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

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| **Case reference** | **:** | **CAM/34/UF/2023/0028** |
| **Property** | **:** | **10 Braunston Close, Northampton, NN4 8QZ** |
| **Applicant** | **:** | **Ms Loes Engelkes** |
| **Representative** | **:** | **In person** |
| **Respondent** | **:** | **Mr Lyn Jones** |
| **Representative** | **:** | **In person** |
| **Type of application** | **:** | **Application by tenant for rent repayment order**<br>**Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016** |
| **Tribunal members** | **:** | **Judge K Gray**<br>**Dr Jan Wilcox FRICS** |
| **Venue** | **:** | **Remote hearing by CVP** |
| **Date of decision** | **:** | **27 March 2025** |

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**DECISION**

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## Decisions of the tribunal

(1) The tribunal finds that the Applicant is entitled to a rent repayment order under section 41 of the Housing and Planning Act 2016 and that such an order ought to be made.

(2) The amount of the rent repayment order, determined under section 44 of the Housing and Planning Act 2016, is £2055.91, payable by the Respondent to the Applicant within 28 days of this decision.

(3) The Respondent shall pay the Applicant £320.00 in respect of the reimbursement of the tribunal fees paid by the Applicant within 28 days of this Decision.

## The application

1. By an application dated 26 September 2023 ("the Application") made under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") the Applicant tenant sought a rent repayment order ("RRO") against the Respondent landlord.

2. The Applicant asserts that the Respondent had control of or was managing a house in multiple occupation ("a HMO") which was required to be licenced under the Housing Act 2004 ("the 2004 Act") but which was not so licenced.

## The hearing

3. Both the Applicant and the Respondent attended the hearing in person. They agreed that the Applicant's application, the documents contained in her 44 page hearing bundle and her further statement of 6 March 2025 should stand as her evidence in chief. They also agreed that the Respondent's undated statement of 8 pages should stand as his evidence in chief. They both had the opportunity to and did ask each other questions by way of cross-examination. Both made closing submissions. We reserved our decision.

## The background

4. The property which is the subject of the Application is a three-storey town house of relatively recent construction. Neither party requested an inspection of the property, and the tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

5. The Applicant's case is that she was the tenant of Room E in the property pursuant to the terms of a tenancy agreement dated 1 January 2022

made between the Respondent as landlord and the Applicant as tenant. She lived in the property with four other occupants. On 20 March 2023, West Northamptonshire Council executed a warrant at the property under section 240 of the 2004 Act and found that there were five occupants from five different households residing at the property, but no HMO licence had been granted. Her case is that the Respondent has therefore committed an offence under section 72(1) of the 2004 Act and that she is entitled to a RRO.

6. The Respondent admits that he did not apply for an HMO licence until 19 April 2023, and that a licence was not granted until 25 September 2023. He admits that he has committed an offence under section 72(1) of the 2004 Act. However, he asserts that no RRO should be granted or, if a RRO is granted, the sum awarded should be reduced.

## The issues

7. The parties agreed that the Respondent applied for a HMO licence on 19 April 2023 and that once the application had been made, the Respondent was no longer committing an offence under section 72(1) of the 2004 Act. They agreed that the relevant twelve-month period during which the Respondent was committing an offence under section 72(1) of the 2004 Act was 19 April 2022 – 18 April 2023.

8. At the start of the hearing the parties agreed that the following issues remain in dispute and require determination:

    (i) whether the Applicant is entitled to a RRO under sections 41 and 43 of the 2016 Act; and if so

    (ii) the amount of the RRO, to be determined in accordance with section 44 of the 2016 Act.

9. Having heard evidence and submissions from the parties and considered all the documents provided, the tribunal makes determinations on these issues as follows.

## Legal framework

10. Section 40 of the 2016 Act provides that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

11. Section 41 of the 2016 Act provides:

*(1) A tenant … 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."*

12. Section 43 of the 2016 Act 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.*

13. The amount of a RRO is to be determined under section 44 of the 2016 Act as follows:

"*…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 [*a period, not exceeding 12 months, during which the landlord was committing the offence*], 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.*"

## Findings

Is the Applicant entitled to an order under sections 41 and 43 of the 2016 Act?

14. The Respondent accepts that he has committed an offence to which Chapter 4 of the 2016 Act applies and that this offence was committed between 19 April 2022 – 18 April 2023 ("the Relevant Period").

15. Having considered the Applicant's tenancy agreement dated 1 January 2022 we find that the property was let to the Applicant during the Relevant Period.

