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

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| **Case reference** | **:** | **LON/00AP/HMF/2025/0661** |
| **Property** | **:** | **2E Wolseley Road, London, N8 8RP** |
| **Applicant** | **:** | **DAWID WANIEK** |
| **Representative** | **:** | **In Person** |
| **Respondent** | **:** | **KRZYSTOF KAMASINSKI** |
| **Representative** | **:** | **In Person** |
| **Type of application** | **:** | **An application by a tenant for a Rent Repayment Order pursuant to the provisions of sections 40,41,43 and 44 of the Housing and Planning Act 2016** |
| **Tribunal members** | **:** | **JUDGE SHAW**<br>**Mr A FONKA FCIEH CEnvH MSc** |
| **Date and Venue of Hearing** | **:** | **14th July 2025**<br>**10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | **:** | **22nd July 2025** |

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**DECISION**

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## Background

1. This case involves an application dated 28th December 2024, made by Dawid Waniek ("the Applicant") against Krzystof Kamasinski ("the Respondent") in respect of 2E Wolseley Road, London N8 8RP ( 'the Property"). The application is made pursuant to the provisions of sections 40,41,43 and 44 of the Housing and Planning Act 2016. The Applicant asserts that the room let to him, was part of a property requiring a House in Multiple Occupation ("HMO") Licence from the local licensing authority ( the London Borough of Haringey) , whereas in fact it was unlicensed. Accordingly, Applicant seeks a Rent Repayment Order in the sum of £6760, representing 12 months rent paid by him at a rate of £130per week, during the period 21st August 2023- 20th August 2024.

2. Directions were given by the Tribunal on 5th May 2025. The Appplicant was required to send to the Respondent, his Statement of Case, and any Witness Statements and documents relied upon, by 18th April 2025. In the event, these were supplied marginally out of time, but were accepted by the Tribunal. As a consequence of the late service, the Tribunal wrote to the Respondent on 14th May 2025, reminding him that his Statement of Case and documentation was required by 30th May 2025, and, in the light of the slightly late service by the Applicant, inviting him to request more time if needed. The Respondent failed to respond to that letter, and indeed has failed to send either the Tribunal or the Applicant any indication of the nature of his case, or any documentation at all.

## The Hearing

3. An oral hearing of the application took place before the Tribunal on 14th July 2025, attended by the Applicant and his witness, and partner, Ms Victoria Namulindwa, and also by the Respondent. It is proposed to summarise the case as presented by both sides, to anaylse the relevant stautory provisons, and then give the Tribunal's findings on the application

**The Applicant's Case**

4. The Appicant had supplied a written Statement of Case which he referred to generally. He had found the room though a website called Spare Room, and having arranged a viewing, was shown around the property by another tenant called Ardiol. The Applicant told the Tribunal that the property had been adapted for use as 5 separate rooms for letting, There were 2 rooms on the ground floor, a single room on the first floor and 2 further rooms, each with their own ensuite bathroom facilities, on the second floor. The ground floor had one shared bathroom (used by 3 tenants) and there was a small kitchen on the first floor shared by all tenants.

5. The Applicant decided to take the room offered to him on the ground floor. He entered into an Assured Shorthold Tenancy for the period 20th August 2023 – 19th August 2024, at a rent of £130 per week.

6. He told the Tribunal that after he had moved in, he had expected each room to be occupied by one person, but he discovered that there was a couple living in one of the second floor rooms. He also discovered that the single room on the first floor had an extra person staying perhaps 2 or 3 days a week. So, at various times there might be 7 people staying at the property, which made it uncomfortably overcrowded, especially given the shared bathroom and kitchen facilities.

7. The various permutations of different rooms being occupied not only by the tenants but also by their wives or partners, was irregular but disruptive, so far as the Applicant was concerned. When he reported this to the Respondent he was told that, having investigated, he (the Respondent) had been told by the tenants that the people staying, were not staying permanently and only for occasional isolated days – which the Applicant insisted was not the case.

8. He was supported in this regard by his witness Ms Namulindwa, who told the Tribunal that when the second room on the ground floor became vacant, she entered into a tenancy agreement in respect of that room and moved in during

October 2024. She told the Tribunal that *"it became apparent to me that there were 6 people staying there permanently"* and by November she was clear that the tenant on the first floor had has his girlfriend living pemanently at the property, whilst a tenant on the second floor also had his wife or girlfriend living in his room. She had a text message exchange with the Respondent, complaining of the situation, who at that time took no action.

