FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference(s)	**:**	**BIR/00CN/HMK/2024/0032**
Property	**:**	**Basement Flat 59 Soho Road Birmingham B21 9SP**
Applicant(s)	**:**	**Amina Dania Idrees**
Respondent	**:**	**Kulvant Virdee**
Type of Application	**:**	**An application for a Rent Repayment Order by a Tenant.** **Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal	**:**	**Judge D Barlow** **Mr N Atherton**
Date of Hearing	**:**	**5 March 2025**
Date of Decision	**:**	**30 May 2025**

DECISION

ORDER

The Tribunal determines that it shall exercise its discretion to make a rent repayment order in terms that the Respondent shall pay to the Applicant the sum of £2,730.00 within 28 days of the date of issue of this decision.

REASONS

Background

1. On 5 June 2023 the Soho neighbourhood in which the property is located was designated by Birmingham City Council as subject to selective licensing under section 80 of the Housing Act 2004.

2. The Respondent, Mr Virdee submitted a 'duly made' application for a selective licence to Birmingham City Council on 17 August 2024. A notice of intention to grant a licence was issued by the council on 9 September 2024.

3. Ms Idrees' tenancy commenced on 1 December 2021 and ended on 22 August 2024 when she vacated the flat. On 16 July 2024, Ms Idrees applied to the tribunal for a Rent Repayment Order (RRO) under section 40 of Chapter 4 of Part 2 of the Housing and Planning Act 2016 (the Act), on the grounds that her landlord had committed an offence under Section 95 (1) Housing Act 2004 – that of control or management of an unlicensed house. She seeks a RRO for the 12-month period 17 July 2023 to 16 July 2024 when the flat was unlicensed, in the amount of £7,800.00.

4. 59 Soho Road is a three-storey mixed use property with a basement. The ground and first floor are mostly let as office space. Mr Virdee's business operates from offices on part of the first floor. The second floor comprises 2 residential flats. The Applicant was, until 22 August 2025, occupying the basement studio flat on an assured shorthold tenancy agreement at a monthly rent of £650.00 inclusive of council tax and water rates but exclusive of all other outgoings including electricity. Access to the residential flats is through a central hallway on the ground floor.

Facts

5. From the written statements and oral evidence given at the hearing held on 5 March 2025, at which the parties represented themselves, we have been able to determine the facts as they are set out below.

6. 59 Soho Road is jointly owned by Mr Virdee and his wife Mrs PK Virdee. It is the only property they own apart from their matrimonial home. It is a large property divided into offices that have been let to commercial tenants for some years. More recently the second floor and basement have been brought into residential use. Mr Virdee is solely responsible for management of the building and the lettings, although Mrs Virdee sometimes assists him with the decorations.

7. Mr Virdee is the contractual landlord in respect of the tenancies and entitled to the rent. However, in recognition of his wife's 50% interest in the freehold he pays 50% of the rental income to her. They have organised this by Mr Virdee directing tenants to pay the rent into Mrs Virdee's bank account.

8. The basement flat was refurbished and in good condition when let to Ms Idrees in 2021, although it lacked some basic health and safety measures such as a handrail on the stairs and appropriate arrangements for drying laundry.

9. Mr Virdee is not a professional residential landlord. He just manages the three flats within this building as an adjunct to his commercial lettings. He did not argue for any reduction to the rent calculation to reflect the fact he was paying the council/business and water rates for the whole building. It appears from his oral evidence this may be due in part to the rating assessments for the whole building not recognising the residential areas, making it impossible to apportion the rates between the residential and commercial occupiers.

10. A similar situation exists with electricity. The tenants should be paying for their consumption according to their respective sub-meters. Electricity consumed at the building is charged to Mr Virdee by the utility company. It is his responsibility to collect from the tenants the amount they each consume according to their submeters, which they are contractually obliged to pay. This isn't what happened in Mr Idrees case. She was periodically asked by Mr Virdee to pay what appears to be an estimated sum for electricity.

