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

| | |
|---|---|
| **Case Reference** | : **MAN/00EJ/HMG/2024/0005** |
| **Property** | **: 35 Stanley Street, Durham DL14 8RY** |
| **Applicant** | **: Rachael Wilde** |
| **Representative** | **: Justice for Tenants**<br>**Brian Leacock** |
| **Respondent** | **: Gary Allison** |
| **Type of Application** | **: Application for Rent Repayment Order by tenant**<br>Sections 40,41,43 and 44 Housing and Planning Act 2016 |
| **Tribunal Members** | **: Judge T N Jackson**<br>**J Platt FRICS FTPI** |
| **Date and venue of Hearing** | **: 1 July 2025**<br>**CVP Video hearing** |
| **Date of Decision** | **: 17 August 2025** |

---

## DECISION

---

## Decision

The Tribunal is satisfied beyond a reasonable doubt that the Respondent committed an offence under section 95(1) Housing Act 2004 without reasonable excuse.

The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £941 to be paid to the Applicant within 28 days of the date of this Decision.

The Tribunal determines that the Respondent shall pay the Applicant an additional £330 as reimbursement of the application and hearing fees within 28 days of the date of this Decision.

## Reasons for decision

### Introduction

1. On 12 March 2024, the Applicant applied for a Rent Repayment Order stating that the Respondent had failed to licence a house which was required to be licensed under the provisions of the Housing Act 2004 ('the 2004 Act'). The Applicant sought a Rent Repayment Order in the amount of £4706.81. The Applicant also sought reimbursement of the application and hearing fees totalling £330.Directions dated 27 February 2025 regarding case management matters were issued to the parties.

### Facts

2. The Property is a two -bedroom, three storey end terrace house built circa 1945-1964.

3. The Applicant was a tenant at the Property from April 2017 to 15 August 2023. She had known the Respondent for several years prior to the tenancy. When the Respondent was selling the Property, the Applicant asked to have a tenancy agreement with a view to potentially purchasing the Property at a later date. There was no written tenancy agreement prior to March 2023. During 2022, the Applicant paid £370 rent per month. By written tenancy agreement dated 24 March 2023, the Applicant was a tenant of the Property from 24 March 2023 at a rent of £410 per month. The agreement provided that the tenant pay all charges for gas, electricity, water, sewerage, fixed line telephone and tv licence.

4. The Property was situated within a Selective Licensing Scheme as detailed in the County Council of Durham designation of Areas for Selective Licensing 2021 document, ('the Scheme') dated 3 December 2021 (Applicant's Exhibit J), which came into force on 1 April 2022 and ceased on 31 March 2027 or earlier if revoked by the Council. The document required every house which was let or occupied under a tenancy or licence within a designated area to be licensed, subject to specific exemptions set out in paragraph 5. The Property was located in Coundon Grange, one of the designated areas. The Property did not fall into any of the exemptions detailed in paragraph 5 of the Scheme.

5. After being advised by the Council by email in March 2023 that the Property required a Selective Licence, following a phone conversation to seek clarification, the Respondent's application for a Licence was duly made on 24 March 2023, within a couple of days of the

phone call. On 9 May 2023, Notice of Intention to grant a Licence was served on the Respondent with representations required by 29 May 2023. A Selective Licence was subsequently granted with no works required to be carried out and after the provision of up-to-date gas and electricity certificates.

6. Whilst the parties had previously enjoyed a friendly relationship from 2017 due to their knowledge of each other before the tenancy began in 2017, the relationship deteriorated from the beginning of 2023.

7. During the tenancy, the Applicant reported repairs to the Respondent who carried them out either himself or through contractors. A new radiator was fitted in August 2022. In April 2022, the Applicant asked the Respondent to update the bathroom, which was outdated, had a tiled floor and was cold. From July 2022, a new bathroom was installed by a contractor and the Respondent. Although it was not completed until January 2023, the Applicant was able to use the bathroom throughout. After the bathroom was installed, the bathroom flooded twice causing water damage to the laminate flooring, (provided by the Applicant) on the ground floor. There is a dispute as to the cause of the leaks.

8. The Property had damp and mould to part of the ceiling of the main bedroom caused by a leak in the roof. The roof leak was repaired. There were areas of damp at floor level in the front and rear passages and the dining room. Plastering work arranged by the Respondent was carried out to the front and rear passages by the beginning of 2023 at the latest. There is a dispute as to whether plastering was carried out in the lounge and dining area, and if so, on what date. The wooden gate to the rear had a rotten piece that needed replacing. Parts of the render around the front door had cracked. Coping stones to the front wall had fallen off. The windows seals were defective.

