



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

**Case reference** : **LON/00BB/HMG/2025/0610**

**Property** : **72 Emily Duncan Place, Woodgrange  
Road, London E7 0BB**

**Applicant** : **Steven Johnson**

**Representative** : **Mr P Eliot, Justice for Tenants**

**Respondents** : **Sarah Bartley**

**Representative** : **I/P**

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

**Tribunal members** : **Judge Tagliavini  
Ms Louise Crane CEnvH CIEH**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **24 September 2025**  
**Date of decision** : **27 October 2025**

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**DECISION**

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### **The tribunal's decision**

- (1) The tribunal makes a Rent Repayment Order in the sum of **£1,607.25**.
  - (2) This sum may be 'set-off' by the parties in respect of the judgement debt obtained by the respondent for rent arrears owed by the applicant.
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### **The application**

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

*(1)A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.*

*(2)A tenant may apply for a rent repayment order only if –*

*(a)the offence relates to housing that, at the time of the offence, was let to the tenant, and*

*(b)the offence was committed in the period of 12 months ending with the day on which the application is made.*

2. The applicant alleges the respondents have committed an offence under s.95(1) of the Housing Act 2004 by reason of having the control or managing an unlicensed house in multiple occupation, which is an offence under s.40(3) of the Housing and Planning Act 2016.

3. Section 95(1)HA 2004 states:

*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.*

4. The subject property at **72 Emily Duncan Place, Woodgrange Road, London E7 0BB** ('the property') was situated within a selective licensing area as designated by the London Borough of Newham. The selective licensing scheme came into force on 1st June 2023 and is due to cease to have effect after 31st May 2028. The selective licensing scheme includes Forest Gate North, the ward within which the property is situate and met criteria to be licensed under the scheme and was not subject to any exemption.

## **The background**

5. The applicant became a tenant of the property under an Assured Shorthold Tenancy Agreement dated 5 August 2022 with effect from 15 August 2022 for a 12 months period at a rent of £1,450.00 per month. The respondent is the long lessee of the property under a 'shared ownership' lease dated 1 September 2016. In or about October 2022 the applicant allowed his teenage daughter to move into the property with him. On 23 October 2024, an Order for Possession was made whereby the applicant was required to give possession to the respondent on or before 6 November 2024 and a judgement debt entered for arrears of rent in the sum of £2,993.12 and costs of £391.00 against the applicant. A Bailiff is due to attend the premises in December 2025 in order to recover possession from the applicant who has to date declined to leave.
6. On 10 March 2024, the respondent applied for a selective licence. Subsequently, an Order for Possession was made and a judgement debt entered for arrears of rent against the applicant. A Bailiff is due to attend the premises in December 2025 in order to recover possession from the applicant as he remains in occupation of the property. At the date of the hearing, the applicant continues to owe rent arrears in the approximate sum of £2,300.
7. The Applicant is seeking to recover the sum of £4,780.06 (revised at the hearing from the original sum claimed of £4,564.23) for the rent paid for the period between 15/06/2023 and 14/02/2024.

## **Litigation history**

8. The application was dated 14 January 2025 and directions made by the tribunal on 11 April 2025. The hearing of the application was held on 24 September 2025 at a face-to-face hearing.

## **The Law**

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

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

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

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

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

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

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

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

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

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

11. Section 92(4) of the Housing Act 2004 states:

*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),*

12. The burden is on the respondents to establish the defence of ‘reasonable excuse’ on the balance of probabilities.

### **The hearing**

13. At the hearing, the applicant was represented by Mr P Eliot of Justice for Tenants. The respondent appeared in person. The tribunal was provided with a hearing bundle of 146 digital pages and a Reply of 35 digital pages by the applicant. In addition, the respondent relied upon a digital bundle of 173 pages.

