FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMF/2025/0634**
Property	**:**	**80 Midship Point, The Quaterdeck, London, E14 8SP**
Applicant	**:**	**Mr Sam William Matthews**
Representative	**:**	**Mr Brian Leacock of Justice for Tenants**
Respondents	**:**	**(1) Haijul Islam** **(2) Mr Fakhrul Islam**
Representative	**:**	**Not applicable**
Type of Application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal Members	**:**	**Judge N Hawkes** **Mr A Fonka FCIEH CEnvH MSc**
Venue and date of hearing	**:**	**15 July 2025 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**31 July 2025**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes a rent repayment order in the sum of £5,004 against the Respondents. This sum is payable by the Respondents to the Applicant within 28 days after the date of this decision.

(2) The Tribunal orders the Respondents to reimburse the Tribunal fees paid by the Applicant in the sum of £330. This sum is payable by the Respondents to the Applicant within 28 days after the date of this decision.

The background

1. By an application which was received by the Tribunal on 27 November 2024 ("the application"), the Applicant applied for a rent repayment order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act") against the Respondents.

2. On 18 February 2025, the Tribunal issued Directions leading up to a final hearing.

3. The Tribunal has been informed that the Property is a four-bedroom flat, with shared kitchen and bathroom amenities, on the twentieth floor of a purpose-built block of flats.

4. The Applicant referred the Tribunal to a copy of a tenancy agreement dated 1 April 2021 which records that he became a tenant at the Property on 1 April 2021.

5. The Tribunal was informed that the County Court has ruled that the Applicant was unlawfully evicted from the Property on 8 December 2023 and was referred to a copy of a County Court judgment dated 30 October 2024 requiring the First Respondent to pay the Applicant the total sum of £19,907.04. This sum includes general damages, aggravated damages and exemplary damages awarded by the County Court in respect of the unlawful eviction.

6. At section 9 of the Applicant's application form, it is stated:

"This application is being made under s.41 of the Housing and Planning Act 2016 for the offence of having control of, or managing, an unlicensed HMO, under Part 2 s.72(1) Housing Act 2004 which is an offence under s. 40(3) of the Housing and Planning Act 2016.

...

The breach was occurring to a period including but not necessarily limited to 9/12/2022 – 8/12/2023.

The Property was not licensed during this period (9/12/2022 – 8/12/2023) and no license or application for one had been submitted as of 18/06/2024. (Supporting Document 5)

The amount of rent applied for is £5794.92 for the period of 9/12/2022 – 8/12/2023"

7. During the course of the hearing, having considered the overriding objective pursuant to rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"), the Tribunal granted the Applicant permission to amend the application so as to delete the words in bold above and to substitute: *"The amount of rent applied for is £5,760 for the period 1 December 2022 to 30 November 2023"*. This a lower sum than the sum originally claimed in the application form and it more accurately reflects the Applicant's position, as presented to the Tribunal at the hearing.

The hearing

8. The final hearing took place at 10 Alfred Place, London WC1E 7LR on 15 July 2025.

9. The Applicant attended the hearing in person and he was represented by Mr Brian Leacock of Justice for Tenants. The Respondents have failed to comply with any of the Tribunal's Directions, and they did not attend the hearing.

10. Although the Respondents had been correctly served at their only known address pursuant to rule 16 of the 2013 Rules, on 14 July 2025, the Tribunal asked the Case Officer to also attempt to contact the Respondents by email and/or telephone, using the email address and telephone number on the Applicant's tenancy agreement.

11. The Case Officer followed these instructions and then informed the Tribunal that the email had bounced back and that the telephone number was not in operation.

12. In addition, although the hearing was listed to start at 10 am on 15 July 2025, the Tribunal waited until 10.15 am before starting the hearing in

order to give the Respondents additional time in which to potentially arrive.

13. Rules 34 of the 2013 Rules provides:

If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.

