



**PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case reference : **LON/00AY/HMF/2025/0636**

Property : **2D Kinfauns Road, London SW2 3JL**

The Applicants : **Darlison Douglas Da Silva
Tanairi Mazzariol
Diletta Busin
Esther Durotolu**

Representative : **In person**

Respondent : **Eucharria Oramalu**

Representative : **Matthew Azubike, Grand Estates**

Type of application : **Application for a Rent Repayment Order
by tenants**
Sections 40, 41, 42, 43 and 45 Housing and
Planning Act 2016.

Tribunal members : **Judge Pittaway
Mr J Stead BSc MSc**

Date of Hearing : **5 August 2025**

Date of decision : **14 August 2025**

DECISION

Decisions of the Tribunal

1. **The Tribunal finds that the Respondent committed an offence under section 72(1) of the Housing Act 2004, without reasonable excuse.**
2. **The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £14,832.**
3. **The reasons for the Tribunal decisions are given below.**

The Hearing

4. The Hearing was attended by Mr Da Silva and Ms Mazzariol, two of the Applicants, and Mr Azubike, of Grand Estates, the managing agents of the Respondent.
5. The Tribunal had before it, unindexed, a collection of PDF files, being the Applicants' bundle, part of which was provided to the Tribunal in hard copy at the start of the Hearing. The Tribunal also had before it a two page witness statement from the Respondent dated 1 May 2025 but received by it on 30 July 2025. At the Hearing Mr Azubike provided to the Tribunal and the Applicants a copy of an undated AST (the '**previous AST**') for the Property for the period 2 February 2021 to 1 February 2022, which named four tenants. Of the Applicants only Ms Mazzariol was named in this AST.
6. The Directions of 5 March 2025 made it clear that any witness who makes a witness statement should attend the Hearing Ms Oramalu did not attend, and therefore could not be cross-examined. Mr Azubike told the Tribunal that she now lives abroad.
7. The Tribunal heard oral evidence and submissions from Mr da Silva and Ms Mazzariol and Mr Azubike.

The background

8. The application made by the Applicants dated 4 November 2024, was received by the Tribunal on 29 November 2024. In it the Applicants sought a rent repayment order ('**RRO**') for the rent they had paid for an unspecified period of twelve months under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") in the sum of £24,720, in respect of 2D Kinfauns Road London SW2 3JL ('the **Property**').
9. The application alleged that the Respondent had committed the offence of managing/controlling an unlicensed HMO property contrary to s72 of the 2004 Act.

The Property

10. The Property is described in the Application as a four bedroom house.

11. No party requested an inspection and the Tribunal did not consider that one was necessary.
12. The relevant local housing authority is the London Borough of Lambeth. Mr Da Silva confirmed that the offence alleged by the Applicants was that the Respondent had controlled or managed an unlicensed HMO. The Tribunal heard evidence from Mr Azubike that the requirement to obtain an Additional HMO licence had been introduced by the London Borough of Lambeth in December 2021.
13. The Applicants' bundle contained an undated AST, signed by the Applicants and by Grand Estates London Limited as agent for the Respondent. It named the four respondents as 'the Tenant' and was stated to be for a term from 1 February 2024 to 31 January 2025. The rent payable was £2,060 per calendar month.
14. The previous AST provided by the Respondent at the Hearing was with four named tenants, of whom only Ms Mazzariol was one, for a term from 2 February 2021 to 1 February 2022 at a rent of £1,900 per calendar month.
15. Both ASTs provided that the tenant is responsible for paying the Council Tax for the Property and to pay for the utilities.

Issues

16. The issues before the tribunal to determine were
 - Had the Respondent committed an offence, and during what 'relevant period'?
 - During the period during which an offence (if any) had been committed under s72(1) of the 2004 Act did the Respondent(s) have a defence to the commission of the offence under section 72(4) of the 2004 Act?
 - If an offence has been committed the amount of any RRO that can be ordered under section 44(3) of the 2016 Act.

The Tribunal's decision and reasons

17. The Tribunal reached its decision after considering the witnesses' oral and written evidence and submissions, including documents referred to in that evidence and submissions and taking into account its assessment of the evidence.
18. As appropriate, and where relevant to the tribunal's decision these are referred to in the reasons for the tribunal's decision.
19. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this does not imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.

20. While the Tribunal had regard to the witness statement of Ms Oramalu because she did not attend the Hearing, as directed, less weight has been attached to this than would otherwise have been.
21. The relevant legal provisions are set out in the Appendix to this decision

The relevant period for the Application

22. The applicants had not specified the period in respect of which they sought the RRO in their application nor in their statement of case. At the Hearing they clarified that the relevant period in respect of which they sought the RRO was the twelve month period to 30 September 2024.

