



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

**Case Reference** : **LON/00AZ/HMF/2024/0203.**

**Property** : **Flat 65, Deloraine House, Tanners Hill,  
London, SE8 4PZ.**

**Applicants** : **Abigail Nicol (1)  
Alice Anderson (2)  
Nisreen Fox (3)**

**Representative** : **Brian Leacock of Justice for Tenants**

**Respondents** : **Live in London Limited (1)  
Simon Hilton (2)**

**Representative** : **Not Represented**

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

**Tribunal Member** : **Mr A Harris LLM FRICS FCI Arb  
Ms R Kershaw**

**Date and Venue of  
Hearing** : **13 May 2025 at  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **20 May 2025**

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**DECISION**

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### **Decision of the Tribunal**

1. The Tribunal makes a Rent Repayment Order (RRO) against the First Respondent, Live in London Ltd in the in favour of the Applicants in the sum of £11005.03 to be paid within 28 days.
2. The Tribunal determines that the Respondent shall also pay the Applicants a total of £330 within 28 days in respect of the reimbursement of the tribunal fees paid by the Applicants.
3. **Background**
4. The Applicants are three out of four tenants of the flat at 65 Deloraine House, Tanners Hill, London SE8 4 PZ (the Flat). An assured shorthold tenancy agreement was prepared by Cubix, the letting and managing agent with a binding date of 24 May 2022 naming Live in London Ltd as landlord and the three applicants and Jawad Wint-Henry tenants.
5. On 29 June 2022 Cubix requested that the tenants enter into a new agreement with only 3 names on it due to the landlord's licence only allowing 3 people to live at the Flat. An amended tenancy agreement was entered into removing Alice Anderson from the named tenants. The amended agreement had a revised binding date of 1 July 2022 and was for a term of 12 months commencing on 15 July 2022 expiring on 14 July 2023 at a rent of £1900 per month.
6. All four tenants took occupation under the agreement. In evidence each of the Applicants stated that they were allowed to retain a copy of the tenancy agreement naming four tenants as evidence of their address.
7. The tenancy ended on 6 June 2023 with a rent rebate of £874.52 granted by the landlord who allowed the tenants to leave early due to disrepair issues.
8. The first and second Applicants lived together as a couple and formed a single household with the remaining two tenants each forming separate households. The Flat was therefore occupied by three households as their main residence, sharing kitchen and bathroom facilities.
9. On 29 October 2021 the London Borough of Lewisham designated the whole of the Borough as an area for Additional Licensing of Houses in Multiple Occupation with his designation coming into force on 5 April 2022.
10. The Flat is in the London Borough of Lewisham.

## **The Application**

11. By an application dated 31 May 2024 the Applicants seek Rent Repayment Orders (“RRO”) totalling £14,888.73 for the period 15 July 2022 to 5 June 2023 against the Respondents pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The First Respondent is named in the tenancy agreement of the Flat as the landlord. The Second Respondent is the registered leasehold owner of Flat 65, Deloraine House (the Flat).
12. The Tenancy ended on 6 June 2023 and the application was made on 31 May 2024. Therefore, the offence was being committed in the period of 12 months ending on the day on which the application was made. The application is made on the basis that the landlord has committed the offence under section 72 (1) of the Housing Act 2004 of control of, or managing, an unlicensed HMO. There is no suggestion that the landlord has been convicted of the offence.
13. On 25 July 2024, the Tribunal gave Directions for a hearing on a date to be fixed. The Directions were amended on 10 October 2024. Following a claim by the respondent they had not received the directions Further Amended Directions were issued on 20 January 2025. Copies were sent to all parties. Pursuant to the Directions, the Applicants have filed a Bundle of Documents and a skeleton argument. No evidence has been received from the Respondents.
14. An email timed at 11:49 AM on Monday, 12 May 2025 was sent by Mr Raste Khan of Cubix Estate agents to Justice for Tenants and copied to the tribunal. The email reads  
  
Please see my attached email.  
  