14. As stated above, the Respondents were notified of the hearing by post in accordance with rule 16 of the 2013 Rules and the Case Officer also attempted to notify them of the hearing by telephone and by email. Accordingly, the Tribunal was satisfied that reasonable steps had been taken to notify the Respondents of the hearing.

15. The Tribunal was also satisfied that it was in the interests of justice to proceed with the hearing because the Respondents had been given a fair and reasonable opportunity to participate.

16. The Tribunal heard oral evidence of fact from the Applicant.

The Tribunal's determinations

17. Section 40 of the 2016 Act provides that a 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.

18. Statutory guidance for Local Housing Authorities concerning RROs under the 2016 Act was published on 6 April 2017. The Tribunal has had regard to the Statutory Guidance in determining this application.

The status of the Respondents

19. Section 43 of the 2016 Act provides:

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.

20. The tenancy agreement does not specify the name(s) of the Applicant's immediate landlord. The Applicant's case (at paragraphs 16 and 17 of his statement of case) is that: *"The landlord's phone number provided under the tenancy agreement is the same phone number as Fakhrul (AKA Faz) Islam. The landlord's email address provided under the tenancy agreement is the email address of Haijul Islam."* This assertion is not disputed by the Respondents, who have failed to engage with the proceedings, and the Tribunal accepts the Applicant's account.

21. The phone number 0746 202507 is provided on the last page of the tenancy agreement under the heading *"Landlord [sic] contact details"* and, under the heading "Termination (Break Clause), it is stated *"Landlords [sic] number is 0746 202507"*. On the basis that this is the Second Respondent's telephone number, it follows that the Second Respondent is a landlord. It is also stated under the heading *"Landlord [sic] Obligations"* that *"Fakhrul Islam will repay the deposit to the tenant …"* This further confirms that the Second Respondent is an immediate landlord under the Applicant's tenancy agreement.

22. The First Respondent's former email address appears under the heading *"Landlord Contact Details"* and, in any event, the Tribunal has been informed that the County Court has already determined that the First Respondent was the Applicant's immediate landlord.

23. Accordingly, the Tribunal is satisfied that both of the Respondents were the Applicant's immediate landlords.

Whether it has been established beyond reasonable doubt that the alleged offence has been committed

24. The relevant offences are set out at section 40 of the 2016 Act. They include an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act") which 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).

25. Mr Leacock took the Tribunal to documentary evidence in the Applicant's hearing bundle which establishes that, if the Property was occupied by two or more households comprising three or more occupants, the Property would have required but did not have an additional licence from 1 December 2022 to 30 November 2023 ("the relevant period").

26. The documents to which the Tribunal was referred included:

    (i) documents evidencing the London Borough of Tower Hamlet's Additional Licencing Scheme;

    (ii) a map showing that the Property is situated within the area covered by this Additional Licencing Scheme;

    (iii) correspondence from the London Borough of Tower Hamlet's Housing Licensing Team dated 18 June 2024 stating: *"There is no licence in place for the above property. No previous licence either. The property falls in the Additional licensing area which means if there are 2 or more household comprising of 3 or more occupants then they do require an Additional licence."*

    (iv) correspondence from the London Borough of Tower Hamlet's Housing Licensing Team dated 27 March 2025 stating that no temporary exemption notice application for the Property could be located and that the local authority had been informed that the Property was owner occupied.

27. The Applicant gave evidence that a man named Sam lived at the Property from 2 April 2021 until 8th December 2023; a man named Antonio lived at the Property from a date before the Applicant moved in until 8 December 2023; a man maned Les lived at the Property from a date before the Applicant moved in until 8 December 2023; and a man named Michael lived at the Property from around May 2021 until 8 December 2023. He stated that the letting was on a room by room basis, and that

the occupants were separate households. The Applicant gave oral evidence that he, Les and Michael occupied the Property as their only home but that Antonio would be away from the Property for weeks at a time, at a home in Goa with his wife and children.

