FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BB/HMF/2025/0700**
Property	**:**	**64 Atkinson Road, Newham, London, E16 3LS**
Applicant	**:**	**(1) Rohan Bhandari** **(2) Rose Jorgensen Rideout** **(3) Elina Jade Pampapathi** **(4) Connor Osborne**
Representative	**:**	**Ms. Donnelly-Jackson - Justice for Tenants**
Respondent	**:**	**MD Noor e Alam Siddiqui**
Representative	**:**	**Mr. Shoaib (from RE/MAX STAR)**
Type of application	**:**	**Application for a Rent Repayment Order, pursuant to sections 40, 41, 43 & 44 Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge S. McKeown** **Mr. A. Fonka MCIEH CEnvH MSc**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**7 October 2025**

DECISION

<u>Decision of the Tribunal</u>

(1) The Application for a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 is refused.

(2) The application for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the reimbursement by the Respondent of the fees of £337 paid by the Applicants in bringing this application is refused.

Introduction

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").

Application and Background

2. By an application dated 30 January 2025 (A95) the Applicants applied for a rent repayment order. The application is brought on the ground that the Respondent committed an offence of having control or management of an unlicensed House in Multiple Occupation ("HMO") for failing to have an additional HMO licence ("licence") for the 64 Atkinson Road, Newham, London, E16 3LS ("the Property"), an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act").

3. The Property is a four-bedroom semi-detached house over three-storeys with a shared kitchen and bathroom. It is said that the Property was in an additional licensing area designated by the LB of Newham, under a scheme which came into force on 1 January 2023.

4. A RRO is sought in the sum of £15,695.36 (sought by the Second Applicant on behalf of all Applicants) for the period of 18 August 2023 and 6 February 2024 as follows:

   (a) First Applicant - £3,923.84 – 18 August 2023-6 February 2024;
   (b) Second Applicant - £3,923.84 – 18 August 2023-6 February 2024;
   (c) Third Applicant - £3,923.84 – 18 August 2023-6 February 2024;
   (d) Fourth Applicant - £3,923.84 – 18 August 2023-6 February 2024.

5. The Respondent's position is set out in its Statement of Reasons (R3). In summary, this states:

   (a) The Applicants approached the agent, Mr. Masood, as a single household

(b) The tenancy was a joint tenancy, with all four tenants named;

(c) At no time did the agent state that the Property had a licence;

(d) A valid selective licence was in place, permitting the Property to be let to a single household;

(e) The tenants left the Property voluntarily and were refunded the tenancy deposit and reimbursed for the rent covering the unexpired term of the tenancy.

6. On 26 April 2025 (A87) the Tribunal issued directions for the determination of the application, providing for the parties to provide details of their cases and the preparation of a hearing bundle.

Documentation

7. The Applicants have provided a bundle of documents entitled "Statement of Case" comprising a total of 193 pages (references to which will be prefixed by "A__"). There is also a Reply bundle comprising 34 pages (references to which will be prefixed by "AR__").

8. The Respondent has provided a bundle of documents entitled "Respondent's Evidence Bundle" comprising a total of 37 pages (references to which will be prefixed by "R__"). There were also a number of documents sent separately: Signed Landlord Statement; Cover Letter RRO Reply, "Response to Applicants Reply", Written Defence Statement.

9. The Tribunal has had regard primarily to the documents to which it was referred during the hearing.

The Written Evidence of the Parties

10. There is a witness statement from the Fourth Applicant (A17). His confirms, among other things:

(a) First contact about the Property was made on 7 August 2023 and it was confirmed over the phone that the Property had an HMO licence;

(b) An offer of £2,800 pcm was made which was accepted along with a holding deposit;

(c) The first six months of rent were paid up front, followed by monthly instalments;

(d) The tenancy started on 18 August 2023 but the tenants all moved in on different dates as their university holidays concluding on around 2 September;
(e) There was a single tenancy agreement, for 12 months, with no break clause;
(f) They moved out on 6 February 2024;
(g) The downstairs bathroom had no extractor fan and the window was broken (it could be opened from the inside but only fully closed from the outside);
(h) Upstairs bathroom tiling was poor, and a repair only lasted a short period;
(i) One of the hob burners did not ignite which was raised as an issue but not addressed;
(j) The front door required a key to unlock from the inside rather than a "thumb-turn" lock;
(k) The door to the kitchen was not a fire door;
(l) The landlord did not attend the premises and there was no direct contact with him, only the agency;
(m) None of the tenants were related or in any relationship and they were told by the agency that the Property was suitable for a HMO group.

11. The occupants were as follows:

(a) Bedroom 1 – Fourth Applicant;
(b) Bedroom 2 – First Applicant;
(c) Bedroom 4 – Second Applicant;
(d) Bedroom 3 – Third Applicant.

12. There is a witness statement from Second Applicant (A52) which is similar in its terms but it also details some issues with the Property (para. 6). She states that they moved in separately according to when their schedules allowed, and she moved in on 27 August.

13. There is a witness statement from First Applicant (A63) which is similar in its terms but it also states:

(a) They moved in on separate dates towards the end of August/early September at the end of their summer holidays. Their contractual occupancy began on 18 August with the Applicants moving in about two to three weeks later;
(b) The side date would not close or lock correctly;

(c) The back door from the kitchen was difficult to lock.

14. There is a witness statement from Third Applicant (A72) which is similar in its terms but it also states that the landlord/agent was slow to repair damages as set out in para. 6(c) (A74). She states that her housemates picked up the keys on 18 August, but they moved in at different times throughout the next two weeks, having all moved in by 2 September 2023.

15. There is a witness statement from Mr. Masood (R6) which states, among other things:

(a) He never stated the Property was covered by a HMO licence;
(b) He was aware the Property had a selective licence allowing it to be let as a single household under one agreement;
(c) Since the tenancy was a joint tenancy agreement and the Applicants applied as a group, there was no reason to believe or suggest a HMO licence was necessary.

<u>The Hearing</u>

16. Ms. Donnelly-Jackson represented the Applicants. Mr. Shoaib, a managing agent from RE/MAX STAR attended and represented the Respondent. Mr. Rizwan Ashraf from RE/MAX STAR also attended but played no part in the hearing.

17. Ms. Donnelly-Jackson clarified that the RRO was sought by the Second Applicant as the rent from the other Applicants was collected by her and then paid, but that there was no issue with the RRO being made in respect of all Applicants or being apportioned between them. She said that the Applicants were seeking a RRO pursuant to s.72(1) for the period of 18 August 2023-6 February 2024. The application was made on 3 February 2025 and was therefore on time. The test was whether the Respondent was the Applicant's immediate landlord: *Rakusen v Jepsen* [2021] EWCA Civ 1150. The Applicant's case was that the Respondent was the Applicant's landlord as set out in the tenancy agreement. There is a selective licence in his name (R17-21) which names the Respondent as landlord. The Tribunal raised the issue that RE/MAX STAR was also named as landlord on the tenancy agreement. Ms. Donnelly-Jackson said that RE/MAX STAR were the letting agent, who found the tenants and handled the payment of money. The tenancy agreement states that the address is "RE/MAX c/o landlord". The Applicant's case is that

RE/MAX STAR were the letting agent who liaised on behalf of the immediate landlord. The Property is in an area which required an additional licence. Within the Applicant's Statement of Case is the additional licensing designation (A154). A161 shows the location of the Property, within the correct ward. The Applicants agree with the Respondent that additional licensing did apply. The Applicants were all named in the tenancy agreement, it was a joint tenancy and they were in occupation for the relevant period. The Property required a licence but was not duly licensed. The Respondent contends that the Applicants were a single household. The Applicants say that they knew this was not so and an additional licence was required.

