FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00MS/HMF/2024/0501
Property	:	15 Beverley Road, Canterbury, Kent CT2 7EN
Applicant	:	Lucas Crammond
Representative	:	Samantha Crammond
Respondent	:	Sebastian and Adelle Stephens
Representative	:	
Type of Application	:	Application for a rent repayment order by Tenant Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016
Tribunal Member	:	Regional Surveyor Clist MRICS A.Crawford MRICS ACIArb T.Wong
Date of Hearing	:	18 March 2025
Date of Decision	:	9 June 2025

DECISION

Decision

The Respondent shall pay to the Applicants the sum of £3,456 within 28 days.

The Respondent shall reimburse the Tribunal fees paid by the Applicants of £330 to the Applicant within 28 days.

Reasons

Background

1. On 5 August 2024 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord. The Applicant has not provided information as to the amount of repayment sought or the period in question he is claiming for.

2. The Applicant states that the property in question did not have an HMO licence.

3. The Tribunal has sent the Respondent a copy of the application with supporting documents.

4. The Tribunal will decide (a) whether to make a rent repayment order and, if so, (b) for what amount.

Law

5. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal.

6. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.

7. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied,

beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).

8. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:

    a) the rent paid in respect of the period in question, less

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

9. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:

    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 any of the specified offences.

The Hearing

10. The hearing took place on the 18 March 2025 remotely. In attendance was Mrs Crammond, for the Applicant and the first Respondent, Mr Stephens.

11. The second Respondent, Mrs Stephens was not in attendance. There was no challenge as to the inclusion of Mrs Stephens as a named Respondent.

12. The Tribunal is grateful to both parties for their submissions and the helpful manner in which proceedings were conducted.

13. Mrs Crammond confirmed that the Applicant Mr Crammond would not be appearing at the hearing, nor had he made a written witness statement. Having declined to make an opening statement, Mrs Crammond was content for Mr Stephens to make his opening statement and be questioned upon his evidence.

14. Mr Stephens accepted that there was no HMO license in place for the period of Mr Crammond's occupation. It was explained that the tenants had been in place for two years, the group consisting of 3 individuals and 1 couple, although the couple occupied separate rooms and as such all five bedrooms were occupied. This had caused some confusion and oversight as to the rules surrounding licensing. Previously, the property had always been let to 4 individuals only.

15. Mr Stephens stated that he had not contacted the local authority prior to letting to the group of five tenants but as soon as he became aware of Mr Crammond's application to the Tribunal he applied for a HMO license. Mr Stephens further explained that that he was a private landlord in Canterbury with six other rental properties as mix of holiday and students lets. He explained it was a fully family-run business and that he has recently sold three properties.

16. Mrs Crammond began her questioning of Mr Stephens.

17. Mr Stephens explained that although he was an experienced landlord he had been so busy he simply had made an oversight and could not really defend himself. He explained that as soon as he became aware of the oversight he applied for a HMO licence. It was said that the property was of a high standard with a fully wired smoke alarm system. Mr Stephens described himself as a proactive landlord, attending to any issues promptly. It was said that once the property was assessed for a HMO licence, the inspecting officer identified only two category 2 hazards.

18. The Tribunal questioned Mr Stephens on his evidence.

19. Mr Stephens stated that no utilities were included in the rent as he felt it was better for students to manage their own finances and he did not want to profit from any such arrangement. It was explained that he did arrange and pay for the supply of the internet but that such cost was deducted from the tenancy deposit at the end of tenancy.

20. Mrs Crammond confirmed that no utility bills were included in the rent but that the cost of the internet was deducted from the tenancy deposit. Mrs Crammond questioned Mr Stephens as to whether £1,500 of building maintenance costs as included in his financial accounts was normal. Mr Stephens stated that it was a typical amount but that it was dependant upon what work was required. He added that the expenses had been calculated by his accountant.

21. The Tribunal continued their questioning of Mr Stephens. He stated that there had been no issue with the Applicant in terms of his conduct as a tenant. Their relationship had been good throughout with the only issue encountered being the end of tenancy cleaning where he had requested that the skirting boards were cleaned.

22. Mr Stephens began to clarify his statement of mitigation within the hearing bundle [30] that the property had been 'historically compliant' in terms of annual gas and electrical safety checks. A HMO license had never been held for the property.

