



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

**Case Reference** : **MAN/00DA/HMF/2024/0034**

**Property** : **8 Claremont Avenue, Leeds, LS3 1AT**

**Applicant** : **Jared Dutton**

**Representative** : **Jane Dutton**

**Respondent** : **Omar Rahman & Shafik Rahman**

**Type of Application** : **Housing and Planning Act 2016 – Section 41(1)**

**Tribunal** : **Mr P Barber (Judge) Mr A Davis MRICS CAAV (Valuer)**

**Date of Hearing** : **08 May 2025**

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**DECISION AND REASONS**

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**Decision**

**The Tribunal makes a Rent Repayment Order in the sum of £900 for the two periods during which the Respondent committed an offence under s.72(1) of the Housing Act 2004 namely the periods from July 2023 to January 2024 (when a HMO licence application was submitted) and for the period May 2024 through to June 2024 when the application was rejected.**

**The Application**

1. On the 31 July 2024, Mr Dutton made an application to the Tribunal for a rent repayment order. That application was listed for hearing on the 08 May 2025 when

Mr Omar Rahman was in attendance on behalf of the landlord and Mrs J Dutton attended on behalf of her son, Jared Dutton.

2. At the conclusion of the hearing the Tribunal made the following findings of fact and determined the above rent repayment order. Its reasons for doing so are set out in the section headed “Reasons”. The applicable law is contained in the attached Appendix.

#### Findings of Fact

3. The Applicant was a tenant of 8 Claremont Avenue Leeds LS3 1AT for a two-year period until the end of June 2024. He entered into a new tenancy agreement along with 4 other tenants on the 19 April 2023 to rent the property at a combined rent of £2250 per calendar month from the 01 July 2023 until 30 June 2024. The Applicant’s share of the rent was thus, £450 per calendar month. The property is student accommodation let to students. No utilities were included in the rent.
4. Mr Omar Rahman is the landlord’s son, a director of the company Eccup Ltd which manages the property and has overall control and management of the property. It is not denied that Mr Shafik Rahman owns the property and that he is the person who received or was entitled to receive the rack rent.
5. At the commencement of the new tenancy after the Applicant returned from holiday minor disrepair was evident in the kitchen following what appeared to be a leak from the upstairs bathroom. This leak was reported to the landlord via the landlord’s agent, Mr Omar Rahman, but it was some months before the repairs were attended to. We heard evidence from the Applicant’s mother, Mr Dutton who also represents the applicant and attended the hearing on his behalf, that she believed the landlord to be reluctant to carry out repairs and thus checked with Leeds City Council about any HMO licence.
6. Mrs Dutton’s enquiries determined that the property had not been licenced as a HMO since 17 October 2021 when it expired. The landlord, through his agent, was notified that the property was no longer licenced on 31 October 2023 but it was not until January 2024 that Mr Rahman made a renewed application.
7. The exact dates for the new licence application are not wholly clear and Mr Rahman did not think it appropriate to provide evidence in the form of correspondence from the Local Authority, but the Tribunal was satisfied that an application was made towards the beginning/middle of January 2024 – this is confirmed in an email from the Local Authority and Mrs Dutton accepts that fact. Thereafter the licence application was rejected by the Local Authority for failure to pay the appropriate fee and again, whilst the date of this rejection is not clear, Mr Rahman told us it was at the beginning of May 2024 and Mrs Dutton did not object to this. We therefore found as fact that between January 2024 and the end of April 2024 a licence application had been made.
8. The property was, throughout occupied by 5 tenants who met the criteria for separate households and accordingly it came within the definition of a HMO which required a licence. The landlord accepts that requirement. The landlord also accepts that the property did not have a licence when it was let to the tenants as it had expired.
9. From the rental period November 2023 onwards, the Applicant paid 50% of the rent and in an email stated that this was until the landlord provides “proof that a current HMO licence is in place”. Thereafter the landlord, without express agreement

accepted reduced rent and in fact has defended this application on the basis that the acceptance of reduced rent was sufficient recompense for the failure to obtain such a licence.

