FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00FY/HMK/2024/0034**
Property	**:**	**28B Noel Street, Nottingham, NG7 6AW**
Applicant	**:**	**Michael Wallace, Scott Dixie and Tyler Skadorwa**
Representative	**:**	**Justice for Tenants**
Respondent	**:**	**Ravinder Singh**
Type of Application	**:**	**Application under section 41(1) of the Housing and Planning Act 2016 for a rent repayment order**
Tribunal Members	**:**	**Judge M K Gandham** **Mr R Chumley-Roberts MCIEH, JP**
Date and venue of Hearings	**:**	**15 November 2024 (remote) and 28 July 2025 at Centre City Tower, 5 – 7 Hill Street, Birmingham B5 4UU**
Date of Decision	**:**	**1September 2025**

DECISION

Decision

1. The Tribunal is unable to make a rent repayment order as it is not satisfied that an offence was being committed by the landlord in the 12-month period ending with the day upon which the application to the tribunal was made.

Reasons for Decision

Introduction

2. By an application received by the Tribunal on 26 July 2024, Michael Wallace, Scott Dixie and Tyler Skadorwa ('the Applicants') applied for a rent repayment order ('RRO') under section 41(1) of the Housing and Planning Act 2016 ('the Act').

3. The order sought by the Applicants was in respect of rent that they had paid to the landlord as tenants of the property known as 28B Noel Street, Nottingham, NG7 6AW ('the Property'). The grounds in the application referred to the landlord as having committed an offence under section 72(1) of the Housing Act 2004 ('the 2004 Act') for having control of or managing an unlicensed House in Multiple Occupation ('HMO').

4. The application form detailed both *'Rob Singh'* and *'Ravinder Singh'* as respondents, as the Applicants stated that, although the tenancy agreement referred to the landlord as being '*Rob Singh*', subsequent correspondence led them to believe that the landlord's actual first name was 'Ravinder' with 'Rob' being a nickname.

5. The Tribunal issued directions on 2 August 2024 and, in accordance with the same, received bundles from each party. A hearing was scheduled to take place remotely on 15 November 2024.

6. On 7 November 2024, the Applicants made an Order 1 application, submitting a revised schedule for the amount claimed by Mr Dixie, taking into account universal credit he had received during the period of his tenancy. On the same day, the Tribunal received a separate Order 1 application from the Respondent requesting the submission of additional evidence relating to building works carried out at the Property and the current licensing and planning status of the Property.

7. On 11 November 2024, the Tribunal received a skeleton argument from the Applicants' representative, Justice for Tenants.

The Law

8. Section 40 of the Act provides that an RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant. It confers power on the First-tier Tribunal ('the FTT') to make

such an order in favour of a tenant where the landlord has committed an offence to which Chapter 4 of the Act applies.

9. The relevant offences are detailed in section 40(3) of the Act as follows:

	Act	*section*	*general description of offence*
1	*Criminal Law Act 1977*	*section 6(1)*	*violence for securing entry*
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*
7	*This Act*	*section 21*	*breach of banning order*

10. Section 41 of the Act details the application process and provides:

41 Application for rent repayment order

(1) A tenant … 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.

(2) A tenant may apply for a rent repayment order only if —
(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

…

11. Sections 43 and 44 of the Act detail the power of the tribunal to make an order and the amount of that order and, in respect of an application by a tenant, provide:

43 Making of 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 has 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 in accordance 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*
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 of 15 November 2024

12. A hearing took place, remotely, on 15 November 2024. The Applicants attended and were represented by Brian Leacock from Justice for Tenants. Ravinder Singh was represented by Renata Del Luongo, counsel from KCH Garden Square, instructed by Elliot Mather LLP.

Preliminary Matters

13. In relation to the correct respondent for the application, Mr Singh ('the Respondent') confirmed at the start of the hearing that he was the person referred to as 'Rob Singh' on the tenancy agreement. Ms Luongo also confirmed that, taking into account the decision of the Upper Tribunal in *Cabo v Dezotti* [2019] UKUT 303 (LC*)* (unsuccessfully appealed to the Court of Appeal [2024] EWCA Civ 1358*)*, the Respondent accepted that an RRO could be made against him even though he was not the registered proprietor of the freehold of the Property.

