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

| | | |
|---|---|---|
| **Case reference** | : | **LON/00AB/HMF/2025/0618** |
| **Property** | : | **17 Wisdons Close, Dagenham RM10 7HB** |
| **Applicant** | : | **Grace Samiba**<br>**Frederick Ekow Biney** |
| **Representative** | : | **In person** |
| **Respondent** | : | **Nazmun Tutul**<br>**Golam Rahat Khan** |
| **Representative** | : | **Mr Khan, MK Adams Solicitors** |
| **Type of application** | : | **Tenant's application for a Rent Repayment Order under ss. 40, 41, 43 & 44 of the Housing and Planning Act 2016** |
| **Tribunal members** | : | **Tribunal Judge M Jones**<br>**Mr Appollo Fonka FCIEH** |
| **Date and venue of hearing** | : | **10 July 2025, 10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | : | **01 October 2025** |

---

## DECISION

---

## Decisions of the tribunal

(1) The Tribunal declines to order the Respondents to repay to the Applicants any sum by way of rent repayment.

(2) The Tribunal declines to order the Respondent to reimburse the Applicant the application and hearing fees.

## Introduction

1. The Applicant tenants made an application dated 8 November 2024 for a rent repayment order ("***RRO***") against the Respondent landlords under sections 40-44 of the Housing and Planning Act 2016 ("***the 2016 Act***").

2. It is asserted that the landlords committed an offence of control or management of an unlicenced dwelling contrary to section 95(1) of the Housing Act 2004, which is an offence under section 40(3) of the 2016 Act.

3. Ms Samiba initially occupied 17 Wisdons Close, Dagenham RM10 7HB ("***the Property***") pursuant to a tenancy agreement dated 27 January 2019 granted to her and her former partner Mr Anthony Boakye Danquah for a term of 12 months at a rent of £1,200 per month, commencing on 15 February 2019. This had been increased by agreement to £1,350 per month from May 2024.

4. It was the uncontested evidence of the Applicants that Mr Biney moved into the Property in December 2019, Mr Danquah having by then vacated. All rental payments for the period with which the Tribunal is concerned were made by direct transfer from Mr Biney's account.

5. The tenants seek a RRO in the sum of £14,400. This prompted some inquiry at the commencement of the hearing, where the initial handwritten application dated 08 November 2024 was contained in neither party's bundle, but a subsequent typed application dated 17 March 2025 appeared at the beginning of the Applicants' bundle. This appeared to have been prepared as a wholly unnecessary response to the directions given by the Tribunal on 05 February 2025.

6. Having investigated the basis of the claim for an RRO, it transpired that the tenants sought an RRO for the 12-month period ending on 11/02/2024, in respect of which period they agreed that the rents paid from 28 February 2023 totalled £14,100, being £300 less than the sum claimed.

7. The Respondents served a detailed narrative statement of case in response to the application.

8. The parties each filed bundles in advance of the hearing. The Applicants' initial bundle numbered some 113 pages, augmented by the November 2024 application, and the Respondents' some 325 pages. This was countered with a further bundle from the Applicants comprising an additional 87 pages.

9. Whilst the Tribunal makes it clear that it has read each party's bundles, the Tribunal does not refer to every one of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to specific documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

10. This Decision seeks to focus solely on the key issues. The omission to refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundles or at the hearing require any finding to be made for the purpose of deciding the relevant issues in this application. The Decision is made on the basis of the evidence and arguments the parties presented, as clarified by the Tribunal in the hearing, and is necessarily limited by the matters to which the Tribunal was referred.

## Hearing

11. This was a face-to-face hearing.

12. The Applicants each represented themselves at the hearing.

13. Mr Khan, solicitor, represented the Respondents at the hearing, the commencement of which was adjourned upon the discovery that he had been instructed only 10 minutes or so into the hearing, and then the fact that he did not in fact attend at the Tribunal until 11.20 am, citing transport difficulties.

14. Progress was, accordingly, delayed for well over an hour. It was then hampered, first, by a fire alarm necessitating evacuation of Tribunal premises and, then, by the fact that the Respondents' solicitor did not have the Applicants' supplemental bundle, and the Tribunal adjourned for that to be rectified.

15. The Applicants and Respondents each gave evidence.

16. Because of the interruptions the hearing did not conclude until after 16.30 hrs, and in consequence of the Tribunal's need to discuss its decision, the written decision could not be prepared that day. Preparation of this written decision has thereafter been delayed in particular by Judge Jones's judicial and professional commitments, and we apologise to the parties for the delay.

