FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AY/HMF/2024/0036**
Property	:	**26 Aveline Street, London, SE11 5DQ**
Applicants	:	**(1) Ngoc Tri Nham Huynh** **(2) Hannah Imrie** **(3) Isobel Rose Spawton** **(4) Araminta Hampden-Martin** **(5) Leah Rogers**
Representative	:	**Ngoc Tri Nham Huynh**
Respondent	:	**(1) Robert Hadfield** **(2) Jane Hadfield** **(3) Pineflat Limited**
Representative	:	**Mr Decker**
Type of application	:	**Application for a rent repayment order by the tenants: sections 40, 41, 43 and 44 of the Housing and Planning Act 2016**
Tribunal members	:	**Judge Tueje** **Mrs L Crane MCIEH CEnvH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**13th January 2025**
Date of decision	:	**3rd March 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 Third Respondent is dismissed.

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

(3) The Tribunal makes a rent repayment order against the First and Second Respondents, who are therefore jointly and severally liable to pay the global sum of £8,748.89, which is to be paid to the Applicants within 28 days of the date this Decision is sent to the parties.

(4) Unless the parties agree otherwise, the above sum is to be paid to Mr Huynh as the lead tenant, and it will be his responsibility to forward it to, or distribute it amongst, the other Applicants, as may be appropriate.

(5) The global sum represents a rent repayment order for the following periods:

- Mr Huynh — 14th February 2022 to 15th Jan 2023
- Ms Imrie — 14th February 2022 to 15th Jan 2023
- Ms Hampden-Martin — 14th February 2022 to 15th Jan 2023
- Ms Spawton — 14th February 2022 to 18th Sept 2022
- Ms Rogers — 19th September 2022 to 15th Jan 2023

(6) The Tribunal has issued separate directions in respect of the application for costs made under Rule 13(1)(b) and Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

(7) The reasons for the Tribunal's decisions are given below.

The Application

1. This decision relates to an Application dated 21st December 2023 made under section 41 of the Housing and Planning Act 2016 for a rent repayment order. The application form containing a statement of truth is signed by all 5 Applicants.

2. The Applicants are the former tenants of 26 Aveline Street, London, SE11 5DQ ("the Property"), which is a 4-bedroom split-level flat.

3. The Application is made against the First and Second Respondents, Mr and Mrs Hadfield, who were stated to be the Applicants' immediate landlords in

the tenancy agreements. The Application is also made against the Third Respondent, Pineflat Limited, stated to be the managing agent in the tenancy agreement.

4. The Applicants are claiming a rent repayment order from 14th February 2022 to 15th January 2023, being a period of 336 days. The amount claimed is £26,511.78, being the total rent paid during the period of their claim.

5. By an order dated 10th April 2024, and subsequently amended on 22nd July 2024, the Tribunal gave directions. The directions orders made provision for the parties to each prepare separate bundles for the hearing containing their supporting documents, and an expanded statement of reasons for the application. It gave the parties the option to prepare a skeleton argument, and if they did so, to provide it 3 clear days before the final hearing.

6. The First and Second Respondents' statement of case, which bears their names, is dated 23rd July 2024. Paragraph 2 of their statement of case reads (US English used in the original):

   At all material times, and as pleaded by the Applicants, the property required a HMO license, but was not so licensed.

7. Paragraph 26 of their statement of case continues:

   In these circumstances the offence committed is the least serious offence for which a rent repayment order could be made; and such offence was committed as a result of maladministration of the online application system previously used by the Lambeth Borough Council.

8. The Tribunal listed the final hearing on 29th August 2024.

9. The hearing on 29th August 2024 was adjourned because Mr Decker, counsel for the respondent, was involved in a road traffic accident on the way to the hearing. The matter was re-listed to be heard on 13th January 2025.

