FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MD/HMK/2024/0003**
Property	**:**	**145A Upton Road, Slough SL1 2AE**
Applicant	**:**	**Anita Katarzyna Kopera**
Representative	**:**	**In person**
Respondent	**:**	**Kaldip Singh Samra**
Representative	**:**	**In person**
Type of application	**:**	**Application for a rent repayment order by a tenant under Sections 40, 41, 43 and 44 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge A. Arul** **Mrs S. Redmond Bsc ECON MRICS**
Hearing date	**:**	**16 April 2025**
Date of decision	**:**	**17 July 2025**

DECISION

<u>Decisions of the Tribunal</u>

(1) The Tribunal is not satisfied that a relevant offence has been committed and will not therefore make a Rent Repayment Order.

(2) The Tribunal directs that the Respondent shall forthwith reimburse the Applicant in respect of the hearing fee paid of £220 but the Applicant shall bear the initial application fee of £100.

(3) The Tribunal makes the determinations as set out in the decision below.

<u>Reasons</u>

The Application

1. The Applicant sought determinations pursuant to section 41 of the Housing and Planning Act 2016 (the 2016 Act) for a rent repayment order (RRO). The Applicant alleges that the Respondent landlord has committed the offence of control or management of an unlicensed house, contrary to section 72(1) Housing Act 2004 (the 2004 Act). This relates to an alleged failure to obtain a licence for a house in multiple application under Part 2 of the 2004 Act.

2. The sum sought in the application form is £5,190, relating to the period of 12 months between June 2022 and June 2023, when the Respondent applied for a relevant licence in respect of the Property. This sum is based on rent paid of £6,090 over that 12 month period less an estimated £900 (12 x £60) in bills or utilities paid for by the landlord. At the hearing, the Applicant submitted that the Respondent had not proven such bill or utility payments so invited the Tribunal not to allow for them by way of reduction to the rent figure. Thus, the application was for a RRO in the sum of £6,090.

Procedural history and documents

3. The application, dated 2 April 2024, was lodged at the office for the Eastern region (where the Property is situated). On 15 January 2025, a Procedural Judge gave case management directions which required that the Applicant send a bundle of relevant documents to the Tribunal and to the Respondent; and thereafter the Respondent send a bundle of relevant documents to the Applicant and the Tribunal. The Applicant then had permission to send a brief reply to the issues raised by the Respondent.

4. The Applicant filed a 90-page bundle, including an extended statement of reasons as to why a RRO should be made, which was in reality a witness statement of the Applicant save for a statement of truth. The

bundle also included witness statements of two former tenants, Marionna Tusell-Bayarri and Rosie Garvey Cocker, and the Applicant's partner, Muhammad Jan, as well as other documents.

5. The Respondent filed a 89-page bundle, including a statement of response to the Applicant's application (which again was in reality a witness statement) together with a statement from a former tenant, Nirmal Dhaliwal.

6. The Applicant filed a second "supplemental" bundle of 25 pages, which included a number of additional documents.

7. The Tribunal has based its decision on these documents and the evidence heard and submissions made at the hearing; no site visit having been deemed necessary. All those documents have been read by the Tribunal, but it is not necessary in this decision to set out each and every one of them. They all contributed to the reasoning of the decision.

The Hearing

8. The hearing was conducted via CVP.

9. The Applicant attended the hearing and represented herself. Her witnesses attended and answered questions.

10. The Respondent also attended the hearing and represented himself. His witness did not attend, despite the Respondent having the chance during a break to enquire as to their availability.

The Background Facts

11. 145A Upton Road, Slough SL1 2AE ("the Property") was purchased by the Respondent over twenty years ago; we were shown official copies from the Land Registry noting that he was registered as proprietor on 21 June 2002.

12. The Respondent lived in the Property initially but his circumstances changed and he let some rooms to lodgers. He eventually moved out completely in or around 2021. The Property is, we were told, his only rental property; he has let one other property in the past but not currently. He currently lives around 12 miles away; at the time of the material events it was 75 miles.

13. The Property is a house comprising 5 bedrooms available for let to paying tenants. Each bedroom has its own key access. The tenants use common kitchen, bathroom and garden facilities. We were not presented with

evidence as the extent of conversion, if any, which has taken place to allow for this use.

