



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

Case Reference : **LON/00BB/HMF/2024/0264**

Property : **7 Plashet Road, London E13 0PZ**

Applicants : **Ms Lauren Finn**

Representative : **In person**

Respondents : **Mr Riaz Ahmed
Mr Arun Afzal
Mr Mohammed Afzal
Mr Harry Afzal**

Representative : **Mr Mohammed Afzal in person**

Type of application : **Application for a Rent Repayment
Order by Tenants – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016**

Tribunal members : **Judge J P Donegan
Mrs Sarah Redmond MRICS
(Valuer Member)**

Date of hearing : **17 April 2025**

Date of decision : **22 April 2025**

DECISION

Decision of the Tribunal

The application for a rent repayment order ('RRO') is dismissed.

The background and procedural history

1. The applicant was a sub-tenant at 7 Plashet Road, London E13 0PZ ('the Property') between 25 February and 28 December 2023. There was no written tenancy agreement. Her immediate landlord was Mr Mohammed Afzal ('Mr Afzal'), who is also known as Arun and Harry. Mr Afzal was previously a tenant of the Property, which is a five-bedroom house and sublet bedrooms on an individual basis. His landlord was Mr Riaz Ahmed ('Mr Ahmed')
2. Mr Ahmed let the Property to Mr Afzal under a written tenancy agreement dated 01 August 2020. This was for a fixed term of six months. It appears Mr Afzal held over, as a statutory periodic tenant, on the expiry of this term. He stayed at the Property for long periods, sleeping in the sitting room.
3. Initially the applicant lived in one of the smaller bedrooms in the Property, on her own. She moved into a larger bedroom, with her partner, in October 2023.
4. The applicant seeks a RRO pursuant to sections 40 to 44 of the Housing and Planning Act 2016 ('the 2016 Act') and claims a total sum of £2,750 for the period 25 July to 25 December 2023. She contends the Property was an unlicensed house in multiple occupation ('HMO') during her occupation.
5. The Tribunal application was submitted on 22 July 2024 and named Mr Ahmed, Mr Afzal, Arun Afzal and Harry Afzal as respondents. Panel 9 of the application form stated there was no HMO licence for Property and identified the relevant offence as "*S.72 HOUSING ACT 2004; HAVING CONTROL OF OR MANAGING AN UNLICENSED HMO*".
6. The Tribunal issued directions on 11 October 2024, amended on 10 December 2024 and the case was listed for a video hearing on 17 April 2025.
7. Directions 5-10 dealt with the filing and service of digital hearing bundles. Direction 7 listed the documents to be included in the applicant's bundle, including:
*"(d) full details of the alleged offence, with supporting documents from the local housing authority, if available (**Note: the Tribunal will need to be satisfied **beyond reasonable doubt** that an offence had been committed**)"*

8. The annexe to the directions listed the issues to be determined by the Tribunal, including:

- *“Whether the tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences:*

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
<i>1</i>	<i>Criminal Law Act 1977</i>	<i>s.6(1)</i>	<i>violence for securing entry</i>
<i>2</i>	<i>Protection from Eviction Act 1977</i>	<i>s.1(2), (3) or (3A)</i>	<i>unlawful eviction or harassment of occupiers</i>
<i>3</i>	<i>Housing Act 2004</i>	<i>s.30(1)</i>	<i>failure to comply with improvement notice</i>
<i>4</i>	<i>Housing Act 2004</i>	<i>s.32(1)</i>	<i>failure to comply with prohibition order etc.</i>
<i>5</i>	<i>Housing Act 2004</i>	<i>s.72(1)</i>	<i>control or management of unlicensed HMO</i>
<i>6</i>	<i>Housing Act 2004</i>	<i>s.95(1)</i>	<i>control or management of unlicensed house</i>
<i>7</i>	<i>Housing and Planning Act 2016</i>	<i>s.21</i>	<i>breach of banning order</i>

9. In her statement of case, the applicant complained of overcrowding but mentioned a HMO licence for Property.
10. Mr Ahmed has not engaged with these proceedings or responded to the application.
11. In his statement of case, Mr Afzal described the Property as “*fully HMO-licensed*”. He produced a copy of the licence, which was granted to Mr Ahmed by London Borough of Newham (‘LBN’), on 27 April 2023. The licence was valid from 01 January 2023 and does not expire until 30 December 2027. The Property is licensed “*for a maximum of 5 people living as 5 household(s) regardless of age.*”
12. In her reply to Mr Afzal’s statement of case, the applicant acknowledged the Property was licensed but submitted it was occupied by more than 5 people “*making the HMO nul and void*”. She also complained of poor management and pointed out the licence named Mr Hassan Khan, rather than Mr Afzal, as the managing agent. She tried calling Mr Khan on one occasion, only to receive a text reading “*Please do not contact us thanks*”.
13. The applicant also relied on an audio recording of a telephone conversation with Mr Afzal, when he was aggressive and abusive towards her.
14. The relevant legal provisions are set out in the appendix to this decision.