The Background

10. It is common ground that the First and Second Respondents are leaseholders of the Property, and London Borough of Lambeth is the freeholder. The First Respondent has been a director of a property management business for 30 years. We were told that he started the Third Respondent company, while the Second Respondent dealt with the books and administration. The First Respondent has since sold the company to Mrs Tagarroso, but the First and Second Respondent are still directors of the Third Respondent.

11. Mrs Tagarosso gave evidence on behalf of the Third Respondent. In her witness statement she states the Property has the appropriate health and fire safety equipment including smoke, heat and carbon monoxide alarms, the kitchen has a fire door, and a thumbturn lock to the front door, and that the Property fulfils the requirements of an HMO.

12. In May 2021 the First Respondent was diagnosed with cancer, for which he underwent treatment. Then in November 2021, the Second Respondent was diagnosed with cancer; she received radiotherapy in December 2021, before starting chemotherapy in January 2022.

13. The First Respondent became aware in 2021 that Lambeth was introducing an Additional Licensing scheme for HMOs, and tried to submit a licence application on 17th November 2021. Applications had to be made online and had to be accompanied by a fire risk assessment and an emergency lighting certificate, which Lambeth, as the freeholder had not supplied to him.

14. Mrs Tagarosso says that also on 17th November 2021 the missing documents were requested from Lambeth, followed by periodic reminders (see paragraphs 16, 19 and 30 below).

15. Lambeth's Additional Licencing scheme was introduced on 9th December 2021. It applies to houses in multiple occupation (HMO) within its borough occupied by three or more persons who form more than one household, where the occupiers share a kitchen, bathroom and WC.

16. By an e-mail sent to Lambeth's fire safety team on 8th February 2022, the First Respondent chased Lambeth for the fire risk assessment and emergency lighting certificate that had been requested on 17th November 2021. This was shortly before the First and Second Respondent entered into the first tenancy agreement with the Applicants.

17. By an agreement dated 11th February 2022, Mr Huynh, Ms Hampden-Martin, Ms Rogers and Ms Imrie entered into a joint 12-month assured shorthold tenancy agreement commencing 14th February 2022; the agreement had a six month break clause. The rent was £2,400 per calendar month payable on the first day of each month. By clause 3.2 of the agreement, the Applicants were liable to pay the utilities in addition to the rent.

18. Clause 4.2 of the agreement states:

    To use the Property as a single private dwelling as the Tenant's only or principal home and not to use it or any part of it for any other purpose nor to allow anyone else to do so

19. Also, on 14th February 2022 Mrs Tagarroso tried to submit a licence application using an expired fire risk assessment. But because Lambeth had still not provided the emergency lighting certificate, she was unable to complete the application. A few weeks after the tenancy began, on 8th March 2022, the First Respondent chased Lambeth again for the fire risk assessment and emergency lighting certificate. Mrs Tagarroso also contacted Lambeth's health and safety team in May 2022 and September 2022 requesting the documents, but Lambeth still didn't provide them.

20. In the interim, by a further (replacement) tenancy agreement dated 23rd August 2022, Mr Huynh, Ms Hampden-Martin, Ms Spawton and Ms Imrie entered into a joint 12-month assured shorthold tenancy agreement commencing 19th September 2022. The replacement tenancy was on the same terms and at the same rent as the original tenancy.

21. The Applicants have provided an occupation timetable which they expressly state relates to their occupation. It covers the period from 14th February 2022 to 16th January 2023, and is as follows:

Mr Huynh	14th February 2022 to 16th January 2023
Ms Imrie	14th February 2022 to 16th January 2023
Ms Hampden-Martin	14th February 2022 to 16th January 2023
Ms Spawton	14th February 2022 to 18th September 2022
Ms Rogers	19th September 2022 to 16th January 2023

22. In section 9 of the application form, the Applicants state:

The tenancy agreements show that the property was rented out to 4 tenants who share toilet, bathroom or kitchen facilities with each other.

23. Mr Huynh provided a copy of his bank account transactions showing that in February 2022 he paid £3,932.56 to the Third Respondent, and then £2,400.00 per month to the Third Respondent from 1st March 2022 onwards.

