PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AM/HMF/2024/0104**
Property	:	**270 Stamford Hill London N16 6TY**
The Applicant	:	**Mr Marcus Epstein**
Representative	:	**In person**
Respondents	:	**Sentry Guardians Limited (1)** **Vacant Property Management Limited (2)**
Representative	:	**Mr Rothbart for both Respondents**
Type of application	:	**Application for a Rent Repayment Order by tenants** Sections 40, 41, 42, 43 and 45 Housing and Planning Act 2016.
Tribunal members	:	**Judge Pittaway** **Mr M Cairns**
Date of Hearing	:	**17 March 2025**
Date of decision	:	**14 April 2025**

DECISION

Decisions of the Tribunal

1. **The Tribunal finds that both Sentry Guardians Limited and Vacant Property Management Limited are Respondents.**

2. **The Tribunal finds that the Respondents committed an offence under section 72(1) of the Housing Act 2004, and that for at least part of the period for which an RRO is sought, without reasonable excuse.**

3. **The Tribunal makes a Rent Repayment Order against the Respondents jointly and severally in the sum of £6,000.00.**

4. **The reasons for the Tribunal decisions are given below.**

The Hearing

5. The Hearing was attended by Mr Epstein, the Applicant, and Mr Rothbart, a director of both Respondents.

6. The Tribunal had before it at the start of the Hearing the Applicant's two bundles, of 100 and 19 pages respectively, pages, and a Respondent's bundle of 40 pages.

7. During the Hearing it became apparent that the Respondents had not received the Applicant's 100 page bundle. This contained the application, evidence of rent payments and five pages of e mail exchanges with L.B. of Hackney. The Tribunal adjourned to give the Respondents the opportunity of reviewing the contents of this bundle.

8. There was a witness statement from Ms Rebecca Wade in the Respondents' bundle. Despite the Directions of 22 January 2025 making it clear that any witness who makes a witness statement should attend the Hearing Ms Wade did not attend, and therefore could not be cross-examined.

9. The Tribunal heard oral evidence from Mr Rothbart and Mr Epstein and submissions from Mr Rothbart and Mr Epstein.

The background

10. The application made the Applicant, dated 27 February 2024, was received by the Tribunal on 29 February 2025. In it the Applicant sought a rent repayment order (**'RRO')** for the rent he had paid for the period 1 March 2022 to 28 February 2023 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") in the sum of £9,000, in respect of a room at 270 Stamford Hill ('the **Property**').

11. The application alleged that Sentry Guardians Limited (**'Sentry**') had committed the offence of managing/controlling an unlicensed HMO property contrary to s72 of the 2004 Act.

12. The Directions issued on 22 January 2025, named both Sentry and Vacant Property Management Limited ('**VPM**') as Respondents and contemplated that the Tribunal hearing the application would investigate further whether one or both respondents should remain as Respondents.

The Property

13. The Property is described in the Application as an upstairs flat with ten rooms, two bathrooms, two toilets and one kitchen.

14. During the hearing Mr Rothbart submitted that the Property was a commercial, not a residential, property. It had previously been a pub on the ground floor. It was occupied under a 'guardian' scheme, under licence agreements which provided for the occupants to vacate on 28 days' notice.

15. No party requested an inspection and the Tribunal did not consider that one was necessary.

16. The relevant local housing authority is the London Borough of Hackney. The Tribunal heard evidence that Sentry had initially been unable to apply for an HMO for the Property as it did not appear on the Council's relevant database, being commercial rather than residential premises. The system was updated on 2 February 2023 which allowed Sentry to apply for an HMO on 9 March 2023.

