



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

<b>Case reference</b>	<b>: BIR/ooFY/HMJ/2024/0001</b>
<b>Property</b>	<b>: 18 Field Maple Drive, Nottingham NG7 5PU</b>
<b>Applicants</b>	<b>: Sangan Khoshal Zazai &amp; Mohammad Usman Zazai</b>
<b>Representatives</b>	<b>: Justice for Tenants (Ref:25392)</b>
<b>Respondent</b>	<b>: Ahamd Shakeb Shoaib</b>
<b>Type of Application</b>	<b>: Application by a Tenant for a Rent Repayment Order</b> <b>Sections 40, 41, 43, &amp; 44 of the Housing and Planning Act 2016</b>
<b>Tribunal members</b>	<b>: TW Jones FRICS (Chairman) K Bentley</b>
<b>Date of Hearing</b>	<b>: Paper determination</b>
<b>Date of Decision</b>	<b>: 09 October 2025</b>

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**DECISION**

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## **Background**

1. By application dated 6<sup>th</sup> June 2024 the Applicants applied for a rent repayment order against the Respondent under the Housing and Planning Act 2016 (“the Act”).
2. The grounds of the application were that the Respondent had control of a house which was required to be licensed but was not so licensed, under section 95 of the Housing Act 2004 (“the 2004 Act”), and that they had therefore committed one of the offences listed in section 40(3) of the Housing and Planning Act 2016 (“the Act”) and that the Tribunal were therefore permitted to make a rent repayment order in his favour.
3. The Tribunal originally issued Directions for a formal determination of this case on 5 September 2024.
4. The Respondent was barred on 15 January 2025.
5. The Tribunal held an oral hearing on 11 March 2025.
6. At that hearing, the Applicants advised the Tribunal that for various reasons, they sought to amend their application to seek an order for a total period of 12 months rather than the original 9 months set out in the original application.
7. The Tribunal adjourned the hearing in order to make further directions.
8. The Tribunal made further directions on 14 March 2025 stipulating:
  - a. This matter is not suitable for a paper determination and shall be listed for a hearing.
  - b. As the period over which the Order is sought, and therefore the amount claimed has changed significantly, the Tribunal proposes to lift the bar on the Respondent unless the Applicants object within 7 days.
  - c. By 28 March 2025 the Applicants must send to the Respondent, and to the Tribunal a revised indexed and paginated electronic bundle of all relevant documents for use in the determination of the application.
  - d. By 11 April 2025 the Respondent must send to the Applicants, and to the Tribunal an indexed and paginated electronic bundle of all relevant documents for use in the determination of the application.
  - e. By 25 of April 2025, the Applicants shall send an electronic reply to the issues raised in the Respondent’s statement and supporting documentation. The Reply must be sent to the Tribunal and also copied to the Respondent.
9. On 8 August 2025 the Tribunal informed parties that it considered that a further oral hearing was not required and that if any party required a further oral hearing, they were to notify the Tribunal within 14 days. No such notification was received.
10. In determining this matter, the Tribunal considered the Applicants revised electronic bundle. It was noted that the Respondent had not responded to the Tribunal’s directions and had not submitted any documentation.

## **The Law**

11. The relevant provisions of Part 3 of the 2004 Act, so far as this application is concerned are as follows-

### **79      Licensing of houses to which this Part applies**

- (1) This Part provides for houses to be licensed by local housing authorities where
  - (a) they are houses to which this Part applies (see subsection (2)), and
  - (b) they are required to be licensed under this Part (see section 85(1)).
- (2) This Part applies to a house if
  - (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
  - (b) the whole of it is occupied either under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)

### **85      Requirement for Part 3 houses to be licensed**

- (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
  - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

### **95      Offences in relation to licensing of houses under this Part**

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time
  - (a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still be effective (see subsection (7)).
- (3) In proceedings against a person for an offence under sub-section (1) it is a defence that, at the material time
  - ...  
(b) an application for a licence had been duly made in respect of the house under section 87, and that the application was still effective.
- (4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for failing to comply with the condition, as the case may be.

