



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

Case Reference : **LON/00AK/HMF/2024/0636**

Property : **15 Elmhurst Road, Enfield, EN3 5TB**

Applicant : **Gerard Dugdill**

Represented by : **Jamie McGowan, Justice for Tenants**

Respondent : **Sylvena Annesta Semper**

Type of Application : **Application by Tenant for Rent
Repayment Order. Sections 40,41, 43
& 44 of the Housing and Planning Act
2016**

Tribunal : **Judge Bernadette MacQueen
Mr S Mason, BSc, FRICS**

Date of Hearing : **7 May 2025**

Date of Decision : **12 May 2025**

DECISION

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1. The Tribunal finds that the Respondent has committed the offence of having control or management of an unlicensed house under the provisions of section 95(1) of the Housing Act 2004, and that accordingly a Rent Repayment Order in favour of the Applicant can be made.
2. The Tribunal makes a Rent Repayment Order of £3,467.57 for the period 1 September 2022 to 31 August 2023. This amount must be paid by the Respondent to the Applicant within 28 days of the date of this decision.
3. The Tribunal also orders the reimbursement of the Tribunal fees (£110 application fee and £220 hearing fees) and this amount must be paid by the Respondent to the Applicant within 28 days of the date of this decision.

Background

4. By application dated 27 August 2024 and received by the Tribunal on 28 August 2024, the Applicant made an application for a Rent Repayment Order (RRO) under section 41 of the Housing and Planning Act 2016 (“the Act”) in relation to 15 Elmhurst Road, Enfield, EN3 5TB (“the Property”). The Tribunal found that the application had been brought in time as the last date of the offence alleged by the Applicant was 31 August 2023, meaning that the alleged offence was being committed within the 12 month period ending with the day on which the application was made (section 41(2)(b) of the Act).
5. The Applicant sought a RRO for rent totalling £4,114.50 which he had paid for the Property during the period 1 September 2022 to 31 August 2023.

The Hearing

6. The Applicant attended the hearing and was represented by Jamie McGowan, Justice for Tenants. The Respondent did not appear and was not represented. Further, the Respondent did not provide the Tribunal with an explanation for non-attendance nor for her non-compliance with the Tribunal's Directions.

Decision to Proceed In Absence

7. The Tribunal considered rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules) which provides that the Tribunal may proceed with the hearing in a party's absence if satisfied that the party has been notified of the hearing, or that reasonable steps have been taken to notify the party of the hearing, and it is in the interests of justice to proceed
8. Turning firstly to consider whether the Respondent had been notified of the hearing, the Tribunal was satisfied that the application had been properly served on the Respondent and that the Respondent was aware of the hearing. Jamie McGowan told the Tribunal that Justice for Tenants had served information regarding these proceedings at two addresses. The first address was that of the Property and this address had been used because this was the address given for the Respondent in the tenancy agreement (page 37 of the bundle). Further, this was the address given for the Respondent in the Proprietorship Register of the HM Land Registry copy of the register of title for the Property (page 73 of the bundle). The second address used was the address given on the Deposit Protection Certificate.
9. Jamie McGowan also told the Tribunal that a further letter dated 13 March 2025 had been sent to the Respondent at 15 Elmhurst Road, London, EN3 5TB. This letter had confirmed the details of the proceedings and the hearing date of 7 May 2025 and had also provided a contact email address for Justice for Tenants.
10. Additionally, Jamie McGowan confirmed that Justice for Tenants had been provided with an email address for the Respondent by a previous

managing agent of the Property on 26 November 2024. That same day, Justice for Tenants had sent the application and Tribunal Directions to this email address. Further, they had served the Applicant's bundle by email to this address on 20 January 2025, and had also served additional evidence prior to this hearing using the same email address. Jamie McGowan confirmed that no notification had been received to say that the emails were undelivered.