### **The tribunal’s reasons**

14. The tribunal was satisfied beyond reasonable doubt that the respondent had committed the offence of having the control or managing an unlicensed property that was required to be licensed.
15. The tribunal considered whether the respondent's assertions that the applicant had no standing to make the RRO as:
  - (i) The property was not 'let' to the respondent at the time of the offence as the respondent had terminated the tenancy early although the applicant remained in occupation.
  - (ii) The continuation of the tenancy past the 12 months fixed term as subject to the respondent's Housing Association giving permission for the continuation of the sub-letting.
16. The tribunal determines that at the end of the 12 months fixed term of the tenancy, the applicant became a period assured shorthold tenant. The respondent continued to accept rent from the applicant and relied on his non-payment of rent as a reason to obtain a judgement debt. The absence of any continuing permission from the respondent's housing association landlord to sub-let does not negate the applicant's continuing status as a tenant but does raise issues, which are not relevant for the purposes of this application, as to whether the respondent may herself be in breach of the terms of her lease.
17. The respondent also asserted that the property was exempt for the licensing requirements as it is part of legal estate under One Housing Group, a registered provider of social housing and therefore exempt under s.79(3) of the Housing Act 2004. However, the tribunal finds that as a private landlord vis a vis the applicant, a licence was required under the London Borough of Newham's licensing scheme and that the respondent is not exempt from this requirement.
18. The respondent also raised a defence of 'reasonable excuse pursuant to s.95(4) of the Housing Act 2004 and asserted that she was abroad at the date the licensing requirements came into effect. Thereafter, she contacted the Local Authority in order to claim an exemption from the licensing requirements. This claim, however, was refused and the Local Authority continued to request a licence be applied for by the respondent.
19. The respondent also relied on a 'defence' of extreme financial hardship due to having to rent a room in shared accommodation for herself due to be unable to return to the subject property at the end of the fixed term. Therefore, she was faced with paying her own rent, her mortgage payments for the property and the rent arrears being incurred by the applicant. However, in March 2024 the applicant applied for and was subsequently granted a selective licence.

20. The tribunal finds in all the circumstances the respondent has not successfully raised a defence of ‘reasonable excuse. The test for whether a ‘reasonable excuse’ has been established is an objective one and not prescribed by the existence or absence of certain factors although can include where relevant, genuine attempts to comply with the licensing requirements; seeking advice and administrative errors by the Local Authority.
21. The tribunal finds that although the respondent was abroad in Ireland for a period, she nevertheless had a continuing obligation to keep herself informed of her obligations as a landlord and any changes to the licensing requirements and apply for a licence in a timely fashion. Further, the tribunal finds the respondent was in receipt for a substantial period of the monthly rent payable under the lease and has herself been in receipt of some Universal Credit payments for her mortgage interest. The tribunal also finds it was unreasonable to rely on her own (misjudged) interpretation of the law in respect of exemptions without first seeking some legal advice, particularly when advised by the Local Authority to apply for a licence.
22. Having determined the respondent has committed an offence pursuant to s.95(1) of the Housing Act 2004, the tribunal went onto to determine the quantum of the RRO it should award. In determining the amount the tribunal took into consideration s.44(6) of the Housing and Planning Act 2016 states:
- (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.*
23. In determining the amount of the RRO the tribunal had regard to the case of *Acheampong and Roman & others* [2022] UKUT 239 (LC). This sets out how the tribunal should approach the quantification of a RRO.

24. The applicant seeks a RRO for the period 15/06/2023 and 14/02/2024. However, by an email dated 20 March 2024 the respondent wrote to the applicant requesting rent arrears of £2,658.40 which had accrued in the period 06/07/2023 to 05/03/2024. Consequently, the tribunal finds that in the period of RRO claimed the applicant was required to pay was 8 months' rent at £1,450.00 per month i.e. £11,600 part of which sum was met by way of direct housing payments from Universal Credit to the respondent from 5 March 2023. From the bank statements provided by the respondent the tribunal finds the applicant did accrue rent arrears during the period of the RRO claimed.
25. The tribunal finds the rent paid personally by the applicant during the period 06/07/2023 to 05/03/2024 as £4,780.06 less arrears as at 14/02/24 of £1,208.39 i.e. **£3,571.67**. The tribunal does not consider the offence in all the circumstances of this case to be at the highest end of seriousness and took as its starting point 60% of the £3,571.67 and made a further deduction of 10% to reflect the conduct of the applicant in failing to pay rent as required under the terms of the lease.
26. The tribunal finds the respondent was largely responsive to the applicant's complaints about the conditions in the flat including a broken fridge which the respondent replaced. However, the tribunal could see from the numerous emails and the repeated requests by the respondent for the applicant to leave the property that the relationship had broken down on both sides.
27. The tribunal also took into account the stretched financial circumstances of the respondent as evidenced by the documents provided by the respondent in the form of bank statements, credit card statements, demands for payment of service charges and mortgage payments as well as her obligation to pay rent on her shared rented accommodation. The tribunal therefore applied a further deduction of 5% (£96.46) to reflect these matters thereby reducing any award to 45% of the starting point of the rent paid by the applicant. This produced a RRO of **£1,607.25**.
28. There was no evidence to show the respondent had previously been convicted of any other relevant offence and therefore no further adjustments to the amount of the RRO were made.
29. In conclusion, the tribunal makes a RRO in the sum of **£1,607.25**. However, in view of the judgement obtained, the tribunal directs that the parties may set off this RRO against the debt owed by the applicant to the respondent.

**Name:** Judge Tagliavini

**Date:** 27 October 2025

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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

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

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

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

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