FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/HMF/2025/0613**
Property	:	**Flat 4, 14 Argyle Walk, London, WC1H 8HA**
Applicants	:	**(1) Jacob King (Lead Applicant)** **(2) Juan Vidal-Perez** **(3) Joel Philippe** **(4)Roxanne Feiner**
Representative	:	**Jack Sheard (Lay Representative)**
Respondent	:	**Mireille Gasking**
Representative	:	**In person**
Type of application	:	**Application for a rent repayment order by tenants** **Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal	:	**Tribunal Judge Mohabir** **Mr C Gowman MCIEH MCMI BSc**
Date of hearing	:	**31 July 2025**
Date of decision	:	**6 August 2025** **Amended 18 August 2025**

DECISION

Introduction

1. Unless stated otherwise, the references in square brackets are to the pages in the Applicants' hearing bundle.

2. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 ("the Act") for a rent repayment order against the Respondent in respect of Flat 4, 14 Argyle Walk, London, WC1H 8HA ("the property") in the London Borough of Camden.

3. The property is a self-contained flat located over the first and second floors of the building, and consist of five bedrooms, and a shared kitchen/dining area. There is a common corridor and stairwell.

4. The Respondent is the long leaseholder of the property who let out single rooms to tenants on an individual basis.

5. The Applicants each took tenancies from the Respondent individually. These tenancies entitled them to an individual private room, and access to the shared bathrooms and kitchen/dining area. The Applicants' tenancies commenced on the following dates:

   a. Jacob King: 4 July 2022;
   b. Juan Vidal Perez: 12 October 2021;
   c. Joel Philippe: 10 February 2024; and
   d. Roxanne Feiner: 13 March 2024.

6. The Applicants were not the only tenants of the property. There were other tenants who moved in and out from time to time, including the Applicants Joel Philippe and Roxanne Feiner.

7. By an application dated 31 October 2024, the Applicants made this application to the Tribunal for a rent repayment order on the basis that the property was an unlicensed HMO in breach of section 72(1) of the Housing Act 2004.

Relevant Law
Requirement for a Licence

8. Section 72 of the Act 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.
   >
   > (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) ...

(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.

9. The Housing Act 2004 Part 2 s.95(1) provides:
(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

Section 263 of the Act defines a person having control or managing as:
(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 per-son), 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 an- other 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.

Amount of order: tenants

10. Section 44 of the Act provides:

> (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*** | ***the amount must relate to the rent paid by the tenant in respect of*** |
> |---|---|
> | an offence mentioned in row 1 or 2 of the table in section 40(3) | the period of 12 months ending with the date of the offence |
> | an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3) | 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."

Hearing

11. The hearing in this case took place on 31 July 2025 remotely by CVP. The Applicants were represented by Mr Sheard, a lay representative, albeit with

legal training. The Respondent appeared in person from Australia, where she now ordinarily resides.

Procedural

12. The Tribunal, firstly, considered the application made by the Applicants dated 30 June 2025 for an order pursuant to Rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 restricting the Respondent's participation in the proceedings. The basis of the application was the Respondent's failure to file or serve any evidence by 6 June 2025, as directed by the Tribunal. The Respondent admitted that she had been served with a copy of the application.

13. The reasons given by the Respondent for the (admitted) breach was her financial inability to instruct a lawyer and that "she is the mother of 4 children".

14. When deciding the application, by analogy, the Tribunal applied the 3-stage test set out by the Court of Appeal in the case of ***Denton*** when considering an application for relief from sanction.

15. As to stage one, the Tribunal was satisfied that the Respondent's failure file and serve her evidence was a serious and significant breach.

16. As to stage two, on her own case, the Respondent offered no good reason for her inability to file and serve her evidence. The Tribunal found the Respondent to be an intelligent and articulate person and pointed out to her that she did not in fact require a lawyer to articulate her case in writing. Indeed, after the failed mediation appointment, she was able to file some limited disclosure in relation to the mediation.