24. The payments were as follows:

10/2/2022	£540.00
12/2/2022	£3,392.56
1/3/2022	£2,400
1/4/2022	£2,400
1/5/2022	£2,400
1/6/2022	£2,400
1/7/2022	£2,400
1/8/2022	£2,400
1/9/2022	£2,400
1/10/2022	£2,400
1/11/2022	£2,400
1/12/2022	£2,400
3/1/2023	£2,400

25. At page 46 of their bundle, the Applicants explain that the initial amounts paid in February 2022 included payment for a deposit.

26. As part of their written evidence, the Applicants rely on an e-mail from Lambeth's HMO team sent to Mr Huynh on 18th July 2023, which states the Property was not licensed between 9th December 2021 to 15th January 2023.

27. As to conditions at the Property, the Applicants complain that there was no central heating from 2nd December 2022 to 18th January 2023, and during this period they were without a hot water supply on 3 occasions, each period lasting several days.

28. We note e-mail exchanges between Ms Rogers and the Third Respondent confirm that due to the above defects, the Applicants were asked to purchase electric heaters, for which they would be reimbursed. In an attempt to restore the central heating, the Third Respondent arranged for contractors to visit on 2nd December 2022 (the day the fault was reported), with further visits on 8th, 15th and 19th December 2022, and on 14th and 16th January 2023. The Third Respondent also agreed to pay the Applicants electricity bills for December 2022 and January 2023.

29. The Applicants acknowledge the steps taken to try to address the defects, and payment of the electricity bills, but they also point out that their enjoyment of the Property was seriously diminished during this 7-week period.

30. As to the HMO licence application, Mrs Tagarroso contacted Lambeth on 12th January 2023. However, this time she contacted its homeownership team, who advised her to e-mail its HMO licencing team for the fire risk assessment and emergency lighting certificate. Mrs Tagarroso did so.

31. Mrs Tagarroso submitted the HMO licensing application on 16th January 2023. She uploaded the fire risk assessment, which she also used in place of the emergency lighting certificate as it had still not been provided. On 18th April 2024 Lambeth issued a draft HMO licence, before granting the HMO licence on 15th May 2024, with no conditions attached.

The Hearing

32. As stated, the adjourned final hearing was on 13th January 2025.

33. The parties did not request an inspection of the Property by the Tribunal, and the Tribunal did not consider one was necessary or proportionate.

34. The Tribunal was provided with the following documents:

    34.1 A 51-page bundle from the Applicants;
    34.2 A 3-page bundle in reply from the Applicants.
    34.3 A 123-page bundle from the Respondents; and
    34.4 A 13-page skeleton argument from Mr Decker.

35. The Tribunal was provided with a copy of Mr Decker's skeleton argument at around 9.50am. We do not know at what time that morning the Applicants were provided with a copy.

36. The Applicants all attended the hearing in order to give evidence. Mr Decker initially argued the Applicants had failed to comply with the Tribunal's directions by not providing any witness statements. However, neither the directions nor the amended directions orders mandate this. So when the Tribunal queried this, Mr Decker did not pursue the point.

37. Mr Decker declined to cross examine any of the Applicants. The First and Second Respondents and Mrs Tagarroso all gave oral evidence. Mrs Tagarroso and the First Respondent both confirmed during cross examination that they were aware the Property required an HMO licence but did not have one when they entered into the tenancy agreements with the Applicants.

The Issues

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

    38.1 Whether the Respondents committed an offence under section 72(1) as a result of the following:
    - (i) Whether any or all of the Respondents were the Applicants' immediate landlord;
    - (ii) being in control of or managing the Property;
    - (iii) the Property being an HMO;
    - (iv) Whether a licence was required for the Property; and
    - (v) If so, whether there was a licence for the Property.

