



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

Case reference : **LON/00AG/HMF/2024/0266**

Property : **Flat 7 Grafton Mansions Dukes Road
London WC1H 9AB**

Applicants : **Chee Hay Joey Kwong, Salsabila
Andriana, Elizabete Mikelsone**

Representative : **Chee Hay Joey Kwong**

Respondent : **David Shiuh Lin Chou**

Representative : **None**

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 K Ridgeway MRICS**

**Date and venue of
hearing** : **30th May 2025**

Date of decision : **14th July 2025**

DECISION

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order to each of the Applicants as follows:
 - a. Mr Kwong-£7632
 - b. Ms Mikelstone - £5616
 - c. Ms Adriana - £4326
- (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 applicant for her application and hearing fees, totalling £330.
- (4) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants, Chee Hay Joey Kwong, Salsabila Andriana and Elizabete Mikelstone, 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 Flat 7 Grafton Mansions, Dukes Road, the property.
2. The applicants 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.
3. The respondent is Mr David Shiuh Lin Chou who is the registered owner of the property and is listed as landlord on the licence agreements produced by the applicants.
4. The applicants are seeking to recover the following sums for the period 01 September 2022 – 31st August 2023
 - (i) Mr Chee Hay Joey Kwong – 12 months rent @ £1060.00 pcm totalling £12,720

- (ii) Ms Salsabila Andriana – 7 months rent @ £1030 pcm totalling £7210
 - (iii) Ms Elizabete Mikelsone – 12 months rent @ £780 pcm totalling £9360.00
5. The application was made and received on 24th July 2024. Directions were issued in this matter on 18th December 2024 and amended on 19th February 2025.

The hearing

6. Mr Chee Hay Joey Kwong appeared at the hearing and represented the applicants. Ms Miklesone also appeared and gave evidence.
7. The respondent appeared at the hearing. He was accompanied by his wife Ms Ruth Lambert who addressed the tribunal alongside her husband in final submissions.
8. The tribunal discussed the documents sent to the tribunal by both parties following the applicants' response to the respondent's bundle. Both parties wanted these documents to be considered by the tribunal.
9. The tribunal determined that none of the documents submitted after the close of pleadings as set out in the directions would be considered by the tribunal. The documents had been submitted without the directions providing for them, and did not significantly add to the information and arguments that the parties had already provided.

The background and chronology

10. The property is a 4 bedroom flat in the London Borough of Camden. In addition to the bedrooms the property had a kitchen, a bathroom and a separate toilet. The only bedroom in the property which had a lock and key was the fourth bedroom which was intermittently occupied by the respondent or members of his family. The landlord said that there were keys available for other bedrooms, but he had not been asked to provide them.
11. Mr Kwong moved into the property on 5th November 2021 until when following a notice to quit dated 19th August 2023 he left the property on 23rd September 2023.
12. Ms Mikelsone moved into the property on December 16th 2021 and lived there until August 31st, 2023.

13. Ms Andriana moved into the property on 18th December 2022 and lived there until 28th February 2024.
14. Mr Chou or a member of his family occupied the property on an irregular basis. When he or a member of the family were present, they occupied the bedroom with a lock and key. One of the fridges in the kitchen was also reserved for Mr Chou's use.

The issues

15. 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?

The determination

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

The Applicants' evidence

16. The property is situated within an additional licensing area as designated by the London Borough of Camden. The additional licensing scheme

came into force on 8th December 2015 and was renewed on 8th December 2020. The scheme requires all HMOs with 3 or more occupants living in two or more households to be licensed. The designation of the scheme is provided in the applicants' bundle provided in response to the respondent's bundle at page