17. As to stage three, being the other circumstances of the case, the Tribunal was satisfied that the Respondent never intended to comply with the direction to file and serve her evidence for the reasons given by her. In addition, she had failed to comply with the Tribunal direction emailed to her on 11 July 2025 requesting an explanation for the breach. She admitted receiving the email, but offered no other reason for failing to respond to it. The only inference to be drawn from the Respondent's conduct is that she had a complete disregard for the Tribunal's order and directions. Such conduct did not warrant relief being granted. The potential sanction for non-compliance with the Tribunal's directions were made express and clear in the directions order dated 12 February 2025.

18. It was not the Respondent's position that she was seeking to adduce evidence late and, therefore, it was not necessary to refuse permission for

this. The Tribunal, therefore, concluded that the appropriate sanction under Rule 8(2)(e) was to debar her from defending the proceedings.

Decision

19. It follows that the only evidence before the Tribunal was the Applicants'. Nevertheless, the Tribunal explained to the Respondent that they still had to prove their case, and she was entitled to cross-examine the First to third Applicants who were in attendance. It should be noted that the Fourth Applicant, Ms Feiner, did attend remotely initially but left the hearing because she is living in Switzerland. She could not give evidence because she is outside the jurisdiction, and no permission had been obtained from the host country to do so.

20. The Respondent did cross-examine the First to third Applicants, but her questions were in relation to not being notified by them of the alleged fire hazards, the inoperative smoke alarm in the kitchen and the electrical problems with the fuses constantly tripping.

Admitted Facts/Findings

21. As the Tribunal understood it, the following facts were not disputed by the Respondent. In any event, for the avoidance of doubt, the Tribunal made findings of fact as follows:

(a) The Applicants were tenants of the Premises. This is proved by their tenancy agreements [AB 11-22] and confirmed in their witness statements [AB 85-120].

(b) The Premises were an HMO. The Applicants all comprise separate households, used the Premises as their only home, and shared amenities including bathrooms and a kitchen. The Premises thus met the 'self-contained' flat test of the Housing Act 2004 s254(3). This is proved by their witness statements [AB 85-120, including the floorplan at 94].

(c) The property required licensing. Camden operated an Additional Licensing regime, which applied to properties with at least three occupants from two or more households [AB 125]. This applied to the property throughout the maximum 12-month period in respect of which the property was unlicensed, as shown by the Updated Chronology of Occupancy [AB 80].
Additionally, there was statutory Mandatory Licensing which applied whenever premises had five occupants from two or more households, per Article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) Order 2018 (SI 2018/221). This was the case for 268 days being adopted as the relevant period in respect of which the application was brought [AB 80].

(d) The property did not have the required licence. This is confirmed by correspondence with the Local Authority [AB 121-124].

(e) The Respondent was in control of, and/or managing, the property within the meaning of the Housing Act 2004 s72(1). The Respondent is the leaseholder of the property [AB 172-3]. She is listed as the landlord on each of the Applicants' tenancy agreements [AB 11-22] and, therefore, entitled to receive rent from them. The Applicants did pay that rent [AB 23-43, 176].

22. The Tribunal was, therefore, satisfied beyond reasonable doubt that Respondent was in control of/managing an unlicensed HMO during the relevant period.

23. The Tribunal was also satisfied that n*one of* the three statutory defences from the Housing Act 2004 s72(4) and (5) are made out:

(a) The Respondent did not have a temporary exemption notice [AB 122].

(b) The Respondent had not applied for a licence as of 29 October 2024, after the relevant period [AB 122].

(c) The Respondent has provided no evidence of a reasonable excuse for not having a licence.

24. The Tribunal then turned to the issue of quantum.

25. The claim relates to the period between 4 October 2023 – 12 October 2024. Although the period exceeds 12 months, no individual Applicant seeks a rent repayment order for a period exceeding 12 months.