11. The Tribunal's case file confirmed that the Tribunal had sent the application, Directions and notice of hearing to the Respondent by post at the Property. These items had not been returned as undelivered.
12. The Tribunal was therefore satisfied that the Respondent was aware of the hearing and so considered the second limb of rule 34, namely whether it was in the interests of justice to proceed with the hearing in the Respondent's absence. The Applicant had attended the hearing and had instructed Justice for Tenants to represent him. The Applicant had also complied with the Tribunal's Directions and had produced a bundle of documents. By contrast, the Respondent had not attended or instructed anyone to attend on her behalf, had not provided any explanation for non-attendance and had not complied with any of the Tribunal's Directions. Further, the Tribunal considered rule 3(2)(a) and 3(2)(e) of the Rules which provides that the Tribunal must deal with cases proportionately and avoid delay. The Tribunal was therefore satisfied that it was in the interests of justice to proceed.

Relevant Offence

13. The Applicant clarified at the hearing that the relevant offence was that the Property had not been licensed under Enfield Council's selective licensing scheme and therefore the Respondents had been committing an offence under section 95(1) Housing Act 2004, namely of having control of or managing a house which was required to be licensed but was not so licensed.

14. The Applicant confirmed that he was not seeking to pursue an allegation of either a breach of the mandatory or additional licensing provisions under section 72(1) Housing Act 2004 (control or management of unlicensed House in Multiple Occupation). Whilst the application had initially been on the basis that there had been either a breach of the mandatory, additional or selective licensing provisions, the applicant confirmed that he was now only pursuing an offence under the selective licensing provisions.

Additional Documents

15. At the start of the hearing, the Applicant made an application to adduce an explanatory note which appeared on Enfield Council's website to provide further details regarding the ward names covered by the selective licensing scheme.
16. The Tribunal was satisfied that the document had been sent to the Respondent in advance of the hearing. Further, the Tribunal found that there was no prejudice to the Respondent as it was clear from the bundle of documents provided by the Applicant that the Applicant's position was that the alleged offence was a breach of the selective licensing scheme and details of that scheme were provided in the bundle. The late evidence was an explanatory note which added more detail to the information already provided. This explanatory note confirmed that the selective licensing scheme was defined by boundaries that had been in place at the time the licensing designation was made on 18 May 2021. The Tribunal was therefore satisfied that there was no prejudice to the Respondent.

Hearing Bundle

17. The Directions made on 25 November 2024 had required each party to prepare a bundle of relevant documents. The Applicant had provided a bundle of documents that consisted of 110 pages. The Respondent did

not provide any documents to the Applicant or the Tribunal or provide any explanation for this.

The Law

18. Section 41(1) Housing and Planning Act 2016 states:

“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”

16. Section 43(1) Housing and Planning Act 2016 states:

“The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted)”

17. Section 40(3) Housing and Planning Act 2016 defines “an offence to which this Chapter applies” by reference to a table. The offence under section 95(1) Housing Act 2004 (control or management of unlicensed house) is within that table.

Control or Management of Unlicensed House:

18. Section 95(1) Housing Act 2004 provides:

“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 but is not so licensed.”

Enfield Council’s Selective Licensing Scheme

19. At pages 86 to 87 of the bundle was a copy of the selective licensing scheme made by Enfield Council under section 80 Housing Act 2004. The scheme had commenced on 1 September 2021 and applied to all privately rented residential properties occupied by 1 or 2 persons, or 1 family household located in 14 wards in the borough under two designations.

20. The Property was situated in a ward known as Turkey Street and this ward was within the selective licensing designation. In 2022, the ward boundaries had changed and the Property had become part of the Bullsmoor ward. However, the explanatory note for the scheme stated that the selective licensing scheme was defined by the boundaries that were in place at the time the licensing designation was made on 18 May 2021 and that properties that fell within the boundaries of the selective designation would be licensable irrespective of the new ward boundary change that had come into force on 5 May 2022. The Tribunal was therefore satisfied that the Property fell within the Enfield Council selective licensing designation.

