



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

Case reference : **LON/00AC/HMF/2025/0622**

Property : **46 Lancaster Gardens, LB of Barnet,
London N2 9AJ**

Applicant : **Luke McBratney**

Representative : **Justice for Tenants - Ref 28359**

Respondent : **Beach Hugh Sherwood Mercer**

Representative : **None**

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

Tribunal members : **Judge H Carr
Mr Appollo Fonka FCIEH**

**Date and venue of
hearing** : **24th July 2025**

Date of decision : **29th August 2025**

DECISION

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order to Mr Luke McBratney totalling £6141.31.
- (2) The Rent Repayment Order must be paid within 28 days of the issue of this decision.
- (3) The tribunal determines that the respondent reimburse the applicant for his application and hearing fees, totalling £330.
- (4) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenant, Mr Luke McBratney, seeks a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO) in relation to 46 Lancaster Gardens, LB Barnet London N2 9AJ.
2. The applicant alleges that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s.72(1) of the Housing Act 2004.
3. The respondent is Mr Beach Hugh Sherwood Mercer who is the registered owner of the property and was in receipt of the rent. Mr Mercer used the premises for his work and occupied a converted outbuilding to the property for much of the time of the applicant's occupation.
4. In his application the applicant was seeking to recover the sum of £9,525.00 for the period 12 November 2022 to 11th November 2023. Following submissions made after the hearing this amount was increased to £10,300 for the period 1st November 2022 – 31st October 2023.
5. The application was made and received on 8th November 2024. Directions were issued in this matter on 18th February 2025.

The hearing

6. Mr Luke McBratney appeared at the hearing. He was represented by Mr Jamie McGowan of Justice for Tenants.
7. Mr Beach Mercer appeared at the hearing and represented himself.
8. The tribunal dealt with the preliminary issues raised about evidence.
9. On 16th July the respondent sent to the tribunal and the applicant various copies of utility bills relating to the period November 2024 to April 2025. The applicant says that he has no objection to this evidence being considered.
10. The applicant sought to adduce further evidence from the local authority about the licensing status of the property. The application in connection with this evidence was first made by the applicant on 14th July 2025. On 17th July Judge O'Brien ordered that the application be considered as a preliminary matter at the hearing on 24th July 2025 as well as the decision about how to proceed as there are ongoing criminal investigation by the local authority.
11. The respondent made no objection to the admission of the further evidence.
12. The tribunal therefore decided to accept the evidence. In the light of the fact that the respondent admits the offence, the tribunal determined to proceed despite the ongoing criminal investigation by the local authority.
13. The respondent provided no information about his financial circumstances and the applicant's information about rent payments was incomplete and confusing. In the light of this the tribunal directed that both parties should be given the opportunity to remedy these defects via submissions and an opportunity to comment on those submissions. Those submissions and responses have been considered as part of this determination.

The background and chronology

14. The property is a 4 bedroom 2 storey terraced house in the London Borough of Barnet. To the rear of the property there is an outbuilding.
15. Mr McBratney moved into the property on 18th August 2022 and lived there until 12th November 2023.
16. The freehold owner of the property is Mr Beach Hugh Sherwood Mercer. He has owned the property since 13th August 2014.

The issues

17. The issues that the tribunal must determine are;
- (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - (ii) Does the respondent have a 'reasonable excuse' defence?
 - (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenant?
 - (iv) Should the tribunal refund the applicant's application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

The Applicant's evidence

18. The property is situated within an additional licensing area as designated by the London Borough of Barnet. The additional licensing scheme came into force on 27th October 2022 and will cease to have effect on 27th October 2027. The scheme requires all HMOs with 3 or 4 occupants living in two or more households to be licensed. The designation of the scheme is provided in the applicant's bundle at Exhibit K.
19. The additional licensing scheme was implemented borough wide.

20. The property met all the criteria to be licensed under the designation and does not qualify for any licensing exemptions.
21. The Respondent is said by the London Borough of Barnet to have applied for a licence in July 2023. The application was then withdrawn, and this was confirmed by the Respondent, so no licence was in place for during the applicant's tenancy.
22. Supporting evidence for this is provided by email correspondent between the LB Brent and the applicant's representatives at page 126 of the Applicant's bundle
23. The applicant says that during the period of his claim the property was occupied by at least three persons living in two or more separate households and occupying the property as their main residence. Their occupation of the property constituted the only use of the accommodation.
24. The applicant was unrelated to any of the other occupiers and was not in a relationship with any of the other occupiers.

The Respondent's evidence

25. The respondent does not dispute that the property was unlicensed during the period of the applicant's occupation.
26. He told the tribunal that he had commenced the application for a licence but found that he could not afford it.

The decision of the tribunal

27. The tribunal determines that the respondent has committed the alleged offence

The reasons for the decision of the tribunal

28. The tribunal relies on the evidence from the applicant, the information provided by the local authority and the admission of the respondent.

Does the Respondent have a 'reasonable excuse' defence?