    38.2 If the elements of the offence at paragraphs 38.1(i) to 38.1(v) above are met in respect of any of the Respondents during the period in which the offence was committed, did that Respondent(s) have a defence to the commission of the offence under section 72(4) and/or 72(5)?

    38.3 If an offence has been committed, the whole of the rent paid during the period of the offence.

    38.4 Whether the Respondents had been responsible for the cost of any utilities at the Property.

    38.5 The severity of the offence.

    38.6 Any relevant conduct of the Respondents, 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

39. The Tribunal reached its decision after considering the parties' written evidence and the Respondents' oral evidence, including documents

referred to in that evidence, and taking into account its assessment of the evidence and documentation provided by the parties.

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

41. 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.

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

The offence under section 72(1) Housing Act 2004

43. The Tribunal is satisfied that in respect of the First and Second Respondents, the Applicants have proved beyond reasonable doubt that all the elements of the offence under section 72(1) are proved, as set out at paragraphs 44 to 62 below.

44. We find the First and Second Respondents were persons managing the Property as defined by section 263(3), which states a person manages premises where they are an owner or lessee of the premises, and they receive the rack-rent either directly, or indirectly through an agent. The First and Second Respondents are the leasehold owners of the property. Mr Huynh has provided documentary evidence showing that he paid to the Third Respondent, which manages the Property on behalf of the First and Second Respondents, the amount of rent on the dates set out in the tenancy agreement.

45. We are also satisfied beyond reasonable doubt that the Property meets the criteria of Lambeth's Additional Licensing Scheme. Firstly, because the First and Second Respondent concede this in their statement of case. Secondly, they applied for an HMO licence, which was granted.

46. Despite the above, Mr Decker put forward a number of arguments as to why the application should be dismissed. Firstly he argued that the Applicants had failed to provide any evidence that they occupied the Property, he says their evidence states that they rented (as opposed to occupied) the Property, and there is only evidence that Mr Huynh paid rent.

47. In our judgment, the Applicants written evidence sets out the dates they occupied the Property (see paragraph 21 above), and the facilities they shared (see paragraph 22 above). Clause 4.2 of the tenancy also states the Property must be occupied as their only or principal home, which we consider akin to the requirement at section 254(2)(c) that occupation must

be as a person's only or main residence. Furthermore, the First and Second Respondents accept a HMO licence was required during the relevant period, that a licence was not obtained, and that an offence has been committed. Accordingly, we are satisfied the First and Second Respondents committed an offence under section 72(1).

48. At paragraph 12 of his skeleton argument, Mr Decker states:

The Respondents have been deprived of testing evidence which could only fall within the knowledge of each of the respective applicants, or whose evidence is probative generally where the First Applicant is not corroborated.

49. However, it was Mr Decker who did not avail himself of the opportunity to cross examine the Applicants who all attended the hearing. The Respondents have adduced no written or oral evidence to challenge the Applicants contention that they occupied the Property for the periods stated. To the contrary, the First and Second Respondents' statement of case accepts the Property required a licence but did not have one, and admits that an offence was committed. We are therefore satisfied beyond a reasonable doubt that the elements of the offence set out at paragraph 38.1(i) to 38.1(v) above are proved.

50. We find Mr Decker's argument surprising: as counsel, he cannot give evidence, his submissions were made without any supporting evidence, and are at odds with the respondents' position as set out in their statement of case. We therefore reject this argument.

51. Mr Decker also argued the First and Second Respondents had a reasonable excuse defence. He argued that on 17th November 2021, being more than 12 weeks prior to the Applicants' first tenancy, the First Respondent requested the emergency lighting certificate from Lambeth in order to submit the HMO licence application. He points out the First Respondent chased Lambeth for a response on 8th February 2022, before the tenancy start date, and again on 8th March 2022. Then Mrs Tagarroso telephoned Lambeth in May and September 2022, before e-mailing and contacting Lambeth again in January 2023.