20. This selective licensing designation applied to any house which was let or occupied under a tenancy or licence within the area. "House" is defined within section 99 of the Housing Act 2004 as "a building or part of a building consisting of one or more dwellings". Section 99 defines "dwelling" as "a building or part of a building occupied or intended to be occupied as a separate dwelling". The selective licensing scheme specifies exceptions; however, none of these exceptions was applicable to the Property. For completeness, the exceptions are a house in multiple occupation, a tenancy or licence granted by a registered social landlord, a house subject to an interim or final management order, a house subject to a temporary exemption under section 86 of the Housing Act 2004, or where the tenancy or licence is exempt under the Act (79(4)) or the occupation is of a building or part of a building which is so exempt.

21. At page 78 of the bundle, the Applicant produced an email dated 21 December 2023 from the private rented housing team of Enfield Council that confirmed that the Property did not have a licence of any kind and no applications were pending.

Tribunal Finding - House which is required to be licensed but is not so licensed.

22. The Tribunal accepts the evidence of the Applicant and finds that the Property was a house that was required to be licensed under the Enfield Council selective licensing scheme, but was not so licensed. The Tribunal was satisfied that the Applicant lived at the Property as his main residence and paid rent to the Respondent.

Person having Control of or Managing

23. The section 95(1) offence is committed by the person having control/managing the Property. Section 263(1) Housing Act 2004 defines “person having control” in relation to the premises as meaning:

“the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.”

24. Person managing is defined by section 263(3) Housing Act 2004 as

“the person who, being an owner or lessee of the premises—
(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or

licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

25. The Applicant produced at pages 36 to 42 of the bundle an assured shorthold tenancy agreement for the Property in which the Respondent was stated to be the landlord. Further, the Respondent was the beneficial owner of the Property and this was shown by the Land Registry title (pages 72 to 76 of the bundle). The Tribunal therefore found that the Respondent was the person having control of the Property as the person who received or would so receive the rack-rent if the Property were let.
26. The Applicant further submitted that the Respondent was also the person managing the Property as she was the owner of the Property and received the rent from the Applicant. The Tribunal therefore found that the Respondent was the person managing the Property as the Respondent was the owner of the Property who received the rent.

Relevant Period and Rent Paid

27. The Applicant sought a RRO for the period 1 September 2022 to 31 August 2023 (“Relevant Period”) and provided bank statements showing the rent payments he had made (pages 44 to 71 of the bundle). Additionally, the Applicant produced at page 43 of the bundle, a table showing the total reclaimable rent. The Applicant confirmed to the

Tribunal that the monthly rent was £420; however, the Applicant had paid for utility bills and this had been offset against the rent. The Applicant confirmed at the hearing that the total reclaimable rent was actually £4,079.49. This was slightly reduced from the figure of £4,114.50 because of an adjustment to the utility payment calculation.

28. The Applicant confirmed that he was not in receipt of a housing element of Universal Credit or Housing Benefit.

Statutory Defence and Reasonable Excuse (Section 95(3) and (4)).

29. Sections 95(3) and (4) of the Housing Act 2004 set out relevant defences which the Tribunal must consider. The burden of proof in relation to this is on the Respondent and the relevant standard of proof is on a balance of probabilities.
30. The Respondent did not provide the Tribunal with any evidence; however, the Tribunal considered whether a defence under section 95(3) and/or (4) nevertheless arose.
31. In proceedings against a person for an offence under subsection 95(1), section 95(3) provides that 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) [temporary exemption from licensing requirements], or
 - (b) an application for a licence had been duly made in respect of the house under section 87.
32. The Tribunal accepts the evidence provided by Enfield Council, at page 77 of the bundle, and finds that an application for a selective licence or a temporary exemption notice had not been made. The Tribunal therefore finds that a statutory defence does not arise.