23. At this point, Mr Stephens' camera and audio froze. The hearing was suspended for a few moments whilst Mr Stephens rejoined the video hearing platform.

24. Upon rejoining, Mr Stephens confirmed that gas and electrical safety certificates for the property were obtained each year and on time. The property also had a valid EPC and was fitted with an LD2 fire alarm system. He considered the property to be of good standard for a family home and above average for student accommodation.

25. Mr Stephens accepted however that the property was compliant with general rental regulations but not of HMO licensing requirements. Notwithstanding, Mr Stephens added that that the HMO licensing officer had only identified two 'low scoring' category 2 hazards in the property which related to thumb turn locks and the flooring levels to the rear of the kitchen. The HMO licence was conditional upon the installation of thumb turn locks and the adjustment of the floor level in the kitchen.

26. Mr Stephens confirmed that he had never committed any other related offences.

27. Mrs Crammond requested to ask further questions of Mr Stephens, to which he obliged.

28. Mr Stephens confirmed that he had applied for a HMO licence on 2 September 2024 whereas the Applicant made his application to the Tribunal on 19 August 2024, accepting that the former event did not immediately follow the latter in the strictest of sense. Mr Stephens further confirmed his earlier evidence that works to install thumb locks and adjust the floor level to the rear of the kitchen were required in order to obtain a HMO licence.

29. Mrs Crammond responded to state that there had been no other issue with the property or the rent level. The property was located in a good area of Canterbury and a good landlord and tenant relationship had existed.

30. Mr Stephens gave a closing statement.

31. Mr Stephens stated that he had obtained a HMO license once he was aware of his omission which was prompted by the Applicant's application for a rent repayment order. He acknowledged that there was a few weeks between the events due to having been away on holiday over the summer.

32. He further accepted that the HMO application process required fire certification and PAT testing and it was that application that prompted him to obtain the same. He stated that he had stored paper versions of the certificates and did not hold digital copies of the same.

33. Mr Stephens explained that he endeavours to provide the highest quality of accommodation to his tenants which was evidenced by the fact that only two low scoring hazards were identified by the licensing officer within the subject property. The officer was otherwise happy with the condition of the property, adding that the fire walls were acceptable.

34. Mr Stephens stated that he would have preferred the Applicant to have appeared at the hearing today to have had the opportunity to question him, particularly with regards to the landlord-tenant relationship.

35. Mrs Crammond made her closing statement.

36. It was said that as Mr Crammond's representative she could confirm that his relationship with Mr Stephens had been good and there had been no issue with him as a landlord. The sole reason for the application for a rent repayment order was that the property was unlicensed. The Applicant had trusted that all relevant paperwork would be in place.

37. As to the category 2 hazards, Mrs Crammond stated that they are relevant to this case and ought not to be trivialized. HMO licensing ensures that properties are safe and compliant with regular checks undertaken to ensure adherence to the required standards. This had not been the case and the property was not suitable for a HMO license without the category 2 hazards being rectified.

38. The reasoning for the application was said to only relate to the lack of license. HMO licensing needs governance to prevent rogue landlords. The HMO licensing scheme is therefore in place for good reason and goes beyond the requirements for general rental properties. Any lack of compliance therefore requires punishment and the application has brought the issue to the Respondents' awareness.

39. Mr Stephens confirmed to the Tribunal that he had not provided any evidence to support his statement on the Respondents' financial circumstances. He added that his understanding was that he could only provide evidence of property related expenses. He explained that his private mortgage costs had recently increased and that he was paying university fees for his children but that he had not provided any evidence of the same.

40. Mr Stephens stated that he was content to reimburse the Applicant with the application and hearing fees.

41. As the hearing was being brought to a close, Mr Stephens requested that he clarified his earlier evidence. The request was permitted and Mr

Stephens explained that he had not said that category 2 hazards were not relevant, but that that the licensing officer, Mr Baker had described them as low scoring. No other works were required.

42. Mrs Crammond said that she also wished to make a final statement in response, that being a reference to the hearing bundle [58] where Mr Stephens had stated that the category 2 hazards were irrelevant. For the avoidance of doubt, he had now accepted that they were relevant. She also added that the expenses referred to within the hearing bundle [49] related to Mr Stephens' tax return to HMRC and did not see why expenses relating to telephone calls, vehicles and charity payments were relevant. Even so, the profit remained at £14,000 for the subject property alone.

