FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMF/2022/0018**
Property	**:**	**Fifth Floor, 35-37 William Road, London NW1 3ER.**
Applicant	**:**	**Xenia Flint-Shipman.**
Representative	**:**	**In person.**
Respondent	**:**	**Global 100 Limited (also known as Global Guardians).**
Representative	**:**	**Kelly Owen Limited (solicitors) – Anthony Owen, Director.**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**Judge T Cowen** **Mr R Waterhouse FRICS**
Date of decision	**:**	**9 April 2025**

SUBSTANTIVE ORDER AND DECISION

The Tribunal orders that:

The Respondent is required to make a rent repayment order to the Applicant in the sum of £5,760.00.

REASONS FOR ORDER

The Property

1. The Property is the Fifth Floor of a former office block ("the Building"), which was being occupied by property guardians. The Applicant occupied the Fifth Floor as her residence as a property guardian.

The Application

2. Section 41 of the Housing and Planning Act 2016 allows a tenant to apply to this Tribunal for a rent repayment order against a person who has committed a relevant offence. The relevant offences are listed in section 40.

3. The Tribunal has received an application dated 13 January 2022 under section 41 from the Applicant tenant for a rent repayment order ("RRO"). The Applicant alleges that the Respondent committed an offence under S.72 of the Housing Act 2004, namely managing or controlling an unlicensed house in multiple occupation ("HMO") that was required to be licensed.

4. In this application, the Applicant makes the following assertions:
   a. The Respondent entered into an agreement with the Applicant for her to reside on the Fifth Floor of the Building on 18 May 2020 and the Applicant moved in on the same day.
   b. The Applicant paid £1,000 per month from May 2020 on the first day of each month.
   c. The Respondent applied for an HMO licence on 15 January 2021.
   d. The Applicant was living on the Fifth Floor of the Building pursuant to the said agreement during the course of the 12 months leading up to the issue of this application.
   e. During that Period, the Building was an HMO which was required to be licensed.
   f. The Building did not have an HMO licence from the time when the Applicant moved in.
   g. The Respondent had control and/or was managing the Building during that period.

5. The claim is for the total sum of **£9,000**, being the total paid by the Applicant in respect of her occupation at **£1,000** per month for the period of 9 months commencing with the date when she started paying and ending with the date on which the Respondent applied for an HMO licence.

Property Guardians and the law of Rent Repayment Orders

6. This Building has been the subject of previous RRO proceedings. In *Global 100 Limited v Jiminez & ors* [2022] UKUT 50, the issue in the Upper Tribunal was whether a former office building occupied by property guardians was capable of coming within the definition of an HMO. The Upper Tribunal confirmed the decision of the FtT that it was an HMO.

The Hearing

7. An oral hearing took place at 10 Alfred Place, London WC1E 7LR attended by the Applicant, who was representing herself, and by Mr Anthony Owen of Kelly Owen Limited, who was representing the Respondent.

8. There were a number of disputed issues apparent from the papers before the hearing started. During the hearing, it became clear that many of the points raised in those issues were no longer being pursued. In this decision, we shall refer only to the issues which remain in the dispute and the agreed issues which are relevant for our findings.

Whether the Offence was Committed

9. In order to consider whether to make an RRO, the Tribunal must be satisfied beyond reasonable doubt that the offence alleged was committed.

10. After considering the decision in the *Ziminez* case (see above) the Respondent, through its legal representative at the hearing, conceded that it had committed the offence which is claimed by this Applicant. The Respondent had originally argued that the Applicant was not the kind of occupier who was entitled to an RRO, because she was allegedly not residing in the Property as her only or principal home. But that argument was no longer pursued by the Respondent at the hearing.

11. In *IR Management Services Limited v Salford City Council* [2020] UKUT 81, the Upper Tribunal held that the First-tier Tribunal should always consider whether there may be a reasonable excuse. Following questions from the Tribunal, the Respondent's legal representative confirmed at the hearing that no explanation was being offered by way of defence of reasonable excuse under section 95(4) of the 2004 Act for the commission of the offence.

