



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

Case reference : **LON/00AM/HMF/2024/0672**

Property : **228 Wigan House, Warwick Grove,
London, E5 9JB**

Applicants : **Daniel Jay Bradbury
Benjamin Zhi You Chan
Nusrat Khan Juty**

Representative : **Justice for Tenants**

Respondent : **Dogan Bolat**

Representative : **Mr Carr of counsel**

Type of application : **Application for a rent repayment order
by tenants**
Sections 40, 41, 43, & 44 of the Housing and
Planning Act 2016

**Tribunal
member(s)** : **Mr O Dowty MRICS
Mr A Fonka FCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **1 September 2025**

DECISION

Decisions of the Tribunal

1. The Tribunal finds that the respondent committed an offence under section 72(1) of the Housing Act 2004 without reasonable excuse, and committed that offence during the period 29 January 2022 to 30 September 2023.
2. The Tribunal makes a Rent Repayment Order in favour of the applicants in the sum of £9,400.

3. The Tribunal further orders the respondent to reimburse to the applicants their hearing and application fees, a total of £330.
4. The reasons for the Tribunal's decisions are given below.

Background

5. The application is made jointly by Daniel Jay Bradbury, Benjamin Zhi You Chan and Nusrat Khan Juty who occupied 228 Wigan House, Warwick Grove, London, E5 9JB – a flat, in the London Borough of Hackney, in a local authority estate.
6. It was common ground that the property was subject to an 'additional HMO licensing scheme' imposed by Hackney Council, and that the property required a licence under that scheme from the start of the tenants' occupation on 29 January 2022 until the expiry of that licensing scheme on 30 September 2023. The tenants initially paid a rent of £1,900 per calendar month (pcm), which rose to £2,000pcm when they signed a new tenancy agreement for a fixed term of 1 year commencing on 28 February 2023. The tenants remained in the property until the end of that tenancy.
7. The applicants applied to this Tribunal for a rent repayment order (RRO), the Tribunal receiving that application on 26 September 2024. That application sought an RRO to the amount of £23,500, being the amount paid between 30 September 2022 and 29 September 2023. The respondent agrees that the application was made in time and that the maximum amount of £23,500 for the period is correct.
8. The Tribunal issued directions on 17 January 2025 (which were subsequently amended on 15 April 2025), and a face-to-face hearing was arranged in this matter. We held that hearing on 12 June 2025, which was attended by all three applicants, their representative Mr Leacock of Justice for Tenants, the respondent, his letting agents Ms Eker and Mr Yilmaz of Rent-a-Home, his counsel Mr Carr and a Turkish interpreter.

The alleged offence and issues in dispute

9. The respondent has not been convicted of an offence. Instead, the applicants allege that he committed the offence of being a person controlling or managing an HMO which was required to be licensed under Part 2 of the Housing Act 2004 but was not so licensed, contrary to Section 72(1) of that Act.
10. There was no dispute between the parties as to the sum of rent paid, that the property should have been licensed, that it was not so licensed, nor that the respondent was the landlord (which it was accepted he was). The issues we were to determine were:

- whether the landlord was a person in control or a person managing the premises
- whether in any case he had a reasonable excuse defence, either in whole or part
- the quantum of any award if the Tribunal had jurisdiction to make a Rent Repayment Order

The hearing

11. We heard a lot of witness evidence on the day, from all 3 tenants, the landlord, and both Ms Eker and Mr Yilmaz who work for the landlord's managing agent; and indeed so much evidence was given that it was necessary for us to seek permission of our security staff to carry on with the hearing so that it might be heard in one day; even ignoring the fact there were further legal submissions the parties' representatives indicated they were happy for us to consider largely on the basis of the arguments made in writing. It was therefore also impossible for us as a panel to discuss the matter sufficiently to reach our decision on the day, and instead it was necessary for us to do so on a later occasion without the parties.
12. No set of reasons can ever be a verbatim record of proceedings, and certainly these reasons would be too lengthy were we to record word for word what every witness had said or what they were asked. Indeed, having reviewed my notes in this matter – they extend to 46 pages in length. Much of which, in truth, was not particularly controversial between the parties anyway.
13. The tenants' evidence was all in extremely similar terms and concerned almost exclusively the condition of the property and the continual issues they had faced with the letting agency appointed by the landlord, relevant to the quantum of our award rather than the offence itself. There was damp, black spot mould and some pooling of water in the property (of which photos were offered in evidence) that had not been fixed nor even investigated properly. The landlord's agent had blamed the tenants for it, but it wasn't their fault. He had said it was because they had dried clothes in the property, but "95%" of them had only been dried in a small and limited area and the damp extended to far away parts of the flat. The agent had sent an email about how to prevent it from happening again. They had followed those steps and it had no effect. In fact, there were issues with the windows and the tiled splashback for the shower was lower than was apparently required by some of standard – but in any case it was not the tenant's fault.
14. The tenants had offered to pay for half of the demoulding, but this was purely an attempt to be diplomatic and have the matter dealt with at all, not an acceptance of responsibility. If anything, they thought the mould might have been painted over before they moved in (of which a photograph was provided which apparently showed mould under the top

layer of paint; though in truth it wasn't really clear enough to be certain). They had had to use chemical sprays and they were concerned as to the damage to their health from that.

