FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HB/HMF/2024/0014/BS
Property	:	17 Sommerville Road, Bristol BS7 9AD
Applicant	:	Jonathan Davies
Representative	:	Abbleys Solicitors
Respondent	:	Julian Hector Edward Macfarlane-Watts
Representative	:	Henriques Griffiths Solicitors LLP
Type of Application	:	Application for a rent repayment order by Tenant Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016
Tribunal Member	:	Regional Surveyor Clist MRICS
Date of Hearing	:	28 January 2025
Date of Decision	:	25 April 2025

DECISION

Decision

The Respondent shall pay to the Applicants the sum of £3,510 within 28 days.

The Respondent shall reimburse the Tribunal fees paid by the Applicants of £300 to the Applicant within 28 days.

Reasons

Background

1. On 31 May 2024 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord. The amount claimed is £7,800 which 'constitutes repayment of 12 months of rent'.

2. The Applicant states that the property in question did not have an HMO licence and 'At the time of the offence….was subject to Bristol City Council's Additional Licensing Scheme'.

3. Further, the Applicant avers that the 'Respondent has admitted liability but disputes quantum'.

4. The Tribunal sent the Respondent a copy of the application with supporting documents.

5. The Tribunal will decide (a) whether to make a rent repayment order and, if so, (b) for what amount.

Law

6. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal.

7. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.

8. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).

9. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:

    a) the rent paid in respect of the period in question, less

    b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

10. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:

    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 any of the specified offences.

The Hearing

11. The hearing took place on the 28 January 2025 remotely. The Applicant, Mr Davies, was in attendance with his legal representative, Mr Hulme. The Respondent, Mr Macfarlane-Watts, was in attendance and represented himself. The Tribunal is grateful to both parties for their submissions and the helpful manner in which proceedings were conducted.

12. Mr Hulme stated that he had not prepared an opening statement and did not wish to make one. On that basis, he requested that Mr Davies give his evidence.

13. Mr Davies confirmed the truth of his two statements [19-25] and [227-233].

14. Mr Macfarlane-Watts questioned Mr Davies on his statements.

15. Mr Davies stated that his concerns relating to fire safety were based upon his previous experience of living in HMO's whereby he expected a HMO to have fire doors, fire blankets, smoke alarms, fire assessment reports, gas safety checks and the like. Mr Davies described the internal doors as flimsy but accepted that there were smoke alarms in place. He confirmed that he had not raised such concerns during the course of the tenancy.

16. Mr Macfarlane-Watts questioned Mr Davies as to why his first statement did not mention an eviction whereas the second statement had. Mr Davies stated that he had received an eviction notice but that the parties had later mutually agreed to date that Mr Davies would vacate the property.

17. Mr Davies confirmed that he had estimated Mr Macfarlane-Watt's total rental income [232] based upon the four bedrooms let at an estimated £600 pcm per room.

18. Mr Macfarlane-Watts questioned Mr Davies on his statement which stated that Mr Macfarlane-Watts had moved back to Bristol and was living with his mother. Mr Davies said that this was based upon his understanding of a Whatsapp message that Mr Macfarlane Watts had sent to him explaining his living arrangements.

19. The Tribunal questioned Mr Davies.

20. Mr Davies confirmed that he accepts Mr Macfarlane-Watt's figure of £7,022.62 as expenditure on utility bills for the 12 months subject to the application.

21. Upon questioning as to the condition of the property, Mr Davies stated that the property was well-loved but tired as a result of a lack of upkeep. By way of example, it was said that the roof leak was preventable with maintenance, as was the broken pane of glass to the lean-to that fell out due to the rotten wooden frame. Mr Davies opined that the age of the property required a higher level of maintenance and required upkeep from the tenants. It was said that such upkeep included re-staining a wooden worktop, staining and sanding outdoor furniture and the repainting of the ceiling and window frame in the Applicant's ensuite bathroom.

22. Mr Davies stated that there was a smoke alarm to the ground floor but he could not recall if there was one on the first floor. There was a carbon monoxide monitor situated next to the boiler. There were no fire doors, self closing doors, fire blankets or fire extinguishers in the property.

23. Mr Davies confirmed that he paid rent on the 1st of each month and paid a full month's rent in the last month of his occupation.

24. Mr Hulme questioned Mr Macfarlane-Watts on his witness statement.

25. Mr Macfarlane-Watts firstly confirmed the details of exhibit 1 [27], that he was the owner of the subject property for the relevant period having been in such ownership since 2015 as the sole proprietor. It was further confirmed that the subject property had 4 bedrooms.

26. Mr Macfarlane-Watts stated that there was some discrepancy to Mr Davies's evidence [20] as to the sequencing of occupation of the other tenants, to which it was said the move in dates went beyond the 12 months period in question. Mr Mcfarlane-Watts however, agreed with Mr Hulme that the dates were confirmed with his solicitor and no evidence had been adduced to counter Mr Davies's evidence.

27. Mr Macfarlane-Watts further accepted the letter from Bristol City Council stating that an additional licensing scheme was operative in the ward to which the subject property was situated and as such the property met the requirements for the scheme during the period 3rd March 2021-31st July 2023. It was accepted that the scheme was implemented in 2019.