*We have stated you are required to start the court procedures as we are not looking to go through a tribunal.*  
  
*The issue is with Lewisham and the change over with their systems. This on going issue is being chased weekly our end.*  
  
*Once a court order is in place, we can then have our insurance make arrangements with legal cover.*  
  
*Once again, as previously stated – please arrange an order through the courts and not a tribunal.*
15. The tribunal considered the contents of the email and was satisfied that the Respondent had notice of the hearing and has chosen not to participate. The First-tier Tribunal is the appropriate forum for dealing with rent repayment orders as set out in sections 40 and 41 of the 2016 Act.

## **The Hearing**

16. All the Applicants and their representative appeared in person.

## **The Law**

### **Housing and Planning Act 2016 (“the 2016 Act”)**

17. 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.”

18. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. The Claims are made in respect of the following three offences

(1) the offence of eviction or harassment of occupiers contrary to section 1 (2), (3) or (3 A) of the Protection from Eviction Act 1977

(2) the offence of control or management of an unlicensed HMO under section 72(1) of the Housing Act 2004 (“the 2004 Act”)

(3) the offence of having control of, or managing an unlicensed HMO under part 3, section 95 (1) of the Housing Act 2004

19. 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.

20. 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).”

21. 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—

(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.”

22. 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

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

23. Section 56 is the definition section. This provides that “tenancy” includes a licence.

### **The Housing Act 2004 (“the 2004 Act”)**

24. Part 2 of the 2004 Act relates to the designation of areas subject to additional licensing of houses in multiple occupation (HMO).

25. Section 72 specifies a number of offences in relation to the licencing of houses. The material parts provide (emphasis added):

“(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.

(4) 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
- (b) an application for a licence had been duly made in respect of the house under section 63”

26. Section 62 (2) allows the local authority to grant a temporary exemption of up to 3 months where a landlord intends to take particular steps with a view to securing that the house is no longer required to be licensed.

27. The Housing Act 2004 Part 2 s. 61(1) states:

(1) Every HMO to which this Part applies must be licensed under this Part unless—

- (a) a temporary exemption notice is in force in relation to it under section 62, or
- (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

28. Section 55 of the Housing Act 2004 states:

#### **55 - Licensing of HMOs to which this Part applies**

(1) This Part provides for HMOs to be licensed by local housing authorities where—

- (a) they are HMOs to which this Part applies (see subsection (2)), and
- (b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

- (a) any HMO in the authority’s district which falls within any prescribed description of HMO, and
- (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation

29. The Housing Act 2004 introduced the mandatory licensing of HMOs whilst The Licensing of Houses in Multiple Occupation Order (Prescribed Description) (England) Order 2018 states at paragraph 4

4. An HMO is of a prescribed description for the purpose of section 55 (2) (a) of the Act if it

- (a) is occupied by 5 or more persons
- (b) is occupied by persons living in 2 or more separate house and
- (c) meet the standard test under section 254 (2) of the Act

## 254 Meaning of “house in multiple occupation

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

(a) it meets the conditions in subsection (2) (“the standard test”);...

(2) 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.

## 72 Offences in relation to licensing of HMOs

30. Section 72 specifies a number of offences in relation to the licencing of houses. The material parts provide (emphasis added):

“(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 61 (1)) but is not so licensed.

(2) A person commits an offence if—

(a)he is a person having control of or managing an HMO which is licensed under this Part,

(b)he knowingly permits another person to occupy the house, and

(c)the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)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 67(5), and

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

(4)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

(b)an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5)In proceedings against a person for an offence under subsection (1), (2) or (3) 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 permitting the person to occupy the house, or

(c)for failing to comply with the condition,

as the case may be.

### **263 Meaning of “person having control” and “person managing” etc.**

31. (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.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

## **The Evidence**

### **The property**

32. The Flat is a four-bedroom self-contained flat on the 4<sup>th</sup> floor of a block of local authority flats with shared kitchen and bathroom facilities.