26. During this period the Applicants each paid rent as follows:

(a) Jacob King paid £12,600.00 [AB23-24, 176];
(b) Juan Vidal Perez paid £10,800.00 [AB 25-36];
(c) Joel Phillipe paid £7,960.00 [AB 37-38];
(d) Roxanne Feiner paid £6,965.00 [AB 39-43];

This is a combined total of £38,325.00. The calculations and dates are set out at [AB 81-84].

27. There were two regimes under which the property required a licence. During the 256 days where there were five occupants, constituting two or more households, the statutory mandatory licensing regime was applicable. During the remainder of the relevant period, as there were at least three occupants, constituting two or more households, Camden's Additional Licensing scheme was applicable.

28. In combination, the Tribunal was satisfied that the Respondent was in breach of licensing requirements, committing the offence under the Housing Act 2004 s72(1), for the entire respective periods claimed by the Applicants.

29. Guidance was given by the Upper Tribunal in ***Vadamalayan v Stewart*** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. It was held in that case the starting point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matters set out in section 43(4).

30. This decision was followed by the Upper Tribunal decision in the case of ***Williams v Parmar*** *[2021] UKUT 244 (LC)* where the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed at section 44(4) of the Act.

31. The Upper Tribunal held that "*there is no presumption in favour of the maximum amount of rent paid during the period*". It was noted that when calculating the amount of a rent repayment order the calculation must relate to the maximum in some way. Although, the amount of the rent repayment order can be "*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*". Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the Act.

32. The Upper Tribunal further went on to highlight that the Tribunal is not limited to those factors referred to in section 44(4) and that circumstances and seriousness of the offending landlord comprise part of the "*conduct of the landlord*" and ought to be considered. The Upper Tribunal considered that the Tribunal had taken a very narrow approach of section 44(4)(a) by stating "*meritorious conduct of the landlord may justify a deduction from the starting point*". It concluded that the Tribunal may in appropriate cases order a lower than maximum amount if the landlord's conduct was relatively low in the "*scale of seriousness, by reason of mitigating circumstances or otherwise*".

33. The Upper Tribunal went on to lower the amount of the rent repayment orders made by the Tribunal by applying a reduction of 20% and 10% on the basis that whilst the landlord did not have any relevant previous convictions, she was also a professional landlord who had failed to explain why a licence had not been applied for and the condition of the property had serious deficiencies.

34. The Upper Tribunal also confirmed that in cases where the landlord is a professional landlord, and the premises has serious deficiencies more substantial reductions would be inappropriate even if the landlord did not have any previous convictions.

35. This decision highlights that there is no presumption that rent repayment orders will be for maximum rent, and that while the full rent was in some sense still the "starting point" that did not mean that the maximum rent was the default. The amount of the rent repayment order needs to be considered in conjunction with section 44(4) factors and the Tribunal is not limited to the factors mentioned within section 44(4). This means that even if a landlord is guilty of an offence, if their offence is not a particularly serious one, they will expect to be ordered to repay less than the full rent paid during the relevant period.

36. Further guidance has been given by Judge Cook in the Upper Tribunal at paragraph 20 in *Acheampong v Roman* [2022] UKUT 239 about determining the amount of an RRO. Adopting that approach, the Tribunal determined:

(i) the starting figure for the assessment of the RRO was the sums claimed by the Applicant set out application for the periods of time in respect of which the property was unlicensed;

(ii) the relevant conduct on the part of both parties has already been considered above.

(iii) the actual financial circumstances of the Respondent are unknown. As the Tribunal understands it, the Respondent has not been convicted of any offence.

37. As to (i) above, the Tribunal has already set these out at paragraph 26 above.

38. As to the deduction for the cost of utilities, the Tribunal had no evidence of the actual cost. Nevertheless, doing the best it can, it accepted the Applicants estimate that the combined cost for gas and electricity, wifi and water was approximately £75 per person per month (£2.46/day).