12. Since there is no challenge to the matters alleged by the Applicant and since the Respondent admits having committed the offence as alleged and offers no explanation by way of reasonable excuse, we find as fact the allegations made by the Applicant and we find beyond reasonable doubt that the offence was committed as alleged.

Rent Repayment Order – whether to make an order

13. As a result of all of the above, the Tribunal may make a rent repayment order in this case (see section 43 of the 2016 Act).

Rent repayment order – amount of the order

14. The steps to be taken by the Tribunal in assessing the amount of the rent repayment order to be paid under section 44 of the 2016 Act was recently set out by the Upper Tribunal in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraph 20 of the judgment as follows:

> "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)."

We shall go through each of those steps as follows.

(a) Ascertain the whole of the rent

15. The agreement under which the Applicant occupied the Fifth Floor is labelled "temporary licence agreement" below the words "This is not a tenancy agreement". It is between the Respondent and the Applicant and it is dated 18 May 2020. For the purposes of the relevant part of the 2016 Act, the statutory definition of "tenancy" includes licences. It is not therefore necessary for us to decide whether this agreement genuinely created a tenancy or a licence. Nevertheless, for convenience, we will refer to the said document as "the Letting Agreement" and we will refer to the licence fee as "rent" to avoid confusion with provisions in the relevant statutes.

16. The amount stated to be payable as rent in the Letting Agreement is the sum of £230.77 weekly which is payable on the first of each month in the monthly amount of £1,000.

17. The Applicant's claim for a RRO is for 9 months at £1,000 amounting to a total claim of £9,000. All of the period of the claim is less than 12 months

before the date of the application to this Tribunal. Even though the Applicant continued to occupy the Fifth Floor after 15 January 2001, she does not and cannot claim a RRO in respect of rent after January 2001 because the Respondent ceased to be committing the relevant offence when it applied for an HMO licence on that date.

18. However, a RRO can be made only in respect of rent actually paid, rather than rent which may have been due over the relevant period.

19. We heard evidence that over that period the Respondent in fact paid a total of £7,500. Following that evidence, at the hearing the parties agreed that the maximum rent recoverable as an RRO would be **£7,500**.

(b) Subtracting element of utilities from the rent

20. The RRO can relate only to amounts paid as rent. At the hearing, it was common ground between the parties that utilities were included (but not expressly quantified) in the "Licence Fee" paid by the Applicant. The parties have further agreed that the sum of £300 is appropriate in respect of utilities for the total relevant period. We agree.

21. That leaves a maximum claim of **£7,200** before we consider the remaining criteria.

(c) Ascertain the seriousness of the offence

22. In considering the seriousness of the offence itself, the Upper Tribunal in *Acheampong* gave the following additional guidance at para 21:

> "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."

23. In assessing the seriousness starting point under stage (c), the authorities have identified two matters which the Tribunal should consider. Firstly the seriousness of the offence compared to the other offences specified in section 41 of the 2004 Act. The offence under section 72(1) is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account[1].

24. Secondly, we need to consider this offence in the spectrum of all section 72(1) offences. As noted above, this Building has been the subject of previous RRO applications relating to the same failure by the Respondent to obtain an HMO licence. On the question of the seriousness of the offence, with the encouragement of the parties we have considered the

[1] see *Ficcara v James* [2021] UKUT 38 (LC), paras 32 and 50, *Hallet v Parker* [2022] UKUT 239 (LC), para 30; *Daff v Gyalui* [2023] UKUT 134 (LC), paras 48-49 and *Newell v Abbott and Okrojeck* [2024] UKUT 181 (LC), paras 34 to 39.

approach taken by the First-tier Tribunal in those decisions. The Respondent submitted to us that the seriousness of this offence is about 70% on the scale of seriousness. The Applicant accepted that figure as the starting point. We take into account the fact that the Respondent made a deliberate and calculated attempt to circumvent the HMO licensing regulations and that the conditions of the Building were poor and that the poor conditions would have been somewhat alleviated if the Respondent had gone through the licensing procedure in the first place. Taking all of that into account, we agree that this is at the upper end of section 72(1) offences and we have decided that 70% of the maximum RRO would reflect the seriousness of the offence.