14. The Tribunal considered the two Order 1 applications received from the parties. The Respondent did not object to the additional evidence provided by the Applicants being admitted and, despite previously objecting to the admittance of the same, at the hearing Mr Leacock confirmed that the Applicants no longer objected to the admission of the additional evidence provided by the Respondent.

15. The Tribunal, noting all submissions made and being satisfied that the additional information from both parties provided further information to assist the Tribunal in making its decision and related to points already raised by the parties in their statements of case, gave permission for the additional evidence by both parties to be admitted.

Matters agreed between the parties

16. The following matters were either agreed by the parties or were not in dispute:

- The Property fell within an additional licensing area as designated by Nottingham City Council, which licensing scheme commenced on 1 September 2019 and ceased to have effect on 31 December 2023.
- Although the Property had a selective licence from 21 August 2020 to 8 August 2023, an application for an HMO licence was not made until 3 August 2023.
- The Property was let to the Applicants from 1 August 2022 to 31 July 2023.
- The Applicants were responsible for payment of all utilities in addition to the rent.
- The Respondent had not been convicted of, nor received a financial penalty in respect of, any offence detailed in section 40(3) of the Act.

Submissions

17. Mr Leacock, on behalf of the Applicants, confirmed that they were making an application for an RRO pursuant to section 41 of the Act for the offence of having control of or managing an unlicensed HMO, contrary to section 72(1) of the 2004 Act.

18. Mr Leacock confirmed that the Property fell within an area which was subject to additional licensing, designated by Nottingham City Council, and that at all material times the Property was being occupied by three persons from separate households, occupying the Property as their main residence; that rent was paid in respect of their occupation and that two or more households shared one or more basic amenities.

19. Mr Leacock stated that evidence from Nottingham City Council confirmed that an HMO licence was not applied for during the period of the tenancy and that the decision in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083 made it clear that breach of section 72(1) of the 2004 Act was a strict liability offence with no mens rea required.

20. In relation to whether there was a reasonable excuse for the offence, Mr Leacock stated that to rely on the defence, its use must be reasonable in all circumstances

as required by *Marigold v Ors* [2023] UKUT 33 LC. He submitted that 'an honest mistake' did not constitute a reasonable excuse, as it was part of the Respondent's duties to ensure that that he was aware of the correct licencing requirements.

21. All three of the Applicants gave evidence at the hearing regarding the condition of the Property and the Respondent's conduct. They referred to the Property as suffering from poor drainage, with the washing machine flooding the kitchen as a result of the same. They stated that poor drainage had also contributed to a flood that had occurred in the bathroom in October 2022, with the sink overflowing due to a tap having been left on accidentally. They stated that the Respondent had failed to replace the bathroom flooring for the remainder of the tenancy.

22. The Applicants also referred to the following: the front door handle of the Property detaching from the door; the Respondent giving less than 24 hours' notice when attending the Property and there being multiple viewings; feeling intimidated at the end of the tenancy, as the Respondent had asked them to sign an 'End of Tenancy' form which referred to various penalties that could be applied; discovering that, although the deposit was protected, the Deposit Protection Certificate did not include Mr Wallace's name, and the Respondent withholding their deposit for a period at the end of the tenancy.

23. Mr Skadorwa also referred to the Property not being ready at the beginning of the tenancy and him having to seek accommodation in a hotel, storing his goods in a neighbouring property.

24. Due to the conduct of the Respondent, and as the offence had been committed for a period of over three years, Mr Leacock submitted that an order requiring repayment of more than 75% was appropriate.

25. With regard to the condition of the Property and his conduct, the Respondent stated that he had a contract with British Gas regarding the plumbing and drainage. He stated that, following the plumber's attendance, any issues with the washing machine had quickly been resolved.

26. In relation to the bathroom flood, the Respondent stated that the sink had flooded as the plug had been left inside the sink with the tap running. He referred to having received advice to remove the flooring to ensure that the floorboards were allowed to dry and stated that the Property had subsequently been affected by damp and mould, costing approximately £10,000.00 to rectify, with additional costs for damage caused to the flat below.

27. The Respondent stated that by causing damage to the Property, the Applicants were in breach of their tenancy agreement and that Mr Skadorwa had also breached the tenancy agreement by keeping pets at the Property.

28. With regard to other points raised by the Applicants, the Respondent stated that the issue with the door handle was attended to quickly; that the whole of the deposit was protected and that the failure to include Mr Wallace's name on the Deposit Protection Certificate was because he had been unaware as to how to add a third name to the certificate; that he had previously issued 'End of Tenancy'

forms and had been unaware that he should not do so, and that the whole of the deposit had been returned to the Applicants at the end of the tenancy.

