



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

Case reference : **HAV/00HX/HMF/2025/0609**

Property : **38 Prospect Hill, Swindon, SN1 3JS**

Applicant : **Stanica Ovidiu Ardelanu**

Representative : **Mr Barrett, Paralegal from Represent Law Limited**

Respondents : **(1) HMO Properties Limited
(2) Jason Daniel Kirton**

Representative : **Mr Kirton on behalf of both Respondents**

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

Tribunal : **Tribunal Judge Mohabir
Mr K Ridgeway MRICS
Ms P Gravell**

Date of hearing : **28 August 2025**

Date of decision : **18 September 2025**

DECISION

Introduction

1. Unless stated otherwise, the references in square brackets are to the pages in the Applicants' hearing bundle.
2. This is an application made by the Applicant under section 41 of the Housing and Planning Act 2016 ("the Act") for a rent repayment order against the Respondent in respect of 38 Prospect Hill, Swindon, SN1 3JS ("the property") in the Borough of Swindon.
3. The property is a 5-bedroom house comprised with two shared bathrooms and a shared kitchen.
4. The First Respondent is the freeholder of the property who let out single rooms to tenants on an individual basis. The Second Respondent is a Director of the First Respondent who managed the property on its behalf.
5. The Applicant occupied Room C at the Property between 22 April 2024 and 23 October 2024 with his partner and 1 year old child at the time. He was not given a written tenancy agreement but key terms such as the rental and deposit amounts were communicated by WhatsApp messaging on 21st and 22nd April 2024. The rent payable was £725 per month. In addition, the Applicant paid a deposit of £300 on 22 April 2024. Both the rent and the deposit were paid to the First Respondent .
6. The Applicant was not the only tenant of the property. There were other tenants who moved in and out the other 4 rooms from time to time.
7. By an application dated 14 April 2025, the Applicant made this application to the Tribunal for a rent repayment order on the basis that the property was an unlicensed HMO in breach of section 72(1) of the Housing Act 2004. A rent repayment order is sought by the Applicant in the sum of £4,350, being the rent paid for his 6-month period of occupation ("the relevant period").

Relevant Law

Requirement for a Licence

8. Section 72 of the Housing Act 2004 provides:
 - (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
 - (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) ...

(4) 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

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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 permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

9. *Section 263 of the Act defines a person having control or managing as:*

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

Amount of order: tenants

10. Section 44 of the Act provides:

- (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***

an offence mentioned in row 1 or 2 of the table
in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the
table in section 40(3)

***the amount must relate to the rent paid
by the tenant in respect of***

the period of 12 months ending with the date of
the offence

a period not exceeding 12 months, during which
the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
 - (a) the rent paid in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
 - (a) the conduct of the landlord and the tenant,
 - (b) the financial circumstances of the landlord, and
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.”

Hearing

- 11. The hearing in this case took place on 28 August 2025 remotely by CVP. The Applicant was represented by Mr Barrett, a Paralegal from Represent Law Limited. The Respondents were both represented by Mr Kirton, the Second Respondent.

12. The Applicant confirmed the contents of his witness statement were correct. Both in cross examination by the Second Respondent and by the Tribunal, he gave consistent and clear evidence about the number of occupants in the property during the relevant period and his WhatsApp communication to create additional rooms with the Second Respondent about the letting. In addition, he said that in or about August 2024, approximately 4 months after his tenancy commenced, he and his family were decanted by the Second Respondent (by agreement) to “a shed with a toilet” as alternative accommodation for approximately one and a half weeks. This was done to enable the Second Respondent to create additional rooms in the property for letting.
13. In contrast, the Second Respondent was an unreliable witness. For example, he gave evasive and inconsistent evidence about who the various rooms in the property were let to. When faced with compelling evidence about WhatsApp messages sent to and from the Applicant about the letting of his room, he denied that these came from him despite the picture of the recipient of these messages bearing an uncanny resemblance to him, the fact that the WhatsApp account and number used were his. His explanation that his telephone may have been used by an unknown part-time administrative assistant he hired in 2024 lacked credibility.
14. The Second Respondent accepted that the property was an HMO at the relevant time but maintained that it had not required an HMO licence. He confirmed that the Applicant’s deposit was never protected and, therefore, the prescribed information was not served on him. In addition, the property did not have an EPC certificate at the relevant time. Furthermore, he said that although the property had a gas safety and an EICR certificate, these were displayed but not served on the Applicant in accordance with the statutory obligation to do so. The Second Respondent confirmed that the First Respondent owned and let two other properties in the Swindon area.