29. The respondent has provided no argument that he has a reasonable excuse defence.

Decision of the tribunal

30. The tribunal determines that there is no reasonable excuse defence available to the respondent.

The reasons for the decision of the tribunal

31. The respondent made it clear to the tribunal that the only reason that he did not obtain a licence was that he could not afford it, or to do the works which would be required by the local authority.

Should the tribunal make an award of a RRO? If so, for what amount?

The exercise of the tribunal's discretion

32. The applicant asked the tribunal to exercise its discretion and make an RRO.

The decision of the tribunal

33. The tribunal determines to exercise its discretion to make a rent repayment order.

The reasons for the decision of the tribunal

34. The tribunal considered the evidence and determined that it was appropriate for it to exercise its discretion and make a rent repayment order because the respondent had a clear disregard for the law.

The maximum amount of the RRO which can be ordered

35. The period for which the RRO is sought is from 13th November 2022 to 12th November 2023. The applicant provided evidence that he paid rent as follows:

- (i) He paid monthly rent of £850 pcm for nine months (the months of November 2022, December 2022, January 2023, February 2023, March 2023, May 2023, June 2023, July 2023 and August 2023). Sometimes payments in these months were late, but the arrears were cleared. In the month of July 2023, the applicant says that the respondent agreed to use the £100 deposit to make up the arrears. The applicant provided evidence of the respondent's agreement to this.

- (ii) In April 2023 the rent paid was £425 because of an agreed deduction because of the state of the property during three days that month. The applicant argues and the tribunal accepts that rent in the month of April 2023 should be treated as paid fully, i.e. £850, because the deductions were for very poor conditions and the expenses that the applicant incurred living elsewhere (see discussion of the incident at paragraphs 41 and 42 below).
 - (iii) He paid £900 pcm for the months of September 2023 and October 2023.
- 36. The tribunal found that the maximum RRO it could award was **£10,300**. This is made up of 10 payments of £850 and 2 payments of £900.

Other arguments concerning the amount of the RRO to be awarded.

- 37. The rent included payments for utilities. The respondent provided evidence of the costs of electricity, gas and the internet as well as council tax. From the evidence provided the tribunal determines to deduct £100 per month for utility payments.
- 38. Therefore, the maximum amount is reduced by £1200 to **£9100**.
- 39. The applicant argues that his conduct was good. He agrees that sometimes his rent payments were late, but this was due to him working as a contractor for local authorities and their payment schedules being poor.
- 40. The applicant argues that the condition of the property was poor. He points to
 - (i) The failure of the respondent to provide a gas safety certificate, an Electrical safety certificate, an energy performance certificate and a How to Rent Guide.
 - (ii) The respondent failed to rectify unsafe electrical installations in the property such as loose-fitting sockets
 - (iii) The respondent failed to ensure that a banister was fitted on the stairs of the property.

- (iv) The respondent failed to ensure that an interlinked smoke or heat alarm system was installed at the property
 - (v) the respondent frequently interfered with the tenants' quiet enjoyment by entering their rooms without permission.
- 41. In addition, there was a serious incident in March 2023 when as a result of illness on the part of the respondent faeces was spread throughout the bathroom and kitchen. The applicant says that this was not cleaned up for three days.
- 42. Although the respondent disputed that the mess had persisted for as long and that there were no faeces outside of the bathroom, the applicant's photographs demonstrated that the faeces had been spread across the ground floor of the property. The applicant says that whatever the facts, this was a serious hygiene issue which should have led to an urgent, professional clean.
- 43. The applicant argues that the behaviour of the respondent was poor and that he took a cavalier attitude towards his responsibilities as a landlord
 - (i) The respondent admitted in the course of the hearing that the advert he placed on spare rooms was designed deliberately to obscure the fact that he was letting rooms in an HMO from the local authority.
 - (ii) The respondent admitted that he did not have sufficient resources to provide a safe property. For instance, he told the tribunal that he had removed the banisters from the staircase because he intended to replace it with a glass fixture. However, he did not have the money to carry out the works and left the stairs unprotected.
 - (iii) It was also clear from the evidence that the respondent gave to the tribunal that the property continues to be an HMO which requires additional licensing. The respondent argued that the third occupier was not paying rent and could not be evicted because he had no licence.
- 44. The respondent argues that his conduct has been good. He says that the applicant happily moved into the room not even paying a deposit. He could have moved out at any time if he was unhappy. He says he was always friendly and respectful towards Luke and would take in his

clothes from the drying line to his room when they had been left outside to dry. He was very tolerant of late payments of rent.