29. In relation to Mr Skadorwa's issues at the beginning of the tenancy, the Respondent stated that the delay had only been for one night and that he had reimbursed Mr Skadorwa for the hotel stay.

30. In relation to the failure to obtain the correct licence, the Respondent stated that this was due to an error when making his application. He stated that he had mistakenly referred to there being one household, as he did not realise having three students would constitute three separate households. As such, the Respondent submitted that he had made an honest mistake. He confirmed that the Property now had the benefit of a five-year HMO licence.

31. Ms Luongo submitted that the amount of any order, if one was to be made, should not exceed 50 - 65% considering the offence was caused due to an honest mistake. She further submitted that the Tribunal should also take into account that any errors made by the Respondent were inadvertent and that the Applicants' conduct had caused extensive damage to the Property.

32. Ms Luongo stated that the Respondent did wish his financial circumstances to be taken into account by the Tribunal if an RRO was to be made, although she accepted that no financial statements had been provided to date and that the Respondent had not referred to this previously. She stated that the Respondent received no income for managing the properties on behalf of the registered proprietors, firstly his sister then R&D Houses Limited (of which his wife was the sole director) and that his only income was from his work as a taxi driver, that his home was rented and that he had various loans and debts.

33. The Tribunal noted that there were discrepancies in the witness statements provided regarding the dates of occupation of the Property.

34. Mr Wallace's statement referred to him moving into the Property on 12 August 2022 and set out the occupancy timeline as follows:

> **Occupancy timeline**
> Bedroom 1 was occupied by TS from 1.8.22 to 28.7.23
> Bedroom 2 was occupied by MW from 12.8.22 to 30.7.23.
> Bedroom 3 was occupied by SD from 12.8.22 to 30.7.23.

35. Mr Skadorwa's witness statement referred to the occupancy timeline as follows:

> Occupancy timeline
> I moved in on approximately 10th August 2022 and SD and MJ moved in on Friday 12th August 2022. My tenancy was for 12 months.
>
> Bedroom 1 was occupied by TS from 10.8.22 to 28.7.23
> Bedroom 2 was occupied by MW from 12.8.22 to 30.7.23.
> Bedroom 3 was occupied by SD from 12.8.22 to 30.7.23.

But later referred to him vacating the Property "*around the 25th July 2023*" with Mr Dixie leaving on Saturday 29 July 2023 and Mr Wallace leaving on 30 July 2023.

36. Mr Dixie's witness statement referred to the occupancy timeline as follows:

> **Occupancy timeline**
> I moved into the property on Saturday 6th August 2022 and moved out on Saturday 29th July 2023. The tenancy agreement was for 12 months.

37. At the hearing, Mr Dixie confirmed that he had begun his occupation of the Property on 6 August 2022. He stated that he vacated the Property on 29 July 2023, staying in a hotel that night, but helped with the clearance of the Property with Mr Wallace and his parents the following day.

38. Mr Wallace confirmed that he started his occupancy on 12 August 2022 and vacated on 30 July 2023.

39. Although in his witness statement, Mr Skadorwa referred to staying in a hotel for approximately 9 to 10 days before moving into the Property, he confirmed that he had been the first occupant, so accepted that he must have moved into the Property prior to 6 August 2022.

40. In relation to vacating the Property, Mr Skadorwa confirmed that he had vacated the property prior to the other Applicants and believed that this was on 25 July 2023. Upon questioning regarding the exact date, he stated that he was sure that this date was accurate as he spent a full week in his new property before the end of the tenancy.

41. As Mr Skadorwa had stated that he had vacated the property on 25 July 2023, and the application to the Tribunal was made on 26 July 2024, the Tribunal noted that the evidence suggested that there had only been two occupiers of the Property on 27 July 2023, being the last day of the 12-month period ending with the day upon which the application was made.

42. As this was something which neither party had referred to in their submissions, and was central to whether the application to the Tribunal was made in time and whether the Tribunal had the power to make an RRO at all, the Tribunal asked the parties for their comments.

43. Both parties confirmed that they would like an opportunity to make further submissions on the point and, in fairness to both, the Tribunal confirmed that it would issue further directions following the hearing, allowing time for both parties to make any legal submissions on the same.