33. Section 95(4) provides that in relation to an offence under section 95(1) it is a defence if the Respondent had a reasonable excuse for having control of or managing the house without a licence.
34. At pages 103 to 106 of the bundle was correspondence sent from Enfield Council to the Respondent about the licensing requirements. In particular at page 106, the Respondent was copied into an email sent by the Council to the Applicant which set out the penalties for not having a selective licence. The Tribunal therefore finds that the Council proactively contacted the Respondent but the Respondent still failed to license the Property.
35. The Tribunal finds, on a balance of probabilities, that the Respondent did not have a reasonable excuse.

Offence Under section 95(1) Housing Act 2004

36. The Tribunal is therefore satisfied beyond reasonable doubt that the Respondent has committed the offence of having control/management of a house which was required to be licensed for the Relevant Period, namely 1 September 2022 to 31 August 2023, but was not so licensed.

Should the Tribunal Make a Rent Repayment Order (RRO)?

37. Section 43 of the Housing and Planning Act 2016 provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO award is therefore discretionary. However, because the offence was established, the Tribunal finds no reason why it should not make a RRO in the circumstances of this application.

Ascertaining the Whole of the Rent for the Relevant Period

38. As set out above, the Relevant Period was 1 September 2022 to 31 August 2023. The monthly rent was £420 and therefore the amount of rent for this period was £5,040. However, the Applicant told the Tribunal that

he had paid less than this amount in rent, as he had made top-up payments for the gas and electricity and then deducted these from the rent paid.

Deductions for Utility Payments

39. At page 43 of the bundle, the Applicant set out a table showing the total amount paid in rent and the deduction made for utility payments. Each month £420 rent was due but the Applicant had deducted the amount he had paid for utilities. The Applicant confirmed that he had paid for gas and electricity by buying top-ups for the meter and then had claimed the amount spent by deducting this from rent paid he paid to the Respondent.
40. Whilst the Applicant was confirming the amount he had paid for utility payments to the Tribunal at the hearing, the Applicant recognised that the amount for June 2023 did not take into account the fact that another tenant had moved out part way through the month. The Applicant therefore confirmed that the total amount of rent he was claiming after deducting utility payments for the Relevant Period was £4,079.49. The Tribunal accepted the Applicant's evidence and accepted that the whole amount of rent for the Relevant Period was £4,079.49.

Determining the Seriousness of the Offence to Ascertain the Starting Point

41. The Tribunal had to consider the seriousness of the offence as compared to other types of offences for which a RRO could be made, and also as compared to other examples of the same offence.
42. In determining the seriousness of the offence, the Tribunal adopted Judge Cooke's analysis in *Acheampong v Roman* [2022] that the seriousness of the offence could be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house would generally be less serious. However, the Tribunal

had to consider the circumstances of this particular case as compared to other examples of the same offence.

Conduct of the Landlord

43. The Applicant had made a witness statement dated 17 January 2025 (pages 15 to 16 of the bundle) and also gave oral evidence to the Tribunal.
44. The Applicant told the Tribunal that on 22 July 2023, two men had attended the Property and informed the Applicant that he had one month's notice to leave the Property. The Applicant stated that no further communication had been received from the Respondent. On 20 September 2023, one of the men who had previously attended the Property returned and told the Applicant that he had to leave the Property and that all of the Applicant's belongings would be thrown out of the Property. The Applicant confirmed that he had called the police, who explained to the man that proper notice had to be given to the Applicant before he had to leave the Property.
45. The Applicant told the Tribunal that on 22 September 2023, he found that the keys used to top up the meters had gone missing and so the Applicant had to arrange for emergency top up keys to be provided. Further, on 25 September 2023, the Applicant stated that the lock to the front door had been changed. The Applicant contacted the police and was informed that he could change the lock again, which he did at his own expense. The Applicant produced a receipt for this work at page 97 of the bundle which totalled £113.52. Later on 25 September 2023, the Applicant told the Tribunal that the Respondent had attended the Property with a man who the Applicant assumed to be her husband. The Applicant called the police because he felt threatened and believed the Respondent was going to break into his room. The Respondent told the Applicant that he had to leave the Property by the following morning. The Applicant told the Tribunal that he had vacated the Property and moved into bed and breakfast accommodation.

