FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/38UC/HMF/2023/0017**
Property	**:**	**28 Lark Hill, Oxford, OX2 7DR**
Applicants	**:**	**Rebecca Helen Mooney**
Representative	**:**	**In person**
Respondent	**:**	**Xiao Hui Liao**
Representative	**:**	**Mr Ejokpa** **Bower Bailey Solicitors**
Type of application	**:**	**Application for a rent repayment order by a tenant under Sections 40, 41, 43 and 44 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge Aaron Walder** **Judge Arjunan Arul** **Ms Marina Krisko FRICS**
Hearing date	**:**	**13 November 2024**
Date of decision	**:**	**8 April 2025**

DECISION

Decisions of the tribunal

(1) The Tribunal determines that a Rent Repayment Order is made in the sum of £4400.

(2) The tribunal determines that the Respondent reimburse the Applicant for her application and hearing fees, totalling £320.

(3) The tribunal makes the determinations as set out in the decision below.

Reasons

The Application

1. The Applicant sought determinations pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO). The Applicant alleges that the Respondent landlord has committed the offence of control or management of an unlicensed house, contrary to section 95(1) Housing Act 2004.

2. The sum sought in the Application Form is £17,600, for a period of 8 months between September 2022 and April 2023, when the Applicant's tenancy came to an end and she vacated the Property.

Procedural history and Documents before us

3. The application, dated 28 June 2023, was lodged at the office for the Eastern region (where the Property is situated). On 16 July 2024, a Procedural Judge gave case management directions which required that the Applicant tenant send a bundle of relevant documents to the Tribunal and to the Respondent; and thereafter the Respondent send a bundle of relevant documents to the Applicant and the Tribunal. The Applicant then had permission to send a brief reply to the issues raised by the Respondent.

4. The Applicant filed a 96 page bundle, including an extended statement of reasons as to why an RRO should be made, which had a signed statement of truth and was in reality a witness statement of the Applicant, and a witness statement of Katherine Sarah Coney, as well as other documents.

5. The Landlord filed a 119 page bundle, including a statement of reasons in response to the Applicant's application (which again was in reality a witness statement and had a statement of truth).

6. This caused a second "supplemental" bundle of 235 pages to be served by the Applicant, which included another witness statement of the Applicant, and also a witness statement of Mr Kaveh Moussavi.

7. The Respondent also felt the need to provide more documents, this time a more concise bundle of 30 pages, and a further witness statement dated 10 October 2024.

8. The Tribunal has based its decision on these documents alone, no site visit having been deemed necessary. All of those documents have been read by the Tribunal, but it is not necessary in this judgment to set out each and every one of them. They all contributed to the reasoning of the decision.

The Hearing

9. The Applicant attended the hearing and represented herself. She is a solicitor by profession and a non-practicing barrister.

10. The Tribunal was emailed by Bower Bailey at 12.01 on Tuesday 12 November (the day before the hearing) to explain that "The Respondent will not be attending the hearing tomorrow due to medical concerns. However, as previously indicated, we will attend the hearing on her behalf."

11. A medical note was attached to the email. While this Tribunal would always prefer that the parties were present, especially in cases such as this, no application for an adjournment was made. As such, the Tribunal considered it was appropriate to hear the matter in the absence of the Respondent, albeit with the assistance of her advocate.

12. It was noted at the outset that without the Respondent to give oral evidence and be cross examined, the Tribunal would have some difficulty attaching any real weight to her evidence, especially in areas where there was a dispute as to the facts.

13. The Respondent's representative was asked if an adjournment was sought. It was not. In any event, the Applicant stated she would object to any request for an adjournment. The Tribunal also indicated that it was in the interests of justice to proceed with the matter.

The Background (Agreed) Facts

14. 28 Lark Hill, The Waterways, Oxford, OX2 7DR ("the Property") was purchased by the Respondent and her husband in November 2004. While they originally lived in it as their home, relocation to the University of Hong Kong required moving abroad, so the Property was rented out with a view to continuing to service the mortgage.

15. The Property is a four bedroom house located in the Summertown ward of Oxford City.

16. The Applicant first moved into the Property in October 2016 with her two children who were aged 16 and 18 at that time. The Applicant told us that she was recently divorced and had experienced housing insecurity and financial uncertainty.

17. The Property was initially marketed, but then withdrawn from the market. However, Mr Kaveh Moussavi, a gentleman who the tribunal heard evidence from, and who is described by the Respondent as the Applicant's prospective Guarantor, but in fact appears to be simply a work colleague of the Applicant, knocked on the door of the Property and spoke to the Respondent. He explained he had seen the marketing material and thought the Property would be ideal for the Applicant.

