FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AZ/HMF/2025/0608**
Property	**:**	**4 Ardoch Road, Lewisham, SE23 2UP**
Applicants	**:**	**Sunni Saffron Mustafa** **Nicole Wilson**
Respondent	**:**	**San Lan Cheung (Suzanne)**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Shepherd** **Chris Gowman MCIEH**
Venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on line**
Date of Decision	**:**	**23rd July 2025**

DECISION

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1. The Tribunal has received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicants for a rent repayment order (RRO).

2. It is asserted in the application notice that the landlord committed an offence of having control of or managing a house in multiple occupation (HMO) that was required to be licensed but was not so licensed.

3. The Applicants in this case are Sunni Saffron Mustafa and Nicole Wilson (The Applicants).The Respondent is San Lan Cheung (Known as Suzanne).

4. The Applicants are seeking a Rent Repayment Order. They were in occupation of premises at 4 Ardoch Road, Lewisham, SE23 2UP ("The premises"). The premises are situated within an additional licensing area as designated by the London Borough of Lewisham. The additional licensing scheme required all landlords with three or more tenants who are not part of the same household to obtain a license. When the Applicants were in occupation the premises met all the criteria to be licensed under the said designation.

5. The Premises is a three - bedroom terraced house. During the relevant period of October 2023 and October 2024 , the premises were occupied by at least three persons living in three separate households and occupying the property as their main residence. The third tenant did not wish to take part in these proceedings.

6. As already indicated during the Applicants' occupation the premises were located in an area operating an additional licensing scheme. The appropriate HMO licence was not held during the relevant period. It is common ground that the Respondent who is the freeholder and landlord took some steps to obtain a license but did not complete the task. In short, she did not pay the full fee required. The fee is £1500 and she paid half of this. Accordingly, a valid application was not made.

7. The first Applicant moved into the premises in June 2023. The second Applicant moved into the premises in July 2023. Esengo Miere was also in occupation. The Respondent originally used Paul Estates as agents. They were replaced by Robinson Jackson Lettings and a new tenancy was signed in October 2023.

8. The Respondent applied for a license in 2022. Her application number was WK/202207042. She paid £750 i.e half of the total fee. A site inspection was carried out by the council on 16th February 2023. Nothing happened thereafter and the Respondent chased the council on 27th November 2023. The council replied that they would issue the license once they had received the remainder of the fee. They said they would send a link for her to make payment. The Respondent says she did not receive a link. On 20th February 2024 the council requested further information and the outstanding payment. On 25th February 2024 the council sent the Respondent a step by step guide to making an

application. It transpired during the hearing that the Respondent had not properly read this document and it contained the link to make the payment. This was of no surprise because the Council's accompanying email stated the following:

I have requested the payment online again and have attached a guide on how to log in and make the payment.

9. The Respondent again chased for payment details in June 2024 even though they had already been provided. By the time of the hearing on 22nd July 2025 there was still no license in place.

10. At the hearing the Applicants argued that the Respondent's failure to pay the fee demonstrated her unwillingness to prioritise the license issue. They said that the council had repeatedly asked for the fee but it had not been paid. They also argued that several items of disrepair had been in place during their occupation. These were mould growth, a flea and mouse infestation, a leak and a hot tap that would not turn off. It was not entirely clear whether all of these matters had been reported to the Respondent via her agents. The Applicants alleged that the Respondent had delayed repairs by failing to give authority to her agent quickly.

11. For her part the Respondent originally argued that she had a reasonable excuse for her failure to license because she had tried to complete the application but delays by the council in providing her with payment details had thwarted her efforts. She had to alter this argument at the hearing when it transpired that the Respondent had been sent a payment link but had "overlooked it" in her words. In relation to the alleged disrepair she said that it was not all reported and that which was reported was attended to in good order. She was a solicitor who worked in compliance. This was her only property and she had originally intended to live in it but had changed firms and was no longer based in the City of London. She did not want to disclose her annual income.

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

12. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an unlicenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

13. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which states.

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.

14. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence under the mandatory licensing scheme. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

Section 56 Housing Act 2004 deals with the designation of Additional Licensing Schemes:

56 Designation of areas subject to additional licensing
(1) A local housing authority may designate either–
(a) the area of their district, or
(b) an area in their district,
as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.
(2) The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
(3) Before making a designation the authority must–
(a) take reasonable steps to consult persons who are likely to be affected by the designation; and
(b) consider any representations made in accordance with the consultation and not withdrawn.
(4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.
(5) In forming an opinion as to the matter mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question.
(6) Section 57 applies for the purposes of this section.

15. There is no dispute in the present case that the local authority were operating an additional licensing scheme and that for the period in question the premises should have been licensed but wasn't.

16. Section 263 of the Act provides:

"(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the

premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

The Housing and Planning Act 2016 (“the 2016 Act”)

17. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions

permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

18. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

19. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

20. Section 40 provides (emphasis added):

"(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

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

21. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

22. Section 41 deals with applications for RROs. The material parts provide:

"(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.

23. Section 43 provides for the making of RROs:

"(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)."

24. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

"(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid 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.

25. Section 44(4) provides:

"(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."

26. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act

where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

27. In Williams v Parmar [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

> (i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
>
> (ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
>
> (iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).
>
> (iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).
>
> (v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

27. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

28. In Acheampong v Roman [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

"20. The following approach will ensure consistency with the authorities:

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

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

Determination

29. There was clearly a breach as the Respondent did not have a license for the relevant period. Whilst she had commenced her application she had not completed it. It was her delay and not the delay of the council that prevented her completing the process by paying the fee. She was fully aware that she needed to do this because she was reminded on a number of occasions by the council. They sent her a link to make payment in February 2024. In all likelihood she had been sent the link previously as well. In any event it was for her to complete the process not least to protect her position. Her attempts to

pass the blame to the local authority were disingenuous. We have no doubt that she is a busy solicitor but this does not excuse her conduct in failing to give the matter of the property license due care and attention. We do not therefore believe that she had a reasonable excuse.

30. Turning to quantum and applying the *Acheompong* criteria: the total rent paid for the relevant period was the following: £10563.39. The second Applicant paid £7973.28. The First Applicant paid £2626.11 once her Universal Credit housing element was deducted.

31. We were provided with no evidence in relation to the cost of utilities.

32. The failure to license offence is serious but not as serious as other offences such as unlawful eviction. Further we consider that none of the conduct alleged by the Applicants would be sufficiently serious to affect the total penalty. The Respondent managed the property through agents, probably because she had a busy work life. There may have been delays in dealing with some of the disrepair but the matters were resolved eventually. We also take into account the fact that the Respondent has no previous convictions as far as we are aware. We consider that an award of 40% of the rental value is appropriate in this case. We don't believe that the Respondent deliberately sought to evade her responsibilities.

33. Accordingly, we determine the following:

The Respondent should pay the First Applicant, £1050.45.

The Respondent should pay the Second Applicant £3189.31

Judge Shepherd

22nd July 2025

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.