



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

**Case Reference** : **MAN/00BY/HMG/2023/0002**

**Property** : **Flat 36, 40A, Jubilee Drive, Liverpool  
L7 8SN**

**Applicant** : **Gabriel Penn**

**Represented by** : **Mr. Jamie McGowan -Justice for  
Tenants**

**Respondent** : **Sian van der Merwe**

**Represented by** : **Steve Mallet**

**Type of Application** : **Housing and Planning Act 2016 –  
Section 41(1)**

**Tribunal Members** : **Tribunal Judge C Wood  
Tribunal Member S Latham**

**Date of Decision** : **7 June 2024**

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**DECISION**

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## **Decision**

1. The Tribunal orders the Respondent to pay £2239.52 to the Applicant by way of rent repayment order.
2. The Tribunal orders the Respondent to pay £300 to the Applicant in reimbursement of the application and hearing fees.

## **Background**

- 3.1 By an application dated 9 February 2022, (“the Application”), the Applicant applied to the Tribunal for a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016.
- 3.2 Pursuant to the Directions dated 1 June 2023, both parties made written submissions in advance of the in-person hearing which was scheduled for 23 April 2024 at 10:30.
- 3.3 The Applicant attended the hearing with his representative Mr. Jamie McGowan of Justice for Tenants.
- 3.4 The Respondent did not attend the hearing. Mr. Steve Mallet attended on behalf of the Respondent.

## **The Law**

4. The provisions of the Housing and Planning Act 2016, (“the 2016 Act”), so far as relevant, are as follows –
  - (1) Section 40 Introduction and key definitions
    - (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
    - (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
      - (a) repay an amount of rent paid by a tenant, or ...
    - (3) A reference to ‘an offence to which this Chapter applies’ is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	section	General description of offence
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6	Housing Act 2004	Section 95(1)	Control or management of unlicensed house
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(2) Section 41 provides –

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made. ...

(3) Section 43 provides -

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant); ...

(4) Section 44 provides-

(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 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.

5. Section 95(1) of the Housing Act 2004, (“the 2004 Act”), provides as follows:

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part...but is not so licensed.

(2) ...

(3) ...

(4) ...

(5) In proceedings against a person for an offence under subsection

(1)...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)...

## **The Hearing**

## **Preliminary Issues**

### **Non-attendance at the hearing by the Respondent**

6. The Tribunal was surprised by the Respondent's failure to attend at the hearing, not least because it was their understanding that the hearing date had been delayed to allow her to convalesce from medical treatment and thus allow her to travel to the UK to attend.
7. The Tribunal considers that it is very unsatisfactory that the Respondent had chosen not to attend the hearing in person and/or to make her non-attendance clear to the Tribunal and the Applicant prior to the hearing. The Tribunal notes that the Respondent was advised in correspondence from the Tribunal of the possible consequences regarding the Tribunal's treatment of her evidence if she decided not to attend the hearing in person and thereby not make herself available for cross-examination either by the Applicant or by the Tribunal.

### **Failure to appoint a representative in accordance**

9. The Tribunal also notes that no formal notification of Mr. Mallet's appointment as the Respondent's representative had been made to the Tribunal and/or to the Applicant as required by Rule 14 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, ("the Rules") and no reason was provided for this omission.
10. Mr McGowan, the Applicant's representative, pointed out that certain video evidence which it wished to be admitted by the Tribunal had not been sent to Mr. Mallet as they were unaware of his appointment as the Respondent's representative.
11. Notwithstanding this failure of compliance with the Rules, the Tribunal considered that it would not be consistent with the overriding objective to adjourn the hearing to allow the Respondent to attend and/or not to permit Mr. Mallet to act as her representative and it therefore continued with the hearing.

### **Admissibility of video evidence**

12. With regard to the Applicant's request to admit video evidence not previously seen by Mr. Mallet, the Tribunal explained that they had no facility to view such evidence at the hearing but allowed a brief adjournment in order to allow Mr. Mallet to watch the video.
13. On resumption, Mr. Mallet confirmed that he accepted that the video of an internal wall at the Property taken in or about end July/beginning August 2022 showed it to be in the same condition as in January 2022 when a leak had occurred but pointed out that was not evidence of a failure to carry out work in January 2022 to address the cause of the leak.

#### The tenancy agreement

14. Reference was made to apparent discrepancies between the copies of the tenancy agreement produced in evidence by the Applicant and the Respondent respectively regarding the named Landlord, the amount of the rent payable and the payment of a rent deposit. Mr. Mallet stated that the Respondent had received £525 per month; the Applicant stated that he had paid £575 per month, as evidenced by the bank statements.

