



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

Case Reference : **LON/00BE/HMF/2024/0252**

Property : **Flat 8, Trinity House, Bath Terrace,
London, SE1 6PX**

Applicants : **Freya Prentice
Helena Bladen
Phoebe Hill**

Representative : **Jamie McGowan, Justice for Tenants**

Respondent : **Ceri Elizabeth Banks**

Representative : **Did not appear and was not
represented**

Type of Application : **Application by Tenant for rent
repayment order. Sections 40,41, 43
& 44 of the Housing and Planning Act
2016**

Tribunal : **Judge Bernadette MacQueen
Rachael Kershaw, BSc**

Date of Hearing : **20 May 2025**

Date of Decision : **9 June 2025**

DECISION

DECISION

1. The Tribunal finds that the Respondent has committed the offence of failing to license a House in Multiple Occupation (HMO) under the provisions of section 72(1) of the Housing Act 2004, and that accordingly a rent repayment order in favour of the Applicants can be made.
2. The Tribunal makes a rent repayment order in the total sum of £16,224 for the period of 23 July 2022 to 22 July 2023. The Tribunal orders that the Respondent must pay Phoebe Hill £5,408, Freya Prentice £5,408 and Helena Bladen £5,408 within 28 days of the date of this decision.
3. The Tribunal also orders the reimbursement of the Tribunal fees (application and hearing fee), and this amount must be paid by the Respondent to the Applicants within 28 days of the date of this decision.

Background

4. On 16 July 2024, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 from the Applicants for a rent repayment order (RRO) in relation to Flat 8, Trinity House, Bath Terrace, London, SE1 6PX (the Property). The Property was a three bedroom flat on the ground floor of a six storey block of flats.
5. The Applicants contended that the Property was required to be licensed pursuant to the London Borough of Southwark's Additional Licensing Scheme. It was asserted that the Respondent had committed an offence of having control or management of an unlicensed HMO contrary to section 72(1) of the Housing Act 2004.
6. The Applicants sought a RRO for the period 23 July 2022 to 22 July 2023 ("Relevant Period") in the sum of £24,960.

7. It was not disputed that the Respondent had submitted an application for an Additional Licence for the Property to the London Borough of Southwark on 7 August 2023, and that this had been granted on 18 September 2023.

The Documentation and Hearing

8. The Tribunal had made Directions on 19 September 2024 that required each party to prepare a bundle of relevant documents for use at the hearing and to send these to each party and the Tribunal.
9. The Applicants had sent a bundle of documents that consisted of 213 pages, in addition the Applicants had provided a video showing the layout of the Property and a response to the Respondent's submissions, which was 3 pages in length. Further, prior to the hearing, Jamie McGowan on behalf of the Applicants had submitted a skeleton argument.
10. The Respondent had not provided a bundle of documents that complied with the Tribunal's Directions. Instead, the Respondent had provided an email which was sent on 16 December 2024 to the Tribunal and the Applicant's representative which was entitled "statement of defence". There were 7 documents attached to this email relating to gas safety record, tenancy deposit scheme, Electricity Installation Condition report (EICR), Energy Performance Certificate (EPC), and a certificate dated 14 August 2020 which appeared to show that the flat entrance door met fire safety standards.
11. On 18 December 2024, the Tribunal wrote to the Respondent stating that:

"The Respondent must submit her statement and documents (making sure that all documents she wishes to

rely upon are in the bundle) in the correct form as described by the directions.”