9. The Applicant had up to 4 dogs at any time at the Property. Dogs had chewed skirting boards within the Property and had knocked off coping stones on the wall at the front of the house. A guest of the Applicant had caused damage to the kitchen door. The Respondent had provided a new door, and the tenant paid for it to be installed before she moved out.

10. On 1 March 2023, the Respondent had a discussion with the Applicant in his car outside the Property at which he complained about the cleanliness and condition of the house due to damage caused by the Applicant and her dogs. The Applicant says she felt intimated and returned to the house crying.

11. On 23 and 24 March 2023, the Respondent texted the Applicant 3 times in total to ask the Applicant to remove some tape being used to secure a spotlight prior to the attendance of an electrician on 24 March 2023 who was attending to carry out an electrics test.

12. On 24 March 2023, after the Respondent had been made aware by the Council that there should be a written tenancy agreement, one was signed by the parties.

13. On 13 May 2023, following a disagreement regarding who was responsible for paying for which repairs, the Applicant said that she would like to leave the Property due to the relationship breakdown and that she no longer wished to buy it.

14. On 15 May 2023, in response to the above conversation, the Respondent provided the Applicant with a letter giving her one month's notice to 18 June 2023 to leave the Property.

15. In mid-June 2023, the Applicant contacted the Council regarding the eviction letter and was advised that the letter was not in the correct format for an eviction notice. The Council subsequently advised the Respondent that a section 21 Notice was required, and it would be best if it was hand delivered.

16. On 28 May 2023, two gardeners attended the Property to work on the garden. Whether or not the Respondent had given prior notice to the Applicant is disputed.

17. On 28 June 2023, the Respondent attempted to hand deliver the section 21 Notice as advised by the Council, but the Applicant was not at home. When he was returning home, he saw the Applicant returning to the Property and followed her in his car to hand deliver the section 21 Notice. There was an interaction outside the house, which was videoed by Ring video, following which the Applicant complained to the police but asked them not to take any action.

18. On approximately 31 July 2023, after ringing the Applicant's employer and being told to submit a written complaint, the Respondent sent a complaint letter expressing concern regarding the state of the Applicant's house and alleged abuse of her position as a police officer. It was alleged that she had made threats against the Respondent in the street, and he felt threatened due to her position. The complaint was not upheld.

19. The Applicant left the Property on the 15th of August 2023. Before moving out, the Applicant repaired or replaced items of disrepair caused by herself, dogs or visitors.

**Hearing**

20. The hearing was held by CVP Video platform. In attendance were the Applicant represented by Brian Leacock of Justice for Tenants and the Respondent who was unrepresented but accompanied by a friend, Eileen Callaghan. No inspection was carried out. The appeal bundles contain a description of and included photos of the Property. Both parties gave oral evidence.

**The Law**

21. Section 41 of the Housing and Planning Act 2016 ("the 2016 Act"), provides that a tenant may apply to the Tribunal for a Rent Repayment Order against a landlord who has committed an offence to which the 2016 Act applies.

22. The 2016 Act applies to an offence committed under section 95(1) of the Housing Act 2004, namely the control or management of an unlicensed house.

23. Section 43 provides that the Tribunal may make a Rent Repayment Order if satisfied, beyond a reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies (whether or not the landlord has been convicted).

24. Section 44 of the 2016 Act provides for how the Rent Repayment Order is to be calculated. For offences under section 95(1) of the 2004 Act, the period to which a Rent Repayment Order relates is a period, not exceeding 12 months, during which the landlord was committing the offence. The rent the landlord may be required to pay in respect of that period must not exceed the rent paid in respect of that period, less any relevant award of universal credit paid in respect of rent under the tenancy during that period.

25. Section 44(4) of the 2016 Act states that in determining the amount of a Rent Repayment Order, we should take account of the following factors:
    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 that Chapter of the Act applies.

**Submissions**

The Applicant

26. It was apparent from the documentation and confirmed by the Applicant's representative that documentation within the appeal bundle and the skeleton argument had been prepared by different people which lead to a conflict in some of the submissions and in the percentage of rent paid claimed which included 75% and 100%, which was not helpful.

27. The Applicant's representative submitted that the Respondent was a person both having control of and managing a house which was required to be licensed under Durham County Council's Selective Licensing Scheme but that during the Applicant's tenancy, it was not so licensed until a duly made application on 24 March 2023. It was submitted that the Respondent's assertion of ignorance of the Scheme did not provide an objectively reasonable excuse as to why the Property was unlicensed.