15. One of the tenants, Ms Juty, was asked what she thought the landlord (or their managing agent) should have done about the damp – given there didn't seem to be any obvious solution. She answered that she wasn't an expert and wasn't sure – but that it should at least have been investigated and it wasn't.
16. The tenants told us that there were issues with the windows (other than the damp and mould). One did not close fully and was held by a chain and the opening mechanism of others had become defective as time went on. The landlord's agent had taken months to arrange repairs and only did so after they posted a negative online review.
17. In addition, the drum for the washing machine had been broken at one point. The landlord's managing agent had sought to blame the tenants for it, before then simply caving in on that when offered any resistance. In the meantime, the tenants had been without a washing machine. Mr Carr put it to one of the tenants, Mr Bradbury, that it was the tenants who had damaged it – which Mr Bradbury denied.
18. We found all of the tenants' evidence entirely credible and we accept the truthfulness of what they said in full. They carried themselves as any inexperienced witnesses would and were clearly, we find, trying to give us the right answers. Their evidence was framed by the humdrum details of daily life that lend stories credibility as they are difficult to invent; and we particularly enjoyed Ms Juty's description of the 'Himalayan salt lamp' which had been damaged by the damp in her room, its method of purchase and the unlikeliness of it actually being made of salt given where it was purchased. Though in fact, Ms Juty might actually be wrong about the last point. It is notable that lamp was particularly affected by the damp compared with other items of furniture, as salt and damp often run together – and salt staining is a well-known indicator of potential damp issues.
19. The landlord also gave evidence, through a Turkish interpreter, and in truth we found practically all of that evidence credible as well for similar reasons. He had bought the property under the right to buy scheme and decided to let it out. To do so, he spoke to one of his friends and he recommended the landlord's current letting agents Rent-a-Home. Mr Yilmaz of Rent-a-Home had told him he would handle everything. The landlord did not know the property required a licence until this present matter began. Whenever the landlord himself had been made aware of a problem he had fixed it at the first opportunity, including the washing machine complained of by the tenants. As regards the damp, he had lived at the property with his family for a number of years prior to the current tenants moving in and this was the first time the property had experienced any damp issues. He had instructed the letting agent to essentially run the property, and trusted him to do the job. Matters

concerning the letting of the property were, he considered, entirely the letting agent's problem.

20. The only exception to the credibility of the landlord's evidence was the evidence about the window the tenants had complained of which did not shut properly and was held on a chain. The landlord averred it did close properly – but we saw a photo of it (at page 181 of the respondent's bundle) and it clearly didn't. The window is a double glazed, apparently a UPVc window. It was held 'closed' by a metal security chain. Firstly, we are an expert Tribunal and there is no way that window could be sufficiently closed by that sort of mechanism given how double glazed windows of that type work. Secondly, we pointed out the photograph showed the chain clearly had significant slack available (meaning it was not exerting any perceivable pressure on the window at all) – and the landlord told us the photo showed the window in the 'closed' position. Were that chain holding the window properly closed, the slack that was clearly visible in the photographs simply couldn't be there.

The evidence of the letting agents

21. It is rare, in proceedings before us, that it is necessary to caution witnesses practically at all – let alone ones who are not parties to the case. However, in this case, counsel for the respondent agreed with the tribunal that it was the right thing to do. That was because the reasonable excuse defence offered was that it was not the landlord's responsibility to licence the property, and instead it was the managing agent who had erred. Both Mr Yilmaz and Ms Eker confirmed, in response to our cautioning them, that they were happy to continue to give evidence and understood the potential ramifications if a criminal prosecution were brought against them.
22. The evidence of Ms Eker was brief and much of it was not directly relevant to the matter at hand (though was helpful in our understanding of the background). In essence, Ms Eker's evidence was that she was a director of the letting agency used by the landlord, and was responsible for applying for licences for their clients. Ms Eker had been responsible, she said, for applying for the licence for the property, and she had not done so. It had been an oversight as her husband, who had previously been in charge of the letting agency, had passed away around the time of instruction and there were knock-on effects from that.
23. The evidence of Mr Yilmaz, a member of the letting agency's staff who did most if not all of the day-to-day work on behalf of the landlord, took rather longer. Mr Yilmaz's evidence was that he had been approached by the landlord and had told the landlord the property required a licence and that he would handle everything. He provided a written contract and advised the landlord to seek legal advice concerning it.

24. That contract included clause **2.2** (on page 183 of the respondent's bundle), which says, under the heading **LANDLORD'S RESPONSIBILITIES**:

2.2 Legal Compliance Ensuring the property is legally lettable (safe and habitable) Providing EPC, Gas Safety Certificate, and EICR Ensuring fire safety (smoke alarms, carbon monoxide detectors, etc.) Complying with if applicable Selective, Additional HMO, HMO (Mandatory) licensing if applicable

