



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

**Case Reference** : HAV/00HX/HMF/2024/0601

**Property** : 44 Northbourne Road, Swindon, Wiltshire,  
SN25 4YE

**Applicant** : Ms Hayley Willetts

**Respondent** : Mrs Daria Smith

**Type of  
Application** : Application for Rent Repayment Order under  
the Housing and Planning Act 2016

**Tribunal Members** : Tribunal Judge H Lumby  
Mr M Ayres FRICS  
Mr M Jenkinson

**Venue** : Havant Justice Centre (via CVP)

**Date of Hearing** : 19<sup>th</sup> August 2025

**Date of Decision** : 21st August 2025

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal dismisses the application for a rent repayment order against the Respondent.
- (2) The tribunal orders the Respondent to reimburse to the Applicant the application fee of £110 and the hearing fee of £227 (amounting to £337 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

### **Introduction**

1. The Property is a six bedroom house in Swindon formerly let by the Respondent to a variety of occupiers. They were required to leave when the Property was sold, the Applicant being required to vacate on 21 September 2023.
2. The Applicant has applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”). The application is dated 12 September 2024.
3. The basis for the application is that the Respondent was controlling and/or managing an HMO which was required to be licensed under Part 2 of the Housing Act 2004 (“**the 2004 Act**”) at a time when it was let to the Applicant but was not so licensed and that she was therefore committing an offence under section 72(1) of the 2004 Act.
4. The Applicant’s claim is for repayment of 12 months’ rent paid, amounting to £7,500. She also claims reimbursement of her application and hearing fees.
5. The tribunal was provided with a bundle running to 45 pages. The contents of this were noted by the tribunal. The Respondent has not engaged with the case so the bundle contained only information provided by the Applicant and no response from the Respondent.
6. The hearing was conducted using the CVP video service. The Applicant attended but the Respondent did not. The tribunal was satisfied that she was aware of the hearing and the joining details. It therefore determined to proceed in the Respondent’s absence. There were no witnesses present for either party.

### **Relevant statutory provisions**

7. The relevant statutory provisions are set out in the Schedule to this decision.

## **Alleged Offence**

### **House in Multiple Occupation**

8. The Applicant rented a room in the Property from 23 March 2019 until 21 September 2023. She has provided details of the amounts she has paid as rent. Her tenancy provided that the landlord would pay the council tax and utilities. The tribunal accepts that she occupied the Property during that period and that this was her principal residence.
9. The Applicant argues that the Property was an unlicensed HMO on the basis that it was rented to five or more people who form more than one household. Evidence has been provided that the Respondent did not have an HMO licence at any time during the Applicant's occupation of part of the Property.
10. The Applicant became aware that the Property may be an unlicensed HMO from an article in a local newspaper. This reported that the local council had been alerted that a possible offence of controlling or managing an unlicensed HMO had been committed. However, the council had been unable to bring a prosecution as they could not be satisfied beyond all reasonable doubt (the so called criminal standard) that an offence had been committed. They had instead brought a prosecution against the Respondent for failing to provide information when requested. The contents of the report were confirmed to the Applicant by Swindon Council, which prompted her to apply for a rent repayment order.
11. The Applicant's application was dated 12 September 2024. Section 41(2) of the 2016 Act provides that 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.
12. The Applicant's tenancy ended on 21 September 2023. Section 41(a) requires that for a tenant to be able to bring a claim, the offence must have been going on whilst the relevant housing was let to the tenant. Section 41(b) also requires the offence to have been committed in the 12 month period counting back from the date the application for a rent repayment order was made. Counting back the 12 months from 12 September 2024, the earliest date permitted would be 12 September 2023, shortly before the Applicant's lease ended. Accordingly, for the application to be valid, the alleged offence must have been occurring on at least one day between 12 and 21 September 2023.
13. As a result, the tribunal began the hearing by considering whether the alleged offence was occurring on any day between 12 and 21 September

2023. The Applicant chose 12 September 2023 and argued that there were six people in occupation on that date, forming five households. In addition to herself, she listed occupiers called Matt, Guy, Alex (and his girlfriend) and Stan. The Applicant did not know their surnames and was not in contact with any of them any longer.