Has an offence been committed?

23. Mr da Silva submitted that the Respondent had committed the offence of managing or controlling an unlicensed HMO for the whole period of their stay. The Tribunal heard evidence from Mr Da Silva and Ms Mazzariol that for the whole of the relevant period, from September 2023, the four Applicants occupied the Property, with an AST having been entered into by them for the period from 1 February 2024.
24. Mr da Silva and Ms Mazzariol confirmed that the Applicants were not all members of the same family, but friends.
25. Mr da Silva gave evidence that he had checked with a housing officer of LB of Lambeth, and by going on-line (as recently as the morning of the Hearing) and that the Property did not have an HMO licence.
26. For the Respondent Mr Azubike submitted that when the Previous AST had been entered into there was no requirement for the Property to have a HMO where fewer than five people occupied the property. The requirement to have an HMO for three or more people came into force in December 2021, after the previous AST had been granted.
27. Mr Azubike submitted that an offence was not committed as the four occupants constituted one household as they occupied under a single AST.

The Tribunal's Decision

28. During the twelve month period to 30 September 2024 the Respondent committed the offence of controlling or managing an unlicensed HMO, being an HMO which required an additional HMO, rather than a mandatory HMO.

Reasons for the Tribunal's Decision.

29. While the Applicants did not provide evidence of the necessity of an HMO licence where a property was occupied by four persons. Mr Azubike admitted that an HMO

licence was required in L B of Lambeth from December 2021 where a property was occupied by three or more persons.

30. Mr Azubike was referring to the requirement for an additional HMO licence that was introduced by LB Lambeth on 9 December 2021 and applies to any property occupied by three or more individuals that is not captured by mandatory HMO licensing.
31. For the requirement to apply it is also a requirement that the living accommodation be occupied by persons who do not form a single household, under s254(2)(b) of the 2004 Act.
32. By s258(2) of the 2004 Act a household is not a single household unless the individuals in question are all members of one family. That the four individual Applicants in this application, who are not members of the same family, entered into one AST does not make them a single household.

Reasonable excuse to offence under section 72(1) Housing Act 2004

33. Mr Azubike submitted that at the time the Previous AST was entered into there was no requirement for the Property to be licensed as an HMO. The obligation only arose in December 2021. He submitted that the Respondent had received no notice from LB Lambeth of the newly introduced need to licence the Property. He confirmed to the Tribunal that the Property was the sole property of the Respondent. Mr Azubike explained that Grand Estates London Limited managed the Property for the Respondent. It managed some other properties for other persons, none of which are in L B Lambeth.
34. Mr da Silva submitted that the factual position was that the Respondent should have licenced the Property but had not done so. The Respondent should have checked whether a licence was required.

The Tribunal's decision

35. The Respondent did not have a reasonable excuse for not licensing the Property, but the position in which the Respondent found herself may be taken into account when considering the amount of the RRO.

Reasons for the Tribunal's decision

36. The responsibility for checking whether a licence is required is on the landlord, not the housing department of L B Lambeth. The Tribunal finds that the Respondent might have had a reasonable excuse for not immediately realising in December 2021 that she needed to obtain an additional licence for the Property but either she or her agents should have checked the position and do not appear to have done so between December 2021 and February 2024 when the AST was entered into with the Applicants.

37. It is not a reasonable excuse that the Respondent and/or her agent had misunderstood what constitutes a 'household', which is not dictated by the number of agreements with the tenants. It depends upon all the tenants belonging to one family. This is made clear in the 2004 Act.

Amount of the RRO

38. The Tribunal heard evidence from Mr da Silva and Ms Mazzariol that for the whole of the relevant period the rent paid to the Respondent was £2,060 per month, and Mr Azubike confirmed that this was the amount per month which Grand Estates had received on behalf of the Respondent for the relevant period.
39. Under the AST the Applicants were responsible for the payment of the council tax and utilities.
40. The Tribunal heard evidence from Mr da Silva that until the end of their period of occupation, when they were only given one month's notice of the need to leave the Property, and there was a delay in returning their deposits, the tenants had no particular problem with the landlord. Mr da Silva explained that the non-repayment of the deposits (some of which had only been returned shortly before the Hearing) had placed the Applicants in a difficult financial position when seeking new rented accommodation.
41. Mr Azubike gave evidence that the relationship between the tenants and the landlady had been good, and that the tenants had been asked to give written notice that they agreed to vacate the property by the beginning of October 2024 so that Ms Oramalu could sell the Property. Mr Azubike gave evidence that the delay in returning the deposits had been because Ms Oramalu had wanted to make certain that the tenants had returned all the Property keys.
42. The Tribunal heard conflicting evidence from the parties as to the condition in which the Property was originally let and the condition in which it was returned at the end of the tenancy. It also heard unsubstantiated evidence from Mr Azubike, which the tenants denied, of the late payment of rent.
43. Mr Azubike referred to the Respondent having to sell the Property, the sale of which was completed on 30 November 2024, but there was no other evidence before the Tribunal as to the Respondent's financial circumstances.
44. Mr Azubike stated that the Respondent had no previous convictions under the relevant Chapter of the 2004 Act and this was not challenged by the Applicants..

