FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBH/HMF/2024/0601**
Property	**:**	**50 Lancaster Road, Waltham Forest, London E17 6AJ**
Applicants	**:**	**Veselka Atanasova**
Representative	**:**	**Peter Elliot - Justice for Tenants**
Respondent	**:**	**Stoyan Tabakov**
Representative	**:**	**Abdul Firfire**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Shepherd** **Louise Crane MCIEH**
Venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**10th March 2025**

DECISION

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1. In this case the Applicant, Veselka Atanasova ("The Applicant") is seeking a Rent Repayment Order against the Respondent, Stoyan Tabakov ("The Respondent"). The Respondent failed to attend the hearing on 7th March 2025. He hadn't warned the Tribunal he was not intending to attend. His friend Abdul Firfire came in his place. He said the Respondent could not attend because he was in Bulgaria. He could not really advance a case on behalf of the Respondent further than offering to read his statement of case which we had already read. It was suggested by Mr Firfire that the Respondent had not been properly served by Justice for Tenants. Mr Elliot said the documents had been served at the property in question. We accept that this took place. We do not accept that the Respondent was prejudiced in any way by the alleged late receipt of documents. He had the documents over two months before the hearing and still chose not to attend.

2. The Applicant was in occupation of premises at 50 Lancaster Road, Waltham Forest, London E17 6AJ ("The premises").

3. It was the Applicants' case that the Respondent had failed to license the premises when he was required to do so. Specifically, she claims a Rent Repayment Orders as follows:

    - Rent for the period between `15th August 2022 – 13th August 2023- a total of £11960. She was not in receipt of Universal Credit for the relevant period.

4. It is the Applicant's case that during the relevant period the premises were subject to either mandatory or additional licensing. It was also a possibility that the premises should have been licensed under the selective licensing scheme operating in Waltham Forest.

5. For his part the Respondent argued in his statement of case that the Applicant was the only "lodger" living at the premises during the relevant period. He also

claimed that he was in occupation at the premises during the relevant period. Both submissions ran directly contrary to the Applicant's case. In these circumstances one might have expected he would attend the hearing or provide evidence of his occupation. He did neither.

6. The Applicant denies that the Respondent was in occupation during the relevant period. At most he may have stayed at the premises for a couple of weeks. He lives in Bulgaria which is his main home. It is the Applicant's case that she shared the premises.

7. The Applicant described the layout of the premises in her witness statement. She and her daughter occupied a self contained flat at the top of the house. The remainder of the premises was shared by other occupiers. To access her flat the Applicant walked through the shared accommodation below. She had use of the lounge in the shared part of the premises and shared the garden. Mr Elliot submitted that this arrangement satisfied the "Self Contained Flat Test" in the definition of an HMO (see below).

8. The Applicant said that she occupied the premises between 27th March 2017 and 1st October 2023.During the relevant period she shared the premises with the following people: Vasilka Atanasova; Shafket Dervishev, Georgi Popov, Stoika Georiev and Dimitrina Mitskova.

9. The local authority confirmed that the premises should have been licensed during the relevant period but were not. They inspected the premises on 8th August 2023 and confirmed who was in occupation. Significantly the Respondent made an application for an Additional License on 16th August 2023.

10. As well as failing to license the premises during the relevant period the Applicant made a number of complaints about his conduct. There was a serious fire started by one of the other residents. The Applicant could not put the fire out because there was no extinguishers. In addition the alarms were defective because the batteries had run out. The Respondent did not make good the damage caused by the fire. In her flat the shower leaked lifting the laminate

flooring throughout the flat. She told the Respondent about this but he failed to deal with it. The Respondent also failed to protect her deposit and provided no safety certificates.

11. The applicant also applies for the award of the fees paid under rule 13(2) of the Tribunal rules 2013, namely £100 application fee and £220 hearing fee, totalling £320.

12. The Rent Repayment Order application was made pursuant to section 41 of the Housing and Planning Act 2016.

13. There is no dispute that the premises were situated within an additional licensing area as designated by the London Borough of Waltham Forest. The additional licensing scheme has been implemented borough-wide.

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

14. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation.

15. As already said the Applicant says the premises were an HMO because they fell within the definition in s.254 of the Housing Act 2004. The relevant parts of that section state the following:

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) 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.

(3) A part of a building meets the self-contained flat test if—

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat). ….

16. The 2004 Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an unlicenced house. On summary conviction, a person who

commits an offence is liable to a fine. An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

17. 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."

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

18. 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.

19. 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. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

20. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that “the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of “rogue landlords” in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The “main object of the provisions is deterrence rather than compensation.”

21. Section 40 provides (emphasis added):

“(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."

22. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

23. 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.

24. 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)."

25. 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.

26. 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."

27. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

24. In Williams v Parmar [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

> (i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
>
> (ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
>
> (iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).
>
> (iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).
>
> (v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

25. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish 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 (the lower end of the scale being 25%).

26. In Acheampong v Roman [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

"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."

Determination

27. The Applicant provided evidence of the rent that she had paid during the relevant period and satisfied the Tribunal that for the relevant period the premises should have been licensed but were not. Her application was made in time.

28. This was a serious offence of failure to license. We consider that the premises met the definition in the self - contained test in s.254 of the Act. We also consider that the premises were licensable during the relevant period either under the mandatory licensing provisions or the additional licensing scheme being operated by Waltham Forest. Indeed, the Respondent applied for an additional license after the visit by the Local Authority. Having made this finding we don't have to consider whether the premises were exempt from selective licensing by virtue of the Respondent's alleged occupation of the premises. In any event he provided no evidence to support this assertion. The Applicant attended the hearing and gave honest and cogent evidence about the occupation of the premises. She confirmed the Respondent lives in Bulgaria and did so during the relevant period. We consider this is correct. Accordingly we will make a Rent Repayment Order. Turning next to the question of penalty.

29. Applying the criteria in Acheampong above:

- The total rent paid for the relevant period was £11960

- There was no evidence of the cost of utilities paid for by the landlord.

- As already indicated, this was a serious licensing breach although a lesser offence compared to other types of offence such as unlawful eviction.

30. Applying the other criteria under the Act there was strong evidence of poor conduct by the Respondent. We consider that he failed to address the question of fire safety even after the fire at the premises. He also failed to address the leaking shower. He showed considerable disrespect to the Tribunal by failing to attend and instead sending along Mr Firfire who was well meaning but unable to assist us. In most respects he behaved like a "rogue landlord". He didn't protect the Applicant's deposit, he didn't provide safety certificates and he has

sought to evade responsibility in these proceedings. In contrast the Applicant paid her rent and conducted herself properly.

31. In light of all of these matters we consider that an 85% award is appropriate which equates to **£10166**. We also order the Respondent to pay the Applicant's application and hearing fee of **£320**.

Judge Shepherd

10th 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.