### **Licence requirements**

33. The tribunal has found that the property was let to 4 tenants who were not related, but two cohabited thus forming 3 separate households and who shared kitchen and bathroom facilities. The property therefore meets the standard test for an HMO and required a licence.

34. The London Borough of Lewisham have an Additional licensing scheme which covers the geographical area in which property lies. Correspondence

from the local authority confirmed that the property was not licensed as an HMO.

35. No licence application for an HMO licence was made before or during the tenancy.

### **The relevant landlord**

36. The tribunal considered which of the Respondents should be considered to be the landlord. The tenancy agreement names Live in London Ltd as landlord in both versions of the agreement. The bank statements for the first applicant, Ms Nichol, show an equal share of the rent was paid to her by the other 3 tenants and that a single payment was made from that account to Cubix Property Ltd. It is not disputed that Cubix were managing agents on behalf of Live in London Ltd.
37. Documents before the tribunal show that the second Respondent is the sole director of the first Respondent but there is no evidence to show how the flat which is owned by the second Respondent came to be let by the first Respondent.
38. In his skeleton argument Mr Leacock drew the attention tribunal to section 263 concerning the meaning of “person having control” And “Person Managing” for the Purposes of the 2004 Act. Subsection (3)(b) set out above covers a person who would so receive the 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;
39. The second Respondent is the person who would have received the rents but for the arrangement with his company and he would therefore appear to be an undisclosed principal. The tribunal therefore finds that the second Respondent is a person managing the property for the purposes of section 263 and is therefore liable to be made the subject of a rent repayment order.

### **The period of the offence**

40. Under section 41(2)(a) of the Housing and Planning Act 2016 a tenant may apply for a rent repayment order if 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 for a licence was made.
41. The tenancy ran for a term from 15 July 2022 until 3 June 2023 when the Applicants vacated with a rent rebate be granted for part of the final month

of the tenancy. The maximum period for which an order can be made is 12 months. No application has been made at any stage for an HMO licence.

42. The Tribunal is satisfied beyond reasonable doubt that the offence was being committed during this period.

### **Rent paid**

43. The amount claimed for a rent repayment order is £14,799.23 representing 75% of the rent paid of £1900 per month with several rebates granted by the landlord for disrepair issues. This is confirmed by the bank statements of the first Applicant. The tribunal accepts the evidence of the tenants that they each paid their monthly rent to Abigail Nichol who then made a single payment to the landlord.

### **Utility costs**

44. In *Acheampong v Roman* [2022] UKUT239 (LC) the Upper Tribunal restated the amount of a rent repayment order should start with the amount of rent paid and then deduct any element of that sum that represents payments for utilities that benefit the tenant such as gas and electricity and internet access.
45. The Applicants were responsible for the utility costs during the tenancy and therefore no deduction falls to be made.

### **Repayment Order**

46. The Tribunal is satisfied that the conditions for the making of a Rent Repayment Order have been made out. Under section 44 of the 2016 Act the amount the landlord may be required to repay must not exceed the rent paid in that period. The Tribunal must also take into account the conduct of the landlord and tenant and the financial circumstances of the landlord and whether the landlord has been convicted of an offence. There is also a defence available to the landlord of reasonable excuse.
47. The Tribunal has no evidence of a conviction.

### **The Respondents financial circumstances.**

48. The tribunal has no evidence as to the Respondents financial circumstances and makes no adjustment for this factor.

### **Conduct of the parties**

49. The Applicants gave evidence of various items of disrepair arising throughout the tenancy. In particular, a whole ceiling of bedroom caused by

a roof leak that to that room becoming uninhabitable. There was extensive mould throughout the property and the registration of mould mites. The heating system was said to be ineffective. Breaches of The Management of Houses in Multiple Occupation (England) Regulations 2006 were claimed relating to the condition and failure to supply a gas safety certificate.