28. It was accepted that the expenses incurred in relation to the letting of the property [167] brought the net rent to be £7,020.85.

29. Mr Macfarlane-Watts confirmed that he had not disclosed any evidence relating to his current financial position.

30. With regards to the tenancy deposit, Mr Macfarlane_Watts confirmed that he had taken a deposit equivalent to 6 weeks rent from Mr Davies, acknowledging that he had breached the Tenant Fees Act 2019. Mr Macfarlane-Watts also admitted that the deposit was placed into his personal account initially rather than being lodged in a tenancy deposit protection scheme, stating it was an oversight but that the deposit was registered as soon as it was identified. Notwithstanding, Mr Hulme questioned Mr Macfarlane-Watts on whether the prescribed information was provided to tenants as per the requirement. Mr Macfarlane-Watts failed to agree that it was a requirement, stating that the Tenancy Deposit Scheme supplied the information to Mr Davies.

31. It was said by Mr Macfarlane-Watts that the early return of the

tenancy deposit prior to Mr Davies moving out of the property posed a financial risk to him. He accepted that he could have inspected the property early but that Mr Davies had wanted the deposit returned early.

32. With regards to the renovation of the property, Mr Macfarlane-Watts stated that a digger had arrived on site the day of Mr Davies's departure but that it was stationary on the lawn with no work undertaken. The planning process had taken place in the year prior. Mr Hulme suggested that given that was the case, and based upon Mr Davies's photographical evidence of his bedroom, there was no financial risk to Mr Macfarlane-Watts. This suggestion was rejected by Mr Macfarlane, stating that Mr Davies's photographs were not timestamped and were taken after he had vacated the property. Mr Macfarlane-Watts explained that he and Mr Davies had a good relationship and as such he had sent Mr Davies photographs of the property during conversations. He stated that he had the right to request surety whilst Mr Davies had occupied his property and it was unorthodox for him to have requested the return of such before the end of his tenancy.

33. Mr Hulme then turned to inaccuracies within the tenancy agreement and information lodged with the tenancy deposit protection scheme [60]. Mr Macfarlane-Watts agreed that the tenancy start date and property description of 3 bedrooms were incorrect but stated that this was due to administrative shortcomings rather than any malice. Furthermore, it was accepted by Mr Macfarlane-Watts that he was not living at the property and thereby acting as a live-in landlord at the time that Mr Davies's tenancy was granted, adding that he was not living at the subject property at that time but was in temporary accommodation.

34. Mr Macfarlane-Watts confirmed that he had not provided Mr Davies with a copy of an EPC, EICR, tenancy deposit scheme information, How to Rent Handbook, gas or fire safety certificates at the start of the tenancy [21]. It was said that he had obtained gas safety certificates each year but it was accepted that this was not suitable for fire safety compliance.

35. Mr Hulme directed his questioning to the condition of the property.

36. Mr Macfarlane-Watts explained that there had been no ongoing reports of damp or water ingress but an isolated event of a roof leak to which he attended to within an hour in January 2023. Further, Mr Macfarlane-Watts stated that there had been no issue with humidity in the property and that the previous tenants had used a dehumidifier for the purpose of drying laundry only. There had never been any reports of damp or

humidity.

37. Mr Macfarlane-Watts admitted that the property did not have fire doors, extinguishers or fire blankets.

38. Mr Hulme referred Mr Macfarlane-Watts to a photograph provided by Mr Davies of a dislodged electrical plug socket [242]. Mr Macfarlane-Watts said that he did not know where the plug socket was located or when the photograph was taken. He added that he was not sure that it was from Mr Davies' bedroom, explaining that he and Mr Davies had an amicable relationship and had previously communicated frequently after Mr Davies' tenancy ended. It was said that in 2023 an electrician fitted an extractor fan to Mr Davies's bathroom and had undertaken an informal inspection of the electrics within the rest of the house, at Mr Macfarlane-Watt's request. He commented that the photograph may have been in relation to that event, to which he confirmed was not an EICR inspection.

39. Mr Hulme turned his questioning to the conduct of Mr Macfarlane-Watts. It was confirmed that Mr Macfarlane-Watts had been a landlord for 5 years, although not consistently so throughout that period. At no time was an agent appointed to manage the lettings. It was suggested by Mr Hulme that with a monthly profit in the region of £2,000 pcm, an agent could have been employed. Mr Macfarlane-Watts admitted that he could have used an agent but disputed suggested level of profit.

40. Mr Macfarlane-Watts admitted that he had offered the tenants a discount in rent if they paid in cash, stating that it was foolish but an attempt to make the process of payment easier. He confirmed that Mr Davies had declined the offer and paid rent by direct debit.

41. Mr Macfarlane-Watts was referred to a message sent to another tenant whereby he stated that the property was owned jointly with his partner and requesting the rent to be paid to the same. Mr Macfarlane-Watts explained that his partner did not own the property but helped him the administration of the property. Mr Macfarlane-Watts rejected the idea that requesting the payment of rent to a third party was suspicious, stating that it was akin to using an agent, although it was admitted that his partner was not an agent herself.