## The Property

17. The Property is a 2-bedroom flat situated on an upper floor of a purpose-built block.

18. We did not inspect the Property, where neither party requested us to do so, and we did not consider it necessary or proportionate to do so to determine the application before us.

19. The Property was situated within a selective licensing area as designated by the London Borough of Barking & Dagenham (*"**LBBD**"*) under s.80 of the Housing Act 2004 (*"**2004 Act**")*, which remained in force throughout the period in issue, until its termination on 31 August 2024.

## Applicants' Case

20. The Applicants state that the Property did not have a licence, but required one, for the entirety of the period 12 February 2023 to 11 February 2024.

21. This was not in the event disputed by the Respondents, where Mr Khan in his submissions entirely sensibly conceded that the Property was subject to a selective licensing scheme at the relevant time, but that no licence had been applied for.

22. It was also common ground that the Respondents first applied for a licence on 10 February 2024, but that such licence application was not deemed to have been completed by LBBD until 12 February 2024. It was not granted for a considerable period thereafter, in disputed circumstances. LBBD however issued a draft licence in respect of the Property on 21 August 2024, the validity of which was backdated to 25 June 2024.

23. The Applicants complained of disrepair within the Property, and alleged that the Respondents were unresponsive to complaints and requests for maintenance works. They alleged, amongst other things, that the gas cooker worked only once during the term of their occupation, leading them to have to use gas cylinders on a camping stove to cook, turning their cookware black and creating fumes that made their children cough.

24. The Applicants complained of mould around windows and in the bathroom. They alleged that their kitchen units were in a poor state of repair. They complained of 6 months' leakage from the toilet in the Property, causing nuisance and inconvenience to their downstairs neighbour. The Applicants further alleged that heater valves were exposed, causing a hazard, and that the Property lacked fire alarms, so that Mr Biney purchased portable alarms himself.

25. All of this, the Applicants claim, was repeatedly complained of to the Respondents, who, they alleged, were highly unresponsive. They produced evidence to support complaints made from and after September 2024, in the course of which they sought assistance from LBBD's Housing Department, and produced a series of pictures showing the disrepair complained of.

## The Respondents' Case

26. The case for the Respondents was to the effect that the RRO application was retaliatory, against successive claims for possession of the Property based in turn upon substantial rent arrears. The first section 8 notice was served on 06 August 2024.

27. The Respondents' statement of case asserted that they had submitted a timely licensing application upon being appraised of the need to do so in January 2024, applying in early February 2024, and the reason a final licence was not issued was due to the Applicants' obstruction of the Respondents' workmen, who repeatedly sought and were denied access to effect necessary works.

## Relevant statutory provisions

## Housing and Planning Act 2016 (*"the 2016 Act"*)

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.

| | ***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 |

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.

| ***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.

Housing Act 2004 (*"**the 2004 Act**"*)

Section 95

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

Section 263

(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 … rents or other payments from … 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 … 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 …

## Tribunal's analysis

28. The uncontested evidence is that the Property was a dwelling which was required to be licensed but was not licensed at any point during the period of the claim. Having considered that uncontested evidence we are satisfied beyond reasonable doubt that for the whole period of the claim the Property required a licence, and it was not licensed.

29. It is also clear that the Respondents were the landlords for the purposes of section 43(1) of the 2016 Act, as they are named as landlord in the tenancy agreement, and received the rent paid. Again, this was undisputed.

30. The next question is whether the Respondents were, together, a *"person having control of or managing"* the Property within the meaning of section 263 of the 2004 Act. The evidence shows that the rent was paid to the Respondents. The Respondents have not sought to argue that they were not persons having control of or managing the Property or that the rent paid was not the *"rack-rent"* as defined in section 263. We are,

accordingly, satisfied that the Respondents received rent from the Applicants. The Respondents were additionally and in any event at the relevant time a person managing the Property.

**<u>The defence of "reasonable excuse"</u>**

31. Under section 72(5) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 3 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. The burden of proof is on the person relying on the defence.

32. In this case, Mr Khan sought to advance the defence, on the basis that the Respondents were not business persons or professional landlords, who had no idea that a licence was required until they were written to by LBBD in January 2024, and who demonstrably made application for the requisite licence promptly upon receiving such correspondence.