12. The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

#### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a Rent Repayment Order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
  - (a) repay an amount of rent paid by a tenant, or ...
- (3) A reference to ‘an offence to which this Chapter applies’ is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	Section	General description of offence
Housing Act 2004	Section 95(1)	control or management of unlicensed house

#### **41 Application for 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 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 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.

<b>If the order is made on the ground that the landlord has committed an offence mentioned in row ..6.. of the table in section 40(3)</b>	<b>the amount must relate to rent paid by the tenant in respect of a period not exceeding 12 months during which the landlord was committing the offence</b>
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- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
  - (a) the rent paid in respect of that period, less
  - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount, the Tribunal must, in particular, take into account—
  - (a) the conduct of the landlord and the tenant,
  - (b) the financial circumstances of the landlord, and
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

### **Applicants' Submissions**

- 13. The Applicants outlined in their written submissions that they occupied the property continuously from 15 September 2022 until 29 January 2025 during which the timeline of the Respondent's offence under Section 95 (1) of the Housing Act 2004 was in summary:
  - a) **1 August 2018:** The LHA's First Scheme was introduced;
  - b) **15 September 2022:** The offence commenced when the Applicants move in;
  - c) **8 June 2023:** The Respondent applied for a Temporary Exemption Notice;
  - d) **4 July 2023:** The offence paused when the TEN was granted;
  - e) **4 October 2023:** The TEN expired but the First Scheme was not in force;
  - f) **1 December 2023:** The offence resumed with the Second Scheme
  - g) **29 November 2024:** The offence ended when the Respondent made an application for a selective licence.

The Applicants further submitted that they were seeking to recover rent in respect of a discontinuous period such being permissible in accordance with the Upper Tribunal decision in *Irvine v Metcalfe & Ors [2021] UKUT 0060 (LC)* in addition to the Application Fee and the Hearing Fee.

Copies of the relevant documentation and Tenancy Agreement were submitted.

- 14. The Assured Shorthold Tenancy signed 15 September 2022 stipulated that the rent of £700 per calendar month for the first 6 months followed by £750 for the remainder of the fixed term was to be paid on 16 September 2022 for the first month followed by the 15<sup>th</sup> day of every month thereafter.
- 15. The Tenancy Agreement further specified that the utility costs (electricity and gas), TV licence, council tax, garden maintenance and water bills were not included in the rent.
- 16. The Appellant submitted in their witness statement that they do not recall receiving a gas safety certificate, "how to rent guide" and an Energy Performance Certificate at the

commencement of the tenancy, and despite numerous requests the Respondent did not address the identified property defects including mould, dampness and ceiling leakages in the main bedroom.

17. On 1 August 2018 Nottingham City Council brought in the first selective licensing scheme.
18. The first licensing scheme ceased to have effect on 31 July 2023.
19. On 1 December 2023 Nottingham City Council brought in a second licensing scheme which ceases to have effect on 30 November 2028.
20. Both schemes covered the ward in which the property is situated.
21. The property was not exempt under the specified exemptions nor was it in operation as a HMO.
22. On 7 June 2023 an application was submitted (and granted) for a temporary exemption notice expiring on 4 October 2023.
23. On 29 November 2024 the offence ended when the Respondent applied for a selective licence.
24. Whilst the offence continued until 29 November 2024 when the Respondent paid the licence application fee, by 11 March 2024 the Applicants' total period of claim (over the two discontinuous periods) had reached the maximum 12 months recoverable rent.
25. The Applicants detailed a breakdown of the rent covering the rental period concerned and sought a rent repayment order in the sum of £8700 made up of the rent paid between 15 September 2022 and 7 June 2023 amounting to £6267.12 and the rent paid between 1 December 2023 and 11 March 2024 amounting to £2432.88.
26. It was submitted that the property was not licensed at any point during the Applicants' period of claim with the claim specifically excluding the period in which the Respondent had the benefit of a Temporary Exemption Notice.
27. The aforesaid satisfied all elements of the offence of having control of, or managing, an unlicensed property under Part 3, section 95(1) of the Housing Act 2004 which is an offence specified under section 40 (3) of the Housing and Planning Act 2016.
28. The Applicants submitted copies of bank statements confirming rent payments made.

