



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

Case Reference : **LON/00BK/HMF/2024/0090**

Property : **31 Forsyth House, Tachbrook Street,
London, SW1V 2LE**

Applicants : **Ella Newman (1)
Jessica Mizen (2)**

Respondent : **Sarah Pickard**

Type of Application : **Application by Tenant for rent
repayment order. Sections 40,41, 43
& 44 of the Housing and Planning Act
2016**

Tribunal : **Judge Bernadette MacQueen
Mr Fonka, FCIEH CEnvH M.Sc**

Date of Hearing : **3 March 2025**

Date of Decision : **13 March 2025**

DECISION

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DECISION

1. The Tribunal is not satisfied beyond reasonable doubt that any offence under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977, unlawful eviction or harassment of occupiers, was committed by the Respondent.
2. The Tribunal finds that the Respondent has committed the offence of failing to license a House in Multiple Occupation (HMO) under the provisions of section 72(1) of the Housing Act 2004, and that accordingly a rent repayment order in favour of the Applicants can be made. The Tribunal makes a Rent Repayment Order of £1,508.40 in favour of Jessica Mizen, and £1,508.40 in favour of Ella Newman. These amounts must be paid by the Respondent to the Applicants within 28 days of the date of this decision.
3. The Tribunal orders the reimbursement of the Tribunal fees (application and hearing fee) and this amount must be paid by the Respondent to the Applicants within 28 days of the date of this decision.
4. The reasons for this decision are set out below.

Background

5. On 22 February 2024, the Applicants made an application for a Rent Repayment Order (RRO) under section 41 of the Housing and Planning Act 2016 (the Act) in relation to 31 Forsyth House, Tachbrook Street, London, SW1V 2LE (the Property).
6. The Applicants stated in their application that they each paid rent of £900 per month for the Property for six months (1 September 2023 until 29 February 2024).

7. The Applicants made their application alleging two relevant offences. Firstly, they alleged that three or more people were living at the Property and sharing basic facilities, and therefore the Respondent was committing an offence under section 72(1) Housing Act 2004, namely the offence of having control or management of a House in Multiple Occupation (HMO) which was required to be licensed but was not so licensed under the City of Westminster Additional Licensing Scheme.
8. Secondly, the Applicants alleged that offences under section 1(2), (3) and/or (3A) of the Protection from Eviction Act 1977 were committed by the Respondent, namely unlawful eviction and/or harassment of occupiers.
9. It was not disputed that the Applicants signed an assured shorthold tenancy agreement for the Property in July 2023, with the tenancy beginning on 1 September 2023 and ending on 31 August 2024. A copy of the tenancy agreement was at pages 40 to 49 of the Applicants' bundle.
10. In relation to the relevant period for the HMO licensing offence, the Respondent confirmed that an application for a licence had been made to Westminster Council on 31 January 2024. Further that on the Applicants' evidence Jessica Mizen did not move into the Property until 9 September 2023. Therefore, all parties agreed that the relevant period the Tribunal was asked to consider in order to determine whether or not there had been a breach of the Additional Licensing Scheme was 9 September 2023 until 31 January 2024.

The Hearing

11. The Tribunal had made Directions on 11 October 2024 that required each party to produce a bundle of relevant documents. The Applicants had produced a bundle which consisted of 55 pages; the Respondent had produced a bundle which consisted of 79 pages, and the Applicants had produced a response which consisted of 5 pages. Both parties had submitted a skeleton argument.

12. The Hearing took place on 3 March 2025. The Applicants and the Respondent appeared as litigants in person.

The Law

13. The relevant law is as follows:

Section 1 Protection from Eviction Act 1977:

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

- (a) to give up the occupation of the premises or any part thereof; or
- (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts [likely] to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

- (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
 - (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,
- and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from

exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

HMO - Additional Licensing Scheme Offence

Section 41 (1) Housing and Planning Act 2016 states:

“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”

Section 43 (1) Housing and Planning Act 2016 states:

“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)”

14. Section 40(3) Housing and Planning Act 2016 defines “an offence to which this Chapter applies” by reference to a table. The offence under section 72(1) Housing Act 2004 (control or management of unlicensed house) is within that table.
15. The City of Westminster Council Additional Licensing of Houses in Multiple Occupation Scheme came into force on 30 August 2021 and continues until 30 August 2026. The Scheme applies to the whole area of the district of the City of Westminster, and therefore applies to the Property.