17. The additional licensing scheme was implemented borough wide.
18. The property met all the criteria to be licensed under the designation and does not qualify for any licensing exemptions.
19. This information was confirmed in a letter provided by LB Camden dated 10th July 2024 and provided at page 186 of the Applicants' bundle. Further information from Mr Kane was provided in an email dated 25th April 2025 and contained at 293 – 294 of the Applicants' bundle in response.
20. Jack Kane, Operations manager, who wrote the letter dated 10th July , said that the council had concluded that between 21st November 2022 and 10th July 2024 the property was operating as a House in Multiple Occupation.
21. Subsequently, by email dated 25th April 2025 Mr Kane said that there had been a typo and what should have been said was that the property was an HMO from 21st November 2021 until 10th July 2024.
22. 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.
23. The applicants produced copies of licence agreements. Mr Kwong said that part of the conditions of him taking the room was that he should manage the gas and electric bills for the flat, which were to be split four ways. Mr Kwong carried out this responsibility throughout his occupation of the property.
24. The applicants were unrelated to any of the other occupiers and were not in a relationship with any of the other occupiers.

The Respondent's evidence

25. The respondent agreed that the property was unlicensed during the period of the applicants' occupation. The respondent disputed that the property required licensing.

26. The respondent says that the property was not the main or only residence of any of the applicants. He said that Mr Kwong owned a property in Nottingham and was not on the electoral roll in Camden.
27. He said that the other two applicants were students and spent a considerable amount of time at their respective family homes.
28. The respondent says that the property did not need to be licensed because this is what the further communication from Camden indicated.
29. He says that the original decision by LB Camden that the flat was an HMO was based wholly on information supplied to Camden by the applicants.
30. The respondent says that officers from Camden HMO team turned up at the property at 9.00 am on 6th September 2024 without prior notice. They investigated the property, took pictures of all the rooms and interviewed all the inhabitants. As a result of the inspection Camden told the respondent he had been cleared of HMO breaches.
31. He exhibited an email from Jack Kane of LB Camden dated 11th March 2025. In that email Mr Kane says that the case was closed by the Council in October 2024 and no further action will be taken.
32. The respondent also referred to a letter sent to the applicants which says that the council had no evidence to confirm that the property was an HMO during the period 21st November 2021 to 10th July 2024, which the respondent says reverses the HMO status assigned to the property in their initial letter of 10th July 2024.
33. The respondent therefore argued that the application no longer has a valid statutory basis because Camden Council does not consider there is evidence to support the applicants' claim.
34. Mr Kwong told the tribunal that his property in Nottingham has tenants and whilst he keeps a room there, it is used for storage. During the period of the claim the residence in London was his main residence. He worked from that address during Covid, his bank account was at that address, and he had the utilities in his name.
35. He confirmed and the respondent agreed that the other two applicants were international students attending courses of higher education in London.

The decision of the tribunal

36. The tribunal determines that the respondent has committed the alleged offence

The reasons for the decision of the tribunal

37. The tribunal relies on the evidence from the applicants and the information provided by the local authority. The property is in an area of additional licensing and all three applicants were in residence for the period of claim.
38. On the basis of the evidence provided, the property is the main or only residence of each of the applicants.
39. The tribunal accepts the evidence of Mr Kwong that the subject property was his main residence. Although he owns a property in Nottingham, that property is fully tenanted and his main residence at the relevant time was the subject property.
40. The other two applicants are international students and the tribunal notes that the definition of only or main residence includes
41. The tribunal notes that the communications from LB Camden have confused the respondent. However the tribunal does not require Camden to take action on an unlicensed HMO in order for it to determine whether an offence has been committed. What it requires to know from Camden Council is that the property was not licenced during the relevant period. The email of 24th April 2025 from Mr Kane and referred to by both parties provides the evidence that the respondent had not applied for a licence for the relevant period and therefore the tribunal finds beyond reasonable doubt that the property was not licenced.
42. The comment from Mr Kane, that Camden Council was unable to confirm whether there were any HMO breaches during that period is accurate. However the tribunal relies on the evidence from the applicants that the property was occupied by the three of them during the relevant period, to determine that the property required licencing and therefore finds beyond reasonable doubt that the offence has been committed.

Does the Respondent have a 'reasonable excuse' defence?

43. The respondent argues that he has a reasonable excuse defence.
44. He says that he visited China in January 2020 and because of very serious lockdown regulations was unable to leave China until June 2023.