17. The 'Temporary Licence Agreement' (the **'Occupation Agreement**') in the bundle before the Tribunal was made between VPM and Mr Epstein and entered into at the beginning of March 2022. It recites that VPM is an approved supplier of guardians who perform guardian functions, by occupying certain properties as designated by VPM. The Property is licensed by the 'Owner' to Sentry for the purpose of Sentry securing the property against trespassers and protecting it against damage. The Occupation Agreement recites that Sentry has the ability to allow VPM to grant temporary, non-exclusive licences to Guardians and entitles VPM to collect sums and manage the property on behalf of Sentry. It states that it is Sentry who collects the licence fee monthly. The Occupation Agreement provides that the Guardian will pay such Council Tax as is lawfully due, apportioned by VPM by reference to the number of occupants from time to time and their period of occupation. The Occupation Agreement is unclear as to who pays for the cost of Utilities (water, drainage, gas and electricity) but Mr Rothbart confirmed at the hearing that these were included in the Licence Fee and Mr Epstein did not dispute this. The Occupation Agreement was expressed to run for the Licence Period (stated to be '28 days rolling contract') terminable if Sentry's right to use the property terminates, or on VPM giving four weeks' notice.

Issues

18. Mr Rothbart accepted that the property was one which required an HMO licence while occupied by the Applicant, notwithstanding that he had submitted that it was a commercial property. Failure to have such a licence is an offence under section 72 (1)

of the Housing Act 2004 (the **'2004 Act'**) (controlling or managing an unlicensed HMO)

19. The issues before the tribunal to determine were

- The correct Respondent(s) against whom the RRO should be made.
- During the period during which an offence had been committed under s72(1) of the 2004 Act did the Respondent(s) have a defence to the commission of the offence under section 72(4) of the 2004 Act?
- If an offence has been committed the amount of any RRO that can be ordered under section 44(3) of the 2016 Act.

The Tribunal's decision and reasons

20. The Tribunal reached its decision after considering the witnesses' oral and written evidence and the oral and written submissions, including documents referred to in that evidence and submissions and taking into account its assessment of the evidence.

21. As appropriate, and where relevant to the tribunal's decision these are referred to in the reasons for the tribunal's decision.

22. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

23. While the Tribunal had regard to the witness statement of Ms Wade, because she did not attend the Hearing as directed, less weight has been attached to this than would otherwise have been.

24. The relevant legal provisions are set out in the Appendix to this decision

The Respondent(s)

25. The Tribunal heard evidence from Mr Epstein that he had paid the licence fee to Go Cardless and this was evidenced by Mr Epstein's bank statements in the Applicant's bundle.

26. Mr Rothbart gave evidence that the licence fee was paid to Go Cardless who charged a fee of £6 per transaction. Go Cardless paid the fees to VPM who retained approximately 70% of the fee to cover expenses. The balance of approximately 30% was paid to Sentry. There was no written agreement between Sentry and VPM in the bundles before the Tribunal.

27. Mr Rothbart confirmed that he was a director of both Sentry and VPM, and that the companies were 'effectively the same'.

The Tribunal's decision

28. The Tribunal finds both Sentry and VPM to be Respondents.

Reasons for the Tribunal's Decision

29. The Tribunal had to make its determination on the limited evidence before it.

30. The bundles before the Tribunal did not include the agreement between the owner of 270 Stamford Hill and Sentry. Nor did it contain any written agreement between Sentry and VPM.

31. On the basis that VPM was receiving the fee for the premises, for the purposes of sections 263(1) and (2) of the 2004 Act it is a 'person having control' in relation to the Property.

32. On the basis that Sentry received payments from the Applicant via VPM, either by reason of VPM acting as its agent or by reason or some agreement with VPM under which VPM received the payments, Sentry is a 'person managing' the premises for the purposes of s263(3) of the 2004 Act.

33. In making both Sentry and VPM Respondents the Tribunal is mindful that they are associated companies, that Mr Rothbart is director of both and that he confirmed that they were 'effectively the same'.

Reasonable excuse to offence under section 72(1) Housing Act 2004

34. Mr Rothbart submitted that the lack of an HMO application by Sentry was due to 270 Stamford Hill not being listed on the Council's system.

35. Mr Rothbart gave evidence that Sentry had entered into an agreement with the owner of 270 Stamford Hill on 20 February 2022 and had spent until March 2022 ensuring that the building complied with the requirements of it being operated as an HMO. The documentary evidence of this was not in the bundles before the Tribunal.