44. The Tribunal also confirmed that it would request disclosure of Mr Skadorwa's other tenancy agreement (as he had referred to this in his oral testimony) and any corroborating evidence regarding the submissions made by the Respondent in relation to his financial circumstances.

Steps following First Hearing

45. The Tribunal issued directions in respect of the above on 21 November 2024.

46. Instead of providing a legal submission, as requested in the directions, the Applicants, instead, supplied an additional witness statement from Mr Skadorwa dated 27 November 2024. The statement exhibited evidence of two taxi journeys, one made on 26 July 2023 at 12:21 am from "*North Street & Station Road, Heanor*" to "*Noel Street & Terrace Street, Nottingham*" and the other made on 27 July 2023 at 10:13 pm from "*Crocus Street & Wallett Street, City Centre, Nottingham*" to "*Noel Street & Terrace Street, Nottingham*", with details of payment for those journeys and a screen shot of chat messages around those dates.

47. In the statement, Mr Skadorwa submitted that he had been in a "*phased living situation where both my tenancy agreements overlapped*" which had led to his confusion regarding his moving date. He stated that the taxi receipts indicated that he had stayed overnight at the Property on both 26 July 2023 and 27 July 2023 and vacated on 28 July 2023.

48. The Respondent provided legal submissions in relation to the issue of whether the Tribunal had jurisdiction to make an RRO, which it submitted it did not as the application had been made out of time, and also made an application objecting to the submission of the additional witness statement provided, as this was not requested by the Tribunal and had not been filed on the Respondent. The Respondent requested that the application be struck out and that, in the event the matter was struck out, that the Tribunal exercise is powers to make a wasted costs order against the Applicants.

49. The Applicants subsequently supplied legal submissions and a copy of Mr Skadorwa's other tenancy agreement, requesting the Tribunal to admit the same and reject the application to strike out. The tenancy agreement was for a property located at Flat 2, 127 Station Road, near Heanor ('the New Flat'), commencing on 27 June 2023 for 12 months.

50. On 14 January 2025, the Tribunal issued further directions confirming that it did not consider it proportionate for the application to be struck out for non-compliance with directions and that, as the evidence of Mr Skadorwa was pertinent to the question as to whether an RRO could be made, the Tribunal would admit the same but that a further hearing would be arranged so that any questions the Respondent and Tribunal had regarding his additional statement could be put to him.

51. The hearing was scheduled for 28 July 2025.

52. On 25 July 2025, the Respondent made an application to submit additional evidence relating to the taxi receipts submitted by Mr Skadorwa. The Respondent stated that, as these did not detail his destination as being the address of the Property, they were not conclusive evidence of his occupation there. The

Applicants did not object to the same being admitted in evidence, referring to the Respondent being able to put this question to Mr Skadorwa at the hearing.

Hearing of 28 July 2025

53. A hearing took place at the tribunal's hearing rooms in Birmingham. The Applicants attended and were represented by Mr Jamie McGowan from Justice for Tenants. The Respondent was no longer legally represented by Elliot Mather LLP and attended on his own behalf. Mr Skadorwa gave evidence on oath regarding his occupation and both parties were given an opportunity to make any further submissions regarding the additional evidence provided since the previous hearing.

54. At the hearing, Mr Skadorwa stated that he had ensured that there was an overlap between his two tenancies due to the problems he had encountered at the beginning of his initial occupancy of the Property.

55. He stated that he had remained in occupation at the Property until 28 July 2023 and that the reference in his additional statement to having a "*phased living situation*" was not meant to infer that he had been living at the New Flat during this period. He stated that he did not drive, so had been slowly transporting his belongings to the New Flat via taxi. He stated that this had involved several journeys but that he had retained the items he used most days at the Property. He stated that this transference of his belonging was what he was referring to when he made his statement.

56. In relation to why he had changed his mind on the date on which he vacated the Property, Mr Skadorwa referred to having an "*atrocious memory*" and that, it was only after finding his taxi receipts, that he realised that he had made a mistake with the dates.

57. In relation to the two taxi journeys referred to in his additional statement, Mr Skadorwa stated that he believed that the first journey had been from the New Flat, as he had, in addition to transferring his belonging to it, been decorating the same. He stated that he had returned to the Property in the evening where he had stayed the night. In relation to the second journey, Mr Skadorwa stated that he believed that he may have been visiting a computer shop and, again, had returned to the Property overnight.