(d) Other section 44(4) factors

25. We now need to consider whether to make any additions or deductions to that figure, taking into account all the factors in s44(4). The first of these is conduct.

Conduct

26. We are required by section 44(4)(a) of the 2016 to take account of the conduct of the landlord and the tenant.

27. The Applicant relied on the following allegations of bad conduct on the part if the Respondent:

    a. Disrepair to the roof. After listening to the evidence and submissions of both parties, we find that there was disrepair to the roof which led to discomfort on the part of the Applicant. We also find, however, that the Respondent did its best to alleviate that problem, but that the conditions for doing so were not ideal. We take account of the fact that disrepair of itself is not bad conduct. The question is how the Respondent responded to it.

    b. Fire safety. We find that the Respondent failed to take appropriate steps regarding fire safety until prompted by an email from the Council. That is bad conduct which we take into account.

    c. The conditions of the Building which most adversely affected the Applicant occurred during the last few months of her occupation of the Fifth Floor. Electrical power was cut off, the lifts ceased operating, demolition work started on other parts of the Building while the Applicant was still living in the Fifth Floor, the doors of the bathroom(s)/toilet(s) which the Applicant used were removed. These were all actions taken (rather than simply neglect) against the Applicant and other occupiers deliberately designed to drive them out of the Building. They were humiliating, degrading and dangerous.

       The Respondent accepted that these things had been done, but they relied in the fact that they were done by the ultimate owner of

the Building – ie by their superior landlord – and not done by the Respondent itself. The Respondent relies additionally on the fact that it had no contractual obligation to the Applicant to repair or to provide specific services.

We accept all of that as a matter of fact. However, we think that the question of conduct in section 44(4)(a) goes beyond questions of mere contractual obligation. In this case, the Respondent had assumed responsibility for providing residential accommodation to the Applicant. We are satisfied on the evidence we saw and heard that the Respondent knew about what was being done to the Applicant by the actions of the superior landlord, but they effectively washed their hands of it. They did nothing even to try to help the Applicant – for example by attempting to intervene with the superior landlord or by helping to provide temporary alternative accommodation or by helping to find a removal company for the Applicant when she did want to move out. Instead they took steps to evict the Applicant, by serving a notice to quit and issuing county court proceedings. There is nothing wrong with that course of action of itself, but we take account of the sharp contrast between the alacrity with which the Respondent pursued the eviction process with its complete inaction in trying to alleviate the terrible conditions the Applicant was being forced to live in.

28. The Respondent had no specific allegations of misconduct on the part of the Applicant save for the fact that she withheld payment f rent after August 2021 during the period when the Fifth Floor was virtually uninhabitable (because f the conditions described above).

29. We have decided that the Respondent's failure to do anything to alleviate the Applicant's extreme predicament amounts to poor conduct, although we also take account of the fact that the Respondent did not cause it and was not able directly to remedy it. Taking that together with the other issues mentioned above, we have decided to add a further 10% to reflect all of that.

(d) Other section 44(4) factors: Landlord's financial circumstances

30. We are required to take into account the landlord's financial circumstances under section 44(4)(b) of the 2016 Act. There is no written statement of the financial circumstances of the Respondent.

31. Following the decision in *Daff v Gyalui* [2023] UKUT 134 (LC) we enquired of the Respondent's representative at the hearing. The Respondent's representative declined to draw our attention to any feature of its financial circumstances and stated that the Respondent did not want to rely on financial circumstances.

32. Therefore, in taking account of the landlord's financial circumstances, we have decided that there is nothing to warrant any adjustment to the amount of the rent repayment order under this heading.

(d) Other section 44(4) factors: Previous convictions

33. We have no evidence that the Respondent has been convicted of any offence to which Chapter 4 of the 2016 Act applies, for the purposes of section 44(4)(c) of the 2016 Act.

Amount of rent repayment order: Discussion and Conclusion

34. We have decided in the light of all of the above that the correct level for the rent repayment order would be 80% of the maximum rent claimable.

35. The figure we have arrived at is therefore 80% of £7,200 which amounts to the sum of £5,760 payable by the Respondent to the Applicant.

Dated this 9th day of April 2025

JUDGE TIMOTHY COWEN

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).