



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

Case reference : **LON/00BG/HMF/2025/0603**

Property : **Flat 8, Thornaby House, Canrobert Street, London E2 0BE**

Applicants : **(1) Ms. Hannah Ely
(2) Mr. Herne Hollanby
(3) Ms. Morgane Willer
(4) Ms. Abigail Casson**

Representative : **Mr. Muhammed Williams of the London Borough of Tower Hamlets**

Respondent : **Mr. Russel Haque**

Representative : **Not represented**

Type of application : **Application for a rent repayment order by tenants**

Tribunal : **Judge S.J. Walker
Tribunal Member Mr. J. Stead
BSc(Hons), MSc**

Date and Venue of Hearings : **4 August 2025
10, Alfred Place, London WC1E 7LR**

Date of Decision : **3 September 2025**

DECISION

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- (1) The Tribunal makes Rent Repayment Orders under section 43 of the Housing and Planning Act 2016 requiring the Respondent to pay the sums set out below**
- (a) To the First and Second Applicants jointly the sum of £5,295**
- (b) To the Third Applicant the sum of £2,682**
- (c) To the Fourth Applicant the sum of £658.06**

- (2) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbursement by the Respondent of the fees of £300 paid by the Applicants in bringing this application is granted. Payment is to be made within 28 days.**

Reasons

The Application

1. The Applicants seek rent repayment orders pursuant to sections 43 and 44 of the Housing and Planning Act 2016 (“the Act”) for various periods between 28 December 2022 to 5 February 2024 as set out in their application.
2. The application was received by the Tribunal on 5 November 2024 and is in time. It alleges that the Respondent has committed an offence contrary to section 72(1) of the Housing Act 2004 (“the 2004 Act”) - having control or management of an unlicensed House in Multiple Occupation (“HMO”).

The Hearing

3. The hearing was conducted face-to-face. The first three Applicants attended and were represented by Mr. Muhammed from the London Borough of Tower Hamlets. The Respondent did not attend and was not represented.
4. The Tribunal firstly considered whether it should proceed with the hearing in the absence of the Respondent. In doing so it took account of rules 2 and 34 of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”).
5. Rule 34 of the Rules allows a hearing to proceed in the absence of a party if (a) the Tribunal is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify them of it and (b) the Tribunal considers that it is in the interests of justice to proceed.
6. The Tribunal was satisfied that the Respondent was aware of the hearing. There was no doubt that he was aware of the proceedings. This is made clear by the fact that he sent e-mails to the Tribunal on 10 January and 29 May 2025. In the former he requested that all documents should be sent to his e-mail address. Notice of the hearing was sent to the Respondent on 9 April 2025 by e-mail. He responded to this on 29 May 2025 stating that he did not intend to submit a case bundle.
7. Given the Respondent’s indication that he did not intend to supply a case bundle the Tribunal was satisfied that it was in the interests of justice to proceed in his absence. He had clearly indicated an intention not to participate in the hearing.

8. The Tribunal had before it a numbered bundle of documents prepared on behalf of the Applicants which comprised 111 numbered pages. References to page numbers in this decision are to the numbered pages in that bundle. In the course of the hearing, the Tribunal was also shown electronic Santander bank statements which were not in the hearing bundle which showed rent payments being made to the Respondent.

The Legal Background

9. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. This list includes an offence contrary to section 72(1) of the 2004 Act. Such an offence is committed if a person has control of or manages an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.
10. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description (a mandatory licence) or if it is in an area for the time being designated by a local housing authority under section 56 of the 2004 Act as subject to additional licensing, and it falls within any description of HMO specified in that designation (an additional licence).
11. To be an HMO of any description the property must meet one of the tests set out in section 254(2) of the 2004 Act. In this case the relevant test is that in section 254(3) the self-contained flat test. A part of a building meets the self contained flat test if it;
 - “(a) consists of a self contained flat;
 - (b) the living accommodation is occupied by persons who do not form a single household ...;
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect of at least one of the those persons’ occupation of the living accommodation; and
 - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.”
12. By virtue of section 258 of the 2004 Act persons are to be regarded as not forming a single household unless they are all members of the same family. To be members of the same family they must be related, a couple, or related to the other member of a couple.

13. An offence under section 72(1) can only be committed by a person who has control of or manages the property in question. The meaning of these terms is set out in section 263 of the 2004 Act as follows;
- “(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*
 - (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.*
 - (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—*
 - (a) receives (whether directly or through an agent or trustee) rents or other payments from—*
 - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and*
 - (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or*
 - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;*
and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
14. It is a defence to a charge of an offence under section 72(1) of the 2004 Act that a person had a reasonable excuse for committing it (section 72(5)).
15. By virtue of the decision of the Court of Appeal in the case of Rakusen - v- Jepsen and others [2023] UKSC 9 an order may only be made against the immediate landlord of a tenant.
16. An order may only be made under section 43 of the Act if the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.
17. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period.
18. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant

offence when determining the amount to be paid under a rent repayment order.