11. When the rent was increased by £50.00 per month in November 2023, Ms Idrees thought this was intended to include electricity. Mr Virdee did not however intend that to be the case. For reasons that are unclear Mr Virdee did not seek payment for electricity for a lengthy period following this. In July 2024, he presented Ms Idrees with a bill for £4,905.17 in respect of outstanding charges. Ms Idrees asked for copies of the electricity bills justifying the charges and sought legal advice. She also complained to the council. Mr Virdee explained at the hearing that he had found it impossible to reconcile the figures for the units shown on his electricity bills for the building with the figures shown on the tenants' sub-meters. More recently Mr Virdee's son has been assisting him with this. The Tribunal took this to mean that Mr Virdee had been estimating the contributions due from Ms Idrees because he couldn't work out how to charge for the units shown on the sub-meter. Once they had been properly reconciled by his son there was a substantial underpayment.

12. While this is only partially relevant to the calculation of rent for the relevant period it does demonstrate Mr Virdees lack of experience and professionalism in managing mixed use buildings with residential areas.

<u>Mr Virdee's relevant evidence</u>

13. Mr Virdee only became aware of the need to licence the flats when the council wrote to him in July 2024 following Ms Idrees complaint concerning the electricity charges. He does not dispute that he should have applied for a selective licence on or before 5 June 2023, his explanation is simply that he was unaware of the most recent designation order which included the Soho district.

14. On being advised of the need to licence the property Mr Virdee promptly took steps to obtain one only to discover that he needed an up-to-date EPC. His annual gas and electricity certificates were up to date. A licence application was submitted and deemed duly made on 17 August 2024. A draft licence was

issued in September 2024 which places a restriction on numbers but does not require any works to be carried out as a precondition. However, Mr Virdee has since obtained vacant possession of the residential parts of the building and says that he is considering a reconfiguration of the property before re-letting the residential areas.

15. Mr Virdee accepts that he failed to deal with the electricity charges in a professional manner. He realised the accrued charges had become substantial and that Ms Idrees would probably not be able to pay them immediately. This is why he suggested she could pay them over a period of time as and when she could afford to.

Ms Idrees relevant evidence

16. Ms Idrees paid the rent regularly and on time throughout the tenancy including the relevant period, for which she provided bank statements. She says that she fell down the stairs on one occasion due to the absence of a handrail but did not report the incident to Mr Virdee because she didn't want to create an issue with him. Ms Idrees installed a tumble dryer because there are no external drying areas for laundry. This unfortunately caused a build-up of condensation leading to patches of black mildew growing on parts of some walls. Photos were provided. She paid for a dehumidifier to reduce the condensation but believes the generally damp atmosphere may have contributed to her health issues.

17. Ms Idrees is employed in the health service. She had to take time off work for health issues which she says are related to issues with her tenancy including the condensation problem and uncertainty concerning her liability for the electricity charges. However, in the end Mr Virdee did not press her to pay the electricity charges and returned her deposit without deduction when she vacated the flat. She agreed that the flat was in good condition when she moved in and that relations with Mr Virdee had been cordial until the electricity issue arose. A handrail was installed following her complaint to the council and the mildew problem was also addressed. Relations with Mr Virdee deteriorated after she made this application. He visited her at the flat on one occasion with another person and tried to persuade her to withdraw the application in return for a lump sum. Ms Idrees says that she found the conversation and the circumstances in which it took place to be intimidating.

18. Mr Virdee does not dispute attempting to negotiate a settlement but does not believe his approach was at all threatening. In his statement of case, he also offered to settle on payment of 12 months' rent less a sum equal to the unpaid electricity charges.

19. Mr Virdee said that his council/business rates for the entire building are about £1,500 per annum and his water rates approximately £900.00 per annum, both of which he pays. He did not provide written evidence confirming these sums.