33. We accept that the explanation is credible. Nevertheless, it was the Respondents' responsibility to obtain a licence and there is nothing in the explanation provided which in our view is sufficient to amount to a complete defence. In particular, there is nothing to suggest that the matter was wholly outside the Respondents' control or that they were relying on somebody else to take appropriate steps in circumstances where it was reasonable to do so.

34. The purpose of the licensing regime is to try to ensure – insofar as is reasonably possible – that properties which are rented out are safe and of an acceptable standard, and it would frustrate that purpose if landlords could be excused compliance simply because their personal circumstances and/or failure to appraise themselves of applicable regulations caused them to neglect to apply for a licence.

35. The Tribunal therefore concludes, beyond reasonable doubt, that the Respondents had no reasonable excuse for failing to seek the necessary licence.

**<u>The offence</u>**

36. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. An offence under section 95(1) of the 2004 Act is one of the offences listed in that table.

37. Section 95(1) states that *"A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part … but is not so licensed"*, and for the reasons given above

we are satisfied (a) that the Respondents were, together, "person(s) managing" the Property for the purposes of section 263 of the 2004 Act, (b) that the Property was required to be licensed throughout the period of claim and (c) that it was not licensed at any point during the period of claim.

38. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made. On the basis of the Applicants' uncontested evidence on these points we are satisfied beyond reasonable doubt that the Property was let to the Applicants at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which their application was made.

39. We accordingly find that the Respondents each committed the offence under s.95(1) of the 2004 Act.

## **<u>Process for ascertaining the amount of rent to be ordered to be repaid</u>**

40. Based on the above findings, we have the power to make a rent repayment order against the Respondents.

41. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenants in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of housing benefit or universal credit paid in respect of rent under the tenancy during that period.

42. In this case, the Applicants' claim relates to the period 12 February 2023 to 11 February 2024.

43. Albeit that the Applicants seek a rent repayment order in the total sum of £14,400, analysis of the uncontested evidence reveals that the entirety of the rent paid to the Respondents during the relevant period, was slightly lower, £14,100.

44. We are satisfied on the basis of the evidence that the Applicants were in occupation for the whole of the period to which this rent repayment application relates and that the Property required a licence for the whole of that period. Therefore, the maximum sum that can be awarded by way of rent repayment is the sum of £14,100, this being the amount paid by the Applicants by way of rent in respect of the period of claim.

45. Under sub-section 44(4), in determining the amount of any rent repayment order 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 the relevant part of the 2016 Act applies.

46. In its decision in ***Acheampong v Roman and others [2022] UKUT 239 (LC)***, the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which is paraphrased below:-

(a) ascertain the whole of the rent for the relevant period;

(b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;

(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 compared to other examples of the same type of offence; and

(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).

47. Adopting the ***Acheampong*** approach, the whole of the rent in this case means the whole of the rent paid by the Applicants out of their own resources, which (where we have been unable to discern any relevant components of Universal Credit) is £14,100.

**<u>Utilities</u>**

48. We accept that the Applicants were solely responsible for payment of utilities: indeed, such was an unnumbered clause in the tenancy agreement, appearing at p.42 of the Applicants' bundle. Accordingly, no reduction applies under this head.

**<u>Seriousness</u>**

49. In ***Acheampong*** at §20(c), Judge Cooke held that the Tribunal must consider how serious the housing offence forming the basis of the application is, both compared to other types of offences in respect of which a rent repayment order may be made, and compared to other examples of the same offence. As the issue was put in §21 of the judgment, this *"…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?"*

50. As the Applicants were at considerable pains to remind us in their evidence, failure to license leads – or can lead – to significant health and safety risks for often vulnerable tenants, and sanctions for failure to license have an important deterrent effect on future offending as well as encouraging law-abiding landlords to continue to take the licensing system seriously and to inspire general public confidence in the licensing system. In addition, there has been much publicity about licensing of privately rented property, and there is an argument that good landlords who apply for and obtain a licence promptly may feel that those who fail to obtain a licence gain an unfair benefit thereby and therefore need to be heavily incentivised not to let out licensable properties without first obtaining a licence.

51. Furthermore, even if it could be argued that the Applicants did not suffer direct loss through the Respondents' failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, this will significantly undermine the deterrence value of the legislation.