16. The Application was made on 26 September 2023. Accordingly, the offence was committed in the period of 12 months ending with the day on which the application was made.

17. The Respondent asserted that the Applicant had, in making this application, taken advantage of the law to obtain free accommodation at his expense, and that accordingly no RRO should be made. We do not agree. The law permits the Applicant to make an application for a rent repayment order in the circumstances described above. She cannot in our judgment be criticised for exercising those rights.

18. We are therefore satisfied that the Applicant is entitled to an order under section 41 of the 2016 Act and that it is appropriate, in light of the Respondent's failure to ensure that the property had a valid HMO licence in place, to make such an order.

The amount of the RRO

19. We begin by ascertaining the whole rent paid by the Applicant for the Relevant Period. There was no dispute that the Applicant paid her rent of £400 per month in full during the Relevant Period. Accordingly, the total rent paid in the Relevant Period is £4800.00.

20. There was no suggestion that any relevant award of universal credit was paid to the Applicant or the Respondent in respect of the rent under the tenancy during the Relevant Period.

21. The Respondent provided a table of "running costs" for the property in 2022 and 2023. The table included entries for council tax, gas and electricity, water, insurance, and internet charges for the period October 2022 to September 2023. We were provided with no information about the Respondent's costs incurred before October 2022.

22. The Respondent confirmed that the insurance costs related to the costs of insuring the building and for boiler and appliance repair cover. He accepted, and we find, that this insurance was for his benefit, and not for the benefit of the Applicant. He also accepted that though entries for council tax payments appeared in the spreadsheet for February and March 2023, he did not in fact pay any council tax during those months.

23. The Applicant accepted that the Respondent paid for council tax, gas and electricity, water and internet charges, but she did not know how much was spent by the Respondent.

24. Doing the best we can with the information that was provided to us, we find that the following sums are to be deducted from the rent paid during the Relevant Period to reflect payments made by the Respondent in respect of utilities that only benefitted the Applicant:

(i) Council tax – October 2022 – April 2023 - £1019.93 (of which the Applicant's share is £203.99)

(ii) Water - October 2022 – April 2023 - £1206.00 (of which the Applicant's share is £241.20).

(iii) Electricity and gas - October 2022 – April 2023 - £951.79 (of which the Applicant's share is £190.36).

(iv) Internet charges - October 2022 – April 2023 - £263.19 (of which the Applicant's share is £52.64)

Total: £688.19.

25. We consider next the seriousness of the offence that we have found to be made out. In our judgment, the offence is more serious than the offence of having control or management of an unlicenced house under section 95(1) of the 2004 Act because of the risk of overcrowding, sanitation and fire hazards involved with managing properties occupied by multiple households. However, it is in our judgment considerably less serious than some of the other offences identified in section 40 of the 2016 Act, such as using violence to secure entry, the eviction or harassment of occupiers and/or the failure to comply with an improvement notice or prohibition order.

26. We also take into account the fact that the Local Authority later granted a HMO licence to the Respondent without the need to take any enforcement action against him. The Respondent's unchallenged oral evidence was that the only issue raised by the Local Authority before the licence was granted was an issue relating to the smoke alarms which had been removed by the occupants of the property (as to which see further below). We accept his evidence and in our judgment this factor is indicative of the fact that the offending in this case is of a less serious nature.

27. In our judgment, the less serious nature of the offending in this case warrants a reduction in the amount of the RRO for the Relevant Period. Subject to the remaining factors referred to in section 44 of the 2016 Act (i.e. the conduct of the parties and the financial circumstances and offending history of the landlord) we find that the less serious nature of the offending would warrant the making of a RRO of 60% of the rent paid for the relevant period. However, the seriousness of the offending is not the only matter that we are required to take into account, and we now

consider those remaining factors in coming to our final assessment of the amount of the RRO.

28. As to the conduct of the Respondent, we accept his unchallenged evidence that he is not a "professional" landlord (that is to say, that he does not let other properties) and that the property was once his own home, which he let to tenants after moving to London for work reasons.

