



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

Case reference : LON/00AZ/HMG/2024/0604(1)
LON/00AZ/HMF/2024/0698 (2)

Property : 96 Perry Vale, London, SE23 2LQ

Applicants : (1) (a) Olivia Chantal Burgh
Goodwin
(b) Aditya Babu Kambalath
Cherukovilakath
(2) Ms Nadja Todt

Representative : (1) Represent Law Ltd
(2) Dr Roy Mohan

Respondent : Vinod Nair

Representative : In person

Type of application : Application for a rent repayment order
by tenant Sections 40, 41, 43, & 44 of the
Housing and Planning Act 2016

Tribunal members : Judge H Carr
Mr A. Fonka FCIEH

**Date and venue of
hearing** : 5th June 2025

Date of decision : 27th June 2025

DECISION

Decisions of the tribunal

- (1) The tribunal determines to make Rent Repayment Orders as follows:
 - (i) Ms Goodwin - £2,846.28
 - (ii) Mr Cherukovilakath - £2,379
 - (iii) Ms Todt - £ 3,333.10
- (2) The Rent Repayment Order must be paid within 28 days of the issue of this decision.
- (3) The tribunal determines that the respondent reimburse the applicants for their application and hearing fees.
- (4) The tribunal makes the determinations as set out under the various headings in this decision.

The applications

1. In the first application, LON/ooAZ/HMG/2024/0604, the applicants, Olivia Chantal Burgh Goodwin and Aditya Babu Kambalath Cherukovilakath seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO) in relation to 96 Perry Vale London SE23 2LQ.
2. In the second application LON/ooAZ/HMF/2024/0698 the applicant Ms Nadja Todt seeks a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO) in relation to 96 Perry Vale London SE23 2LQ.
3. The applicants in both applications allege that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s.72(1) of the Housing Act 2004.
4. The respondent in both applications is Mr Vinod Nair, the registered owner of the property and named on the rental agreements as the landlord. His address is the address of the property.
5. The applicants in the first application are seeking to recover rent as follows:

(i) Olivia Chantal Burgh Goodwin -£5,243

(ii) Aditya Babu Kambalath Cherukovilakath - £5150.17

6. The first application was made and received on 1st September 2024. Directions were issued in this matter on 11th December 2024.
7. The applicant in the second application, Nadja Todt is seeking to recover £8,068.49.
8. The second application was made and received on 10th October 2024. Directions were issued in this matter on 7th March 2025.
9. By an order of Judge Martynski dated 9th April 2025, the applications are to be heard together.

The hearing

10. The applicants from the first application attended the hearing and were represented by Mr Clarke Barrett of Represent Law.
11. The applicant from the second application attended the hearing. Her representative, Dr Mohan, did not attend.
12. The respondent did not appear at the hearing. He made applications on two separate occasions for the hearing to be heard remotely which were refused by procedural judges on 29th May 2025 and on 2nd June 2025.
13. The applications were rejected by procedural judges each on the basis that insufficient evidence was provided of his inability to attend the hearing in person.
14. The respondent made written representations which were considered by the tribunal and are referred to below.

The Law

15. The definition of HMO in s.254 of the Housing Act 2004 is relevant to this decision.

s.254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

(a) it meets the conditions in subsection (2) (“the standard test”);

- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
 - (c) it meets the conditions in subsection (4) (“the converted building test”);
 - (d) an HMO declaration is in force in respect of it under section 255; or
 - (e) it is a converted block of flats to which section 257 applies.
- (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 (see section 258);
 - (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 (see section 259);
 - (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.

The property

16. The property is a terraced house over three floors. The ground floor comprises a communal kitchen, living room, garden and a bathroom for used by the occupant of room one. The first floor comprised three bedrooms, two of which had ensuite bathrooms. On the second floor there was a loft extension where the respondent had his bedroom with an ensuite bathroom
17. Ms Goodwin occupied Room 2, one of the bedrooms on the first floor with the benefit of an ensuite bathroom. Her occupancy commenced on 19th October 2023 and terminated on 28th April 2024 following her giving the respondent notice on 15th March 2024. She paid a rent of £750 pcm.
18. Mr Cherukovilakath occupied room 1, the bedroom on the first floor which did not have an ensuite bathroom. He had the use of a bathroom on the ground floor. His occupancy commenced on 17th September 2023 and terminated on 16th September 2024 following Mr Cherukovilakath

giving notice to the Respondent on 25th March 2024. He paid a rent of £625 pcm for the months of September to February 2024 and then a rent of £650 pcm for the months of March – September 2024.

