FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/OOBG/HMF/2024/0677**
Property	**:**	**43 Parnell Road, London, E3 2RS**
Applicants	**:**	**(1) Ms Carla Comida** **(2) Mr Aldo Mucelli** **(3) Mr Marcello Silva**
Representative	**:**	**Mr Williams, London Borough of Tower Hamlets**
Respondent	**:**	**(1) Orb Habitat Limited** **(2) Mohammed Shair Alom**
Representative	**:**	**Mr Cardoso, Director of the First Respondent**
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** **Ms S Coughlin MCIEH**
Date of hearing	**:**	**31 July 2025**
Date of decision	**:**	**18 August 2025**

DECISION

Introduction

1. Unless stated otherwise, the references in square brackets are to the pages in the Applicants' [AB] and Respondent's [RB] hearing bundles respectively.

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 43 Parnell Road, London, E3 2RS ("the property") in the London Borough of Tower Hamlets.

3. The property is a five-bedroom maisonette within a purpose built block with a shared kitchen, two bathrooms (one with a shower upstairs and a small toilet downstairs), and no living room. The maisonette also had a garden, but access was only possible through one of the ground-floor bedrooms. The two downstairs bedrooms were originally a living room. A dividing wall had been installed, converting the space into two separate bedrooms.

4. The First Respondent was the landlord of Applicants pursuant to the "licence" agreements variously granted to them below. It should be noted that the Respondent uses the trading name of Euro Lettings also. The Second Respondent was the leaseholder of the flat and was not known to the First Respondent.

5. The Applicants were each granted the licence agreements by the First Respondent individually. These agreements entitled them to an individual private room, and access to the shared bathrooms and kitchen facilities. The Applicants' occupation commenced on the following dates:

   a. Carla Comida: 11 October 2022 for a term until 10 April 2023 at a monthly rent of £780. Thereafter, she remained in occupation on a monthly statutory periodic basis until she vacated on 2 March 2024;

   b. Aldo Mucelli: 13 September 2022 for a term until 13 February 2023 at a monthly rent of £650. He vacated on 9 March 2024;

   c. Marcello Silva: 3 May 2022 for a term until 4 December 2023 at a monthly rent of £693. Thereafter, he remained in occupation on a monthly statutory periodic basis until he vacated on 6 July 2024;

6. The calculations of the amounts claimed by each of the Applicants for a RRO is set out at [AB/98-100].

7. By an application dated 10 September 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 30 July 2025. The Applicants were represented by Mr Williams from the London Borough of Tower Hamlets. The First Respondent was represented by Mr Cardoso who is a Director of the company. The Second Respondent did not attend. The Tribunal decided that the best way to conduct the hearing was to adopt an inquisitorial approach.

12. Miss Comida said that the shower room continually suffered from mould despite it being repainted more than 3 times. The only source of ventilation was a window. She also said that the boiler had broken down during the Christmas holiday in 2023, when it began leaking water onto electric cables, leaving the Applicants without hot water, heating, or gas to cook [AB/138]. Apparently, it was repaired the following day after she reported it to Orb Habitat.

13. Other matters she complained of was the Orb Habitat's failure to provide the occupiers with a copy of the gas safety certificate or to protect the deposits paid by them. These assertions were not challenged by the Company.

14. In addition, she directed the Tribunal to the photographic evidence about the poor condition of the communal staircase carpet [AB/143-144] throughout her occupation. Mr Baduge, the witness for Orb Habitat who still resides in the property, confirmed the poor condition of the carpet was correct, that it was in a similar condition when he moved in in 2022 but it had in fact worsened. Curiously, Mr Cardoso said that Mr Baduge was wrong about the condition of the carpet despite the compelling photographic evidence to the contrary. Mr Cardoso asserted that the carpet "did the job", did not require changing and furthermore was caused by the Applicants themselves.

15. Other complaints made by Miss Comida included the missing light switch outside the bathroom [AB/148] and the presence of bed bugs for a period of 3-4 months, although she accepted this was successfully treated by the company. The washing machine had leaked and caught fire [AB/173] but she could not remember when. It had been repaired by the Respondent a couple of days later.

16. She also complained to Orb Habitat that Mr Baduge had committed various acts of noise nuisance, and she had to contact the police when he had an

altercation with one of his visitors. She asserted that nothing was done by the company to address these problems. Mr Baduge accepted that the altercation had taken place but denied the allegations of noise nuisance on the basis that the noise insulation in the property is not good.

17. Mr Silva's evidence was largely consistent with that of Miss Comida's in relation to the presence of mould in the shower room and the boiler and washing machine breaking down.

18. Mr Aldo's first language is not English, and he was unable to read his witness statement. Apparently, it had been translated and prepared in English by his partner.

19. Mr Cardoso confirmed that he in fact lets the property from another firm of agents by the name of "Home to Home" under a written agreement for a term of 2 years. The agreement permits him to sublet the property. After paying for "maintenance" he retains a portion of the rent and then pays approximately £2,300 per month to Home to Home.

20. He also confirmed that he has rented the property under this arrangement from 2022, when it was already tenanted. He said that he had inherited the property without an HMO licence from the previous agent [RB/2]. He submitted that this was merely a "bureaucratic" problem and that a RRO should not be made in favour of the Applicants.

21. When asked what maintenance [AB/32/7.3] was carried out by the company, Mr Cardoso said it amounted to an inspection of the common areas "when needed". The £70 one off charge for flat rate bill [AB/52-52] covered the cost of maintenance, cleaning, utility bills and internet. However, when asked by the Tribunal he was unable to say exactly when the cleaning had been carried out, only that it had been done "now and then".

Decision

Admitted Facts/Findings

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

    (a) The Applicants were tenants of the property. This is proved by their written agreements [AB/28-53] and confirmed in their witness statements [AB/101-105]. For the avoidance of doubt, the Tribunal found that the "licence" agreements were tenancy agreements, as a matter of law, because they had all of the features of a tenancy agreement. Namely, exclusive possession, a defined term and the payment of rent[1]

[1] see ***Street v Mountford*** [1985] AC 809

(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 property thus met the HMO test in the Housing Act 2004 s254(2). This is proved by their witness statements [AB/101-105].

(c) The property required licensing. Tower Hamlets operated an Additional Licensing regime, which applied to properties with at least three occupants from two or more households [AB/23] from 1 April 2024. This applied to the property throughout the maximum 12-month period (sane for Miss comida) in respect of which the property was unlicensed, as shown by RRO calculations [AB/98-100].

(d) The property did not have the required licence. This was admitted by the First Respondent. It did not apply for a licence until 9 January 2024.

(e) The First Respondent was in control of, and/or managing, the property within the meaning of the Housing Act 2004 s72(1). The First Respondent is named as the landlord on each of the Applicants' tenancy agreements [AB/28-53] and, therefore, entitled to receive rent from them. The Applicants did pay the rent to the Respondent [AB/56-97].

23. The Tribunal was, therefore, satisfied beyond reasonable doubt that the First Respondent was in control of/managing an unlicensed HMO during the relevant period. The First Respondent was landlord under a Rent to Rent agreement with another company. The Second Respondent, the leaseholder of the property, is not the landlord of the property nor was there any evidence that he was in receipt of any rent from the Applicants

24. 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 First Respondent did not have a temporary exemption notice.

(b) The First Respondent had not applied for a licence until after the Applicants had vacated their respective premises.

(c) The First Respondent has provided no evidence of a reasonable excuse for not having a licence other than to say it was an "administrative oversight".

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

26. For the relevant periods, the Applicants each paid rent as follows:

(a) Carla Comida paid £9,209 [AB/98];

(b) Marcelo Silva paid £8,316 [AB/99];
(c) Aldo Mucelli paid £7,800 [AB/100];

This is a combined total of £25,325.

27. 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.

28. 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).

29. 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.

30. 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.

31. 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*".

32. 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.

33. 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.

34. 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.

35. 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 in the 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.

36. As to (i) above, the Tribunal has already set these out at paragraph 16 above.

37. As to the deduction for the cost of utilities, the Tribunal had no evidence of the actual cost incurred by the Respondent. This formed part of the £70 flat rate bill charge levied by the Respondent. However, there was no evidence before the Tribunal to enable it to make even an estimated deduction for the cost of utility bills. To do so would be a matter of complete speculation and any figure would be entirely arbitrary. Therefore, the Tribunal was unable to make any deduction for utility bills.

38. As to (ii) above, the Tribunal attached weight to the following matters:

(a) the Tribunal found that the property suffered from a significant loss of amenity during the Applicants' occupation by reason of the recurrent mould problems in shower room, pest infestation and the condition of the stair carpet. The Tribunal considered this to be a

major tripping hazard on the means of escape for the first floor tenants and it is a specific requirement of the Management of HMO's (England) Regulations 2006 that stair coverings in common parts are safely fixed and kept in good repair - Regulation 7(2)(c). Although Mr Cardoso claimed to be aware of the regulations he considered that the carpet only needed cleaning.

(b) the Tribunal found that the property suffered from potential fire hazards caused by the wiring defects to washing machine and boiler. The loose cables and taped repair to both shown in the photographic evidence cannot be considered to be an acceptable or permanent repair. There was no fire door to the kitchen.

(c) the loss of amenity has to be considered as being greater given the property was occupied by 5 tenants.

(d) the Tribunal was satisfied that the First Respondent is a professional landlord. It had been operating since 2014/15. On its own case, it operated a portfolio of approximately 30 properties, all of which are HMO's. Given the Tribunal's finding above that the "licence" agreements were in fact tenancies, it was satisfied that their purported use by the First Respondent was an attempt to circumvent the statutory obligation to protect the deposits paid by the Applicant, the provision of the prescribed information, an Energy Performance Certificate, a current gas safety certificate, a copy of the property licence and the How to Rent Guide.

(e) As a professional and experienced landlord, the tribunal was satisfied that it knew that a licence was required but did not make enquiries from Home to Home nor ask for copy of the licence when it acquired the property despite its knowledge of the licensing scheme operated by the Tower Hamlets. Furthermore, the property remained unlicensed for the entire period of the Applicants' occupation.

39. Taking all of these considerations in account in relation to the First Respondent's conduct, the Tribunal was satisfied that it bore a high level of culpability. Therefore, this should be reflected in an award of 70% for the amounts claimed by each of the Applicants.

40. Accordingly, the RRO made in respect of each Applicant is:

Ms Comida is £6,446,30
Mr Mucelli is £5,821.20
Mr Silva is £5,087. It was agreed that deposit did not cover whole of last month's rent so a deduction of £373 (£693-320) from total rent paid was made.

41. The amounts of the RRO's are payable by the First Respondent 28 days from the date this decision is issued to the parties. The Tribunal makes no order against the Second Respondent, Mr Mohammed Shair Alom

Name: Tribunal Judge Mohabir **Date:** 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).