14. The Applicant first moved into the Property on 10 April 2022. The tenancy was initially for a fixed three month term and went into a periodic tenancy thereafter.

15. The rent paid was £500 per month, which included utility bills paid for by the Respondent and comprising fuel, water and broadband. The rent increased to £515 per month from January 2023.

16. The Applicant gave notice to the Respondent on 21 March 2024 and vacated the Property on 21 April 2024.

17. The other tenants in occupation during the same time (but for varying periods) as the Applicant between 10 April 2022 and 21 April 2024, appear to have been: April Pesa, Talia Chesno, Maria De Melo, Brenda Limo, Rosie Garvey Cocker, Mariona Tusell-Bayarri, Srilakkshmiand Irinka. The evidence as to exact occupancy periods was scant however it was common ground that five bedrooms were being occupied by various unconnected parties during the period mentioned above and, in particular, the period for which a RRO is sought.

18. The Property was granted a HMO licence by the local authority, Slough Borough Council, on 3 October 2023. This followed an application by the Respondent made on 22 June 2023. The application was triggered by contact from the local authority on 15 June 2023 following a notification by the Applicant earlier that same month.

Issues

19. The Tribunal must determine the following issues, which requires careful consideration of the legislation and the relevant authorities.

    a) Is the Tribunal satisfied beyond reasonable doubt that the Respondent has committed the alleged offence?

    b) Does the Respondent have a 'reasonable excuse' defence?

    c) What amount of RRO, if any, should the Tribunal order?

        i. What is the maximum amount that can be ordered under s.44(3) of the Act?

        ii. What account must be taken of:

            (1) The conduct of the Respondent

(2) The financial circumstances of the Respondent

(3) The conduct of the Applicant?

d) Should the tribunal order the Respondent to reimburse the Applicant's application and hearing fees?

The Legal Framework

The Housing Act 2004 ("the 2004 Act")

20. 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.

21. Section 61(1) provides:

"Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

(2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence."

22. Section 72 provides:

"(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine."

23. Section 254 provides:

"(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");

...

(c) it meets the conditions in subsection (4) ("the converted building test");

(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(4) A building or a part of a building meets the converted building test if—

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);

(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation."

24. Section 259 provides:

"(1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.

(2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person—

(a) as the person's residence for the purpose of undertaking a full-time course of further or higher education;

(b) as a refuge, or

(c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority."

25. Section 263 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")

26. 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 local housing authorities to impose financial penalties of up to £30,000 for a number of offences as an alternative to prosecution.

27. Chapter 4 introduced a new set of provisions relating to RROs. An additional five offences were added, in respect of which a RRO may 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.

28. 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 2016 Act 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.

29. In the Upper Tribunal (in *Rakusen v Jepsen* [2020] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, 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."*

30. In the Court of Appeal, Arnold LJ endorsed these observations. At [36], he noted that Part 2 of the 2016 Act was the product of a series of reviews into the problems caused by rogue landlords in the private rented sector and methods of forcing landlords to either comply with their obligations or leave the sector. Part 2 is headed "Rogue landlords and property agents in England". At [38], he noted that the 2016 Act conferred tough new powers to address these problems. At [40], he added that the 2016 Act is aimed at *"combatting a significant social evil and that the courts should interpret the statute with that in mind"*. The policy is to require landlords to comply with their obligations or leave the sector.

31. In the subsequent decision of *Kowalek v Hassanien Limited* [2022] EWCA Civ 1041, Newey LJ summarised the legislative intent in these terms (at [23]):

> *"It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy*

underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in Jepsen v Rakusen [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (Rakusen v Jepsen [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in Rakusen v Jepsen, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

32. Section 40 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*
> >
> > *(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."*

33. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". Those include "control or management of an unlicenced HMO", and "control or management of an unlicenced house".

34. In *Acheampong v Roman* [2022] UKUT 239 (LC), the UT established that a FTT is obliged to assess the relative seriousness of seven categories of offence which "can be seen from the relevant maximum sentences on conviction" in assessing any RRO.

35. 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.