52. Mr Decker cites *Kumar v Kolev [2024] 4 WLR 93,* as authority to argue we should have regard to all the circumstances when considering whether the Respondents have a reasonable excuse. He also relies on *D'Costa v Andrea [2021] UKUT 0144(LC)* where the Upper Tribunal held a respondent who had been informed by their local authority that they did not need an HMO licence was found to have a reasonable excuse. Mr Decker argues the latter authority applies in this case. That is because Lambeth, as the freeholder, had control of the emergency lighting certificate which the Respondents needed to submit the HMO licence application. However, it was Lambeth's excessive delay in providing this documentation that prevented the Respondents submitting the HMO licence application.

53. We have considered whether, on the balance of probabilities, Lambeth's failure to provide the documentation amounted to a reasonable excuse. In our judgment, it does not. We note the First Respondent first tried to submit an online application on 17th November 2021, before the Additional Licensing scheme came into force, and some months before the Applicants' original tenancy began. We also take into account the First Respondent requested a copy of the documentation from Lambeth on 17th November 2021 and 8th February 2022.

54. However, we also note that the Respondents were aware that the Additional Licensing scheme came into force on 9th December 2021, and yet no steps were taken to chase Lambeth in the 12-week period between 17th November 2021 to 8th February 2022, but yet the First and Second Respondents granted the Applicants a tenancy agreement knowing a licence was required but had not been obtained. We have also taken into account that the Third Respondent, the managing agent for the Property since February 2022, took no steps to pursue Lambeth until May 2022, and then waited 5 months before contacting Lambeth again in September 2022. On each occasion, the Respondents contacted Lambeth's health and safety team, but not its HMO licensing team. As a professional landlord who has instructed a managing agent, having regard to all the circumstances, we do not consider that this sporadic contact with Lambeth amounts to a reasonable excuse when the Respondents were aware that the Property required a licence but did not have one.

55. Mr Decker also seeks to argue that the Property is not an HMO as a matter of law by virtue of the exemptions at schedule 14. Insofar as is relevant, schedule 14 states:

> ***1. Introduction: buildings (or parts) which are not HMOs for the purposes of this Act (excluding Part 1)***
>
> *(1) The following paragraphs list buildings which are not houses in multiple occupation for any purposes of this act other than those of Part 1.*
>
> *(2) In this Schedule "building" includes a part of a building.*
>
> ***2. Buildings controlled or managed by public sector bodies etc.***
>
> *(1)A building where the person managing or having control of it is-*
>
> *(a) local housing authority*

56. Mr Decker's argument continues that where the rent is paid directly or indirectly to more than one person, the definition of *"person having control"* at section 263 includes both persons. Developing his argument further, Mr Decker states (see paragraph 18 of his skeleton argument):

In London Corporation v Cusack-Smith [1955] AC 337, it was held unanimously by the House of Lords that where the same house was let successively on a chain of leases and sub leases over a period of years, more than one person could be said to be in receipt of the rack rent of the house because the question whether a rent was or was not a rack rent was to be determined at the time of the letting.

57. Therefore, Mr Decker argues that because the Property is let successively by Lambeth to the First and Second Respondents, who in turn, had let it to the Applicants, *Cusack-Smith* applied. And in accordance with *Cusack-Smith,* Lambeth was also a person in control of the Property because it received a rack rent when the First and Second Respondents' predecessor in title purchased a leasehold interest in the Property. Further, if Lambeth was a person in control of the Property, by virtue of paragraph 2(1)(a) of schedule 14, the Property is exempt from HMO licensing.

58. The Tribunal asked Mr Decker whether the logical conclusion to his argument would mean that in effect, properties where the freeholder was a local housing authority, and the leaseholder had sublet the Property, the Property would be exempt from the HMO licensing requirements by virtue of schedule 14. Somewhat reluctantly, Mr Decker agreed.

