FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/HMF/2021/0286**
Property	:	**Flat 12 Simpson House, 2 Somerford Grove, London, N16 7TX**
Applicant	:	**Daniel Miodrag Blair Young Roland Chanin-Morris**
Representative	:	**Somerford Grove Renters**
Respondent	:	**Simpson House 3 Ltd**
Representative	:	**-**
Type of Application	:	**Application for a rent repayment order by tenant - Housing and Planning Act 2016**
Tribunal Member	:	**Judge Robert Latham Steve Wheeler MCIEH CEnvH**
Venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**3 March 2025**
Date of Revised Decision	:	**7 March 2025**

REVISED DECISION

The Tribunal is exercising our powers under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct typographical errors in front page of our decision, dated 3 March 2025. The corrections are highlighted in yellow.

Judge Robert Latham, 7 March 2025

Decision of the Tribunal

1. The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £19,535, to be paid by 14 March 2025.

2. The Tribunal determines that the Respondents shall also pay the Applicants £100 in respect of the tribunal fees which they have paid.

3. The said sums are to be paid by 14 March 2025 and are enforceable by the "London Renters Union (Somerford Grove Renters Fund)" who have been appointed by the Applicants to enforce this order on their behalf.

The Application

1. This is one of sixteen applications for Rent Repayment Orders ("RROs") which have been made by tenants who resided in flats at Olympic House and Simpson House. This is on a development of some 171 flats in a set of converted warehouses. There have been significant delays in determining these applications as the Respondent company was struck off. On 1 November 2024, the company was restored by order of the court.

2. On 16 November 2021, the Applicants issued this application for a rent RRO against the Respondent pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act"). The application relates to Flat 12 Simpson House ("the Flat").

3. On 5 April 2023, the Tribunal gave Directions pursuant to which the Applicants have filed a Bundle of 744 pages to which reference is made in this decision. The Respondent has filed no case in response. At an early stage, Anthony Gold, Solicitors, acted for the Respondent. They are no longer instructed. On 19 November 2024, the Tribunal gave further Directions giving the Respondent a final opportunity to file is case by 31 December. The Respondent failed to comply. The Directions provided for the application to be determined on the papers. Neither party has requested an oral hearing.

The Housing Act 2004 ("the 2004 Act")

4. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be

licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that a building or a part of a building meets the "standard test" if:

> "(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
>
> (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
>
> (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
>
> (d) their occupation of the living accommodation constitutes the only use of that accommodation;
>
> (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
>
> (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

5. Section 56 permits a local housing authority ("LHA") to designate an area to be subject to an additional licencing scheme. On 10 May 2018, the London Borough of Hackney ("Hackney") introduced an Additional Licencing Scheme which applies to all HMOs in the borough, save for those that require a licence under the mandatory scheme. The Scheme came into force on 1 October 2018 and ceased to have effect on 30 September 2023.

6. Section 263 provides:

> "(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
>
> (2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
>
> (3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

7. Section 63 provides for making applications for an HMO licence:

"(1) An application for a licence must be made to the local housing authority.

(2) The application must be made in accordance with such requirements as the authority may specify.

(3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority."

8. Section 72 specifies a number of offences in relation to the licencing of HMOs. The material parts provide:

"(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.
.....

(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) (a temporary exemption notice), 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)).

....

(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 .... grant a licence, in pursuance of the notification or application.

9. It is to be noted that there may be more than one person who may commit an offence under section 72 as having "control of" or "managing" an HMO. However, when it comes to the making of a RRO, this can only be made against the "landlord".

The Housing and Planning Act 2016 ("the 2016 Act")

10. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

11. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. In the decision of *Kowelek v Hassanein [2022] EWCA Civ 1041; [2022] 1 WLR 4558,* Newey LJ summarised the legislative intent in these terms (at [23]):

"It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (*Rakusen v Jepsen* [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in *Rakusen v Jepsen*, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair),

the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

12. Section 40 provides:

> "(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."

13. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The seven offences include the offence of "control or management of unlicenced HMO" contrary to section 72(1) of the 2004 Act.

14. Section 41 deals with applications for RROs. The material parts provide:

> "(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.

15. Section 43 provides for the making of RROs:

> "(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)."

16. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> "(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.

17. Section 44(4) provides:

> "(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."

18. Section 47(1) provides that an amount payable to a tenant under a RRO is recoverable as a debt.

19. In *Acheapong v Roman* [2022] UKUT 239 (LC); [2022] HLR 44, Judge Elizabeth Cooke gave guidance on the approach that should be adopted by Tribunals:

> "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. 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."

