



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

Case reference : LON/00AG/HMF/2025/0626

Property : (x5) 102 Priory Road, London, NW6
3NS

Applicants : (1) JACK BOWEN
(2) FREDERIC MARKS
(3) LIZETTE OROZCO GUTIERREZ
(4) JULIE-ANNE CZYZ
(5) NATHAN RANDAL
(6) INDRE BRUZAITE
(7) RYUKIE MUSTAFA

Representative : James Cairns of Justice for Tenants

Respondents : BENTRY CAPITAL LIMITED

Representative : Respondent did not attend

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

Tribunal : Judge Shepherd
Fiona Macleod

Date of Decision : 22nd September 2025

DECISION

1. A rent repayment order of £16785 shall be paid by the Respondents for the period 15th August 2023 to 15th December 2023. The said sum must be paid within 28 days of this decision being issued. The Respondents shall also reimburse the Applicants with the application and hearing fee at a total of £777. This sum is also to be paid within 28 days of this decision being issued.

Background

2. The Application for a Rent Repayment was brought by seven former tenants of 102 Priory Rd, NW6 3NS (The premises). The tenants are Jack Bowen, Frederick Marks, Lizette Orozco Guiierrez, Julie-Anne Czyz, Nathan Randal, Indre Bruzaite and Ryukie Mustafa ("The Applicants"). The Respondents are the owners of the premises, Bentley Capital Limited.
3. The Applicants all occupied the premises as assured shorthold tenants protected under the Housing Act 1988. None of the Applicants are still in occupation of the premises. Their respective periods of occupation are shown below.
 - a. Flat (No.2): Frederic Marks and Lizette Orozco Gutierrez, one household, lived at the Property from 1st Feb 2021 until 31 January 2024.
 - b. Flat (No.1 and No.3): Julie-Anne Czyz and her partner, Nathan Randall, moved into Flat No.1 in October 2015. In January 2023, they moved into Flat No. 3 and moved out of the property on November 24th 2023. They did not attend as they were expecting a baby
 - c. Flat (No.8): Indre Bruzaite lived at the Property from 15th July 2018 until 15th December 2023.
 - d. Flat (No.7): Ryukie Mustafa lived at the Property from 6th April 2019 until 1st December 2023. This Applicant did not attend.
 - e. Flat (No.1): Jack Bowen lived at the Property from 14th January 2023 until 30th November 2023.
4. The premises is a semi-detached nine-flat property converted into a total of nine flats over four floors. Five flats with a shared bathroom, have their own kitchen (Flats number 1, 4, 5, 7 and 8). Four flats are self-

contained with their own bathrooms (Flats number 2, 3, 6 and 9). Eight flats share a communal entrance, and one flat has its own entrance.

The Applicants' case

5. The Applicants allege that they are entitled to rent repayment orders for the following periods:
 - a. Jack Bowen is seeking to recover the sum of £1,558.90 for the rent paid for the period between 15/08/2023 and 30/11/2023.
 - b. Julie-Anne Czyz & Nathan Randall are seeking to recover the sum of £3,966.32 for the rent paid for the period between 15/08/2023 and 24/11/2023.
 - c. Indre Bruzaite is seeking to recover the sum of £3,504.97 for the rent paid for the period between 15/08/2023 and 15/12/2023.
 - d. Ryukie Mustafa is seeking to recover the sum of £2,775.94 for the rent paid for the period between 15/08/2023 and 01/12/2023.
 - e. Frederic Marks and Lizette Orozco Gutierrez are seeking to recover the sum of £9,674.71 for the rent paid for the period between 15/08/2023 and 25/01/2024.
6. The Applicants allege that during these periods the Respondents were in control of or managing the premises and were operating without a license. They made their application for a Rent Repayment Order on 19th November 2024 accordingly all of the Applicants have made their applications within 12 months of the offence being committed.
7. The Applicants say that the property was subject to mandatory licensing conditions. It was occupied by more than 5 persons living in more than two households and met the Section 254(4) converted building test. Therefore, the mandatory requirement to licence the property under s.55 of the Housing Act 2004 is met.
8. In the alternative the Applicants say that the premises was subject to additional licensing conditions. The London Borough of Camden has implemented borough-wide additional licensing conditions for the period 8 December 2020 – 8 December 2025. The premises were within the designated area for additional licensing.
9. In email correspondence from Camden dated 19th November 2024 it was confirmed that the premises had been licensed under a mandatory license until 14th August 2023. After this date the license was revoked with the agreement of the Respondents' predecessor in title. The former owner agreed to revoke the license because he was selling the premises to the Respondents. The Respondents became the freehold owners on 13th June 2023.