52. Against that expression of policy concerns, it is nevertheless the case that the offence under s.72(1) of the 2004 Act is significantly less serious than those in rows 1, 2 and 7 in the table in section 40 of the 2016 Act, and we take that into account, following the guidance the Upper Tribunal in ***Dowd v Martins*** **[2023] HLR** 7, where offences of failing to licence in accordance with section 72(1) of the 2004 Act were expressed as being "*...generally less serious than others for which a rent repayment order can be made.*"

53. The nature of a landlord has been held to be relevant to the seriousness of the offence. In some cases, it has been argued that there is a distinction to be drawn between "professional" and "non-professional" landlords, seriousness being aggravated in the case of the former. The proper approach is as set out by the Deputy President in ***Daff v Gyalui*** **[2023] UKUT 134 (LC)***,* at paragraph 52:

*"The circumstances in which a landlord lets property and the scale on which they do so, are relevant considerations when determining the amount of a rent repayment order but the temptation to classify or caricature a landlord as "professional" or "amateur" should be resisted, particularly if that classification is taken to be a threshold to an entirely different level of penalty. ... The penalty appropriate to a particular offence must take account of all of the relevant circumstances."*

54. As to the condition of the Property, a good deal of the evidence in the case related to the Applicants' assertions as to poor condition and a lack of maintenance or response by the Landlords.

55. Having considered the evidence adduced by both sides, we conclude that there is no evidence to support any allegation that the Property was in a substantially poor condition between February 2023 and February 2024. We find that all substantive complaints of serious disrepair commenced only after the landlords served notice under Housing Act 1988 seeking possession, after the parties had fallen into disagreement regarding a proposed rent increase, and against mounting arrears. We find that after complaints in September 2024 the Landlord sent a maintenance man around to the Property, who confirmed to them that any defects had been remedied.

56. Thereafter, no complaint was made to the Respondents between September 2024 and January 2025 inclusive, from which we conclude that either the Property was nowhere near as bad as the Applicants assert, or if it was in a poor condition they simply failed to report it. We take particular note of the fact that, a report having been made to LBBD by the Applicants, that body closed its complaint file on 16 December 2024, based upon a lack of evidence from, and a failure to grant access by the Applicants.

57. Against the available evidence, we consider that the Property was of a reasonable standard, and that complaints of defects have been exaggerated by the Applicants to seek to lend support to the present claim. By way of example, a Gas Safety inspection dated 28 February 2024 filed to record the significant problems with gas hobs said to have warranted the use of a camping stove, and the electrical condition report dated 21 February 2024 recorded no significant defects.

58. We accordingly reject the case advanced on behalf of the Applicants that the Property suffered unresolved disrepair and maintenance issues to any significant degree.

59. In order to assess the starting point at stage (c), we take account of the now substantial guidance in case law from the Upper Tribunal, including cases in which the Upper Tribunal has substituted its own assessments. In particular, we have considered **Acheampong** itself, ***Williams v Parmar and Others*** **[2021] UKUT 244 (UT), [2022] H.L.R. 8**; ***Aytan v Moore*** **[2022] UKUT 27 (LC)**; ***Hallett v Parker*** **[2022] UKUT 239 (LC)**; ***Hancher v David and Others*** **[2022] UKUT 277 (LC)**; and ***Dowd v Martins and Others*** **[2022] UKUT 249 (LC)**. The range of percentage of the maximum possible RRO awarded range from 25% to 90% (i.e. at stage (d) – most of the cases precede ***Acheampong***).

60. We have had particular regard to the case of ***Newell v Abbott*** **[2024] UKUT 181**, where the Upper Tribunal awarded 60% of the rent received to the tenants from a landlord of a single property based upon a lack of licensing due to a lack of attention or inadvertence, where the accommodation was generally of a good standard.

61. In the light of the reasonable condition of the Property, and what we find to have been general responsiveness of the Respondent landlords, discussed further below, against the fire safety concerns raised, where the failure to obtain a licence was a matter of inadvertence rather than a deliberate decision to ignore their responsibilities, we consider that the starting point for this offence at stage (c) should be 60% of the maximum rent payable. That provides a figure of £14,100 x 60% = £8,460.

## Section 44(4) – Other Factors, Including Conduct

62. At stage (d), we must consider what effect the matters set out in Section 44(4) of the 2016 Act have on our conclusions thus far. Section 44(4) provides that in determining the amount of an RRO, within the maximum, the Tribunal should, in particular, take into account the conduct of the landlord and the tenant, and the financial circumstances of the landlord.