#### Section 43(1) of the 2016 Act – commission of an offence by the Landlord

15. In this case, the relevant offence is the failure to obtain a licence for the Property under s95(1) of the 2004 Act.
16. Mr. Mallet confirmed to the Tribunal that the Respondent accepts that a licence was required for the Property during the relevant period, that she had failed to obtain one and that she had therefore committed an offence under s95(1) of the 2004 Act.

#### **Evidence**

17. The issues addressed by the parties' representatives in oral submissions are as follows:

#### **Section 95(4) of the 2004 Act – reasonable excuse defence**

- 17.1 From the Respondent's written submissions, it appears that the Respondent seeks to establish a "reasonable excuse" defence based on the following grounds:

- (1) that she had relied on her agent to attend to such matters as obtaining a licence for the Property, if/when one was required; and/or,
  - (2) that the Respondent was unable to obtain a licence in her own name because she did not have an UK address.
- 17.2 Reference was made to the Upper Tribunal decision in *Thurrock Council v Palm View Estates* [2020] UKUT 355 where Judge Cooke said: “The focus must be on an excuse for committing the offence; there might be all sorts of reasons for not applying for a licence that might, or might not, not provide a reasonable excuse for the commission of the offence”.

17.3 Reliance on agent

- (1) The Applicant’s submissions
  - (a) There is no evidence that the Respondent took reasonable steps to ensure the competence of the agent she appointed to manage the Property but appeared to have relied solely on a statement from an estate agent involved in her purchase of the Property.
  - (b) The Agency Agreement makes it clear that the Respondent remained liable for the condition of the Property, (paragraph A – Service), and, although referring to an HMO licence, indicates that licensing is the Respondent’s responsibility and that the Agent will not be liable for any failure of compliance in such respect, (paragraph B – Notes and General Terms).
  - (c) There is no written evidence to support the Respondent’s claim that she contacted the Agent in March 2022 to request the obtaining of the necessary licence.
  - (d) Specifically, this claim appears to be contradicted by the statement in paragraph 4 of the email dated 21 June 2023 sent by Mr. Mallet to the Applicant’s representative where it is stated: “...because if the managing agent “Open Property” had applied for the licence in July 2022, as requested by the Landlord...”, and the email dated 6 July 2022 from the Respondent to the Agent which reads: “Goldings have applied for the licence for no 42, could you ensure the same is done for no 36.”.
  - (e) The Applicant submits that the email dated 6 July 2022 reads like a 1<sup>st</sup> request to the Agent to apply for a licence and that there is no evidence

of further contact by the Respondent to ensure that the application had been made.

- (f) It appears that the Respondent was aware at this time of issues within the Agent eg personnel changes which should have caused her to question their competence to make the licence application.
- (g) For these reasons, the Applicant submits that the Respondent has failed to establish that she had a reasonable excuse for the commission of the offence as it was not reasonable for her to rely on the Agent to make the licence application.

(2) The Respondent's submissions

- (a) The Respondent was aware that a license was needed for the Property in March 2022 and contacted the Agent orally at that time to request an application was made.
- (b) In July 2022, the Respondent was aware that the person, (Rhian), she had been dealing with at the Agent, had left and so she emailed the person, (Karl), who had taken over responsibility for the Property, to ensure that her initial request had been acted upon.
- (c) The Respondent did not consider that there was any need to follow-up this request as she was aware that applications can take a long time.
- (d) Mr. Mallet stated that the lack of any request for the application fee payable on submission of the application did not cause the Respondent to question if the application had, in fact, been made.
- (e) Mr. Mallet confirmed that the Property remained empty following the Applicant's departure until the end of January 2023.
- (f) Mr. Mallet submits that it was reasonable for the Respondent to rely on the Agent to make application for the licence as at that time there was no reason to doubt their competence, although this view had changed by August 2022 and was the reason for the subsequent appointment of Goldings in October 2022.
- (g) Goldings applied for a licence for the Property in January 2023.

17.4 Requirement for licence holder to have an UK address

(1) Applicant's submissions



- (a) A person commits an offence under s95(1) of the 2004 Act if they are “...having control of or managing a house which is required to be licensed...but is not so licensed”.
- (b) The Respondent falls within the definition of a “person managing” as set out in s263(3) of the 2004 Act and is therefore capable of being found to have committed an offence under s95(1) of the 2004 Act.
- (c) The lack of an UK address had not prevented a licence being obtained for the Respondent’s other property,
- (d) The Applicant noted that there is no denial by the Respondent that she is to be regarded as “a person managing...” the Property.
- (2) Respondent’s submissions
- (a) Mr. Mallet reiterated that the Council’s licensing requirements included that “the licence holder must also have a valid UK address that legal notices can be served at”.
- (b) As a result, the Respondent had no option other than to instruct the respective agents to make the licence applications. Goldings made the application and obtained the licence; the Agent did not.