42. Mr Macfarlane-Watts was directed to his email dated 17 April 2023 by Mr Hulme, whereby he gave notice to the tenants to regain possession of the property. Mr Macfarlane-Watts stated that he did not consider the effect of the notice to be informal but the manner to which he delivered it to be such. He confirmed that he had allowed another tenant to get a pet prior to giving notice due to the tenant experiencing depression and

so he considered it would be beneficial to grant the request.

43. Mr Macfarlane-Watts admitted that the informal notice provided did not comply with the requirements of a S.21 notice following a response from the collective tenants and admitted to issuing a defective S.21 notice on the 29th April 2023, having backdated the notice period to his original email sent on the 17 April 2023. This was stated to have been in error and a lack of understanding of the process. Mr Macfarlane-Watts explained that after the tenants had informed him that the notice was defective on 1st May 2023, they mutually agreed a three and a half month notice period. Mr Davies requested to move out slightly later on 31 July 2023 to which it was said, was accepted without hesitation.

44. Mr Hulme suggested that Mr Macfarlane-Watts had no choice but to accept the dates suggested by the tenants given the Tenant Fees Act 2019 was breached (in relation to the tenancy deposit) and operating an unlicensed HMO as he would have been unable to serve a valid S.21 Notice. Mr Macfarlane-Watts denied the suggestion as he was not aware that he had breached the Tenant Fees Act 2019 or S.72(1) Housing Act 2004 at the time.

45. Mr Hulme asked Mr Macfarlane-Watts why he had told the tenants that he wouldn't move back in following his planning application. It was explained that at the time of April 2022 the costs of renovation were considered to be too high and that was the outlook at that time.

46. Mr Macfarlane-Watts explained that he had not been living in Bristol during the relevant period but had been 'temporarily crashing', including at his mother's house as he had been working between his Birmingham, London and Bristol offices and was awaiting to move back into the subject property.

47. Upon Mr Hulme's assertion that he had a staggering amount of ignorance with regards to residential lettings, Mr Macfarlane-Watts disagreed stating that he had made shortcomings as an unprofessional landlord but ultimately wanted to create a good place to live for his tenants.

48. Mr Macfarlane-Watts further disagreed with the assertion that his relationship with Mr Davies was one of compliance rather than an amicable one, stating that tenants have more rights than landlords and that he had never abused his position or considered himself to be a rogue landlord. He further stated that Mr Davies had been a great tenant but that he hadn't maintained the property as was asserted. He explained that he had asked the tenants to wax the dining room table on occasions when cups left ring marks on the wooden surface. He

had provided the wax and did not consider this to be maintaining the property.

49. Mr Macfarlane-Watt's was questioned as to whether he had prior knowledge of the roof gulley leaking to which it was said that the gulley can become blocked with leaves and heavy downpours.

50. It was said by Mr Macfarlane-Watts that the bathroom extractor fan was in full working order but that Mr Davies had requested a newer model. Mr Macfarlane-Watts purchased the fan the next day and hired an electrician to install it. Mr Macfarlane-Watts added that fixtures and fittings sometimes require replacement or maintenance. Mr Hulme asked if the same could be said for Mr Davies's query as to loft insulation to which Mr Macfarlane-Watts stated that Mr Davies was inquisitive and would converse with him about such matters. He wasn't required to do so or take responsibility for maintenance but he did not mind Mr Davies doing so as it meant that the property was cared for and well-maintained.

51. Mr Macfarlane-Watts stated that Mr Davies always paid the rent in full and on time and never damaged anything in the property. He stated that the tenant's conduct was impeccable throughout the course of the tenancy although there may have been more contact with him than he would have liked.

52. The panel questioned Mr Macfarlane-Watts.

53. Mr Macfarlane-Watts explained that he had originally been a live-in landlord and had downloaded a lodgers tenancy agreement template from the internet for use. He had not changed the tenancy agreement for new tenants after he had relocated to London in 2016 as it had not occurred to him to do so although he accepted it ought to have.

54. It was said by Mr Macfarlane-Watts that he used the website 'Spareroom' to source tenants and would message them directly to check their suitability and arrange referencing. He had never employed an agent to do so.

55. The panel directed Mr Mcfarlane-Watts to a text message exchange with one of the tenants [244] where he had referred to his partner as a co-owner of the property. Mr Macfarlane-Watts explained that she is not a co-owner and referred to the deeds but explained that he had formerly owned the property with his previous partner. When that relationship ended his new partner contributed towards buying out Mr-Macfarlane-Watts former partner but that the new partner was never added to the deeds.

56. Upon questioning as to his living arrangements, it was said that Mr Macfarlane-Watts exclusively lived in London from July 2016 until he gained a new role in Birmingham in 2022 whereby he travelled between Birmingham, Bristol and London. His post was said to have been sent both to London and to Bristol addresses, he had changed his address with some but not all contacts. He stated that he had never had sight of any letters from the council regarding changes to the licensing scheme.