18. The First Applicant gave evidence. He confirmed his name, address and that he is a student. He confirmed his witness statement at A63. He said that they found the Property online, he believed that the Second Applicant first made contact by phone with RE/MAX STAR on 7 August. The First Applicant understood that the Second Applicant explained they were all students, with four different guarantors. They viewed the Property on a WhatsApp video call with Mr. Masood and after that, they made an offer and paid the holding deposit. They agreed to pay six months' rent upfront, which they paid on 18 August 2023. The tenancy started on 18 August and by 2 September 2023, all the Applicants had moved in. He was asked about his understanding of the role of RE/MAX STAR. He said that the Applicants paid the rent to them on behalf of the landlord (the Respondent) and they were managing the property. When asked why he understood this, he said it was his understanding of their position and the agency, and that when people rent through agencies, that is how it worked. He did not know if RE/MAX STAR had told the Applicants that they did not own the Property. He confirmed that he thought the Respondent was the landlord and that was because of the tenancy agreement, which he signed remotely. He confirmed that they had received documents such as the How to Rent guide, EPC, electricity and gas safety certificates.

19. The First Applicant confirmed that he got to know the Applicants as they were on the same university course and in the same student accommodation in their first year. There was no romantic relationship between them. When they signed up to the tenancy, they were asked for their identification, details of their guarantors and the guarantors documents. They all had separate guarantors. He confirmed his tenancy application form at AR12. He said that they all paid their share of the rent to the Second Applicant, who then paid RE/MAX STAR. They each paid their share of the bills and the Fourth Applicant paid them (water, broadband, gas, electricity). No Council Tax was due as they were students. No element of the rent included bills. He was not in receipt of Housing Benefit or Universal Credit. The Third Applicant communicated with RE/MAX STAR by WhatsApp about repair issues. Repairs to the side gate took quite a long time, and the other issues may have been resolved, but not straight away. There were no property sections by the Respondent, and if there were any by RE/MAX STAR, he

was not present for them. The only person he met from RE/MAX STAR was the person he and the Fourth Applicant met when they collected the keys. When someone from the local authority came to do an inspection, he was not there, but he thought the Fourth Applicant was. After the inspection, they were told that the Property was being re-possessed, they were given two-month's notice, he knew that the Fourth Applicant had contact with the woman from the local authority who told the Fourth Applicant that the Property had the wrong licence as there were four people from four different families living there. The s.21 notice (A67) was received by email from RE/MAX STAR. The email (A68-69) said that the Property was being re-possessed and the Applicants had to leave in that period. The Second Applicant handed the keys back on 6 February 2024. The Applicants did get prescribed information about the deposit and the deposit was returned to them.

20. The First Applicant was asked questions by Mr. Shoaib. He asked if the Applicants had said they were looking for a HMO when they viewed the Property. He said that they had said they were all students. Mr. Shoaib said that the Property was not advertised as a HMO, but there was no copy of the listing in the bundles. The First Applicant confirmed that repairs were done to the door, but it took a bit of time. He thought that the other jobs were also done, but he had not personally raised them with RE/MAX STAR.

21. The Second Applicant then gave evidence. She confirmed her name, address, that she was a student and her witness statement at A52. She said that she was in charge of rent, which she then sent to RE/MAX STAR. They managed the Property, would take a payment and then give it to the Respondent. She was given bank account details to make the payments. She believed she had paid the deposit after receiving payments from the other Applicants. She paid the deposit and the six months' rent upfront on 18 August 2023. They moved out on 6 February 2024 and the "unused" portion of rent (to 18t February 2024) was returned. When asked about repair issues, she said that she did not remember sending emails herself, she thought it was the Fourth Applicant. She saw someone from RE/MAX STAR during the video viewing, but she did not know his name. The First and Fourth Applicants had collected the keys. She had no interaction with the local authority. The s.21 notice was sent to all Applicants. None of the Applicants were in a relationship with each other, they were four "sharers" and she knew they had to check a potential property was suitable for "sharers". She called RE/MAX STAR and checked the landlord would be okay with them being sharers and she was told yes, so she arranged a viewing. She confirmed her tenancy application form at AR16. She said that they were required to provide a rent guarantor and her guarantor was her mother. She had to provide either a driving licence or passport, along with her mother's identification. She had ticked the box to show she was a student at section 4. During the viewing, they had made clear they were students. The form set out her existing financial commitments which was student finance and a student loan. She confirmed there was no copy of the

selective licence anywhere in the Property. When asked if she knew the Property had a licence, she said that RE/MAX STAR said that the Property was okay for sharers. There was no cross-examination (the Tribunal had already explained that if there were any factual issues, if Mr. Shoaib disagreed with anything the witness said, they need to be put to the witnesses and this was explained to Mr. Shoaib again).

22. The Third Applicant gave evidence. She confirmed her name, address, that she was a student and her witness statement at A72. She said that the Second Applicant found the Property and contacted RE/MAX STAR by telephone. They had been looking for a property for a while. The Second Applicant told RE/MAX STAR that they were four medical students looking for a four double-bed property and this was how the Property was advertised. They were looking to rent for one year but in an ideal world, they would have stayed until the end of their degrees. She was taken to A72, cl. 3(c) and she confirmed there was no break-clause and it was a one-year contract. She was taken to A74 and she said that she had raised issues with RE/MAX STAR about a few issues: the bathroom floor tiles, the burner on the cooker, the gate. In terms of the bathroom, she was worried about re-grouting causing leaks in the future. She sent email on 7 September 2023 but a contractor only came to the Property on 28 September. She was taken to A79 and she confirmed that these were her messages to the person from RE/MAX STAR designated to deal with repairs and breakdowns. She had emailed Mr. Saleem initially (A78) and then followed up with some text messages to Mr. Khalid. On 20 September Mr. Khalid had said he would come to the Property, but later he said he was not coming, but would come another time. She confirmed that she had heard nothing about a property inspection before the email at A80. She said that she and the Fourth Applicant were present during the inspection and shortly afterwards, they got the s.21 notice, they contacted the council to clarify if there were issued with the Property. During the inspection, they showed the woman around the Property, she took their names, confirmed their relationships, they showed her the bedrooms, described some repair issues (the bathroom had been re-grouted but it was falling apart again).