16. The designation applies to all HMOs as defined by section 254 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households.
17. The relevant criteria for this application under section 254 is the standard test. This provides:
 - (1)“For the purposes of this Act a building or part of a building is a “house in multiple occupation” if
 - (a) it meets the conditions in subsection (2) (“the standard test”)

The standard test is defined as:

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;
- (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;
- (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.

Schedule 14: Buildings which are not HMOs for purposes of this Act (excluding Part 1)

18. The Respondent relied upon the following provision:

6 Buildings occupied by owners

- (1) Any building which is occupied only by persons within the following paragraphs–
- (a) one or more persons who have, whether in the whole or any part of it, either the freehold estate or a leasehold interest granted for a term of more than 21 years;
 - (b) any member of the household of such a person or persons;
 - (c) no more than such number of other persons as is specified for the purposes of this paragraph in regulations made by the appropriate national authority.

Section 1 Protection from Eviction Act 1977 – Unlawful Eviction and Harassment of Occupier

19. The Applicants' evidence to the Tribunal was that they were unlawfully evicted from the Property and therefore were seeking a RRO on this basis. They did not specify whether their application was in relation to an offence under section 1(2), (3) or (3A) but asked the Tribunal to consider each of these offences.
20. The Applicants told the Tribunal that they were making this claim based on events that had happened which had resulted in them leaving the Property. The Applicants stated that they had sent an email to the Respondent asking for clarification about the terms of their tenancy, and particularly the arrangements for a fourth tenant. This email had been sent on 13 December 2023 and a copy of this was at page 54 of the Applicants' bundle.
21. The Respondent told the Tribunal that, by email dated 14 December 2023, she had responded to the Applicants' email of 13 December and had reminded the Applicants that the fourth bedroom was intended for use by the landlord's family or friends as needed. The Respondent had also wanted to give the Applicants the opportunity to detail any complaints that they had, and so had invited the Applicants' representations. The final paragraph of the Respondent's email suggested that, if a shared flat

was not what the Applicants were hoping for, they should serve notice on the Respondent.

22. By email dated 20 December 2023 (page 69 of the Respondent's bundle) the Applicants had asked to return to the issue after the Christmas period. It was therefore the Respondent's evidence that she had understood that the Applicants had wanted to elaborate and so on 17 January 2024 the Respondent sent a follow up email to the Applicants to ask for a response to the Respondent's email of 14 December 2023 (page 70 of the Respondent's bundle).
23. The Applicants had emailed the Respondent on 19 January 2024 (page 71 of the Respondent's bundle) stating that they were asking for clarity regarding the fourth tenant as per their previous email.
24. In reply, by email dated 25 January 2024, the Respondent had stated that she had already set out her position in the email of 14 December 2023. The Respondent had also stated in the email of 25 January that, having reflected on the matter, she had come to the view that it was better if the Applicants and Respondent parted ways. The Respondent therefore served a notice to end the tenancy using the mutual break clause. The Applicants were told that they must vacate the Property by 29 February 2024. It was the Respondent's evidence that the intention was that this was a mutual arrangement as the housing situation was causing anxiety for her niece Annabelle and the Respondent felt that it was clear from the Applicants' email that they were not satisfied with the housing arrangement.
25. The Applicants' evidence to the Tribunal was that they had sought advice from housing charities and the local housing authority and had been advised that the mutual break clause was not applicable to their situation as they held an assured short-hold tenancy and therefore any eviction was unlawful because no section 21 notice had been served. In evidence, the Applicants told the Tribunal that they sought alternative accommodation, despite knowing at the time that they had not been provided with a section 21 notice. They further confirmed that whilst they had not wished to move

out of the Property or end the tenancy early, they had felt that the situation at the Property was so unpleasant that it was best for them to move out anyway. The Applicants confirmed that they had found options for alternative accommodation and so had reluctantly agreed to move out by the end of February.