58. He stated that he was unsure as to why one of the messages on the screenshot of the chat on 27 July 2023 questioned where he was but believed that this may have related to the other Applicants awaiting his arrival before putting the deadlock on the door.

59. As to how often Mr Skadorwa had stayed in the New Flat during the overlapping period of the tenancies, Mr Skadorwa, initially, referred to having stayed overnight in the New Flat on less than five occasions. When questioned regarding his occupancy of the New Flat by the Tribunal and the Respondent, however, Mr Skadorwa, first, stated that had never slept at the New Flat overnight, instead, referring to staying with a friend who lived around the corner. He later stated

that he had stayed at the New Flat two to three times, when he did not have the taxi fare to return to the Property. Towards the end of giving his evidence, Mr Skadorwa changed his evidence, again, this time stating that he had only stayed at the New Flat on one occasion.

60. Mr Skadorwa stated that the New Flat, in addition to requiring decoration, had several problems – it was infested with rats, there were issues with the power supply and the shower unit flooded. When questioned as to whether he had realised this after taking a shower, Mr Skadorwa stated that he had not taken a shower at the New Flat during this time but had concluded that the shower was prone to flooding as the floorboards under the unit were wet. He went on to refer to issues with the flushing mechanism of the toilet and having no electricity, although later amended his statement and suggested that the power cut may have occurred the following month.

61. Following Mr Skadorwa's oral evidence, both parties were given the opportunity to make any final submissions.

62. Mr McGowan, on behalf of the Applicants, submitted that the principal focus of the tribunal should be on the Respondent's actions and that, based on the tenancy agreement for the Property, it had clearly been let to three separate occupiers until 31 July 2023.

63. He further stated that the legal test with regard to whether a property was being used as a person's "*only or main residence*", as required under section 254 of the 2004 Act, was whether a reasonable onlooker regarded a particular dwelling as the person's house. Mr McGowan stated that, based on the evidence Mr Skadorwa had given at the hearing, the last day upon which he was using the Property as his 'house' was 28 July 2023, so the application had been made in time for the purposes of section 41(2) of the Act.

64. Mr McGowan stated that, as the offence had taken place nearly two years ago, it was not surprising that Mr Skadorwa was having difficulties in remembering exactly what had happened. He stated that this did not suggest a lack of credibility on his part and that, even if he had stayed at the New Flat for five nights during the overlapping period of his tenancies, this was insufficient to suggest that it had become his "*main residence*".

65. In relation to the burden of proof, Mr McGowan referred to the decision in *Williams v Parmar* [2021] UKUT 0244 (LC) ('*Williams*'), in which he stated that the Upper Tribunal had confirmed that the calculation of the period of the offence under section 44(2) of the Act, for the purposes of quantum of an RRO, was to be on the balance of probabilities rather than to the criminal standard. He stated that section 41(2)(b) of the Act, similarly, did not include the words "*beyond all reasonable doubt*". He contended that the tribunal need, therefore, only to be satisfied that an offence was being committed for the purposes of that section on the balance of probabilities.

66. With regard to the Respondent's financial circumstances, Mr McGowan referred to the fact that the Respondent had not made any reference to the same in his

initial Response and that a landlord's profit was not a relevant consideration when making an RRO. He referred to the decision of the Upper Tribunal in *Daff v Gyalui & Anor* [2023] UKUT 134 (LC) having been based on exceptional circumstances in which the landlord had no other source of income.

67. The Respondent referred to the inconsistencies in Mr Skadorwa's evidence regarding his occupancy of the Property. He stated that Mr Skadorwa's first witness statement referred to his having vacated the Property around 25 July 2023 and in oral evidence at the previous hearing he had confirmed that 25 July 2023 was the last date he had occupied the Property. The Respondent submitted that it was too convenient, now knowing the implication of the date, that Mr Skadorwa had referred to being mistaken previously and now believed that 28 July 2023 was the correct date.

68. The Respondent stated that the only corroborating evidence Mr Skadorwa had suppled were two taxi receipts and a screenshot from his phone, none of which was conclusive to support that he had been living at the Property as his main residence after 25 July 2023.

The Tribunal's Deliberations

69. In reaching its determination the Tribunal considered the relevant law, in addition to all of the evidence submitted, briefly summarised above.