46. Enfield Council pursued a prosecution against the Respondent for an offence contrary to section 1(3A) and (4) of the Protection from Eviction Act 1977. The Respondent was found guilty of this offence at North London Magistrates' Court. The court register confirmed (page 110 of the bundle) that the offence that the Respondent was found guilty of was as follows:

“Between 01/07/2023 and 26/09/2023 at London Borough of Enfield, being the landlord of Gerard Richard Dugill, the residential occupier of premises namely 15 Elmhurst Road, Enfield, EN3 5TB, persistently withdrew or withheld services reasonably required for the occupation of the premises as a residence, namely gas and electricity (energy keys disappearing), and the locks being changed, knowing or having reasonable cause to believe that such conduct was likely to cause the said residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises. Contrary to section 1(3A) and (4) of the Protection from Eviction Act 1977.”

47. The Tribunal found the Applicant to be a credible witness who provided consistent written and oral evidence. Additionally, the Tribunal relied on the criminal conviction as set out above. The Tribunal found that the Applicant had been subjected to behaviour from the Respondent that was threatening and resulted in the Applicant feeling intimidated to the extent that he had had to call the police on two occasions, and ultimately this intimidation had meant that he had had to move out of the Property into bed and breakfast accommodation at short notice.
48. Further, the Tribunal accepted the Applicant's position that Enfield Council had contacted the Respondent and so the Respondent was aware of her licensing obligations but did not take action to license the Property.

Financial Circumstances of Respondent Landlord

49. The Tribunal noted from the Magistrates' Court Register for 15 April 2024, a copy of which was at page 110 of the bundle, that the Respondent was ordered to pay £12,879 by North London Magistrates Court for the offence contrary to section 1(3A) of the Protection from Eviction Act 1977 (as set out above).
50. With that said, the Tribunal was not presented with any evidence from the Respondent that she would not be able to meet any financial award the Tribunal made.

Quantum Decision

51. Jamie McGowan on behalf of the Applicant confirmed that the relevant offence relied upon by the Applicant was the offence under section 95(1) of the Housing Act 2004, namely having control of or managing an unlicensed house. The Applicant did not seek an RRO on the basis of the Protection from Eviction Act 1977 offence and therefore section 46 of the Housing and Planning Act 2016 was not applicable. For completeness, section 46 provides that the amount to be awarded is the maximum amount that the Tribunal has power to award where an RRO has been made against a landlord who has been convicted of an offence and the RRO is made in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1,2, 3, 4 or 7 of the table in section 40(3) of the Housing and Planning Act 2016. In this case, the RRO is made on the ground that the landlord committed the offence of having control of or managing an unlicensed house, row 6 of the table in section 40(3). Therefore, the Tribunal must determine the amount of the RRO in accordance with section 44 of the Housing and Planning Act 2016.
52. The Tribunal finds that the section 95(1) licensing offence is not the most serious. However, taking the Tribunal's findings (as set out above), the Tribunal finds that the conduct of the Respondent, particularly the

conduct which had resulted in the conviction and the Applicant having to leave the Property, to be aggravating factors. Further, the Tribunal finds that Enfield Council had contacted the Respondent and set out the licensing obligations but the Respondent had failed to take any action. The Tribunal therefore increases the amount to an award of 85%.

53. The Tribunal therefore makes the following Rent Repayment Order:

Total amount of rent reclaimable: £4,079.49.

85% of which gives a **total amount of £ 3,467.57**

54. The Tribunal orders that the payment be made in full within 28 days.

Application and Hearing Fee

55. The Applicant asked the Tribunal to make an order that the application and hearing fees paid by the Applicant are refunded to him by the Respondent.

56. Given that the Tribunal has made a RRO, the Tribunal exercises its discretion to order that the Respondent must pay the Applicant's application fee of £110 and hearing fee of £220. This amount shall be paid within 28 days.

Judge Bernadette MacQueen

Date: 12 May 2025

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.