



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

Case reference : LON/00BG/HMF/2024/0167

Property : 42 Mansford Street, London E2. 7AJ

Applicants : Mr Ricardo Marcelino, Mr. Juan
Ordonez, Mr. Felipe Da Costa
Mr. Muhammed Williams

Representative : Environmental Health and Trading
Standards - LBTH.

Respondent : Ms. Natalia Walshe Garcia

Representative : Mr John Walsh
Application for a rent repayment order
by tenant Sections 40, 41, 43, & 44 of the
Housing and Planning Act 2016

Type of application : Judge H Carr

Tribunal members : Mr Appollo Fonka FCIEH

**Date and venue of
hearing** : 11th April 2025

Date of decision : 14th April 2025 **amended on 22nd April
2025**

AMENDED DECISION

We exercise our powers under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct the clerical mistake made at paragraph 43 of our Decision dated 14th April 2025. Our amendments are made in bold red type. We have corrected our original Decision because of a typographical error.

Decisions of the tribunal

- (1) The tribunal determines to make Rent Repayment Orders as follows:
 - a. Mr Ordonez - £4862
 - b. Mr Marcelino - £6240
 - c. Mr Da Costa - £4680
- (2) The Rent Repayment Order must be paid within 28 days of the issue of this decision.
- (3) The tribunal determines that the respondent reimburse the applicants for their application and hearing fees, totalling £300.
- (4) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants, Ricardo Marcelino, Juan Ordonez and Felipe Da Costa, seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO) in relation to 167B Gunnersbury Lane, London W3 8LJ, the property.
2. The applicants allege that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s.72(1) of the Housing Act 2004.

3. The respondent is Ms Garcia, the registered owner of the property and who is named on the tenancy agreements as the landlord.
4. The applicants are seeking to recover the following sums:
 - (i) Mr. Ordonez - £7,480 for the period 1 December 2022 to 30 November 2023.
 - (ii) Mr. Marcelino - £9,600 for the period 1 December 2022 to 30 November 2023.
 - (iii) Mr. Da Costa - £7,200 for the period from 1 March 2023 to 30 November 2023
5. The application was made and received on 26 April 2024. Directions were issued in this matter on 11th July 2024 and were amended 20th January 2025. Per Direction 10 of the Amended Directions, the Respondent was to provide the Tribunal and Applicant with a bundle of all relevant documents for use in the determination of the application by 17th January 2025.

The hearing

6. The applicants appeared at the hearing and were represented by Mr. Muhammed Williams of the London Borough of Tower Hamlets.
7. The respondent has not complied with directions and has failed to serve a hearing bundle. A notice of intention to debar the respondent was issued on 17th March 2025. There was no response to that notice of intention and an order debarring the respondent was issued on 3rd April 2025.
8. The respondent's father Mr John Walsh attended the hearing. The respondent was in the waiting room but chose not to attend. Mr Walsh said that his daughter had relied on the solicitor she instructed to submit the hearing bundle. He said that his daughter had contacted the solicitor on several occasions and the solicitor said that he had the proceedings in hand.
9. There was no request for an adjournment from the respondent. Even if such a request had been made the tribunal would not have granted an adjournment. The hearing had already been adjourned once previously on 20th January 2025 because of the solicitor's non-attendance; moreover the respondent had failed to respond to the notice of intention to debar.

10. The hearing proceeded in the presence of Mr Walsh and the tribunal allowed him to ask questions of the applicants but not to present evidence.

The property

11. The property is a three-bedroom maisonette comprising a living room, kitchen and a small toilet, with hand basin on the ground floor of the property. The first floor comprises two double rooms and a single room and a bathroom.

The issues

12. The issues that the tribunal must determine are;

- (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
- (ii) Does the respondent have a 'reasonable excuse' defence?
- (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenant?
- (iv) Should the tribunal refund the applicant's application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

The Applicants' evidence

13. The property is situated within an additional licensing area as designated by the London Borough of Tower Hamlets. The additional licensing scheme came into force on 1st April 2019 and ceased to have effect on 31st March 2024. The scheme requires all HMOs with 3 or more occupants living in two or more households to be licensed.
14. The additional licensing scheme was implemented borough wide other than in those wards covered by the borough's Selective licensing scheme, i.e. the wards of Spitalfields and Banglatown, Weavers and Whitechapel.
15. The Applicants provided a copy of the Notice of Designation of Areas for Additional Licensing for Houses and Flats in Multiple Occupation at page 86 of the bundle and a map of the areas covered by the designation at page 90 of the bundle.
16. The property met all the criteria to be licensed under the designation and does not qualify for any licensing exemptions.
17. The applicants say that during the period of their claim the property was occupied by at least three persons living in two or more separate households and occupying the property as their main residence. Their occupation of the property constituted the only use of the accommodation.
18. Mr Ordonez gave evidence that the respondent had been operating the premises as an HMO since April 2019.
19. The applicants said that during their period of occupation the property was occupied as follows
 - (i) Mr Ordonez has been residing in the property for the last nine years
 - (ii) Mr Marcelino moved in in November 2022
 - (iii) Mr Da Costa moved in in March 2023.
20. The applicants produced two joint AST agreements. The first is dated 1st December 2022 and has the names of Mr Ordonez, Mr Marcelino and Mr Mito Tamari listed as tenants. The AST was for a fixed term of six months at a monthly rent of £2070.