23. She was asked about her understanding of the identity of the landlord. She said that the tenancy agreement named RE/MAX STAR as managing the Property. She was asked about her understanding of the responsibilities of a property agent. She said that the agent would manage the Property, deal with repairs and in her correspondence with RE/MAX STAR, she would tell them about repairs and they would consult with the landlord. She would be told that they would consult with the landlord about repairs and the landlord would get back to them. She paid the rent to the agents and they would give it to the landlord. She said that she understood that if the tenancy was to be brought to an end, it would be the landlord who would end it, through RE/MAX STAR as the agent.

24. She was taken to A79 by Mr. Shoaib and asked about the date of the messages in the third column. She confirmed that they were from 20 September 2023.

25. The Fourth Applicant confirmed his name, address, that he was a student and that his witness statement was at A17. He said that the other Applicants had said how they came to live together, they were in student halls and towards the end of their first year, they decided to live together. They searched for a property over the summer and the Second Applicant found the Property. He confirmed his tenancy application at AR8. The form set out that he was a student, his current landlord (section 5), his financial commitments (section 7). He was asked what had been said to RE/MAX STAR about the composition of the household. He said that they had looked for a property for a long time and had had rebuttals, so the Second Applicant would have said that they were students and sharers. He had been clear on his application that they were not one household.

26. She was taken to para. 4(a) at A18. She said that it was confirmed the Property had a licence. The Second Applicant was on the telephone call but she told the Applicants that she had asked about a HMO licence, said they were students. They had had problems before so they had got into the habit of asking questions in the initial telephone call. She was referred to para. 4(c) and it was confirmed that the First and Fourth Applicants met Mr. Masood, who handed them the keys. He said that the first time he found out the name of the landlord was when the tenancy agreement was sent through. RE/MAX STAR were listed as the agency. She believed the Respondent to be the landlord and owner of the Property and RE/MAX STAR were agents. He said that most of the communication with RE/MAX STAR about repairs was from the Second Applicant, but they were all copied in to all of the emails. He thought that his only contact was when a man came to do repairs to the hob and side gate, and he spoke to him. The bathroom repairs were done on a different date. He confirmed that A33 was an email he sent. He sent it as there had been a visit by the local authority and then the s.21 notice. He made a link in his head between the visit and the eviction, so he emailed to see what the findings from the visit were, if the local authority had raised an issue with RE/MAX STAR or the landlord about the Applicants living at the Property. The response was at A32. He said that they received two emails on the same day (A27 and A29), one attached the s.21 notice. It said there were issued with the bank. He was taken to para. 50 at A30. He said that he had not received any communication from the Respondent and he would not recognise him.

27. There was no cross-examination.

28. The Tribunal asked the Applicants when they had moved in to the Property. The Fourth Applicant said it was definitely by 2 September 2025 but he did not recall. The Second Applicant said she moved in on

27 August 2023. The Third Applicant said she had been on holiday but she would have moved in at the end of August. The First Applicant said that he did not recall, but it was the end of August or 1 September 2023.

29. The Tribunal clarified that it had a witness statement from Mr. Masood (R6), who would not give oral evidence. It had a witness statement from the Respondent (RR6), who would not give oral evidence. It had a witness statement from Mr. Shoaib (RR2), who had also written the Defence Statement (RR4).

30. Mr. Shoaib confirmed his name, that he was the Branch Manager at RE/MAX STAR, Canning Town branch, 75A Barking Road, E16 4HB. He confirmed his witness statement and that he did not want to change or add anything and that nothing was missing from it. He was asked why the Respondent was not at the Tribunal. He said that RE/MAX STAR was acting as the landlord and the landlord was not aware of the letting. He said that RE/MAX STAR were managing the Property and for three years they had owned the Property, they were the lessee and they paid a guaranteed rent to the landlord under a guaranteed rent scheme. The landlord would still get the payment even if the Property was empty. He confirmed a copy of the Rent Guarantee Agreement was at R22. He said that RE/MAX STAR had exercised reasonable care and skill in carrying its duties. He was taken to R22 and asked when RE/MAX STAR had entered into that agreement. He said that R22 was entered into on 27 January 2024 and this was the current agreement. It was put to him that this document was only entered into a week or two before the Applicants had to vacate the Property on 6 February 2024 and he agreed with this and said that this was the current agreement. He said that the agreement with the Respondent was not in the bundles. He said that the Respondent had been using RE/MAX STAR since 2018. The Respondent had another property. He confirmed the Property was let out at the moment for £2,500pcm. The other property was not let to or managed by RE/MAX STAR at the current time. He said RE/MAX STAR were registered with the Property Redress Scheme. When asked if RE/MAX STAR were used to letting out HMO's, he said that they had one. He confirmed he did fully understand the difference between a HMO licence and a selective licence. He said that the Property was licensed in the owner's name. It was put to him that RE/MAX STAR offered different services on its website, it managed HMO's and this was different to guaranteed rent agreements. It was put to him that the Rent Guarantee Agreement was not an "HMO" agreement. He said that it was a commercial agreement between RE/MAX STAR and the Respondent. He was asked if the Respondent was told to seek independent legal advice before he signed the agreement. He said that the agreement was sent to the Respondent and he signed it. He said the letting manager probably did tell the Respondent to take legal advice, but he was not personally there. He was taken to AR24 and he confirmed that the signature on behalf of RE/MAX STAR was Mr. Saleem, who is the Lettings Manager and a partner. He was taken to R6 and he confirmed that set out his understanding as to why the s.21 notice was served. He

was taken to the Rent Guarantee Agreement and it was put to him that on 22 January 2024, the Respondent had entered into a new three-year agreement, and he was asked why he had done this when he was seeking to evict the Applicants. He said that RE/MAX STAR wanted to regain possession as the Respondent was getting new properties and want to re-finance. Mr. Saleem was in charge of new contracts, and he probably convinced the Respondent that it was best to have Guaranteed Rent Agreement in place to have a continuous income. He agreed that the Applicants were given a s.21 notice ten months into a fixed-term 12-month tenancy. He was asked if he accepted that the s.21 notice was not valid. Mr. Shoaib said that he could see there was a problem, but the s.21 notice was only advisory as the landlord wanted possession and it was towards the end of the tenancy agreement and RE/MAX STAR wanted to give him back the Property. He said the notice was advisory, was voluntary and RE/MAX STAR had offered the Applicant replacement accommodation. He was asked about his assertion that the s.21 notice was "voluntary" and he said that the Applicants had been asked to move out, RE/MAX STAR had to give the Property back to the landlord, and the Applicants were offered a replacement. He was asked about whether the notice created a fear of court proceedings, he said that this was never exercised and RE/MAX STAR were at the end of its agreement with the landlord. He was asked about why any agreement with the landlord was more important that the agreement with the Applicants. He said that the s.21 notice was "purely advisory" and the Applicants were offered a different property. He was asked why RE/MAX STAR did not write to the Applicants acknowledging the breach of the agreement with them, he said it had probably been overlooked. He was asked who gave the instruction to regain possession, he said that the landlord called the "admin" team. He said the landlord was not in control of who was in the Property. He said that the landlord had a "commercial agreement" with RE/MAX STAR which was coming to an end and he wanted to regain possession, a commercial agreement was a business deal. He was asked why, if the agreement with the landlord had been coming to an end, a tenancy agreement running to August 2024 had been entered into. He said that usually RE/MAX STAR convinced a landlord to enter into a new agreement, but in this case they did not know the landlord's plan and he was looking to refinance. He was asked about RE/MAX STAR's operating model and he said that it was a franchise.