18. The Applicant took the Property on an AST dated 5 October 2016, with a term of 15 months. A deposit of £3600 was paid, and there is a dispute as to whether or not this was properly protected as required by section 203 of the Housing Act 2004. There is no dispute that the Respondent was her landlord and as such was the "person having control" and the "person managing" the property pursuant to the Housing Act 2004.

19. The AST was renewed on a number of occasions, the latest being an agreement dated 20 October 2019 for a term that commenced on 5 November 2019. The rent was reduced slightly to £2200.

20. Around 2020 (during the initial stages of the Covid pandemic) two matters occurred. First, the Applicant experienced financial difficulties. Second, the Respondent and her husband returned to the UK, since her husband had retired. The Tribunal is told that they both had health difficulties.

21. On 5 May 2020 the Respondent states she "served an initial notice" on the Applicant. This notice required her to vacate the property by 5 August 2020. This does not appear to be a formal notice under s.8 or s.21 of the Housing Act 1988, but nevertheless expresses a wish for the Applicant to vacate the property.

22. While the accounts differ, it is agreed that the Applicant refused to leave, and further that no proceedings were forthcoming. Of course, there was actually a moratorium on possession proceedings at that time.

23. A further email was sent to the Applicant in June 2021. Again, it is accepted this was done. The Applicant expressed an agreement to move out, but noted that any admission was "without prejudice to my legal rights, and in particular, the invalidity of s.21 notice". She did not move out at that point.

24. Finally, the Respondent appears to have taken some formal advice, and a formal notice pursuant to s.8 was served on the Applicant in August

2022. The Respondent says it is of relevance that this is before the Licencing Regime brought in by Oxford City Council commenced on 1 September 2022.

25. The Applicant contested the proceedings which were heard in the Oxford County Court under claim number J00OX604. The resolution of those proceedings was by Tomlin Order dated 28 February 2023. The terms recorded that the Respondent would make a payment to the Applicant of £20,000 "in full and final settlement of the Defendant's claims to date"; and the Applicant would give vacant possession on or before 30 April 2023.

26. The Applicant did vacate on 30 April 2023.

Issues

27. The Tribunal must determine the following issues, which requires careful consideration of the legislation and the relevant authorities.

a) Is the Tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

b) Does the Respondents have a 'reasonable excuse' defence?

c) Does the Tomlin Order give rise to a defence?

d) What amount of RRO, if any, should the tribunal order?

i. What is the maximum amount that can be ordered under s.44(3) of the Act?

ii. What account must be taken of

(1) The conduct of the landlord

(2) The financial circumstances of the landlord

(3) The conduct of the tenant?

e) Should the tribunal order the Respondent to reimburse the Applicant's application and hearing fees?

The Legal Framework

The Housing Act 2004 ("the 2004 Act")

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

29. Section 79 puts a general duty on local housing authorities to make such arrangement as are necessary to secure the effective implementation of their district of the licensing regime provided for by Part 3. Section 80 allows a local housing authority to designate an area in their district as subject to selective licensing.

30. Section 95 creates an offence of having control and management of a house which is required to be licensed, but is not so licensed. On summary conviction, a person who commits an offence is liable to a fine. An additional remedy under s.96 is that either the local housing authority or an occupier could apply to a FTT for a RRO.

31. Section 263 provides:

> "(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
>
> (2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
>
> (3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–
>
> > (a) receives (whether directly or through an agent or trustee) rents or other payments from–
> >
> > > (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
> > >
> > > (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or

licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

32. By section 95(4) it is a defence to proceedings for an offence under this part if there is a "reasonable excuse" for having control or of managing the house without a licence, or failing to comply with a condition of the licence.

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

33. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

34. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances.

35. The phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

36. In the Upper Tribunal (in *Rakusen v Jepsen* [2020] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live.

The "main object of the provisions is deterrence rather than compensation."

37. In the Court of Appeal, Arnold LJ endorsed these observations. At [36], he noted that Part 2 of the Act was the product of a series of reviews into the problems caused by rogue landlords in the private rented sector and methods of forcing landlords to either comply with their obligations or leave the sector. Part 2 is headed "Rogue landlords and property agents in England". At [38], he noted that the Act conferred tough new powers to address these problems. At [40], he added that the Act is aimed at "combatting a significant social evil and that the courts should interpret the statute with that in mind". The policy is to require landlords to comply with their obligations or leave the sector.

