FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/HMF/2024/0136**
Property	**:**	**9 Radley House, Park Road, London, NW1 6DN**
Applicant	**:**	[redacted]
Representative	**:**	**In person**
Respondent	**:**	**Asleigh Gaulet and Vincent Gaulet**
Representative	**:**	**Asleigh Gaulet (in person)**
Type of Application	**:**	**Application for a rent repayment order by tenant - Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Robert Latham** **Alison Flynn MA MRICS**
Date and Venue of Hearing	**:**	**12 November 2024 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15 November 2024**

DECISION

Decision of the Tribunal

1. The Tribunal makes a Rent Repayment Orders against the Respondents in the sum of £3,811.50 is to be paid by 6 December 2024.

2. The Tribunal determines that the Respondents shall also pay the Applicants £350 by 6 December 2024 in respect of the tribunal fees which they have paid.

The Application

1. On 9 April 2024, the Applicant issued an application against the First Respondent, Mrs Ashleigh Gaulet, seeking a Rent Repayment Order ("RRO") against the Respondents pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act"). The application relates to 9 Radley House, Park Road, London, NW1 6DN ("the Flat"). It is in Marylebone. At the material times, this was a three bedroom flat with a living room, kitchen and a bathroom/toilet. It is on the fourth floor.

2. On 20 June 2024, the Tribunal gave Directions, pursuant to which:

(i) The Applicant has filed her Statement of Case and evidence (196 pages) references to which will prefixed by "A1.__".

(ii) The Respondent has provided its Statement of Case and evidence (116), references to which will prefixed by "R.__".

(iii) The Applicant has provided a Reply (14 pages) references to which will prefixed by "A2.__".

The Hearing

3. Both Ms [redacted], the Applicant, and Mrs Gaulet appeared in person. Both gave evidence and expanded upon the matters raised in their witness statement.

4. The Applicant is from New Zealand. She is [redacted]. In 2022 , She completed a degree course in [redacted]. On 6 October 2022, she came to the UK having obtained a job with the [redacted].

5. Mrs Gaulet was born in the UK. She is aged 59. In 1992, she qualified as a lawyer in the USA. In 1995, she acquired the Flat and registered it in her own name. In 1993, she married Vincent Gaulet who is French. In 2001, she registered the Flat in her joint names. Mrs Gaulet lived at the Flat until 2002. She then moved to France with her husband. She has rented out rooms in her Flat. For some years, she retained a room for her own use.

Since about 2015, she started to let out all three rooms. However, during the Covid-19 lockdown, she had some difficulty in renting out all the rooms. Mr Gaulet is a website developer. He does a lot of work on-line. Mrs Gaulet has worked with a real estate agency in France in connection with holiday lets. However, this work dried up when the government introduced legislation to deter Airbnb lettings.

6. On 29 July 2024 (at A1.137), Ms [redacted] carried out a search of title at the Land Registry and ascertained that the leasehold interest is registered in the name of Mr and Gaulet. More recently, she ascertained that Mrs Gaulet had transferred her interest to her husband. This transfer has not yet been registered at the Land Registry as there is currently a delay of some 10 months. Mrs Gaulet stated that she had done this for tax purposes and that no consideration had been paid.

7. At the beginning of the hearing, Ms [redacted] applied to join Mr Gaulet as a Respondent. She was concerned that she would have difficulty in enforcing any RRO against Mrs Gaulet now that she has no interest in the Flat. Mrs Gaulet opposed this application, but stated that were her husband to be joined, she had authority to act for him.

8. The Tribunal joins Mr Vincent Gaulet as a respondent to this application pursuant to rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. At the material times, he was a joint tenant of the Flat together with his wife. Joint tenants can only act in conjunction with each other. Whilst only Mrs Gaulet's name appeared on the Applicant's tenancy agreement, we are satisfied that she was acting as an undisclosed agent for her husband (see *Cabo v Dezotti* [2024] EWCA Civ 1358). Mrs Gaulet sought to argue that Mr Gaulet was not "a person having control of or managing of an HMO" as he did not receive any of the rent. The rent was paid to Mrs Gaulet and she did not account for any of it to her husband. We consider this argument hereafter.

9. The Tribunal confirmed that it was common ground that at the material times the City of Westminster ("Westminster") had introduced an additional licencing scheme that required all HMOs (not covered by the mandatory scheme) to be licenced where there are two or more households and three or more people sharing facilities.

10. Ms [redacted] occupied a room in the Flat between 30 October 2022 until 10 November 2023. The initial rent was £1,000 pm. She was also required to pay a deposit of £950. There is a full breakdown of the rent payments at A1.158-162. For the last 9 days of her tenancy, she made a payment calculated on a monthly rent of £1,100, which was the increased rent that Mrs Gaulet had demanded. Ms [redacted] was up to date when she left the Falt. Mrs Gaulet returned her the deposit, without any deductions, three days after she left.

11. Any applicant for a RRO must prove that their landlord committed the offence of "control or management of an unlicenced HMO" to the criminal standard of proof. Mrs Gaulet sought to argue that Ms [redacted] had failed to adduce sufficient evidence to prove that an offence had been committed to the criminal standard. However, we need to consider this having regard to all the evidence that we heard. The Tribunal indicated to Mrs Gaulet that she had a choice as to whether she gave evidence in response to the application. If so, we would expect her to answer any questions that the Tribunal put to her. She elected to give evidence. It was quite apparent to the Tribunal that at all material times between 30 October 2022 and 5 November 2023, Ms [redacted] was occupying the Flat with two other tenants, namely Sandro Mignuzzi and Tom Volk who were paying rent in respect of the rooms that they were occupying and who were occupying their rooms as their only or main residence.