28. The Applicant's representative submitted that in assessing the seriousness of the offence under section 95(1) of the 2004 Act the following factors were relevant:

    *a.* The Respondent's lack of processes to keep abreast of their legal obligations *(Aytan v Moore [2022] UKUT 27 (LC) at [52]*;
    b. Disrepair and maintenance issues in the Property;
    c. Breach of Local Authority Selective Licensing Standards;
    d. Neglect of the Applicant's right to peaceful occupation of the Property; and
    e. Service of an invalid eviction notice.

29. He submitted that the purpose of an RRO is to punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and to remove the financial benefit of offending (*Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities)*. These policy objectives justify a substantial portion of the rent being awarded (*Williams v Parmar [2021] UKUT 244 (LC) at [51]);*

30. He referred us to the case of *Newell v Abbott [2024] UKUT 181*, where the Upper Tribunal awarded 60% of the rent received to tenants from a landlord of a single property where

the licencing failure was due to inadvertence or lack of attention, and the accommodation was generally of a good standard.

31. It was submitted that a significant proportion of the rent claimed be established as the starting point for any award to reflect the seriousness of the offence.

32. It was submitted that the Respondent had shown a systematic neglect of his legal obligations as detailed in the Applicant's witness statement regarding persistent damp and mould affecting the master bedroom, hallway and dining room; flooding due to improper workmanship by the Respondent when carrying out bathroom repairs and structural disrepair, including broken and unsecured brickwork in the front garden and damaged concrete surfaces due to dampness.

33. It was submitted that the Respondent was in breach of the Selective Licensing Conditions 7,11,17 and 18. Condition 7 required that tenants be provided with a written signed statement detailing the terms of their occupancy at the start of the tenancy. Condition 11 required the landlord to ensure that the Property was fit for human habitation at the start of and during the tenancy and to take reasonable steps to address repair and maintenance issues promptly. Condition 17 requires the landlord to maintain the Property's exterior in a reasonable condition and good state of repair. Condition 18 requires the landlord to maintain, secure and keep free from graffiti exterior and boundary walls and fences.

34. It was submitted that the Applicant's right to quiet enjoyment was breached by the Respondent throughout by frequent unannounced visits to the Property; confrontational interactions initiated by the landlord in relation to outstanding maintenance issues and by sending contractors without prior notice or consent, thus impacting the tenant's sense of privacy and security.

35. Reference was made to an alleged malicious letter of complaint sent by the Respondent to the Applicant's employer alleging that the Applicant had harassed him in the street and threatened him with arrest. The complaint was not upheld by the employer.

36. It was submitted that the Applicant had conducted herself appropriately throughout the tenancy, complying fully with the terms of the tenancy agreement and paying all rent due.

37. In conclusion, the Applicant's representative submitted that 75%, if not all the rent paid, should be awarded.

<u>The Respondent</u>

38. The Respondent said that this was his former family home which he had been trying to sell. However, the Applicant had asked to rent with a prospect to buy, as she had stayed in it many times in the past and it was convenient as it was located opposite her mother.

39. He was unaware of the Selective Licensing Scheme until Durham Council contacted him by email in March 2023 to advise him that he needed a licence for the Property by 1 April 2023. He immediately contacted the Council by phone to advise that he was selling the Property but was advised that a licence was still required if only for a few months and that if there was no application before 1 April 2023, he could be subject to 'a hefty fine'. The

Council officer said that there had been a delay in contacting landlords in the area to advise them of the need for such a license, despite the Scheme having taking effect from the 1st of April 2022. The Council officer provided an online link by which the Applicant could apply. On 24 March 2023, within a couple of days of the phone call, he applied online. A licence was subsequently granted following the production of up-to-date gas and electricity certificates but with no requirement for any works to be carried out prior to a licence being granted. The Respondent had since sold the Property and was no longer a landlord.

40. The Council officer had advised the Respondent that a written tenancy agreement was required, which resulted in the written agreement dated 24 March 2023.

41. The Property was mortgaged. During the dates in question, he had received £4706 rent and had paid mortgage payments of £3094. The receipts for the repairs and services to the Property for the dates in question were £3903 and therefore the total outgoings exceeded the rental income. The Respondent provided invoices for works relating to boiler, gas hob and installation of new gas fire 15 November 2021; cost of new bathroom suite 20 April 2022; items for bathroom installation dated 29 July 2022; house insurance dated 8 August 2022; cost of contractor fitting new bathroom and new radiator; dated 8 August 2022; items for bathroom and plumbing sundries dated 17 August 2022; plumbing sundries dated 1 September 2022; cost of skirting 2 September 2022; bathroom fitting dated 6 September 2022; plumbing sundries dated 6 September 2022; plastering to lounge, dining room, kitchen, front and rear passage dated 17 October 2022; service costs CPIZ dated 7 November 2022.