36. The agreement between VPM and Mr Epstein was entered into on 1 March 2022.

37. The first e mail exchange of the Respondents with the Council was in June 2022. Mr Rothbart said that there had been telephone calls with the Council before then.

38. Mr Rothbart stated that it was in February 2023 that the Council amended its system so that Sentry was able to apply for an HMO on 9 March 2023.

39. Questioned by the Tribunal as to why the Respondents had allowed the Applicant into occupation before the HMO had been granted Mr Rothbart said that this was because in their experience the Respondents expected that it would only take about a month to

sort out the situation. Mr Rothbart said that the Respondents had experienced a similar problem with other properties in Hackney.

40. Mr Epstein submitted that the Respondents had not applied for an HMO licence for a year during which an HMO licence was required for 270 Stamford Hill, and the Respondents knew that they needed an HMO licence.

The Tribunal's decision

41. The Respondents had a reasonable excuse for not applying for an HMO during some part of the year from March 2022 to March 2023, but not the whole of the period.

Reasons for the Tribunal's decision

42. There was no evidence in the bundles of when the Respondents first communicated with the council on the issue of 270 Stamford Hill not being on the relevant council database.

43. On the evidence before it the Tribunal finds that the Respondents were experienced landlords and knew of the need for an HMO, from before anyone was allowed into occupation of 270 Stamford Hill. The fact that 270 Stamford Hill was not on the Council's database so that the Respondents could not apply for an HMO is a reasonable excuse, however the Tribunal finds that the Respondents were dilatory in pursuing the Council to ensure that 270 Stamford Hill was put on the relevant database. In her witness statement Ms Wade states that it was only on 21 September 2022 that she emailed the council to advise them that 270 Stamford Hill was not on the Council's database. The Occupation Agreement had been entered into with the Applicant six months previously. That the Property was not on the Council's database should have been pursued more actively.

44. The actions taken by the Respondents may be taken into account when considering their conduct in relation to the amount of the RRO

Amount of the RRO

45. The parties agreed that the whole of the rent for the relevant period was £9,000.

46. Mr Rothbart submitted that 30 to 35% of the licence fee received by the Respondents was paid for utilities, namely gas, electricity and water. There were no invoices to substantiate this in the bundles.

47. Mr Epstein accepted that the Respondents paid for the utilities but challenged the percentage of the licence fees attributed to them on the basis that no evidence had been provided to substantiate the amount claimed, or that that amount had been paid. He stated that he had no access to the utility meters.

48. Mr Rothbart stated that the council tax for 270 Stamford Hill was 'a minimal amount', suggesting that it was in the region of £1,300 per annum.

49. Mr Epstein confirmed to the Tribunal that he was not in receipt of universal credit.

50. Mr Epstein submitted that conduct of the Respondents to be taken into account included entering into an illegal contract, making two illegal attempts to evict him after March 2023, that there was an issue with fire safety at 270 Stamford Hill, and that he had had an issue with mice and bed bugs, and with damp.

51. Mr Rothbart stated that the fire doors at 270 Stamford Hill were compliant, that any issues with mice and bed bugs were dealt with and that Mr Epstein had never reported any damp issue to them. Mr Rothbart gave oral evidence that Mr Epstein had not paid any licence fee from March 2023 until he left in September 2023 and that he had not complied with the terms of an agreement to vacate the Property. Mr Epstein confirmed that he had not paid the licence fee from March to September 2023.

52. Mr Rothbart confirmed that there were no financial circumstances that the Respondents wished the Tribunal to have regard to. Mr Rothbart stated that the Respondents had received one financial penalty in respect of a property in Westminster but had never had an RRO made against them.

The Tribunal's decision

53. The Tribunal makes a Rent Repayment Order against the Respondents, jointly and severally, in the sum of £6,000.

Reasons for the Tribunal's decision

54. In its decision in *Acheampong v Roman and others* [2022] UKUT 239 (LC), the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which may be summarised as follows

(a) ascertain the whole of the rent for the relevant period;

(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;

(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 compared to other examples of the same type of offence; and

(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).