12. The Respondent took no further steps to follow the Tribunal’s Directions and so, on 27 January 2025, the Tribunal had sent to the Respondent a notice that the Tribunal was minded to bar the Respondent from participating in the proceedings if she failed to comply.
13. On 13 February 2025, having received no communication from the Respondent since her email of 16 December 2024, the Tribunal had sent the Respondent an Order barring her from further participation in these proceedings. The order stated that the Respondent may make an application to lift the bar, however no such application was received by the Tribunal from the Respondent.
14. Despite the Respondent’s evidence not being submitted in accordance with the Tribunal’s Directions, and taking into consideration that the Applicants made no objection, the Tribunal nevertheless considered the email and documents that the Respondent had sent to the Tribunal on 16 December 2024. In reaching this decision, the Tribunal considered rule 3(2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and determined that in order to enable the Tribunal to deal with the case fairly and justly, the Tribunal would consider the Respondent’s email of 16 December 2024 and its attachments in order to ensure, so far as practicable, that parties were able to participate fully in the proceedings.
15. Each Applicant attended the hearing on 21 May 2025 and were represented by Jamie McGowan of Justice for Tenants. The Respondent did not appear and was not represented. The Tribunal was satisfied that the Respondent was aware of these proceedings given that she had sent the email dated 16 December 2024 to the Tribunal. Further, the Tribunal had sent a notice of hearing to the Respondent’s correspondence addresses and had also sent the notice of hearing to the email address from which the Respondent’s email of 16 December 2024 had been sent (Residential Realtors). The Tribunal was satisfied that it was in the

interests of justice to proceed in the absence of the Respondent. The Respondent had been barred from proceedings because of her non-compliance and no application had been made to lift that bar.

The Law

16. Section 41(1) Housing and Planning Act 2016 states:

“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”

12. Section 43(1) Housing and Planning Act 2016 states:

“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 had been convicted)”

13. Section 40(3) Housing and Planning Act 2016 defines “an offence to which this Chapter applies” by reference to a table. The offence under section 72(1) Housing Act 2004 (control or management of unlicensed HMO) is within that table.

Control or Management of Unlicensed HMO:

14. Section 72(1) Housing Act 2004 provides:

“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 but is not so licensed.”

An HMO required to be licensed, is defined in Section 55(2) (a) Housing Act 2004 as:

“any HMO in the [local housing] authority’s district which falls within any prescribed description of HMO”.

Additional Licensing Scheme

It was not disputed that the Property was within the district of the London Borough of Southwark.

The London Borough of Southwark had exercised its powers under section 56 of the Housing Act 2004 and designated the entire area of its district as subject to Additional Licensing. The scheme had come into force on 1 March 2022 and would on 1 March 2027. The designation applied to all Houses in Multiple Occupation (HMOs) as defined by section 254 of the Housing Act 2004 that are occupied by three or more persons comprising of two or more households.

Section 254 Housing Act 2004 states that a building or part of a building is an HMO if it meets either the standard test, self-contained flat test or the converted building test:

17. The Tribunal identified the standard test as the relevant test and this is defined by section 254(2) as:

(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;

(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;

(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.

Subsection (8) defines “basic amenities as a toilet, personal washing facilities or cooking facilities”.

Exceptions under the London Borough of Southwark Additional Licensing Scheme

18. The exceptions set out within paragraph 5 of the London Borough of Southwark’s Additional Licensing Scheme and can be summarised as:

- a house which is required to be licensed as a mandatory HMO;
- a house subject to an interim or final management order;
- a house subject to a temporary exemption;
- an HMO that is exempt under Housing Act 2004; or
- the property falls within certain stipulations regarding section 257 converted buildings (as set out in 5(e) of the Additional Licensing Scheme).

The Tribunal found that none of these exceptions applied to the Property.

Person having Control of or Managing

19. The Section 72(1) offence is committed by the person having control/managing the Property. Section 263(1) Housing Act 2004 defines “person having control” in relation to the premises as “the person who received the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or would so receive it if the premises were let on a rack-rent”.
20. Section 263(3) defines “person managing” as:

“ 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”.
21. It is now well established that an RRO may only be made against the immediate landlord.

Was the Property an HMO that was required to be licensed?