Admitted Facts/Findings

15. As the Tribunal understood it, the following facts were not disputed by the Respondents. In any event, for the avoidance of doubt, the Tribunal made findings of fact as follows:
 - (a) The Applicant was tenant of Room C in the property, which he occupied with his partner and child. This is confirmed in his witness statement [29-31]. The tenancy was an oral tenancy granted
 - (b) That the First Respondent was the Applicant’s landlord within the meaning of section 263 of the Housing Act 2004. This is proved by the rent and the deposit being paid to the First Respondent by the Applicant. Therefore, the First Respondent was in control of, and/or managing, the property within the meaning of the Housing Act 2004 section 72(1). The Respondent is the freeholder of the property. It follows that any rent repayment order can only be made

against the First and not the Second Respondent, which was accepted by Mr Barrett for the Applicant.

- (c) The Premises were an HMO. The tenants all comprised separate households and used the property as their only home, and shared amenities including bathrooms and a kitchen. The property thus met the 'self-contained' flat test of the Housing Act 2004 s254(3). This is proved by the Applicant's witness statement and conceded by the Second Respondent.
 - (d) The property required licensing under the mandatory licensing regime, s55(1) and s61(1) Housing Act 2004 which applied whenever premises had five occupants from two or more households, per Article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) Order 2018 (SI 2018/221). This was the case for the 6-month period being adopted as the relevant period in respect of which the application was brought. The Second Respondent's evidence was that the rooms in the property were variously occupied by 6 persons including the Applicant, his partner and child.
 - (e) The property did not have the required licence. This is confirmed by correspondence with the Local Authority [25].
16. The Tribunal was, therefore, satisfied beyond reasonable doubt that Respondent was in control of/managing an unlicensed HMO during the relevant period.
17. The Tribunal was also satisfied that *none of* the three statutory defences from the Housing Act 2004 s72(4) and (5) are made out:
- (a) The First Respondent did not have a temporary exemption notice [AB 122].
 - (b) The First Respondent had not applied for a licence as of 29 October 2024, after the relevant period [AB 122].
 - (c) The Second Respondent gave evidence that he had viewed the content of Swindon's website and believed that the premises did not require licensing as an HMO. He stated that only 4 of the 5 bedrooms had been let out and that he'd understood the advice from Swindon to mean that as there were only 4 households in occupation in his property it did not require a licence. He gave evidence that the wording on the website said "A House in Multiple Occupation (HMO) is a property which houses 3 or more people who form more than one household, and where tenants share basic facilities such as a kitchen, bathroom or toilet. If the HMO occupies 5 or more people from more than one household, the property requires a licence". The content of the website was an accurate summary of what constituted an HMO and when an HMO licence

was required. The second respondent's evidence was that there were 5 or more people from more than one household in occupation. It is difficult to understand why the respondents would not appreciate that a licence was required in these circumstances. The tribunal rejected that a misunderstanding of the website advice amounted to a reasonable excuse when the advice was clear and helpful.

18. The Tribunal then turned to the issue of quantum.
19. The Applicant seeks a rent repayment order for a period of 6 months. During this period, being a total of £4,350.
20. The Tribunal was satisfied that the Respondent was in breach of licensing requirements, committing the offence under the Housing Act 2004 s72(1), for the entire respective period claimed by the Applicant.
21. Guidance was given by the Upper Tribunal in **Vadamalayan v Stewart** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. It was held in that case the starting point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matters set out in section 43(4).
22. This decision was followed by the Upper Tribunal decision in the case of **Williams v Parmar** [2021] UKUT 244 (LC) where the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed at section 44(4) of the Act.
23. The Upper Tribunal held that "*there is no presumption in favour of the maximum amount of rent paid during the period*". It was noted that when calculating the amount of a rent repayment order the calculation must relate to the maximum in some way. Although, the amount of the rent repayment order can be "*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*". Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the Act.
24. The Upper Tribunal further went on to highlight that the Tribunal is not limited to those factors referred to in section 44(4) and that circumstances and seriousness of the offending landlord comprise part of the "*conduct of the landlord*" and ought to be considered. The Upper Tribunal considered that the Tribunal had taken a very narrow approach of section 44(4)(a) by stating "*meritorious conduct of the landlord may justify a deduction from the starting point*". It concluded that the Tribunal may in appropriate

cases order a lower than maximum amount if the landlord's conduct was relatively low in the “*scale of seriousness, by reason of mitigating circumstances or otherwise*”.