26. Further, at page 4 of the Applicants' bundle, they confirmed that due to personal reasons they had felt that it would be best for both of them to leave the Property, confirming that they did not wish to live in the environment that had been created.
27. The Respondent confirmed that she had reached the conclusion that because of tension within the house, it was better for the tenancies to end and therefore wanted to use the mutual break clause giving one month's notice from 31 January 2024, with the Applicants vacating the Property on 29 February 2024 (email of 25 January 2024 page 72 of the Respondent's bundle).
28. At page 41 of the Respondent's bundle was an email dated 5 February 2024 from Ella Newman to the Respondent which confirmed receipt of the notice of the break clause and confirmed that Ella would be leaving the property before the 29 February 2024. Ella further confirmed that when leaving the Property she would lock the front door and post the keys through the letterbox if no one was present to collect them. By email dated 5 February 2024 (page 42 of the Respondent's bundle) Jessica Mizen confirmed that she would be vacating the Property at the end of February. Both Applicants requested written confirmation that the Respondent agreed with this arrangement. The Respondent provided this confirmation by email dated 6 February 2024 (page 41 and 42 of the Respondent's bundle).
29. The Respondent told the Tribunal that the Applicants had not raised any objection or questions about leaving the Property and had not resisted leaving the Property. The Respondent's belief had therefore been that the Applicants were leaving the Property and so there was no need for the Respondent to serve any further notice.

Tribunal Finding - Section 1 Protection from Eviction Act 1977

30. The Tribunal is not satisfied beyond reasonable doubt that any offence under section 1 of the Protection from Eviction Act 1977 is made out. The Tribunal accepts the Respondent's evidence that the relationships between the tenants at the Property were not satisfactory. On the Applicants' own evidence, they had told the Respondents that they would leave the Property and therefore the Respondent, on the basis of what the Applicants were telling her, believed that the Applicants were leaving the Property because this was mutually convenient for all of the occupants.
31. On this basis, the Tribunal is not satisfied that an offence under section 1(2) has been committed as the Respondent was not attempting to unlawfully deprive the residential occupier of any premises but rather seeking to reach a mutual agreement for the tenancy to end.
32. Further the Tribunal is not satisfied beyond reasonable doubt that an offence under section 1(3) was committed as the Respondent lacked the requisite intent. The factual background, as set out above, is such that the Respondent held the reasonable belief that the Applicants were leaving the Property as this was best for all parties.
33. Finally, the Tribunal is not satisfied beyond reasonable doubt that an offence under section 3A was committed. There was no evidence that the Respondent harassed the Applicants. The Tribunal accepts the Respondent's evidence that the Respondent was attempting to resolve a difficult situation by mutual agreement. Further, it is clear from the evidence of the Respondent that she was concerned for the wellbeing of all the tenants.

HMO Additional Licensing Offence

Was the Property an HMO that was required to be licensed?

34. The Property was a split level ground and first floor maisonette with four bedrooms (3 double rooms and 1 single room). The Property also had one bathroom, a separate toilet, a kitchen/diner, lounge and garden.
35. Ella Newman told the Tribunal that she had moved into the Property on 3 September 2023 and had left the Property on 29 February 2024. Jessica Mizen told the Tribunal that she had moved into the Property on 9 September 2023 and had left the Property on 26 February 2024.
36. It was the Applicants' position that the Property was required to be licensed under the City of Westminster Additional Licensing Scheme because three or more people occupied the Property as separate households and shared basic amenities, thereby meeting the standard test (which is set out above).
37. In terms of occupancy of the Property, the Applicants' evidence to the Tribunal was as follows:

Name	Occupancy Period	Comment
Annabelle Patterson	9 September 2023 until after Applicants left the Property.	Respondent's Niece
Jessica Mizen	9 September 2023 until 26 February 2024	Applicant
Ella Newman	3 September 2023 until 29 February 2024	Applicant

Angus	11 August 2023 until 1 December 2023	Family friend of the Respondent
Sam	Two one night stays: 30 November 2023 and 8 December 2023	Cousin of Annabelle Patterson

38. The Respondent did not dispute the periods of occupancy as described by the Applicants, however it was the Respondent's position that the Property did not require an additional licence because Annabelle was a member of the owners' family and therefore the Property fell within Schedule 14, paragraph 9 of the Housing Act 2004 (as set out above). It was the Respondent's position that Annabelle was entitled to have two people live at the Property and therefore did not require an HMO licence. It was the Respondent's position that Angus was a family friend and therefore entitled to stay at the Property; consequently no licence offence had occurred.