31. Ms. Shoaib was asked about his assertion that RE/MAX STAR had a lease of the Property and why the landlord had not served notice on RE/MAX STAR. He said it was because it was a commercial deal and they would always try to make a new deal. It was suggested to him that the fact that no notice was served on RE/MAX STAR indicated that it was not a landlord, but an agent. He said that the landlord was not aware of the Applicants' tenancy and when he mentioned landlord in this sense, RE/MAX STAR was acting as landlord. When asked why the landlord was not aware, he said that there was a three-year lease assigned to RE/MAX STAR. He said that if RE/MAX STAR were managing a property, it should share all documents with the landlord, and his

decision is final, they have authority to choose who they want to let the property to. Where there is a Guaranteed Rent Agreement, it was considered an office property. He was asked why the Respondent was listed as a landlord on the tenancy agreement. He said he had explained the situation, that RE/MAX STAR was acting as agent. Mr Saleem had signed it and Mr. Masood was acting as letting agent. He said that on the Land Registry documents, the Respondent was named. He said that he did not know when the selective licence (R17) that had been provided to RE/MAX STAR and he did not know if RE/MAX STAR had applied for the licence. He noted that the Respondent was named on the licence as application. He said that he did not remember the date of the agreement first entered into with the Respondent in respect of the Property. The agreement he had provided was dated 27 January 2024. It was put to him that there was something "suspect" about the date being so close to the end of the Applicants' tenancy when they had been told they were going to be evicted, and this occurring after the council had inspected the Property and found it did not have an additional licence. He did not agree with this. He could not remember when he first became aware of the council's inspection of the Property (he was taken to A80). He was taken to the licence (R17) and the clauses about permitted occupation ((a) and (b)) and he said it was familiar with what this implied. He was asked if he was contenting that when the Property was let to the Applicants, the selective licence was valid. He referred to Mr. Masood witness statement which set out what they understood.

32. Mr. Shoaib was asked why he thought the Applicants had submitted four separate tenancy application documents if they were one household. He said that it had been overlooked and was inadvertent. He was asked if he still maintained that RE/MAX STAR had acted with due diligence. He said that things happen and you learn from mistakes. He was asked if he agreed that there had been a mistake. He said that when RE/MAX STAR had receive notice of this application, they had checked everything and mistakes were noted. He was asked if he acknowledged that the Property should have had an additional licence, but he did not accept this and said that the Property should not have been let to the Applicants, but he then did accept that for the Applicants to live at the Property, it needed to have had an additional licence. He did not agree that it had been made clear by the local authority inspection that the Property had the wrong licence and it was for this reason that the landlord instructed RE/MAX STAR to evict the Applicants. He confirmed that RE/MAX STAR were responsible for the deposit. He agreed that the Applicants did not have rent arrears and that there had been no complaints about their behaviour. He said that it was RE/MAX STAR who received the rent and then it was given to the landlord, but he did not know how much was passed on. He said that the previous agreement with the Respondent should have been before the Tribunal. He was taken to the agreement at R22 and cl. 17 of that document. It was put to him that the Respondent was responsible for the matters set out which were the functions of a landlord. He said that under the "commercial agreement" the costs had to be the landlords. He said that the landlord paid the cost and RE/MAX

STAR arranged them. He was asked about his references to a "commercial agreement". He said that the agreement with the landlord did not come under property law, it was between the two parties and was about the arrangement of an asset for a certain period and payment of a fixed amount. He said that the "commercial arrangement" and the property arrangement in an assured shorthold tenancy were two different things and the two agreements had to be seen through different lenses": the tenancy agreement concerned property law and this (the Rent Guarantee Agreement) was a commercial agreement and RE/MAX STAR had to pay the guaranteed amount whether or not the tenant paid. He confirmed he was a director of RE/MAX STAR and he said he would understand of his duties under the Companies Act 2006 to promote the success of the company. He was asked why he referred to the Respondent as the "landlord" in text messages and at R25. He said that the author had probably been overwhelmed by the landlord's call and acted on that. Turning to the text messages, he said that the repair costs were the landlord's and they had to alert him that there was a problem with the Property. He said that the person writing the text messages is the "maintenance" person and he would not understand legalities. RE/MAX STAR managed 198 properties and most were under management contracts. He was taken to R25 and it was put to him that the reference to "dear agents" made clear the Applicants regarded RE/MAX STAR as agents. He said that RE/MAX STAR's staff would not distinguish. He agreed that the Applicants reported repairs to RE/MAX STAR. He was asked about stating that when repairs were reported, he had to correspond with the landlord, he said they had to get consent about cost. He agreed that a number of disrepair issues had been raised. He was asked about LB of Newham's guidance and he said that this was a selective licence. He was not aware of any fire safety inspections organised, but he agreed that fire safety breaches were serious. He confirmed that RE/MAX STAR kept records. He said that the Property, as it had a selective licence did not need a fire certificate, only battery-operated fire alarms and a CO2 alarm in kitchen. It was put to him that there had been no check that the Property had the right fire safety equipment and he said it was inadvertent. He confirmed there had been compliance with the requirements for a selective licence. He said that there were gas safety inspections. He was taken to A79 and it was put to him that it sometimes took a while for a response to repair requests. He said that they were all done. It was put to him that as there were separate application forms, RE/MAX STAR knew they were not one household. He said that he was not aware of that and it had "slipped through". He confirmed that RE/MAX STAR were not fined after the inspection and it had no previous convictions.

33. Before submissions, the Tribunal raised as issue concerning the case of *Pearton v Betterton Duplex Limited* [2025] UKUT 175 (LC) as set out below. The Applicant was given further time to make written submissions in this respect, but the Tribunal did then hear submissions from both parties.

34. The Respondent made submission as follows: The Property had been let on single joint tenancy, signed by all four applicants and all their names were on the tenancy agreement. The rent was paid collectively. This was not a series of room lets or separate households but a tenancy intended and structured for one household. At the time of letting, the Property had a selective licence issued by LB of Newham. Based on the joint tenancy, the Respondent had a reasonable belief no HMO licence was required. If the Tribunal found otherwise, the breach was inadvertent, not deliberate and arose from a misunderstanding. The Applicants say they were told the Property had HMO licence but there was no written evidence of this. Mr. Masood's evidence was that no such statement was made. On balance, the Tribunal should prefer the documentary evidence of the joint tenancy compared with uncorroborated claims. The December 2023 email and the s.21 notice references to repossession by the bank was a clerical error. The true reason was that the landlord intended to raise finances and he wanted to regain possession and made a phone call which was misunderstood by RE/MAX STAR's staff and which was sent to the Applicants by email. No possession proceedings were started and s.21 was not enforced. The Applicants were offered relocation to another property and this was not the behaviour of an agent seeking to harass or unlawfully evict. The Applicants left voluntarily and were refunded the deposit and unused rent. This shows good faith and not exploitation. The Respondent and RE/MAX STAR acted in good faith at all times. If there was a licensing breach it was technical and inadvertent and there was a reasonable excuse. He referred to the case of *Williams v Parmar* where there was good conduct, and a lack of malice justified dismissal. There should be no RRO as the Property was let under a joint tenancy with a valid selective licence.