21. The second AST is dated 1st March 2023 and is in the names of the three Applicants. The AST is for a fixed term of six months and at a monthly rent of £2250.
22. The applicants were unrelated to any of the other occupiers and were not in a relationship with any of the other occupiers.
23. Ms Shazmin Rahim of the London Borough of Tower Hamlets provided an email stating that there was no additional licence for the premises. Mr Williams could not locate an HMO licence for the premises but in order to double check the licensing status, Mr Williams referred the matter to Mr Leighton Jones a Housing Standards Officer with the Additional Licensing Scheme.
24. Mr Jones provided an email that the Council had received an application for a licence on 1st December 2023.
25. The application to the tribunal was made on 26th April 2024.

The Respondent's evidence

26. The respondent failed to provide a hearing bundle and therefore provided no evidence to the tribunal.

The decision of the tribunal

The tribunal determines that the respondent has committed the alleged offence.

The reasons for the decision of the tribunal

27. The tribunal relies on the evidence from the applicants and the information provided by the local authority. The respondent has provided no evidence.

Does the Respondent have a 'reasonable excuse' defence?

28. The respondent has failed to provide any evidence and therefore there is no evidence upon which a reasonable excuse defence could be based.

Should the tribunal make an award of a RRO? If so, for what amount?

29. The applicants asked the tribunal to exercise its discretion and make an RRO. The applicants provided substantial evidence of the importance of licensing in the LB of Tower Hamlets.

30. There was no evidence provided to the tribunal to suggest that it should not make such an order.

The decision of the tribunal

31. The tribunal determines to exercise its discretion to make a rent repayment order.

The reasons for the decision of the tribunal

32. The tribunal considered the evidence and determined that it was appropriate for it to exercise its discretion and make a rent repayment order because there had been a clear breach of the law.

The maximum amount of the RROs which can be ordered

33. Mr Ordonez paid £570 per calendar month for his room for the period of 1st December 2022 until 31st March 2023 and £650 from 1st April 2024 until 30th November 2023. The maximum RRO which can be ordered for Mr Ordonez is therefore 4 x £570 = plus 8 x £650 which totals £7480
34. Mr Marcelino paid £800 per calendar month for the period of 1st December 2022 to 30th November 2023. The maximum RRO which can be ordered for Mr Marcelino is therefore 12 x £800 which totals £9600.
35. Mr Da Costa paid £800 per calendar month for the period of 1st March 2023 to 30th November 2023 which totals £7200.
36. The applicants provided evidence of the payment of the rent. Mr Ordonez provided his bank statement at page 46 of the bundle; Mr Marcelino provided his bank statement at page 47 of the bundle and Mr Da Costa provided at page 49 of the bundle.
37. The tribunal found that the maximum RRO it could award was
- (i) Mr Ordonez - £7480
 - (ii) Mr Marcelino - £9600
 - (iii) Mr Da Costa- £7200

Other arguments concerning the amount of the RRO to be awarded.

Utilities

38. The tenancy agreement provides that the applicants are responsible for all outgoing on the property. It was confirmed by the applicants that they paid for the utilities themselves. Therefore, there is no basis for any deduction from the amount of the RRO awarded for utilities.

Conduct of the Applicants

39. The applicants argue that their conduct has been good. They have paid their rent on time and treated the property appropriately. As the landlord lived in Surrey they had taken care of the property, waiting in for workmen etc.

Conduct of the Respondent

40. The applicants argue that the conduct of the respondent had been poor
(i) There is evidence that she has been running an HMO at the property without an additional licence since April 2019

- (ii) There was evidence of disrepair and neglect

- (a) The ceiling of the bathroom was covered with black mould which was not fixed until around March or April 2023

- (b) There was water coming in through Mr Marcelino's bedroom window

- (c) The boiler to the property stopped working in the final weeks of the tenancy which meant that there was no heating or hot water in the property

- (d) The respondent refused to deal with an infestation of bedbugs requiring Mr Ordonez to bear the cost of fumigating the room himself

- (iii) The respondent neglected property maintenance for instance

- (a) The window in the living room did not close so it was always open costing more in heating bills

- (b) The electrical switchboard frequently tripped although it was repaired prior to the termination of the tenancy.