25. As a matter of indisputable, one would've thought, fact (and it is certainly a finding of fact we make) that clause says in black and white that the landlord is responsible for licensing the property. Indeed, when it was translated to the landlord (during his evidence), the landlord agreed that was what it meant – but that that was the first he was hearing of that responsibility.
26. However, for reasons we do not understand, Mr Yilmaz had a different interpretation. The reason the contract said it was the landlord's responsibility was that, in Mr Yilmaz's own words, if the contract said it was the letting agent's responsibility he wouldn't be able to charge the landlord money for applying for it – which he might, or might not, do; depending on whether he thought there was commercial gain to him from either option. In this case, Mr Yilmaz had not actually had to decide whether to charge the landlord money or not, as the licence had simply been forgotten about.
27. We asked if it was Mr Yilmaz's evidence that he conducted his business by entering into written contracts that he then varied orally at whim – which he confirmed.
28. In terms of why the letting agent had not applied for the licence, it was Mr Yilmaz (and in fact Ms Eker's before him) evidence that the firm had been run by Ms Eker's late husband Mr Zeka Moustafa who had passed away around the time Rent-a-Home were instructed by the landlord. It had transpired that lots of things like the company bank account were registered in his name personally, and Mr Yilmaz and Ms Eker had had to focus on getting control of the bank account and keeping the company running. There were, as Mr Yilmaz rather unfortunately put it, "more important things" to worry about than making sure his clients' statutory compliance was taken care of – specifically, keeping the business running.
29. We were also told that housing licences were very difficult to apply for. We are an expert Tribunal, and not only do we not agree – it was simply an astonishing thing to hear from a professional letting agent who told us he was a member of the Association of Residential Letting Agents (ARLA). We were also told, somewhat more credibly by Ms Eker before him, that Hackney Council often take a considerable time to respond to applications and that might explain why the letting agent had forgotten to remember, as it were, to apply for the licence for such a long period.

30. As regards the disrepairs, Mr Yilmaz was of the view the damp and mould was the tenant's fault – and that it had not been an issue before or after they had been there. Mr Yilmaz said that they had replaced the washing machine without making a fuss – however when it was pointed out that clashed with the documentary evidence of an email Rent-a-Home had sent the tenants (at page 132 of the applicants' bundle – which claimed that drum breakage was “not related to wear and tear”), he appeared to resile from that and said that email had been sent in error.
31. As regards the windows, Mr Yilmaz said, they had a complicated opening mechanism – being of the type, we understand, that opens in the traditional sense if used in one way, and pivots if used in another. Mr Yilmaz appeared to be saying the damage to the mechanisms was therefore the fault of the tenants; however, he also said that it would not be immediately obvious to the tenants how to use the windows, that they had not been instructed how to use them and that the damage was consistent with typical use. When we put it to him that he appeared to be describing fair wear and tear rather than damage which could fairly be attributed to the tenants he initially disagreed, before changing his mind under further questioning.
32. As counsel for the respondent put it very well at the hearing – this is embarrassing for the witnesses from the letting agency. Our decision was never going to be positive about their performance given it was their own evidence they had simply forgotten to apply for a licence for a property which required one – leaving both themselves and more importantly their client at risk of potential criminal prosecution. We are, as a panel, in fact very reluctant to criticise the people who appear in front of us – and we are grateful for the letting agents having done so when they were under no compulsion to attend or answer questions from the parties and us – but it is in truth incredibly difficult for us to be anything but negative about some of the things we heard from Mr Yilmaz.
33. Mr Yilmaz's evidence was that his clients sign written contracts that say one thing, when in fact it is intended to vary them significantly where there is financial gain in doing so for the letting agent. When there was a threat to the operation of the business itself, the interests of the business were placed above its client's interests – which was in fact offered by Mr Yilmaz as a partial excuse on the basis that was a reasonable thing to do. We are obviously sympathetic to the cause of that, but this is a business with responsibilities and its clients (and their tenants) are real people whose interests need to be taken care of properly. It may not be Mr Yilmaz nor Ms Eker's faults personally, but when looked at as a business why was there apparently no succession planning at all to make sure things could be handled and that clients were taken care of in the (sad - of course) event that Mr Moustafa passed away?
34. It was Mr Carr's submission – who very fairly was doing the best he could for Mr Yilmaz and Ms Eker as far as that was consistent with his overriding duty to the respondent – that the written contract in this case

offered flexibility. However, to our eyes entering into a contract that says one thing and then in fact doing the exact opposite of it goes beyond flexibility and simply creates confusion and poor client care.

35. In addition, it is worth noting that we were told there was a (brief) period of around 5 weeks where the subject property's gas safety certificate had lapsed. This is a minor issue of itself (much as we note the submissions of the parties regarding it) but the explanation we were given as to why that happened was simply that it had been a bit tricky to arrange a convenient time and the person Mr Yilmaz liked to use to do them was on (brief) holiday. And so, as we observed at the hearing, the property went without a legally required document. Ironically, however, Mr Yilmaz might well not be as much to blame as he thinks he is – as his contract again specifically says it's the landlord's responsibility to conduct those tests and not Rent-a-Home.
36. As we have said above, we do not relish criticising the people who appear in front of us – but in this case we have to do so as it is relevant to our consideration of the evidence. This is because Mr Yilmaz's evidence clashed not only with the tenant's evidence, but also his client's.
37. In terms of the clashes with the tenants' evidence – these were in fact minor and limited. We have in any case already said above that we found the tenants' evidence credible and we accept its truthfulness completely. Mr Carr had suggested that it was the tenants' fault the washing machine drum had broken, but in fact Mr Yilmaz seemed to shy away from that a little in evidence and instead focussed on the fact the landlord's agent had fixed the machine and that any messages saying they wouldn't do so were sent in error.
38. In any case, we find as a fact that the tenants are not responsible for having damaged the drum. To do so would involve us making a finding of fact that the tenants used the washing machine in a non-tenantlike manner; they say they did not, the only evidence to say they did is entirely hearsay evidence that an engineer told the respondent's letting agent it was the tenants' fault - and the letting agent nevertheless fixed it, despite having tried to avoid doing so to begin with.
39. The clashes with the landlord's evidence concern what was said when the contract between Rent-a-Home and the landlord was being agreed, and are more significant. First, Mr Yilmaz says that he told the landlord (and the landlord had understood) that the property needed a licence – whilst the landlord says he was not told and did not know that it did. Second, Mr Yilmaz says he advised the landlord to seek legal advice concerning the contract before signing it.
40. As both of those disputes concern simply what was said and what wasn't, we were obviously provided with limited evidence (and no documentary evidence at all). Simply, the landlord says one thing and his agent says another.