**Section 44(3)(a)-(b) of the 2016 Act –maximum amount repayable**

18. The parties’ submissions are summarised as follows:

- (1) The Applicant confirmed that the rent paid in respect of the period 1 April 2022 to 27 August 2022 is £2799.40, and not £2810.30 as claimed in the Application.
- (2) Mr. Mallet did not dispute this amount.
- (3) The parties confirmed that the rent did not include any amount payable in respect of utilities.
- (4) The Applicant confirmed that he was not in receipt of Universal Credit during the relevant period (or at all).

**Section 44(4) (a) of the 2016 Act - conduct of the Landlord and Tenant**

19. Conduct of the Landlord

- (1) The Applicant submits that the following matters are relevant matters of conduct on the Respondent's part to be taken into account by the Tribunal:
  - (a) rent deposit;
  - (b) leaking roof/leaking tap;
  - (c) fire safety issues.

#### Rent Deposit

##### 19.1 Applicant's submissions

- (1) The Applicant maintains that he paid a deposit of £660 equivalent to 6 weeks' rent which is evidenced by a bank statement showing a payment of £760 being the deposit and the Agent's fee of £100.
- (2) The Applicant's copy of the tenancy agreement makes reference to "a deposit has been paid".
- (3) The Respondent has failed to provide any record of the deposit being placed in a deposit protection scheme.
- (4) The Respondent has attempted to use the return of the deposit as a "bargaining chip" in the context of these proceedings.

##### 19.2 Respondent's submissions

- (1) The Applicant has failed to provide adequate evidence of payment of a deposit by the Applicant.
- (2) Mr. Mallet believes that the Agent may have received a deposit from the Applicant (without informing the Respondent) and has now "walked away" with it.

#### Leaking roof/leaking tap

##### 19.3 Applicant's submissions

- (1) The Applicant reported both the leaking roof and tap to the Respondent in January 2022 but he cannot remember whether he followed up with the Agent about the tap.
- (2) The video evidence shared with Mr. Mallet shows that the problem with the roof persisted until July/August 2022.

- (3) The Applicant confirmed that he had followed the Agent's suggestion to seal the area around the sink rather than pursue the matter with them, as very busy/stressed at this time.

#### 19.4 Respondent's submissions

- (1) Mr. Mallet confirmed that, on receipt of the Applicant's complaint in January 2022 regarding the leaking roof, Goldings (who are the managing agent for the building in which the Property is located), were instructed to attend at the Property but the email correspondence instructing them and their confirmation that repair works were done have not been disclosed to the Tribunal.
- (2) With regard to the leak around the sink, Goldings advised the Respondent that there was no obvious water damage around/beneath the sink and that the Applicant had sealed the sink himself.

#### Fire Safety

#### 19.5 Applicant's submissions

- (1) The Applicant acknowledges that the Respondent has now disclosed the gas and electricity fire safety certificates but notes that they were not made available to the Applicant during the period of his tenancy.
- (2) The Applicant claims that the Fire Risk Assessment, ("FRA"), disclosed by the Respondent in her written submissions identifies a number of issues which it is claimed were present during the period of the tenancy and which exposed the Applicant to risk.
- (3) The contents of the FRA appears to contradict the Respondent's statement in her witness statement that "...there were never any fire risks within the building".
- (4) The Applicant claims that it is reasonable to expect that, had a licence application been made, these issues would have been raised by the Council and remediation required.
- (5) The Applicant refers to the Council's licence fire safety conditions. Whilst some conditions appear specific to an HMO, the Applicant claims that the lack of a fire exit plan and the location/inaccessibility of a fire alarm are matters relevant to any building.

#### 19.6 Respondent's submissions

- (1) The FRA relates to the whole building and the responsibility for remediation of the issues identified lies with the management of the building rather than the individual owner of any flat within that building.
- (2) The Respondent's other property is within the same building and a licence was obtained for that property, notwithstanding these issues.

20. Conduct of the Tenant

Both parties' representatives referred to a request by the Applicant to make late payments of rent during the Covid pandemic but both parties confirmed that this did not relate to the period now in question.