57. Mr Macfarlane-Watts stated that there was a battery-operated smoke alarm outside the bathroom to the first floor. He had since learned that it ought to have been hard-wired. The alarm was tested by himself or on occasion his brother or Mr Davies.

58. With regards to the electrics, Mr Macfarlane-Watts said that he had instructed an electrician to fit two extractor fans to the first floor and that he had previously used the same electrician when the oven had short-circuited. He had requested that the electrician to check over the electrics in the whole house but accepted this was as watertight as an electrical safety report would have been. He stated that the electrician did not mention any loose faceplates or issues with sockets. If he had he would have dealt with any disrepair.

59. Mr Macfarlane-Watts stated that the photograph of the digger in the garden was taken on 31 July 2023, the same day that Mr Davies was vacating the property. The photograph of the bedroom being renovated was taking several months after Mr Davies had left the property. It was sent as Mr Macfarlane-Watts and Mr Davies had kept in touch. Mr Macfarlane-Watts added that it was certainly not the condition of the property whilst Mr Davies was living there and was part of his renovation project. He was shocked that the photograph had been included as evidence to this application.

60. Mr Macfarlane-Watts had notified Mr Davies of the presence of the digger on the 31 July 2023 [189] via Whatsapp, confirming that no works were to be undertaken to the house, nor was access needed that day but that there would be some work to a wall at the rear of the garden.

61. Mr Macfarlane-Watts confirmed that the rental income from the whole property for the relevant period equated to £24,430.

62. It was said that the offer made to the tenants to pay their rent in cash in exchange for a discount was a mistake and he had admitted to that.

63. Mr Macfarlane-Watts made his closing statement.

64. It was said by Mr Macfarlane-Watts that he was not a professional landlord but had always endeavoured to create a safe living environment. He was responsive and would remedy any issues promptly. He had previously had a good relationship with the Applicant whom had said that the property was a 'great place to live'. He stated that he had no related convictions and requested that the Tribunal consider the case of *Hallett v Parker [2022]* UKUT 165 (LC) and *Aytan v Moore & Orrs [2022]* UKUT 27 (LC*)* whereby leeway was given to a non-professional landlord.

65. Mr Davies had not provided any evidence that the property was in a bad condition, unsafe or substandard.

66. There had been no evidence adduced as to any poor conduct on behalf of Mr Macfarlane-Watts, nor that he was a rogue landlord nor that the offence was the most serious envisaged by the Act.

67. Mr Macfarlane-Watts stated that he had taken sufficient steps to inform himself of the HMO scheme since and remedied any shortcomings such as the errors related to the tenancy deposit scheme and had paid a settlement figure to Mr Davies in respect of the Tenant Fees Act.

68. With consideration to these matters, Mr Macfarlane-Watts suggested a Rent Repayment Order at 15% of the rent paid over the relevant period.

69. Mr Hulme made his closing statement.

70. Mr Hulme referred the Tribunal's Directions [17] which included a list of issues for consideration. He stated that the Tribunal ought to be satisfied beyond reasonable doubt that the offence in question had occurred, to which both parties agreed there had been. The Tribunal also had evidence before it from Bristol City Council [150] that a licence was required.

71. The Respondent had admitted that the offence was committed from 3 March 2021 – 31 July 2023 [19 & 159].

72. There had been no dispute that £7,800 rent was paid by the Applicant but deductions for utilities resulted in a net figure of £7,020.85 [167] which was agreed by Mr Davies.

73. Mr Hulme stated that all matters referred to in the Tribunal's Directions had been covered throughout the hearing. With regards to the conduct of the landlord, Mr Macfarlane-Watts had been reckless. The issue surrounding the tenancy protection and breach of the Tenant Fees Act 2019 were

serious. There had been no offence that Mr Davie's deposit had been protected in a separate account, nor did Mr Macfarlane-Watts understand what the prescribed information was.

74. The Respondent had suggested that he had been put at financial risk of returning the Applicant's deposit prior to the end of the tenancy to which the authenticity and accuracy of the statement was questioned.

75. In relation to the fire and safety issues, the Tribunal should attach more weight to Mr Davies' evidence who was honest about what he could recall. The Respondent accepts there were no fire and safety equipment save for a carbon monoxide monitor and smoke alarms. It is safer to rely on Applicant's evidence than the Respondent's speculation.

76. With regards to the electrical safety, Mr Hulme stated that the Respondent had suggested that the electrical socket may not have been from the Applicant's room. It was said that the Respondent's evidence on the matter was less clear than that of the Applicant's evidence.

77. Mr Hulme stated that the Respondent's evidence regarding the issues surrounding the roof leak, damp and humidity was inferior to the Applicant's. The very fact that Mr Davies had repainted the bathroom and requested a new extractor fan suggested that there was damp and humidity.

78. Mr Hulme suggested that Mr Macfarlane-Watts was reactive rather than proactive and that the property being older required careful maintenance.

79. It was said that Mr Macfarlane-Watts had made several references to his actions as being 'administrative shortcomings' which was alarmingly heavily leaned upon in his evidence. Mr Hulme stated that the S.21 notice to evict was wholly unlawful and that Mr Macfarlane-Watts had not taken his responsibility as a landlord seriously.

