amongst other matters:

(a) Consultants – surveyor, architect, building control, planning

(b) Licensing fees

(c) Fire risk assessment

(d) Smoke or heat alarm installation

(e) Works for repair or modification

(f) Increased insurance premiums

(g) Increased lending costs

(h) Increased lettings and management costs.

32. The prospect of such savings is a powerful incentive not to get licensed. Not getting licensed means that important health and safety requirements may get missed, to the possible serious detriment of any occupiers. RROs must be set at a level which disincentivises the avoidance of licensing and disabuses landlords of the idea that it would save money.

33. The Applicants asserted that this case was more serious due to the Respondent's use of the aforementioned sham agreements and the sheer lack of effort devoted to ensuring compliance with the law.

34. Both Applicants accepted that they had no complaints about the condition of the property. However, Mr Leao admitted that they took this property in good condition and have not had to take any action either prior to or during the letting to keep it that way.

35. Taking into account all the circumstances, the Tribunal concluded that this was a serious default which warrants a proportionate sanction.

36. Further, under section 44(4) of the 2016 Act, in determining the amount of the RRO the Tribunal must, in particular, take into account the

conduct of the respective parties, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of any of the relevant offences.

37. Mr Leao said that the Respondent commenced trading in 2017 and, despite the size of its portfolio, has no previous convictions. He claimed the company took pride and care in maintaining the standard of the accommodation (although he provided no supporting evidence). Having said that, it is surprising and disappointing that, despite having taken legal advice, the Respondent still uses standard template agreements which are not fit for purpose. They take on company lets when the arrangements they enter into are clearly not for that purpose. They grant what purport to be licenses but are in fact tenancies. The Respondent would do well to review the agreements it enters into both as tenant and landlord.

38. In the light of the above matters, the Tribunal has concluded that, after the aforementioned deduction for utilities, the amounts claimed should be reduced by a further 15%:

(a) Anton Brisinger: £8,498 - £750 = £7,748, x 85% = £6,585.80;
(b) Charles Sayers: £8,861 - £750 = £8,111, x 85% = £6,894.35

39. The Applicants also sought reimbursement of the Tribunal fees: a £220 application fee and a £220 hearing fee. The Applicants have been successful in their application and had to take proceedings to achieve this outcome. Therefore, it is appropriate that the Respondent reimburses the fees.

Name: Judge Nicol **Date:** 28th 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

Section 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.

(a) 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.

(b) 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.

(c) 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

Chapter 4 RENT REPAYMENT ORDERS

Section 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

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

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

	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).

Section 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.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 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);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 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.