39. Between them, the Applicants are seeking repayment of 39 months' rent. Therefore, the total estimated utility costs, the amount to be deducted would be £2,925. The maximum rent available under the Additional Licensing scheme would be £35,400.

40. As to (ii) above, the Tribunal accepted the Applicants' submission the starting position for calculating the quantum of the RRO is 60%[1], which

[1] see ***Newell v Abbot and Okrojek*** [2024] UKUT 181 (LC)

should then be subject to an uplift to take account of the following matters[2]:

41. Firstly, the Tribunal found that the Respondent had actual knowledge that they required a licence. In March 2023, the property was inspected by the local authority. The inspectors determined that the property needed, but did not have, an HMO licence [AB 88; 108]. The local authority contacted the Respondent by WhatsApp and by email [AB 135]. The Tribunal was, therefore, satisfied that the Respondent knew that a licence was required.

40. Secondly, and arguably, the Tribunal was satisfied that the property was sufficiently unsafe that a licence may not have been granted. The two most serious aspects were fire hazards and electrical safety.

41. An inspection in March 2023 identified fire hazards described as "dangerous", "significant" and "severe" [AB 137]. These required further inspection in June 2023 [AB 141]. Fire hazards in the property included:

    (a) Fire alarms which did not work properly. The Tribunal accepted Dr King's uncontroverted evidence that the alarm in the kitchen did not work during his occupation.

    (b) Unsafe property layout. Again, the Tribunal accepted Dr King's uncontroverted evidence primary means of escape in case of fire was through the communal kitchen on the second floor, his secondary means of escape was via his balcony which then involved a one storey drop. Similarly for Mr Perez, whose secondary means of escape was via his window with a two storey drop.

    (c) No fire doors; and

    (d) No emergency lighting [AB 87-8, 108-9].

42. After the inspection, the Tribunal found that no works were done to remedy these conditions [AB 88, 109]. The fire hazards, therefore, persisted throughout the relevant period.

43. In addition, the Tribunal found that there were also electrical hazards. The Tribunal accepted his evidence and found that Dr King was electrocuted in May 2023. The Tribunal also accepted his evidence and found that the fuses in the property frequently tripped during his occupation.

44. Thirdly, in the light of the risks posed by these hazards, the Respondent chose to grant 5 further tenancies in late October 2023, 7 November 2023, and 8 November 2023 [AB 80]. Additionally, the Respondent

[2] see ***Wilson v Arrow and others*** [2022] UKUT 27 (LC)

granted tenancies to the applicants Mr Philippe and Miss Feiner on 10 February and 13 March 2024 respectively.

45. Fourthly, the Respondent failed to protect the Applicants' deposits.

46. Taking all of these considerations in account in relation to the Respondent's conduct, the Tribunal was satisfied that she bore a high level of culpability. Therefore, this should be reflected in an uplift of 10% on the 60% starting figure making an award of 70% for the amounts claimed by each of the Applicants.

47. Accordingly, the RRO made in respect of each applicant is:

Jacob King: ~~£11646.60~~ £8,190
Juan Vidal Perez: ~~£9982.80~~ £6,930
Joel Phillipe: ~~£7327.80~~ £5,125
Roxanne Feiner: ~~£6442.80~~ £4,508

The amount awarded in respect of each RRO is payable by the Respondent 28 days from the date this decision is issued to the parties.

Fees

48. By a separate application dated 11 August 2025, the Applicants applied for an order that the Respondent reimburse them the fees that they paid to the Tribunal to have the RRO application issued and heard.

49. The Tribunal was satisfied that it was just and equitable to do so because the Applicants had succeeded in their application for an RRO. There are no reasons to depart from the general principle that "costs should follow the event". In other words, the successful party should be entitled to recover its costs.

50. Accordingly, the Tribunal also orders that the Respondent reimburse the Applicants to total fees of £660 paid by them. Payment is to be made not less than 28 days from the date of this amended decision being issued to the parties.

Name: Tribunal Judge Mohabir **Date:** 6 August 2025
amended 18 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).