FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/HMF/2024/0656**
Property	**:**	**Flat 7 Mandeville House, Rolls Road, Southwark SE1 5DX**
Applicant	**:**	**Ms Ellen Stokki Antonis Kentonis Ilaera Georgiu**
Representative	**:**	**Mr Jamie McGowan of Justice for Tenants**
Respondent	**:**	**Mr Ahmed 'Abu' Choudhury**
Representative	**:**	**n/a**
Type of application	**:**	**Application for a rent repayment order by tenant Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016.**
Tribunal	**:**	**Judge N O'Brien, Mr S Wheeler CEnvH**
Date of Hearing	**:**	**24 June 2025**
Date of Decision	**:**	**21 July 2025**

DECISION

Decision of the Tribunal

(1) The Tribunal does not have jurisdiction to make a Rent Repayment Order in these proceedings.

(2) The application for a Rent Repayment Order is therefore dismissed.

Background

1. On 17 September 2024 the tribunal received an application under section 41 of the Housing and Planning Act 2016 (HPA 2016) for a rent repayment order (RRO). The Applicants assert that the Respondents, their former landlord, committed an offence of managing or being in control of a house in multiple occupation (HMO) that was required to be licenced pursuant to the London Borough of Southwark's additional licence scheme but which was not so licensed. The Applicants' case as set out in their application and statement of case is that the Respondent committed the offence from 23 September 2021 to 19 September 2023. They seek a Rent Repayment Order (RRO) for period 20 September 2022 to 19 September 2023. All three Applicants seek a RRO in the sum of £7,800 each, being 100% of the rent paid in the relevant period.

The Hearing

2. The matter was listed for a final hearing on 24 June 2025. The First and Second Applicants attended with their representative Mr McGowan of Justice for Tenants. The Third Applicant was unable to attend in person. The Respondent did not attend and was not represented.

3. At the start of the hearing we considered whether we should proceed in the absence of the Respondent. We noted that the notice of the hearing had been sent to the email address included as the landlord's address for correspondence on the original tenancy agreement being the address of the Respondent's agent Cubix Property Management Ltd. The case officer informed the panel that the agent had responded by email advising that all correspondence should be sent to the landlord directly and asserted that the tribunal had been supplied with his contact details. However according to the case officer no such details had been provided. The Applicants sent a copy of the proceedings and the directions to the postal address recorded for the landlord at HM Land Registry and also to the business address of the landlord's agent which was stated to be the landlord's address on the tenancy renewal agreement for the purposes of s.48 of the Landlord and Tenant Act 1987.

4. We were satisfied that reasonable steps had been taken to bring the proceedings and the hearing to the attention of the Respondent and that it would be in the interests of justice for the hearing to proceed pursuant to Rule 34 of the Tribunal Procedure (First tier Tribunal) 2013.

5. We were provided with a bundle consisting of 426 pages and a skeleton argument prepared by Mr McGowan on behalf of the Applicants. We heard oral evidence from the First and Second Applicant.

6. In the course of hearing the evidence it became apparent that there may be an issue as to the Tribunal's jurisdiction to make a RRO. According to Ms Stokki's written statement, the premises were occupied by the First Second and Third Applicants and a Ms Kanina Darga. All four occupants were full-time third level students which she confirmed in her oral evidence. In her written evidence she said that the third Applicant moved out on 30th August 2023, leaving the First and Second Applicant in occupation with Ms Darga until 19 September 2023. Ms Georgiu also says in her witness statement that she moved out on 30 August 2023. In her oral evidence Ms Stokki told us that Ms Darga moved out on 18th September 2023, not 19th September 2023, leaving only Ms Stokki and Mr Kentonis in occupation. She told us that she and Mr Kentonis vacated the property on 19th September 2023 and she was the last to leave.

7. Mr Kentonis in his witness statement said that Ms Georgiu moved out on 30 August 2023 and that the remaining three housemates remained in occupation until 19 September 2023. In his oral evidence he told us that he moved out on 19th September 2023, the same day as Ms Stokki. He was sure that Ms Darga moved out before he did but he was not sure if it was on 19th September 2023 or the previous day. Consequently he was unsure whether the statement in his written evidence was correct as to the date when Ms Darga moved out.

8. We queried whether, in the light of the decision of the Upper Tribunal in the conjoined appeals of *Moh v Rimal Properties and Kiely v Bostall Estates Ltd [2024] UKUT 324,* the application had been sent to the tribunal within the 12-month period permitted by s.41 of the HPA 2016, given that if we accepted the evidence of Ms Stokki, any offence ceased to be committed by the Respondent on 18th September 2024 when Ms Darga moved out.

