FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AP/HMF/2024/0652**
Property	**:**	**Flat E, 5 Queens Avenue, London, N10 3PE**
Applicants	**:**	**Isabel Grant-Funk** **Harriet Rose Howard** **Holly Elizabeth Turner**
Representative	**:**	**Brian Leacock (Justice for Tenants)**
Respondent	**:**	**Perminder Singh Dubb**
Representative	**:**	**In person**
Type of Application	**:**	**Application for a rent repayment order**
Tribunal Member	**:**	**Judge Robert Latham** **Mel Cairns**
Date and Venue of Hearing	**:**	**27 May 2025 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**27 May 2025**

DECISION

Decision of the Tribunal

1. The Tribunal makes a Rent Repayment Orders against the Respondent in the sum of £19,666 which is to be paid by 20 June 2025.

2. The Tribunal determines that the Respondent shall also pay the Applicant £330 by 20 June 2025 respect of the tribunal fees which the Applicants have paid.

The Application

1. On 5 September 2024, the Applicant tenants issued this application against the Respondent landlord seeking a Rent Repayment Order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act"). The application relates to their tenancy at Flat E, 5 Queens Avenue, London, N10 3PE ("the flat"). The Applicants sought a RRO in the sum of £24,483.96 in respect of the rent which they paid between 3 September 2022 and 2 September 2023.

2. On 29 November 2024, the Tribunal gave Directions. These explained how the parties should prepare for the hearing. The Applicants have filed their bundle of documents which extends to 197 pages. The Respondent did not provide any material in response.

The Hearing

3. The Applicants were represented by Mr Brian Leacock from Justice for Tenants. He provided a Skeleton Argument. He adduced evidence from the three applicants:

   (i) Ms Isabel Grant-Funk was studying a masters in public health at the London School of Hygiene and Tropical Medicine. She is now a public health strategist. She was living in the USA prior to the grant of the tenancy.

   (ii) Ms Harriet Rose Howard was studying cancer research at UCL;

   (iii) Ms Holly Elizabeth Turner was studying for a primary school teaching degree at UCL. She is now a primary school teacher.

   The Tribunal has no hesitation in accepting their evidence. They were all good tenants who paid their rent.

4. Mr Perminder Singh Dubb appeared in person. He accepted that he had received all the papers from the tribunal. He admitted that the flat had required an HMO licence under an additional licencing scheme introduced by the London Borough of Haringey. He stated that his failure to obtain a licence had been an oversight, for which he apologised. He has owned the flat since October 2003. The flat had previously been let under assured shorthold tenancies to single households.

5. The Tribunal afforded Mr Dubb the opportunity to put questions to the Applicants and to make closing submissions. We did not permit him to give evidence, as he had not made any witness statement. In the event, he did not have any questions for the Applicants. At the end of the hearing, Mr Leacock asked if he could put questions to Mr Dubb. The Tribunal

asked Mr Leacock whether he was inviting us to permit Mr Dubb to give evidence, despite not having made a witness statement. Having realised the consequence of this, Mr Leacock deid not to pursue his application. The Tribunal thus has no evidence of Mr Dubb financial circumstances, whether he owns any other properties, or whether he should be treated as a professional landlord. He has not put forward any defence of "reasonable excuse".

The Housing Act 2004 ("the 2004 Act")

6. 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."

7. 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.

8. Section 56 permits a local housing authority ("LHA") to designate an area to be subject to an additional licencing scheme. On 27 May 2019, Haringey introduced an additional licencing scheme which applied to this flat.

9. 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."

10. 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.

<u>The Housing and Planning Act 2016 ("the 2016 Act")</u>

11. 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.

12. 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."

13. 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."

14. 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.

15. 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.

16. 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)."

17. 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.

18. 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."

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

20. 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:
>
> 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."

21. These guidelines have recently been affirmed by the Deputy President in *Newell v Abbott* [2024] UKUT 181 (LC). He reviewed 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), in which 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%).

22. 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."

23. 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."

The Background

24. The flat is situated in a substantial four storey, semi-detached, property in Muswell Hill. This is a desirable area of London. There are six flats in the property. The flat is on the third and fourth floors. The flat has three bedrooms, a living room, a bathroom and toilet, and a second toilet. The two bedrooms on the top floor have Velux windows.

25. The three Applicants found themselves through Facebook. None of them were living in London. They were students who were looking for accommodation to share in London. Ms Howard saw the flat advertised on Openrent (at p.29) at a rent of £2,195 per month. They were unable to inspect the flat, but a video was provided.

26. There is a tenancy agreement at p.74. No rent is specified and it is unsigned. It is dated 29 July 2022 and is for a term from 21 August 2022 to 21 September 2023. Ms Howard did some research and considered that an HMO licence was required. On 18 August 2022, Ms Turner raised this in a text to the Respondent (at p.50). Mr Dubb responded that the Council had not designated the building as an HMO, so no licence was required. The Applicants accepted this.