9. When asked about the condition of the property, the Applicant told the Tribunal that, in effect, he had no complaints. He said that the condition of the property was good, that there were smoke alarms, and health and safey requirements seemed to have been complied with. If anything required attention or repair, the Respondent dealt with it promptly and efficiently. He said of the Respondent, that in respect of these matters *"he was good."*

**The Respondent's Case**

10. The Respondent broke his long silence vis a vis the Tribunal, at the hearing. He explained that he was not the freeholder of the Property but fully accepted that he had entered into the Tenancy Agreement with the Applicant (and the other tenants) and that he (or his company) received the rental payments which he would then pass on to the owner. He accepted fully that he was the person with management and control of the letting of the property. He appeared not to have a good grasp of the HMO licensing requirements. English is not his native language. His conversational English is adequate at a basic level, but he came across to the Tribunal as unfamiliar with the details of licensing. He told the Tribunal that when the complaints were made by the Applicant and Ms Namulindwa, he raised the issue with the freeholder, and was told that all necessary licences were in place. He did not dispute that no record of any such licence could be found on the local authority website, and had no evidence of his own to put before the Tribunal that there is or ever was such a licence. He told the Tribunal that when he was eventually able to ascertain that the property was

indeed in multiple occupation, he told various tenants that they would have to leave. They did in fact leave, but this course led to him being dismissed as manager by the owner.

11. He told the Tribunal that at one point he managed 3 properties, but that at the period under review, (2023/4) this was the only property he managed. He now manages no property for the owner of the subject premises.

**The Law**

12. The statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rogue landlords and agents, and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are set out in sections 40-46 Housing and Planning Act 2016 ("the 2016") Act, not all of which relate to the circumstances of this case.

13. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. Licensing is mandatory for all HMO's which have three or more storeys and are occupied by five or more persons forming two or more households. "House in Multiple Occupation" is defined by s.254 Housing Act 2004. The Licensing of Houses in Multiple Occupation Order 2006 details the criteria under which HMOs must be licensed. The criteria were adjusted and renewed by the Licensing of Houses in Multiple Occupation Order 2018 which came in force on 1 October 2018 and since 1 October 2018 the requirements that the property must have three or more storeys no longer applies.

14. Section 40 gives the Tribunal power to make a rent repayment order where a landlord has committed a relevant offence. Section 40(2) explains that a rent repayment order is an order requiring the landlord under a tenancy of housing in

England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority). Section 72(1) provides that a person commits an offence if he is a person having control or of managing an HMO which is required to be licensed under this Part (see section 6(1)) but is not so licensed. Section 72(5) provides that there is a defence of "reasonable excuse".

15. Section 41 of the Act deals with an application for a rent repayment order:
*(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.*
*(2) A tenant may apply for a rent repayment order only if-*
*(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and*
*(b) the offence was committed in the period of 12 months ending with the day on which the application is made.*

Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a specified offence, if the offence relates to housing rented by the tenant(s) and the offence was committed in the period of 12 months ending with the day on which the application is made.

16. Section 43 of the Act deals with the making of rent repayment order:

*(1) The First-tier Tribunal may make a rent repayment order if satisfied beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).*
*(2) A rent repayment order under this section may be made only on an application under section 41.*

17. Under section 43, the Tribunal may only make a rent repayment order if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted).

18. Previous decsions have confirmed that “lack of reasonable doubt”, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.

19. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, s.44 applies in relation to the amount of a rent repayment order, setting out the maximum amount that may be ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the landlord was committing the offence. By subsection (3) The amount that the landlord may be required to repay in respect of a period must not exceed-
(a) the rent repaid in respect of that period, less
(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period. By subsection (4) In determining the amount the tribunal must, in particular, take into account-
(a) the conduct of the landlord and the tenant,
(b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

**Determination of the Tribunal**

In reaching its Decision, the Tribunal has examined the following questions or issues:

20. Is the Tribunal satisfied, beyond reasonable doubt, that the alleged offence has been committed?

(i) It is the undisputed evidence in this case that the room let to the Applicant was part of a property set out over 3 floors and comprising 5 rooms separately occupied by unrelated tenants, all of whom shared kitchen facilities, and 3 of

whom shared a bathroom and toilet. Even without considering the additional 2 partners who for periods of time also resided in the property, the property fell within the mandatory licencing requitements of Part 2 of the Housing Act 2004, section 55(2), in that it was occupied by 5 or more persons, the occupants were living in 2 or more separate households, and the building satisfies the criteria of section 254 of the Housing Act 2004.