42. The Respondent said that the Applicant and her dogs had caused damage to the Property, namely kick damage to the kitchen door, chewed skirting boards, dogs causing coping stones on the front wall to be knocked off, the garden was a mess, and the Property was not kept clean.

43. The Respondent said that the Applicant had paid all rent due throughout the tenancy. Their relationship had been good until the beginning of March 2023 when he'd told the Applicant that he wanted to sell the Property.

**Deliberations**

44. We considered the applications in four stages –

i. Whether we were satisfied beyond a reasonable doubt that the Respondent had committed an offence under section 95(1) of the Housing Act 2004;

ii. Whether the Applicant was entitled to apply to the Tribunal for a Rent Repayment Order;

iii. Whether we should exercise our discretion to make a Rent Repayment Order;

iv. Determination of the amount of any Order.

*The offence*

45. Section 95(1) of the 2004 Act provides that:

> "*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 licenced".*

46. The Respondent accepted that he had received rent for the Property directly from the Applicant throughout her tenancy and that he was the freehold owner of the Property. We found that he was a person having control of and managing the Property.

47. There was no dispute that the Property was a house. We had regard to the Selective Licensing Scheme (Applicant's Exhibit J) which came into force on 1 April 2022 and ceased on 31 March 2027 (or earlier if revoked by the Council). The Scheme required every house which was let or occupied under a tenancy or licence within a designated area to be licensed, subject to specific exemptions set out in paragraph 5. The Respondent accepted, and we found, that the Property was within a designated area, namely Coundon Grange and that it was a house let under a tenancy agreement and did not fall into any of the exemptions detailed in paragraph 5 of the Scheme. The Property therefore required a licence from 1 April 2022 whilst it was occupied by the Applicant.

48. There was no duly made application for a licence until 24 March 2023, and one was subsequently granted on 8 May 2023. We therefore find that the Property was unlicenced from 1 April 2022 to 23 March 2023, the day before the application was duly made (as defined by section 95(3) of the 2004 Act).

Defence under section 95(4) of the 2004 Act

49. Section 95(4) of the 2004 Act provides a defence if the person in control of or managing the house had a reasonable excuse for the house being unlicenced.

50. The Respondent said that he was unaware of the Scheme and that as soon as he was made aware by the Council, he applied for a licence. We had to decide if what the Applicant did (or omitted to do or believed) was objectively reasonable for this landlord in those circumstances. Ignorance can only constitute a reasonable defence if such ignorance was reasonable in all the circumstances. We had regard to the fact that the Council appeared to have been contacting all landlords to advise them of the Scheme since its introduction but were late in contacting the Respondent. However, in our view, this does not negate a landlord's responsibility to ensure that, if they wish to receive income from renting a property to tenants, they are well versed in the obligations of a landlord both generally and in any associated matters which are specific to the Council area within which a property is located. We accepted that the Respondent had only this Property and was not a 'professional landlord' and accepted his oral evidence that he had done a quick check of landlord obligations on the internet at the beginning of the tenancy. However, despite this, we considered that it was incumbent on any landlord, professional or not, to take adequate steps to ensure that they were aware of all requirements when letting out

property. Therefore, we found that the Respondent did not have a reasonable excuse for the Property being unlicensed.

51. We find beyond a reasonable doubt, that the Respondent was a person having control of and managing a house which was required to be licenced under Part 3 of the 2004 Act, but which was not so licensed and did not have a reasonable excuse.

*Entitlement of the Applicant to apply for a Rent Repayment Order*

52. We determined that the Applicant was entitled to apply for a Rent Repayment Order. In accordance with section 41(2), the offence related to housing that, at the time of the offence, was let to the Applicant, and the offence was committed in the period of 12 months ending with the day on which the application to the Tribunal was made. There was no dispute that the Applicant was a tenant from 2017 to 15 August 2023.

*Discretion to make a Rent Repayment Order*

53. Having considered the matter, including in particular the Respondent's written submission, oral evidence and admission, we were satisfied that there was no ground on which it could be argued that it was not appropriate to make a Rent Repayment Order in the circumstances of this case.

*Amount of Rent Repayment Order*

54. In accordance with section 44 of the 2016 Act, the amount of an Order must relate to rent paid in a period, not exceeding 12 months during which the landlord was committing the offence under section 95 Housing Act 2004. The amount that the landlord is required to pay in respect of a period must not exceed the rent paid in respect of that period.