Has an Offence Been Committed?

19. The Applicants' case, as set out at in their statement of case at pages 24 to 27 and the witness statements at pages 77 to 82, is simple and is as follows. The property is a 3-bedroom flat in a block of flats. The bedrooms were let separately to various occupiers, and there was a shared bathroom, living room and kitchen. There were 4 occupants at all times during the relevant period. The Appellants all entered into assured shorthold tenancy agreements with the Respondent, all lived in the property as their only or main residence, and the property was only used as a dwelling. Rent was paid to the Respondent. An additional licensing scheme was introduced in Tower Hamlets on 1 April 2019 and was renewed on 1 April 2024. It required properties where 3 or more people living in 2 or more households who shared basic amenities to be licensed. The Applicants each occupied their own bedroom and so they formed 4 households. The property was, therefore, an HMO requiring an additional licence. No such licence was in place nor had one been applied for until 7 February 2024. The Respondent was a person managing the property and so had committed an offence contrary to section 72(1) of the 2004 Act.
20. The Respondent provided no evidence or submissions to the Tribunal and so the Applicants' evidence was unchallenged.

Findings

21. On the basis of the witness statements and oral evidence provided by the Applicants during the hearing the Tribunal was satisfied of the following.
22. Ms. Ely and Mr. Hollanby entered into an assured shorthold tenancy of the property on 9 June 2022 for a period of 12 months beginning on 30 August 2022 (pages 28 to 33). There were four tenants party to this agreement, the two others, Ms. Parker and Ms. Freeman, are not parties to these proceedings. The total rent payable was £2,150 per month. The tenancy agreement stated that the landlord was the Respondent and that rent should be paid to him. Clause 5(c) of the agreement made the tenants responsible for the payment of utility bills. Ms. Ely and Mr. Hollanby shared a room and their share of the rent was £820 per month. The other two tenants had a room each and neither were related to the First and Second Applicants.
23. On 5 June 2023 Ms. Ely and Mr. Hollanby signed an addendum to the tenancy agreement which had the effect of substituting Ms. Parker and Ms. Freeman as tenants, as they had decided to leave the property. They were replaced by Mr. Daniels, who is also not party to these proceedings, and the Third Applicant, Ms. Willer. Ms. Parker and Ms. Freeman did not remove their belongings from the property until 11 June 2023, and the following day Mr. Daniels and Ms. Willer moved in. Ms. Willer's share of the rent was £615 per month.

24. On 31 August 2023 a new tenancy agreement was entered into for the period of one year from 30 August 2023 (pages 40 to 45). The tenants were now the first three Applicants and Ms. Hammond, who replaced Mr. Daniels. She is also not a party to these proceedings. The terms of the agreement remained the same save that the total rent was increased to £2,550 per month. Ms. Ely and Mr. Hollanby's share of the rent increased to £970 per month and Ms. Willer's to £730 per month.
25. On 14 November 2023 a further change was made to the tenancy. Ms. Hammond decided to move out and she was replaced by the Fourth Applicant Ms. Casson (page 46). Ms. Casson moved in on 15 December 2023. Her share of the rent was £850 per month.
26. The Respondent applied for an additional licence for the property on 7 February 2024 (pages 87 to 97).
27. Throughout the period from 28 December 2012 to 5 February 2024 there were always at least three people living in the property in at least two households. All the people living in the property were occupying it as their only or main residence and the property was not used for any other purpose.
28. Throughout the period all rent that was paid was paid to the Respondent.
29. Additional licensing designations were in effect throughout the period in question which included the area in which the property is located and which required properties with at least three occupants in at least two households where basic amenities are shared to be licensed (pages 98 to 106.)
30. The property has been owned by Mr. Sadiqul Haque since 11 April 2024 (page 48). It is not clear who owned it before that date. However, in an e-mail to the Tribunal dated 10 January 2025 the Respondent stated as follows;
"Prior to April 2024 and for the period of the claim for RRO I managed the property myself and am solely responsible for the tenancies and everything related to them"

Conclusions

31. On the basis of the facts set out above, the Tribunal was satisfied that the Respondent was committing an offence contrary to section 72(1) of the 2004 Act continuously for at least the period from 28 December 2022 to 6 February 2024. The property was an HMO which required an additional licence but which did not have one. The Respondent was a person having control of the premises as he received the rack-rent of the premises or would have done so if the premises were let at a rack-rent.
32. Although it was not expressly raised by the Respondent, the Tribunal nevertheless bore in mind its obligation to consider whether or not a defence of reasonable excuse applied in this case. In its view it did not.

There was insufficient evidence before the Tribunal to raise such a defence.