14. The Applicant could provide no evidence of the others' occupation or that they had occupied the Property as their principal residence. She said only the Respondent could confirm this and she had not engaged in the proceedings or attended the hearing. She accepted that the tribunal needed to be satisfied beyond all reasonable doubt and that this was the reason the council had been unable to bring a prosecution for the same offence.
15. It was explained that if the tribunal could not be satisfied to the criminal standard that the Property was occupied as an unlicensed HMO at any point between 12 and 21 September 2023, it would be unable to find that the offence had been committed and so the application would fail. It was therefore agreed that we would consider this point as a preliminary issue, as hearing other evidence would not be an effective use of time if that was futile. As a result, we had a short break to consider this.

### **Tribunal consideration**

16. The alleged offence of which the Respondent is being accused has to be proved to the criminal standard, which means that the tribunal must be satisfied beyond all reasonable doubt that the offence has occurred. The offence in question is that controlling and/or managing an HMO which was required to be licensed under Part 2 of the Housing Act 2004 ("**the 2004 Act**") but was not so licensed contrary to section 72(1) of the 2004 Act.
17. The burden of proof is on the Applicant to show that the offence was committed.
18. The tribunal carefully considered the evidence provided to it and the submissions made by the Applicant. We focused on the question of whether the Applicant had shown beyond all reasonable doubt that there were four additional households in occupation of the Property at any time between 12 September 2023 and 21 September 2023.
19. Unfortunately, although the Applicant was a thoroughly credible witness, there was no evidence to corroborate her statements as to the other occupants. We could also not verify whether those occupants occupied the Property as their main or principal residence. None of the other occupiers of the Property during her residence had provided witness statements or attended the hearing and there was no documentary evidence as to the basis of their occupation. As a result, the

tribunal was unable to satisfy itself beyond all reasonable doubt that the alleged offence had been committed on any day between 12 and 21 September 2023. It must as a result dismiss the application.

### **Tribunal determination**

20. The tribunal determines that it is not satisfied beyond all reasonable doubt that the Respondent was controlling and/or managing an HMO which was required to be licensed under Part 2 of the 2004 Act but was not so licensed between 12 September 2023 and 21 September 2023. It cannot therefore find that she was committing an offence under section 72(1) of the 2004 Act during that period.
21. The application is therefore dismissed.

### **Cost applications**

22. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £110.00 and the hearing fee of £227.00.
23. As the Respondent has not co-operated with case and did not attend the hearing, the tribunal feels that it is just and equitable that the Respondent should pay the fees incurred by the Applicant in bringing this application.
24. The tribunal therefore orders the Respondent to reimburse to the Applicant the application fee of £110 and the hearing fee of £227 (amounting to £337 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

### **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 by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
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.

## SCHEDULE

### Relevant statutory provisions

#### Housing and Planning Act 2016

#### Section 40

- (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 ...
- (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 by that landlord.

	<b><i>Act</i></b>	<b><i>section</i></b>	<b><i>general description of offence</i></b>
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	Housing and Planning Act 2016	section 21	breach of banning order

#### Section 41

- (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.
- (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.

#### Section 43

- (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 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) ...

#### Section 44

- (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.



<b><i>If the order is made on the ground that the landlord has committed</i></b>	<b><i>the amount must relate to rent paid by the tenant in respect of</i></b>
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.

#### Housing Act 2004

##### Section 72

- (1) 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.
- (5) In proceedings against a person for an offence under subsection (1) ... it is a defence that he had a reasonable excuse ... for having control of or managing the house in the circumstances mentioned in subsection (1) ... .

##### Section 263

- (1) In this Act “person having control”, in relation to the 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.

(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 ...

(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