The Respondents' case

10. The Respondents took no part in these proceedings. They did instruct solicitors called Aticus Law but no directions were complied with and the Respondents did not attend the hearing on 16th September 2025. At the start of the hearing the Applicants' counsel, Mr Cairns asked the Tribunal to deal with the matter in the absence of the Respondents pursuant to our powers under Rule 34 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 which states the following:

If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.

11. We considered the matter and decided that we would proceed in the Respondents' absence. We were satisfied that they had been served with the relevant documents including the Applicants' bundle of documents. The fact that they instructed solicitors supports the fact that they were aware of the proceedings. We are also satisfied that it was in the interests of justice to proceed with the hearing.

The law

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

12. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licencing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicensed HMO and under section 95(1) of having control or management of an unlicensed house. On summary conviction, a person who commits an offence is liable to a fine. An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.
13. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which states.

254 Meaning of "house in multiple occupation"

- (1) *For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if–*
 - (a) *it meets the conditions in subsection (2) (“the standard test”);*
 - (b) *it meets the conditions in subsection (3) (“the self-contained flat test”);*
 - (c) *it meets the conditions in subsection (4) (“the converted building test”);*
 - (d) *an HMO declaration is in force in respect of it under section 255; or*
 - (e) *it is a converted block of flats to which section 257 applies.*
14. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence under the mandatory licensing scheme. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.
15. Section 56 Housing Act 2004 deals with the designation of Additional Licensing Schemes:
- 56 Designation of areas subject to additional licensing*
- (1) *A local housing authority may designate either–*
 - (a) *the area of their district, or*
 - (b) *an area in their district,**as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.*
 - (2) *The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.*
 - (3) *Before making a designation the authority must–*
 - (a) *take reasonable steps to consult persons who are likely to be affected by the designation; and*
 - (b) *consider any representations made in accordance with the consultation and not withdrawn.*
 - (4) *The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.*
 - (5) *In forming an opinion as to the matter mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question.*
 - (6) *Section 57 applies for the purposes of this section.*
16. Section 263 of the Act provides:

“(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.”

The Housing and Planning Act 2016 (“the 2016 Act”)

17. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

18. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

19. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016 Act. He noted (at [64]) that “the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of “rogue landlords” in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The “main object of the provisions is deterrence rather than compensation.”
20. Section 40 provides (emphasis added):
- “(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, or
- (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.”
21. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.
22. It is a defence to the section 95(1) offence of having control of or managing an unlicensed house for the person concerned to show that they had a reasonable excuse for doing so (section 95(4)(a), 2004 Act). In this case Mr Newell maintained that he had such a defence in relation to the Flat.
23. In *Marigold v Wells* [2023] UKUT 33 (LC), at [48], borrowing from the approach taken by tax tribunals, the Upper Tribunal suggested that a property tribunal considering a defence of reasonable excuse. They had to first consider objectively if the defence could amount to a reasonable excuse. Secondly they have to decide if the facts relied on are proven and whether, viewed objectively, the proven facts provided an objectively rea-

sonable excuse for the conduct of the appellant, taking into account their experience and other relevant characteristics.

24. Section 41 deals with applications for RROs. The material parts provide:

“(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.

25. Section 43 provides for the making of RROs:

“(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).”

26. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(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.

27. Section 44(4) provides:

“(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.”

28. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

29. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

- (i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
 - (ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
 - (iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).
 - (iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).
 - (v) In determining the reduction that should be made, a FTT should have regard to the “purposes intended to be served by the jurisdiction to make a RRO” (at [41] and [43]).
30. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional “rogue” landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).
31. In *Acheampong v Roman* [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:
- "20. The following approach will ensure consistency with the authorities:*
- a. Ascertain the whole of the rent for the relevant period;*
 - b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.*
 - c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:*
 - d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).*
- 21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."*

32. Licensing offences may be ‘less serious’ than other offences for which an RRO can be recovered. However, in *Daff v Gyalui* [2023] UKUT 134 (LC) [49] it was stated that there are “more or less serious examples” of Section 72 offences.
33. *Newell v Abbott* [2024] UKUT 181 (LC) at [47]-[57] provides a comprehensive summary of the Upper Tribunal’s recent decisions regarding the seriousness of particular licensing offences.
34. *Newell* also provides a ‘neutral’ baseline for assessing the seriousness of an RRO. Deputy Chamber President Martin Rodger KC assessed that case at 60% without putting weight on either party’s conduct.