80. Mr Hulme continued, stating that a number of factors veer towards rogue landlord behaviour including the lodger tenancy, illegal deposit, no agent used, the offer to pay rent cash in hand, a third party taking rent payments on occasion and false information given to the Tenancy Deposit Scheme and within the S.21 eviction notice.

81. The conduct of the tenant, on the other hand was impeccable, going above and beyond on repairs and had turned down the offer of discounted rent for cash payments.

82. The Respondent had not given any evidence as to his financial circumstances for the Tribunal to consider.

83. Mr Hulme stated that any lack of previous offences is not a credit factor to the landlord, just something that the Tribunal may take into account. Furthermore, ignorance was no defence to the offence. The Applicant has provided evidence of the extensive consultation undertaken by the local authority prior to implementing the new licensing scheme. This entailed a 12 week consultation throughout 2018 including social media and direct mail to agents, landlords and tenants. It is unclear whether Mr Macfarlane-Watts had received notice from the local authority as his arrangements for rerouting post were loose. The submission was that the local authority's consultation was wide.

84. Mr Hulme referred to the Guidance for Local Authorities for Civil Penalties under the Housing and Planning Act 2016 [294] specifically in relation to harm caused to tenants which need not be actual harm but the potential for harm and that any punishment must outweigh the reward to be a deterrent.

85. Mr Hulme suggested that a high award should be given taking account of all factors and applying the test in *Acheampong v Roman* [2022] UKUT 239. In the same case, a license was rejected owing to fire safety issues and in that case an award of 90% was made. Where there was fire safety and deposit protection failings, an award of 70% was made.

86. It was said that the case of *Hallett v Parker [2022]* UKUT 165 (LC) is distinguishable from the facts of this case as Mr Parker had employed an agent and had applied for a licence. Mr Macfarlane-Watts had further breaches such as the tenancy deposit and S.21 notice. *Hallett v Parker* was not a helpful authority. Mr Hulme referred to the case of *Aytan v Moore & Orrs [2022]* UKUT 27 (LC*)* which had considered obiter of Hallet v Parker that smaller landlords should be encouraged to rely on 'professional property management'.

87. Mr Hulme preferred the judgement in the Wilson appeal of *Aytan v Moore & Orrs [2022] UKUT 27 (LC)* [278] whereby the landlord let only 1 property which was not immediately eligible for a HMO license owing to the requirement for fire doors and fire alarms. The Upper Tribunal awarded a Rent Repayment Order at 90% of the rent paid.

88. Mr Hulme concluded by stating that an award at 15% of the rent paid was insufficient and 90% would reflect the seriousness of the facts.

89. The Tribunal sought the views of Mr Macfarlane-Watts in

respect of the Applicant's request for reimbursement of the application and hearing fee. This was rejected as it was said that any award should cover the cost of the fees. Mr Macfarlane-Watts further stated that he had paid a significant settlement in relation to the tenancy deposit and considered that matter to be settled.

Reasons for Decision and Findings of Fact

Was the Respondent the Applicant's landlord at the time of the alleged offence?

90. The Tribunal has before it a copy of the tenancy agreement between the parties and evidence of the Applicant's rent payments. Furthermore, the Respondent accepts that he was the Applicants landlord throughout their tenancy. Accordingly, the Tribunal is satisfied that the Respondent was the Applicant's landlord at the time of the alleged offence.

Applying the criminal standard of proof, is the Tribunal satisfied beyond reasonable doubt that the alleged offence has been committed?

91. The Tribunal is satisfied that the property was a HMO during the period of the alleged offence.

92. Evidence of tenancy agreements for all occupants was not provided by the Applicant, however, the Respondent accepts that the property required a licence under Bristol City Council's additional licensing scheme. The Respondent, whilst disputing some of the dates as to the other tenants' occupation, accepted that the property was occupied by 4 tenants for the whole of the relevant period.

93. The Tribunal is satisfied that the property is situated in a ward of Bristol that was subject to the additional licensing requirements of Bristol City Council during the relevant period. Evidence of such was produced in the hearing bundle and was not challenged by the Respondent.

94. The Tribunal is satisfied that the property required, but did not have, a relevant licence during the relevant period.

95. The Tribunal is satisfied that the Respondent was a landlord having control of or managing an HMO that was required to be licensed but which was not. Evidence of such was produced in the hearing bundle and was not disputed by the Respondent.

96. The Tribunal finds that the offence of controlling and/or managing an HMO which was required to be licensed under

Part 2 of the Housing Act 2004 but was not so licensed contrary to section 72(1) of the 2004 Act is made out.

97. The Tribunal next turned its attention as to whether the Respondent had a reasonable excuse defence for his failure to licence the property.

98. The Respondent did not deny that the property was a HMO, or that it required and did not have the appropriate licence. The Respondent had explained that he had originally been an owner occupier and initially took in lodgers. In 2016 he relocated to London and let each room out to tenants. When the property was first let it did not require an additional licence and he had been unaware of the extension to Bristol City Council's licensing scheme as had not received details of the consultation. The Respondent stated that some but not all post was redirected to him in London.

