FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/00MA/HMF/2024/0004**
Property	:	**Longdown, Emmets Nest, Binfield, RG42 2HH**
Applicant	:	**Sven Perisic**
Representative	:	**In person**
Respondents	:	**(1) Miriam Stoykov Mirilov** **(2) Marcia Mirilov** **(3) Branislav Mirilov**
Representative	:	**In person**
Type of application	:	**Application by tenant for rent repayment order** **Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal members	:	**Judge K Gray** **Mr Adarsh Kapur**
Venue	:	**Remote hearing by CVP**
Date of decision	:	**19 May 2025**

DECISION

Decisions of the tribunal

(1) The tribunal finds that the Applicant is entitled to a rent repayment order under section 41 of the Housing and Planning Act 2016 and that an order ought to be made.

(2) The amount of the rent repayment order awarded to the Applicant, determined under section 44 of the Housing and Planning Act 2016, is £1764.00 payable by the First and Third Respondents to the Applicant within 28 days of this decision.

(3) The First and Third Respondents shall pay the Applicant £320.00 within 28 days of this Decision in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. By an application received by the Tribunal on 17 April 2024 ("the Application") made under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") the Applicant tenant sought a rent repayment order ("RRO") against the Respondents.

2. The Applicant assert that the Respondents had control of or was managing a house in multiple occupation ("a HMO") which was required to be licenced under the Housing Act 2004 ("the 2004 Act") but which was not so licenced.

3. The background to this application is set out in the hearing bundles prepared by the Applicant and the First and Third Respondents, which the parties confirmed contained the relevant documents and which we have considered in detail.

The hearing

4. The hearing was conducted remotely using the CVP platform. The Applicant attended by telephone, as did the Third Respondent after some initial connection issues. The First Respondent attended by video. We were satisfied that the parties were able to hear each other and the tribunal and fully participate in the hearing. Any connection issues were resolved during short adjournments and the hearing resumed once all parties had reconnected.

5. At the outset of the hearing the Respondents raised a matter foreshadowed in their witness statements, namely that the Second Respondent died on 18 July 2024. The Applicant confirmed that he sought orders against the First and Third Respondent only.

6. All of the parties acted in person and were not represented. We heard oral evidence from the Applicant, who adopted the documents in his hearing bundle as his evidence and was cross-examined by the First and Third Respondents. We also heard oral evidence from the First and Third Respondents and from their sister/daughter Natasha Mirilov. They confirmed the contents of their witness statements dated 20 January 2025, 21 January 2025 and 22 January 2025 respectively. The First and Third Respondents were cross-examined by the Applicant. All parties in attendance made closing submissions. We reserved our decision.

The background

7. The subject property is a bungalow with a converted loft providing accommodation on the ground and first floors. Neither party requested an inspection of the property and the tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

8. The Applicant's case is that he was the tenant of a ground floor room at the property between 10 April 2023 and 1 May 2024 pursuant to the terms of an oral tenancy agreement granted by the First Respondent. He says that the property required a HMO licence during his occupation but no licence was ever in place.

9. The First and Third Respondents agree that the property required a HMO licence but they did not obtain one. The First Respondent agreed that she received the rack rent for the property from the Applicant in the sum of £490 per calendar month and that she was a "person having control" of the HMO at the material times. The Third Respondent admits that he was an owner of the property and received from the First Respondent part of the rent such that he was a "person managing" the HMO. They both therefore admit that they have committed an offence under section 72(1) of the 2004 Act.

10. The Applicant agreed that his case is based solely on the failure to obtain a HMO licence, and not on the allegations of unlawful eviction mentioned in his statement of case.

The issues

11. At the start of the hearing the parties agreed that the following issues remain in dispute and require determination:

    (i) whether the Applicant is entitled to a RRO under sections 41 and 43 of the 2016 Act; and if so

    (ii) the amount of the RRO, to be determined in accordance with section 44 of the 2016 Act.

12. Having heard the evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on these issues below. We focus in our judgment on the main points that have been identified by the parties, though we have considered all the documents and the evidence and the issues raised and taken these into account.

Legal framework

13. Section 40 of the 2016 Act provides that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

14. Section 41 of the 2016 Act provides:

> *(1) A tenant … 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."*

15. Section 43 of the 2016 Act provides:

> *(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).*
> *(2) A rent repayment order under this section may be made only on an application under section 41.*

16. The relevant offences to which Chapter 4 of the 2016 Act applies are set out at section 40 of the 2016 Act. They include the offence under section 72(1) of the 2004 Act of controlling or managing an unlicensed HMO.

17. The amount of a RRO is to be determined under section 44 of the 2016 Act as follows:

> "*…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 [*the period of 12 months ending with the date of the offence / a period, not exceeding 12 months, during which the landlord was committing the offence*], less*

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(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."

Findings

Is the Applicant entitled to an order under sections 41 and 43 of the 2016 Act?

18. It was not seriously disputed that an order ought to be made. We accept that the ground floor room was let to the Applicant from 10 April 2023 to 1 May 2024. As set out above, the First and Third Respondents admit that they committed an offence under section 72(1) of the 2004 Act during this period. The Application was made on 17 April 2024 and therefore the offence was committed in the period of 12 months ending with the date of the application.

19. We are therefore satisfied that the Applicant is entitled to an order under section 41 of the 2016 Act and that it is appropriate, in light of the agreed offending, to make such an order.

The amount of the RRO

20. We begin by ascertaining the full rent paid by the Applicant in the 12 month period during which the First and Third Respondents were committing the offence. There was no dispute, and we find, that the Applicant paid rent in full during his occupation of the property in the sum of £490 per month. His claim is accordingly for 12 months rent at £490 per month, being £5880.00.