Consideration and Decision

Was the Respondent the Applicant's landlord at the time of the alleged offence?

43. The Tribunal has before it a copy of the tenancy agreement between the parties and evidence of the Applicant's rent payments. Furthermore, the Respondent accepts that he was the Applicants landlord throughout their tenancy. Accordingly, the Tribunal is satisfied that the Respondent was the Applicant's landlord at the time of the alleged offence.

Applying the criminal standard of proof, is the Tribunal satisfied beyond reasonable doubt that the alleged offence has been committed?

44. The Tribunal is satisfied that the property was required to be licensed as a HMO during the period of the alleged offence.

45. A copy of a tenancy agreement has been provided by the Applicant which includes five named tenants. The first Respondent accepted that the property was occupied by five individual tenants for the relevant period.

46. The first Respondent has admitted that he did not hold a licence over the relevant period. A HMO licence was later issued on 8th November 2024. Evidence of such was produced in the hearing bundle.

47. The Tribunal is satisfied that the property required, but did not have, a relevant licence during the relevant period.

48. The Tribunal is satisfied that the Respondents were landlords having control of or managing an HMO that was required to be licensed but which was not. Evidence of such was produced in the hearing bundle and was not disputed by the Respondent.

49. The Tribunal finds that the offence of controlling and/or managing an HMO which was required to be licensed under Part 2 of the Housing Act 2004 but was not so licensed contrary to section 72(1) of the 2004 Act is

made out.

50. The Tribunal next turned its attention as to whether the Respondents had a reasonable excuse defence for the failure to licence the property.

51. The first Respondent admitted that the property was a HMO, and that it required and did not have the appropriate licence. The first Respondent had explained that he was a professional landlord with a portfolio of properties. The property in question had previously always been let to four tenants but on this occasion, he had let the house to five tenants. Mr Stephens was candid in his explanation that he was confused about the licencing requirements and had been busy at the time. As such he had simply made an oversight to which he said he could not defend.

52. The Tribunal considered that whilst the first Respondent was a credible witness providing candid responses to questions, his grounds of confusion and making an oversight were insufficient to extinguish his culpability.

53. Having established that an offence was committed the Tribunal finds that the offence occurred for the whole of the relevant period.

Exercising its discretion, should the Tribunal make a Rent Repayment Order?

54. Section 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies. The Tribunal is satisfied that, in this instance, the offence has been made out and considers it is appropriate to make an order.

Determining the amount of the Rent Repayment Order

55. In determining the quantum of an Order, Section 44 of the 2016 Act requires the Tribunal to have regard to specific factors. In particular, Section 44(4) refers to the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter applies.

56. In *Acheampong v Roman* [2022] UKUT 239 the Upper Tribunal provided guidance on how to calculate the appropriate Order. In summary, the Tribunal is advised to:

    i. Ascertain the whole of the rent for the relevant period;

    ii. Subtract any element of that sum that represents payment for utilities that only benefitted the tenant;

    iii. Consider how serious the offence was and what proportion of the rent, after deductions, is a fair reflection of the seriousness of the offence;

iv. Finally, 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) and as referred to in paragraph 64 above.

57. Taking each in turn.

58. The period of claim is 21 June 2023 to 20 June 2024, in accordance with the tenancy agreement. The total rent paid by the Applicant throughout this period was £5,760 which was exclusive of any utility bills.

59. Both parties accepted that the rent did not include any utility bills and although the internet was provided for by the landlord, the cost was recovered at the end of the tenancy from the deposit.

60. The Tribunal is next required to decide how serious the 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 when compared to other examples of the same type of offence. From there, the Tribunal will consider what proportion of the rent is a fair reflection of the seriousness of this offence.

61. Turning to the former of these two points the Tribunal reminded itself of the guidance provided by the Upper Tribunal in *Newell v Abbott & Okrojek* [2024] UKUT 181 (LC), where, at paragraph 38, the Upper Tribunal referenced previous Tribunal guidance handed down within *Acheampong* and in *Hallet v Parker* [2022] UKUT 165 (LC) commenting that, in a list of housing offences which includes the use of violence to secure entry, unlawful eviction and failure to comply with an improvement notice, a licensing offence is relatively of lesser seriousness.