55. In quantifying the Rent Repayment Order, we adopted the approach set out in paragraph 21 of *Acheampong v Roman and others [2022] UKUT 239 (LC*) as endorsed in paragraph 26 of *Dowd v Martins and others [2022] UKUT 249(LC)* namely:

    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, for example, gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate;

    iii. consider how serious this offence was, compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that the term is used in criminal sentencing); it is the default penalty

in the absence of any other factors, but it may be higher or lower in light of the final step.

iv. 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).

*Rent for the relevant period*

56. The Respondent ceased to commit the offence on 23 March 2023, the day before the application for the licence was duly made. The relevant period during which the offence was committed was therefore 1 April 2022 to 23 March 2023.

57. During the relevant period, the Applicant paid £4706.81. We used the calculation provided by the Applicant's representative in Applicant's Exhibit D, with which the Respondent and Tribunal agreed, and which was calculated using the monthly rent of £370 for the period 16 March 2022 to 15 June 2022 and £410 thereafter. The Applicant did not receive Housing Benefit or Universal Credit rent contributions.

58. The Respondent submitted that after taking into account his mortgage payments, invoices paid for works to the Property and house insurance, he made no profit in the relevant period. We had regard to *Vadamayalan v Stewart [2020] UKUT* which states that mortgage payments are an investment in the landlord's own property and payments on repairs, insurance etc reflect the landlord's own obligations when renting out a property. They were therefore not deducted from the figure of £4706.81.

*Deduction for utilities*

59. The tenancy agreement provided that the tenant pay all charges for gas, electricity, water, sewerage, fixed line telephone and tv licence and therefore there was no deduction to be made

*The seriousness of the offence*

60. As confirmed in several Upper Tribunal cases, Section 95(1) of the 2004 Act offences are generally considered to be less serious than other Rent Repayment Order offences as the punishment for failure to comply with section 95(1) is a fine rather than imprisonment.

61. We then considered where this particular case fell on the scale of section 95(1) offences and found it to be at the less serious end. The Respondent failed to take sufficient steps to inform himself of the regulatory requirements associated with letting property in Durham and was unaware of the Scheme. However, the Respondent was an 'accidental' landlord, who became such at the approach of the Applicant in 2017, when he was trying to sell the Property. He owned no other rental properties and had sold this Property once the Applicant had vacated. The requirement for a Selective Licence did not occur until the Applicant had been a tenant in the Property for 5 years. As soon as he became aware of the requirement for a Licence, he applied for one and it was granted based on papers only, with no works required, other than updating the electrical safety certificate. The failure to licence was inadvertent, not deliberate. Text messages between the parties demonstrated that the Respondent had been responsive to disrepair concerns raised by the Applicant.

When she had complained, in 2022, of an outdated and cold bathroom, he had arranged for a new bathroom to be fitted. Whilst it took longer than expected, the Applicant was not left without the use of a working bathroom at any time. Works were carried out to remedy a roof leak which had caused some damp and subsequent mould in the main bedroom. A new radiator and gas fire, (the latter supplied by the Applicant) were installed by contractors on behalf of the Respondent. Plastering works were carried out to the Property although there is a dispute as to whether this was in October 2022 or early in 2023.

62. Whilst the Property had some issues regarding damp, and minor disrepair regarding coping stones, a piece of rotten wood on the gate to the rear of the Property and some disrepair to the rendering, we did not find it to have been in such significant disrepair as claimed by the Applicant's representative. The Respondent had a survey of the Property before he sold it, and this did not reveal any structural disrepair. The Applicant's representative suggested that it was unfit for human habitation under the provisions of section 9A Landlord and Tenant Act 1985 as amended by the Homes (Fitness for Human Habitation) Act 2018 due to the damp and mould. We saw photos of the items of disrepair and regard them as minor. We did not consider the Property to have been unfit for human habitation. At no time did the Applicant contact the Council regarding the condition of the Property which would have allowed them to inspect the Property, and if concerned regarding its fitness for habitation or the presence of Category 1 or 2 hazards, could have served appropriate notices under Part 1 Housing Act 2004. We found that the Property was in reasonably good condition. We saw no evidence that the bathroom had been in disrepair and its replacement is an example of the Respondent going above and beyond his statutory obligations (albeit as investment into his Property).