21. There was no suggestion that any relevant award of universal credit was paid to the Applicant or the Respondents in respect of the rent under the tenancy during this period.

22. The Respondents provided no evidence of any payments made by them in respect of utilities that only benefitted the Applicant during the relevant period. Accordingly, we make no deductions in respect of utilities.

23. We consider next the seriousness of the offence which forms the ground upon which the RRO is made (i.e. the offence under section 72(1) of the 2004 Act). In our judgment, this offence is more serious than the offence of having control or management of an unlicenced house under section 95(1) of the 2004 Act because of the risk of overcrowding, sanitation and fire hazards involved with managing properties occupied by multiple households. However, it is in our judgment considerably less serious than some of the other offences identified in section 40 of the 2016 Act, such as using violence to secure entry.

24. We also take into account that there is no suggestion that the Local Authority has taken any action against the Respondents in respect of their failure to obtain a HMO licence, and nor is it suggested that the condition of the property is such that a licence would not have been granted had an application been made. In our judgment this factor is indicative of the fact that the offending in this case is of a less serious nature.

25. In our judgment, the less serious nature of the offending in this case warrants a reduction in the amount of the RRO for the relevant period. Subject to the remaining factors referred to in section 44 of the 2016 Act (i.e. the conduct of the parties and the financial circumstances and offending history of the landlord) we find that the less serious nature of the offending would warrant the making of a RRO of 40% of the rent paid for the relevant period. However, the seriousness of the offending is not the only matter that we are required to take into account, and we now consider those remaining factors in coming to our final assessment of the amount of the RRO.

26. As to the conduct of the First and Third Respondents, we accept their unchallenged evidence that they are not "professional" landlords (that is to say that they do not let other properties) and that the property is effectively a family home, occupied by the Third Respondent's daughter Natasha, with lodgers taken in for additional family income. The lodgers were not strangers to the family but would be students known to them from the local college or through family connections in Croatia. Natasha now occupies the property with her husband and baby and the family have stopped taking lodgers.

27. We found the First and Third Respondents to be conscientious individuals who did their best to let the property in accordance with the rules but were unaware of the requirement to obtain a HMO licence until the Applicant made this application. We feel sure that their failure to obtain a HMO licence was an innocent breach of the requirements.

28. The Applicant raised a number of issues about maintenance issues at the property in his statement of case. However, none of these points were put to the First and Third Respondents in cross examination and nor did the parties focus on these issues during the hearing. The allegations were

not clearly particularised. We are not satisfied that the Applicant has established that there were any serious or significant maintenance issues at the property that would reflect poorly on the conduct of the First and Third Respondent. We accept, as the First Respondent said, that the property was well run and that disputes were generally resolved in a friendly and collaborative manner. We consider that this reflects positively on the conduct of the First and Third Respondents.

29. The Applicant says that the First and Third Respondents put pressure on him to leave the property without first serving a section 21 notice. We have considered the extracts of the text messages between the parties at the material time. We do not accept that pressure was exerted on the Applicant as he says. The messages sent by the First Respondent are pleasant and polite. The Applicant responded making it clear that he would not leave the property until the proper processes were followed. In the event, the Applicant found somewhere else to live and left the property on 1 May 2024. We do not consider that this matter reflects poorly on the conduct of the First and Third Respondents.

30. Finally, the Applicant says that the Third Respondent and the other family members would use the downstairs shower at the property and kitchen appliances from time to time. No particulars of how often this would take place were given and the witnesses were not asked about it. We have found that this was (in part) a family home and the kitchen and bathroom were shared facilities. We are not satisfied that the Applicant has established that this issue reflects poorly on the conduct of the First and Third Respondents.

31. The First and Third Respondents make a number of complaints about the Applicant. In summary, they raise issues about the Applicant's parking of cars on the road, installing a camera in his room, having guests to stay, storing scrap metal and other items on the property, being abrupt in his communications, scaring a dog owned by another tenant and using the property address for business purposes.

32. Save for in one respect, we do not find these allegations made out. The Applicant was entitled to park cars on the public highway and this is not a landlord and tenant issue. Likewise, there was no suggestion that installing a camera in his room was a breach of the agreement between the parties. It was accepted that the Applicant had permission to store scrap and other items on the premises and that he removed them either during his occupation or shortly after he moved out. In our judgment, the Applicant was entitled to insist on the proper processes being followed before being asked to leave the property and it was not unreasonable for him to continue to occupy his room in April 2024 (whilst still paying rent) even though he had secured accommodation elsewhere. No questions were asked about the issue relating to the dog and no evidence was called from its owner. Despite what the First and Third Respondents say, we do not consider that the Applicant has acted

unreasonably or unconscionably by issuing this application, as he is entitled to do.

33. However, the Applicant accepted that when he was living at the property he used the property as the registered office for a business run by him. He did not ask the Respondents for consent to do this. When he moved out, he did not change the registered office address – this did not take place until Companies House changed the address to a default address in November 2024. We consider that this conduct, both in registering a business to the address without consent and in failing to change the address when he moved out, reflects poorly on the Applicant.

34. There was no evidence of the financial circumstances of the First and Third Respondents before us and we are accordingly unable to consider these circumstances.

35. There is no suggestion that the Respondents have been convicted of an offence to which Chapter 4 of the 2016 Act applies.

36. Taking all these matters into account, including our findings about the conduct of the parties referred to above, we determine that the appropriate order in this case is for the repayment of 30% of the rent paid during the period claimed.

37. We therefore make a RRO against the First and Third Respondents of £1764.00.

38. We also order the First and Third Respondents to reimburse the Applicant for the tribunal fees that he paid in the sum of £320.00 (being the application fee of £100.00 and the hearing fee of £220.00).

Name: Judge K Gray **Date:** 19 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).