35. Ms. Donelly-Jackson made submissions as follows. The Respondent is the person having control as defined by s.263(1) as he was named on the tenancy agreement (R7). He would receive rack rent as is the beneficial owner (A138-139). He was also the person managing property (see the Office Copy Entry). She also referred to the statements of rent (A121-137). The Respondent was the only landlord and the Applicants paid rent in accordance with the tenancy agreement to the Respondent. RE/MAX STAR were property agents and had a guaranteed rent agreement but the date of the agreement was suspect given the chronology. The local authority inspected in 2023, the Applicants were given an invalid s.21 notice (in breach of the tenancy agreement). The week before the end of the tenancy, the Respondent entered a Guaranteed Rent Agreement for 3 years from 27 January 2024. There is no contractual evidence of the relationship between RE/MAX STAR and the Respondent at the start of the tenancy agreement and we do not have what the local authority sent to the Respondent or RE/MAX STAR. This undermined the credibility of why an eviction notice was sent. Why enter a new agreement. It was implausible unless the Respondent wanted the Property let to a single household. The Property is in an additional licensing area (A145) and no application had been made. It was unlicensed from August 2023-Feb 2024, which was almost 6 months. There was ample time to ascertain a

licence was required. In terms of reasonable excuse and the contractual relationship between the Respondent and RE/MAX STAR, the Applicants relied on *Aytan v Moore* and submitted that the Respondent had not shown RE/MAX STAR was contractually obliged to keep the Respondent informed. Within the Guaranteed Rent Agreement, cl. 17, licensing was the Respondent's resp. The Respondent had not presented any evidence of inquiries made about an additional licence, the tenancy was entered into without an additional HMO licence and remained so for the whole of the tenancy. There was no evidence that the Respondent had reason to rely on the competence of an agent and RE/MAX STAR had admitted there were mistakes. It was not known if the Respondent made checks to see if RE/MAX STAR was accredited. There was no reason the Respondent could not have informed himself without relying on an agent. The offence is strict liability. The Tribunal could make inferences that the earlier agreement did not exist or it would have been submitted. In terms of reasonable excuse, Ms. Donnelly-Jackson referred to *Marigold & Ors v Wells*. Ignorance of legal requirements was no excuse (*IR Management Services v Salford* CC UT 2020), *Thurrock v Daoudi, Thurrock v Palmview*. A145 showed that there was no application for a licence. The Respondent asserted that no licence was required as the Applicants were a single household and the Property was therefore covered by the selective licence. The Applicants submitted that the Respondent knew from the outset that the Applicants were students, they had separate rent guarantors, gave separate information, had separate tenancy applications. The Respondent knew the Property was required to have an additional HMO licence. RE/MAX STAR emailed the Applicants individually at start of tenancy asking for key information (A84-85). The Applicants referred to themselves as housemates in text messages (AR6-7). They communicated they were separate tenants, with a lead tenant (AR25). In terms of conduct, there was systematic neglect on the part of the Respondent and a breach s.234(3) Housing Act 2004. The Tribunal heard, the Respondent had not ensured that fire safety was to the level required by an additional licence, only a selective licence. There was also a breach of s.98(1) Housing Act 2004 by serving a s.21 notice when the correct licence was not in place, and the service of the notice was in breach of the terms of the tenancy agreement. There were breaches of the local authority standards (A166-93). They were: para. 3.9(a) (A174), para. 13.14(3) in respect of bathroom ventilation A177). There was no extractor fan and there as an issue with the floors (para. 3.6.1, A170. The bathroom floor required grouting. There was an issue with security and the door locks (A180, para.4.1) as well as with gas appliances (A167 para. 1.7). There was also the issue concerning fire safety (A184-5). There was no issue about the Applicants' conduct – rent was paid and repairs were reported. In terms of seriousness, *Daff v Gyalui* said that you should look at them on a case-by-case basis. The Respondent had lack of processes in place, there were disrepair and maintenance issues, there was an invalid eviction notice, there were issue of fire safety. Ms. Donnelly-Jackon drew attention to the purposes of the legislation and the policy objectives. The award should be a substantial portion of the rent as per *Williams v Parmar*.It was said that an RRO should be made in excess of 90%. There was no reasonable excuse. In terms of seriousness, there were fire safety breaches and a lack of adverse conduct on the part of the Applicants. There was no information as to the financial circumstances of the Respondent. The Tribunal should draw the inference that he was capable of paying. The lack of previous convictions was not a mitigating factor. None of the Applicants were in receipt of Universal Credit or Housing Benefit. The utilities were paid collectively. Ms. Donnelly-Jackson referred to the case of *Newell*. The Respondent had another property which was sometimes let through same agent. There had been a number of repair issues. Inadvertence was not an excuse.

36. The Applicants sought their costs of £337 for fees.

37. Mr. Shoaib said he did not know anything about the Respondent's financial circumstances.

Statutory regime

38. The statutory regime is set out in Chapter 4 of Part 2 of the 2016 Act.

39. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rogue landlords and agents and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are set out in sections 40-46 Housing and Planning Act 2016 ("the 2016") Act, not all of which relate to the circumstances of this case.

40. Part 2 of the Housing Act 2004 ("the 2004 Act") introduced licensing for certain HMO's. The Local Authority may designate an area to be subject to additional licencing where other categories of HMO's occupied by three or more persons forming two or more households are required to be licenced.

41. The meaning of "house in multiple occupation" is set out in s.254(2) Housing Act 2004 which provides that a building or part of it meets the standard test if it:

"(a) consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household ...;

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;

(d) their **occupation** of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

42. Section 40 of the 2016 Act gives the Tribunal power to make a RRO where a landlord has committed a relevant offence. Section 40(2) explains that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority). A relevant offence is an offence, of a description specified in a table in the section and that is committed by a landlord in relation to housing in England let by that landlord. The table includes s.72(1) Housing Act 2004.

41 Application for a rent repayment order
(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
...

43. Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a specified offence, if the offence relates to housing rented by the tenant(s) and the offence was committed in the period of 12 months ending with the day on which the application is made.

43 Making of rent repayment order
(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 section 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);
...

44. Under section 43, the Tribunal may only make a rent repayment order if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter in relation to the commission of an offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

45. It has been confirmed by case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.

46. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, s.44 applies in relation to the amount of a rent repayment order, setting out the maximum amount that may be ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the Respondents were committing the offence. This aspect is discussed rather more fully below.

44 Amount of order: tenants
(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 repaid by the tenant in respect of
...	
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 repaid 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.

Determination of the Tribunal

RRO

47. The Tribunal has considered the application in four stages-

(i) whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time the Respondent was a person who controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed.
(ii) whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.
(iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
(iv) Determination of the amount of any order.