29. However, we accept the Applicant's evidence that there were often maintenance issues at the property.

30. We find that these issues included an ongoing water leak from the bathroom above her bedroom, which caused the smoke alarms in the property to sound for hours on end without any ability to stop them and that though the Applicant informed the Respondent about the problem, he did not fix the issue. The Applicant's written and oral evidence was supported by extracts of various text messages sent by the Applicant to the Respondent about the leak which did not receive a response. Though the Respondent asserted that the problem must have been caused by the Applicant because it did not occur again after she left the property, her unchallenged oral evidence, which we accept, was that she would often come home from work to find water leaking through her bedroom ceiling. We do not accept that the Applicant caused the water leaks. We find that the Respondent's failure to fix the issue, which resulted in the smoke alarms being removed by the occupants (thereby putting the occupiers of the property at increased risk of harm from smoke and fire), reflects poorly on his conduct.

31. We also find that there was no heating or hot water at the property in December 2022 and January 2023. The Respondent agreed that this was the case, but asserted that he was unable to repair the issue because he was out of the country at the time. In our judgment, it was not acceptable for the occupiers of the property to have been left without heating or hot water in the winter months. A responsible landlord would have made arrangements for repair issues at the property to be addressed in his absence. We find that the Respondent's failure to arrange for the heating and hot water to be fixed within a reasonable period of time in December 2022 and January 2023 reflects poorly on his conduct.

32. We also find that:

    (i) The lock on the front door of the property was broken for a month, rendering the door unusable. It remained broken until the Applicant's boyfriend repaired it. The occupiers were able to use the back door of the property during this time.

(ii) The oven stopped working for a period of around 2 weeks, but the occupiers of the property were able to use another oven which remained operational at all times.

(iii) The vacuum cleaner and tumble dryer stopped working until it was repaired by the Respondent 2-3 weeks later.

(iv) The fridge was not functioning as it should for a period of 2 – 3 weeks until it was repaired by an engineer.

(v) The garden fence fell down and was not repaired.

33. However, we accept, as the Respondent asserts, that these issues are relatively minor and that it is to be expected that household items will break down or fail from time to time and require repair. Though the Respondent did not tend to these matters as quickly as he could have done, in our judgment, repairs were carried out within a reasonable period of time. We do not consider that these matters reflect poorly (or positively) on the Respondent's conduct.

34. The Respondent raised several issues in his statement about the Applicant's conduct. He said, amongst other things, that the Applicant had used the tumble dryer in the garage without his permission, had left food and other items in the garage when she left the property, had allowed her boyfriend to stay at the property regularly without the Respondent's permission, had left building materials in the garden which had to be removed by the Respondent at his cost, had removed the smoke alarms, and had stored her boyfriend's car on the property without permission, which had caused oil to spill onto the block paving.

35. The Applicant vehemently rejected these assertions in her written and oral evidence. She said that:

(i) The Respondent had agreed that she could use the tumble dryer and indeed had fixed the dryer from time to time without raising any issue.

(ii) She did not leave any food in the garage when she moved out of the property.

(iii) Her boyfriend stayed in the property occasionally, with the Respondent's agreement.

(iv) The Respondent agreed to her request to store materials in the garden, and had not asked her to remove them before the Application was issued. He had asked if he could purchase the scaffolding.

(v) The Respondent had agreed to the storage of the car and when she offered to remove it, the Respondent told her that it was not a problem. The Respondent later accepted that he had been able to clean up the oil himself.

(vi) The smoke alarms were removed because they were constantly sounding due to the water leak.

36. Much of the Applicant's evidence on these points was supported by extracts of text messages between the Applicant and the Respondent, and was unchallenged in cross-examination. Indeed, the Respondent accepted during the course of the hearing that the Applicant was a good tenant. In the circumstances, we accept the Applicant's evidence set out above, and find, as the Respondent concedes, that she was a good tenant. We do not consider there to be any relevant issues relating to the Applicant's conduct to be taken into account in our assessment of the amount of the RRO.

37. There was no documentary evidence of the Respondent's financial circumstances before us. Though he told us that he has less than £1000 left at the end of every month, he did not provide any bank statements to support this assertion and in any event, he accepted that he still owned the property, which was on the market for sale. He agreed that his financial circumstances would improve substantially once the property is sold, and that in the meantime it is an asset belonging to him.

38. There is no suggestion that the Respondent has been convicted of an offence to which Chapter 4 of the 2016 Act applies.

39. Taking all these matters into account, and in particular the conduct of the Respondent referred to above, we determine that the appropriate order in this case is for the repayment of 50% of the rent paid less the outgoings identified above.

40. We therefore make an RRO of £2055.91.

41. We also order the Respondent to reimburse the Applicant for the tribunal fees that she paid in the sum of £320.00 (being the application fee of £100.00 and the hearing fee of £220.00).

**Name:** Judge K Gray **Date:** 27 March 2025

## Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).