Jurisdiction

9. Section 41(2) of the HPA 2016 provides:

> (2) A tenant may apply for a rent repayment order only if:
>
> ….(b) the offence was committed in the period of 12 months ending on the day on which the application was made

10. A jurisdictional point arose in the above appeals which is the same as the point that has arisen in this one; does the day on which the offence ceased count for the purposes of calculating the 12-month period.

11. In *Moh* the Upper Tribunal held that the words "the *period of 12 months ending on the day on which the application is made*" includes the day on which the application is sent to the Tribunal. Thus in this case the application sent to the Tribunal on 17 September will only have been made in time if the offence was being committed on 18 September 2024. However in *Moh* the Upper Tribunal

also held that the day or part of a day when the Respondent ceased to commit the offence does not count as a day on which an offence was being committed for the purposes of calculating time.

12. Mr McGowan sought to distinguish *Moh* on the grounds that both those appeals concerned cases where the offence ceased due to the fact that the landlord acquired a statutory defence by virtue of s.72(4) HA2004 in the case of *Moh* and by virtue of s.72(5) in the case of *Kiley*. In *Moh* the landlord applied for a licence on 4 May 2022 and the application was sent to the tribunal on 4 May 2023. In Kiley the landlord tried to apply for a licence on 16th November 2022 and the application was sent to the tribunal on 15 November 2023. The Upper Tribunal concluded that the application in *Moh* was 2 days late and the application in *Kiely* was 1 day late. The situation here is that the offence ceased on 18th September 2023 not because the Respondent acquired a statutory defence on that date but because on that day the number of occupants reduced from 3 to 2 meaning that the premises were no longer occupied as a HMO.

13. In *Moh* the Upper Tribunal considered that the parties to that appeal were correct in their submissions that fractions of a day are to be disregarded. Consequently in both cases the landlord was either committing an offence for the entirety of the day on which the statutory defence arose, or none of it. At paragraphs 67 and 68 Judge Elizabeth Cooke concluded;

> *67. If the cases on time limits are not authority for the answer to the present question, are they of assistance in terms of policy? I do not think so. The facilitation of applications for rent repayment orders is not an overriding consideration in determining this question. Far more important is the fact that this is a matter of criminal liability. Faced with a choice between deciding that a landlord is committing an offence throughout the day on which he applies for a licence, and deciding that he has a defence throughout the day on which he applies for a licence, I have no hesitation in choosing the latter. Put another way, because I have to disregard fractions of a day I prefer to say that the landlord has a defence in the morning because he applied for a licence later in the day, than to say that he is committing an offence all afternoon and evening even though he has already applied for a licence.*
>
> *68. I therefore agree with the FTT which said: "If there is any ambiguity, we should lean in favour of the potential offender" (paragraph 62 of the Jerome House decision, paragraph 54 of the Reighton Road decision).*

14. In our view the reasoning of the Upper Tribunal's in *Moh also* applies to cases where the offence ceases due to a reduction in the number of occupants. The result is that the last day upon which the offence was committed in this case was 17th September 2023. The last day that the Applicants could have applied to the Tribunal for a Rent Repayment Order was 16 September 2024. The appeal was issued one day late.

15. Consequently this Tribunal is satisfied that it does not have jurisdiction to determine the application against the Respondents if it concludes that Ms Darga moved out on 18 September 2023. We will also consider the orders we would make if we were satisfied that we had jurisdiction.

The Relevant Law

16. By virtue of s.253 and Paragraph 7 of Schedule 14 of HA 2004 a dwelling will be a house in multiple occupation if it is a self-contained dwelling where 3 or more unrelated persons reside as their main residence as part of 2 or more households sharing basic amenities. If any of the occupants reside there for the purposes of undertaking a full-time course of further or higher education, then the premises are deemed to be their main residence by virtue of s.259(3) HA 2004.

17. The power of local authorities to designate particular areas as being subject to an additional licencing regime is contained in sections 56 to 60 of the 2004 Act. By virtue of s.72(1) of the 2004 Act a person commits an offence if they are in control of or manage a HMO which is required to be licenced by virtue of Part 2 of the Act but is not so licenced. In proceedings against a person for an offence under s72(1) of the 2004 Act it is a defence that he had a reasonable excuse for having control of managing the house without the required licence; s72(5)(a) of the 2004 Act. It is also a defence in proceedings against a person for an offence under s72 (1) that the person had duly made an application for a licence at the material time.

18. Section 40 of the HPA 2016 provides;

(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…

(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 by that landlord.

19. Section 41 of the HPA 2016 provides

(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.

20. Section 43 of the HPA 2016 provides;

(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 has 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);

21. Section 44(2) of the 2016 Act provides that where the First-tier Tribunal decides to make a RRO under s.41(1) in favour of a tenant, the order may be made in relation to rent paid over the period not exceeding 12 months during which the landlord was committing the offence.