Tribunal Findings as to Occupancy

39. For completeness, it was not disputed that Sam had only remained at the Property for two one night periods, and therefore the Tribunal finds that he did not live at the Property as his only or main residence and so his stay is not relevant to the issue of whether or not a licence was required.
40. The Tribunal accepts the evidence of the Respondent that Schedule 14 paragraph 6(1)(c) (as set out above) applies to Annabelle's occupancy and therefore Jessica and Ella could live at the Property without an additional licence being required. The issue for the Tribunal is the status of Angus' occupancy.
41. The Tribunal accepts the evidence of the Applicants that Angus lived at the property as his main residence, that he shared the basic facilities, using

the kitchen, toilet and bathroom, and that he formed a separate household.

42. The Respondent told the Tribunal that she was not expecting Angus to stay at the Property for as long as he did. However, it was not disputed that Angus did live at the Property from 11 August 2023 until 1 December 2023. The Respondent produced at page 76 of her bundle a schedule which showed the contribution that Angus had made to utility bills. The Tribunal therefore finds that Angus was not simply a family friend staying with Annabelle but was occupying the Property as his only or main residence, sharing facilities and forming his own household. The Tribunal finds that there were three or more people living at the Property, in breach of the Westminster City Council Additional licensing scheme.
43. The Tribunal finds that the standard test is the applicable test and therefore finds that the Property consisted of one or more units of living accommodation not consisting of a self-contained flat or flats and that the occupiers did not form a single household. Additionally, the occupiers were occupying the Premises as their main residence, paying rent, and there were two or more households occupying the Property who were sharing toilet, personal washing and cooking facilities. The Property was therefore required to be licensed.

Person having Control of or Managing the Property

44. The section 72(1) offence is committed by the person having control/managing the Property. Section 263(1) Housing Act 2004 defines “person having control” in relation to the premises as “the person who received the rack-rent of the premises (whether on his own account or as agent or trustee of another person)”. Section 263(2) defines “person managing” as the person who, being an owner or lessee of the premises (a) received (whether directly or through an agent or trustee) rents or other payments (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises.

45. There was no dispute that the Respondent's name was stated on the tenancy agreement as the landlord and further that the Respondent received rent for the Property. The Tribunal was therefore satisfied that the Respondent was collecting rent and so was the "person having control" for the purposes of the section 72(1) offence. Additionally, the Tribunal also found that the Respondent was the "person managing" as a lessee of the premises and a person receiving the rent from the people occupying the Property. The Respondent could therefore commit an offence under section 72(1).

Was the Property licensed?

46. It was not disputed that for the period that Annabelle, Jessica, Ella and Angus lived at the Property, namely 9 September 2023 until 1 December 2023, the Property did not have an additional licence.

Statutory Defence – Section 72(4)(b) and Reasonable Excuse

47. The Respondent told the Tribunal that she and her family had wanted Annabelle to live at the Property and to have lodgers staying with her in order to share the bills. The intention was that the single room on the first floor (the floor where Annabelle's room was) would be used by friends and family if they needed to come and stay in London.
48. Angus was a family friend and so the Respondent and her family had allowed Angus to stay at the Property. He had been living in accommodation that had not worked out and so the Respondent had offered him a room as a temporary solution. Angus had stayed longer than initially expected but the Respondent was happy to be able to help him out during this time.
49. The Respondent told the Tribunal that they had had no intention of breaching licensing regulations. They had only wanted to help a family friend by providing him with accommodation. The Respondent had

required Angus to help with bills so that he was not a financial burden to the other occupants.

50. Whilst the Tribunal accepts the evidence of the Respondent that she did not intend to breach licensing regulations, the Tribunal does not find, on a balance of probabilities, that this amounts to a reasonable excuse. The Tribunal nevertheless takes the Respondent's evidence into consideration when considering conduct (below).

Should the Tribunal Make a Rent Repayment Order (RRO)?

51. Section 43 Housing and Planning Act 2016 provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO award is therefore discretionary. However, because the offence has been established, the Tribunal finds no reason why it should not make an RRO in the circumstances of this application.

Ascertaining the Whole of the Rent for the Relevant Period

52. The Tribunal was satisfied beyond reasonable doubt that the offence of being in control of an HMO in breach of the Westminster City Council's Additional Licensing Scheme was committed for the period 9 September 2023 until 1 December 2023. There was no dispute that the Applicants had paid £900 per month each and therefore the whole rent for the relevant period was £2,700 per Applicant.

Deductions for Utility Payments that Benefit the Tenants

53. When determining the amount of a RRO, the Tribunal has a discretion as to whether or not to make a deduction for utility payments. *Acheampong v Roman* [2022] UKUT 239 confirmed that it will usually be appropriate to deduct a sum representing utilities.