41. Our resolution of the first dispute of fact is straightforward – and speaks to the credibility of Mr Yilmaz’s evidence more widely. He was asked, directly, in evidence whether he had told the landlord a licence was needed – he said yes, and that he had told him before the contract was signed. That clashes directly with the content of his own witness statement, which at paragraph 8 say that Rent-a-Home did not discuss it with him. Both of those things simply cannot be true. It is obvious that we therefore prefer the landlord’s credible evidence regarding this dispute of fact.
42. As regards the second, we prefer the evidence of the landlord. The landlord’s evidence was generally credible, save as regards his evidence regarding the window secured by a chain – which he must have known didn’t close properly but told us that it did. Whilst a lot of Mr Yilmaz’s evidence was also credible, there were times when it was not (such as outlined above) and it seemed at points to shift and change as questioning developed. In addition, we do not think it is consistent with the attitude Mr Yilmaz has to legal matters – as displayed openly in his evidence – that he would do something as legalistically thorough as advising a client to seek legal advice before signing his contract of instruction. That is in fact quite an unusual thing for a letting agent to do and we simply don’t think it is credible, particularly in light of the fact the landlord says it didn’t happen. We therefore find as a fact, on the balance of the evidence available to us, that the landlord was not advised to seek legal advice prior to signing the contract.

The damp, mould and water pooling

43. Before moving on, it is worth examining the damp, mould and water pooling (extending to the pooling of water on one of the window cills) at the property in detail. This was complained of by the tenants, and it speaks to the conduct of the landlord in not fixing it. The landlord blames the tenants for the damp on two bases: first, they say they didn’t keep the property warm enough. Second, they hung washing to dry in the property.
44. As regards the first issue, we were invited by Mr Carr for the respondent to take judicial notice of the fact that warm damp air attracts itself to cold walls and stays there. We can do one better than that, in fact, and use our knowledge of how damp ‘works’ as an expert Tribunal; and, with regret, Mr Carr’s characterisation of that process is much too overly simplistic.
45. Damp is caused by all manner of things and to suggest a property might be damp simply because it is cold does not get off the ground. It was the landlord’s case that there is no obvious water entering the property from outside (and indeed no obvious ‘rising’ damp was suggested), and instead the damp is moisture generated within the property. That moisture would be in the property whether it was warm or not – and to that end, it doesn’t really matter to the property as a whole if towels were

dried on radiators as was averred by the respondent (much as the tenants say they weren't anyway). The reason that is inadvisable is because the area immediately around the radiator might be over-exposed to condensation that would otherwise dissipate more widely if towels are left to dry more slowly. More pressingly, given it was the landlord's accusation that the tenants didn't turn the radiators on in the first place, why might this matter?

46. Simply put, the question is not whether the heating was on, or whether the tenants used radiators to speed up the drying of their towels, but whether the tenants created too much condensation or didn't ventilate the property.
47. In any case, Mr Carr submitted to us that the dust on some pipework that is apparently visible in a photograph in the bundle showed that the property had not been heated (which the tenants averred it was – though in a considered manner given the price of electricity at the time). However, Mr Carr also raised with Ms Jury that the temperature readings she had taken showed a consistent temperature of between 15.8 and 17 degrees (on the basis that was too cold). First, we do not agree that those temperatures are too cold, and certainly not so cold as to constitute un-tenantlike use – particularly given they were recorded in a bedroom.
48. Second, those readings were taken at a variety of times of year – including in winter. That demonstrates that the property was maintained at a consistent temperature, presumably achieved by use of the heating as the tenants have evidenced; though in truth that doesn't matter. If a consistent temperature was being maintained that the tenants were content with and was not below a level of a reasonable tenant then there is simply no room to criticise them regarding either the temperature or their use of the heating.
49. The other accusation was that the damp was caused by the tenants. This was said to be because they dried clothes in the property – which we note they even seemed sheepish about, in all credit to them - but of course they did. We do not understand how that is meant to be unreasonable, and it is certainly what one would expect when letting a flat out to three young professionals as has happened here. There was a further criticism of the tenants on the basis that if they were that worried about the damp they should have had a bath rather than a shower. As Mr Chan, the tenant to whom that was put, responded – that is not a practical idea; and frankly the suggestion that tenants having showers every day might be anywhere even approaching un-tenantlike use in 2025 does not get off the ground.
50. In fact, the fact the landlord's letting agent blamed the tenant for the damp on the basis, apparently, they dried clothes in the property and had showers not baths says rather more about the landlord's letting agent than it does the tenants. It is hardly as if the tenants were using the property as some form of bath house, or had taped up the windows, and

it should have been obvious to a competent letting agent that something needed to be done.