63. Having regard to all the circumstances, we did not consider that the Applicant had been exposed to greater risks or deprived of practical protections which she would have obtained if the Respondent had applied for a licence. When asked how she had been disadvantaged by the lack of the licence, the Applicant said her reason for the application for a Rent Repayment Order one year after the relevant period was for 'justice for how the landlord had treated her in the last 2 years of the tenancy'. We did not consider that she has been treated in any other than a reasonable manner. She said that if there had been a selective licence in place, then there would have been a structure to understand the allocation of responsibilities for repairs. However, she would have obtained that structure by requesting a written tenancy agreement. She did not request one during her tenancy and, in our view, was dismissive of the one the Respondent produced on 24 March 2023, referring to it as 'a generic one off the internet', although she signed it.

64. *Newell v Abbott* involved the same offence by a landlord, a solicitor, of one property comprising two flats on the upper stories of a building with a restaurant on the ground floor. The property was generally of a good standard. He had, inadvertently, not obtained a selective licence as required for a dwelling occupied by two or more people sharing facilities but living in separate households. The dwelling was unlicensed from 2016 to 2022 when he sold it. When learning of the Council's attempts to contact him, his own efforts at communication were minimal. The Upper Tribunal determined that 60% of the rent received was an appropriate order but commented that had the offence been committed for a much shorter period, the penalty imposed would have been 50%.

65. We distinguished the current case from *Newell v Abbott* for the following reasons:

    i. the licence related to a single tenancy of a house wholly occupied by one tenant rather than to a dwelling comprising people sharing facilities but living in separate households, where, in our view the risks to tenant's health and safety are greater;

    ii. the lack of licence was for a much shorter period, namely 1 April 2021 to 23 March 2023;

    iii. the Respondent contacted the Council as soon as they had sent him an email regarding the matter;

    iv. the Respondent sought a licence within a couple of days of having spoken to the Council and sought to regularize the position by providing a written tenancy agreement;

    v. no works were required to be completed prior to the grant of a licence apart from the provision of an up-to-date electrical safety certificate;

    vi. the Respondent was not legally qualified and therefore less equipped than a solicitor to keep himself informed of his responsibilities and the relevant regulatory environment (although this does not constitute the defence of 'reasonable excuse').

66. We reviewed the caselaw on quantum of Rent Repayment Orders detailed in *Newall v Abbott*. We had regard to *Hallett v Parker [2022] UKUT 165 (LC)*. Whilst it is a slightly older case, we find it to be a better comparator than *Newell v Abbott*. It involved the landlord of a single property who had not been alerted by his letting agent that, on the first occasion of letting the property to a group of tenants who did not form a single household, a licence under a selective licensing scheme was required The property condition was fairly good and the landlord applied for and was granted a licence as soon as he became aware that one was required with the result that the property was unlicensed for approximately 6 months. The Upper Tribunal awarded a Rent Repayment Order of approximately 25% of the rent paid.

67. We distinguished the current case from both *Hallett v Parker* and *Newell v Abbott* on the basis that the subject Property is not an HMO and that the Scheme post-dated the commencement of the tenancy by some 5 years. We consider failing to control or manage a house let to a single tenant within a selective licencing area without a licence, to be less serious than licensing offences relating to HMOs, which involve the use of shared amenities, particularly where such failure has not resulted in any increase in risk of harm to the Applicant. We also considered that a failure by an accidental landlord to keep abreast of licensing obligations during an established tenancy to be less serious than accidental non-compliance when entering into a new letting.

68. We did not consider the Respondent to be a bad landlord, but rather an accidental and well-intentioned landlord. We were mindful that a Rent Repayment Order is not intended to be a windfall for a tenant who has lived in an unlicensed, but otherwise perfectly satisfactory property. Neither is a Rent Repayment Order to be regarded as damages for alleged breaches of a landlord's repairing obligation, as they can be addressed by a claim

in the courts for housing disrepair. The power to make a Rent Repayment Order should be exercised with the objective of deterring those who exploit their tenants by renting out substandard, overcrowded or dangerous accommodation.

69. Having regard to the matters mentioned in paragraphs 60-68 above, we considered that an award of 25% of the rent paid in the relevant period reflected the seriousness of the offence in this case and is the starting point before we consider any adjustments for section 44. This amounts to £1176.