45. During that time he was very stressed because he was not able to be with his wife and family. He told the tribunal he had not been able to manage his affairs well during that time and this had led to some failures of management. He also said that the lockdown rules about the constitution of a household were very confusing.
46. The respondent said that his wife was also not able to visit the property because of Covid restrictions and because she suffered a minor injury during lockdown.
47. The respondent also said that the property had always been a family home and he did not see it as an HMO and did not want it to be treated as some sort of hostel. He said that contrary to the evidence of the applicants he had not tried to avoid licensing, but he saw the arrangement as a sharing of his family home. He said that the rent was below market rent for the area and considered that he and his wife were behaving in a generous way with the applicants who got to live in a lovely flat in a very central area.
48. The respondent said that the rental income barely covered the service charges on the property.
49. The respondent also said that he thought that he could rely on Mr Kwong as he was a barrister and would have let him know if there was a problem with the letting arrangements.
50. The applicants said that they had each had conversations with the respondent where he had suggested that he was trying to evade the cost of an HMO licence. Mr Kwong says that the respondent told him that he did not want to get Camden to investigate the noise complaint from the downstairs neighbour because of the need for an HMO licence. They also said that they were aware that the respondent suggested that occupiers say that they were part of the landlord's wider family to avoid licensing requirement. The applicants also point out that after the termination of Mr Kwong's licence his former room was advertised on spareroom.com suggesting that he intended to continue to let out three rooms in the property.
51. The respondent denies any allegations that he sought to avoid licensing and says that he was unaware that licensing applied to his situation. He admits that he did make reference to occupiers being members of his family to avoid licensing requirements, but says this was done as a joke.

Decision of the tribunal

52. The tribunal determines that the respondent's reasonable excuse defence does not succeed.

The reasons for the decision of the tribunal

53. The tribunal finds that there is no substance to the respondent's claim of reasonable excuse
54. The tribunal understands that being unable to leave China because of its severe Covid restrictions must have been stressful for the respondent. However the evidence shows that the property was let to three people other than the respondent prior to Covid and there had been no attempt at getting a licence at that time or talking to Camden about what its requirements were.
55. Moreover, if a landlord finds himself unable to manage a property he must put in place alternative arrangements. It is not satisfactory to place all responsibility upon the tenants.
56. The tribunal also takes into account that there was no evidence that the respondent had made any attempt to familiarise himself with the legal requirements. He did not contact Camden council, nor did he join a local landlord association.
57. On the contrary, the tribunal finds, on the balance of probabilities that the respondent was aware of the need for licensing but sought to avoid the cost and the impact on his property. The tribunal notes his evidence that the property was a family home and he did not wish it to look like a hostel.
58. The fact that the property was a family property shared with others at below market rent is not relevant to the legal requirement that the property is licenced. The tribunal notes that the respondent did not provide evidence of what market rents for a room in a shared flat in Bloomsbury were at the time (not including utilities). It considers that it may be that the rents were at the lower end of the market for the location, but notes that sharing a property with a landlord is likely to have an effect on the market rent as is the shared bathrooms, and that the respondent was making a commercial return on the renting. If the rents were so low that they indicated no intention to create legal arrangements then that might constitute a reasonable excuse. However here, the arrangement was a commercial arrangement which generated a profit for the respondent.

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

The exercise of the tribunal's discretion

59. The Applicants asked the tribunal to exercise its discretion and make an RRO.

The decision of the tribunal

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

The reasons for the decision of the tribunal

61. 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 RRO which can be ordered

62. The period for which the RRO is sought is from 01 September 2022 – 31st August 2023. The applicants provided evidence that they had paid rent as follows:

- (i) Mr Kwong paid rent from 1st September 2022– 31st August 2023
- (ii) Ms Andriana paid rent from 1st January 2022 – 31st August 2023
- (iii) Ms Mikelsonsone paid rent from 1st September 2022 – 31st August 2023.