99. The Tribunal considered that such grounds could not fully extinguish the Respondent's culpability. The Tribunal did recognise that Mr Macfarlane-Watts was a small landlord with a single property who had not engaged the services of a letting agent or property manager. He had also relocated from Bristol to London 2016, with the consultation period carried out early in 2018. Whilst such grounds could provide a potential defence, Mr Macfarlane-Watts' postal redirection arrangements were haphazard. The Tribunal considered that given he had not employed any professional services in relation to the letting of the property, the requirement to keep abreast with any legal requirements affecting the locality was greater. Furthermore, the consultation was publicised via social media. The Respondent had failed to demonstrate that he had taken any steps to inform himself on the law or licensing requirements. This lack of knowledge was evidenced by the Respondent's numerous other failings and apparent lack of appreciation of residential property management. The Tribunal therefore found that it could not accept the Respondent's relocation and subsequent introduction of the additional licensing scheme as a reasonable excuse to extinguish his culpability.

100. Notwithstanding such, the Tribunal found the Respondent a credible witness throughout the hearing, who provided candid responses to the Tribunal's questions. Whilst determining that the Respondent did not have a reasonable excuse for the offence, the Tribunal is satisfied that his submissions on the point go towards later mitigation.

101. Having established that an offence was committed the Tribunal finds that the offence occurred for the whole of the relevant period.

Exercising its discretion, should the Tribunal make a Rent Repayment Order?

102. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies. The Tribunal is satisfied that, in this instance, the offence has been made out and considers it is appropriate to make an order.

Determining the amount of the Rent Repayment Order

103. In determining the quantum of an Order, Section 44 of the 2016 Act requires the Tribunal to have regard to specific factors. In particular, Section 44(4) refers to the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter applies.

104. In *Acheampong v Roman* [2022] UKUT 239 the Upper Tribunal provided guidance on how to calculate the appropriate Order. In summary, the Tribunal is advised to:

    i. Ascertain the whole of the rent for the relevant period;

    ii. Subtract any element of that sum that represents payment for utilities that only benefitted the tenant;

    iii. Consider how serious the offence was and what proportion of the rent, after deductions, is a fair reflection of the seriousness of the offence;

    iv. Finally, 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) and as referred to in paragraph 64 above.

105. Taking each in turn.

106. The period of claim is 1 August 2022 to 31 July 2023. The total rent paid by the Applicant throughout this period was £7,800, inclusive of council tax, internet and water.

107. The Respondent has evidenced the expenses relating to the utility bills and the same at £779.15 which has been accepted by the Applicant. The net rent therefore equates to £7,020.85.

108. The Tribunal is next required to decide how serious the 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 when compared to other examples of the

same type of offence. From there, the Tribunal will consider what proportion of the rent is a fair reflection of the seriousness of this offence.

109. Turning to the former of these two points the Tribunal reminded itself of the guidance provided by the Upper Tribunal in *Newell v Abbott & Okrojek* [2024] UKUT 181 (LC), where, at paragraph 38, the Upper Tribunal referenced previous Tribunal guidance handed down within *Acheampong* and in *Hallet v Parker* [2022] UKUT 165 (LC) commenting that, in a list of housing offences which includes the use of violence to secure entry, unlawful eviction and failure to comply with an improvement notice, a licensing offence is relatively of lesser seriousness.

110. In *Daff v Gyalui* [2023] UKUT 134 (LC) the Upper Tribunal went further and, at paragraph 48 and 49 of the decision, the Deputy Chamber President attempted to rank the housing offences by reference to their general seriousness. At paragraph 49, Judge Martin Rodger KC refers to the offence of controlling or managing an unlicensed HMO as *"generally of a less serious type. That can be seen by the penalties prescribed for those offences which in each case involve a fine rather than a custodial sentence."* Judge Rodger KC continues *"Although generally these are lesser offences, there will of course be more or less serious examples within each category."* The Tribunal reminded itself that circumstances pertaining to a licensing offence may vary significantly.

111. Turning to the circumstances of this case, the Respondent says that he owned only the subject property which was his former residence before relocating to London. The Respondent states within his witness statement that he had rented a property himself in London. He had been unaware that Bristol City Council had extended its HMO licensing scheme and had failed to employ the service of a letting agent or property manager.

112. The Tribunal does not find the Respondents omission to obtain the required licence to have been a deliberate act. However, it is incumbent on any landlord to keep abreast of statutory and regulatory requirements. In omitting to obtain the necessary HMO licence the Respondent failed to keep abreast of such requirements. The Tribunal accepts Mr Macfarlane-Watts' evidence that the oversight was inadvertent, although the Tribunal finds that there was little impetus to inform himself of statutory and regulatory requirements relating to residential lettings and there was a clear preference to deal with matters in an informal manner.

113. The Applicant alleges that the property fell short of fire safety requirements and made various assertions throughout the

hearing and the hearing bundle as to the condition of the property being 'tired' and requiring maintenance. The Applicant's witness statement included a statement opining that the property would not be eligible for a HMO license had one been applied for.