55. As indicated to the parties at the hearing the Tribunal have adopted the approach recommended in *Acheampong v Roman and others.*

56. There was no information before the Tribunal as to the amount of the utilities paid by VPM, and the Tribunal find it unlikely that as much as 30-35% of the licence fees received were paid in respect of utilities. This would have represented a charge for Mr Epstein's bedroom of over £3,000. In the absence of any evidence as to what was spent and having regard to the energy price cap, as the only possible source of evidence, the Tribunal finds that a reasonable deduction from the maximum amount of the RRO for both council tax and utilities would be in the region of £1,000, leaving the maximum net amount of £8,000.

57. As to the seriousness of the offence, the Tribunal has taken into account that that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licensing system and to deter evasion, and the seriousness of the offence.

58. The Tribunal has found the only offence in this application is operating an HMO without a Licence.

59. The Tribunal finds that the offence is not the most serious type of offence for which a RRO may be sought, as recognised in the decision in *Daff v Gyalui* [2023] UKUT 134 (LC), which case also recognised that there can be more or less serious offences within each category.

60. The Tribunal has then considered how serious the offence is within its category. Factors that may be relevant in assessing how serious an offence is within its category may include whether the respondent was an experienced landlord, the condition of the property, whether improvements might be required before the grant of the licence and the length of the offence.

61. The Tribunal finds that the Respondents are experienced landlords and were aware of the need for a licence. For part of the period of the offence the Respondents were unable to apply for the licence, but the Tribunal finds that they were dilatory in pursuing the Council to place the property on the correct database. However once they were able to do so they applied for the necessary licence.

62. Section 44(4) provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the both parties, the financial circumstances of the landlord/licensor and whether the landlord/licensor has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.

63. In reaching its decision the Tribunal has had regard to what Deputy Chamber President Roger Martin KC said at paragraph 61 of *Newall v Abbott* [2024] UKUT 181 (LC), that evidence in rent repayment cases can focus disproportionately on allegations of misconduct by one party against the other, and that Tribunals should not treat each allegation with equal seriousness or to make findings of fact on them all. It has therefore not given weight to the allegations of poor conduct on either side, except it has had regard to the non-payment of the licence fee by the Applicant of the licence fee after March 2023.

64. There is no evidence before the Tribunal as to the financial circumstances of the Respondents.

65. The Tribunal has noted that the respondents had one financial penalty awarded against them but no previous RROs.

66. Having regard to the existence of a reasonable excuse for committing the offence for some part of the relevant period, the total net rent for the relevant period, the severity of the offence and the deductions that it considers should be made in light of the factors to which the Tribunal must have regard under s44(4) of the 2016 Act the Tribunal makes a Rent Repayment Order against the Respondent in the sum of £6,000, being 75% of the net rent paid for the relevant periods.

Name: Judge Pittaway **Date:** 14 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).

Appendix of Relevant Legislation

Protection from Eviction Act 1977

1 Unlawful eviction and harassment of occupier.

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

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

(3) If any person with intent to cause the residential occupier of any premises—
(a) to give up the occupation of the premises or any part thereof; or
(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

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

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

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

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

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1)A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2)A person commits an offence if—
(a)he is a person having control of or managing an HMO which is licensed under this Part,
(b)he knowingly permits another person to occupy the house, and
(c)the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—
(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
(b)he fails to comply with any condition of the licence.

(4)In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
(a)a notification had been duly given in respect of the house under section 62(1), or
(b)an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5)In proceedings against a person for an offence under subsection (1), (2) or (3) 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), or

(b)for permitting the person to occupy the house, or (c)for failing to comply with the condition,
as the case may be.

263 Meaning of "person having control" and "person managing" etc.

(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.

(4)In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5)References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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.

(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 to that landlord.

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers

	Act	*section*	*general description of offence*
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

(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.

(3) A local housing authority may apply for a rent repayment order only if –

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

43 Making of a rent repayment order

(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 had 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 with –

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

44 Amount of order: tenants

(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 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
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.