19. Ms Todt occupied room 3, one of the bedrooms on the first floor with the benefit of an ensuite bathroom. Her occupancy commenced on 30th July 2023 and terminated on 13th April 2024. She paid a rent of £875 pcm from 30th July and then £920 pcm for the month of April 2024.
20. The Respondent is the freehold owner of the property and named as landlord on the lodging agreements.

The issues

21. The issues that the tribunal must determine are;
 - (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - (ii) Does the respondent have a 'reasonable excuse' defence?
 - (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenant?
 - (iv) Should the tribunal refund the applicant's application and hearing fees?
 - (v) Legal costs

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

The Applicants' evidence

22. The property is situated within an additional licensing area as designated by the London Borough of Lewisham. The additional licensing scheme came into force on 9th December 2021 and will cease to have effect on 8th December 2026. The scheme requires all HMOs with 3 or more occupants living in two or more households to be licensed.
23. The additional licensing scheme was implemented borough wide.
24. The Applicants provided a copy of the Notice of Designation of Areas for Additional Licensing for Houses and Flats in Multiple Occupation at page 20 of the first Applicants' hearing bundle.
25. The property meets all the criteria to be licensed under the designation and does not qualify for any licensing exemptions.
26. The Applicants say that during the period of their claim the property was occupied by at least three persons living in two or more separate households and occupying the property as their main residence. Their occupation of the property constituted the only use of the accommodation. They each confirmed that they had received no universal credit or housing benefit during the claim period.
27. The applicants gave evidence that they were unrelated to any of the other occupiers and were not in a relationship with any of the other occupiers.
28. The applicants provided copies of email correspondence with the LB of Lewisham at pages 27 – 30 the first Applicants' hearing bundle which confirmed that the property was not licensed as an HMO. The email from the LB Lewisham is from Aaliyah Robinson, Licensing and Housing Enforcement Coordinator with Lewisham Council and is dated 27th August 2024.

The Respondent's evidence

29. The Respondent argues that the property was only occupied by three lodgers from 19th October 2023 when Ms Goodwin moved into the property to 13th April 2024 when Ms Todt moved out.
30. The applicants say that there were other lodgers in the property and at all times there were three occupiers. A Ms Gaile Lacsado lived in the property from approximately April 2023 until Olivia Goodwin moved in. Mr Cherukovilakath gave evidence that the landlord had told him that his room had previously been occupied by another tenant, Zui Mansata.

31. The tenants also gave evidence that Ms Todt's room was advertised after she terminated her occupancy.
32. At the hearing the applicants conceded that following Ms Todt leaving the property the only two residents were the first applicants.
33. In evidence provided, the Respondent said that Ms Lacsado did not occupy the property as her only or principal residence. The tribunal put this to the applicants who said that they were aware that Ms Lacsado spent some time on night shift and some time at her partner's home. Neither Ms Todt nor Mr Cherukovilakath was unable to provide evidence that Ms Lacsado occupied the property as her only or main residence.

The decision of the tribunal

34. The tribunal determines that the respondent has committed the alleged offence between 19th October 2023 and 13th April 2024.

The reasons for the decision of the tribunal

35. The tribunal relies on the evidence from the applicants and the information provided by the local authority.
36. The respondent admits that the offence was committed between 19th October 2023 and 13th April 2024.
37. The applicants have failed to provide evidence beyond reasonable doubt that there were three occupants in addition to the resident landlord for whom the property was their only or principal home prior to Ms Godwin's occupancy.
38. The applicants concede that no offence was committed after the departure of Ms Todt on 13th April 2024.

Does the Respondent have a 'reasonable excuse' defence?

39. Whilst the Respondent does not specifically plead a reasonable excuse defence the tribunal understand his representations as including an argument that he has a reasonable excuse defence because he was not aware of the licensing requirement under the additional licensing scheme.

The decision of the tribunal

40. The tribunal determines that the respondent does not have the benefit of a reasonable excuse defence.

The reasons for the determination of the tribunal

41. The tribunal does not accept that ignorance of the law provides a reasonable excuse defence to a failure to licence.

Should the tribunal make an award of a RRO? If so, for what amount?

42. The applicants asked the tribunal to exercise its discretion and make an RRO.
43. The landlord asks that the tribunal exercises its discretion and not make a RRO. He does not let out other property and he has admitted that there was a period when a licence was required.