59. Having regard to *Cusack-Smith,* we reject Mr Decker's argument. The case was concerned with the definition of the *"owner"* for the purposes of section 19 of the Town and Planning Act 1947. It was not concerned with the definition of the *"person having control"* which is the person the exemption that paragraph 2(1)(a) of schedule 14 is concerned with. As the authority Mr Decker seeks to rely on was decided in the context of a different statutory provision, and in respect of a different term, owner as opposed to person in control, we do not find it is of any particular assistance in this case.

60. As an aside, and in light of the nature of the legal issues raised in his skeleton argument, we do not consider it appropriate that, in breach of the Tribunal's directions order, Mr Decker skeleton argument was provided so late. Particularly as the skeleton argument was provided on the day of the adjourned hearing and had not been provided prior to the original final hearing date.

61. In the circumstances, having found that an offence has been committed under section 72(1), having found that there is no reasonable excuse, we also find it is appropriate to exercise our discretion by making a rent repayment order against the First and Second Respondents, there being no exceptional circumstances that would justify refusing to make the order.

62. It is common ground between the parties that the First and Second Respondents were the Applicants' immediate landlord, and the Third Respondent was the managing agent. This is confirmed in the written

tenancy agreements. In *Rakusen v Jepsen and others* [2023] UKSC 9 the Supreme Court held that a rent repayment order may only be made against the immediate landlord. Accordingly, we dismiss the Application in respect of the Third Respondent.

Amount of the Rent Repayment Order

Relevant factors

63. 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:

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

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

    63.3 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

    63.4 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.

64. We have adopted the approach recommended in *Acheampong v Roman and others*

The amount of the award

65. The Applicants are seeking repayment of the total amount of the rent they paid during the period in which the offence was committed, namely the period from 14th February 2022 to 15th January 2023.

66. Mr Decker argued that only Mr Huynh had provided proof of payment of the rent. Therefore he relied on *Dowd v Martins [2023] HLR 7* to argue that as Mr Huynh was one of four joint tenants, the rent repayment order should only reflect a proportion of the total sum paid. He claimed there was no indication that any of the other Applicants authorised Mr Huynh to act on their behalf. Mr Decker's skeleton argument suggested that point would be pursued if only Mr Huynh attended the final hearing. In the event, all 5 Applicants attended the hearing, but Mr Decker reiterated the point.

67. We consider this case is different to *Dowd*. In that case, one of two joint tenants withdrew their application for a rent repayment order, however in this case, it is pursued by all Applicants who occupied the Property as joint tenants at the relevant time. We also note that, aside from all Applicants attending the hearing, the application form, which named Mr Huynh as the lead tenant, was signed by each Applicant. We take this to be their express authority for Mr Huynh to represent them.

68. 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.

69. As stated, we have found the period of the offence was 14th February 2022 to 15th January 2023, which is 336 days. The Applicants state this equates to a rent repayment order of £26,511.78, calculated as follows:

    £2,400 per month x 12 months/ 365 days = £78.904
    £78.904 x 336 days = £26,511.78

70. Mr Decker argues that Mr Huynh's bank transactions show that a total of 11 payments of £2,400 were paid to the Third Respondent during the period of the offence, which amounts to £26,400. However, this calculation disregards the February 2022 payments, which were paid before 14th February 2022, i.e. before the period of the offence. While those payments were made before 14th February 2022, the February 2022 payments include rent in respect of the period from 14th February 2022 to 28th February 2022. We do not consider the fact that the payment itself was received beforehand means it should be excluded from the calculation. This is supported by the wording of section 44(2) of the Housing and Planning Act 2016, which states in respect of an offence of control or management of an unlicensed HMO:

    … the amount must relate to rent paid by the tenant in respect of … a period, not exceeding 12 months, during which the landlord was committing an offence.

71. Therefore, because the February payments were made in respect of a period during which the offence was being committed, it follows the payments made by Mr Huynh in February 2022 can be taken into account.