**Section 44(4)(b) of the 2016 Act- financial circumstances of the Landlord**

21.1 Applicant's submissions

- (1) The Applicant questions whether the evidence presented of the Respondent's financial circumstances indicates that her financial circumstances are so challenging as to make payment of a rent repayment order difficult and/or to justify any reduction of the amount which would otherwise be determined to be payable.
- (2) In particular, the Respondent's bank statements show a credit balance of c£11000.
- (3) The Applicant notes as follows:
  - (a) the Applicant is the owner of 2 unmortgaged properties in the UK;
  - (b) it is unclear in what way/to what extent but the Respondent appears to be subsidised to live in France by Mr. Mallet who is responsible for payment of all household bills.

21.2 Respondent's submissions

- (1) Mr. Mallet confirms that the Respondent owns 2 properties in the UK, neither of which is mortgaged.
- (2) The Property was empty for 4 months following the Applicant's departure.
- (3) The rent since 13 February 2023 has been set at £625 per month.

- (4) The purchase price of a 1-bed flat like the Property is c£60,000.
- (5) The tax returns provided are both UK and French returns. The UK return relates to the 2021/22 tax year.

**Section 44(4)(c) of the 2016 Act – conviction of the Landlord**

- 22. It is common ground between the parties that there is no evidence of the Respondent having been convicted at any time of a relevant offence.

**23. Rule 13(2) of the Rules**

In the event of a rent repayment order being made, the Applicant seeks an order by the Tribunal under Rule 13(2) requiring the Respondent to reimburse the Applicant with the application and hearing fees, (£100 and £200 respectively).

**Reasons**

**Determination whether to make a rent repayment order**

- 24. In determining whether to make a rent repayment order, the Tribunal must be satisfied, beyond reasonable doubt, that the landlord has committed a relevant offence.
- 25. The Tribunal notes the admission by the Respondent of the commission of an offence within s95(1) of the 2004 Act, as referred to in paragraph 16 above..

**Has the Respondent established a reasonable excuse defence under section 95(4) of the 2004 Act?**

- 26. The Tribunal notes that the appropriate burden of proof in this respect is the balance of probabilities.

**Reliance on the Agent**

- 27. The Tribunal notes as follows:
  - (1) the Tribunal is unpersuaded that the Respondent requested the Agent to apply for a licence in or about March 2022 but that the first request to the Agent to make an application was in the email dated 6 July 2022;
  - (2) as the Respondent has acknowledged that by July 2022 there were some concerns about the competence of the Agent, the Tribunal does not consider that it was reasonable for the Respondent to rely, without

enquiry, on the Agent. Whilst it accepts the Respondent's submission that the application process can be lengthy, the Tribunal considers that the lack of any request by the Agent for payment or reimbursement of the application fee, estimated to be c£500, should have led the Respondent to check whether the application had been made.

**Lack of an UK address**

28. The Tribunal notes as follows:
- (1) it is reasonable to expect that that the Respondent should have investigated and/or been aware that there were options available to her to establish an address for service in the UK;
  - (2) the Respondent's lack of an UK address did not prevent Goldings from obtaining a licence in respect of the Respondent's other property.
28. The Tribunal is therefore satisfied that neither reliance on the Agent or the lack of an UK address affords the Respondent a "reasonable excuse" defence under s95(4) of the 2004 Act.
29. The Tribunal is therefore satisfied, beyond reasonable doubt, that the Respondent, as "a person managing" the Property, has committed an offence under s95(1) of the 2004 Act.

**Decision to make a rent repayment order**

30. The Tribunal notes that:
- (1) the offence was committed in the period of 12 months ending with the day on which the Application was made on 9 February 2023; and,
  - (2) the period in respect of which the Application relates is a period not exceeding 12 months, namely, the period 1 April – 27 August 2022 during which the Respondent was committing the offence.
31. The Tribunal therefore determines that it is appropriate to make a rent repayment order.

**Amount of the rent repayment order**

32. Guidance on how the Tribunal should approach quantification of the amount of a rent repayment order has been provided by the Upper Tribunal in *Williams v Parmar* [2021] UKUT 244 (LC) and also in *Acheampong v Roman* [2022] UKUT 239.

31. In *Williams v Parmar*, the Chamber President said that when quantifying the amount of a rent repayment order:

“A tribunal should address specifically what proportion of the maximum amount of the rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.”

32. In *Acheampong v Roamn*, Judge Cook said as follows:

“ *Williams v Paramar* did not say in so many words that the maximum amount will be ordered only when the offence is the most serious of its kind that could be imagined; but it is an obvious inference both from the President’s general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious of cases or where some other compelling and unusual factor justified it. It is beyond question that the seriousness of the offence is a relevant factor – as one would expect from the express statutory provision that the conduct of the landlord is to be taken into consideration. If the tribunal takes as a starting point the proposition that the order will be for the maximum amount unless the section 44(4) factors indicate that a deduction can be made, the FTT will be unable to adjust for the seriousness of the offence (because the commission of an offence is bad conduct and cannot justify a deduction). It will in effect have fettered its discretion. Instead the FTT must look at the conduct of the parties, good and bad, very bad and less bad, and arrive at an order for repayment of an appropriate proportion of the rent.”