36. 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. "*

37. Section 43 provides for the making of RROs:

> *"(1) The First-Tier Tribunal may make a rent repayment order if satisfied, <u>beyond reasonable doubt</u>, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted)."*

38. 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."*

39. "Rent" is not defined in the Act. However, under the Rent Acts, "rent" has a clearly defined meaning, namely "the entire sum payable to the

landlord in money" (see Megarry on the Rent Acts, 11th Ed at p.519 and the reference to *Hornsby v Maynard* [1925] 1 KB 514 and subsequent cases). The meaning is the same at common law as under the Rent Acts (see the current edition of Woodfall "Landlord and Tenant" at 7.015 and 23.150).

40. 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."*

41. 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 local housing authority has imposed a financial penalty.

42. 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]).

43. 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%).

44. In *Acheampong*, Judge Cooke 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."*

45. In *Fashade v Albustin* [2023] UKUT 40 (LC), the Deputy President, Martin Rodger KC (at [21]) summarised the approach adopted by the Chamber President in *Williams v Palmer* in these terms:

> *"It was necessary in each case to consider the seriousness of the offence (a crucial element of the landlord's conduct) and to fix the amount of the order having regard to its seriousness and all other relevant considerations, including those particularly identified in subsection (4)."*

46. Most recently, the Deputy President, Martin Roger KC summarised a number of the decisions above in *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC). The Tribunal has applied the guidance in all the above cases to its decision.

Decisions on the Issues

47. It was common ground that the Property did not have a HMO licence, that the Respondent did apply for a licence on 22 June 2023 after an approach from the local authority, and that it was granted on 3 October 2023.

48. It was not agreed between the parties whether the Property required a licence between June 2022 and June 2023. In order to be satisfied beyond reasonable doubt that the Respondent had committed an offence over the relevant period, the Tribunal needed to be satisfied that a licence was in fact required. This in turn required consideration of the requirements of the Housing Act 2004 as far as HMOs are concerned.

49. The Tribunal did not have sufficient evidence before it to determine whether the Property is a converted building or whether the standard test for a HMO applies i.e., under section 254 of the 2004 Act. The Property was originally a single dwelling and each bedroom now has a lockable door. They are not flats, but merely bedrooms. A licence is required under section 254 if the conditions under the applicable subsection are all met. One such condition, which applies under the standard test and that for converted properties, is that the occupants were, or are to be treated for the purposes of section 254, as occupying the Property as their only or main residence. Section 259(2) provides that a person is to be treated as so occupying in this way if it is their residence for the purpose of undertaking a full-time course of further or higher education.

50. The Tribunal had before us only very limited evidence of the status tenants who occupied from time to time and during the period for which a RRO is sought i.e., June 2022 to June 2023. The evidence was not complete and we had to try and piece together which tenants occupied over which periods of time and what their status was.

51. We were shown an email from Talia Chesno dated 1 February 2022 stating that she had decided to start living with her partner with effect from 1 March 2022 but wanted to continue renting the room for a few days a week as she would still be working locally. In the same email, Ms Chesno sought a rent reduction, citing that she would stay an average of 12 nights per month at the Property. It appears from a later email giving notice that Ms Chesno vacated on or around 31 January 2023. It appears, therefore, that she did not use the Property as her main residence between 1 March 2022 and 31 January 2023. Although the Applicant's evidence was that all tenants were occupying full time and she regularly saw them, we were shown WhatApp messages between her and the Respondent dating 14 and 16 July 2022 confirming that she had not seen much of Ms Chesno.

52. We were also referred to another tenant, Brenda Limo, who emailed the Respondent on 12 September 2022 stating that she worked shifts of 4 days on and 4 days off and would be 'going home' on her days off; the home was also described as involving 3 hours travel.

53. We were satisfied that these examples were not merely a 'snapshot' but instead a pattern across tenants over time. We were shown an email dated 6 November 2020 from another former tenant, Maria De Melo, stating that she would use the Property for term time only and would otherwise be staying with her aunt. Although use whilst studying would still be regarded as main residence occupation, and this email significantly predates the period of time in question, it is consistent with the Respondent's position that he understood that the occupants were not using rooms as their main residence.