51. As regards the windows, the tenants had suggested there may have been a link between their not closing properly and the damp at the property. They are in fact wrong about that, as ventilation prevents damp rather than causing it. It is in fact remarkable that – despite the fact some of the windows were broken so as to not close properly – the damp persisted. It seems difficult, therefore, to suggest the property might not have been ventilated given the tenants appear to have had, at least in part, little option but to ventilate it.
52. The landlord said that he had occupied the property previously, and that he says he didn't experience damp before – and it was said, without documentary evidence, that there was no damp at the property now. Similarly, though, we note the tenants' evidence that they thought the landlord might have painted over the damp before they moved in and heard their credible evidence regarding the damp and their treatment of the property during the period of the tenancy.
53. It is also worth noting that there were obvious sources of damp which were the landlord's responsibility. First, the low height of the tiling in the shower area. We do not, in truth, particularly care about the fact it is below some sort of minimum height limit as the tenants complained (as all properties have their minor defects). However, regardless of any such limit that may or may not exist, the tiling next to the shower is clearly too low. The photograph speaks for itself, but it is wildly inadvisable to have tiling so far below the level of the shower head. What about the water that will hit the wall between the shower head and the tiling? It will cause damp and damage – as it has here.
54. Second, we were told that the extractor fan in the bathroom didn't work for a considerable period. That would obviously increase the condensation in the property markedly, and the tenants can hardly be blamed for it.

Fire Safety

55. The applicants had advanced that fire safety requirements hadn't been met at the property, in particular due to the failure to provide a fire blanket or a fire rated kitchen door. If the property had been licensed, they said, this wouldn't have been the case.
56. The respondent, for some reason, refused either to confirm or deny the former allegation – which simply means it was entered in uncontested evidence that we obviously accept.
57. In terms of the latter, the respondent said that there was no requirement for there to be a kitchen door – but simply that if there was one it would need to be fire rated. In its absence, there was no breach of the council's HMO standards.

58. Those HMO standards were provided in evidence by the applicants, and we agree with the respondent that – on the balance of the evidence and argument presented to us - they don't actually provide explicitly for the provision of a kitchen door at all. Accordingly, the only relevant issue here is that no fire blanket was provided, which is a relatively trivial matter that is vastly outweighed by the other issues in this case.
59. We note for completeness that one of the tenants, Mr Bradbury, also referred to there not being an emergency light in the kitchen marking the exit, which he felt was needed in an HMO. This was not in the applicants' pleaded case, and we were not provided with documentation to support this claim anyway. Accordingly, we had no regard to it.

Key Findings of Fact

60. Having considered the evidence of the parties, it is helpful to set out what we find (as facts) happened:
1. The landlord was recommended, and approached, Mr Yilmaz and asked him to handle everything concerning the property's letting.
 2. Mr Yilmaz said he would do so, and that he would apply for any licences needed, but did not say that one was specifically needed in this instance.
 3. The landlord did not know a licence was needed.
 4. Mr Yilmaz provided the landlord a contract, which the landlord signed without legal advice nor having been advised to take such advice.
 5. The tenants moved into the property and occupied it in a perfectly adequate tenant-like manner.
 6. All day-to-day communication about the property was between the tenants and the landlord's agent, save for brief communication between the landlord and the tenants at the very start of the tenancy.
 7. There were issues with damp and mould at the property which were not the tenants' fault. These were not resolved by the landlord or their agent and instead the tenants were blamed without good cause.
 8. There were further issues with the windows and some other more minor things like the washing machine which were dealt with by the landlord and their agent, but belatedly and after much chasing and in some cases blaming of the tenants for things that were not their fault.
61. Having made our key findings of fact concerning what happened, we considered the areas of dispute between the parties. In doing so, we bore fully in mind that it is the applicants' responsibility to prove their case to the criminal standard.

Was the respondent a person in control of or managing the premises?

62. The applicants had advanced that the respondent was a person in control of or managing the premises, and that therefore an offence under Section

72(1) of the Housing Act 2004 had been committed by him. There was no dispute that the property required licensing, nor the vast majority of the other ingredients of the offence of which he was accused. In the respondent's statement of case, no issue was raised as to whether the landlord was a person in control or managing the premises; however, this was raised in the skeleton argument provided by Mr Carr for the hearing.

63. There might be an argument therefore that we should not consider this matter – as it was raised for the first time as an issue in the skeleton argument rather than in pleadings. However, these are serious proceedings and it would seem unfair to us to prevent someone who, fundamentally, has been accused of a criminal offence (much as we are not capable of convicting him of it) from being able to defend themselves.