The decision of the tribunal

44. The tribunal determines to exercise its discretion to make a rent repayment order.

The reasons for the decision of the tribunal

45. The tribunal considered the evidence and determined that it was appropriate for it to exercise its discretion and make a rent repayment order because there had been a clear breach of the law.

The maximum amount of the RROs which can be ordered

46. Ms Goodwin paid rent for the period beginning 9th October 2023 and 13th April 2024 at a monthly rate of £750 which is a daily rate of £24.20.
47. The maximum RRO for Ms Goodwin is $5 \times £750 = \textbf{£3750}$ and $26 \times £24.20$ (for a period of 13 days in October 2023 and 13 days for a period in April 2023) = **£4379.20**.
48. She gave evidence that she did not receive Housing Benefit or Universal Credit at any time during the tenancy.
49. Mr Cherukovilakath gave evidence that he paid rent £625 per month for first six months of his occupation increasing to £650 pcm from April 2023. The maximum RRO for Mr Cherukovilakath for the period that he is entitled to an RRO is 5 months at £625 pcm which equals **£3125** plus 13 days in October at a daily rate of £20.16 which equals **£262** plus 13

days in April at a daily rate of £21.00 which equals **£273.00**. This equals **£3660**.

50. He gave evidence that he had not received Housing benefit or Universal Credit at any time during the tenancy.
51. Ms Todt gave evidence that her rent was £875 pcm until it was raised in April 2023 to £920 pcm. For the period for which she is entitled to an RRO the maximum RRO is five months at £875 pcm, which equals **£4375**, plus 13 days at a daily rate of £28.23 which equals **£367.00** for the month of October plus 13 days at a daily rate of £29.68 which equals **£385.84** for the month of April 2023. This equals **£ 5127.84**
52. She confirmed that she did not receive Housing Benefit or Universal Credit during the tenancy period.
53. The respondent did not dispute the figures provided.
54. The tribunal found that the maximum RRO it could award was
 - (i) Ms Goodwin - £4379.20
 - (ii) Mr Cherukovilakath - £3660.
 - (iii) Ms Todt - £ 5127.84

Other arguments concerning the amount of the RRO to be awarded.

Utilities

55. The occupancy agreement provides that the applicants pay £75 per month for utilities in addition to their rent.
56. Additional charges were made at the end of each month when the respondent calculated expenditure on utilities and demanded payment of any overspend over the £75 regular charge.
57. Therefore, there is no basis for any deduction from the amount of the RRO awarded for utilities as the Applicants paid for all utilities in addition to their rent.

Conduct of the Applicants

58. The Applicants argue that their conduct has been good. They have paid their rent on time and treated the property appropriately.
59. The Respondent says that the conduct of the applicants has been poor.
60. He raised the issue of Ms Todt breaking a tile in the bathroom
61. He says that the Applicants ignored the fact that the rooms were let for single occupancy only. This was clearly stated in the lodger advert, during the property viewing and in the lodger agreement.
62. He also says that the application is opportunistic and that the Applicants have failed to acknowledge his positive responses to their issues. He notes in particular that he purchased a humidifier to respond to complaints of damp.

Conduct of the Respondent

63. The respondent argues that his conduct has been good.
64. The applicants argue that the conduct of the respondent has been poor. They pointed to the Respondent
 - (i) Charging for overnight stays of guests. There was a lack of clarity about when there would be a charge levied, with Mr Cherukovilakath being told that despite being in the agreement it was just a formality, but then being charged £20 for his girlfriend staying the night. Ms Goodwin was allowed a visitor three nights a month but was then charged for additional visitors. Whilst those charges were waived it was still a problematic attitude.
 - (ii) Poor internet connection which the Respondent was reluctant to improve despite the fact that Mr Cherukovilakath relied on it for work.
 - (iii) Use of security cameras which were used to monitor the occupiers and their guests which the occupiers say breached their privacy and was not consented to.
 - (iv) Intimidatory behaviour – Ms Todt complained of intimidatory behaviour in connection with a broken tile in her ensuite bathroom. The Respondent insisted that she was responsible despite the handyman she got to fix it saying it was caused by leaks. Ms Todt says that the Respondent made up a