### **Respondent's Submissions**

29. The Respondent made no submissions to the Tribunal.

### **Discussion and Determination**

30. On this application for a rent repayment order, the first issue for the Tribunal is to decide whether the Respondent has committed an offence under section 95 of the 2004 Act, namely whether the Respondent has had control of or management of a property

which requires to be licensed, but which is not so licensed. No rent repayment order can be made unless this offence is established beyond reasonable doubt.

31. There are 6 elements to the offence:

- a. That the Property must be a “house”;
- b. That the Property must be in area which the local authority has designated as an area of selective licensing;
- c. That the Property is let under a single tenancy or licence that is not an exempt tenancy or licence;
- d. That the Property is not licensed;
- e. That the Respondent is “a person managing or having control” of the Property;
- f. That there is no reasonable excuse for the Respondent having control of the Property without it being licensed (which has to be proved by the Respondent on the balance of probabilities).

32. The first five elements of the offence are not seriously in doubt. The Property is a building, consisting of a dwelling which therefore falls under the definition of “house” in section 99 of the 2004 Act. The Tribunal accepts the evidence which is submitted by the Applicants that the Property was within a selective licensing area as from 1 August 2018 and resumed with the second scheme on 1 December 2023 and that no application for a licence was made until 29 November 2024.

33. The Tribunal then proceeded to consider Section 95 of the Act. Section 95(3) confirms that *‘it is a defence that, at the material time-*

*(b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection 7)*

34. In this case no application for a licence was made until 29 November 2024 as such, the Tribunal determines that there is no statutory defence for the Respondent having control of the property without it being licensed. In particular:

- a) There was no licence.
- b) An application for a licence had not been made.
- c) The Respondent had received no Notice of Exemption from the local authority confirming that for any reason, the property was exempt from the requirement to have a licence.

35. A copy tenancy agreement provided in the bundle of documents confirms that the property is let under a single tenancy. The Respondent is managing the property as he receives the rent. By virtue of section 263 of the Act the Respondent is the person in control of the Property as they receive the rent directly from the tenant.

36. No evidence was submitted to indicate that the Respondent had a reasonable excuse for failing to license the Property. In fact, it is disappointing that the Respondent choose not to assist the Tribunal by submitting any material.

We therefore find, as a matter of fact that an offence under Section 95 of the 2004 Act is proved.

37. There is no suggestion that the Respondent did not know of the selective licensing scheme. It is unfortunate that the application for such licence did not have the importance it deserves attributed to it.
38. The Tribunal is aware of the Upper Tribunal's decision in *Irvine v Metcalfe & Ors [2021] UKUT 0060 (LC)*, in which it was mentioned that it may be permissible for Applicants to seek an RRO over *any* period (subject to the 12-month constraint imposed by section 44, Housing and Planning Act 2016), even if this is comprised of distinct, discontinuous periods.
39. Our conclusion on the first issue is that the Respondent did commit an offence under Section 95 of the 2004 Act between 15 September 2022 - 7 June 2023 and 1 December 2023 - 11 March 2024 during which period the Applicants were tenants in the property.
40. The second question for us is to determine is the maximum possible award we could make as a rent repayment order. The Tribunal notes the award cannot be higher than the rent that was paid in a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) and 44(3)(a) of the 2016 Act).
41. It is apparent that the offence continued for the term of the tenancy up to the licence application date 29 November 2024 apart from the period that the Respondent received a temporary exemption from licence requirement. In addition, following the expiration of the temporary exemption licence on 4 October 2023 the Respondent still did not apply for the Selective Licence under Section 95 of the Housing Act 2004 until 29 November 2024, some 12 months later.
42. In view of P.40. the Applicants are entitled to a rent repayment order for this period of his occupancy therefore we now have to identify the rent paid *during* that period and the rent payable *in respect of* that period (see *Kowalek v Hassanein Ltd [2021] UKUT 143 (LC)*).
43. In *Acheampong v Roman [2022] UKUT 239* the Upper Tribunal set out the following guidance on how to quantify the amount of a rent repayment order which, it said, will ensure consistency with the authorities:
  - a) Ascertain the whole of the rent for the relevant period;
  - b) Subtract any element of that sum that represents payments for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate;
  - c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relevant seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that the term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step;
  - d) Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