(ii) Both the Applicant and his witness Ms Namulindwa gave evidence as to the above layout. The Respondent was present throughout their evidence, and although he sought to challenge some of their assertions, the physical layout and occupation of the rooms by 5 people for the greater period of the 12 months in respect of which a repayment order is sought, was not in dispute.

(iii) The Tribunal is satisfied by application of the criminal standard ( section 43(1) of the 2016 Act, that an HMO licence was required.

(iv) The Tribunal is also satisfied, applying the same standard of proof, that the property had no such licence. The Applicant supplied a screenshot of his check on the website of the London Boorough of Haringey in this regard, and he also gave unchallenged evidence that he had telephoned the council, to check the licencing position, and it was confirmed to him that no licence had been applied for or granted. This check was made at or about the time he vacated the property in November 2024. He also gave evidence that after his enquiry, the council renewed contact with him in order to carry out an inspection, consequent upon what he had told them, but that he had been unable to give access because he was no longer in occupation.

(v) The Respondent too, in effect accepted that in his representations to the Tribunal that (although he had thought that the threshold for multiple occupation was 6 rather than 5) when he investigated and found 6 or more in occupation, he required the excess occupiers to vacate, because there was no HMO licence for the property. He told the Tribunal that he had checked with his principal whether there was appropriate licensing, had been told that all the necessary licence had been obtained – but was able to produce no evidence of an HMO licence to the Tribunal. He was resigned to the fact that a repayment order

would have to be made, but asked for time to make any such repaymment (which will be mentioned below).

For the above reasons the Tribunal is satisfied beyond reasonable doubt that the offence has been committed.

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

Again, the Tribunal's answer to this question is in the affirmative:

(1) The Applicant's Tenancy Agreement, contained within the Hearing Bundle, is dated 21st August 2023 and is for a term of 12 months from that date. The Landlord is named as the Respondent.
(2) The rent paid by the Applicant ( as evidenced by his bank statement in the Hearing Bundle) was to the Respondent, through his company Kamas Property Group Limited, throughout the period of the tenancy from August 2023-August 2024.
(3) The Applicant told the Tribunal ( and the Respondent entirely accepted) that the Respondent was the contact point for all occupiers at the property, - he dealt with rent payments and receipts, the Tenancy Agreements, the finding of tenants and maintenace and management of the property generally.
(4) For all relevant purposes, the Respondent was the person with control and management of the property, for the purposes of section 263 of the Housing Act 2004.

22. Does the Respondent have a defence of "Reasonable Excuse"?

(i) The Respondent raised no suggestion of a reasonble excuse, but given that he was unrepresented, it behoves the Tribunal to consider whether, on the evidence before it, there exists evidence which may amount to such an excuse.

(ii) The Respondent is handicapped in this respect, because despite having been prompted by the Tribunal, in correspondence before the Hearing, to produce his Case – he elected to make no Witness Statement and produced no documents. So effectively the Tribunal had no proper evidence from him at all.

(iii) His representatations to the Tribunal, disclosed no such possibility of a defence, so far as the Tribunal could ascertain. At its high point, the best that could be said was that, when he had asked his freeholder principal about the HMO licence he had been told that all necessary licnces existed. However, he appears never to have made any independent enquiries of his own, or indeed, as the manager in charge and control, himself to have made such application.

(iv) The Tribunl is satisfied that no "reasonable excuse" defence applies in this case.

23. Should the Tribunal make an RRO in this case?

(i) The power to make an order under section 43 is discretionary

(ii) Having concluded that beyond reasonable doubt that the offence has been committed, the Tribunal can see no reason why an order should not be made, and indeed every reason to do so.

24. Other matters considered by the Tribunal have been whether the offence was committed within the 12 month period preceding the application being made The application was made promptly, shortly after the Applicant vacated in November 2024, the Application being dated 28th December 2024. The offence was being commited (with the exception of a period mntioned below) throughout, and so this criterion is satisfied.

25. The maximum amount the Tribunal could order is the full sum of 12 months rent at £130 per month, being £6760. The period for which an RRO is sought is the period of the tenancy from August 2023 – August 2024.

