



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

Case Reference : **BIR/37UE/HMK/2024/0026**

Property : **4B Bourne Street, Gedling NG4 2FH**

Applicant : **Miss Emilia Seniuk**

Representative : **Justice for Tenants**

Respondent : **Mr Richard Ortyl**

Type of Application : **Application under section 41(1) of the
Housing and Planning Act 2016 for a
rent repayment order**

Tribunal Members : **Judge M K Gandham
Mr N Wint BSc (Hons) FRICS ACI Arb**

**Date and venue of
Hearing** : **Paper determination**

Date of Decision : **30 July 2025**

DECISION

Decision

1. The Tribunal orders Mr Richard Ortyl to repay to Miss Emilia Seniuk rent in the sum of £2,700.00.
2. The Tribunal orders, under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, that Mr Richard Ortyl reimburse to Miss Emilia Seniuk the application fee in the sum of £110.00.

Reasons for Decision

Introduction

3. By an application received by the Tribunal on 21 May 2024, Miss Emilia Seniuk ('the Applicant') applied for a rent repayment order ('RRO') under section 41(1) of the Housing and Planning Act 2016 ('the Act').
4. The order sought by the Applicant was in respect of rent that she had paid as the tenant of the property known as 4B Bourne Street, Gedling NG4 2FH ('the Property') to Mr Richard Ortyl ('the Respondent'), who was her landlord and owner of the freehold of the Property at the commencement of her tenancy.
5. The Tribunal issued directions, dated 12 June 2024, to the Applicant and to the Respondent at both his postal address (as detailed on the office copy entries for the Property at the Land Registry) and via his previous managing agent. The Tribunal received an email from the agent, on 21 June 2024, confirming that they were no longer instructed by the Respondent but that they had forwarded correspondence on to him by email and at the most recent postal address they had for him.
6. The Tribunal received the Applicant's Statement of Case on 8 July 2024, in accordance with the directions order but did not receive any documents from the Respondent.
7. On 12 September 2024, the Tribunal issued a Notice to the Respondent, by post and email, warning him that if he did not comply with the previous directions order, he might be barred from taking any further part in the proceedings. As no response was received from the Respondent, he was barred from taking further part in the proceedings on 1 November 2024.
8. As the Respondent had been barred, the Tribunal confirmed that the matter would be listed for a paper determination unless the Applicant objected. No objections were received and this matter has been decided on the written evidence submitted by the Applicant without an inspection of the Property.

The Law

9. Section 40 of the Act provides that an RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been

paid by a tenant. It confers power on the First-tier Tribunal ('the FTT') to make such an order in favour of a tenant where the landlord has committed an offence to which Chapter 4 of the Act applies.

10. The relevant offences are detailed in section 40(3) of the Act as follows:

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	<i>Criminal Law Act 1977</i>	<i>section 6(1)</i>	<i>violence for securing entry</i>
2	<i>Protection from Eviction Act 1977</i>	<i>section 1(2), (3) or (3A)</i>	<i>eviction or harassment of occupiers</i>
3	<i>Housing Act 2004</i>	<i>section 30(1)</i>	<i>failure to comply with improvement notice</i>
4		<i>section 32(1)</i>	<i>failure to comply with prohibition order etc</i>
5		<i>section 72(1)</i>	<i>control or management of unlicensed HMO</i>
6		<i>section 95(1)</i>	<i>control or management of unlicensed house</i>
7	<i>This Act</i>	<i>section 21</i>	<i>breach of banning order</i>

11. Section 41 of the Act details the application process and provides:

41 Application for rent repayment order

- (1) *A tenant ... 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.*

...

12. Sections 43 and 44 of the Act detail the power of the tribunal to make an order and the amount of that order and, in respect of an application by a tenant, provide:

43 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.*

- (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);*

...