27. On 21 August 2022, Ms Howard saw the flat for the first time. She was concerned that the Velox window in her bedroom was cracked (p.40). The window was seized and could not be fully closed or opened. She complained about this to Mr Dubb. He agreed to repair this. It was never repaired.

28. Ms Howard's father is a firefighter. Ms Howard was concerned about the fire precautions. There was no door to the kitchen. There was no fire blanket. Her father provided her with one. There were two fire alarms on the internal staircase. There was a Carbon Monoxide alarm on a shelf in the kitchen which seemed to be working. This should have been mounted on the ceiling near the gas boiler.

29. On 1 September 2022, Ms Howard moved into the flat. Next day, she was joined by Ms Turner and Ms Grant-Funk. The tenants apportioned the rent according to the size of their rooms, Ms Howard paying 33.5%, Ms Turner 34% and Ms Grant-Funk 32,5%. Ms Turner and Ms Grant-Funk occupied the two bedrooms on the top floor. There was an excellent relationship between the tenants. They ate together and spent leisure time together in the living room. They agreed that the flat was in a good location.

30. All the tenants complained of disrepair. Ms Howard had a particular problem with the Velux window in her bedroom. It was cracked. It was ill-fitting and could not be opened. There was a gap which she plugged with a scarf and a flannel (p.42). She also used masking tape (p.39). On 30 October 2022, there was a storm and she heard the pane lifting. She slept in the living room for safety reasons. Next day, she complained to the Respondent (p.45). Her bedroom was cold.

31. The Applicants complained of a number of other items of disrepair. There was a leak into the hallway. They complained about it on 13 October 2022 (p.37). They were concerned as there was dampness near the intercom. Ms Turner complained about a leak into her bedroom. There was some mould growth in the bathroom. They also complained that the toilet leaked, so they only used the toilet in the bathroom.

32. The Applicants provided screenshots of a number of text messages and a video of the rainwater onto the Velux window. They complained that Mr Dubb was slow to respond. Mr Dubb was not well served by his builders. However, he did agree to some rent reductions because of the disrepair.

33. On 9 September 2023, Ms Howard and Ms Turner left the flat. Ms Grant-Funk left on 29 September. They did not want to renew the tenancy because of the problems that they had faced. They took advice as they did not want other tenants to face the problems that they had experienced. They were informed of their right to apply for a RRO.

Our Determination

34. The Tribunal is satisfied beyond reasonable doubt of the following

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

(ii) The Respondent was the person "having control" of the flat, as he 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 established 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 2 September 2022 to 9 September 2023.

35. The Applicants claim a RRO over the twelve month period 3 September 2022 to 2 September 2023. The Tribunal must first determine the whole of the rent of the relevant period. It is agreed that the Applicants paid a total of £24,581.96 (see p.86). This gives credit for the rent reductions that were agreed. None of the tenants were in receipt of universal credit. There are no deductions to be made for utility bills as these were paid by the tenants.

36. 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.

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

(a) The conduct of the landlord. This is the factor that we need to consider further.

(b) The conduct of the tenant. There is no criticism of the conduct of the tenants.

(c) The financial circumstances of the landlord. There is no evidence on this. Mr Dubb was anxious to provide evidence on this. However, he had not filed any statement of case and we did not permit him to give evidence.

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

38. We have regard to the following factors:

(i) The Tribunal does not consider Mr Dubb to be either a professional landlord or a rogue landlord. He was rather misguided. Mr Dubb arranged the letting himself. He did not carry out sufficient inquiries as to his responsibilities as landlord. We have seen many cases where the landlord would have used the living room as a fourth bedroom; Mr Dubb did not seek to do so. Mr Dubb apologised for his failings. He attributed this to an oversight. We give him credit for his remorse.

(ii) The Tribunal assesses the disrepair as significant but would not put this in the most serious category. Mr Dubb was ineffective in remedying the disrepair. He was not well served by the builders whom he instructed. There were further problems in that it was the freehold company which had the primary responsibility for the repair of the roof. He was slow in responding to complaints. He agreed to some modest rent reductions. However, significant items of disrepair remained outstanding at the end of the tenancy.

(iii) The Tribunal was concerned about the fire precautions. This is the principle reason why HMOs require licences. A licence would not have

been granted without significant works being executed. There was no door to the kitchen. No fire blanket was provided. Any kitchen is a common seat of fire. There was no thumb-turn-lock for the front door which was the only means of escape in the event of a fire.

(iv) The Applicants complained that they were not provided with an EPC certificate at the commencement of the tenancy. However, they were provided with the "How to Rent" guidance, a gas safety certificate and an electrical installation condition report. Their deposit was placed in a Deposit Protection Scheme and returned at the end of the tenancy.

39. Taking these factors into account, we make a RRO in the sum of £19,666, namely 80% of the rent of £24,581.96 which was paid by the Applicants. We also order the Respondent to reimburse to the Applicants the tribunal fees of £330 which have been paid. These sums shall be paid by 20 June 2025.

Robert Latham
27 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.