33. She then said that the following approach will ensure consistency with previous legal 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).”
34. Those two decisions are binding on the Tribunal and are borne in mind when calculating the amount of the rent repayment order to be made in this case.

**Maximum amount of rent repayment order**

35. The Tribunal notes that there is no dispute between the parties that the rent paid by the Applicant during the relevant period (1 April – 27 August 2022) is £2799.40.
36. The Tribunal notes Mr. Mallet’s comments regarding the discrepancy between the amount of rent paid by the Applicant as evidenced by the bank statements and the amount actually received by the Respondent



but considers that this is a matter that the Respondent must pursue directly with the Agent and does not affect the maximum amount of the rent repayment order.

### **Seriousness of the offence**

37. Although any failure of compliance with the law should be taken seriously, in the context of the licensing regime, the Tribunal does not consider that the failure to obtain a selective licence for a property occupied by a single household is as serious a breach as, for example, the failure to obtain an HMO licence.
39. As such the Tribunal considers that it is appropriate to consider that the seriousness of the offence warrants the making of a rent repayment order of 80% of the rent paid for the relevant period, subject to the remaining s44(4) factors, which are:
- (1) the conduct of the landlord and the tenant;
  - (2) the financial circumstances of the landlord; and,
  - (3) whether the landlord has ever been convicted of another relevant offence.

### **Conduct of the Landlord**

#### Deposit

40. With regard to the deposit, the Tribunal has no reason to believe that the Applicant did not make payment of a deposit as claimed, although it notes that he has not provided evidence of this to the Tribunal.
41. The Tribunal has no jurisdiction in the context of the Application to make any determination regarding any right of the Applicant to the return, in full or otherwise, of the deposit, although the Applicant may have recourse to other legal remedies in this respect.
42. The Tribunal therefore does not consider that the issues regarding the deposit between the parties is relevant conduct on the part of the Landlord to be taken into account when determining the amount of the rent repayment order.

#### Leaking roof/leaking tap

43. The Tribunal is satisfied that the Respondent responded appropriately at the time to the Applicant's complaint regarding the leaking roof by reporting the issue to Goldings as managing agent of the building in which the Property is located.
44. The Tribunal considers the issue of the leaking tap to be a trivial matter which it appears the Applicant may have remedied himself and/or did not consider to be of sufficient importance to pursue further with the Respondent.

#### Fire Safety

45. The Tribunal considers that the grant of a licence for the Respondent's other property suggests that the Council did not regard the issues in the FRA raised by the Applicant were of the significance and/or importance suggested.
46. The Tribunal is therefore satisfied that none of the above issues constitutes conduct on the part of the Landlord to be taken into account in its quantification of the amount of the rent repayment order.

#### **Conduct of the Applicant**

47. The Tribunal determines that there is no conduct on the part of the Applicant which is relevant to their quantification of the rent repayment order. Failure to pay rent/rent arrears could be of relevance in this context but the evidence suggests that the issue was temporary and there were no existing arrears.

#### **Conviction of relevant offence**

48. There is no evidence before the Tribunal of the Respondent having been convicted of a relevant offence, and it was therefore not a matter for its consideration.

#### **Financial circumstances of the Respondent/landlord**

49. The Tribunal considers that the evidence provided by the Respondent as to her financial circumstances appeared to be incomplete and/or of limited relevance and the Respondent's decision not to attend the hearing removed the possibility for the Tribunal (and the Applicant) of seeking clarification of issues raised by that evidence and generally regarding her financial circumstances.
50. The Tribunal notes however that Mr. Mallet confirmed that both of the properties owned by the Respondent were mortgage-free, that his estimated valuation of each was c£60000, and that rent of at least £625 per month was being achieved when the properties were occupied. The Tribunal considers that "voids" ie periods of non-occupation are an expected feature of the rental market.
51. Having regard to the above, the Tribunal determines that there are no financial circumstances relating to the Respondent which should be taken into account in its quantification of the rent repayment order.

**Determination of the amount of the rent repayment order**

52. Taking all these matters into account, the Tribunal determines that the appropriate order in this case is for repayment of 80% of the rent paid being the sum of £2239.52.
53. Further, pursuant to Rule 13(2) of the Rules, the Tribunal orders the Respondent to pay to the Applicant the sum of £300 in respect of the application and hearing fees.