70. As stated above, under section 41(2)(b) of the Act, a tenant may only apply for an RRO if the offence the landlord is accused of was committed in the period of 12 months ending with the day on which the application was made. As the application was made on 26 July 2024, the beginning of the 12-month period was 27 July 2023.

71. Prior to being able to make an RRO under the Act, the Tribunal must also be satisfied "*beyond reasonable doubt*" (under section 43(1)) that the Respondent had committed one or more of the offences referred to in section 40(3) of the Act.

72. Based on the evidence, the Tribunal was satisfied that the Respondent was the person in control or management of the Property during the Applicants' tenancy. In addition, there was no dispute that an application for an HMO licence was not made in respect of the Property until 3 August 2023.

73. Accordingly, in order for the Tribunal to be able to make an RRO it had to be satisfied that the Property, at the relevant time, was operating as an unlicensed HMO. Although Mr McGowan submitted at the second hearing, that the Tribunal need only be satisfied of this on the balance of probabilities, the Tribunal does not agree.

74. At paragraph 29 of the *Williams* decision referred to by Mr McGowan, the Honourable Mr Justice Fancourt, the then Chamber President, stated as follows:

> "*First, there was and is no reasonable doubt that, in the period of 12 months ending with the application of the tenants to the FTT, the landlord committed*

an offence under s. 72(1) of the 2004 Act. Although the landlord has not been convicted, she accepted that an offence was committed. The FTT therefore had jurisdiction to make RROs in each of the cases before it."

75. These words make clear that for the tribunal to have jurisdiction, there must be "*no reasonable doubt*" that the offence had been committed in the period of 12 months ending with the date of application. Hence the burden of proof for this section is to the criminal standard not the civil one.

76. As there was no suggestion by either party that Mr Wallace and Mr Dixie were not occupying the Property at the relevant time, in order for the Tribunal to find that the Property was an HMO which required licensing, as per the local authority's additional licensing requirements, it must be satisfied beyond reasonable doubt that on 27 July 2023 Mr Skadorwa was occupying the Property as his "*main residence*" (there being no suggestion that he did not have the benefit of two tenancies on that date).

77. Having considered all of the evidence, both written and oral, the Tribunal is not so satisfied.

78. Mr Skadorwa in his initial signed witness statement, dated 26 June 2024, confirmed that he vacated the property "*around 25th July 2023*". This aligned with his oral testimony at the first hearing, in which he stated, on more than one occasion, that he had vacated the property on 25 July 2023, referring to spending a week at the New Flat prior to his tenancy of the Property ending.

79. Mr Skadorwa's second witness statement, dated 27 November 2024, referred to him living in a "*phased living situation*". It made no mention of any difficulties with the New Flat which would have impeded his ability to occupy the same and, although it referred to him staying at the Property overnight on 26 and 27 July 2023 and vacating on 28 July 2023, he did not refer to either property as his "*main residence*".

80. Although Mr Skadorwa referred to having an atrocious memory at the second hearing, and that the discovery of the taxi receipts and messages on his phone (exhibited to his second witness statement) had led him to conclude that he had vacated the Property on 28 July 2023, the Tribunal is not satisfied that either the receipts or the message on the phone are sufficiently persuasive of his occupation of the Property as his main residence.

81. As referred to in his initial witness statement, all of the Applicants were "*firm friends*" and, even if he was no longer living at the Property as his main residence, there would be no reason why he would not be visiting his friends who were still living there. Indeed, there was no reason why, if visiting them late in the evening, he may not have stayed overnight.

82. The Tribunal found that the inconsistencies in Mr Skadorwa's oral evidence did impact on the credibility of the evidence he gave at the second hearing. The Tribunal was not satisfied that such inconsistencies, could simply be put down to his memory, nor the time that had elapsed since he had vacated the Property.

83. Based on all of the evidence, the Tribunal found that Mr Skadorwa likely vacated the Property, and stopped using it as his main residence, on 25 July 2023. As such, whether to the criminal or the civil standard (as suggested by Mr McGowan), the Tribunal was not satisfied that all three Applicants were occupying the Property as their main residence on 27 July 2023.

84. Consequently, the Tribunal is not satisfied beyond reasonable doubt that the Respondent was in control or management of an unlicensed HMO on 27 July 2023 and finds that the application to it was not made in time. Accordingly, it has no jurisdiction to be able to make an order.

Appeal Provisions

85. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM
.....
Judge M K Gandham