114. The Respondent had admitted that there were no fire doors, fire blankets or extinguishers in the property. The Applicant could only recall one smoke alarm to the ground floor whilst the Respondent believed that there may have been two alarms but could not be sure. He could recall one smoke alarm outside the bathroom to the first floor, although it was battery operated and not hard-wired which he believed may be a requirement for licensing.

115. The Tribunal finds that the property had insufficient fire safety protection likely to meet the HMO licensing requirements.

116. With regards to the condition of the property, the Applicant had provided photographic evidence only of water ingress to his roof following a roof leak and loose electric socket purported to have been situated within his room. The Respondent did not challenge the Applicant's evidence regarding the roof leak but had explained that it was a single occurrence owing to a blocked roof valley. It was said that there were no further incidences reported to him. This was unchallenged by the Applicant. The Tribunal finds that the roof leak was a single incident with any dampness resulting from the event rather than the property suffering with damp as on ongoing issue.

117. With regards to the electrical socket, the Respondent was unaware of the issue and noted that the photograph was not timestamped and queried the location of the socket.

118. The Applicant's witness statement referred to a broken pane of glass falling from the porch. No evidence was advanced of this item of disrepair although the event was undisputed by the Respondent. The Applicant made general submissions that the property was not adequately maintained by the Respondent referring to acts of maintenance that he had carried out himself to include re-staining a timber surface and repainting his bathroom and cleaning the tiles. The Applicant had also arranged for the replacement of the extractor fans in his bathroom and made enquiries as to the loft insulation. The Respondent did not challenge these such submissions, although clarified that the tenants were not requested to re-stain a timber surface but to rewax a wooden table when water-rings appeared from the placement of cups on the surface. He did not see this particular act as maintenance of the property. Furthermore, the Respondent had deemed the Applicant to have been inquisitive as to the property and an engaged in

communication with him frequently, although this was not an obligation on the Applicant's part.

119. The Tribunal notes that the Applicant submitted limited photographic evidence of the property with none showing the overall condition of the property. The Tribunal finds that the Applicant's statement that the property was 'well-loved' but tired to be more accurate than later assertions in his second witness statement that the property required renovation to become habitable. Whilst the water ingress resulting from the blocked roof valley was clearly undesirable and unpleasant for the Applicant, the Tribunal finds that it was a single event over the course of the Applicant's occupancy which was dealt with promptly by the Respondent. As undesirable as the matter was, the Tribunal does not find it to be tantamount to the property being in poor condition. Indeed, the Applicant had stated within his communication to the Respondent that the property had been a 'great place to live'. The Tribunal find that the events outlined by the tenant were insufficient to consider the condition of the property to be poor.

120. With regards to the loose electrical socket, the Applicant did not date stamp the photograph, nor was there a wider view of the image to show its location. The Tribunal found this to be insufficient evidence, particularly as the Applicant had included photographs within the hearing bundle of the property during renovation works after he had vacated the property. Notwithstanding, the Respondent admits that he had not commissioned an EICR and as such the Tribunal finds that the electrics for the property had not been appropriately assessed.

121. With regards to the digger that was present at the property, both parties agree that it had arrived on 31 July 2023. The Applicant did not challenge the Respondent's evidence that access inside the house was not required. Notwithstanding, the Tribunal finds that insufficient notice was provided to the Applicant as to its arrival and stationing in the rear garden. With regards to the photographs of the renovation works, these too were not timestamped with the Applicant not disputing that they were taken after his tenancy had ended. The Tribunal finds that such photographs are post Mr Davies' tenancy and do not assist in determining the condition of the property during his occupancy. Further, the Tribunal finds that the renovation works were not evidence that the property was in poor condition previously.

122. The Tribunal found that the parties had an amicable relationship. Whilst the Tribunal accepted the Applicant's point that a power imbalance existed, the two parties had remained in contact beyond the end of Mr Davies' tenancy.

123. The Respondent accepted shortcomings in relation to compliance with statutory requirements and his obligations as a landlord. The Tribunal therefore found that the Respondent had failed to lodge the tenancy deposit in a suitable protection scheme, errors had been made relating to the number of bedrooms once the Applicant had requested he lodge the deposit, the Respondent had taken a deposit equivalent to six weeks rent in contravention to the Tenant Fees Act 2019, prescribed information was not provided to the tenant and an incorrect tenancy agreement was issued containing errors. In relation to the attempted eviction, the Tribunal found that an insufficient notice period and defective S.21 notice was issued to the tenants although this could not be deemed as an unlawful eviction as a defective notice invalidated the process with the parties mutually agreeing an acceptable date to vacate. The Tribunal noted Mr Hulme's submission that the Respondent had no choice but to accept the tenants' suggested dates to end their tenancies due to the licensing offence and defective notice however, found that the Respondent's response indicated a genuine lack of knowledge as to his breaches.