Was the Respondent the Applicants' landlord at the time of the alleged offence?

48. It was asserted during the hearing that RE/MAXSTAR was the landlord of the Applicants. There is a "Guaranteed Rent" agreement (R22), but the Tribunal finds the Respondent was the Applicant's landlord (18 August 2023-6 February 2024) and relies on the following:

(a) The Respondent is listed as having title absolute of the Property (A139);
(b) The Respondent is listed as the landlord on the tenancy agreement (R9). It states that one of the parties is "RE/MAX CO LANDLORD or LANDLORD: Mr. MD Noor e Alam Siddiqui" with the address given as "RE/MAX C/O LANDLORD";
(c) On the s.21 notices (A29, A69), Mr. Saleem is said to be the agent;
(d) There are repeated references to the Respondent by RE/MAXSTAR as the "landlord", both in the documents e.g. (A41, A68, R37, A79) and during. Mr. Shoaib's oral evidence;
(e) The Respondent was the applicant for the selective licence which was granted in January

2023 (R17) with Mr. Shoaib listed as licensing agent;

(f) The Guaranteed Rent agreement only started on 27 January 2024 (R22);

(g) The "Statement of Reasons" (R3) describes RE/MAXSTAR as managing agent and letting agent under the Guaranteed Rent Agreement.

Was a relevant HMO licensing offence committed during the period 18 August 2023 and 6 February 2024 and, if so, by whom?

49. The Tribunal applies, as it must, the criminal standard of proof (s.43(1)).

50. Section 77 Housing Act 2004 states that a "HMO" is a house in multiple occupation as defined by sections 254-259. The Tribunal is satisfied that once all the Applicants had moved into the Property (and until 6 February 2024), it was an HMO and the Property required an additional licence (A145) in order to be occupiable by three or more persons living in two or more separate households (see the additional licensing designation (A154)).

51. The Tribunal is also satisfied that the Property was, as from the time that the Applicants moved into the Property and until 6 February 2024, occupied by at least three people living in more than two separate households (the Respondent's issue is that he was led to believe that they were a single household which the Tribunal will go on to deal with below, in respect of any reasonable excuse defence).

52. Section 72(1) of the 2004 Act is listed in section 40 of the 2016 Act in respect of which the First-tier Tribunal may make a rent repayment order. The section provides that:

"A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed... but is not so licensed".

53. Section 61(1) states:

"Every HMO to which this Part applies must be licensed under this Part unless-
(a) a temporary exemption notice is in force in relation to it under section 62, or
(b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4".

54. Section 55 states:

> "(1) This Part provides for HMOs to be licensed by local housing authorities where-
> (a) 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".

55. The Respondent does not dispute the fact that there was no additional licence during the material period, but in any event, on the evidence, the Tribunal would have found (applying the criminal standard) that there was no additional licence in place during the material time (A140-5).

56. There is an issue as to when any offence commenced. The Tribunal finds that the offence was committed from the time that at least three of the Applicants were occupying the premises (this is dealt with below in terms of when the Applicants took up occupation of the Property) until 6 February 2024.

57. Where the Respondent would otherwise have committed an offence under section 72(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 72(5). The standard of proof in relation to that is the balance of probabilities. Where the Tribunal makes findings of fact in relation to such an aspect of the case, it does so on the basis of which of the two matters it finds more likely. It does not need to be sure in the manner that it does with facts upon which the asserted commission of an offence is based.

58. The offence is strict liability (unless the Respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083. The intention or otherwise of the Respondent to commit the offence is not the question at this stage, albeit there is potential relevance to the amount of any award. The case authority of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) in relation to reasonable excuse held that the failure of the company, as it was in that case, to inform itself of its responsibilities did not amount to reasonable excuse. The point applies just the same to individuals.

59. The Upper Tribunal gave guidance on what amounts to reasonable excuse defence was given in *Marigold & Ors v Wells* [2023] UKUT 33 (LC), *D'Costa v D'Andrea & Ors* [2021] UKUT 144 (LC) and in *Aytan v Moore* [2022] UKUT 027 (LC):

(a) the Tribunal should consider whether the facts raised could give rise to a reasonable excuse defence, even if the defence has not been specifically raised by the Respondent;
(b) when considering reasonable excuse defences, the offence is managing or being in control of an HMO without a licence;
(c) it is for the Respondent to make out the defence of reasonable excuse to the civil standard of proof.

60. The Tribunal has considered if there is a reasonable excuse defence. As stated above, the Respondent contends that RE/MAXSTAR was told that the Applicants were a single household.

61. Section 258 Housing Act 2004 states as follows:

(1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.

(2) Persons are to be regarded as not forming a single household unless

(a) they are all members of the same family, or

(b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) For the purposes of subsection (2)(a) a person is a member of the same family as another person if—

(a) those persons are married to or civil partners of, each other or live together as if they were a married couple or civil partners;

(b) one of them is a relative of the other; or

(c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.

(4) For those purposes—

(a) a "couple" means two persons who fall within subsection (3)(a);

(b) "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;

(c) a relationship of the half-blood shall be treated as a relationship of the whole blood; and

(d) the stepchild of a person shall be treated as his child.

(5) Regulations under subsection (2)(b) may, in particular, secure that a group of persons are to be regarded as forming a single household only where (as the regulations may require) each member of the group has a prescribed relationship, or at least one of a number of prescribed relationships, to any one or more of the others.

(6) In subsection (5) "prescribed relationship" means any relationship of a description specified in the regulations.

62. The Tribunal finds that the Applicants were not one household. The Tribunal also finds that RE/MAXSTAR was not told that the Applicants were one household but, in any event, it is not said by the Respondent what relationship it was thought there was between the Applicants. The Respondent took no steps to satisfy himself as to whether the Applicants would constitute one household within the statutory meaning. The onus was on the Respondent, as the landlord. Further, the Applicants completed separate Tenancy Application forms (AR6, AR10) with different addresses, different guarantors, giving the relationship of guarantor to the Applicant (Fourth Applicant – father; First Applicant – father; Second Applicant – mother; Third Applicant - grandmother) and with next of kin listed on the forms. It was (or should have been) clear that the Applicants did not constitute one household. The Tribunal therefore finds, on the balance of probabilities, that no reasonable excuse defence is made out.

63. The Tribunal finds that the offence was committed from the time that at least three Applicants moved in to the Property until 6 February 2024. The issue of whether the offence was committed between 18 August 2023 and this time is dealt with below.

64. The next question is by whom the offence was committed. The Tribunal determined that the offence was committed by the Respondent, being the "person" within the meaning of s.71(1) and s.263 Housing Act 2004, who had control of the Property at the material time.

Should the Tribunal make a RRO?

65. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondent committed an offence under section 72(1) of the 2004 Act, a ground for making a rent repayment order has been made out.

66. Pursuant to the 2016, a rent repayment order "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is

made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in the *London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) as follows:

"I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order".