25. The Upper Tribunal went on to lower the amount of the rent repayment orders made by the Tribunal by applying a reduction of 20% and 10% on the basis that whilst the landlord did not have any relevant previous convictions, she was also a professional landlord who had failed to explain why a licence had not been applied for and the condition of the property had serious deficiencies.
26. The Upper Tribunal also confirmed that in cases where the landlord is a professional landlord, and the premises has serious deficiencies more substantial reductions would be inappropriate even if the landlord did not have any previous convictions.
27. This decision highlights that there is no presumption that rent repayment orders will be for maximum rent, and that while the full rent was in some sense still the “starting point” that did not mean that the maximum rent was the default. The amount of the rent repayment order needs to be considered in conjunction with section 44(4) factors and the Tribunal is not limited to the factors mentioned within section 44(4). This means that even if a landlord is guilty of an offence, if their offence is not a particularly serious one, they will expect to be ordered to repay less than the full rent paid during the relevant period.
28. Further guidance has been given by Judge Cook in the Upper Tribunal at paragraph 20 in *Acheampong v Roman* [2022] UKUT 239 about determining the amount of an RRO. Adopting that approach, the Tribunal determined:
 - (i) the starting figure for the assessment of the RRO was the sums claimed by the Applicant set out application for the periods of time in respect of which the property was unlicensed;
 - (ii) the relevant conduct on the part of both parties has already been considered in the Tribunal’s findings above.
 - (iii) the actual financial circumstances of the First Respondent are unknown. As the Tribunal understands it, the First Respondent has not been convicted of any offence.
29. As to (i) above, the Tribunal has already set these out at paragraph 19 above.
30. As to the deduction for the cost of utilities, the Tribunal had no evidence from the First Respondent of the actual cost for the relevant period. The respondents had submitted a combined gas and electricity statement for the period 28th June 2025 to 24th July 2025 showing a total charge of £141.68 but no evidence was provided for the period of the RRO claim.

31. As to (ii) above, the Tribunal repeats and relies on the findings made above as being relevant conduct on the part of the First Respondent. In addition, the Tribunal took account of the fact that the Applicant and his family had been decanted by the First Respondent to unsatisfactory alternative accommodation for a short period of time. HMO licensing allows a local authority to consider whether a premises is suitable for the number of households and the number of occupants proposed to be in occupation, the size of rooms and facilities will be considered including WC and bathroom facilities and fire safety measures. The Applicant gave evidence that the ground floor room A was occupied throughout the period of the RRO claim by 2 adults and 2 children and he said the children attended local schools. The Applicant said that Room B on the first floor was occupied by 2 adults and 1 child for a period of around 4 months and that they left and did not return when renovation began of the upper rooms to prepare for the loft extension. The Applicant claimed rooms D and E on the first floor were each occupied by 1 person for the first 4 months of his claim and the occupant of Room D did not return after vacating for the renovation. The Applicant's household was 2 adults and 1 child. On the Applicant's case there were 12 people comprising of 8 adults and 4 children sharing 2 shower rooms for 4 months of the claim period followed by a reduction to 8 people comprising 5 adults and 3 children sharing those facilities. The Second Respondent's evidence was that in addition to the Applicant's there was only ever 3 other rooms let out and that each of those let rooms had one person in occupation and that there were no other children in the property. The Tribunal preferred the Applicant's evidence and this suggested that the premises were severely overcrowded. During cross examination the Second Respondent was referred to screenshots of Whatsapp messaging said to have been sent on 21st April 2024 [37-38] where the price of the room for 2 adults with 1 child was offered at £725 plus a £300 deposit. The Applicant said he would need to check with his wife before confirming his acceptance of the terms and the Second Respondent replied "I think it will work well for you and family because there is other children living there". The Second Respondent denied sending that message about other children, he was unable to provide the name of anybody else who had access to his WhatsApp account that could have sent that message from it. The Tribunal found as a fact that the Second Respondent had sent that message and that there were other children occupying the HMO as claimed by the Applicant. If an HMO licence application had been submitted the local authority would have imposed conditions as to the maximum occupancy by considering the facilities available.
32. Taking all of these considerations in account in relation to the First Respondent's conduct, the Tribunal was satisfied that it bore a high level of culpability. Therefore, this should be reflected in an award of 80% of the amount claimed by the Applicant.

33. Accordingly, the RRO made in respect of each Applicant is £3,480. The amount awarded payable by the Respondent 28 days from the date this decision is issued to the parties.

Fees

34. The Tribunal was satisfied that it was just and equitable to make an order for the First Respondent to reimburse the Applicant the fees he had paid to have the application issued and heard. This was because the Applicant had succeeded in his application for an RRO. There are no reasons to depart from the general principle that “costs should follow the event”. In other words, the successful party should be entitled to recover its costs.
35. Accordingly, the Tribunal also orders that the Respondent reimburse the Applicant to total fees of £300 paid by him. Payment is to be made not less than 28 days from the date this decision is issued to the parties.

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).