63. The tribunal found that the maximum RRO it could award was £29,290. This is made up of 12 x £1060.00 rent pcm for Mr Kwong which equals £12,720.00, 12 x £780 pcm for Ms Mikelsonsone which equals £9360.00 and 7 x £1030.00 pcm for Ms Andriana £7,210.00

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

64. The applicants argue that no deductions should be made from the rent for utilities. Utilities were paid in addition to rent and not covered by the rent. In these circumstances the tribunal makes no deductions from the maximum RRO payable for the utilities received by the tenants.
65. The applicants argue that their conduct has been good.

66. The applicants argue that the condition of the property was poor
- (i) The flat had no internal fire doors, no internal fire alarm system, no emergency exit lighting, no fire-fighting equipment except a fire blanket hidden in a busy kitchen closet
 - (ii) There were no locks on three of the bedrooms
 - (iii) There was a faulty boiler which needed resetting weekly to produce hot water
 - (iv) The washing machine at times did not function properly and had a broken detergent tray
 - (v) The main bathroom toilet seat was faulty since the beginning of Mr Kwong's occupancy and was not fixed until April 2023
 - (vi) There was a broken window to bedroom 3 which was reported on 27th November 2022. When the respondent responded he said that one of the cracks had been there for at least a couple of years. He asked the occupier Ms Mikelsone to tape over the cracks. The room was cold and damp as a result. The window was eventually repaired in August 2023.
 - (vii) There was constant mould on the main bathroom ceiling
 - (viii) There was mould in the 2nd bedroom which led to the paint on the wall next to the window peeling. This was not remedied for over a year.
 - (ix) The flat had inadequate fridge space and no functioning freezer. The respondent left expired food in the food cupboards leading to maggots and flies.
67. The applicants argue that the behaviour of the respondent was poor and amounted to harassment. Mr Kwong says that he was evicted because he raised the issue of the HMO licence with the respondent. The respondent also constantly raised issues of noise with the applicants who say that the complaints from the neighbours were because of the lack of sound insulation in the property. The respondent did not investigate the complaints, nor did he ask the council to investigate the complaints. Instead the applicants say the respondent made unreasonable demands

that they alter their behaviour and for instance walk on the balls of their feet.

68. The applicants say that the respondent also tried to restrict the use of utilities by the applicants even though they paid their share. In June 2023 the respondent asked each of the licensees to take a maximum of one shower per week and to do laundry only once a week. The reason for the request was the respondent's desire to keep the utility bills low. They refused this request as unreasonable.
69. In July August 2023 the respondent entered Mr Kwong's room on several occasions to check on building work without notice.
70. The respondent gave responsibility for management of the property to occupiers. Mr Kwong arranged viewings for vacant rooms and administered some of the utility bills.
71. The respondent argues that his conduct has been good. He provided high quality and spacious accommodation at below market rent. He says he was vigilant and constant in his management of the property from abroad during the period of the applicants' occupancy of the property.
72. The respondent says that the conduct of the applicants has been poor. He said that Mr Kwong caused nuisance by stomping around the flat and causing persistent noise nuisance to the downstairs neighbour. He points out that when the respondent attempted to remind him to be considerate, this is now described as harassment. The respondent also says that Mr Kwong behaved badly because his girlfriend stayed over periodically, and when she was there, the bathroom was trashed by them, they were playing loud bathing water games with many lit candles. They also monopolised the kitchen, cluttering it and making it unhygienic. The respondent also complains about the state of Mr Kwong's room and that he used the room for video hearings of court trials. He admits that he did not raise the untidiness etc with Mr Kwong as he did not want to cause problems.
73. The respondent argues that the applicants have lied about their living circumstances, fabricating and falsifying evidence. He suggests that Mr Kwong has encouraged the other applicants to collude in his dishonesty and he has lodged a formal complaint to the Bar Standards Board in relation to Mr Kwong's conduct.
74. He also says that the applicants deliberately inflated their claim and failed to comply with deadlines set by the tribunal.
75. In relation to financial circumstances the respondent says that he and his wife are pensioners living on a fixed income. They do not know how

they would raise the money to pay an RRO, as they make no profit from renting out the property once the service charges are paid. The respondent told the applicant that the flat he stays in in Shanghai is rented.