28. The Tribunal accepts this evidence and finds beyond reasonable doubt that the Applicant, Les, and Michael occupied the Property throughout the relevant period as their only residence and as three separate households. Accordingly, the Property required an additional licence regardless of Antonio's occupancy status. It is therefore not necessary for the Tribunal to determine whether or not Antonio occupied the Property as his main residence or principal home during the relevant period.

29. Section 263 of the 2004 Act provides:

263 Meaning of "person having control" and "person managing" etc.

(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.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

30. The Applicant gave evidence, with reference to copies of his bank statements, that he paid rent to the Second Respondent throughout his tenancy and that the Second Respondent was also involved in managing the Property. The Tribunal accepts this unchallenged evidence and finds that the Second Respondent was a person having control of the Property throughout the relevant period.

31. The Applicant also gave evidence that the Second Respondent collected rent on behalf of the First Respondent and that the First Respondent met the definition of a person managing the Property throughout the Applicant's period of occupation. The Tribunal also accepts this unchallenged evidence.

32. The Tribunal notes that section 72(5) of the 2004 Act provides:

(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.

33. The Tribunal is not aware of any facts which could potentially amount to a reasonable excuse within the meaning of section 72(5) of the 2004 Act.

34. Having carefully considered all the evidence referred to above, the Tribunal is satisfied beyond reasonable doubt that an offence under section 72(1) of the 2004 Act was committed by each Respondent throughout the relevant period and, also, throughout the period during which the Applicant occupied the Property.

The exercise of the Tribunal's discretion

35. Section 43 of the 2016 Act provides that the Tribunal *may* make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO is therefore discretionary. Having considered all the circumstances set out above, including the fact that the Applicant's application has not been opposed by either of the Respondents, the Tribunal is satisfied that this is an appropriate case in which to exercise its discretion to make a RRO.

The amount of the Rent Repayment Order

36. Section 44 of the 2016 Act specifies the factors that a Tribunal must take into account in making a RRO. Further, helpful guidance has been provided by the Upper Tribunal in *Acheampong v Roman* [2022] UKUT 239 (LC).

37. In summary, the Tribunal must:

(i) ascertain the whole of the rent for the relevant period;

(ii) subtract any element of that sum that represents payment for utilities that only benefited the tenant;

(iii) consider how serious the 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?

(iv) finally, 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) of the 2016 Act, namely (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 identified in the table at s.45 HPA 2016.

38. As stated above, the whole rent for the relevant period is £5,760. The Applicant gave evidence, which the Tribunal accepts, that he was not in receipt of Universal Credit.

39. The Applicant also gave evidence, which the Tribunal accepts, that the following utilities that only benefited the tenant were included in his rent: electricity, gas, water, and broadband. He is not aware how much the relevant bills were.

40. Mr Leacock's primary case is that, in all the circumstances, the Tribunal should not exercise its discretion to subtract a sum on account of these utilities. In the alternative, he submits that the Tribunal should exercise caution in making any deductions and should resolve any doubts in favour of the Applicant given that the Respondents have failed to disclose copies of the utility bills and have failed to engage with these proceedings.

41. The Tribunal finds that it is fair and just to make a deduction on account of the utilities which were included in the rent given that they solely benefited the tenants. However, in the absence of any evidence from the Respondents as to the level of the relevant costs, we have adopted a cautious approach, resolving all doubts in favour of the Applicant. We note that the four occupants of the Property shared the benefit of the utility bill payments and, applying our general knowledge and experience as an expert Tribunal, we deduct the sum of £200 from the total rent of £5,760 on account of the Applicant's share.

42. In considering how serious the offence was, the Tribunal has had regard to *Acheampong*, to *Newell v Abbott* [2024] UKUT 181 and to the list of comparative cases referred to in that judgment. Whilst each case turns on its own facts, we note the importance of consistency and that the pattern of decisions in other cases is a necessary point of reference and a relevant factor to which regard should be had.