The Tribunal's decision

45. The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £14,832, being 60% of the whole rent paid for the relevant period..

Reasons for the Tribunal's decision

46. In its decision in *Acheampong v Roman and others* [2022] UKUT 239 (LC), the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which may be summarised as follows
- (a) ascertain the whole of the rent for the relevant period;
 - (b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;
 - (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 compared to other examples of the same type of offence; and
 - (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).
47. The hearing the Tribunal have adopted the approach recommended in *Acheampong v Roman and others*.
48. The parties agreed that the whole of the rent for the relevant period was £24,720.
49. The landlord did not pay the council tax or for the utilities.
50. As to the seriousness of the offence, the Tribunal has taken into account that that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licensing system and to deter evasion, and the seriousness of the offence.
51. The Tribunal has found the only offence in this application is operating an HMO without a Licence.
52. The Tribunal finds that the offence is not the most serious type of offence for which a RRO may be sought, recognised in the decision in *Daff v Gyalui* [2023] UKUT 134 (LC), which case also recognised that there can be more or less serious offences within each category.
53. The Tribunal then considered how serious the offence is within its category. Factors that may be relevant in assessing how serious an offence is within its category may include whether the respondent was an experienced landlord, the condition of the property, whether improvements might be required before the grant of the licence and the length of the offence.
54. The Tribunal finds that the Respondent was not an experienced landlord, but did have an agent on whom she was entitled to rely and who should have been aware of the need

for a licence during the relevant period. The offence continued from December 2021 until the tenants vacated the property.

55. Section 44(4) provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the both parties, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.
56. In reaching its decision the Tribunal has had regard to what Deputy Chamber President Roger Martin KC said at paragraph 61 of *Newall v Abbott* [2024] UKUT 181 (LC) (***Newall***), that evidence in rent repayment cases can focus disproportionately on allegations of misconduct by one party against the other, and that Tribunals should not treat each allegation with equal seriousness or to make findings of fact on them all. It has therefore not given weight to the allegations of poor conduct on either side, except it has had regard to the delay in the repayment of three of the Applicants' deposits.
57. There is no evidence before the Tribunal as to the financial circumstances of the Respondent.
58. The Tribunal has noted that the Respondent has no previous conviction under the relevant Chapter of the 2004 Act.
59. Deputy Chamber President Rodger KC, in *Newall*, reviewed the quantum of orders that had been made by the Tribunal in similar cases (paragraphs 47 to 56) and stressed the importance of the promotion of consistent decision making. In that case Deputy Chamber President Rodger made an award of 60% (paragraph 62) of the total rent paid for the relevant period, where the offence was committed by, '*a landlord of a single property and was the result of inadvertence, or lack of attention, rather than being deliberate, and that the accommodation provided was generally of good standard which attracted long-term residents and which the residents were disappointed to leave...*'.
60. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that it considers should be made in light of the factors to which the Tribunal must have regard under s44(4) of the 2016 Act and the similarity of factors in this application to those in *Newall* the Tribunal makes a Rent Repayment Order against the Respondent in the sum of £14,832, being 60% of the rent paid for the relevant period.

Name: Judge Pittaway

Date: 14 August 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).

Appendix of Relevant Legislation

Housing Act 2004

72 Offences in relation to licensing of HMOs

(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.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—

- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
- (b) he fails to comply with any condition of the licence.

(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.

S254 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”)

.....;

(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.

S258 HMOs: persons not forming a single household

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless—

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if—

(a) those persons are married to or civil partners of, each other or live together as if they were a married couple or civil partners;

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes—

(a) a “couple” means two persons who fall within subsection (3)(a);

(b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) “prescribed relationship” means any relationship of a description specified in the regulations.

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.

Housing and Planning Act 2016

40 Introduction and key definitions

- (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.

- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

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

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.

- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

43 Making of a 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 had 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 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.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to rent paid by the tenant in respect of

the period of 12 months ending with the date of the offence

a period, not exceeding 12 months, during which the landlord was committing the offence

(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.