67. The clear purpose of the 2016 Act is that the imposition of a rent repayment order is penal, to discourage landlords from breaking the law, and not to compensate a tenant, who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

68. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making a rent repayment order. The Tribunal determines that it is entitled to therefore consider the nature and circumstances of the offence and any relevant conduct found of the parties, together with any other matters that the Tribunal finds to properly be relevant in answering the question of how its discretion ought to be exercised.

69. Taking account of all factors, the evidence and submissions of the parties, including the purpose of the 2004 Act, the Tribunal exercises its discretion to make a rent repayment order in favour of the Applicants.

The amount of rent to be repaid

70. Having exercised its discretion to make a rent repayment order, the next decision was how much should the Tribunal order?

71. In *Acheampong v Roman* [2022] UKUT 239 (LC) at [20] the Upper Tribunal established a four-stage approach for the Tribunal to adopt when assessing the amount of any order:

(a) ascertain the whole of the rent for the relevant period;
(b) subtract any element that represents payment for utilities;
(c) consider the seriousness of the offence, 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 type of offence. What proportion of the rent is a fair reflection of the seriousness of this

offence? That percentage of the total amount applies for is the starting point; it is the default penalty in the absence of other factors, but it may be higher or lower in light of the final step;
(d) consider whether any deductions from, or addition to, that figure should be made in light of the other factors set out in section 44(4).

72. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act. Therefore, the amount ordered to be repaid must "relate to" rent paid in the period identified as relevant in section 44(2). The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.

73. At [31] of *Williams v Parmar* [2021] UKUT 244 (LC) it was said:

> "... [the Tribunal] is not required to be satisfied to the criminal standard on the identity of the period specified in s.44(2). Identifying that period is an aspect of quantifying the amount of the RRO, even though the period is defined in relation to certain offences as being the period during which the landlord was committing the offence".

74. It was also said that: "A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions." The judgment goes on to state that the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal "must, in particular take into account". The Tribunal is compelled to consider those and to refer to them. The phrase "in particular" suggests those factors should be given greater weight than other factors. In *Williams*, they are described as "the main factors that may be expected to be relevant in the majority of cases"- and such other ones as it has determined to be relevant, giving them the weight that it considers each should receive. Fancourt J in *Williams* says this: "A tribunal must have particular regard to the conduct of both parties includes the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence, The Tribunal should also take into account any other factors that appear to be relevant."

75. The Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period (ignoring for these purposes a provision about universal credit not of relevance here). That is entirely consistent with the order being one for repayment. The provision refers to the rent paid during the period rather than rent for the period.

76. It was said, in *Williams v Parmar*, by Sir Timothy Fancourt [43] that the *Rent Repayment Orders* under the Housing and Planning Act 2016: Guidance for Local Authorities identifies the factors that a local authority should take into account in deciding whether to seek a Rent Repayment Order as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending. It was indicated [51] that the factors identified in the Guidance will generally justify an order for repayment of at least a substantial part of the rent. It was also said that a full award of 100% of the rent should be reserved for the most serious of cases.

77. The Tribunal has carefully considered the amount of the rent for the relevant period of the licencing offence that should be awarded.

<u>Ascertain the whole of the rent for the relevant period</u>

78. The relevant rent to consider is that paid during "a period, not exceeding twelve months, during which the landlord was committing the offence".

79. The tenancy agreement states that the rent is £2,800 pcm (there was a "refund" made given the Applicants left the Property before the expiry of the fixed term). There is a schedule of the rent said to have been paid and which is claimed (A116). The amounts said to have been paid by the Second Applicant (on behalf of all of the Applicants) is as follows: £15,695.38 (not including the deposit) which is six months' (£16,800) less 12 days (£92.05 per day = £1,104.60). There is evidence of payments (A121), but the Respondent accepts that the full amount of the rent was paid.

80. None of the Applicants were in receipt of Universal Credit or Housing Benefit.

81. A matter was raised during the hearing by the Tribunal relevant to this issue. The Tribunal queried whether any RRO could be made. It drew attention to the case of *Pearton v Betterton Duplex Limited*. In that case, the Upper Tribunal found that the First-tier Tribunal was correct in finding that it could not make a RRO where the rent had been paid before the offence was being committed. The Upper Tribunal noted the references to "occupation" and "is occupied" in s.254(2) Housing Act 2004 and said that those references were crucial to the definition of a HMO. The Upper Tribunal rejected the submission that rent paid in advance should be "applied" to later dates and found that the rent paid by the appellant was not paid during the period in which the offence was committed as s.43(2) Housing and Planning Act 2016 required.

82. In the instant case, six months' rent was paid in advance on 18 August 2023 which was the day the tenancy began (and this was all the rent paid as the tenancy was brought to an end before the six months were up). The issue was whether the Applicants were occupying the Property at the time the rent was paid.

83. As the issue was not one raised by the Respondent and was not one of which the Applicants had notice, the Tribunal gave the Applicants some time to put in written submissions on the issue. The Tribunal did not provide for a response from the Respondent but said that if it was minded to find in favour of the Applicants on the issue, it would then allow the Respondent an opportunity to respond (limited to this issue).

84. The Applicant was given until 4pm on 19 September 2025 to put in written submissions. They state (in summary) as follows: The Applicant distinguishes the case of *Pearton* on the basis that, in the instant case, the Applicants had asserted and begun occupation insofar as their period of possession and quiet enjoyment had begun as of 18 August 2023 and they had all moved into the Property in August 2023. Further, in this case, the rent was paid on the date the tenancy commenced, not in advance of the agreement and the only question is whether the offence took place from 18 August 2023 or from the point that at least three Applicants had moved in (i.e. by 27 August 2023). It is said that the First Applicants was in occupation on or before 24 August 2023. The Second Applicant moved in on 27 August 2023. The Third Applicant moved in on 31 August 2023. The Fourth Applicant moved in on 26 August 2023. It is noted that s.254(2) requires occupation and s.254(2)(c) states that the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it. Section 259 Housing Act 2004 provides that persons occupying a property while they are full-time students are to be regarded as having their only or main residence there. It is said that the Applicants are to be treated as occupying the Property at the material time as they collected the keys on 18 August 2023 and could have moved in at any time thereafter. As they were returning from university vacation, the subject property was their "only or main residence". The Tribunal should not take an over literal approach to the precise timings of things done by the Applicants, they were granted a tenancy, they were entitled to occupy the property and began the process of taking up occupation. Parliament cannot have intended for such semantics to matter. Reference is made to *Cetin v Epping Borough District Council* [2025] UKUT 196 (LC).

85. Some of the above (and the documents attached to the submissions) contained fresh evidence as to when the Applicants moved into the Property. The Tribunal has had regard to this even though it was not produced before or at the hearing, but it does not ultimately assist on the crucial issue, which is whether the Applicants were in occupation on the date that the rent was paid, i.e. 18 August 2023 in that it is clear that none of the Applicants moved into the Property on 18 August 2023.