50. The Applicants state that the response of the managing agents was that the Applicants should ventilate the property better. Additionally a dehumidifier was provided.
51. The roof leak took several months to be attended to, although the tribunal notes that this is a leasehold property and repairs of the roof would most likely be the responsibility of the freeholder out of the direct control of the landlord to the tenancy.
52. The tribunal finds that the Respondents were aware they were required to obtain an HMO licence from their conduct at the commencement of the tenancy requiring a second tenancy agreement naming 3 tenants instead of 4 as on the first agreement.
53. The Tribunal finds that the Respondents should have known the licensing requirements.
54. The Tribunal finds no evidence of any conduct on behalf of the Applicants which is relevant to this assessment.

### **Reasonable excuse**

55. No defence of a reasonable excuse has been treated by the Respondents.
56. The tribunal finds there is no credible evidence of any wrongdoing on the part of the tenants.
57. The tribunal finds that the Respondents did not have a reasonable excuse for failing to licence the House as an HMO.

### **The amount of a rent repayment order**

58. The Tribunal has considered the guidance given by the Upper Tribunal in *Acheampong v Roman*, *Williams v Parmar*) and *Aytan v Moore [2022] UKUT 027 (LC)* and finds that the appropriate starting point for assessment of an RRO is 65% of the rent paid.

59. The Tribunal has then considered that the Respondents are experienced landlords familiar with the licensing regimes for housing. It has also considered the state of repair of the property and accepts the evidence of the tenants. Required documentation was not supplied at the commencement of the tenancy.
60. The tribunal also takes into account complete failure of the Respondents to seek an HMO licence at any stage.
61. The Court of Appeal in *Kowalek v Hassanein* [2022] EWCA Civ 1041 quoted with approval from *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324, (s44) “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”: and further 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”.
62. The Upper Tribunal in *Acheampong* set out several stages to the assessment of a rent repayment order.
- 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).
63. Applying the above guideline, the whole of the rent is £14,673.37 being the whole of the rent of £1900 per month less 25% paid by universal credit from the 4<sup>th</sup> tenant who is not an applicant in these proceedings and allowing for rebates for disrepair or leaving early as set out in the calculation below. There are no utilities to be deducted.

64. Failing to licence a house which is required to be licensed is a serious offence and is part of a policy to ensure housing is of an appropriate quality. During the tenancy complaints were made about disrepair including roof leaks, mould and a mite infestation. Copies of the gas and safety certificates was not supplied at the commencement of the tenancy. Taking all these factors into account the tribunal determines that the appropriate level of rent repayment order is 75%.

### **Our Determination**

65. The Tribunal is satisfied beyond reasonable doubt that the Second Respondent has committed an offence under section 72(1) of the 2004 Act of managing an unlicensed HMO.
66. In case we are wrong on the liability of the second Respondent we are further satisfied that the first Respondent was the “person having control” of the House as it received the rack-rent of the premises from the Applicants. The first Respondent was the Landlord of the tenancy notwithstanding that the lease is held by the second Respondent.
67. The Tribunal makes a rent repayment order in favour of the Applicants in the sum of £11,005.03 as set out below to be paid within 28 days.

due date	total rent	3/4th
15/07/2022	£1,900.00	£ 1,425.00
15/08/2022	£1,900.00	£ 1,425.00
15/09/2022	£1,900.00	£ 1,425.00
15/10/2022	£1,900.00	£ 1,425.00
15/11/2022	£1,900.00	£ 1,425.00
15/12/2022	£1,900.00	£ 1,425.00
15/01/2023	£1,900.00	£ 1,425.00
15/02/2023	£1,900.00	£ 1,425.00
15/04/2023	£1,900.00	
less rebate	-£ 419.99	
	£1,480.01	£ 1,110.01
15/05/2023	£1,900.00	
less rebate	-£ 41.00	
	£1,859.00	£ 1,394.25
15/06/2023	£1,900.00	
less refund for early leaving	-£ 874.52	
	£1,025.48	£ 769.11
		£14,673.37
Rent repayment order	75%	£11,005.03

68. We are also satisfied that the Respondents should refund to the Applicants the Tribunal fees of £300 which have been paid in connection with this application.

**A Harris LLM FRICS FCIArb  
Valuer Chair**

**20 May 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 First-tier 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).