44 Amount of order: tenants

- (1) *Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.*
- (2) *The amount must relate to rent paid during the period mentioned in the table.*

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
<i>an offence mentioned in row 1 or 2 of the table in section 40(3)</i>	<i>the period of 12 months ending with the date of the offence</i>
<i>an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>a period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (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.*
- (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.*

Applicant's Submissions

13. The Applicant confirmed that the application was made under section 41 of the Act for the offence of having control of, or managing, an unlicensed house under section 95(1) of the Housing Act 2004 ('the 2004 Act').
14. The Applicant stated that the Property was situated within a selective licensing area, as designated by Gedling Borough Council, which commenced on 1 October 2018 and ceased to have effect on 30 September 2023. The Applicant's bundle contained a copy of the details of the scheme from the local authority, together with a map and confirmation of the Property being located within the scheme area.
15. The Applicant was a tenant of the Property by way of a tenancy agreement dated 21 April 2022, for an initial fixed term commencing on 30 April 2022 for one year

at a monthly rent of £375.00. The rent increased on 30 August 2023 to £420.00 per month. Although the Applicant, in her witness statement, stated that she commenced occupation on 21 April 2022, in a subsequent email she confirmed that her tenancy did begin on 30 April 2022, as referred to in the tenancy agreement.

16. The Applicant submitted that the Respondent was the appropriate respondent for the application as he was detailed as the immediate landlord in the tenancy agreement and was the owner of the freehold of the Property, as shown in the Office Copy Entries. As the person who also received the rent, the Applicant stated that the Respondent was the person who had both control of the Property and the person managing it, pursuant to section 263 of the 2004 Act. Accordingly, the Applicant submitted that the Tribunal was able to make an RRO.
17. The Applicant noted that the Respondent applied for a Temporary Exemption Notice ("TEN") on 23 May 2023, which was rejected on 26 May 2023, and that any appeal period for this would have elapsed on 23 June 2023 (28 days after the TEN application was rejected).
18. In relation to the amount of the order, the Applicant provided a spreadsheet detailing the amount the Applicant had paid during the tenancy and stated that:

"The Applicant is entitled to recover any rent paid in any 12 months during which the offence was committed as per the appeal decision of 15 May 2019 for case LON/00AJ/HMF/2018/0053 and section 44 of the Housing And Planning Act 2016".
19. Accordingly, the Applicant sought to recover the sum of £4,545.00 for 12 months' rent paid between 30 July 2022 to 29 September 2023. This took into account that the Respondent had a defence under section 95(3)(a) of the 2004 Act for 31 days from the date upon which the TEN had been applied for, to the date when the TEN application was rejected by the local authority and the appeal period for the same had elapsed.
20. The Applicant confirmed that she was not a receipt of the housing element of universal credit for housing benefit and was responsible for all utilities.
21. In relation to the conduct of the parties, the Applicant referred to the presence of mould in the living room and bathroom at the commencement of the tenancy, which she stated was reported to the Respondent multiple times but not rectified, and the lack of a carbon monoxide detector at the Property.
22. The Applicant also referred to the shed/outbuilding being in a poor state of condition, which she stated was also highlighted to the Respondent. The Applicant noted that Gedling Borough Council's 'Selective Licence Conditions for Privately Rented Properties' required all licensed houses to have: *"gardens, yards and other external areas ... cleared of rubbish, debris and accumulations"*.
23. In relation to the seriousness of the offence, although the Applicant accepted that an offence in relation to section 95 might be less serious than other offences, the

Tribunal was asked to note that the Respondent had failed to keep abreast of his legal obligations and that the offence had been committed for a lengthy period.

24. In light of the above, the Applicant submitted that the full amount, or a significant proportion, of the rent paid should be awarded.
25. Documentation submitted to the Tribunal by the Applicant in January 2025 confirmed that the Property had been sold by the Respondent on 7 August 2023.

The Tribunal's Deliberations

26. In reaching its determination the Tribunal considered the relevant law, in addition to all of the evidence submitted, briefly summarised above.
27. Prior to being able to make a rent repayment order under the Act, the Tribunal must be satisfied '*beyond reasonable doubt*' (under section 43) that the Respondent had committed one or more of the offences referred to in section 40(3) of the Act.
28. The Tribunal is satisfied that the Respondent was the landlord and the person in control of the Property in accordance with section 263 of the 2004 Act.
29. Neither party disputed that the Property was subject to selective licensing, nor that it was without a licence from the beginning of the Applicant's tenancy until the time the Respondent sold the Property. As there was no evidence that the Respondent had a defence, other than during the brief period in which he had applied for a TEN, the Tribunal is also satisfied that the Respondent had committed an offence under section 95(1) of the 2004 Act.