The law

20. Before a rent repayment order is made, the Tribunal must be satisfied, beyond reasonable doubt, that a designated offence has been committed (see section 43(1) of the 2016 Act). An offence under section 95 of the 2004 Act is such a designated offence.

21. The relevant parts of section 95 provide:

"*Offences in relation to licensing of houses under this Part*

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
(2) …

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

(a) …

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

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

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

(b) for failing to comply with the condition, as the case may be."

22. The relevant part of s87 provides:

"*Applications for licences*
(1) …
(2) The application must be made in accordance with such requirements as the authority may specify"

23. The standard of proof is "*beyond reasonable doubt*". It is not that the offence has to be proved beyond any doubt at all (see *Opara v Olasemo* [2020] UKUT 0096 (LC)).

24. The amount of a rent repayment order on an application by a tenant is governed by section 44 of the 2016 Act. This requires that the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. The Tribunal must take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has been convicted of an offence to which Chapter 4 of the 2016 Act applies.

The issues for the Tribunal:

Are we satisfied beyond reasonable doubt that the landlord has committed the alleged offence under Section 95(1) of the Housing Act 2004 in respect of control or management of an unlicensed house?

25. The elements of the offence are not in any serious doubt and Mr Virdee has not disputed that an offence of failure to licence has been committed, or the jurisdiction of the Tribunal to make an RRO. The Tribunal accepts the written evidence from Ms Idrees that the property was within a selective licensing area as from 5 June 2023, and that no application for a licence was made until 17 August 2024.

26. There is no dispute that Mr Virdee is the landlord. He is not the person who directly receives the rack rent because he has arranged for the rent to paid into Mrs Virdee's bank account to facilitate a separate arrangement they have concerning profit sharing of the rental income. He is not therefore a person 'in control' of an unlicensed house for the purposes of s263(1) of the Act. He is however managing the property and is an owner of the property entitled to receive the rack rent had he not arranged for Mrs Virdee to receive the rent on his behalf. He is therefore a person 'managing' the property for the purposes of s263(3) of the Act and therefore liable for this offence.

27. We considered whether Mr Virdee's lack of awareness of the requirement to licence, may provide a defence of reasonable excuse under s95(4). Useful guidance on this question can be found in *Thurrock Council v Daoudi*, 2020 WL 04005713 (2020) where the Upper Tribunal considered two ways in which ignorance of the need to obtain a licence might be relevant:

> "*There may be cases in which an ignorance of the facts which give rise to the duty to obtain a licence may provide a defence of reasonable excuse under section 72(5)….*
>
> *It is also possible to imagine circumstances in which a landlord had a reasonable excuse for not appreciating that a property had come within a selective licensing regime* ***(although it would be necessary for the landlord to have taken reasonable steps to keep informed****). Short of providing a defence, ignorance of the need to obtain a licence may be relevant to the issue of culpability. Although, as the Government's Guidance points out, a landlord is running a business and ought to be expected to understand the regulatory environment in which that business operates, not all businesses are the same.* ***A decision maker might reasonably take the view that a landlord with only one property was less culpable than a landlord with a large portfolio****." (my emphasis)."*

28. Mr Virdee did not articulate any defence on this ground. However, the Tribunal is satisfied that the Mr Virdee was unaware of the selective licensing regime until notified by Birmingham City Council in July 2024, and that he

then took steps to obtain a licence without disputing the requirement. The Tribunal also accepts Mr Virdee's evidence that he only manages this single mixed-use property and is not experienced in residential lettings.

29. That being said, the selective licensing regime has been in force for some years now and is reasonably well understood by landlords operating in Birmingham. Landlords are aware (or should be) of the seriousness of failing to licence their properties and the onus is on those benefitting from the lettings to ensure that they are abreast of the relevant law. No evidence was offered of any steps, reasonable or otherwise, taken by or on behalf of Mr Virdee to keep himself informed of the regulatory regime under which the property was let.

