



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

Case Reference : CHI/19UC/HMF/2024/0019

Property : 364A Lymington Road, Highcliffe, Dorset,
BH23 5EY

Applicant : Edward Moffat

Representative : .

Respondent : Stephen Drew

Representative :

Type of Application : Application for a Rent Repayment Order,
Section 41 of the Housing & Planning Act 2016

Tribunal Members : Judge N Jutton, Mr David Cotterell FRICS, Mrs
Juliet Playfair.

**Date and Venue of
Hearing** : 31 July 2025
Havant Justice Centre, The Court House,
Elmleigh Road, Havant, Hampshire, PO9 2AL -
remote hearing

Date of Decision : 4 August 2025

DECISION

1. Background

2. The Applicant was formerly an occupier of residential premises known as 364A Lymington Road, Highcliffe, Dorset, BH23 5EY (the Property). The Respondent is the owner of the Property and was at all material times the Applicants' landlord. The Property was an house in multiple occupation (HMO) for the occupation of 5 households and 5 persons. The Applicant vacated the Property in April 2024.
3. By an application dated 28 June 2024 the Applicant seeks a Rent Repayment Order in respect of rent paid by him to the Respondent for 12 months of his occupation of the Property. He also seeks to recover fees paid by him to the Tribunal in respect of this application.
4. There was before the Tribunal a paginated bundle of documents prepared by the Applicant of some 49 pages that included the application, Directions made by the Tribunal, evidence of rent payments made, a letter from Bournemouth Christchurch and Poole Council dated 5 March 2025 addressed to the Applicant and correspondence between the parties. References to page numbers in this decision, e.g. [10], are references to the page numbers in the bundle of documents.

5. The Law

6. Chapter 4 of the Housing and Planning Act 2016 (the 2016 Act) enables the Tribunal to make a Rent Repayment Order in favour of a tenant if it is satisfied beyond reasonable doubt that the landlord has committed one or more of certain specified offences during the tenancy. Those offences are set out in a table at section 40(3) of the 2016 Act. There are seven offences listed. Those include Section 72(1) of the Housing Act 2004, which provides: '*A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part.... but is not so licensed*'. Section 72(4) provides that it is a defence if an application for a licence has been duly made under section 63 and that application is still effective. Section 72(5) provides that it is a defence that the defendant had a reasonable excuse for having control of or managing a house which is required to be licensed but is not so licensed.
7. Section 41(2) of the 2016 Act provides:
 - (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.*

8. Accordingly, it is for the tenant(s) to prove, to the criminal standard of proof, that the offence or offences alleged had been committed on a date or over a period within the 12 months ending on the date of the application to the Tribunal.
9. If the Tribunal decides to make a Rent Repayment Order in favour of a tenant the amount is determined in accordance with the provisions of section 44. In determining the amount the Tribunal must in particular take into account 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 Chapter 4 of the 2016 Act applies.

10. The Hearing

11. The hearing was attended by the Applicant, Edward Moffat. There was no attendance by or on behalf of the Respondent. The Tribunal was satisfied that reasonable steps had been taken to notify the Respondent of the hearing and that it was in the interests of justice to proceed with the hearing. The hearing therefore proceeded in the Respondent's absence. The hearing took place remotely.

12. The Applicants' Case

13. The Applicant says that he lived at the Property under the terms of a form of tenancy agreement dated 10 July 2020 until he vacated the property in April 2024. There is a copy of the agreement in the bundle [22 – 28]. The agreement is described as '*Excluded Licence Agreement for Letting to a Lodger*'. It is an agreement to occupy a first floor room with ensuite at the Property and to enjoy access to communal facilities named as a kitchen and a laundry room. The rent, described as '*licence fee*', is £125.00 per week payable in advance on Saturday of each week. The licence fee is stated to include the following utilities: council tax, water rates, electricity, gas, telephone and Internet. In answer to a question from the Tribunal the Applicant wasn't able to say what proportion of his rent might be attributable to the utilities.
14. The Property is an house in multiple occupation (HMO). The Applicant says that it was required to be licensed by the local authority Bournemouth, Christchurch and Poole Council. That it was not at all material times licensed. The Applicant seeks a Rent Repayment Order in respect of rent paid by him for a period of 12 months. The Applicant also seeks an order that the Respondent reimburse him fees paid by him to the Tribunal.
15. The Applicant explained that the initial rent of £125 per week had been increased by the Respondent to £130 per week and that was the rate that he paid during the last 12 months of his tenancy. There was within the bundle copy statements from the Applicant's bank showing standing order payments of rent to the Respondent at an initial rate of £125 per week increasing to £130 per week from September 2022 until the Applicant vacated the Property in April 2024 [29-42].

16. The Applicant told the Tribunal that during his period of occupation he had very little communication with the Respondent and that as far as he was aware the Respondent had never visited the Property. That the day-to-day management of the Property had been carried out by the Respondent's son Max. The Applicant said that during his time at the Property there were continuous leaks from the roof. That flooding had occurred from the kitchen into his room due to inadequate plumbing, that there was a lack of space including storage and worktop space in the kitchen and that the ventilation in the Property was so bad that condensation formed in the roof causing the fire alarm to be set off on a regular basis. That he believed that the only reason that the Respondent had subsequently applied for an HMO licence was because the Applicant had been in touch with the local authority about the condition of the Property.