64. Turning first to whether the respondent was a person in control of the premises, the definition of a person having control is provided in Section 263(1) of the Housing Act 2004:

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

65. The applicant advanced that the respondent was a person having control of the property, as he was “listed as the immediate Landlord in the ASTs and is the beneficial owner of The Property as shown by the land registry title deed found in Exhibit F. They are, therefore, “person having control” of the premises as they are the person who received or would so receive the rack-rent if the premises were let”. The respondent submitted that the applicant had not applied the statutory test, and that in any case the rent was paid to the landlord's agent and not to the landlord.

66. The respondent is wrong that the applicants did not apply the statutory test, as they made clear reference to the landlord's receiving the rack-rent. However, the applicants were wrong about that. As the respondent submits, the rent was not received by the landlord but by their agent; and it seems clear to us from the wording of Section 263(1) that “the” person who receives the rack-rent can be an agent of another person. In any case, the burden is on the applicants to show – to the criminal standard of proof – that the respondent was a person in control, and we consider that bar has not been met.

67. As regards whether the landlord was a person managing the property, this is defined in Section 263(3) of the Housing Act 2004:

*(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
(a) receives (whether directly or through an agent or trustee) rents or other payments from—*

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

68. The respondent clearly meets this definition. He is the leasehold owner and receives, albeit indirectly, rent from the tenants. The only objection raised by the respondent is that the applicant has not specified in enough detail how they allege the landlord is a person managing the property, and that they have instead given a “broad-brush statement” of why they allege so, and “have failed to specify under which part or parts of s.263 they contend that he constitutes a “person managing” the Premises”.

69. The respondent submitted further that the applicants could not persuade us to the criminal standard of proof as they had failed to specify how they contend that the landlord was a person managing the premises, and this also means that the landlord does not know the case he is expected to meet.

70. The applicants had submitted that the landlord was the person managing the property “as defined by section 263(2) HA 2004 as they were the owner of the subject property who received or would so receive rent from tenants in the subject property and was therefore a “person managing” the property”. As the respondent has observed, section 263(2) in fact defines rack rent, and the applicants clearly meant 263(3) – but this is a clear and minor slip which would cause no reasonable reader any prejudice in understanding, and indeed has not done so here.

71. We don’t agree that the applicants have failed to provide enough detail of the offence they allege occurred. We find that the applicants have clearly set out why they think the landlord was a person managing the property. They said that he was the owner of the property who received, or would receive, rent at the property. Those are set out as two limbs in Section 263(3) (as they must be), but they are hardly far removed from each other – and it would be clear to any reasonable person what they were being accused of. The respondent says it means that he does not know the case he is expected to meet, but even were that so we don’t agree that is the applicants’ fault and the fact is that he has met that case – including by the provision of a 188 page bundle concerning it.

The reasonable excuse defence

72. As regards the reasonable excuse defence, the advanced defence is that the landlord had placed his reliance on his letting agent to sort everything out, and they had let him down. The landlord had no idea a licence was needed and had handed the matter practically entirely over to his letting agent. All of that, we have found above, is true, but the question is whether that constitutes a reasonable excuse.

73. The applicant, in response, referred us to the case of *Aytan v Moore* [2022] UKUT 027 (LC), and specifically to paragraph 40 of that decision:

A landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was:

(1) a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements;

(2) evidence that the landlord had good reason to rely on the competence and experience of the agent; and

(3) a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent..."

74. The applicants focussed on the first test, and submitted that the contract between the landlord and his letting agent made clear that the landlord was responsible for licensing the property (which it does). There was therefore no contractual obligation on the agent to apply for a licence, and the advanced defence therefore failed the tests set out in *Aytan v Moore*.

75. At first sight this is fatal to the respondent's reasonable excuse defence. However, Mr Carr submitted that there was a contractual duty (although it is worth noting this disagreed with his skeleton argument, which at paragraph 26 made clear there was no such contractual duty). A written contract had been signed which did clearly say it was the landlord's responsibility, but that was not the end of the matter. The landlord had formally engaged the letting agents, and had done so through that written contract. Having instructed them formally by written contract, he was then entitled to rely on them telling him they were responsible for doing things, and had a legitimate expectation that they would then do them.

76. We note Mr Carr's submissions, which were the absolute best he could have done for his client, but we don't agree with them. This is not a case where a general instruction has been entered into between a landlord and an agent and ancillary tasks are added on later. Instead, the identification of who holds responsibility for legal compliance is a significant feature of the instruction, and the written contract entered into between the parties explicitly says that licensing the property is the

landlord's responsibility. If the parties wished to vary that agreement such that the agent assumes responsibility for applying for licences, then they would need to properly document such a major and fundamental change. This is not a minor, trifling matter that might be dispensed with pragmatically in the course of a business relationship – we are talking about one person seeking to contractually transfer their legal obligations onto another.