22. The Tribunal finds that the Property met all the criteria requiring it to be licenced under the Southwark Additional Licensing Scheme, with the standard test being the applicable test.
23. Specifically, the Tribunal finds that the Applicants’ witness statements set out details of the way that the Property was occupied. The Tribunal accepts the Applicants’ evidence that they all moved into the Property on 23 August 2021 and left the Property on 19 August 2023. The Tribunal accepts the Applicants’ evidence that they did not form a single household but that they shared cooking and washing facilities, and that they occupied the Property as their only or main residence, with their occupation constituting the only use of that accommodation.
24. The Tribunal also accepts the Applicants’ evidence that the monthly rent for the Property was paid to the Respondent from the bank account of Freya Prentice, with Phoebe Hill and Helena Bladen paying their share

of the rent to Freya Prentice. This was shown in the bank statements that the Applicants produced at pages 109 to 163 of the Applicants' bundle.

25. Further, the Tribunal notes that the Respondent stated in her email to the Tribunal of 16 December 2024 that the Property was not licensed for the period 23 July 2022 to 22 July 2023, and that once the Respondent had become aware of the requirement to obtain an additional licence, she did so.
26. The Tribunal was therefore satisfied that the Property was required to be licensed under the London Borough of Southwark's Additional Licensing Scheme.

Person Having Control/Managing

27. The Applicants produced their tenancy agreement at pages 88 to 107 of the Applicants' bundle. This was an assured shorthold tenancy which commenced on 8 June 2021 with the term being for a period of 24 months, namely from 23 August 2021 until 22 August 2023. The Respondent was listed as the immediate landlord.
28. Further, the Applicants produced a copy of the official copy of the register of title for the Property from HM Land Registry. This showed that the Property was registered under title number TGL 156656 and that the Respondent was the Leasehold owner (page 165 to 166 of the Applicant's bundle).
29. Additionally, the Applicants produced bank statements of Freya Prentice for the Relevant Period. These showed that rent of £2,080 was paid on a monthly basis to "Residential Real", who the Applicants confirmed were the managing agents named on the tenancy agreement for the Property as Residential Realtors (pages 127 to 151 of the Applicants' bundle).
30. The Tribunal is therefore satisfied that the Respondent was the "person having control" for the purposes of the section 72(1) offence as the

Respondent was the immediate landlord, the beneficial owner of the Property and receiving the rent. Additionally, the Tribunal also finds that the Respondent was the “person managing” given the Respondent was the leasehold owner of the Property, receiving the rent.

Tribunal Determination – Section 72(1) Offence

31. In light of the evidence before it, the Tribunal finds, beyond reasonable doubt, that the Respondent committed the offence of being the person having control of or managing an HMO which was required to be licensed but was not so licensed.

Statutory Defence – Section 72(4) Housing Act 2004 and Reasonable Excuse Section 72(5).

32. The Tribunal considered section 72(4) Housing Act 2004 which provides:

“In proceedings against a person for an offence under subsection (1) [offence of failing to obtain an HMO licence] 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.

33. The Tribunal does not have before it any evidence that the Respondent had a defence under section 72(4)(a) Housing Act 2004. With regards to the defence under section 72(4)(b) Housing Act 2004, although the Respondent had told the Tribunal in her email of 16 December 2024 that an application for an additional licence for the Property had been submitted, she accepted that this was on 7 August 2023, which was after

the Relevant Period. The Tribunal therefore finds that the Respondent did not have a statutory defence under section 72(4).

34. The Tribunal has considered whether the Respondent had a reasonable excuse under section 72(5). The Respondent in her email of 16 December 2024 said that the delay in submitting her licence application was not intentional but was due to unclear information from the London Borough of Southwark regarding the applicability of the Additional Licensing Scheme and what the Respondent described as the resulting grey area surrounding compliance with the requirements.
35. The Respondent did not provide the Tribunal with any evidence to substantiate her claim. In particular, the Respondent did not expand on her statement as to what she meant by a grey area surrounding compliance with the requirements, and why she said that there was confusion because of, in her words, unclear guidance from the Council.
36. It was for the Respondent to show, on a balance of probabilities, that the statutory defence under section 72(5) was met. Given the Respondent failed to produce any evidence to the Tribunal to explain her assertion that there was confusion because of unclear guidance from the London Borough of Southwark the Tribunal is not satisfied that the Respondent had a reasonable excuse.