17. **The Respondent's Case**

18. The Respondent did not attend the hearing. The only evidence from him was in the form of an email dated 13 February 2025 addressed to the Tribunal [45]. In that email the Respondent says that he refutes all claims made by the Applicant. That storm damage to the roof had always been repaired without delay. That flooding was caused by malicious damage of one of the tenants. That the Applicant was aware of the storage space available before moving in. That the fire alarm was and had always been in good working order. That the fire alarm would be triggered by tenants using equipment such as toasters in their rooms. That despite the fact that the use of cooking equipment was forbidden in bedrooms. That there was adequate ventilation to the roof void. That the Applicant's claim that inadequate ventilation to the roof void caused the fire alarm to be triggered was '*baseless*'. That he had complied with all '*private housing sector*' requirements within '*the allotted timeframe*'.

19. **The Tribunal's Decision**

20. On the basis of the evidence before it the Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence pursuant to section 72(1) of the Housing Act 2004 (the 2004 Act) in that he was a person having control or management of an HMO which was required to be licensed but was not so licensed. In the circumstances the Tribunal determines that it is appropriate for it to make a Rent Repayment Order in favour of the Applicant.

21. The Tribunal reminds itself that the purpose of the Rent Repayment scheme is not compensatory. That the power to make Rent Repayment Orders should be exercised with the objective of deterring those who exploit their tenants by renting out substandard, overcrowded or dangerous accommodation. The purpose is to punish and to deter what have been described as 'rogue' landlords. That there is a '*... risk of injustice if orders are made which are harsher than is necessary to achieve the statutory objectives*' (para 26 - **Hallett v Parker** (2022) UKUT 165 (LC)).

22. In addressing the amount of the Order the Tribunal adopts the four stage test set out in **Acheampong v Roman** [2022] UKUT 239 (LC).
23. 'Relevant Period'. The offence was committed during the 12 month period ending on the date of the application to the Tribunal. The application was made on 28 June 2024. The 12 month period therefore commences on 28 June 2023. The Respondent made an effective application for a licence on 9 November 2023 - a licence was issued on 8 March 2024 (see letter from dated 5 March 2025 from Bournemouth Christchurch and Poole Council [21]). The relevant period is therefore 28 June 2023 to 9 November 2023 a period of 135 days. That equates to 19.29 weeks during which the applicant paid rent at the rate of £130 per week a total sum of £2,507.14.
24. Utilities. The rent paid was inclusive of utilities. Neither party produced figures for the cost of utilities. The best that the Tribunal can do as an expert Tribunal is to determine that a reasonable sum for utilities would be £60 per month. That equates to £13.85 per week. For the relevant period that is a total of £267.04 which the Tribunal deducts from £2,507.14 leaving a balance of £2240.10.
25. Seriousness of the offence. The Tribunal considers the seriousness of the offence under section 72(1) of the 2004 Act and in relation to other types of offences for which a rent repayment order may be made. On the basis of the very limited evidence before it the Tribunal is of the view that this does not appear to have been a particularly serious offence when compared to other examples of the same type of offence. The fact that the Applicant complains of a lack of space both in respect of size of the kitchen and storage facilities is not relevant. Presumably he inspected the Property before taking occupation. It doesn't appear to be disputed by the Respondent that there was some damage to the roof which he says was repaired without delay. There is insufficient evidence to support the Applicant's contention that the roof leaked continuously. There may have been poor communication between Applicant and the Respondent but the Applicant was able to make contact with the Respondent's son who acted as his agent. It is unclear as to how a want of maintenance or repair and in particular the contended existence of condensation in the roof void would trigger the fire alarm. As the Respondent says there are any number of reasons as to why a fire alarm might be set off. Nor, when compared to other types offence for which a RRO may be made is it a particularly serious offence. It is punishable by a fine not by imprisonment. In the circumstances the Tribunal reduces the said sum of £2241.70 by 50% to £1,120.05 as a fair reflection of the seriousness of the offence.
26. Section 44(4) factors. There is insufficient evidence before the Tribunal of conduct on the part of either the Applicant or the Respondent that would warrant an adjustment to the amount of the order. The Tribunal has not been provided with details of the Respondent's financial circumstances. Nor has the Tribunal been provided with any evidence as to whether or not Respondent has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies. In the circumstances the Tribunal makes no further adjustment to the amount of the order.

27. Accordingly the Tribunal makes a Rent Repayment Order in favour of the Applicant requiring the Respondent to repay rent to the Applicant in the sum of **£1,120.85**.

28. The Applicant seeks an order under rule 13(2) of the Tribunal Procedure (first-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse him the fees paid by him to the Tribunal of £330. A rent repayment order has been made in the Applicant's favour. The Respondent failed to attend the hearing. Save for his email to the Tribunal dated 13 February 2025 he has failed to engage in these proceedings. In the circumstances the Tribunal orders that the Respondent repay to the Applicant the Tribunal fees paid by him in the sum of **£330**.

29. Summary of Tribunal's Decision.

30. The Tribunal makes a Rent Repayment Order in favour of the Applicant in the sum of £1120.85 and Orders the Respondent to reimburse the Applicant fees paid by him to the Tribunal in the sum of £330.

4 August 2025

Judge N Jutton

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the

Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking