FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/HMK/2024/0040**
Property	**:**	**61 Roland Road, Birmingham B19 1RT**
Applicant	**:**	**Mr Abul Hossain, who appeared as a litigant in person assisted by an interpreter, Mr Khayrul Islam**
Respondent	**:**	**Mr Mohamed Eklas Miah, who appeared represented by Mr Yasser Sarwar, solicitor**
Application	**:**	**Application for a rent repayment order by tenant Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Hearing	**:**	**Centre City Birmingham, 10th April 2025**
Tribunal Members	**:**	**Judge Anthony Verduyn** **Mr D.A. Lavender** **Judge Cynyr Rhys**
Date of Decision	**:**	**8 May 2025**

DECISION

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1. The Tribunal makes a rent repayment Order against Mr Mohamed Eklas Miah in the sum of £6,300 to be paid to the Applicant by 5pm on 28th May 2025.

REASONS

2. Mr Abul Hossain ("**the Applicant**"), is the occupier of 61 Roland Road, Birmingham B19 1RT ("**the Property**"). The Property comprises a house, but is let only as to part, with his landlord, Mr Mohamed Eklas Miah ("**the Respondent**"), retaining possession of the front room (which has its own lock) and accessed using the front door to the house (for which he has a key). The Respondent uses the front room for storage, along with cellars. The Respondent has also retained sheds in the rear garden, also for storage. Although, the Respondent is said to make free with his use of the front door, there is no real issue that the remainder of the Property is in the exclusive use of the Applicant. His rooms are ground floor sitting or living room, kitchen and bathroom (no shower), and first floor four bedrooms and WC. The Applicant lives at the Property with his wife, Mrs Shahin Akther ("**the Applicant's wife**").

3. Notwithstanding that the Respondent in his witness statement confirmed that the Applicant was the Respondent's "tenant" and occupied the Property "pursuant to an assured shorthold tenancy", a preliminary point was taken by the Respondent's solicitor, who contended that the occupation of the Property by the Applicant did not amount to a tenancy, but a mere licence. This was based on the Property being in part retained by the Respondent, and his free use of the front door to access the front room (at least until recently stopped through protest by the Applicant, who complains at being harassed by the Respondent). There was also the Respondent's retention of garden sheds, when the rest of the garden was used by the Applicant. Nothing was put in evidence about use of cellars.

4. The Tribunal had sight of the "Tenancy Agreement" made between the parties and the Applicant's wife. It is dated 1st November 2020, which the parties agree was the start date for relevant occupation of the Property. This distinguishes the parts let and retained. It describes a "rent" of £700 per month, payable on the first, and a like sum paid as a deposit. The "tenant" was stated to be responsible for Council Tax and utilities and there was provision against anti-social behaviour.

5. The Tribunal finds that this was an Assured Shorthold Tenancy of part of the Property and not a licence. There is no suggestion that the Respondent had any right to enter the parts being let to the Applicant and, consequently, the Applicant and his wife were in exclusive possession of those parts at a rent for a monthly term (key features of a tenancy). Insofar as there was a right of entry, this was plainly for the purposes of accessing the retained parts. This was in the manner of a right of way and did not diminish the possession even of any hallway or garden in the hands of the Applicant and his wife as tenants. There was nothing sufficient to justify disregarding the clear words of the "Tenancy Agreement", including its title and reference to "rent", "landlord" and "tenant". Indeed, although the Tenancy Agreement was plainly drafted without the assistance of a lawyer, it was clearly intended to reflect a formal arrangement between the parties to it.

6. In any event, the preliminary point was directed at a contention that a Rent Repayment Order cannot be made in respect of a residential, periodic licence. This cannot be the case because Section 56 of the Housing and Planning Act 2016, under Part 2 of which there is the statutory scheme for Rent Repayment Orders, makes clear that (in Part 2) "letting includes the grant of a licence" and "tenancy includes a licence". Whereas "rent" is not expressly stated to include fees payable under a licence, this must logically follow (and is all the stronger as a contention when the agreement in question refers in terms to "rent" being paid). When these observations were made by the Tribunal at the hearing, the issue was not pressed further or developed on behalf of the Respondent.

7. The core facts are not in dispute concerning the licensing of the Property.

8. The Respondent is the freeholder of the Property.

9. With effect from 5th June 2023, Birmingham City Council ("**the Council**") introduced Selective Licencing Areas, under Part 3 of the Housing Act 2004 and approved by the Secretary of State for Levelling up, Housing and Communities, and which included Roland Road as part of the Lozells ward. The deadline for landlords to apply for a licence expired on 4th September 2023. The Respondent made no such application by that deadline. Correspondence before the Tribunal from the Council shows that an application for a licence was "duly made" under Section 87(2) of the Housing Act 2004 by the Respondent on 17th October 2024, which is significantly after the Applicant made application to this Tribunal on 23rd August 2024 for the Rent Repayment Order.

10. On 23rd August 2024, the Applicant applied to this Tribunal for a Rent Repayment Order asserting unlawful letting, essentially for want of a licence, for the preceding calendar year. Directions were given on 27th August 2024. No issue has been raised with compliance with directions. The Respondent produced a witness statement in answer to the application and both sides provided bundles of documents.

11. The contents of the bundles demonstrate a *prima facie* offence under Section 95(1) of the Housing Act 2004 ("**the 2004 Act**"), set out in the appendix, in that the Respondent had control of a house which required a licence under Part 3, and particularly Section 85(1), of the 2004 Act, and it did not have a licence at the material time. An offence under Section 95(1) of the 2004 Act engages the Rent Repayment Order provisions in Chapter 4 of the Housing and Planning Act 2016 ("**the 2016 Act**"), specifically Section 40(3) of the 2016 Act (also appended). This is not a case where a Respondent has been convicted of an offence.

12. Under Section 95(4) of the 2004 Act it is defence to an offence under Section 95(1) of the 2004 Act if the landlord had a "reasonable excuse for having control or managing the house in the circumstances". Whilst no-where was it suggested by or on behalf of the Respondent in terms that he had such a "reasonable excuse", the Tribunal had regard to evidence from him that tended in that direction.

13. In his witness statement, the Respondent referred to the "delay" in applying for a licence as being explained in a Statutory Declaration dated 7th October 2024 (and which responded to an undisclosed letter dated 9th August 2024 from the Council and/or a "Notice of Intention"). He confirmed he can read and write in English, but denied understanding the Notice. He states he had never heard of a selective licence and the Property was his only rental (although in evidence to the Tribunal he accepted his wife rented out a property). He refers to health conditions: "Type 2 diabetes … high blood pressure, high cholesterol and … eye sight issues. I also have a pacemaker installed and am deaf in both ears." He suggests that these prevent his capable management of his affairs, apparently because medication makes him "drowsy and forgetful", but he had recently taken advice from his children and a solicitor, so he had applied for a licence latterly.

14. The Tribunal has no hesitation in rejecting ignorance of the licensing scheme as a defence. There is no suggestion that the scheme was not properly publicised. It was not

for the Council to identify and notify landlords individually, nor would such a requirement be practicable. In the absence of any evidence justifying ignorance of the scheme, ignorance would not count as a defence to the statutory offence. Ignorance, without more, is no reasonable excuse. The only question is whether ill-health is relevant, but, in this case, there is no sufficient evidence connecting ill-health with ignorance. It is not suggested that something identifiable was overlooked through (for example) deafness or poor eyesight. Rather the suggestion is some sort of medically induced inattention to the Respondent's affairs in general, but this does not stand up to scrutiny when considering the advice expressly available to the Respondent from family and lawyers. Amateurish business as a landlord is no reasonable excuse.

15. The suggestion of a reasonable excuse, had it been advanced on behalf of the Respondent with any vigour, would have failed.

16. The Tribunal is accordingly satisfied beyond reasonable doubt that the offence under Section 95(1) has been proven against the Respondent; that is to say, the Respondent as landlord had control of or managed the Property which was required to be licensed under s.85(1) of the 2016 Act but which was not so licensed.

17. In determining the amount of any Rent Repayment Order (if any), the Tribunal has regard to the stages set out in Acheampong v Roman [2022] UKUT 239 (LC), namely:
    1. Ascertaining the whole of the rent for the relevant period;
    2. Subtracting any element of that sum that represents payment for utilities that only benefit the tenant;
    3. Considering seriousness of the proven offence, both compared to other types of offences for which an Order can be made and examples of the same type of offence. What proportion of the rent (after deductions as above) is a fair reflection of the seriousness of the offence? This is the starting point. It is also the default penalty in the absence of any other factors, but may be higher or lower in light of the final step;
    4. Considering deductions or additions in light of factors set out in Section 44(4) of the 2016 Act, namely conduct of landlord and tenant, financial circumstances of landlord and any previous convictions of the landlord in relation to offences set out in section 40.

18. The rent paid in the 12 months prior to the application to the Tribunal is not in dispute. There were due 12 instalments of £700, totalling £8,400. The Applicant has disclosed his personal current account statements detailing payment in full, save for £650 being

paid in November 2023 and £640 in December 2023, hence an apparent shortfall of £110. It was not disputed in evidence from the Applicant and the Respondent, heard by the Tribunal, that these underpayments reflected sums that the Applicant had paid directly to contractors in respect of issues arising from the condition of the Property (further set out below), especially the WC leaking and associated rear garden flooding from its drain. It was not suggested by or on behalf of the Respondent that the £110 amounted to arrears, or sums were owing to the Respondent from the relevant period, but that rent was effectively redirected in respect of some works required from the Respondent in respect of the care of the Property. No sum in respect of rent appears to have been paid by the Applicant's wife, notwithstanding that she signed the Tenancy Agreement. The Tribunal finds that the full sum of £8,400 is relevant to any Rent Repayment Order accordingly.

19. Utilities were paid for by the Applicant and so are not deducted.

20. In respect of the seriousness of the offence, the Tribunal has considered the case of Newell v Abbott [2024] UKUT 181 (LC). This was also a case of a landlord being ignorant of the licensing requirements and controlling or managing a property without a licence. The Upper Tribunal characterised an offence of this sort as "one of the less serious offences in respect of which a rent repayment order can be made" (paragraph [39]). The key issue in that case was the long duration of controlling or managing the property without a licence, justifying an award of 60% of the rent for the relevant period. It was observed that a much shorter duration of offending, as in the current case, would warrant 50%.

21. In this case, the licence was not applied for until after these proceedings had been issued, and even then not immediately, which would justify a starting point at or about 60% of the rent for the relevant period.

22. Three further factors impinge on the seriousness of the offence, and these are set out in Section 44(4) of 2016 Act: (a) the conduct of the landlord and the tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this chapter of the 2016 Act applies. No evidence was presented regarding the financial circumstances of the Respondent as landlord, nor is there any evidence of any relevant conviction.

23. In respect of conduct, the Applicant raised issues of extensive disrepair to the Property and personal conduct of the Respondent. The Respondent also criticises the Applicant's conduct.

24. There is considerable evidence for disrepair in the period in question. A letter from the Council dated 18th October 2023 refers to a complaint at the domestic boiler not working, and damp and mould growth. Further correspondence shows the Council inspected on 27th November 2023 and found no fixed heating or hot water because of boiler failure, resulting in an abatement Notice under Section 80 of the Environmental Protection Act 1990 being issued dated 30th November 2023. The Applicant accepts that the abatement notice was complied with by the Respondent, but asserts that there was about 3 months with no heating and, indeed, no cooking facilities.

25. Diversion of rent to pay contractors appears to be agreed for November and December 2023, as set out above.

26. A letter from the Community Law Partnership dated 21st August 2024 shows that possession proceedings brought by the Respondent against the Applicant were dismissed in Birmingham County Court on 19th August 2024 for failure to provide a Gas Safety Certificate (as well as failure to produce a Section 21 Notice and to prove the Property licensed).

27. On 20th September 2024 the Council served an Improvement Notice on the Respondent. This detailed many issues which were inherently unlikely to have risen only since 23rd August 2024, and thus to relate to the period in question: the presence of an untested gas fire in the front room, with no Carbon Monoxide alarm, and a gas cylinder used for a standalone heater, Category 1 Band C hazard (although the front room was not let to the Applicant, this impinged on general safety at the Property); non-working smoke alarm and electrical wiring too close to the gas cooker, Category 1 Band A hazard; no handrails to stairs, Category 1 Band B hazard; Excess cold, comprising gaps to front door and living room window, and defective heating, Category 1 Band C hazard; structural collapse and falling elements, comprising -

> "Cracks and bulges to external walls – Toilet leaking to ground floor level. Signs of water ingress and penetrating damp and mould present. Significant amount of water leaking when the toilet is flushed, water sits on the floor around the toilet, also

through to the kitchen from the WC room (first floor) may cause structural damage, cracks to the ceiling on the ground floor caused to the water leaking Damp and mould in the WC room, there is also water leaking from the toilet when Ceiling was not constructed, fixed and maintained to be strong to remain intact Defective ceiling in the kitchen to the toilet leaking, cracked bulging ceiling" (sic.)

Category 1 Band C hazard; Damp and mould, affecting three bedrooms, the wall beneath the WC window and ground floor bathroom ceiling, Category 2 Band D hazard; Electrical hazards to 2 bedrooms, Category 2 Band G hazard; Personal hygiene, sanitation and drainage, comprising broken tiling and seals, and damaged bathroom linoleum flooring, Category 2 Band J hazard; and, like hazard in the kitchen where hot water was at "inappropriate pressure" and there was no cold water at all.

28. An email from Birmingham and Solihull Mental Health NHS Foundation Trust dated 25th February 2025 asserts that the Applicant and his wife were homeless at that point in time, due to the condition of the Property.

29. By contrast, the Respondent, in his witness statement, asserts that he complied with the Improvement notice.

30. The Applicant was cross-examined about when the Respondent was put on notice of disrepairs, to which the response was that there was frequent complaint, especially when he saw him at the Property (a daily occurrence) and by leaving voice messages. He was asked why he only deducted limited repair costs from the rent, with the implication that he should have spent the rent on remedying other defects, but he said the Respondent told him not to and the works would be very expensive. He also observed he paid rent and the Respondent as landlord should carry out repairs. He accepted that he was given temporary cooking facilities, but this appears to have amounted to a hot plate pending cooker repairs. It was suggested that letters from the Council were not brought to the attention of the Respondent, including the Abatement Notice, but the Applicant said he was given copies of the notices (hence had copies for the Tribunal) and the Respondent collected mail from the front door and items literally fixed to the lounge door.

31. At the Tribunal the Respondent produced Gas Safety Certificates dated 16th January 2023 (albeit noting a drop off in the initial test) and 20th July 2024 (save for inadequate

bonding). Also he produced an electrical safety certificate dated 4th March 2023. The Applicant denied seeing these certificates before.

32. The Tribunal finds that the Property was in a considerable state of disrepair throughout the period of the Rent Repayment Order. The Abatement Notice and the Improvement Notice corroborate the complaints of the Applicant and detail a woeful state of disrepair. Further, the Tribunal finds that the Applicant did complain to the Respondent, not in writing (the Applicant is a Bengali speaker), but when opportunity presented, as it frequently did with the Respondent's visits. It is implausible that nothing would be said to the Respondent, when the Applicant repeatedly complained to the Council. Further, the Respondent had access to the front of the Property and the garden and was well able to take note of the issues which must have been apparent. Having acted upon the various notices, the Respondent must have been aware of them. It was the Respondent that was burdened with statutory duties of repair and he was in default in his responsibilities. It was not for the tenant to carry out repairs and make deductions from rent. The Certificates do not demonstrate that the general repair of the Property was adequate, and they were not entirely unequivocal in any event.

33. In respect of the Respondent's personal conduct, this appears to centre on alleged absence of warning when the Respondent attended to use the front room and aggressive conduct and swearing (apparently in the context of him seeking possession of the Property). The Applicant had reported some matter to the police, but it was not clear what. He states he has been frightened to leave the Property.

34. The Respondent denied misconduct and said the Applicant referred to him honorifically as "uncle" (which the Applicant did on one occasion before the Tribunal). The Respondent denied voice messages, receipt of the Abatement Notice or contact from the police. He denied knowledge of the loss of gas services in 2023 and electrical problems, and he stated he reacted promptly to Council matters.

35. Whilst it is probable that relations between the parties became strained, especially from about Autumn 2023 when complaints of the Applicant were taken up by the Council, the Applicant has not established on the balance of probabilities that conduct of the Respondent was so bad as to warrant an enhanced Rent Repayment Order.

36. For his part the Respondent alleges that the Applicant has more than just his son living with the Applicant and his wife; although on what basis it can be objectionable for a tenant of a four bedroom dwelling to limit those living there to 3 people was entirely unclear. The objection seemed to be that the Applicant may receive some rent from a sharing occupier. Further, he complained that he was intending only to offer temporary accommodation in 2020, for a period of 6 months. Notice was given and disregarded, and the Applicant would not leave nor pay increased rent of £800 per month.

37. Nothing in the complaints of the Respondent leads the Tribunal to diminish the award in a Rent Repayment Order. There is no evidence of any lawful reason to limit the occupation of the Property by the Applicant, nor to have regard to any sums he may have received from others (for which there was no evidence at all). There is no suggestion a rent increase was agreed or lawfully imposed. The County Court found the continued possession of the Property by the Applicant to be lawful.

38. In the result, the Tribunal has determined that it should exercise its discretion and make a Rent Repayment Order in this case: the failure to hold a licence in the relevant period warrants censure. The offence has been made out and no defence of reasonable excuse arises. The offence was significant and was not for a short duration. Furthermore, the state of the Property was plainly seriously deficient and the relevant repair obligations fully the responsibility of the Respondent. He was adequately on notice and failed to act promptly or effectively. In these circumstances the award shall be of 75% of the rent for the relevant period, namely £6,300 (£8,400 x 75%). This sum is payable by 5pm on 28th May 2025.

Tribunal Judge Verduyn

Appendix: Extracts from (1) Section 95 Housing Act 2004 and (2) Sections 40, 41, 43 and 44 Housing and Planning Act 2016

Section 95 of the Housing Act 2004, Offences in relation to licensing of houses under this Part

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

(b) he fails to comply with any condition of the licence.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for failing to comply with the condition,

as the case may be.

(5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(7) For the purposes of subsection (3) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

> (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
>
> (b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.

(8) The conditions are—

> (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
>
> (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(9) In subsection (8) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Sections 40, 41, 43 and 44 of the 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 by that landlord.

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

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has 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 in accordance 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 the table.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

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

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

- End -