story that she had broken it with a weight and created a scene in front of the handyman when Ms Todt disputed his account. Mr Cherukovilakath complained of intimidatory behaviour in connection with his responsibility for cleaning the ground floor bathroom. He says that the respondent made frequent provocative and humiliating comments about its cleanliness without there being any issues. Mr Cherukovilakath says that the remarks began from his first month, that the Respondent would access the bathroom in Mr Cherukovilakath's absence and continue his criticism. The Respondent would demand additional cleaning and that Mr Cherukovilakath show him afterwards. Mr Cherukovilakath gave evidence that he kept the bathroom clean and the constant surveillance undermined his self-esteem. At the point of departure, the Respondent asked Mr Cherukovilakath to clean the bathroom and show it to him in time to clean it again if anything was not satisfactory. Mr Cherukovilakath refused, saying he would clean it once well, as other tenants did when they vacated. Mr Cherukovilakath gave evidence that the communication between himself and the Respondent was traumatising and left him with lingering anxiety.

- (v) Blackmail – Mr Cherukovilakath told the tribunal that he received a blackmail email sent to his personal and work email addresses from an anonymous address. He believed it was from his former landlord. Additionally, on 30th December 2024 two of Mr Cherukovilakath's friends received a random message on Instagram from an unknown sender. The sender claimed to be providing information about their 'tenant' Aditya while calling him derogatory names. From the tone and nature of the message Mr Cherukovilakath believed that the message was from his former landlord and that in both instances the messages were sent in retaliation for his pursuit of a RRO.
- (vi) Damp and mould to the ground floor bathroom
- (vii) Damp and mould in Mr Cherukovilakath's room. Mr Cherukovilakath said that damp and mould would build up every two weeks. He informed the landlord on several occasions, but no measures were taken to fix the issue. The landlord advised keeping the room ventilated, which Mr Cherukovilakath did. Mr

Cherukovilakath needed to clean the walls and ceiling with mould spray every two weeks wearing a mask and gloves. The constant exposure to the mould and frequent use of chemicals in the bedroom caused skin irritation and allergic upper airway symptoms.

- (viii) Damp and mould in the closet of Ms Todt's rooms which led to her throwing out a mouldy pair of shoes and ceasing to use the closet.
- (ix) The ground floor bathroom was allocated to Mr Cherukovilakath apparently for sole use, but it was used by others, but Mr Cherukovilakath had sole responsibility for its cleanliness.

65. The Respondent responded to the allegations as follows:

- (i) The property had residential broadband and business grade internet was never promised. He dealt with complaints promptly.
- (ii) The Respondent rejects any accusation of blackmail as false and baseless. The Respondent says he had no contact with Mr Cherukovilakath's employer or friends.
- (iii) The Respondent says that as rooms above and below the room occupied by Mr Cherukovilakath showed no signs of damp or mould which indicate this was not a structural issue but likely caused by inadequate ventilation and room usage. He says that he noted that windows were rarely opened for ventilation and a kettle was used in the room creating condensation. The Respondent says he purchased a top of the range dehumidifier

66. The Respondent denies that his conduct has been poor.

67. Deductions were only made as provided for in the contract and it was reasonable to make those deductions.

68. The Respondent referred to several cases in defence to the application.

Financial circumstances of the Respondent

69. The Respondent says that the subject property is his only property

- 70. He says he earned £5000 from employment in the 2023 – 2024 tax year. His part time project ended in May 2024, and his current year income is approximately £2300.
- 71. He says that an award would cause severe hardship.
- 72. The tribunal notes that the property is charged with a mortgage which is a surety mortgage and not an acquisition mortgage.

Submissions of the Applicants

- 73. The Applicants argued that the intimidatory behaviour combined with poor conditions should lead to a high award. They argued that it was highly likely that the email and Instagram post were from the Respondent. The timing was right and he had the motivation.
- 74. Mr Barrett referred the tribunal to a FTT decision *Ogunbiyi & Ogunbiyi v Adesanya* (LON/00BB/HMF/2024/0173) where Judge Latham decided that the threatening behaviour of the Respondent in that case merited a very high award of an RRO.
- 75. Mr Barrett had attempted to locate the Respondent's authorities, but they did not appear to exist.
- 76. They also noted that the Respondent had not included his rental income in his income calculations. They believed he was a self-employed consultant. Because the Respondent did not attend the tribunal the Applicants were not able to cross examine him on his income.

The decision of the tribunal

- 77. The tribunal determines to award a RRO at 65% of the maximum RRO payable. This means that the applicants will be awarded RROs as follows:

(iv) Ms Goodwin - £2,846.48

(v) Mr Cherukovilakath - £2,379

(vi) Ms Todt - £ 3,333.10

The reasons for the decision of the tribunal

- 78. There is extensive case law on how the tribunal should reach a decision on quantum of a rent repayment order. In reaching its decision in this case the tribunal has been guided by the very helpful review of the

decisions in the Upper Tribunal decision *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC).