63. As Judge Cooke noted in ***Acheampong***, there is a close relationship in terms of conduct, at least of the landlord, between stages (c) and (d). Insofar as we have already made findings in relation to stage (c) which may also be said to relate to the conduct of the Respondent, we do not double-count them in considering the section 44(4) issues.

64. The most notable factor in dispute, to which the majority of the evidence at the hearing was directed, related to this issue of conduct of the parties.

65. By way of preamble, we find that the Property was for the substantial majority of the Applicants' occupation in a reasonable state of decoration and repair, and that the Applicants appear to have lived there perfectly happily until financial issues between the parties soured their relationship, leading ultimately to the Respondents' attempts to recover possession, based upon rent arrears.

### *Arrears*

66. In relation to the question of arrears, the Respondents produced a schedule asserting that between May 2019 and May 2025 the Applicants had accrued arrears of rent totalling some £15,890.00.

67. Upon giving evidence, Ms Samiba sought to dispute every penny of the arrears represented in that schedule. She was repeatedly asked whether she agreed any of the figures for the arrears, and stated that she disputed each and every sum on at least three occasions. Upon being cross-examined, she conceded that each sum there set out was indeed accurate, save for the first entry which in fact erroneously credited to the Applicants the sum of £960, as against £940 that had actually been paid. The net effect, we find, is that the Applicants were in arrears of rent in

the total sum of £15,910 as against the sums due and paid, as represented in that schedule.

68. Ms Samiba's efforts to deny what was plain and obvious upon analysis of the bank statements provided did nothing to assist her credibility.

69. Ms Samiba sought to maintain that additional sums had been paid by the Applicants which had, wrongly, not been credited to them. She was unable to demonstrate any such sum by reference to the documentary evidence, and unable to provide any particularity of what she claimed to have paid. We reject that evidence.

70. This was compounded by the fact that after sporadic large underpayments of rent in the latter part of 2024 and a want of payment of any sum in August and October, the Applicants had paid no rent whatsoever in January, February, March, April and May 2025, and each stated their intention to pay nothing thereafter. This, on examination, was not contingent upon any particular hardship or difficulty in seeking benefits, for example: for all that the Applicants' cleaning company had closed in 2022, Ms Samiba stated that she had savings, and Mr Biney was in employment.

71. Rather, as Ms Samiba expressed herself, this was a deliberate decision based upon the absence of a licence and alleged disrepair at the Property. Her stance, echoed by Mr Biney, was that those factors justified them in paying nothing at all for their accommodation.

72. It followed that by the date of the hearing the arrears of rent had increased by a further sum of £1,350 payable on 15 June 2025, so that the total had grown to £17,260, and appeared likely to continue to grow against the Applicants' apparent ideological opposition to paying anything at all.

73. Mr Biney sought to explain at least some of this as a consequence of difficulties experienced during the Covid-19 pandemic, when work was scarce. He stated that he had reached a verbal agreement with Mr Khan that the Applicants would pay 50% of the rent falling due, albeit that he agreed that he knew he needed to make up the shortfall at some point. He, too, held fast to the proposition that historical arrears need not be paid, and no rent would be paid going forward, based upon the absence of a licence and the alleged disrepair.

74. Mr Khan denied reaching any such binding agreement with Mr Biney, and we find that the actual sums paid, fluctuating as they did between £800 and £1,000 per month during the Covid period, demonstrates an awareness on the part of Mr Biney that substantially more than (just) 50% of the rent was required to be paid, so that we conclude no such binding agreement was concluded, albeit that to their credit the

Respondents did not actively pursue the arrears during the currency of the Covid pandemic.

75. Indeed, we found the evidence of the Applicants to be most unsatisfactory in a number of respects: they were evasive and argumentative, and in Ms Samiba's case repeatedly refused to accept the obvious in relation to the bank statements. Mr Biney did himself no favours by seeking to question Mr Khan's medical qualifications, and Ms Samiba had to be asked to restrain herself when erupting in laughter as Mr Khan explained how the stress of the situation regarding the Property had caused him to lose weight.

76. By contrast we found the Respondents to be measured and careful in their responses to questions, so that in all instances of dispute we preferred the evidence of the Respondents, and viewed the Applicants' evidence with considerable caution, unless corroborated by independent documentary evidence.

***Disrepair***

77. The other issue pertaining to conduct related to the disrepair alleged by the Applicants. We have already found that the Property was in a reasonable condition, and that the evidence discloses no complaints of serious disrepair left unaddressed. We accept the evidence of Mr Khan that at any point the tenants complained of any issue from 2019, he had a regular handyman that he sent round. By way of example, he stated, and we accept, that in 2020 he replaced the freezer where a broken door could not be repaired.