54. We were referred to a further example, Irenka Celmot, who, in a leaving questionnaire, indicated that she occupied between 2 May 2022 and 1 October 2023 but did not normally stay 7 nights per week. That, of course, does not mean that she did not use the Property as her main residence, however it does create some doubt when viewed in the context of the above examples.

55. It would have been desirable to have heard evidence from some of the other tenants and former tenants. We heard evidence from Marionna Tusell-Bayarri and Rosie Garvey Cocker however neither confirmed that they or others were occupying as their main evidence. Their statements and evidence focused more generally on the alleged conduct of the Respondent. The Applicant gave evidence that tenants were always using the Property as their main residence and disputed the evidence referred to above about tenants having a main residence elsewhere.

56. There was no evidence from the local authority as to whether a HMO licence was required between June 2022 and June 2023. The Applicant's evidence was that she was told by the local authority that a HMO licence was required. She said this was based on evidence they had gathered

themselves. This was supported by an email which we were shown dated 15 June 2023 from the local authority referring to the Property as an 'unlicensed HMO'. The same email goes on to state that it was 'believed' to require a licence due to the occupation by five or more individuals regardless of the number of storeys. The Applicant had been the one to report the Respondent to the local authority in early June 2023. She said she had looked up the rules and seen that there were five unrelated tenants and believed the Property comprised a HMO.

57. The fact that a licence was granted on 3 October 2023 does not itself prove that a HMO licence was required prior to that date; certainly not to the required evidential standard of beyond reasonable doubt. We were also not provided with details of the licencing process. We had evidence that the licence was granted but not a copy of the application or relevant documents or communications. We had no formal confirmation of what, if any works, were required to secure the licence. There was a difference in evidence as to whether the door to the bedrooms were fire rated and had sufficient automatic closing devices. The Respondent told us that they were fire rated but the markings were painted over so he replaced them for the avoidance of doubt. The alternative was a survey to certify the fire resistance, which would have been equally as costly as replacement. He said that he took advice on this from a surveyor. We were not told of other works required by the local authority other than the obtaining of an energy performance certificate. The Respondent told us that this was not compulsory but he obtained one as good practice.

58. The Respondent told us that he was aware that a mandatory licensing scheme was in place and had taken some informal advice when he moved out of the Property in 2021. However, he did not believe that licensing applied because the tenants were transient and not all using the Property as their main residence, for example only staying for a few days at a time for access to work. He said he checked the local authority website which confirmed the requirement for the Property to be used as a main residence but he did not take the enquiry further at the time. He did not revisit the issue until the local authority approached him in June 2023. He had not been present during their visit. He told us that there were no improvement notices or other compulsory actions required, he was simply advised to apply for a licence if he wished to continue letting the Property.

59. We were not satisfied beyond reasonable doubt that an offence was committed during the relevant time frame of June 2022 to June 2023. The examples given above do not cover all the period in question, but are in our view sufficient to create doubt. We consider that the Applicant has not proven her case, therefore.

Reasonable Excuse

60. If we had found that a relevant offence had been committed, we would have gone on to consider whether there was a relevant defence (principally, whether there reasonable excuse for non-compliance) and the amount, if any, of a RRO.

61. The Respondent's primary position was that there was a reasonable excuse that no licence had been obtained because he was not a professional landlord and understood the licensing requirements do not apply. If he made an error, it was a genuine one, and as soon as he became aware, he applied. The Applicant argues that he is a professional landlord and, in any event, he should have known the rules.

62. The Tribunal has considered a number of cases where a Respondent has argued that they simply were not aware of the scheme. In all of those cases, as here, the answer is that ignorance of the law is simply no excuse. As such, we find that just because the Respondent says he was not aware that the scheme applied, that does not amount to a reasonable excuse.

63. We consider that, had we found an offence had been committed, there would be no reasonable excuse defence. That is not to say that the Respondent's arguments cannot be relevant when considering quantum, but they do not amount to a reasonable excuse to not obtain a licence.

Quantum

64. The Applicant was seeking a RRO for £5,190, which as noted above was revised up to £6,090 on the basis that allowance had been given for an estimated amount for the utilities and bills paid by the Respondent but he had failed to prove those items.