Should the Tribunal Make a Rent Repayment Order (RRO)?

37. Section 43 Housing and Planning Act 2016 provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the relevant offence has been committed. The decision to make a RRO award is therefore discretionary.
38. However, on the facts of this case, because the offence was established, the Tribunal finds no reason not to make an RRO.

Ascertaining the Whole of the Rent for the Relevant Period

39. The Applicants set out in a table at page 108 of their bundle the total amount of rent that the Applicants had paid to the Respondent for the Relevant Period. The total rent sought was £24,960, which was 12 payments of the monthly rent of £2,080.
40. As set out above, the Applicants produced bank statements to show that rent was paid from Freya Prentice's bank account. The Tribunal accepted this evidence and also the Applicants' evidence that none of them received housing benefit or universal credit.

Deductions for Utility Payments that Benefit the Tenant

41. The Applicants confirmed that utility payments were not part of their rent as the Applicants made the payments for utilities for the Property themselves. The Tribunal accepted the Applicants' evidence and determined that no deduction should be made for utility payments from any RRO amount the Tribunal determined payable.

Determining the Seriousness of the Offence to Ascertain the Starting Point

42. The Tribunal had to consider the seriousness of the offence compared to other types of offences for which a RRO could be made, and also as compared to other examples of the same offence.
43. In determining the seriousness of the offence, the Tribunal adopted Judge Cooke's analysis in *Acheampong v Roman* [2022] that the seriousness of the offence could be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house would generally be less serious. However, the Tribunal

had to consider the circumstances of this particular case as compared to other examples of the same offence.

Seriousness of Offence and Conduct of Landlord and Tenant

44. The Applicants stated that they had paid their rent on time and conducted themselves well. The Applicants alleged that the Respondent had failed to comply with a number of obligations, in particular with regard to fire safety. Further the Applicants submitted that the offence had been occurring for a long period of time.

45. The Applicants submitted that the London Borough of Southwark's HMO standards required that:

“all gas pipe work, appliances and flues must be tested by a registered Gas Safety Engineer every 12 months”.

46. The Respondent had included as an attachment to her email of 16 December 2024 a Gas Safety Certificate which was dated 11 September 2020. This certificate stated that the next safety check was due by 11 September 2021, however the Respondent did not provide any other certificates.

47. The Tribunal therefore finds that the Respondent failed to ensure that the gas safety checks were completed.

48. Regarding the Electrical Installation Condition Report (EICR), the Tribunal accepts that the certificate that the Respondent provided to the Tribunal was dated 6 September 2020 and that this stated that improvement works were required. The Respondent had further submitted an invoice for £822 for works that were completed on the same day. Whilst the Respondent did not provide any subsequent certificates to confirm that the Property was compliant, the Tribunal accepts that work was completed at the Property.

49. The Applicants submitted that none of the internal doors were fire doors, there were no smoke alarms in the kitchen or bedrooms and there were no fire extinguishers or blankets in the Property. The Tribunal notes that 5.4 of the London Borough of Southwark's HMO standards (page 192 of the Applicants' bundle) stated that a manager of an HMO must provide and maintain the means of escape from fire, provide firefighting equipment and reasonably protect the occupiers of the HMO from injury.
50. Whilst the Tribunal accepts the Applicants' evidence, the Tribunal notes that each Local Housing Authority will have different specifications as to whether, for example, a fire blanket is required or whether smoke alarms are required in bedrooms. It is not clear what the particular specifications of the London Borough of Southwark are in this regard.
51. The Respondent had included in the documents that she had sent to the Tribunal a certificate dated 14 August 2020 which appeared to show that the entrance door met fire safety standards. However, the details of what this certificate related to were not clear and therefore this certificate did not assist the Tribunal.
52. Finally, the Applicants stated in their evidence that there was an issue with mice at the Property and stated that the inspection report completed by the Respondent's agent showed that the Respondent's agent was aware of the problem (page 26 of the Applicants' bundle). However, the Tribunal notes that whilst a specialist control company was not used by the Respondent, the report of the managing agent stated that:

"The tenants had noticed one mouse run through. They feel it may have been from when the works next door kept happening. They have not seen it since. I have advised if they encounter another one, to report the problem via RR website."

53. There is no evidence before the Tribunal that the Applicants had contacted the Respondent or the managing agent to report that the problem was continuing. The Tribunal therefore does not find that this is an aggravating factor.
54. The Respondent had submitted that she maintained the Property in good condition and that there were no allegations of disrepair, harassment or other breaches of the tenancy agreement. There was no dispute between the parties that the Respondent had protected the Applicant's tenancy deposit, which the Tribunal accepted.
55. The Respondent submitted that she was based in Australia and had made every effort to ensure compliance with UK housing regulations, acting promptly to licence the Property once she was made aware of the requirement to licence. The Respondent submitted that this should be a mitigating factor. The Tribunal accepts as mitigation that the Respondent had acted promptly when she was aware of the licensing breach and that an additional licence for the Property was granted on 18 September 2023.
56. The Tribunal also accepts as a mitigating factor that the Additional Licensing Scheme came into force on 1 March 2022, which was after the tenancy with the Applicants had commenced. The Respondent stated that she was based in Australia, however she did not provide the Tribunal with any detail as to when this arrangement began or what it entailed. The Tribunal notes that an agent, Residential Realtors, appears to have managed the Property; however, the Respondent did not provide the Tribunal with any details as to the duties performed by this agent. Therefore, whilst the Tribunal finds that the requirement to licence the Property was that of the Respondent, the Tribunal does accept as mitigation that the Additional Licensing Scheme came into effect after the tenancy began.

Financial Circumstances of Respondent Landlord

57. The Respondent had submitted in her written evidence that she did not own additional properties in the UK and had limited financial resources.
58. However, the Tribunal was not presented with any evidence that the Respondent would not be able to meet any financial award the Tribunal made.

Whether Respondent Landlord has been convicted of offence

59. There was no evidence before the Tribunal that the Respondent had any convictions identified in the table at section 40(3) Housing and Planning Act 2016.

Respondent as a Professional Landlord

60. The Respondent stated that she was not a professional landlord and the Tribunal accepts this.

Quantum Decision

61. Taking the factors of this particular case into account, the Tribunal finds that a RRO of 65% should be made.
62. As stated above, the Tribunal accepts the evidence of the Applicants that they paid for utilities at the Property. The Tribunal therefore calculates the RRO as follows:

Total Claim - £24,960

Less utilities - £ 0

65% of which gives a **total amount of £ 16,224.**

63. This total amount is divided equally between the Applicants so that a RRO of £5,408 is made for Phoebe Hill, £5,408 is made for Freya Prentice and £5,408 is made for Helena Bladen.
64. The Tribunal orders that the payment is made by the Respondent to the Applicants in full within 28 days of the date of the Tribunal's decision.

Application Fees

65. The Applicants made an application for an order to be made that the Respondent should refund the Applicants for the application and hearing fee that the Applicants had paid to the Tribunal.
66. Given that the Tribunal has made a RRO, the Tribunal exercises its discretion to order that the Respondent must pay to the Applicants the application fee and hearing fee that the Applicants paid to the Tribunal. This amount shall be paid within 28 days of the date of the Tribunal's decision.

Judge Bernadette MacQueen

Date: 9 June 2025

ANNEX – 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 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 to 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 (ie 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.