77. Mr Carr, in his skeleton argument, had also sought to remind us that the criminal standard of proof applied in this matter (in a paragraph about the respondent's reasonable excuse defence). That was a somewhat surprising submission to read, as it is the respondent's duty to show a reasonable excuse defence, not the applicants' to disprove it. In doing so, the respondent need only show the defence on the balance of probabilities, rather than the higher criminal burden referred to.
78. We find that the landlord has not shown that he has a reasonable excuse defence. The landlord and his agent entered into a written contract which specifically said the landlord was responsible for licensing the property. If the landlord did wish to abrogate his legal responsibilities to someone else entirely, then he needed to make sure that was what was happening, and – if it was needed – seek advice regarding it. Instead, it was his own evidence at the hearing that he had signed a contract in a language he didn't understand, and simply had his daughter look through the contract. Those are not the actions of a reasonable landlord instructing a professional to take proper care of his legal duties.
79. Were he to have taken what must be the minimum reasonable step of having that contract translated so that he knew what it said - or indeed had sought proper advice concerning it - he would've seen or been told it actually said the licensing was his responsibility; as he acknowledged it did when it was translated to him at the hearing. At that point, no reasonable landlord could have thought that they were in safe hands and that they had no responsibility for the legal compliance of the property. Either the contract was right, and it was the landlord's responsibility to license the property – or the letting agent they were instructing to handle their important legal affairs had produced a contract that said the opposite of what was intended.
80. We note for completeness that the respondent had submitted that the advanced reasonable excuse defence might yet offer a partial defence if not a full one, until (perhaps) such point as the second tenancy agreement between the parties began in February 2022. We don't understand why that might be the case. The advanced defence relies on the fact that it was not the respondent's responsibility to licence the property. Were that so, it would be equally as true before the signing of the second tenancy agreement as after it – and indeed at any point in the relevant period. Accordingly, we do not find that it offers a partial defence either.

Jurisdiction to make RRO

81. There is no dispute that the property was required to be licensed and was not. We have found that the respondent was a person managing the property, and we have also found that the respondent has not shown that he had a defence of reasonable excuse. Accordingly, we are satisfied so that we are sure to the criminal standard of proof that the respondent committed the offence of controlling or managing an HMO that was required to be licensed under Part 2 of the Housing Act 2004 that was not so licensed, contrary to Section 72(1) of that Act.
82. There is no dispute that that offence (if it was committed) was committed for the whole of the relevant period for which rent repayment has been applied (30 September 2022 to 29 September 2023), that the tenants applied within 12 months of the offence being committed nor that they were entitled to apply for an order to a maximum of £23,500.
83. Accordingly, we have jurisdiction under section 41 of the Housing and Planning Act 2016 to make a rent repayment order. We have decided to make such an order; it would be exceptional for us not to and we considered it would be in line with the Tribunal's overriding objective to deal with cases fairly and justly to do so.
84. The leading authority concerning the arrival at the quantum of such an order is provided by *Acheampong v Roman* [2022] UKUT 239 (LC). This provides four steps, which we will take in turn:

A – Ascertain the whole of the rent for the relevant period

85. It was common ground that the total rent for the period was £23,500.
86. The applicants confirmed that none of them received Universal Credit or Housing Benefit payments in relation to the property, and so no deduction from this figure is necessary to comply with Section 44(3) of the Housing and Planning Act 2016.

B - 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 is expected to make an informed estimate where appropriate.

87. The applicants paid the bills at the property, and so no deduction is needed to account for utility payments.

C – determine the seriousness of the offence to ascertain the starting point.

88. The seriousness of an offence of controlling or managing an unlicensed HMO can vary according to circumstance. In this case, we find that the offence, born out of a failure to licence the property, is not one of the most serious types of offence for which an RRO might be sought.
89. It is clear and we find, based on the credible evidence of the respondent on this topic, that the respondent committed this offence through ignorance of the law rather than intention. We are aware that the applicants suggested that might not be the case, however there was no hard evidence presented to us to show that the landlord intentionally failed to licence the property; and, with respect to the respondent who we are sure would not disagree, legal knowledge is not exactly the respondent's forte – particularly given the language barrier he faces in keeping up to date.
90. That being said, we are aware that there were issues with damp and mould at the property – and more minor issues such as the approximately 5 week period the property went without a gas safety certificate and the failure of the landlord to provide a fire blanket. Those matters are heavily tied up with the landlord's conduct as well, and we have therefore taken them into account when considering the landlord's conduct to avoid any element of double counting.
91. Having consideration of the above, we consider that a starting point of 65% of the rent paid would be appropriate in this instance.

D – consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

92. Section 44(4) of the Housing and Planning Act 2016 provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.
93. We are unaware of the landlord having been convicted of a relevant other offence.
94. We heard evidence from the respondent regarding his financial position orally at the hearing. We were told he works as a street sweeper for the local council and receives a salary which provides him £1,980 per month net. His wife does not work, and his two children make practically no financial contributions. He has a mortgage on his main residence, the cost of which is £888 per month. The subject property is mortgaged at a cost of £635 per month, with an additional cost of £105 per month in service charge and £26 in insurance. He has no savings. The property is

let for £2,200 per month now, of which £176 is paid to the letting agent in commission.