The hearing

15. The hearing took place on 17 April 2025, by remote video conferencing. The applicant and Mr Afzal both appeared in person. Mr Ahmed did not attend and was not represented.
16. I spent some time clarifying the issues at the start of the hearing. The applicant said she was now seeking a RRO on the basis the occupation condition in the HMO licence had been breached. I explained she needed to establish one of the offences listed at section 40 of the 2016 Act, as listed at paragraph 8 above. I also referred her to sections 72(1) and (2) of the Housing Act 2004 ('the 2004 Act'). A breach of the occupation condition could be a breach of section 72(2), but this is not one of the listed offences.
17. On resuming the hearing, the applicant explained she was still relying on section 72(1) and her argument was the breach of the licence condition invalidated the licence, meaning the Property was an unlicensed HMO. I informed the parties the Tribunal would deal with this argument, as a preliminary legal issue. If the argument succeeded, we would then go on to consider the evidence on overcrowding. If not, we would dismiss the RRO application.
18. The parties then made brief oral submissions on the validity of the HMO licence. The applicant likened the situation to a breach of a liquor licence, contending this would invalidate the licence. She suggested the licence obtained by Mr Ahmed was "*incorrect*" as the Property was occupied by more than five people. In response, Mr Afzal submitted the licence was valid. The local authority had inspected the Property on several occasions and could have revoked the licence if there were any breaches. There were only ever five tenants, at most and he no longer has any involvement with the Property having terminated his tenancy.
19. Following another adjournment, I informed the parties the RRO application was dismissed on the basis the applicant had not proved an offence under section 72(1) of the 2004 Act. I gave brief verbal reasons for this decision. More detailed reasons are set out below.
20. Given our finding on the preliminary issue, the Tribunal did not go on to hear evidence from parties.

Reasons for the Tribunal's decision

21. Based on the documents, it is clear Mr Afzal was the applicant's landlord for the duration of her tenancy.

22. The Tribunal can only make a RRO where it is satisfied, beyond a reasonable doubt, that the landlord has committed one of the offences listed at section 40 of the 2016 Act.
23. The applicant relies on section 72(1) of the 2004 Act but there was a HMO licence for the Property throughout her tenancy. A licence continues in force for the period specified in the licence unless terminated or revoked (section 68(3) of the 2004 Act). There was no evidence the licence had been terminated under section 68(7) or revoked under section 70.
24. Any breach of the occupation condition did not invalidate the HMO licence. There is nothing in the licence itself to suggest it only operates if the conditions are met. Further, there are separate sanctions for breaches of licence conditions. This could give rise to an offence under section 72(2) or, in the case of a serious breach or repeated breaches, entitle LBN to revoke the licence under section 70(2). Further, it could result in LBN imposing a civil penalty pursuant to section 249A. These sanctions are matters for the local housing authority and are outside the Tribunal's jurisdiction.
25. The HMO licence remained in force throughout the applicant's tenancy, and she has not proved any offence under section 72(1).
26. The Tribunal has considerable sympathy for the applicant. Her statement of case and reply both referred to overcrowding. She states that up to 10 people lived at the Property. If this is correct, there was a clear breach of the HMO licence which could have been hazardous. Further, the audio clip reveals Mr Afzal was aggressive and abusive to her, on at least one occasion. The absence of a written tenancy agreement is also a concern.
27. Based on her statement of case and reply, the applicant's complaint of poor management appears well founded. However, this on its own (if proved) would not entitle her to a RRO.

Costs

28. At the end of the hearing, Mr Afzal asked if he could claim any costs arising from the dismissal of the application. I explained the Tribunal has limited costs powers but referred him to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules. Any application for a Rule 13(1) costs order must be made in accordance with Rules 13(4) and (5).

Name: Judge J P Donegan

Date: 22 April 2025

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

Appendix of relevant legislation

Housing Act 2004

68 Licences: general requirements and duration

- (1) A licence may not relate to more than one HMO.
- ...
- (3) A licence –
 - (a) comes into force at the time that is specified in or determined under the licence for this purpose, and
 - (b) unless previously terminated by subsection (7) or revoked under section 70 or 70A continues in force for the period that is so specified or determined.
- ...
- (7) If the holder of the licence dies while the licence is in force, the licence ceases to be in force on his death.
- ...

70 Power to revoke licences

- (1) the local housing authority may revoke a licence –
 - (a) if they do so with the agreement of the licence holder,
 - (b) in any of the cases mentioned in subsection (2) (circumstances relating to licence holder or other person)
 - (c) in any of the cases mentioned in subsection (3) (circumstances relating to HMO concerned), or
 - (d) in any other circumstances prescribed by regulations made by the appropriate national authority.
- (2) The cases referred to in subsection (1)(b) are as follows –
 - (a) where the authority consider that the licence holder or any other person has committed a serious breach of a condition of the licence or repeated breaches of such a condition,
 - (b) where the authority no longer consider that the licence holder is a fit and proper person to be the licence holder, and
 - (c) where the authority no longer consider that the management of the house is being carried out by persons who are in each case fit and proper persons to be involved in its management.

Section 66(1) applies in relation to paragraph (b) or (c) above as it applies in relation to section 64(3)(b) or (d).

...

72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control or managing a 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 housing being occupied by more households or persons than is authorised by the licence.

...

249A Financial penalties for certain housing offences in England

- (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
- (2) In this section "relevant housing offence" means an offence under –
 - (a) section 30 (failure to comply with improvement notice),
 - (b) section 72 (licensing of HMOs),
 - (c) section 95 (licensing of houses under Part 3)
 - (d) section 139(7) (failure to comply with overcrowding notice), or
 - (e) section 224 (management regulations in respect of HMOs).
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.
- (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if
 - (a) the person has been convicted of the offence in respect of that conduct, or
 - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (6) Schedule 13A deals with –
 - (a) the procedure for imposing financial penalties,
 - (b) appeals against financial penalties,
 - (c) enforcement of financial penalties, and

- (d) guidance in respect of financial penalties.
- (7) The Secretary of State may by regulation make provision about how local housing authorities are to deal with financial penalties recovered.
- (8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.
- (9) For the purposes of this section a person's conduct includes a failure to act.

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 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.
- (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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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
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.
- (2) A tenant may apply for a rent repayment order only if –
 - (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) 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, a 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);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

- 13.-** (1) The Tribunal may make an order in respect of costs only –
- (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
 - (i) an agricultural and land drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs –
 - (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends –
 - (a) a decision notice recording the decision which finally disposes of all issues in the proceeding, or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

...