The tribunal's findings

22. The property which is the subject of the application is a 4-bedroomed ground and first floor maisonette in a large purpose-built block situated in the London Borough of Southwark (LBS). On 1 March 2022 LBS introduced an additional licencing scheme for houses in multiple occupation (HMOs) which were not subject to mandatory licencing pursuant to s.55 of the Housing Act 2004.

23. The applicant's unchallenged evidence, which we accept, establishes the following beyond all reasonable doubt

(i) the property was required to be licenced under LBS's additional licencing scheme if at any time it was occupied by 3 or more persons who did not form one household;
(ii) The occupants were all full-time students enrolled on courses of further or higher education;
(iii) The applicants resided in the property with Ms Darga from approximately 20 September 2021 until 30th August 2023 when the Third Applicant moved out;
(iv) Ms Darga and the First and Second Applicant resided in the property as at 18 September 2023;
(v) The Applicants paid rent to the Respondent via his agent;
(vi) The Respondent is the owner of the premises, the named landlord and the person entitled to the rack rent;
(vii) Between September 2021 and 19 September 2023 the Respondent was managing and/or in control of the premises; and
(viii) The premises were not licenced.

24. We do not consider that there is any basis to conclude that the Respondent had a reasonable excuse for not holding an appropriate licence.

25. We are satisfied on the balance of probabilities that Ms Darga moved out on 18th September 2023. Ms Stokki was very sure in her oral evidence that she and Mr Kentonis moved out on 19th September, but that Ms Darga moved out on the previous day. Consequently that the offence ceased to be committed on 17th September 2023 and the tribunal has no jurisdiction to make an RRO

Amount of RRO

26. We will now consider what order we would have made had we concluded that we have jurisdiction in this matter. In the case of Acheampong *v Roman [2022] UKUT 239 (LC)* the Upper Tribunal set out a 4-stage test which the tribunal must apply when considering how much to order a landlord to pay by way of an RRO. In summary the tribunal must;

    1. Ascertain the whole of the rent for the relevant period.

    2. Subtract any element of that sum that represents payment for utilities that only benefit the tenant. It is for the Landlord to supply evidence of these, but an experienced Tribunal will be able to make an informed estimate.

    3. Consider seriousness both compared to other types of offences for which an RRO can be made and examples of the same type of offence. What proportion of the rent (after deductions as above) is a fair reflection of the seriousness of the offence? This is the starting point. It is also the default penalty in the absence of any other factors but maybe higher or lower in light of the final step.

    4. Consider deductions or additions in light of section 44(4) factors (conduct of landlord and tenant, financial circumstances of landlord and any previous convictions of the landlord in relation to offences set out in section 40)

27. In ***Newell v Abbot*** **[2024] UKUT 181 (LC)** considered an appeal which has a number of similarities to the instant case. In that case the Upper Tribunal, having reviewed a number of recent authorities on the correct approach to quantification, observed at para 57;

> *"This brief review of recent decisions of this Tribunal in appeals involving licencing offences illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately or by a commercial landlord or an individual with a larger property portfolio or whether the*

tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors which tend to justify lower penalties include inadvertence on the part of the smaller landlord, property in good condition such that a licence would have been granted without one being required and mitigating factors which go some way to explaining the offence without excusing it such as the failure of a letting agent to warn of the need for a licence or personal incapacity due to poor health"

28. In that case the Upper Tribunal noted that the landlord was not a professional landlord and that he had had committed the offence of controlling an unlicenced HMO through inadvertence rather than deliberately. The property was in reasonably good condition during the tenants' occupation. It made a RRO equating to 60% of the net rent paid.

29. None of the Applicants were in receipt of Universal Credit. No part of the rent they paid related to utilities.

30. While we bear in mind the important public policy reasons underpinning the HMO licencing regime, we consider that this is a less serious offence when compared to the other offences in respect of which a RRO can be made which unlawful eviction and harassment and failure to comply with an improvement notice. The Respondents cannot be described as rogue landlords. We bear in mind that the purpose of the legislation is deterrence; it is not relevant that the applicants have not suffered any personal loss as a result of the failure to obtain a licence.

31. The property was in reasonable condition throughout the tenancy, although we accept that there were some issues with the condition of the decking in the back garden. In addition one of the fire alarms did not function. We note that one of the bedrooms was too small to be used as a bedroom and had the property been licenced it would not have been licenced as a 4-bedroom property.

32. Taking all of the above into account we consider that of a rent repayment order of 65% of the rent paid by each applicant during the relevant period would have been appropriate.

Name : Judge N O'Brien Date of Decision 21 July 2025

<u>Rights of appeal</u>

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).