44. The evidence was that the total sum of £8,700 was paid as rent during the period 15 September 2022 - 7 June 2023 and 1 December 2023 - 11 March 2024 and that the full amount was due (see paragraph 24 above).

45. The Tribunal is required to satisfy itself as to the amount of the possible rent repayment order and agrees with the Applicants' calculation.

Therefore, the starting point for the maximum award we can make is £8,700.

46. The third question for us is to determine is the amount we are willing to order, taking into account the factors we are obliged to consider contained in section 44(4) of the 2016 Act. We may also take into account any other factors we consider are relevant (see paragraph 50 of *Williams v Parmar* [2021] UKUT 0244 (LC)).

47. Having regard to *Acheampong v Roman* we therefore take into account the following:

- a. This is the Respondent's first offence;
- b. The Respondent has now licensed the property;
- c. No element of the rent represents payments for utilities;
- d. The Appellant's witness statement indicates that:-
  - i. they do not recall receiving a gas safety certificate, "how to rent guide" and an Energy Performance Certificate at the commencement of the tenancy, and
  - ii. despite numerous requests the Respondent did not address the issues regarding the condition of the property including mould, dampness and ceiling leakages in the main bedroom,
- e. The evident disregard the Respondent had for the licensing requirement – see P. 41;
- f. It is clear from 'Ayton' and other Upper Tribunal cases that the intention of Parliament with this legislation was to target "rogue" landlords. The Respondent's disregard for the requirement of selective licensing would suggest that he falls within that description;
- g. No submissions have been made in respect of the Respondent's financial circumstances. We are satisfied on a balance of probability that the Respondent is able to afford the full amount of the rent repayment order we make.

48. The Tribunal does not give any weight to the fact that any rent repayment ordered may be considered by some to be an underserved windfall for the tenant. This is not a factor we are able to take into account.

49. Taking into account the decision in *Acheampong v Roman* we are of the opinion that it would be unjust not to make a discount to the maximum sum we can order as a rent repayment taking into consideration this is the Respondent's first offence and that he has now licensed the property.

50. As we have previously determined the starting point for our award is £8,700.00 (P45).

51. We further determine that the offence of not having a selective licence is not unduly serious on its own when taking account of the range of potential offences for which rent repayment orders are available, such as harassment or unlawful eviction. Therefore, we do not accept that this is an appropriate starting point and balancing all the factors listed above, our view is that 40% reduction of this amount is appropriate.

52. The purpose of a rent repayment order is to deter landlords from the unlawful action of operating without a licence when required and to prevent repeat offences. In this case it is evident that the Respondent was made aware of the licensing requirement but for whatever reason did not apply for such until 29 November 2024.
53. In addition, there is evidence of disrepair which has not been addressed by the Respondent as detailed in P.16. and there is the matter of the gas safety certificate, "how to rent guide" and an Energy Performance Certificate which should have been provided to the Applicants at the commencement of the tenancy.
54. The Tribunal must also have regard to the conduct of the Landlord/Respondent in accordance with Section 44 of the Housing & Planning Act 2016.
55. Taking paragraphs 52 and 53 into account it is the Tribunal's decision that the award of £5220 be increased by 25% giving a total repayment of £6525.00.
56. We order that the Respondent must pay a rent repayment order to the Applicants in the sum of £6525.00.
57. We further order that the Respondent must reimburse to the Applicants the Application Fee (£100.00) and the Hearing Fee (£200.00) making a total of £300.00.

### **Appeal**

58. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

T. Wyn Jones FRICS  
Chairman. First-tier Tribunal (Property Chamber)