30. The circumstances are not therefore sufficient for the Tribunal to find the landlord has a reasonable excuse for not appreciating that the property had come within the selective licensing scheme. They are however circumstances that we have considered below in relation to culpability.

<u>What is the maximum amount that can be ordered under section 44(3) of the 2016 Act?</u>

31. We are satisfied that the offence was committed within a 12-month period ending on the date of the application and that the applicable 12-month period is any consecutive 12-month period during which the offence was being committed. Ms Idrees has paid the rent of £650.00 per month for the 12-month period immediately prior the filing of this application and that is the relevant period the Tribunal has considered in relation to this application.

32. The rent is inclusive of council tax and water rates. However, there was no evidence that council tax for the flats was being paid by Mr Virdee, and no water consumption figures were provided which would allow for an informed estimate of a fair proportion. Possibly because Mr Virdee is not seeking any reduction for these outgoings. Consequently, we have not made any deduction for council or water rates from our calculation of the maximum sum that could be awarded. We have adopted the same approach to electricity. Mr Virdee's failure to deal with the charges in a professional manner has probably caused him to be significantly out of pocket. However, his haphazard approach to collection of the charges has at the same time caused considerable stress and anxiety to his tenant. We thought both parties were truthful about this issue. Mr Virdee was not ill-intentioned just hopelessly inefficient and unprofessional in his approach to calculating and levying the charges. As there was no evidence that would allow us to make an informed estimate of the electricity charges for whatever period they were not paid, we have not taken into account any benefit that might have accrued to Ms Idrees.

33. The maximum sum that can be awarded under section 44(3) of the Act is therefore 12 x £650 = £7,800.00.

<u>What factors should be taken into account, including the matters in s.44(4)?</u>

34. In *Acheampong v Roman & Ors* [2022] UKUT 239 (LC), Judge Cooke provided some practical guidance for the FTT when assessing the amount of rent to be

repaid, which she considered would be consistent with the authorities. This was to:

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)*

Deliberation

35. With that in mind, we have taken account of the following factors:

a. That the landlord has no previous convictions of an offence referred to in chapter 4 of the 2016 Act.

b. The landlord is not a professional landlord with regard to residential lettings. He only manages this single mixed-use property and lacks the knowledge and experience generally found in experienced landlords of residential property portfolios. His failure to understand the regulatory framework is therefore less culpable than that of a professional landlord.

c. An offence under section 95 of the 2004 Act is not the most serious of the offences which could result in a rent repayment order. The offence was committed for a period of some 14 months, which although serious is not a lengthy period.

d. The landlord does not claim to have any financial pressures, from which we have inferred that he can afford any financial penalty we impose.

e. It is notable that the tenant accepts that she had a good relationship with her landlord (until the electricity issue).

f. The property was let in good condition albeit with some safety issues. They were quickly rectified after the council became involved, but not

before the tenant had sustained a fall, and health issues which may have been exacerbated by the lack of proper ventilation.

g. The landlord made a prompt application for a licence which was granted without any suggestion that the property was not suitable for occupation.

h. Birmingham City Council have not pursued the financial penalty against the landlord, which would be surprising if they considered the offence to be of the higher order of seriousness.

i. There are no issues with the tenant's conduct.

36. The Tribunal found both parties to be credible and reliable witnesses. We accept Mr Virdee's explanation that the visit he made to the flat with a friend was a well-intentioned effort to settle this application without the need for a hearing. This is supported by his formal written offer within the proceedings. We also accept his evidence concerning the electricity charging issues which appear to be largely due to lack of competence in calculating what he should be charging.

37. Our view, balancing all the above circumstances, is that we should exercise discretion to make an RRO, and that the appropriate discount is 65%. **We therefore order the Respondent to repay the Applicant rent in the sum of £2,730.00.**

D Barlow
Deputy Regional Judge

Appeal

38. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.