45. He says he only went into rooms to keep clothes or if it appeared something was amiss. The respondent carried out the cleaning to the property and the occupants of the property relied on him to do so.
46. The respondent says that the conduct of the applicant has been poor. The applicant frequently paid his rent late, he failed to pay £326.70 of the rent for November 2023, and he repeatedly came home drunk making lots of noise. The respondent said that the applicant often left the kitchen messy after a late-night drinking session and on one occasion threw the respondent's herbal powders all over the garden as well as making a mess of the kitchen.
47. In relation to financial circumstances the respondent says that he is self-employed and has very limited income.
48. The respondent owns 46 Lancaster Gardens which he states is worth approximately £750,000. The property is mortgaged with a mortgage of £602,745 and he makes monthly mortgage payments of £2492, He also owns a second rental property, 124 B, Harbut Road, Clapham Junction for which he claims most of the rent goes on mortgage payments.
49. The respondent says he has a rental income from the Lancaster Road property of £2100. He pays council tax of £221 pcm and the electricity, gas, internet cost on average around £300 pcm.
50. The applicant is sceptical about the values that the respondent places on his properties. He suggests that the Lancaster Gardens property is worth closer to £936,500 as unlike the comparator property quoted by the respondent, it is a four bedroom property with a converted outbuilding which has provided accommodation for the respondent during much of the applicant's tenancy.
51. The applicant referred the tribunal to the Upper Tribunal decision in *Daff v Gyalui* [2023] UKUT 134 (LC). Here the Upper tribunal said that the purpose of considering a landlord's financial circumstances was to avoid the imposition of disproportionate penalties. The applicant suggests that the respondent's behaviour in this instance was very serious. Moreover, *Daff v Gyalui* concerns a landlord with very poor financial circumstances because of the incredibly poor long-term health of the landlord, her inability to earn an income and her ineligibility for state benefits. It was this which led to the Upper Tribunal reducing the financial penalty.

The decision of the tribunal

52. The tribunal determines to award a RRO at 70% of the maximum RRO following deductions for utilities and arrears of rent.
53. This means that the RRO will total **£6141.31**.

The reasons for the decision of the tribunal

54. There is extensive case law on how the tribunal should reach a decision on quantum of a rent repayment order. In reaching its decision in this case the tribunal has been guided by the very helpful review of the decisions in the Upper Tribunal decision *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC).
55. *Acheampong v Roman* (2022) UKUT 239 (LC) established a four-stage approach which the tribunal must adopt when assessing the amount of any order. The tribunal in this case has already taken the first two steps that the authorities require by ascertaining the whole of the rent for the relevant period and subtracting £100 pcm from that sum as an amount representing payment for utilities that only benefitted the tenant.
56. Next the tribunal is required to consider the seriousness of the offence in comparison with the other housing offences for which a rent repayment order may be made. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.
57. However, although generally the failure to licence is a less serious offence, the Upper Tribunal recognises that even within the category of a less serious offence, there may be more serious examples.
58. In this case the tribunal considered that the case is a serious example of one of the less serious offences in which a rent repayment order may be made.
59. The reasons for this are as follows:
- (i) The respondent appears to have a disregard for the health and safety of his tenants and of the law.
 - (ii) He openly admits that he sought to deceive the local authority.
60. On the other hand, the tribunal has taken into account the following
- (i) the landlord is not a portfolio landlord

- (ii) the respondent attended the tribunal and was open and honest about his failure to licence the property and the reasons for that failure.
 - (iii) The applicant benefited from a tolerant landlord who accepted late rent payments on a regular basis.
- 61. The tribunal notes that the applicant did not pay the rent that was due in November 2023. The applicant argues that although he initially agreed to pay the rent, the property was in a poor condition for some of the period and he considered he had been treated poorly by the respondent and had decided to reduce the amount payable of the outstanding rent.
- 62. The applicant points out that the decision in *Yi v Hobbs* [2024] UKUT 155 (LC) gives the tribunal a discretion on how arrears which arise after the period of claim should be treated.
- 63. In this particular instance the tribunal has determined to deduct the sum of £326.70 from the RRO that is payable.
- 64. Therefore, the maximum RRO payable is reduced from £9100 to £8773.30
- 65. Otherwise, it the tribunal makes no deductions for the conduct of the applicant. It notes the allegations of partying and drunken behaviour that the respondent makes of the applicant but does not consider, in the context of what was clearly a very relaxed household, the conduct of the applicant was particularly poor. It also notes that the applicant was often late in paying his rent but accepts the applicant's explanation that this was as a result of the nature of his employment.
- 66. The tribunal decided to increase the amount payable above that usually awarded in licensing offences because of the conduct of the landlord. The respondent was cavalier about his legal responsibilities and openly admitted he sought to deceive the local authority.
- 67. The tribunal has also considered the financial circumstances of the respondent.
- 68. It has determined not to reduce the amount of the RRO because of the financial circumstances of the respondent. The respondent has financial assets, rental income and the capacity to earn an income. It agrees with the applicant that his assets are such that he can afford to pay the RRO and that the amount that the tribunal has determined to award is appropriate for the level of the offence.

69. The tribunal therefore considers that a RRO of 70% of the maximum RRO is appropriate and does not consider that any further deductions or increases should be made.
70. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.

Name: Judge H Carr

Date: 29th August 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

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

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

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