79. *Acheampong v Roman* (2022) UKUT 239 (LC) established a four stage approach which the tribunal must adopt when assessing the amount of any order. The tribunal in this case has already taken the first two steps that the authorities require by ascertaining the whole of the rent for the relevant period which it has determined as 19th October 2022 to 13th April 2023, and subtracting any element of that sum that represents payment for utilities that only benefitted the tenant. In this instance there is no deduction for utilities.
80. Next the tribunal is required to consider the seriousness of the offence in comparison with the other housing offences for which a rent repayment order may be made. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.
81. However, although generally the failure to licence is a less serious offence, the Upper Tribunal recognises that even within the category of a less serious offence, there may be more serious examples.
82. In this case the tribunal considered that the case is a moderately serious example of one of the less serious offences in which a rent repayment order may be made.
83. Its starting point in assessing the seriousness of the offence and quantum is that whilst there has been a failure to licence the property, the tribunal notes that this is not a case of prolonged disregard of licensing requirements because the evidence points to a relatively short period during which a licence was required. In addition, it appears that the landlord had only this one property. The complaints about conditions in the property whilst of some significance are not serious. If there had been nothing more then the tribunal would have concluded that this was a less serious example of a less serious offence.
84. However, there are circumstances in this case which increase the seriousness of the offence. The tribunal accepts as fact on the balance of probabilities that the Respondent was bullying towards Mr Cherukovilakath about the state of cleanliness of the ground floor bathroom and that there was an intimidatory atmosphere within the household. The tribunal notes that the bathroom assigned to Mr Cherukovilakath was in fact the only bathroom that was available on the ground floor and that it was not therefore his exclusive responsibility. This made the demands made by the Respondent particularly onerous. There was no evidence supplied to the tribunal that Mr Cherukovilakath was responsible for any deficiencies in the standard of cleanliness of that bathroom.

85. The tribunal also finds that the landlord behaved in an intimidatory manner towards Ms Todt in relation to the damaged tile to her ensuite bathroom.
86. In addition, the tribunal finds on the balance of probability that the Respondent used the security cameras to monitor the behaviour of the Applicants particularly in relation to overnight guests.
87. The tribunal also accepts as fact on the balance of probabilities that the email and Instagram post concerning Mr Cherukovilakath were sent by the landlord. The landlord was the only person who would have had the motivation to send the anonymous email and Instagram post.
88. These matters have led to the tribunal decision about quantum. It should be noted however that the tribunal did not consider the behaviour of the Respondent in this case to be the equivalent of the threatening and abusive behaviour displayed by the respondent in the decision of *Ogunbiyi & Ogunbiyi v Adesanya*.
89. The tribunal decided not to reduce the amount payable because of the conduct of the Applicants. There was no evidence to support any allegation that the tenants' conduct was anything but good. The tribunal accepted their evidence that they had each paid their rent regularly and had behaved in a responsible manner as regards the property. The tribunal accepts Ms Todt's evidence about the damage to the bathroom tile and subsequent events and Mr Cherukovilakath's evidence about the standard of cleanliness he maintained in the bathroom.
90. Whilst the Respondent had provided some evidence about his financial circumstances, these submissions were not complete. The evidence only related to a salary and did not explain the rental income or any self employed income that the Respondent may have received in the relevant period.
91. At this stage the tribunal considers that a RRO of 65% of the maximum RRO is appropriate and does not consider that any further deductions should be made.
92. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fees and hearing fee. These total £667 - £330 for Ms Goodwin and Mr Cherukovilakath's application and £337 for Ms Todt's application.
93. The Respondent and Ms Todt made applications for legal costs in connection with the applications. The starting point for the tribunal is that parties bear their own legal costs. There are circumstances when the behaviour of a party is such that an order should be made. Those circumstances are set out in Rule 13 of the Tribunal's procedural rules.

However, the threshold for an order for costs is extremely high. In this particular case the tribunal determines that there is no basis for the award of costs to either the Respondent or Ms Todt. For the information of the Respondent, the applications were properly made and there was evidence that a criminal offence had occurred. For the information of Ms Todt, the Respondent properly defended the applications and made appropriate concessions.

Name: Judge H Carr

Date: 27th June 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).