*Adjustments for section 44*

*Conduct*

70. As stated by Deputy Chamber President Martin Rodger QC in *Newell v Abbott [2024]* at paragraph 61-

> "*When Parliament enacted Part 2 of the 2016 Act, it cannot have intended tribunals to conduct an audit of the occasional defaults and inconsequential lapses which are typical of most landlord and tenant relationships. The purpose of rent repayment orders is to punish and deter criminal behaviour. They are a blunt instrument, not susceptible to fine tuning to take account of relatively trivial matters. Yet, increasingly, the evidence in rent repayment cases, (especially those prepared with professional or semi- professional assistance), has come to focus disproportionately on allegations of misconduct. Tribunals should not feel that they are required to treat every such allegation with equal seriousness, or to make findings of fact on them all. The focus should be on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two.*"

<u>The Applicant</u>

71. The Applicant admitted to having caused some damage to the Property which she remedied before she vacated. She had paid her rent throughout the tenancy period, as she was required to do. We found that there was no reason to make an adjustment for the conduct of the Applicant.

<u>The Respondent</u>

72. We considered the Respondent's alleged bad conduct. There was no written tenancy agreement until March 2023. Although it is good practice to have one, there is no general obligation to do so. Oral tenancies are common particularly amongst friends and acquaintances and the Applicant confirmed in evidence that she had never asked for one.

73. The Property had damp in some rooms and there were some minor repair issues outstanding. The Respondent had carried out repairs during the tenancy, involving contractors and had replaced an outdated bathroom at the Applicant's request.

74. There was a dispute as to the cause of the two leaks in the bathroom, but we did not have evidence before us to determine the matter one way or the other and we took no account of it.

75. As late as 24 March 2023, the texts showed a friendly relationship between the parties. The Applicant did not indicate that she wished to leave the Property until 13 May 2023.

76. We preferred the Respondent's evidence regarding the allegations made regarding his conduct as we found the Applicant to be less credible. We found that the Applicant had placed a gloss on the Respondent's behaviour when alleging that he had acted in an intimidatory fashion and in breach of her right to quiet enjoyment and her statements were made without consideration of the context. The allegations were not corroborated by the documentary evidence she provided. The Applicant relied almost entirely on events which occurred after the relationship had (as agreed) broken down in seeking to cast the Respondent as a rogue landlord throughout the period of the tenancy and, in particular, during the period of the offence. We preferred the evidence relating to events during the period of the offence which included WhatsApp messages between the parties showing that the Respondent was trying to deal with disrepair issues in a timely manner rather than breaching the Applicant's rights to quiet enjoyment and which contained 'kisses' and 'LOLs'.

77. The Respondent's explanations in his oral evidence as to the alleged intimidatory incidents seemed eminently reasonable and plausible and we preferred his evidence to the Applicant's. For example, we accepted the Respondent's explanation that as the Applicant had a partner at the house and dogs, rather than interrupt them, the Respondent would ask the Applicant to come outside the house to speak to him. This seemed a perfectly reasonable approach.

78. The Applicant's oral evidence regarding the incident in the car on 1 March 2023 was that the Respondent had raised his voice and it was like 'my dad having a go at me'. However, she continued that 'his presence was *almost* intimidating' (our emphasis) and there was never a 'threat'. We therefore did not find that his behaviour was intimidatory.

79. The Respondent had been advised by the Council of the need to hand deliver a section 21 Notice. He had attempted to do so on 28 June 2023, but the Applicant was not at home. When driving away, he saw the Applicant return home and therefore turned round and followed her home to hand deliver the Notice. He therefore did follow her home but for a valid reason.

80. We viewed the Ring video evidence of the above incident although could not hear the conversation due to poor sound quality. We were conscious that this was only a short clip of the incident. However, from the clip we saw, we did not see intimidatory behaviour.

81. We were conscious of the Applicant's profession and, whilst accepting that the alleged incidents occurred outside of work, find it unlikely that an experienced officer as she was, would find discussions regarding the condition of her house with a landlord whom she had known in a personal capacity from being a child and who was using a raised voice to be intimidating or harassment.

82. Even if we had found the alleged intimidatory conduct by the Respondent proven, with the exception of the incident on 1 March 2023, the conduct was after the date of the relevant period for which the Rent Repayment Order is sought, namely 1 April 2022 to 23 March 2023 and therefore we would have attached less weight to it. Both parties confirmed that the relationship did not breakdown until approximately March 2023, the end of the relevant period with which we are concerned, and this is evidenced by the text correspondence up to this date.

83. The alleged contact 'multiple times a day' by the Respondent regarding the tape over the spotlight comprised 3 texts over 2 days including the day on which the electrician was due to attend. We did not find this to be 'multiple times a day' nor did we find it to be a breach of quiet enjoyment and this is certainly not reflected in the Applicant's response text to the Respondent after receiving the 3 texts which was friendly.