Jurisdiction to Make an Order

33. On the basis of the wording of the tenancy agreements, which clearly named the Respondent as the landlord, the fact that rent was paid to the Respondent, and the contents of his e-mail of 10 January 2025 referred to above, the Tribunal was satisfied that the Respondent was the Applicants' immediate landlord. It follows that the Tribunal has jurisdiction to make an order against him

Amount of Order

34. The Tribunal therefore went on to consider the amount, if any, which it should order the Respondent to pay. In doing this it had regard to the approach recommended by UT Judge Cooke in the decision of Acheampong -v- Roman and others [2022] UKUT 239 (LC) @ para 20. The first step is to ascertain the whole of the rent for the relevant period.

Rent

35. Schedules of the rent payments made by the Applicants are at pages 74 to 76. Subject to what follows, the Tribunal was satisfied that these accurately reflected the contents of the bank statements contained in the bundle or electronic statements which were shown to the Tribunal in the course of the hearing. The Tribunal accepted the oral evidence it heard that up to and including the payment made by Mr. Hollanby on 30 May 2023 (page 53) the rent for him and Ms. Ely was paid to Ms. Freeman, who then paid the total amount of rent owing to the Respondent. From 29 June 2023 onwards the total rent was paid by Mr. Hollanby to the Respondent until his final payment on 29 January 2024 (page 61). The rent was paid in full.
36. There was, though, an error in the schedule in respect of Ms. Willer (page 75). This showed rent of £615 being paid on 29 August 2023. However, the evidence of the new tenancy agreement which commenced that month which increased the total rent to £2,550 per month, together with Mr. Hollanby's bank statement, which shows that he paid £2,550 to the Respondent on 30 August 2023, leads to the conclusion that Ms. Willer in fact paid £730 that month, not £615 as stated in the schedule.
37. Also, the evidence was that Ms. Casson did not pay her rent for February 2024 until after 7 February 2024, by which time the offence was no longer being committed. In the light of the Court of Appeal decision in Kowalek -v- Hassanein Ltd [2022] EWCA Civ 1041, which held that rent repayment orders may only be made in respect of payments of rent which were made at a time when the offence was being committed, it follows that the Tribunal cannot order repayment of any part of the rent paid by Ms. Casson for February 2024.
38. Taking the above into account the Tribunal decided that the amounts of rent paid during and in respect of the periods in question were as follows;

- (a) by Ms Ely and Ms. Hollanby for the period from 28 December 2022 to 29 December 2023 £10,590;
- (b) by Ms. Willer for the period from 5 June 2023 to 29 January 2024 £5,364; and
- (c) by Ms. Casson for the period from 15 December 2023 to 29 January 2024 £1,316.12

Utilities

- 39. The rent paid by the Applicants did not include the cost of utilities, so no deduction is required to be made from the amount of rent paid when calculating the maximum amount the Tribunal may order to be paid.
- 40. It follows that the maximum amounts the Tribunal could order to be paid are the amounts of rent actually paid as set out above.

Seriousness of Offence

- 41. As required by the approach recommended in the case of Acheampong the Tribunal then considered the seriousness of the offence both as compared to other types of offence and then as compared with other examples of offences of the same type. From that it determined what proportion of the rent was a fair reflection of the seriousness of the offence.
- 42. The offence in question is one contrary to section 72(1) of the 2004 Act. This is, when compared with offences such as unlawful eviction, a more minor offence. This alone would justify a reduction of 25%.
- 43. The Tribunal also concluded that this was not a serious offence of its kind. Firstly, it considered the impact on the tenants of the absence of a licence. This was not a case where the Applicants had shown that there were widespread safety risks at the property.
- 44. The Tribunal also considered the fact that there was no evidence that the Respondent rented out any other properties.
- 45. Bearing these factors in mind the Tribunal concluded that the total amount payable should be reduced further. It considered that the reduction should be of a further 25%, meaning a reduction to 50% of the maximum.

Section 44(4)

- 46. The Tribunal then considered whether any decrease – or increase – was appropriate by virtue of the factors set out in section 44(4) of the Act.
- 47. There were no allegations of poor conduct by the parties in this case. Indeed, in the witness statement at page 78 it is said that the Respondent was generally responsive and acted on repair requests fairly swiftly.
- 48. In the light of this the Tribunal concluded that there was no reason to further alter the proportion of the maximum amount which should be paid by the Respondent.

49. There was no evidence before the Tribunal to suggest that the Respondent would be unable to pay any sum that the Tribunal may impose.
50. Taking all this together the Tribunal concluded that no further change in the amount of the order was justified under section 44(4).
51. It follows, therefore, that the amount of the order payable by the Respondent to the Applicants is as follows;
- (a) to Ms. Ely and Mr. Hollanby - $£10,590 \times 50\% = £5,295$
 - (b) to Ms. Willer - $£5,364 \times 50\% = £2,682$
 - (c) to Ms. Casson - $£1,316.12 \times 50\% = £658.06$
52. The Applicants also sought an order under rule 13(2) of the Rules for the re-imbursement of the fees paid for bringing the Application. The Tribunal concluded that, given that the Applicants had succeeded in their application, it was just and equitable to make such an order.

Name: Judge S.J. Walker

Date: 3 September 2025

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.