43. At paragraph 20c of *Acheampong,* it is suggested that decision makers should adopt the following approach when assessing the seriousness of an offence:

"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."

44. *Newell v Abbott* was a case concerning Selective Licensing. In our judgment, the offence in the present case is more serious due to the higher risks and responsibilities involved in letting houses in multiple occupation. The Tribunal has no information concerning the Respondents' financial circumstances and there is no evidence that the Respondents have at any time been convicted of an offence identified in the table at section 45 of the 2016 Act.

45. The Applicant gave evidence that he had been told by a neighbour that the Respondents let other properties. However, we have not placed any weight on this hearsay evidence because the neighbour was not available to have their evidence tested through questioning and no specific properties were identified other than one which appears to be the home of the Second Respondent and his family. We have, however, taken into account:

(i) the length of time during which the offence was committed;

(ii) the Respondents' failure to keep abreast of their legal obligations;

(iii) evidence given by the Applicant, which we accept, that:

(a) his deposit was not held in a rent deposit scheme;

(b) none of the doors at the Property were fire doors;

(c) the Applicant does not recall there being any fire alarms at the Property (although he does recall the existence of fire alarms in the common parts of the block);

(d) he was not given a copy a gas safety certificate, How To Rent Guide, energy performance certificate, or electrical safety certificate by the Respondents;

(e) the Property was in a state of disrepair (this included evidence that the toilet and shower were not in a reasonable state of repair for a significant period of time); and that

(f) the cleaner arranged by the Respondents did a poor job.

46. As regards the conduct of the landlord, we have placed considerable weight on the unlawful eviction. The Applicant gave evidence, which the Tribunal accepts, that the unlawful eviction took place after the Second Respondent had indicated that, if Michael left the Property, the other tenants could stay. It also took place when the Second Respondent was aware that the Applicant was temporarily away from the Property.

47. The Applicant gave oral evidence, which the Tribunal accepts, that he returned from a holiday to find that his room had been broken into; the locks to the front door of the Property had been changed; and his personal belongings had been dumped in plastic bags outside in the street. The Applicant then had no option but to sleep rough on the street next to his belongings until a neighbour found him in the early hours of the morning and took him in. On taking his personal items out of the plastic bags, he found that some were broken and others (including irreplaceable items of sentimental value) were missing. This is clearly extremely serious harmful conduct on the part of the landlord.

48. As regards the conduct of the Applicant, the Tribunal was referred to a chain of Whatspp messages which includes reference to an incident in which the Applicant accepted that he lost his temper with Michael and that he needed to apologise. The Applicant explained that this had occurred when Michael was drunk and creating a disturbance at night which was preventing the Applicant from sleeping. The Applicant does not accept more serious allegations made against him by the Second Respondent in the Whatapp message chain concerning the incident with Michael.

49. The Second Respondent has not sought to prove his allegations and the Applicant points to the fact that the Second Respondent went on to

express the view that, if Michael left the Property, the Applicant and the other tenants could stay. This suggests that it was Michael rather than the Applicant who was the problem. Accordingly, we take no account of the Second Respondent's allegations but we have taken into account the fact that the Applicant accepts that he conducted himself in a way which required an apology. As this was a one off incident, it warrants no more than a modest reduction.

50. Having taken all of these factors into account, we make an RRO in the sum of £5,004 amounting to 90% of the adjusted rent (after the deduction for utility bills).

The Applicant's application for the reimbursement of Tribunal fees

51. In all the circumstances and having regard, in particular, to the level of the rent repayment order that has been made against the Respondents and to the fact that the Respondents have wholly failed to engage with these proceedings, the Tribunal exercises its discretion pursuant to rule 13(2) of the 2013 Rules to make an order requiring the Respondents to reimburse the Tribunal fees which have been paid by the Applicant in the sum of £330.

Name: Judge Hawkes **Date:** 31 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).