78. As to fire safety, we accept Mr Khan's evidence that the Property was compliant with all necessary regulations, having a smoke detector fitted in the hallway, which had been set off in 2022 when the Applicants left the Property leaving the oven on, which had caused a fire and the attendance of the fire brigade.

79. Having made complaint of a leaking toilet to Ms Tutul, her regular handyman assured her in September 2024 that no defect could be found. The Applicants complained to LBBD; the correspondence from that Authority discloses that the Applicants failed to provide supporting evidence. A plumber despatched to inspect the complaint was denied access, and by the email from Mr Akmol Hussain dated 16 December 2024 LBBD's decision to close the complaint file was communicated to the Respondents. We note that this prompted Ms Samiba to institute a formal complaint against Mr Hussain, dated 15 May 2025.

80. The Applicants complained to LBBD regarding the Property once more, in February 2025, leading to an inspection on 19 February by LBBD's officers and a detailed email from Simon Mwansa, Housing Enforcement

Officer, dated 05 March 2025. That highlighted a series of issues of concern, and requested the Respondents' proposals for rectification. These included damp and mould growth, draughts contingent on the open-plan configuration in the absence of a door between kitchen and living room, the poor state of the kitchen units, the need to adjust internal doors, and poor state of the bathroom, including a defective cistern. Notably, at no point has a formal Improvement Notice been served.

81. As identified above, no complaints regarding these matters can be shown to have been made to the Landlords in the months preceding LBBD's inspection and, where we accept Mr Khan's evidence that his handyman reported no issues upon inspection in September 2024, the Respondents cannot sensibly be criticised for remaining in ignorance of these issues.

82. Thereafter, we accept the Respondents' evidence that they sent tradesmen around to undertake necessary repairs, who were repeatedly refused entry. Mr Biney gave evidence that no fewer than 8 separate individuals had attended, but he considered that he was not obliged to admit them when there had been no liaison beforehand, or where he was not clear what work each was seeking to undertake. On one occasion workmen had turned up at 10 am, where he had a dental appointment at 10.30 am.

83. Mr Khan's evidence, by contrast, was that he would always provide advance notice of when workmen would be coming, and their proposed activities. He stated that there had been no problem gaining admittance to the Property prior to 2024, when relations soured. The Respondents had recently taken either to not admitting workmen at all, or being so rude to them that several had informed him they were no longer prepared to work at the Property

84. The evidence discloses, and we find, that there is no evidence of general poor condition of the Property for the period in issue on the application, to February 2024. Thereafter, complaints began once the Respondents served a s.8 notice in August 2024. Upon a complaint of a leak from the toilet, the Respondents sent a tradesman around in September 2024, who reported back to the effect that all was well, and made no mention of the Applicants needing to use a bucket to flush the toilet.

85. We find that the Applicants complained to the council regarding the alleged leak but, upon LBBD seeking to inspect, failed or refused to allow access or provide any supporting evidence, so that the file was closed in December 2024. This, we find, supports the Respondents' case that the Applicants habitually refuse entry to workmen seeking to ameliorate the very problems that the Applicants have complained of.

86. No complaints of any other defects were made to the Respondents between September 2024 and February 2025; when the Applicants

complained from February 2025 the Respondents sent tradesmen to the Property to seek to effect repairs, in response to the correspondence from LBBD, having been ignorant of the defects beforehand. For reasons best known to themselves, we find that the Applicants were obstructive about permitting access to no fewer than 8 separate tradesmen, and effectively frustrated the Respondents' ability to ameliorate matters of which they had been in ignorance prior to the LBBD email.

87. The Applicants, we find, then changed tactics to complaining of the frequency of visits, a wholly unjustified series of complaints of a lack of forewarning of such visits, a lack of identity documents for the persons attending or of clarity as to their proposed purpose and so on.

## Summary of Findings - Disrepair

88. We find the Applicants' complaints to have been significantly exaggerated.

89. It follows that we find little or nothing in the conduct of the Respondents that would cause us to adjust the level of an RRO award against them, and accordingly we make no such adjustment.

## Summary of Findings - Arrears

90. In ***Yi v Hobbs* [2024] UKUT 155 LC** the Upper Tribunal held that rent arrears occurring outside the period for which an RRO can be made are relevant to the tenants' conduct pursuant to section 44(4)(a), and may in the discretion of the First-tier Tribunal be deducted from any award.