54. At page 76 of the Respondent's bundle, the Respondent set out a table showing the payments that had been made for heating and hot water. The Respondent confirmed that the £900 monthly rent included heating and hot water. The Applicants accepted the figures provided by the Respondent with the exception of the amount allowed for heating for September 2023 as it was the Applicants' evidence that the heating was not used during this month.
55. The Tribunal accepts the evidence of the Respondent as to payments made and also accepts the Applicants' evidence as to the use of heating in September. The Tribunal therefore determines that a deduction of £186 for each Applicant should be made for utilities paid by the Respondent for the relevant period (9 September 2023 to 1 December 2023). This amount is made up of £120 per applicant for heating, and this figure takes into account the seasonal variations. Additionally, for hot water, the Tribunal determines a monthly amount of £12 (total £36).

Determining the Seriousness of the Offence to Ascertain the Starting Point

56. The Tribunal has to consider the seriousness of the offence compared to other types of offences for which a RRO could be made, and also as compared to other examples of the same offence.
57. In determining the seriousness of the offence, the Tribunal adopts Judge Cooke's analysis in *Acheampong v Roman* [2022] that the seriousness of the offence could be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house would generally be less serious. However, the Tribunal has to consider the circumstances of this particular case as compared to other examples of the same offence.

Conduct of Applicants and Respondent

58. The Applicants told the Tribunal that the standard of accommodation that they were provided with was good and that any problems with the Property were always resolved promptly. Their issue was with guests, particularly Angus, who were allowed to stay at the Property. It was for this reason that the Applicants had asked for locks to be fitted to their bedroom doors as they had felt uncomfortable.
59. The Applicants also told the Tribunal that Annabelle had told the Applicants that her cousin Sam would be staying at the Property but that no date or exact timeframe was given. Jessica Mizen told the Tribunal that she had been shocked when she found Sam in the living room.
60. The Respondent told the Tribunal that she had provided a high standard of accommodation and that the Applicants were told when they first rented the Property that the intention was for the Respondent's friends and family to be able to use the spare room. Further, the Respondent confirmed that locks had not been fitted to the bedroom because of fire safety concerns.
61. Both parties agreed that the Respondent had used the Tenancy Deposit Scheme and that the Applicants' deposits had been returned at the end of the tenancy

Tribunal Findings

62. The Tribunal finds that the accommodation provided by the Respondent was of a high standard. Further the Tribunal takes into consideration the Respondent's evidence given in the reasonable excuse section. However, the Tribunal finds that the Property was in breach of the Additional Licensing Scheme and therefore makes an RRO.

Professional Landlord/Financial Circumstances of Respondent Landlord

63. The Respondent confirmed that she was not a professional landlord and that the Property was used by Annabelle to provide her with accommodation whilst she completed her university education. The intention had only ever been for Annabelle to have people live with her to share the bills.
64. The Tribunal was not presented with any evidence that the Respondent would not be able to meet any financial award the Tribunal made.

Whether Respondent Landlord has been convicted of offence

65. The Respondent confirmed that she did not have any convictions identified in the table at section 45 Housing and Planning Act 2016, and there was no evidence before the Tribunal that this was not the case.

Quantum Decision

66. Taking all of the factors outlined above in account, the Tribunal finds that this licensing offence is not the most serious under the 2016 Act. Taking the factors of this particular case into account, the Tribunal finds that an award 60% should be made given the findings made above.
67. The Tribunal therefore makes the following award for each Applicant:

Total Claim - £2,700
Less utilities - £ 186

60% of which gives a **total amount of £ 1,508.40**

68. The Tribunal orders that the payment of £1,508.40 to Jessica Mizen and the payment of £1,508.40 shall be made to Ella Newman within 28 days.

Application Fees

69. The Tribunal invited the parties to make representations as to whether or not the Respondent should refund the Applicants for the application and hearing fee paid to the Tribunal. The Applicants asked the Tribunal to

make such an order, whereas the Respondent requested that this order was not made.

70. Given that the Tribunal has made an RRO, the Tribunal exercises its discretion to order that the Respondent must pay the Applicants the payments they made to the Tribunal by way of application and hearing fees. This amount shall be paid within 28 days.

Judge Bernadette MacQueen

Date: 13 March 2025

ANNEX – 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 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 to 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 (ie 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.