124. Turning to the seriousness of the offence, the Tribunal considered that it was low when compared to other types of offence in respect of which a rent repayment order can be made although when compared to other examples of the same type of offence, the Tribunal considered it to be mid-high range owing to short-comings in relation to fire safety. Notwithstanding, the Tribunal acknowledged that the Respondent had fitted a smoke detector, a carbon monoxide monitor and commissioned a gas safety certificate in 2022 and as such had not completely overlooked all safety requirements. The Tribunal considered there to be somewhat of a mitigating factor owing to the introduction of additional licensing in 2019, a time when the Respondent was no longer living in Bristol. The Tribunal finds that the Respondent had made an inadvertent error in failing to keep himself informed of licensing requirements or employing professional assistance.

125. In consideration of such matters, the Tribunal had regard to the legal authorities advanced by the parties. The Tribunal agreed to some extent with Mr Hulme that the case of *Hallett v Parker [2022]* UKUT 165 could be distinguished on the facts, although as could the case of *Aytan v Moore & Orrs [2022] UKUT 27 (LC)*. The *Hallett* case had also concerned a small landlord with a single property who had moved abroad and as such was unaware of the introduction of an additional licensing scheme. Mr Hallett, had however, employed a letting agent and had previously rented the property as a single household. The Respondent to this application had not used a letting agent or property manager, had breached several other statutory requirements and there were fire safety issues which may have

made the property ineligible for a licence. The offence in these circumstances is therefore more serious than in the case of *Hallet v Parker*.

126. With regards to the Wilson appeal - *Aytan v Moore & Orrs [2022]* UKUT 27 (LC), the landlord like Mr Macfarlane-Watts was also a small, single property landlord who had let his former residence. The distinction to this case was that Mr Wilson was a member of the Residential Landlords Association and had been apparently unaware of the introduction of the Licensing of Houses of Multiple Occupation (Prescribed Description) order 2018 which had national and widespread publication. Furthermore, fire safety issues included a lack of alarms. Considering the mitigating factor of the consultation and introduction of the additional licensing scheme by Bristol City Council whilst Mr Macfarlane-Watts was residing in London, the Tribunal considered the offence within the Wilson appeal to be more serious than the circumstances of the subject application.

127. With this in mind, the Tribunal considered a starting point of 40% of the proportion of the rent was appropriate.

128. Finally, turning to those factors set out in s.44(4) of the 2016 Act the Tribunal finds that the tenant's conduct was impeccable throughout his occupation of the property. The Tribunal therefore sees no reason to make a deduction in respect of such.

129. In terms of the landlord's conduct, the Tribunal considered that the issue was multi-faceted. On the one hand, his relationship with the Applicant was amicable with a clear intention for good relations being had. Mr Macfarlane-Watts had acted quickly to rectify the roof leak. Conversely, the Respondent's breaches in relation to the Housing Act 2004 and the Tenant Fees Act 2019 in relation to the tenancy deposit (lack of protection and amount held), provision of prescribed information and the defective eviction notice cannot be ignored and are very serious shortcomings relating to the conduct of the Respondent.

130. The Tribunal did consider that the Respondent had been candid and co-operative throughout the proceedings with the dispute limited to the level of quantum.

131. In consideration of such, the Tribunal sees fit to make an upward adjustment to its starting point.

132. In regard to his financial circumstances, Mr Macfarlane-Watts provided limited evidence in the hearing bundle that the property was mortgaged. No further information was forthcoming and neither was any degree of hardship pleaded. The Tribunal finds no adjustment for the financial

circumstances of the landlord is warranted.

133. There was no evidence before the Tribunal that the Respondent had at any time been convicted of a relevant offence to which Part 2 Chapter 4 of the Housing and Planning Act 2016 applies. The Tribunal therefore makes no deduction of such.

134. The Tribunal finally, reminded itself of the parties submissions as to the level of quantum. Mr Macfarlane-Watts suggestion of a Rent Repayment Order of 15% was wholly unrealistic given the numerous breaches of statutory requirements and fire safety concerns. The Tribunal reminded itself that a Rent Repayment Order of 25% was awarded in the Hallett case, to which the Tribunal considered the seriousness of this offence to be greater.

135. Mr Hulme had suggested a Rent Repayment Order of 90%, relying upon case law and a reference to civil penalty guidance to local authorities. The Tribunal preferred to rely on legal authorities, whilst applying the facts of the case. The Tribunal considered the level of award suggested by Mr Hulme to be at the upper end of seriousness of the offence.

136. Whilst the Tribunal considers the fire safety issues and breaches of statutory requirements very seriously, there is a degree of mitigation owing to the consultation and eventual introduction of the additional licensing scheme at a time when Mr Macfarlane-Watts was residing in London and there had been some attempt to ensure the safety of the tenants such as the gas safety certificate, carbon monoxide monitor and smoke alarm. Furthermore, the Applicant and Respondent had an amicable relationship.

137. On that basis the Tribunal determines that an appropriate order is 50% of the rent paid and makes an order for £3,510 (Three thousand, five hundred and ten pounds) (rounded) to be payable within 28 days of the date of this decision.

138. The Tribunal further orders that the Respondent reimburses the Applicants the £110 application fee and £220 hearing fee within 28 days of the date of this decision.

RIGHTS OF APPEAL

1.A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2.The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3.If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.