65. The Respondent produced extracts from his online banking facility grouping together payments to third party utility companies. These covered payments over the entire 12 month period June 2022 to June 2023.

66. The Applicant argued that, because these did not show actual invoices or receipts, and did not state the Property they related to, they could in theory be related to a different property and should be disregarded.

67. We were not persuaded by the Applicant's argument. It was common ground that utilities were in fact provided to the Property (and, by implication, used by the tenants or benefited from) during the relevant period. The Applicant confirmed that she had not paid them herself and there was no evidence before us that another tenant or third party paid them. That would in any event have been illogical and at odds with the tenancy agreements which provided that utility costs were included within the rent. The Respondent told us that he had paid the utility costs and we were shown these payments, as noted above. We find on the

balance of probabilities that he paid the utility costs and the actual sums should be deducted from rent paid. We accept the evidence in the form of his bank statement extracts, notwithstanding the absence of the invoices or receipts. In any event, we find that the amounts shown are consistent with what in our view would be the expected costs of the fuel, water and broadband supplies.

68. On the bank statement extracts, we could see total costs paid over the period as fuel £2,806 (£561.20 per tenant), water £856.61 (£171.32 per tenant after adjustment where the payments covered 18 months) and broadband £234.08 (£50.82 per tenant). Thus, a total deduction of £783.34 per tenant from the annual rent.

69. We concluded that the maximum amount that can be awarded for a RRO is £6,090 less £783.34 = £5,306.66. This sum is the total rent paid by the Applicant between June 2022 and June 2023 less the utilities paid by the Respondent per the calculations above.

70. As to the financial circumstances of the Respondent, there was very little documentary evidence provided. However, it is clear from his witness statement that he holds a job elsewhere and uses the Property as an additional source of income. His occupation is Engineer. Whilst any financial penalty may be unwanted, we were not made aware of any exceptional hardship that a RRO would cause.

71. We must also consider the conduct of the parties. We accept that the Respondent acted quickly to secure a licence once he was told one might be required. He also joined the National Residential Landlords Association and produced certificates for courses he had undertaken. There was no evidence to suggest that any of these steps were contrived, for example solely to reduce the amount of any RRO that the Tribunal was minded to order. We accept the evidence from WhatsApp messages and tenants that he was diligent in responding to tenant enquiries and there were no significant issues with the Property. We heard evidence of problems from time to time but none were out of the ordinary nor were there unreasonable delays in addressing them. There were various peripheral allegations made by the Applicant, including (but not limited to) that the Respondent tried to hide his identity, did not pay adequate tax on his rental income and that he had harassed tenants. In broad terms, we did not accept that these allegations were made out. We have not set out detailed findings on those allegations as they have no material impact on the quantum of a hypothetical RRO in terms of conduct relating to the offence.

72. With regard to the Applicant, there were alleged arrears of rent which were not explained but appeared to amount to £305. A notice of rent increase was served and the Applicant asserted it was invalid but did not state why. This was perhaps her right, as it is for the landlord to ensure notices were correct, however it was not conduct that was helpful in

avoiding dispute. That said, there was nothing in the Applicant's conduct which would justify adjusting a hypothetical RRO.

73. In considering the seriousness of this offence, the Tribunal determines it to be towards the less serious end of the scale, of a less serious offence. That is because there is no malfeasance on the part of the Respondent and, although not a statutory defence, his failure to obtain a licence was, we find, a genuine oversight which was quickly corrected.

74. If we had found that a relevant offence had been committed, we would have considered that an RRO of no more than two months' rent paid, less utility costs, would have been appropriate. As we are not satisfied to the required evidential standard that a relevant offence had been committed, we do not make any order for an RRO.

75. The Applicant has not succeeded in the application however we note that some material issues, such as the Respondent's pre-existing knowledge of the HMO licencing scheme, were not sufficiently clear until the hearing. On this basis, we order consider it just and equitable to apportion fees paid. We direct that the Respondent shall forthwith reimburse the Applicant in respect of the hearing fee paid of £220 but the Applicant shall bear the initial application fee £100.

Name:	Judge A. Arul	**Date:**	17 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).