38. In the subsequent decision of *Kowalek v Hassanien Limited* [2022] EWCA Civ 1041, Newey LJ summarised the legislative intent in these terms (at [23]):

> "It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in Jepsen v Rakusen [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (Rakusen v Jepsen [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in Rakusen v Jepsen, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

39. Section 40 provides:

> "(1) This Chapter confers power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
>
> (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
>
> (a) repay an amount of rent paid by a tenant, or
>
> (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

40. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". Those include "control or management of an unlicenced HMO, and "control or management of an unlicenced house".

41. In *Acheampong v Roman* [2022] UKUT 239 (LC), the UT established that a FTT is obliged to assess the relative seriousness of seven categories of offence which "can be seen from the relevant maximum sentences on conviction" in assessing any RRO.

42. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.

43. Section 41 deals with applications for RROs. The material parts provide:

> "(1) A tenant or a local housing authority may apply to the First-Tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
>
> (2) A tenant may apply for a rent repayment order only if —
>
> (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
>
> (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

44. Section 43 provides for the making of RROs:

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

45. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> "(3) The amount that the landlord may be required to repay in respect of a period must not exceed—
>
> (a) the rent paid in respect of that period, less
>
> (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

46. "Rent" is not defined in the Act. However, under the Rent Acts, "rent" has had a clearly defined meaning, namely "the entire sum payable to the landlord in money" (see Megarry on the Rent Acts, 11th Ed at p.519 and the reference to *Hornsby v Maynard* [1925] 1 KB 514 and subsequent cases). The meaning is the same at common law as under the Rent Acts (see the current edition of Woodfall "Landlord and Tenant" at 7.015 and 23.150).

47. Section 44(4) provides:

> "(4) In determining the amount the tribunal must, in particular, take into account—
>
> (a) the conduct of the landlord and the tenant,
>
> (b) the financial circumstances of the landlord, and
>
> (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies."

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

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

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

50. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

51. In *Acheampong*, Judge Cooke states that FTTs should adopt the following approach:

> "20. The following approach will ensure consistency with the authorities:
>
> a. Ascertain the whole of the rent for the relevant period;
>
> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
>
> c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as

above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

52. On 7 February 2023, in *Fashade v Albustin* [2023] UKUT 40 (LC), the Deputy President, Martin Rodger KC (at [21]) summarised the approach adopted by the Chamber President in Williams v Palmer in these terms:

"It was necessary in each case to consider the seriousness of the offence (a crucial element of the landlord's conduct) and to fix the amount of the order having regard to its seriousness and all other relevant considerations, including those particularly identified in subsection (4)".

53. Most recently, the Deputy President, Martin Roger KC summarised a number of the decisions above in *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC). The Tribunal has applied the guidance in all the above cases to its decision.

Decisions on the Issues

54. The Tribunal heard evidence from Katherine Sarah Coney, who was a team manager in the Private Sector Safety Team of Oxford City Council. She explained that the Council had designated the area where the subject property was for selective licencing from 1 September 2022 until 31 August 2027.

55. Upon receiving a letter from the Applicant, she checked the council's database system (Metastreet) and discovered that the subject property was not licenced.

56. In any event, the Respondent accepts that the subject property required a licence between 2 September 2022 and 30 April 2023 , but did not have one.

57. As such, it is a straightforward finding of the Tribunal that the Respondent has committed the offence.

58. Furthermore, the Tribunal determined to exercise its discretion and make an RRO.

Reasonable Excuse

Submissions

59. The Respondent made a number of submissions suggesting that there was a reasonable excuse that no licence had been obtained. Those were:

a) The Respondent is not a professional landlord, and had no knowledge of the selective licencing scheme;
b) Before the implementation of the scheme, the Respondent had commenced proceedings to obtain possession from the Applicant. Had the Applicant simply vacated at the time notice was served, she would not have been in occupation during the time the scheme took effect;
c) Had she applied for an exemption, she would have been entitled to one as a result of the possession proceedings.

Decision

60. The Tribunal has considered a number of cases where a Respondent has argued they simply were not aware of the scheme. In all of those cases, as here, the answer is that ignorance of the law is simply no excuse. As such, we find that just because the Respondent says she was not aware of the scheme, that does not amount to a reasonable excuse.

61. Furthermore, the evidence on this point is not compelling. We did not hear from the Respondent herself as to the state of her knowledge, and what methods she had in place to keep uptodate as to the relevant law surrounding her letting.

62. The Applicant refers us to the case of *D'Acosta v D'Andrea* [2021] UKUT 144, where the landlord received express assurances from a Local Authority employee that the selective licence scheme did not apply. The current case is far removed from the facts there. There is simply no evidence here that the Respondent did anything to keep herself abreast of the requirements of landlords.

