FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AU/HMF/2024/0095**
Property	**:**	**Flat 1, 72 Highbury Park, London, N5 2XE**
Applicant	**:**	**Lea Tsionis**
Representative	**:**	**In person**
Respondent	**:**	**Highbury Broadway Developments Limited**
Representative	**:**	**Tasos Papaloizou (director)**
Type of Application	**:**	**Application for a rent repayment order**
Tribunal Member	**:**	**Judge Robert Latham** **Steve Wheeler MCIEH CEnvH**
Date and Venue of Hearing	**:**	**16 May 2025 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**19 May 2025**

DECISION

Decision of the Tribunal

1. The Tribunal makes a Rent Repayment Orders against the Respondent in the sum of £2,225 which is to be paid by 13 June 2025

2. The Tribunal determines that the Respondent shall also pay the Applicant £320 by 13 June 2025 respect of the tribunal fees which she has paid.

The Application

1. On 19 February 2025, the Applicant, Ms Lea Tsionis, issued this application against the Respondent, Highbury Broadway Developments Limited, seeking a Rent Repayment Order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act"). The application relates to her tenancy at Flat 1, 72 Highbury Park, Islington, N5 2XE ("the flat".) The Applicant seeks a RRO in the sum of £4,451.12 in respect of the rent which she paid between 20 February and 17 July 2023.

2. On 15 January 2025, the Tribunal gave Directions. These explained how the parties should prepare for the hearing.

3. On 7 March 2025, the Respondent filed its Statement of Case. Mr Tasos Papaloizou, its director, admitted that the flat required an HMO licence under an additional licencing scheme introduced by the London Borough of Islington ("Islington"), and that there was no licence in place. He applied for a licence on 20 February 2024 as soon as he learnt that a licence was required. He apologised for the oversight. On 10 June 2024, Islington granted a licence. He suggested that a RRO assessed at 50% of the rent in the sum of £2,250 was appropriate.

The Hearing

4. Ms Tsionis appeared in person. She is German and has now returned to Germany. She gave evidence. She sought a RRO assessed at 100% of the rent. She described how the flat was on the first floor of the building. There was a restaurant on the ground floor and another flat on the second floor. The flat originally had three bedrooms and a living room. However, the living room was let as a fourth bedroom. On 17 February 2023, the Respondent had granted an Assured Shorthold Tenancy to the Applicant and three other joint tenants for a term of 12 months. The total rent was £3,600 per month and her share was £925 pm. She complained that the rent was high and that the living conditions cramped. The flat was in a noisy location. On the opposite side of the road was a school with a kindergarten. She decided to leave after five months. She is currently unemployed.

5. Mr Papalpozou appeared on behalf of the Respondent. He is the director. Mr Papalpozou is an accountant. He manages some 30 properties which he owns through a number of companies. He has done so for some 25 years. He stated that the flat had been refurbished before he first let it in about 2021. At that time, he had been advised by Mr Phillip Chuku, his managing agent. However, he had granted the current tenancy without taking advice from his agent. He admitted that he should have been aware of the additional licencing scheme. He accepted that he did not have a defence of reasonable excuse. He apologised for his oversight. He stated that he had never previously had any difficulties with his tenants.

6. Mr Chuku also attended the hearing to support Mr Papalpozou. He stated that Mr Papalpozou was a good landlord.

The Housing Act 2004 ("the 2004 Act")

7. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that a building or a part of a building meets the "standard test" if:

> "(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
>
> (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
>
> (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
>
> (d) their occupation of the living accommodation constitutes the only use of that accommodation;
>
> (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
>
> (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

8. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is

occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

9. Section 56 permits a local housing authority ("LHA") to designate an area to be subject to an additional licencing scheme. On 1 February 2021, Islington introduced an additional licencing scheme.

10. Section 263 provides:

> "(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) 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.
>
> (2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.
>
> (3) In this Act "person managing" means, in relation to premises, 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."

11. Section 72 specifies a number of offences in relation to the licencing of HMOs. The material parts provide:

> "(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

The Housing and Planning Act 2016 ("the 2016 Act")

12. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

13. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. In the decision of *Kowelek v Hassanein [2022] EWCA Civ 1041; [2022] 1 WLR 4558,* Newey LJ summarised the legislative intent in these terms (at [23]):

> "It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (*Rakusen v Jepsen* [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in *Rakusen v Jepsen*, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

14. Section 40 provides:

> "(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."

15. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The seven offences include the offence of "control or management of unlicenced HMO" contrary to section 72(1) of the 2004 Act.

16. Section 41 deals with applications for RROs. The material parts provide:

> "(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.

17. Section 43 provides for the making of RROs:

> "(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)."

18. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

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

19. Section 44(4) provides:

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

20. Section 47(1) provides that an amount payable to a tenant under a RRO is recoverable as a debt.

21. In *Acheapong v Roman* [2022] UKUT 239 (LC); [2022] HLR 44, Judge Elizabeth Cooke gave guidance on the approach that should be adopted by Tribunals:

> "20. The following approach will ensure consistency with the authorities:
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> a. Ascertain the whole of the rent for the relevant period;
>
> b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
>
> c. Consider how serious this 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 compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:
>
> d. 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).

> 21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

22. These guidelines have recently been affirmed by the Deputy President in *Newell v Abbott* [2024] UKUT 181 (LC). He reviews the RROs which have been assessed in a number of cases. The range is reflected by the decisions of *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC) and *Hallett v Parker* [2022] UKUT 165 (LC), the Deputy President distinguished between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (25%).

23. The Deputy President provided the following guidance (at [57]):

> "This brief review of recent decisions of this Tribunal in appeals involving licensing offences illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger property portfolio, or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health."

24. The Deputy President added (at [61]):

> "When Parliament enacted Part 2 of the 2016 Act it cannot have intended tribunals to conduct an audit of the occasional defaults and inconsequential lapses which are typical of most landlord and tenant relationships. The purpose of rent repayment orders is to punish and deter criminal behaviour. They are a blunt instrument, not susceptible to fine tuning to take account of relatively trivial matters. Yet, increasingly, the evidence in rent repayment cases (especially those prepared with professional or semi-professional assistance) has come to focus disproportionately on allegations of misconduct. Tribunals should not feel that they are required to treat every such allegation with equal seriousness, or to make findings of

fact on them all. The focus should be on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two."

Our Determination

25. The Tribunal is satisfied beyond reasonable doubt of the following:

(i) The Property was an HMO that required a licence under Islington's additional licencing scheme at all material times. There was no licence.

(ii) The Respondent was the person "having control" of the Flat, as it received the rack rent from the tenants.

(iii) The Respondent was also the person "managing" the Flat as it was the freehold owner which received the rent.

(iv) The Respondent has not suggested any defence of "reasonable excuse".

The Tribunal is therefore satisfied beyond reasonable doubt that the Respondent has committed an offence under section 72(1) of the 2004 Act, of having control of or managing an HMO which is required to be licensed under but was not so licensed. The offence was committed over the period 20 February to 17 July 2023.

26. The Tribunal must first determine the whole of the rent of the relevant period. It is agreed that the Applicant paid a total of £4,451.12. We are satisfied that the relevant period for a RRO should be 20 February to 17 July 2023. The Respondent has not suggested that there are any deductions that need to be made.

27. We are then required to consider the seriousness of the offence. The Upper Tribunal considers licencing offences to be less serious than other offences for which RROs can be imposed.

28. We are finally required to have regard to the following:

(a) The conduct of the landlord.

(b) The conduct of the tenant.

(c) The financial circumstances of the landlord.

(d) Whether the landlord has at any time been convicted of an offence to which this Chapter applies. There is no relevant conviction.

29. We have regard to the following factors:

(i) The Respondent Company is controlled by Mr Papaloizou who owns some 30 properties.

(ii) We accept Mr Papaloizou explanation that his failure to licence the flat was an oversight. He apologised for this. He made an open offer to make a RRO in the sum of £2,225. He should be given credit for this.

(iii) We accept that the flat had been refurbished some two years before the tenancy was granted. Islington readily granted an HMO licence.

(iv) Mr Tsionis complained about the level of the rent, the cramped living conditions and the location of the flat. However, these are all factors of which she should have been aware when she took on the tenancy. They are not relevant to the assessment of the RRO.

30. Taking these factors into account, we make a RRO in the sum of £2,225, namely 50% of the rent paid by the Applicant. We also order the Respondent to reimburse to the Applicant the tribunal fees of £320 which she has paid. These sums shall be paid 13 June 2025.

Robert Latham
19 May 2025

RIGHTS OF APPEAL

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

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

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.