26. Finally the Tribunal has given consideration to the amount to be ordered by way of RRO, and has taken into account the guidance given in the Upper Tribunal and Court of Appeal in *Williams v Parmar [2021] UKUT 244 (LC); Acheampong v Roaman [2002] UKUT 239; Kawalek v Hassanein Ltd [2002] EWCA Civ 1041: and Newell v Abbott [2024]UKUT 181 (LT).*

27. First, it was agreed in the accounts given by both parties that there were gaps, amounting to 4 weeks, during lettings within the 12 month period claimed, when only 3 rooms were occupied by 3 unrelated individuals, and thus no licence would have been required. Accordingly the sum of 4 x £130 = £520 should be deducted from the total sum, reducing it to £6240.

28. Next, the amount paid referable to utilties falls to be deducted. Again the parties were agreed that the sum paid for gas and electricity, internet, and water, was within a range of £65 - £100 per month. Taking the monthly figure of £75, a deduction of £900 annually should be made, reducing the overall figure to £5,340.

29. Finally the Tribunal is required to consider (a) how serious this offence was, compared with other ofences for which repayment orders may be made and (b) the conduct of the parties, the financial circumstances of the landlord, and whether the landlord has at any time been convictd of some other offence in the table appearing at section 45 of the Act. (Universal Credit would also need to be deducted, but this case does not feature such credit).

30. Failure to have applied for obtained an HMO licence is not one of the more serious offences appearing in the exact, as compared with illegal eviction, harrassment etc.

31. The Applicant candidly told the Tribunal, that absent the failure to have complied with the licensing provisions, he had no complaints against the Respondent. He said that the condition of his room and the other parts of the property was good

and well-maintained. He had no concerns as to compliance with Health and Safety requirements – there were smoke alarms in the property, everyone had locks for their doors. If any maintenance issue cropped up and was reported, the Respondent would deal with it promptly and efficiently. In all these respects , he said of the Respondent "*he was good."* Indeed, he said *"I was OK, until too many people started living there."* The tenor of his evidence was that if one person only had occupied each of the 5 rooms ( as was the case for some of the time of his tenancy) he would have been untroubled, nothwithstanding that 5 people anyway would have required an HMO.

32. The problem occurred when 2 tenants in particular started having their partner stay over, at first for part of the week, but then, on the Applicant's evidence (supported by Ms Namulindwa) full-time. Even this was not the result of direct conduct on the part of the Respondent. This is not a case, (as with others the Tribunal is sometimes faced with) of an unscrupulous or rogue landlord packing a property in an extreme way to maximise income. The overcrowding came about, on the Applicant's evidence, as a result of uniltaral action by some of the tenants, not the Respondent. When the Respondent tried to investigate the position he was given different accounts by the Applicant and Ms Namulindwa, on the one hand, and the relevant tenants on the other. The Respondent had some difficulty monitoring the private lives of these tenants, but when he was satisfied that they has (as he put it) "*crossed the line"* he did indeed give notice and obtained possession. This appears however to have been after the Applicant had left.

33. The Tribunal also takes into account the fact the Respondent has not been convicted of an offence identified in section 45 of the Housing Act 2016, and was never a person dealing with a large portfolio of properties.

34. For the reasons set out above the Tribunal considers this to be a case in which the seriousness is at the lower end of the scale, and in respect of one of the less serious offences of those mentioned in the Act. In the Tribunal's judgment, it is a case in which, after the above deductions have been made, the appropriate order

is one of repayment of 50% of the remaining balance. The figure after the above deductions was £5340, meaning that an order of 50% of that sum computes to £2670. This is the amount of the order for repayment made by the Tribunal.

35. The Respondent asked the Tribunal to take into account his financial situation, principally in allowing him time to pay. Unfortunately, he put no financial evidence before the Tribunal, and in any event the Tribunal has no powers in respect of stage payments, which is a matter the parties will have to seek some agreement upon between themselves.

36. The Applicant has had to bring this application, and in so doing has incurred Application and Hearing fees totaling £337, and this sum too should be paid by the Respondent to the Applicant.

## 37. Conclusion

For the reasons set out above the Tribunal orders that:

(i) The Respondent shall pay the Applicant the sum of £2670 by way of Rent Repayment Order

(ii) The Respondent shall pay the Applicant's Application and Hearing Fees, in the sum of £337

**JUDGE SHAW** **22nd 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 persion 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.