95. The applicants countered that evidence by submitting that he owned two properties, and could not therefore be considered too hard done by.
96. Considering the costs above provided in evidence to us, the landlord appears to have a sum of £2,350 per calendar month available to him after paying his living costs and the costs of the subject property – though we note that £2,350 does not include any amount for taxation on the £2,024 per month he receives (net of agent's fees) for the subject property, and there are undoubtedly a few other costs he has forgotten about as well. We are sympathetic to the cost of living, however it appears to us that the respondent receives – after payment of housing costs – a reasonable sum of money each month, and he owns two properties. Accordingly, we make no adjustment for financial circumstances.
97. For completeness, we note that we were also provided evidence concerning the respondent's potentially having a neurological disorder; which we were told is as yet undiagnosed. This is not directly relevant to the decision we are to make, and it is difficult to see what we might do with that information, particularly in light of the fact it is not clear that the respondent does in fact suffer from any such disorder.
98. As regards conduct, we have already made findings of fact above concerning the evidence we heard – and we find that there was nothing untoward about the tenants' conduct at all.
99. The respondent made a great deal of the fact that some of the tenants had law degrees, one of them worked in the legal sector, and that they were measuring the height of the shower tiling and apparently collating other evidence before moving out – and suggested that the tenants knew what they were doing and were simply trying to exploit a street sweeper.
100. Firstly, we don't think that's fair to the tenants – it seemed more to us (and indeed was the evidence of the tenants) that, by the end of their tenancy, they had reached their wits end with what was pretty poor treatment and had considered applying for an order when they left. Although, it is notable that they did not even do so until over 6 months had passed.
101. Secondly, and more importantly, that is of no import whatsoever. In truth it was somewhat odd to hear submissions seeking, essentially, to cast aspersions on lawyers and the legally trained in a First-tier Tribunal hearing room, being put forward (and this is not a criticism of Mr Carr who acted fearlessly on his client's instructions throughout the hearing as he should have) by a barrister. It has nothing to do with how the tenants treated the landlord during the tenancy, or how they treated the property. Nor, importantly, does it have anything to do with the respondent's offending – of which if anything the tenants were the victims.

102. The landlord's conduct is a difficult thing to unravel. We think we have made this clear above, but for the avoidance of doubt we find as a fact that the tenants were very poorly served by the landlord's agents. There were damp, mould and water pooling issues at the property which we have found as a fact were not their fault. Instead of those issues being investigated, they were blamed for them – and continue so to be. The landlord's agent had quite clearly tried to get out of fixing the washing machine, and caved as soon as any pushback was received. The property went without a gas safety certificate for a period of around 5 weeks as the landlord's agent had not arranged for a test to be carried out when it should have been, and the tenants were not provided with a fire blanket as they should have been. We have no doubt from what we heard that the conduct of the landlord's agents was simply not good enough, and were we making an award against them we would be making a sizeable adjustment for that.

103. However, we aren't making an award against the landlord's agent. The landlord had almost entirely left the matter in his agent's hands. It was notable from the landlord's evidence that he averred - we felt, credibly - that he had paid for the washing machine as soon as he was told it needed doing. That also seems to fit with the speed at which his agent caved to the tenants – the agent presumably, given the landlord's evidence, having not told the landlord before then.

104. The question is, was the letting agent's poor conduct a reflection of poor conduct on the landlord's part? We consider that it was, though obviously to nowhere near the same extent as if his own conduct to the tenants was as poor as his agent's. The tenants were left by the landlord at the mercy of (by the landlord's own evidence) entirely unsupervised letting agents, who were performing poorly. We find those are not the actions of a good landlord, and it is notable that those agents continue to be instructed to this day – despite this matter and the concerns within it coming to light. The landlord clearly, therefore, continues to be satisfied with the way in which his tenants are treated by his agents.

105. Further, we must consider the window which was secured by a chain that did not close properly. The tenants raised that, including with the landlord personally, and were told it did – when it clearly didn't and we could tell that ourselves from a photo of it. We heard the evidence of the landlord about this, which was otherwise largely credible, but he must have known that window didn't close properly. That is poor conduct on his part, but also should've been of concern as regards his agent. A good agent would have raised a clear falsehood like this as an issue with their client, not gone along with it and said a window that obviously didn't close properly did. This is relevant to our finding that the landlord acted poorly by not supervising his letting agents, as this should have been an early warning signal.

106. As regards the landlord's advanced reasonable excuse defence, whilst we have found it was not a defence above we do consider it is a

strong mitigating factor as regards the commission of the offence itself. The landlord had instructed a letting agency who had been recommended to him, and was operating in a (slightly) limited market in doing so as it was necessary for that agency to employ fluent Turkish speakers so that the landlord could communicate with them. He thought the agents would sort everything out. We have found above that we don't think that was a reasonable thing to think, and not enough to be a defence, but it is clearly a lot better than someone who simply took no steps at all to inform themselves of their legal requirements.

107. In consideration of the above, we make a deduction of 25 percentage points - balancing the landlord's poor conduct (both direct and in failing to supervise his agents) against the strong mitigation regarding the commission of the offence itself set out immediately above.

Rent Repayment Order

108. For the reasons given above, we make a Rent Repayment Order to the benefit of the applicants in the sum of £9,400 (being 40% of the total rent paid in the period 30 September 2022 to 29 September 2023).

Fees

109. The applicants sought repayment of their application and hearing fees under Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
110. We find it appropriate, in light of our decision to make an RRO, to order the respondent to reimburse the applicants the costs of the application and hearing fees – a total of £330.

Name: Mr O Dowty MRICS

Date: 1 September 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of Relevant Legislation Not Previously Quoted

Housing and Planning Act 2016

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

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

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

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

41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(3) A local housing authority may apply for a rent repayment order only if –

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

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

43 Making of a rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined with –

(a) section 44 (where the application is made by a tenant);

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2)The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed ***the amount must relate to 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
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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
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(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.