- (c) The chair provided for Mr Marcelino to work from home was in disrepair
- (d) The kitchen sink would often clog up and the emergency plumber called by the tenants said the problem was due to poor construction.
- (iv) Breached local authority HMO standards for instance failed to provide all required fire alarms and only the front door was a fire door. The kitchen was without a door during the period of the tenancy.
- (v) The Respondent was manipulative with the tenants and aggressive with them in the final months of the tenancy, accusing the tenants of damaging the flat

and threatening to make significant deductions from the deposit. She was also upset when the tenants informed her that they did not know how to release pressure from radiators to make the boiler function well.
- (vi) The Respondent entered the flat without prior consent from the tenants on three different occasions when the tenants were not present. The Respondent took photographs of the interior of the property and threatened to withhold monies from the deposit. This was in the last month of the tenancy.
- (vii) The Respondent made unreasonable demands, for instance saying that the tenants were not allowed to dry clothes in the living room when there was no practical alternative for drying clothes. She told the tenants that they had to dry the shower after use.

Financial circumstances of the Respondent

41. The respondent has provided no evidence of her financial circumstances.

Submissions of the Applicants

42. The Applicants made no submissions as to the appropriate level of the RRO. Mr Williams did however argue that it should be substantial because of the important role that licensing plays in guaranteeing standards in the private rented sector.

The decision of the tribunal

43. The tribunal determines to award a RRO at 65% of the maximum RRO payable. This means that the applicants will be awarded RROs as follows:

- (i) Mr Ordonez - £7480 x 65% = £4862
- (ii) Mr ~~Mareline~~ Da Costa - £8800 x 65% = £4680
- (iii) Mr Da Costa Marcelino - £9600 x 65% = £6240

The reasons for the decision of the tribunal

44. There is extensive case law on how the tribunal should reach a decision on quantum of a rent repayment order. In reaching its decision in this case the tribunal has been guided by the very helpful review of the decisions in the Upper Tribunal decision *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC).

45. *Acheampong v Roman* (2022) UKUT 239 (LC) established a four-stage approach which the tribunal must adopt when assessing the amount of any order. The tribunal in this case has already taken the first two steps that the authorities require by ascertaining the whole of the rent for the relevant period and subtracting any element of that sum that represents payment for utilities that only benefitted the tenant.

46. Next the tribunal is required to consider the seriousness of the offence in comparison with the other housing offences for which a rent repayment order may be made. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.

47. However, although generally the failure to licence is a less serious offence, the Upper Tribunal recognises that even within the category of a less serious offence, there may be more serious examples.

48. In this case the tribunal considered that the case is a moderately serious example of one of the less serious offences in which a rent repayment order may be made.

49. The reasons for this are as follows:

- (i) Whilst there has been a failure to licence the property, the property appears to have been in reasonable

condition and the applicants accepted that although their relationship with the respondent broke down in the last month of the tenancy, prior to that she had been reasonably responsive to their requests for repairs.

(ii) The tribunal does not consider that failure of the respondent to take responsibility for the bed bugs or her failure to be helpful when the boiler broke down to be particularly serious breaches of her responsibilities.

(iii) It notes that the respondent refurbished the bathroom as part of responding to the problem of mould.

50. On the other hand, there were some serious breaches of fire regulations as the property did not have a full complement of fire doors, or smoke alarms and the door to the kitchen was missing. This, along with the length of the breach, discussed below, is a significant element of the tribunal's decision that the breach is a moderately serious example of one of the less serious offences for which an RRO is payable.

51. The tribunal decided not to reduce the amount payable because of the conduct of the tenants. There was no evidence to support any allegation that the tenants' conduct was anything but good. The tribunal accepted their evidence that they had each paid their rent regularly and had behaved in a responsible manner as regards the property.

52. The tribunal has decided to make a moderate increase in the amount payable because of the conduct of the landlord. Whilst the landlord has not properly engaged with proceedings, this appears at least in part to be due to the behaviour of her solicitor.

53. On the other hand, the tribunal has taken into account the fact that the breach in the law has continued since 2019, and it is beholden on a landlord to get competent legal advice. The length of the breach is an important factor in the tribunal's decision that the breach of licensing requirements is a moderately serious example of a breach. It notes that the landlord obtained advice when one of the tenants gave notice, such that she treated the remaining tenants as also having terminated their agreement. She should have taken the same sort of quality advice about the requirements for licensing.

54. Mr Walsh told the tribunal that the respondent has now engaged property managers who have dealt with the fire precautions etc and advised her properly on the need for a licence.

55. At this stage the tribunal considers that a RRO of 65% of the maximum RRO is appropriate and does not consider that any further deductions should be made.
56. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.

Name: Judge H Carr **Date:** 14 April 2025

amended 22nd 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 Firsttier 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).