The hearing

35. As already indicated the Respondents failed to attend the hearing despite having notice of it. Mr Cairns represented the Applicants. He took the Tribunal through the facts of the case and described the layout of the premises (see above). We had the benefit of witness statements from all of the Applicants. Unfortunately, three of the Applicants did not attend (see above in para 3). The question arises as to the weight we should attach to their evidence and indeed their application in light of their non - attendance. If the Respondents had indicated an intention to defend the proceedings we would hesitate in giving weight to the witness evidence because the Applicants had failed to attend to pursue their own application. Here however the Respondents had shown a singular lack of interest in taking any part in the proceedings save for instructing solicitors who did nothing on their behalf. In addition, the evidence was largely the same as that of the other occupiers. Accordingly, we allowed Mr Cairns to pursue the application on behalf of the missing Applicants.
36. We asked the Applicants to nominate their head tenant to give oral evidence. This was Mr Bowen but we allowed other Applicants to answer questions as we went along. Mr Bowen appeared to be a very honest witness. The other Applicants also appeared honest. They gave the impression that they had felt let down by the Respondents. They believed the previous owner had secured agreement from the Respondents that they would not seek to evict the Applicants. In the event the Respondents were active in seeking the eviction of all of the tenants in some cases offering sums of money and in all cases starting possession proceedings which were doomed to failure because of the absence of an HMO license. The Applicants were particularly concerned about an elderly neighbour who had lived at the premises for 30 years and had been put under pressure to leave by the Respondents.
37. As well as seeking to evict them the Applicants complained that they had received no proper management since the Respondents took over. Their previous managing agent Mark Shine was very good. The Respondents’ managing agents were not local and were based in Liverpool and Birmingham. No replacement cleaner had been appointed by the Respond-

ents. The communal bathrooms were therefore not properly cleaned. Their elderly neighbour Gail had fallen and the emergency services had knocked her door down. The door was not replaced. Mr Marks said the heater in his flat had broken in winter 2023. He had to buy electric heaters. The Applicants said that they did not believe the fire alarm was working. The alarm had not been tested for some time.

38. According to the Applicants the Respondents had converted the premises to a single family dwelling.

Determination

39. We are satisfied beyond reasonable doubt that the Respondents were the Applicants' landlord with effect from the date when they took over ownership of the premises.
40. We are satisfied beyond reasonable doubt that the premises were a House in Multiple Occupation and should have been licensed but were not during the Applicants' occupation. We accept the Applicants' argument that the premises met the self - contained test in s.254 (4) of the Housing Act 2004 (see above) because they contained self - contained and non self - contained dwellings. This meant a license was required under the mandatory regime. If we are wrong about that the premises were in any event subject to an additional licensing scheme in Camden which meant that a license was required.
41. We are satisfied beyond reasonable doubt that the Respondents were the persons in control of the premises or indeed managing the premises at the relevant time. There was nothing to indicate the contrary and the Applicants paid their rent to the Respondents when they took over.
42. The Respondents took no part in the proceedings and did not therefore offer a reasonable excuse defence.
43. Accordingly, we consider that the offence is established for the periods claimed. No license was obtained or even sought during the Applicants' occupation of the premises.
44. Having decided that the offence is made out we consider it is appropriate to make a Rent Repayment order in this case. We will then consider the amount of penalty that is due. Applying the test in *Acheampong* (above):
45. The whole of the rent due was £21,480.84
46. In relation to utilities it appears that the only elements we can consider are the water rates, gas and electricity for the common parts. We had no evidence on the amount of council tax being paid by the Respondents. We consider that a deduction of £500 is appropriate.

47. None of the Applicants received universal credit so there is no deduction required here.
48. We consider that this offence was serious as the Applicants were placed at risk by virtue of the fact that the premises were not licensed. The fire alarm may have been out of order. It was unclear whether fire doors were in situ. In some respects the offence is not as serious as say an unlawful eviction but here the Respondents were not answerable as a landlord and sought to evict the Applicants even though they knew that the premises were not licensed. We consider this was a serious breach for which no justification or mitigation was offered.
49. The Applicants all appeared honest. There was no evidence their conduct had been anything other than good. In contrast the Respondents had shown disdain for the Applicants rights. Their main motivation was to get the Applicants out of the premises so that they could reinstate them as a family home presumably with a lure of a lucrative sale. The Respondents are undoubtedly professional landlords whose business is developing and managing property. We consider that the Respondents were *Rogue Landlords* of the type envisaged in the legislation and therefore a penalty at the higher end is appropriate.
50. We had no information about the Respondents' financial circumstances. We also don't know whether they have previously been convicted of any of the offences identified in the Table at s 45 of the 2016 Act.
51. Taking all of these matters into account we consider that an award of 80% of the rent for the relevant period is appropriate. This amounts to £16,785 which must be paid within 28 days of receipt of this decision
52. The Applicants were entirely successful in their application therefore we also require the Respondent to pay the application and hearing fees of £777. This sum should also be paid within 28 days of receipt of the decision.

Judge Shepherd

22nd September 2025

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.