## Reasons

10. Before making a rent repayment order under section 40 of the Housing and Planning Act 2016, section 43 of that Act requires the Tribunal to be satisfied beyond a reasonable doubt that an offence has been committed, in this application under section 72 of the Housing Act 2004. We are so satisfied. The Respondent accepts that there was no extant licence during the whole of the Applicants occupation of the property and in the relevant period of 12 months from the 01 July 2023 through to the 30 June 2024.
11. Section 72(1) of the Housing Act 2004 creates an offence of having control of or managing a HMO which is required to be licensed but is not licensed, however the effect of section 72(4) and 72(8) is that it is a defence in any proceedings against a landlord if an application for a licence has been made and no decision has been made not to grant a licence.
12. It follows that the Respondent has a defence to this claim at the point the licence application was made but that defence falls away as soon as the application was rejected. As set out above in our findings of fact, we have decided that this period is for the months of January, February, March and April which accords with Mr Rahman's oral evidence and is a likely timeframe for the Local Authority considering the application and asking for the balance of the fee to be paid. Accordingly, there are two separate periods during which an offence has been committed – July 2023 through to December 2023 and May 2024 through to June 2024.
13. Section 72(5) of the 2004 Act creates a further defence of "reasonable excuse" for controlling an unlicensed HMO. In his statement to the Tribunal, Mr Omar Rahman has given a variety of excuses as to why no licence was applied for before the last one expired and why the most recent application was not followed through. These include overwork; living in another part of the country; living abroad; caring for elderly relatives and having a young family but none of these excuses could be said to be reasonable. Mr Omar Rahman, himself, accepts that none of these amount to a reasonable excuse for failing to obtain a licence and in those circumstances the Tribunal did not find that any such defence is made out.
14. As the Tribunal has determined that Mr Shafiq Rahman is guilty of an offence under section 72(1) of the Housing Act 2004, on two separate occasions, it is appropriate therefore to go on to consider whether a rent repayment order is to be made under section 40 of the 2016 Act and if so, how much, under section 44 of that Act. Having considered the issues in this appeal
15. Guidance on the correct approach to determining this type of application is set out by the Upper Tribunal in the decision of *Acheampong v Roman* [2022] UKUT 239 (LC) in paragraph 20, which we now follow.
16. Ascertain the total amount of rent paid during the relevant period. In this case there are two relevant periods. In the period July 2023 to December 2023 £2250 was paid and then for the months May 2024 and June 2024, £450 was paid (i.e. 50% of the contractual rent). Therefore, the total amount of rent paid was £2700.

17. Subtract any part of the rent which represents utilities etc. There were no utilities or services included in the rent and accordingly no deduction will be made.
18. Consider the seriousness of the offence compared to other offences which might give rise to a rent repayment order. Failure to apply for a licence is a serious offence. Mrs Dutton set out the reasons why licensing of a HMO is a necessary process in her submissions to the Tribunal and we agree with them entirely. HMOs are in their very nature potentially hazardous with 5 separate households living in one house, sharing facilities. There are many risks associated with letting a HMO and it is of utmost importance that the property meets appropriate fire, health and safety and repair standards. That said, the failure to renew the licence is not as serious as some of the other offences in section 40 of the 2016 Act and we have decided it is at a moderate level. Given the facts particular to this offence as we have found them, we have also decided that this offence is moderate. The Respondent should have had procedures in place to know when a licence expired. We were told that the Respondent has many properties with hundreds of tenants and no reasonable excuse has been put forward for such an important oversight.
19. Given the Tribunal's view that this represents a moderate level offence, the starting point for a rent reduction would be 50% of the rent paid. Interestingly, this also accords with Mr Rahman's submissions on page 4 of the statement where he states that "an effective rental payment of 47% of the total due amount.... seems fair given that the occupants enjoyed the full use of the property...".
20. Therefore, a rental reduction of 50% represents the starting point before considering the factors in section 44(4) of the 2016 Act. These are: the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has been convicted of any crime.
21. No impecuniosity claim, or evidence has been submitted by the Respondent and neither is there any evidence that he has been convicted of a relevant offence. Those issues can therefore be discounted.
22. As to the conduct of the landlord and tenant, the Applicant raises the issue of the leak in the kitchen as a relevant consideration. We accept that there was some delay in attending to this but Mr Rahman told us that it was not the average run of the mill leak and that it required more extensive investigation to remedy. We were also told that this was a "one off" event and that generally there had been a good relationship between landlord and tenant and that repairs, when reported, were attended to promptly. We accept that evidence and decided that any delay in attending to this issue did not weigh in the balance.
23. Finally, we take account of the fact that for the months of November 2023, December 2023, May 2024 and June 2024, the Applicant paid 50% of the rent and the Respondent accepted 50% of the rent. That is conduct which we should take into account in order to do justice as between the parties.
24. If the Applicant had paid full rent for the months referred to in Paragraph 23, the amount paid would have been £3600. A reduction of 50% would have given rise to a rent repayment order of £1800. However, credit needs to be given for the 50 reduction already agreed between the parties for the months of November 2023, December 2023, May 2024 and June 2024 such that only July 2024, August 2024, September 2024 and October 2024 are included in the equation. This means that the overall reduction of rent paid – i.e. £2700 – is to be by 1/3 or £900.

## **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).

## **Appendix of Relevant Legislation Housing**

### **Act 2004 72 Offences in relation to licensing**

#### **of HMOs**

- (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.
- (2) A person commits an offence if—
  - (a) he is a person having control of or managing an HMO which is licensed under this Part,
  - (b) he knowingly permits another person to occupy the house, and
  - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
  - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
  - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
  - (a) a notification had been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for permitting the person to occupy the house, or
  - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary

conviction to a fine not exceeding level 5 on the standard scale.

- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “*relevant decision*” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

## **Housing and Planning Act 2016**

### **40 Introduction and key definitions**

- (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.

- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

<i><b>Act</b></i>	<i><b>section</b></i>	<i><b>general description of offence</b></i>
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **41 Application for rent repayment order**

- (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.

#### **43 Making of a rent repayment order**



- (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 had been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with –
  - (a) section 44 (where the application is made by a tenant);

#### **44 Amount of order: tenants**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

***If the order is made on the ground that the landlord has committed***

***the amount must relate to rent paid by the tenant in respect of***

an offence mentioned in row 1 or 2 of the table in section 40(3)

the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

a period, not exceeding 12 months, during which the landlord was committing the offence

- (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.
- (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.