91. We find the conduct of the Applicants in relation to the issue of the arrears appalling. They are each adamant that they will not pay rent for the Property, which they feel to be justified by the absence of a licence and by the disrepair complained of. This is not a consequence of hardship, rather an ideological refusal to pay. The Respondents' offer to seek to agree a repayment plan for the arrears has been ignored, and the stated position of each of the Applicants was that they would continue to refuse to pay a penny in respect of their continued occupation of the Property.

92. The vast majority of the arrears accrued outside the period for which the RRO can be made, where only £300 of those arrears were incurred during the RRO period, when the sum of £900 was paid as against £1200 due, in June 2023. That small level of arrears has been taken into account in calculating that starting point.

93. The remaining arrears sum, £16,960 accrued outside that period. This, we note, is more than double the starting point of £8,460 identified above.

94. In ***Kowalek v Hossanein Ltd* [2021] UKUT 143 (LC)** the Upper Tribunal agreed with the FTT that arrears accrued by the tenant outside the period relevant to the rent repayment order was a matter of the tenant's conduct and relevant to the calculation of the order; it upheld the FTT's decision to reduce the order made from £23,819.98 by 50% to £11909.99, where the rent arrears amounted to over £8,000. That decision was upheld by the Court of Appeal ( **[2022] EWCA Civ 1041** ).

95. In ***Kowalek***, the arrears amounted to a little over one third of the 'starting point' for the contemplated RRO. In the present case, the arrears are more than double that starting point.

96. In ***Yi v Hobbs*** the Upper Tribunal considered it appropriate to substitute for the initial decision of the FTT to allow just half of the arrears payable, a determination that the entirety of such arrears should be set against the amount to be repaid:

*"...it was clearly within the FTT's discretion to allow only half the arrears against the amount payable, and indeed one can imagine circumstances where no reduction might be made to reflect arrears, in light of the conduct of the landlord. But this was not such a case;* ***the only relevant matter of conduct of either party was the rent arears accrued by Mr Hobbs****. The FTT's decision to reduce the amount payable by only 50% of those arrears is inexplicable and I set the decision aside.* ***I can see no reason why the whole of arrears should not be set against the amount to be repaid, since there is no dispute about the amount of the arrears and the FTT found that no satisfactory explanation had been given for the arrears****."* **[at §23,** emphasis added**]**

97. While that decision was of course contingent on its own facts, we consider it would be wholly unjust for the Respondents to be forced to pay an RRO to tenants who demonstrably owe them more than twice the sum we would consider awarding as a starting point, and who have steadfastly refused to pay a penny in rent for a considerable period. Applying our discretion, we consider that the appropriate course is to set the entirety of the arrears against the amount otherwise to be repaid by way of RRO, noting the identical approach of the Upper Tribunal in ***Yi v Hobbs***.

98. The appropriate calculation, £8,460 - £16,960 leaves a substantial negative balance of (£8,500).

99. It follows that we conclude that the appropriate sum payable by way of RRO is £0, and accordingly we decline to order that any sum should be paid by way of RRO.

## Financial Circumstances of the Landlord

100. We are also required to consider the financial circumstances of the landlord under section 44(4).

101. Where we have concluded the appropriate sum is £0, we need not address this issue in detail. We do however accept Mr Khan's evidence of financial hardship, where he has had to borrow from friends and family to meet the mortgage for the Property.

## Whether the Landlord has at any time been convicted of a relevant offence

102. Neither Respondent has been convicted of a relevant offence.

## Decision

103. The Tribunal deplores the approach of the Applicants, who deem it appropriate simply to refuse to pay their rent, while (as we have found) causing great difficulty to the Respondents in their efforts to remedy precisely the issues the Applicants seek to rely upon as matters of conduct.

104. Taking all of the findings explained above into account, the Tribunal finds that we reduce the rent repayment figure by 100%, and we decline to order that the Respondents pay to the Applicants any sum by way of RRO.

## Reimbursement of Tribunal Fees

105. The Applicants have applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse their application and hearing fees.

106. Where the Applicants' claim has wholly failed, in the circumstances, we do not consider it appropriate to order the Respondents to reimburse these fees.

**Name:** Judge M Jones **Date:** 01 October 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.

(A) 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.

(B) 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.

(C) 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.

(D) 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.

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