Amount of the Order

30. The Tribunal found that it could make an RRO having been satisfied that an offence had been committed under section 95(1) of the 2004 Act, that the offence had been committed within the twelve months preceding receipt of the application and that, whilst the offence was being committed, the Applicant had paid rent to the Respondent.
31. Taking into account the guidance given by the then Chamber President, The Hon Mr Justice Fancourt, in *Williams v Parmar* [2021] UKUT 0244 (LC), the Tribunal noted that the correct approach when considering what amount of repayment order is reasonable in any given case was for the FTT to consider "*what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions*".
32. The Tribunal also noted that this decision confirmed that the FTT should have particular regard to the conduct of both parties (including the seriousness of the offence committed, as later underlined in *Acheampong v Roman and others* [2022] UKUT 239 (LC)), the financial circumstances of the landlord, whether the

landlord had at any time been convicted of a relevant offence and “*any other factors that appear to be relevant*” [paragraph 50].

33. Although the Applicant sought to recover the sum of £4,545.00 for 12 months’ rent paid between 30 July 2022 to 29 September 2023, the Tribunal noted that the Property had been sold on 7 August 2023. Even if this had not been the case, the Tribunal does not accept that the intention of the legislation would have allowed such a repayment.
34. The wording of section 44 of the Act is very clear – the amount of the RRO must relate to rent paid by the tenant in respect of “*a period, not exceeding 12 months, during which the landlord was committing the offence*”.
35. There appears to be no restriction as to which 12-month period this relates to, so long as the tenant was paying rent and the landlord was committing the offence, but it is quite clear that the period of time cannot exceed 12 months. This is quite distinct to a period of time over which the tenant had paid 12 months’ rent capable of being repaid, which appears to be what was suggested by the Applicant.
36. The Tribunal has, therefore, instead considered the 12-month period from 22 May 2022 to 21 May 2023, noting that the Respondent had a defence (due to the application for a TEN) from 23 May 2023 to 22 June 2023. Accordingly, the Tribunal determines the maximum amount of the order to be £4,500.00.
37. As the Applicant had been responsible for all of the utilities, the Tribunal found that no deductions were required for the same.
38. In relation to the conduct of the Respondent, the Tribunal found (taking into account the guidance given by the Upper Tribunal, most notably in the decision in *Hallett v Parker* [2022] UKUT 165 (LC) (*‘Hallett’*)), the failure to obtain a licence was not the most serious type of offence. The Tribunal also noted that in *Hallett* the offence related to an HMO licence, which the Tribunal considered was a potentially more serious offence than the failure to control an unlicensed house due to the nature of the tenancies and higher risks, hence the more stringent management requirements with HMOs. The Tribunal did accept, however, that licensing requirements were necessary and that an order ought to be made to deter evasion. The Tribunal also noted that the Property had been without a licence for a considerable length of time.
39. With regard to any other conduct, having considered the Applicant’s submissions, including the photographs submitted and Inventory & Schedule of Condition (‘the Inventory’) produced at the commencement of the tenancy, the Tribunal is not satisfied that either the mould at the Property or the condition of the shed/outbuilding were “*sufficiently serious to move the dial one way or the other*” (see *Newell v Abbott* [2024] UKUT 181 (LC)).
40. The Applicant’s email dated 6 May 2022, appeared to indicate that the mould had been present from the start of the tenancy and no corroborating evidence was provided to show that she had chased the Respondent continuously regarding the same. The same email indicated that she had been surprised that the shed was

included within her tenancy and had offered to clear some items and carry out some work to it.

41. In relation to the missing carbon monoxide detector, the Tribunal accepts that this was a more serious issue, however, based on the Inventory the Property appeared to be in a fairly good condition with no fire safety issues.
42. Taking into account all of the above, and noting that there was no evidence provided that the Respondent had been convicted of any other relevant offence, the Tribunal finds that a 40% deduction in the maximum rent was appropriate.
43. As the Tribunal had no information to suggest that the Respondent's financial circumstances should be taken into account, the amount to be repaid is £2,700.00.

Order under Rule 13

44. The Tribunal can, under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, "*make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party...*". In this matter, the Applicant had paid an application fee of £110.00.
45. Having found that the Respondent had committed an offence and had no reasonable excuse to do so, the Tribunal finds it appropriate to make an order under Rule 13(2) and orders the Respondent to reimburse to the Applicant the sum of £110.00.

Appeal Provisions

46. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM

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Judge M K Gandham