- 76. The respondent provided details of the service charges he has been required to pay. Charges of around £45000 covered major internal redecoration work in 2021, and external redecoration in 2023.
- 77. The applicants say that the respondent can afford to pay an RRO as he owns a home in Cambridge and the Bloomsbury flat. In addition he was making considerable income from the Bloomsbury flat.

Submissions

- 78. Neither party addressed the tribunal on quantum of the award. The respondent said that no award should be made because Camden indicated that it had no evidence of breach of HMO regulations.
- 79. The respondent also says that the applicants have no independent evidence whereas he can rely on the evidence of the downstairs flat owner that Mr Kwong was causing a nuisance and the evidence of Camden that they would not act on the case.
- 80. The respondent and his wife made it clear to the tribunal that the case had caused them great stress and that they felt that their home had been violated by people who agreed to live there on reasonable terms, who had had the benefit of living in the property at a difficult time and who had lied to the tribunal and colluded with each other to fabricate evidence against the respondent. The respondent suggested that there were three clear lies in the evidence of the applicants, the position of the fire blanket, that there was no carbon monoxide alarm and about the extractor fan over the cooker.
- 81. He also argued that the applicants wanted to stay in the property which he said was inconsistent with the application.
- 82. The respondent and his wife asked that if any award was to be made it should be given to a charity.
- 83. Mr Kwong in his submissions rebutted suggestions of a lack of credibility in his evidence. Instead he asked the tribunal to prefer the applicants' evidence about evasion of HMO licensing.

84. He asked the tribunal to note that the property had consistently been let to three sharers, drawing on the occupation table and the subsequent advert.
85. The applicants submitted that this was a commercial enterprise where only the bare minimum was done of what was required of a landlord.

The decision of the tribunal

86. The tribunal determines to award a RRO at 60% of the maximum RRO.
87. This means that the RRO will total £17,574 and comprise
 - (i) Mr Kwong -£7632
 - (ii) Ms Mikelsone - £5616
 - (iii) Ms Adriana - £4326

The reasons for the decision of the tribunal

88. 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).
89. *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 and subtracting any element of that sum that represents payment for utilities that only benefitted the tenant. There is no deduction for utilities that needs to be made in this case.
90. 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.
91. 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.

92. In this case the tribunal considered that the case is a less serious example of one of the less serious offences in which a rent repayment order may be made.
93. The reasons for this are as follows:
- (i) Whilst there has been a failure to licence the property, the landlord is not a portfolio landlord
 - (ii) The tribunal accepts that the landlord has made arrangements which mean that the property no longer needs licensing.
 - (iii) Apart from the lack of fire doors – which is a serious failure, it appears to the tribunal that the property was generally in a reasonable condition.
94. 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 applicants' conduct was anything but good. The tribunal notes that Mr Kwong in particular assisted the respondent with running the property. Many of the complaints that the respondent make are because of inevitable tensions as a result of flat sharing arrangements and the evidence indicated that the respondent was as much to blame for tensions as the applicants.
95. The tribunal decided to increase the amount payable because of the conduct of the landlord. It accepts the evidence of the applicants that the respondent sought to evade licensing and also accepts the evidence that the respondent behaved inappropriately towards the applicants seeking to reduce their use of the shower and washing machine and limit their cooking to light meals. The tribunal finds that there were no fire doors internal to the property which put the occupants at risk. The failure to repair a cracked window promptly and to provide sufficient and clean food storage space is also taken into account.
96. The tribunal has also considered the financial circumstances of the respondent, in particular that he and his wife live on fixed incomes. However the respondent produced no evidence of his income and the tribunal notes that the respondent owns a family home in Cambridge as well as the subject property.
97. It has determined not to reduce the amount of the RRO because of the financial circumstances of the respondent. The respondent has considerable financial assets and did not provide evidence of his income. Service charges are not something that benefits tenants but are an

obligation on a leasehold owner which are likely to increase the value of his asset.

98. At this stage the tribunal considers that a RRO of 60% of the maximum RRO is appropriate and does not consider that any further deductions or increases should be made.
99. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.

Name: Judge H Carr

Date: 14th July 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).