84. Regarding the damp in the dining room which the Respondent considered may be caused by an extension built by the neighbours, we did not accept that he asked the Applicant to 'sort it out' with the neighbours. We accepted the Applicant's oral evidence that as the Respondent was working away, he had asked her to have a discussion with the neighbours but accept the Respondent's oral evidence that this was within the context of an initial discussion regarding the building of the extension so that the conversation could be reported back to him on his return. In any event, no discussion took place as the property was vacant.

85. There was a dispute between the parties as to whether the Respondent gave notice to the Applicant before contractors came to the house. From the text correspondence, there is evidence that the Respondent did give notice on several occasions and worked around the Applicant's shift patterns of which he was aware. There is a dispute regarding the gardeners on 28 May 2023, but we did not determine the issue as we were unable to do so on the evidence available to us. Further, even if proven, this incident was after the relevant period, and we would have attached little weight to it.

86. We did not find the Respondent's complaint letter to the Applicant's employer to be malicious or vexatious even though it was not upheld by her employer. Whilst a complaint to an employer regarding the condition of an employee's house was ill judged and inappropriate, it was not inappropriate to complain of alleged threats and misuse of an employee's position if that was a genuinely held belief. The Applicant did not provide evidence to show that the letter was malicious or vexatious. Further, the letter was written approximately 31 July 2023, which was after the relevant period.

87. We acknowledged that the reference to alleged breaches by the Respondent of the Selective Licensing Conditions was an attempt to illustrate the harm or disadvantage to the Applicant of the failure by the Respondent to licence the Property. However, for the reasons set out throughout this decision, we did not accept the alleged harm, as the Applicant had other avenues available to her, including asking for a written tenancy agreement if she was unsure of the respective obligations, reporting any concerns regarding the condition of the Property to the Council and taking legal action in the County Court regarding any alleged disrepair or lack of maintenance of the Property.

88. Whilst we accepted that the eviction notice was unenforceable as it was not in the correct format, the 'eviction letter' arose as a result of the Applicant saying that she wished to leave the Property and it was therefore not a retaliatory or malicious eviction by the Respondent.

89. In respect of mitigation regarding the Respondent's conduct, we considered that there was no likelihood of the Respondent recommitting the offence and we had received no evidence that the Respondent had gained financially from committing the offence. We considered it doubtful that this decision would deter any other landlords who were ignorant of a selective licensing scheme from committing any offence. We found against the arguments averred by the Applicant's representative 'to punish' the Respondent.

90. We were mindful of the late contact by the Council regarding the introduction of the Scheme and its apology for that late contact. Whilst not legally required, the Council had adopted an approach of contacting all landlords of the introduction of the Scheme and yet due to the backlog, did not approach the landlord until approximately one month before it started to enforce the requirements of the Scheme. We were provided with no evidence as to how the Council had advertised the commencement of the Scheme to existing landlords and were mindful that the tenancy pre-dated the Scheme by some 5 years.

91. We considered that a reduction from the starting figure of 25% to 20% represented the mitigation factors.

*Financial*

92. The Respondent had not provided any written evidence as to his financial circumstances or medical information. He provided oral evidence that he had worked in the construction business for the last 30 years and was now a self-employed fabricator and forklift truck driver. The Property was intended to be his pension. However, he had been on sick leave since February 2025. As he was self-employed, he was not in receipt of sick pay. As his wife worked, he was not entitled to state benefits. He sold the Property in 2024, and with the equity of £45,000, had paid off debts and had £12,000 remaining. He had no other savings. He had sold his previous home and had bought another one of the same value, namely £145,000, with no mortgage.

*93.* We did not consider that there needed to be any adjustment to the starting figure for reasons of finance.

*Conviction*

94. The Respondent had not been convicted of any housing related offences or received any financial penalties. There is no reason to adjust the proposed Rent Repayment Order figure

*Conclusion*

95. We determined that the appropriate level for the Rent Repayment Order was £941.

96. By Section 47 of the 2016 Act, a Rent Repayment Order is recoverable as a debt. If the Respondent does not make the payment to the Applicant in the above amounts within 28 days of the date of this decision, or fails to come to an arrangement for payment of the said amounts which is reasonable and agreeable to the Applicant, then she can recover the amount in the County Court.

**Reimbursement of fees**

97. As the Applicant succeeded in her application, it is appropriate to order that the Respondent refund to her the Tribunal fees that the Applicant has paid, totalling £330.

**Costs**

98. No application for costs was made by either party and we make no such order.

**Appeal**

99. 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 and must state the grounds on which they intend to rely in the appeal.

.....
Judge T N Jackson