62. In *Daff v Gyalui* [2023] UKUT 134 (LC) the Upper Tribunal went further and, at paragraph 48 and 49 of the decision, the Deputy Chamber President attempted to rank the housing offences by reference to their general seriousness. At paragraph 49, Judge Martin Rodger KC refers to the offence of controlling or managing an unlicensed HMO as *"generally of a less serious type. That can be seen by the penalties prescribed for those offences which in each case involve a fine rather than a custodial sentence."* Judge Rodger KC continues *"Although generally these are lesser offences, there will of course be more or less serious examples within each category."* The Tribunal reminded itself that circumstances pertaining to a licensing offence may vary significantly.

63. Turning to the circumstances of this case, the first Respondent says that he owned and managed a portfolio of rental properties which was described as his family business.

64. The Tribunal does not find the Respondents' omission to obtain the

required licence to have been a deliberate act. However, it is incumbent on any landlord to keep abreast of statutory and regulatory requirements. In omitting to obtain the necessary HMO licence the Respondent failed to keep abreast of such requirements. The Tribunal accepts Mr Stephens' evidence that the oversight was inadvertent, although the Tribunal finds that the Respondents ought to have had a better understanding of the legislative requirements or have made an enquiry with the local authority as to the requirements, considering they were experienced professional landlords.

65. With regards to the condition of the property, it was said by the first Respondent that the property was in good condition. This was not disputed as such by the Applicant, Mrs Crammond having said that there had been no issue with the property. There was, however, some level of dispute between the parties submissions in the hearing bundle and throughout the course of the hearing as to the relevance of the 'low scoring' category 2 hazards that were identified by the inspecting officer as part of the HMO application. Mr Stephens gave a degree of acceptance on the matter being relevant at the end of the hearing. The Tribunal found that the property was not fully compliant with licensing requirements – an issue which was entirely relevant to its consideration. The rectification of the category 2 hazards were requirements in order for the HMO license to be issued. This was therefore inconsistent with Mr Stephens' witness statement that stated that the property was historically compliant with licensing requirements.

66. Turning to the seriousness of the offence, the Tribunal considered that it was low when compared to other types of offence in respect of which a rent repayment order can be made although when compared to other examples of the same type of offence, the Tribunal considered it to be low-mid range owing to the relatively good condition of the property, albeit acknowledging that a HMO licence was conditional upon the rectification of two category 2 hazards. Furthermore, the Tribunal acknowledged that the Respondent was a professional landlord with a portfolio of properties. Whilst the lack of licence was an inadvertent error, it was an error that was unacceptable given the landlords' experience. The Tribunal considered this to be an aggravating factor.

67. With this in mind, the Tribunal considered a starting point of 60% of the proportion of the rent was appropriate.

68. Finally, turning to those factors set out in s.44(4) of the 2016 Act the Tribunal finds that the tenant's conduct was good throughout his occupation of the property. The Tribunal therefore sees no reason to make a deduction in respect of such.

69. The Tribunal found that the Landlord's conduct had also been good throughout the course of the tenancy. The Respondent had also been candid in admitting his oversight in obtaining a HMO licence.

70. In consideration of such, the Tribunal does not find it necessary to make

an adjustment to its starting point.

71. In regard to the Respondents' financial circumstances, evidence had been submitted relating to rent received and expenses for the subject property, for the tax period 5th April 2023-4th April 2024. The Tribunal did not consider such evidence to be useful in determining the Respondents' financial circumstances but showed only an element of such. The Respondents' joint witness statement and oral evidence of Mr Stephens stated that the rental business was the sole source of income and that they were funding two sons through university. No evidence was adduced as to their personal finances. The Tribunal therefore found there was insufficient evidence relating to the Respondents' financial circumstances to warrant any adjustment to its starting point.

72. There was no evidence before the Tribunal that the Respondent had at any time been convicted of a relevant offence to which Part 2 Chapter 4 of the Housing and Planning Act 2016 applies. The Tribunal therefore makes no deduction of such.

73. On that basis the Tribunal determines that an appropriate order is 60% of the rent paid and makes an order for £3,456 (Three thousand, four hundred and fifty-six pounds) to be payable within 28 days of the date of this decision.

74. The Tribunal further orders that the Respondents reimburses the Applicants the £110 application fee and £220 hearing fee within 28 days of the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.