86. The Respondent was asked for his comments on the fresh evidence supplied and/or the legal submissions. The Respondent has provided submissions which are, in summary, that the occupation of the Property was staggered (with three occupants from 27 August 2023) so the offence could not have commenced on 18 August 2023. Further submissions were made as to the identity of the correct Respondent. These were not sought by the Tribunal and amount to fresh or further submissions on a point raised at the hearing. The Tribunal has had no regard to them. The Respondent also provided fresh evidence in the form of a Landlord Guaranteed Rent Agreement dated 20 January 2021. This was not sought by the Tribunal. The Tribunal has had no regard to the fresh evidence.

87. The question for the Tribunal is whether having the keys to the Property, having signed a tenancy agreement and having, therefore, a right of possession of the Property, the Applicants were in "occupation" as required for the purpose of s.254(2). The Tribunal finds that they were not for the following reasons.

88. Section 254(2)(c) and s.259 do not assist as it is premised on there being occupation. They do no more than preserve that occupation as occupation of an only or main residence (for the purpose of s.254), e.g. during university holidays.

89. Occupation in the context of overriding interests has been considered by the Courts. Para. 38.80 of Defending Possession Proceedings states: "Whether someone is in "actual occupation" is a question of fact", citing *Lloyds Bank plc v Rosset* [1989] Ch 350 and *Link Lending Ltd v Bustard* [2010] EWCA Civ 424. It goes on to state:

"... Occupation of land requires a physical present as opposed to a legal entitlement to the land. In the context of residential premises, this will obviously be satisfied by someone living in the mortgaged premises. It is necessary, however, that there is some degree of permanence and continuity. For example, being present in a house in order to get it ready to move into is not sufficient". That cites the case of *Abbey National Building Society v Cann* [1991] 1 AC 56, HL.

90. In *Cann*, Lord Oliver of Aylmerton stated [93]:

"It is, perhaps, dangerous to suggest any test for what is essentially a question of fact, for 'occupation' is a concept which may have different connotations according to the nature and purpose of the property which is claimed to be occupied. It does not necessarily, I think, involve the personal presence of the person claiming to occupy. A caretaker or the representative of a company can occupy, I should have thought, on behalf of his employer. On the other hand, it does, in my judgment, involve some degree of permanence and continuity which would rule out mere fleeting presence. A prospective tenant or purchaser who is

allowed, as a matter of indulgence, to go into property in order to plan decorations or measure for furnishings would not, in ordinary parlance, be said to be occupying it, even though he might be there for hours at a time".

91. The Tribunal therefore finds, as a matter of fact, that the Applicants were not in occupation on 18 August 2023. As a result, following *Pearton v Betterton Duplex Limited* the Tribunal cannot make a RRO as, at the time that all the rent was paid, the test set out in s.254(2) Housing Act 2004 was not met as at 18 August 2032 and the rent paid by the Applicant was not paid during the period in which the offence was committed.

92. The decision of the Tribunal is that no RRO can be made. The Tribunal, however, goes on to consider the remaining matters in the event that it is wrong on this issue (and the remainder of this decision is on that basis).

93. If the Tribunals' primary decision is wrong, and the Applicants were in occupation as at and from 18 August 2023, it would have found that the whole of the rent for the relevant period was £15,695.38.

Deductions for utilities?

94. The Applicants were liable for all charges in respect of supply and use of utilities, and so no deductions would be made in this regard.

Seriousness of the offence

95. If the Tribunals' primary decision is wrong, and the Applicants were in occupation as at and from 18 August 2023, the Tribunal considers the seriousness of the offence.

96. In *Williams v Parmar* [2021] UKUT 244 (LC) it was said that "the circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord', so the First Tier Tribunal may, in an appropriate case, order a lower than maximum amount of rent repayment, if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness of mitigating circumstances or otherwise".

97. As the Upper Tribunal has made clear, the conduct of the Respondent also embraces the culpability of the Respondent in relation to the offence that is the pre-condition for the making of the Rent Repayment Order. The offence of controlling or managing an unlicensed HMO is a serious offence, although it is clear from the scheme and detailed provisions of the 2016 Act that it is not regarded as the most serious of the offences listed in section 40(3).

98. In *Daff v Gyalui* [2023] UKUT 134 (LC) it was highlighted that there will be more and less serious examples within the category of offence: [49].

99. The Tribunal determines that the relatively less serious offence committed by the Respondent (i.e. a licensing offence) should be reflected in a deduction from the maximum amount in respect of which a RRO could be made.

100. In *Newell v Abbot* [2024] UKUT 181 (LC) was an appeal with a number of material similarities to the instant case. In *Newell,* the appropriate starting point was determined to be 60% of the rent paid. The tribunal took into account that

(a) The Respondent is an amateur as opposed to a professional landlord.

(b) The breach which occurred was inadvertent.

(c) The property was in good condition; and

(d) A licencing offence was committed (section 95(1), HA 2004).

101. The starting point for the Tribunal, taking account of this, is that a RRO should be made, reflecting 60% of the total rent paid for the relevant period.

102. The Tribunal takes into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies when considering the amount of such order. Whilst those listed factors must therefore be taken into account, and the Tribunal should have particular regard to them, they are not the entirety of the matters to be considered: other matters are not excluded from consideration. Any other relevant circumstances should also be considered, requiring the Tribunal to identify whether there are such circumstances and, if so, to give any appropriate weight to them.

103. The Tribunal takes into account:

(a) Bathroom window was damaged allowing it to be opened from the inside, but only fully closed from the outside;

(b) The front door needed a key to be unlocked from the inside instead of having a thumb turn lock, and the rear door had a similar "set-up" and was challenging to lock securely;

(c) The side gate was not closing or locking property. A wooden board with protruding nails fell off;

(d) These matters were reported multiple times before the lock was fixed, but the date continued to be a problem. The wooden board was never repaired;

(e) A s.21 notice was served at a time when it could not lawfully be valid;

(f) The Applicants' deposit was protected (and returned at the end of the tenancy);

(g) The Applicants were provided with the relevant information and safety certificates;

(h) Although the Respondent did not obtain the required additional HMO licence, the property did have a selective licence.

104. There are no allegations against the Applicant (and they were thanked for being good tenants – R29)

105. Taking account of the above and balancing all the factors, the Tribunal would have adjusted the amount of the RRO by 5%, i.e. it would have made a RRO, reflecting 65% of the total rent paid for the relevant period.

Whether landlord convicted of an offence

106. Section 44(4)(c) of the 2016 Act requires the Tribunal to take into account whether the Respondent has at any time been convicted of any of the offences listed in section 40(3). The Respondent has no such convictions.

Financial circumstances of the Respondent

107. The Tribunal has no information as to the financial circumstances of the Respondent.

Conclusion

108. For the reasons set out above, the Tribunal makes no RRO.

109. If the Tribunal was wrong in relation to the occupation of the Applicants, and it could have made a RRO, it would have reduced the maximum repayment amount by 35% (i.e. the amount of the award would have been 65% of the rent paid in the material period) apportioned equally between the Applicants.

Application for refund of fees

110. The Applicant asked the Tribunal to award the fees paid in respect of the application should they be successful, namely reimbursement of the issue fee and the hearing fee. As the Applicants have not been successful, the Tribunal does not order the Respondent to pay those fees.

Judge Sarah McKeown
7 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 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)