20. These guidelines have recently been affirmed by Martin Rodger KC, the Deputy President, in *Newell v Abbott* [2024] UKUT 181 (LC). He reviews the RROs which have been assessed in a number of cases. The range is reflected by the decisions of *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC) and *Hallett v Parker* [2022] UKUT 165 (LC), the Deputy President distinguished between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (25%).

21. The Deputy President provided the following guidance (at [57]):

> "This brief review of recent decisions of this Tribunal in appeals involving licensing offences illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger property portfolio, or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health."

22. The Deputy President added (at [61]):

> "When Parliament enacted Part 2 of the 2016 Act it cannot have intended tribunals to conduct an audit of the occasional defaults and inconsequential lapses which are typical of most landlord and tenant relationships. The purpose of rent repayment orders is to punish and deter criminal behaviour. They are a blunt instrument, not susceptible to fine tuning to take account of relatively trivial matters. Yet, increasingly, the evidence in rent repayment cases (especially those prepared with professional or semi-professional assistance) has come to focus disproportionately on allegations of misconduct. Tribunals should not feel that they are required to treat every such allegation with equal seriousness, or to make findings of fact on them all. The focus should be on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two."

The Background

23. On 20 February 2019 (at p.23-46), Daniel Miodrag and Roland Chanin-Morris move into occupation of the Flat. On the same day, the Respondent granted an AST to Daniel Miodrag and Roland Chanin-Morris and Elizabeth Edwards for a term of 12 months from 20 February 2019 at a monthly rent of £2,342.66 including an unspecified water payment. On 7 November 2019, Blair Young moved into occupation. There is a Deed of Assignment (p.66-67) which confirms Blair Young's replacement of Elizabeth Edwards.

24. 24 January 2020 (p.92-116), the Respondent granted a "Renewal Agreement" to the Applicants for a term of 12 months from 20 February 2020 at a monthly rent of £2,340 and a monthly water charge of £46. The Flat had three bedrooms. Each tenant had their own bedroom. There was no relationship between them. They shared the kitchen and the two bathrooms. They all lived as separate households. They occupied the Flat as their primary residences.

25. At all material times the Flat required a licence, but it was not until 23 November 2020 that the Respondent applied for a licence. The last date on which the Respondent committed an offence under section 72(1) of the 2004 Act was therefore 22 November 2020 (see *Moh v Rimal Properties Limited* [2024] UKUT 324 (LC).

26. On 19 June 2021, the Applicants vacated the Flat.

The Offence of control or management of an unlicenced HMO

27. The Tribunal is satisfied beyond reasonable doubt that the Respondent is guilty of an offence of under section 72(1) of the 2004 Act, of having

control of or managing an HMO which is required to be licensed under but was not so licensed. The offence was committed over the period 20 February 2019 to 22 November 2020.

The Assessment of the RRO

28. The Applicants seek RROs totalling £28,501.98 for the twelve month period from 30 November 2019. Daniel Miodrag paid the rent and the other tenants paid him their contributions. He has provided details of his bank statements at p.47-65, 68-91 and 117-126. None of the Applicants were in receipt of universal credit.

29. The Tribunal must first determine the whole of the rent of the relevant period. We are satisfied that the relevant period is 23 November 2019 to 22 November 2020. An offence was committed throughout this period. The sums claimed by the Applicants include the water charge. This must be deducted. The initial water charge is unspecified, but we estimate this at £46 per month. The relevant rent is therefore four months at £2,296.66 and eight months at £2,340, a total of £27,906.64.

30. We are then required to consider the seriousness of the offence. The Upper Tribunal considers licencing offences to be less serious than other offences for which RROs can be imposed. We are dealing with a large portfolio landlord. There is evidence that the Respondent has failed to licence a large number of flats. The Respondent can only be characterised as a rogue landlord.

31. We are finally required to have regard to the following:

(a) The conduct of the landlord.

(b) The conduct of the tenant. There is no criticism of the conduct of the tenants.

(c) The financial circumstances of the landlord. This is a large portfolio landlord.

(d) Whether the landlord has at any time been convicted of an offence to which this Chapter applies. There is no relevant conviction.

32. The Applicants refer us to the decision in 8 Simpson House (LON/00AM/HMF/2020/0236) when a FTT made a RRO of £18,421, namely 65% of the rent. On 23 June 2022 (reported at [2022] UKUT 164 (LC)), Martin Rodger KC, the Deputy President increased the RRO to £22,500, namely 80% of the rent. This is not strictly a conviction. Further, the aggravating factors in this case and the landlord's conduct in connection with this appeal, are not relevant to the RRO which we are required to determine.

33. Taking all relevant factors into account, we make RROs in the sum of 70% of the rent £27,906.64, namely £19,535.

Robert Latham,
3 March 2025

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.