63. As to the suggestion of an exemption, Ms Coney was asked if an exemption would be granted in the circumstances of this case, and she told the Tribunal that it is unlikely. This is in keeping with the email of 28 September 2023 from Oxford City Council, which states such an

exemption cannot be issued retrospectively. It is, in any event, time limited; the Applicant was still in possession of the Property when any hypothetical exemption period would otherwise have expired (thus compelling a licence application in any event). As such, this cannot amount to a reasonable excuse.

64. The Tribunal were initially attracted to the argument that where a landlord has attempted all lawful means to remove a tenant before a licencing scheme comes into effect, that might amount to a reasonable excuse. However, upon reflection, we have concluded it cannot.

65. First of all, on the facts of this particular case it is difficult to see how it could be a reasonable excuse, given the Respondent's position is she did not know about the licencing system anyway. Thus, she did not make a deliberate and considered decision not to apply for a licence because of the imminent ending of the tenancy.

66. Secondly, it is a truism that until and unless a tenancy is brought to an end, it remains in existence. S.5 of the Housing Act 1988 makes it clear that an assured tenancy cannot be brought to an end except by an order or the Court for possession. Indeed, s.5(1A) makes it clear that where an order of the Court for possession is made, the tenancy only ends when the order is executed. Thus, technically the tenancy does not even end when the possession order has been made, but only upon execution, which may be many weeks after it is made.

67. The Tribunal can think of no other situation where a tenant loses statutory protection because the tenancy is about to end (as opposed to has actually ended) so it would be illegitimate to apply that here.

68. Finally, the Local Authority appear to offer dispensations and, notwithstanding the evidence of Ms Coney that the uncertainty of the possession proceedings in this case made it unlikely, it certainly seems possible that a landlord contemplating removing a tenant and thus not needing a licence could get one.

69. It does also appear to us that if the effect of simply serving a notice to quit, or a statutory notice seeking possession, was to avoid the need for a selective licence, it would actively encourage landlords to serve such notices in areas that were subject to licencing requirements, which would be against the ethos of the scheme.

70. For all of those reasons, we consider there is no reasonable excuse here. That is not to say that it cannot be relevant when considering quantum, but it does not amount to a reasonable excuse to not obtain a licence.

The Tomlin Order

71. On a proper construction of the Tomlin Order we cannot see how it assists the Respondent. The money paid was to settle "the Defendant's claims to date". Had it referred to future claims, or all claims relating to the Defendant's occupation under the tenancy, then it may be arguable that this claim is somehow caught by that. But it does not. This claim for an RRO was not one of the Defendant's claims at the date of the Tomlin Order, and is thus not affected by the clauses of that agreement.

Quantum

72. The Tribunal was somewhat hampered in its consideration of quantum due to the lack of evidence supplied by the Respondent.

73. The Tribunal concluded that the maximum amount that can be awarded is £17,600, being £2200 rent per month from 2 September 2022 until 2 April 2023. No evidence has been provided by the Respondent as to what proportion of that, if any, contributed to bills and utilities.

74. As to the financial circumstances of the Landlord, no documentary evidence has been provided. However, it is clear from the witness statements that both she and her husband are retired and in ill health. Furthermore, it is also clear that the Respondent paid the sum of £20,000 to the Applicant pursuant to the Tomlin Order, and she tells us in her witness statement that she needed to borrow to obtain that sum. We also accept that the Respondent has moved back into the subject property with her husband.

75. We must also consider the conduct of the parties. We accept that the Respondent failed to protect the Applicant's deposit, however it appears that sum was repaid (as part of the £20,000) as well as any statutory damages. As such, that conduct can be mitigated as the Respondent has in effect been punished for it.

76. With regard to the Applicant, we are mindful of the correspondence which accompanied the various notices seeking possession of the property. Irrespective of their effect as a matter of law, the Applicant clearly represented she was intending to move out of the property on a number of occasions, but did not keep her word. Clearly had she done so, then the facts show the Respondent would have moved back into the property and no licence would have been required.

77. Further, we note that the Applicant did have some arrears of rent, and the rent for the property was reduced to assist her.

78. In considering the seriousness of this offence, the Tribunal determines this is towards the less serious end of the scale, of a less serious offence. That is because there is no malfeasance on the part of the Respondent,

and her efforts to retake possession appear to manifest a serious intention to move back into the property.

79. As such the Tribunal consider that a RRO of 25% of the maximum amount is appropriate.

80. It is also appropriate for the application and hearing fees paid by the Applicant to be refunded.

Name: Judge Aaron Walder **Date:** 4 April 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).