



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

Case reference : LON/00AM/HMF/2025/0675

Property : 5 Apprentice Way, London E5 8TW

Applicant : Tanyaradzwa Paine-Motsi

Representative : I/P

Respondents : (1)Mr Sarwar Khan
(2)Mrs Shamin Akhtar

Representative : N/A

Type of application : Rent repayment order – s.41 Housing
and Planning Act 2016

Tribunal members : Judge Tagliavini
Mr S Wheeler MCIEH, CEnvH

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 17 September 2025
Date of decision : 5 October 2025

DECISION

The tribunal's decision

- (1) The tribunal makes a rent repayment order in the sum of £3,278.08.
 - (2) The tribunal makes an order reimbursing the applicant's application and hearing fees in the sum of £337.00.
 - (2) These sums are payable by the respondent to the applicant within 14 days of this decision being sent to the parties.
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The application

1. This is an application made pursuant to s.41 of the Housing and Planning Act 2016 which states:

(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.

2. The applicant alleges the respondent has committed an offence under s.95(1) of the Housing Act 2004 by reason of having the control or managing an unlicensed house in multiple occupation that was required to be licensed. Section 95(1) states:

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

3. Section 85(1) states:

(1) Every Part 3 house must be licensed under this Part unless –

(a) it is an HMO to which Part 2 applies (see section 55(2)), or

(b) a temporary exemption notice is in force in relation to it under section 86, or ...

4. *Section 55(1) and (2) states:*

(1) This Part provides for HMOs to be licensed by local housing authorities where—

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

The background

5. The subject property comprises a 5 bedroom terraced house ('the property'). Pursuant to a tenancy agreement dated 17 October 2023 made between Mr Sarwar Khan and Mrs Shamin Akhtar C/O Lock and Key Lettings Ltd and Tanyaradzwa Paine-Motsi, John Alexander Rudd, Sebastian Rock, Anoushka Khandwala at a rent of £3,7500 per month (exclusive of utilities). From the start of the tenancy on 20 October 2025, the applicant occupied one room at the property and had shared use of the kitchen and bathroom/w.c. with the other 4 occupiers. The applicant asserts the property was required to be licensed as it was a house used as an HMO and seeks a RRO for the period 20 October 2023 to 7 May 2024 in the sum of £5,463.46 together with the application and hearing fees in the total sum of £337.00.

Litigation history

6. All communications to the respondents have been sent to the respondents' address given in the tenancy agreement as being c/o their agent Lock & Key Lettings Ltd. The respondents played no part in this application, having neither complied with the tribunal's Directions dated 25 April 2025 and having been debarred from further participation in these proceedings by an order made by Judge Martynski dated 9 September 2025.

The Law

7. The applicant asserts the respondents committed an offence under s.95(1) of the Housing Act 2004 in that they had the control or were managing the subject property. Section 263 of the Housing Act 2004 defines these terms as:

(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.

8. It is for the applicant to prove every element of the alleged offence on the criminal standard of proof i.e. beyond all reasonable doubt.

The hearing

9. At the hearing, the applicant appeared in person and provided the tribunal with a hearing bundle comprising of 90 digital pages. The respondents did not appear and were not represented. In deciding to

continue with the hearing in the absence of the respondents or any representative, the tribunal had regard to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

10. Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states:

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. The tribunal satisfied itself that on the balance of probabilities, the respondents had been made aware of this application as the tribunal's letters, directions and subsequent Orders had been sent to the address the respondents had repeatedly given in the applicant's Tenancy Agreement, as being the address for correspondence and service of all notices ie. c/o Lock & Key Lettings Limited.
12. Therefore, having regard to rule 34 and the overriding objective, the tribunal considered it was fair and reasonable and in the interests of justice to proceed with the hearing in the absence of the respondents.

The tribunal's reasons

13. In reaching its decisions the tribunal took into account the burden and standard of proof required in this application. It also took into account all of the written and oral evidence provided by the applicant. The tribunal was satisfied the applicant had paid her 'share' of the rent of £832 per month throughout the period of the RRO claimed, which was collected by the Mr John Rudd on behalf of all the occupiers then paid to Lock & Key Lettings Limited as per clause 13.1 of the lease by way of payment to the bank details provided in the Tenancy Agreement.
14. The tribunal was also satisfied so that it was sure that the property had been a house in multiple occupation through the RRO period claimed by the applicant and that it was required to be licensed pursuant to the provisions of the Housing Act 2005 as a HMO. The tribunal was also satisfied the property did not have a license during the applicant's occupation as confirmed by the London Borough of Hackney Business and Technical Support Team; *email dated 17 Jan 2025.*

15. As the respondents did not participate in and were if fact debarred, no defence of 'reasonable excuse' was put forward and therefore the tribunal was not to consider this issue.
16. The tribunal was satisfied that the rent had been received by the respondents and that the respondents are the registered owners of the property as shown on the Land Registry documents. The tribunal is satisfied, therefore that the respondents had the control and were managing the property during the period of the applicant's occupation.
17. Having determined that an offence was committed throughout the period of the applicant's occupation, the tribunal considered the issue of quantum. In determining the amount of the RRO the tribunal took into account section 44(4) of the housing and Planning Act 2016 which states:

(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.
18. The tribunal also had regard to case law on the issue of quantum and in particular *Acheampong and Roman and others* [2022] UKUT 239 (LC)
19. Although the applicant complained of poor conduct, this primarily related to a dispute about the non-return of her deposit by the letting agent, which led to an Adjudication Decision dated by the Deposit Protection Service and is not, in any event within the jurisdiction of this tribunal.
20. The applicant did not provide evidence of any previous criminal conviction on the part of the respondents. No financial evidence of the respondents' circumstances was provided to the tribunal
21. Therefore, having taken all of the relevant circumstances and factors into account including the seriousness of the offence for which, to the knowledge of the tribunal, no financial penalty had been levied on the respondents, the tribunal considers the appropriate RRO to make is a sum that represents 60% of the rent claimed. Therefore the tribunal makes an Order that the respondents pay to the applicant the sum of £3,278.08.

22. The tribunal also makes an Order requiring the respondents to reimburse the application and hearing fees of £377 (total) to the applicant.
23. The sums at paragraphs 21 and 22 above are to be paid to the applicant by the respondents within 14 days of the date of this decision being sent to the parties.

Name: Judge Tagliavini

Date: 5 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.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the Regional Office which has been dealing with the case. The application should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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

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

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

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