72. On that basis, the whole of the rent for the period the offence was being committed is £26,511.78.

73. As stated, the rent paid was exclusive of bills, so ordinarily no element of the rent paid would be deducted on the basis that it represents payment

for utilities. However, Mr Decker claims that the £343.60 paid by the Respondents to cover electricity costs for December 2022 and January 2023 should be deducted. We disagree for a number of reasons. In her e-mail sent on 27th January 2023, Mrs Tagarroso suggests the Respondents will pay the electricity to make amends for the interruption to the heating and hot water supply. In his witness statement, the First Respondent states this was to reimburse the Applicants for the increased electricity costs resulting from using electric heaters (see paragraph 18). In other words, it was paid as compensation, and the amount of that compensation was agreed at the cost of electricity for these two months. We consider that is different to subtracting from the rent, a sum that reflects the cost of the electricity that only the Applicants have had the benefit of. There was no evidence as to what amount of the £343.60 represents payment for the increased electricity costs and inconvenience, and what amount would be for their standard electricity costs. Finally, apart from the assertion in Mr Decker's skeleton argument, there is no evidence of the amount that the Respondents paid for the electricity. We note Mr Decker is in danger of straying into giving evidence.

74. Regarding the seriousness of the offence in this application, namely the control or management of an unlicensed HMO, we find this is at the lower end when compared to other offences for which a rent repayment order may be made. While we consider this offence was committed in the knowledge that the Property was unlicensed, we take into account that the Respondents had endeavoured to apply for the HMO licence before the Applicants' original tenancy start date. And while we consider those efforts by the Respondents could have been more concerted, we also take into account that Lambeth's significant delay in providing the necessary documentation was a relevant factor.

75. As to the conduct of the parties, we do not consider the heating and hot water problems between December 2022 and January 2023 justify an increase in the award. It would have undoubtedly been inconvenient for the Applicants, particularly in the middle of winter. However, we also take into account that the Third Respondent was dealing with this, and arranged for contractors to visit on a number of occasions to try to resolve the problem, including arranging a contractor's visit on the day the defect was reported. It's unfortunate the defect was only remedied after several weeks, but that does not seem to be due to any fault on the Respondents' part, who also did what they could to compensate the Applicants for the inconvenience.

76. The Applicants make no other complaint about the conditions at the Property, and entering into the replacement tenancy agreement suggest they found the condition of the Property was adequate. We also note an HMO licence was subsequently granted, which supports Mrs Tagarroso's evidence that the Property had appropriate health and fire safety equipment and features.

77. We were not provided with any information regarding the Respondents' finances: Mr Decker confirmed the Respondents did not wish to adduce any evidence of their finances as they were not seeking to reduce the award on that basis.

78. We were also not provided with any evidence that the Respondents have previous convictions for a similar offence, and we accept the First Respondent's evidence that in respect of other properties they let out, they have obtained relevant licences, where required.

79. We consider that the First and Second Respondents have put forward mitigation that justifies a reduction in the amount of the award. Firstly, while we do not consider it provides a reasonable excuse, we consider Lambeth's delay in providing the emergency lighting certificate was a relevant factor contributing to this offence. Although we balance this against the sporadic manner in which the Respondents dealt with this, and the other factors set out at paragraph 54 above. Secondly, we consider that First and Second Respondents' health problems were relevant, in terms of the severity of their conditions, the treatment they underwent, and the timing coinciding with the period in which the offence was committed. Finally, we take into account that the First and Second Respondents had instructed Pineflat to manage the Property, which to an extent reduces the First and Second Respondents' culpability, because there were arrangements in place to deal with matters while they were indisposed.

80. There was no evidence or argument to indicate any misconduct on the part of the Applicants. Therefore, no reduction of the amount awarded is justified on that basis; the only reduction relates to the First and Second Respondents' above mitigation.

81. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that we considers should be made in light of factors to which we must have regard under section 44(4) of the 2016 Act, we make a rent repayment order against the First and Second Respondent in the total sum of £8,748.89, which represents 33% of the rent paid during the relevant period.

82. 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:** 3rd March 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.