12. Ms [redacted] indicated that she was seeking a RRO in respect of the rent which she had paid over the period 11 November 2010 to 10 November 2023 in the sum of £12,030.

The Housing Act 2004 ("the 2004 Act")

13. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that a building or a part of a building meets the "standard test" if:

> "(a) it 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 (see section 258);
>
> (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 (see section 259);
>
> (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."

14. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

15. Section 56 permits a local housing authority ("LHA") to designate an area to be subject to an additional licencing scheme. The City of Westminster has introduced an Additional Licencing Scheme which applies to all HMOs (not covered by the mandatory scheme) where there are two or more households and three or more people sharing facilities.

16. Section 263 provides:

> "(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."

17. Section 63 provides for making applications for an HMO licence:

"(1) An application for a licence must be made to the local housing authority.

(2) The application must be made in accordance with such requirements as the authority may specify.

(3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority."

18. Section 64 deals with the grant or refusal of a licence. It is to be noted that there may be more than one person who may be the appropriate licence holder. In such circumstances it is for the LHA to determine who is the most appropriate person to hold the licence.

19. Section 72 specifies a number of offences in relation to the licencing of HMOs. The material parts provide:

"(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.
……..

(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) (a temporary exemption notice), 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).

….

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either-

(a) the authority have not decided whether to …. grant a licence, in pursuance of the notification or application.

20. It is to be noted that there may be more than one person who may commit an offence under section 95 as having "control of" or "managing" a house.

However, when it comes to the making of a RRO, this can only be made against the "landlord".

The Defence of Reasonable Excuse

21. The defence or reasonable excuse was recently considered by the Upper Tribunal in In *Marigold & Ors v Wells*. Martin Rodger KC, the Deputy Chamber President, stated at [40]: "The offence of having control of or managing an unlicensed HMO contrary to section 72(1) of the 2004 Act is a continuing offence which is committed by the person having control or managing on each day the relevant HMO remains unlicensed. To avoid liability for the offence the person concerned must therefore establish the defence of reasonable excuse for the whole of the period during which it is alleged to have been committed."

22. In assessing whether a respondent has established the defence of reasonable excuse for the whole of the period during which the offence is alleged to have been committed, the Upper Tribunal endorsed the approach of the Upper Tribunal, Tax and Chancery Chamber, in *Perrin v HMRC* [2018] UKUT 156 (TCC) at [81]. Applying this to the context of landlord and tenant:

> (i) First, establish what facts the landlord asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the landlord or any other person, the landlord's own experience or relevant attributes, the situation of the landlord at any relevant time and any other relevant external facts).
>
> (ii) Second, decide which of those facts are proven.
>
> (iii) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased.

23. In doing so, it should take into account the experience and other relevant attributes of the landlord and the situation in which the landlord found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the landlord did (or omitted to do or believed) objectively reasonable for this landlord in those circumstances?

24. The Tribunal, in *Perrin*, then dealt with a particular point which is regularly encountered in HMO licensing cases and which therefore merits attention:

> "82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have

been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long."

The Housing and Planning Act 2016 ("the 2016 Act")

25. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

26. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. In the decision of *Kowelek v Hassanein [2022] EWCA Civ 1041; [2022] 1 WLR 4558,* Newey LJ summarised the legislative intent in these terms (at [23]):

> "It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (*Rakusen v Jepsen* [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in *Rakusen v Jepsen*, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that

objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

27. Section 40 provides:

> "(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
> >
> > (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

28. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The seven offences include the offence of "control or management of unlicenced HMO" contrary to section 72(1) of the 2004 Act.

29. Section 41 deals with applications for RROs. The material parts provide:

> "(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.

30. Section 43 provides for the making of RROs:

> "(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)."

31. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

> "(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.

32. Section 44(4) provides:

> "(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."

33. Section 47(1) provides that an amount payable to a tenant under a RRO is recoverable as a debt. Section 52(2) provides that "an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent".

34. In *Acheapong v Roman* [2022] UKUT 239 (LC); [2022] HLR 44, Judge Elizabeth Cooke gave guidance on the approach that should be adopted by Tribunals:

> "20. The following approach 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 payment 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 relative 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 that 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).
>
> 21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

35. These guidelines have recently been affirmed by the Deputy President in *Newell v Abbott* [2024] UKUT 181 (LC). He reviews the RROs which have been assessed in a number of cases. The range is reflected by the decisions of *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC) and *Hallett v Parker* [2022] UKUT 165 (LC), the Deputy President distinguished between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (25%).

36. The Deputy President provided the following guidance (at [57]):

> "This brief review of recent decisions of this Tribunal in appeals involving licensing offences illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger property portfolio, or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health."

37. The Deputy President added (at [61]):

> "When Parliament enacted Part 2 of the 2016 Act it cannot have intended tribunals to conduct an audit of the occasional defaults and inconsequential lapses which are typical of most landlord and tenant relationships. The purpose of rent repayment orders is to punish and deter criminal behaviour. They are a blunt instrument, not susceptible to fine tuning to take account of relatively trivial matters. Yet, increasingly, the evidence in rent repayment cases (especially those prepared with professional or semi-professional assistance) has come to focus disproportionately on allegations of misconduct. Tribunals should not feel that they are required to treat every such allegation with equal seriousness, or to make findings of fact on them all. The focus should be on conduct with serious or potentially serious consequences, in keeping with the objectives of the legislation. Conduct which, even if proven, would not be sufficiently serious to move the dial one way or the other, can be dealt with summarily and disposed of in a sentence or two."

The Background

38. On 6 October 2022, Ms [redacted] arrived in the UK from New Zealand. She had a job, but no accommodation. She saw a room in the Flat advertised on Spare Room. She did not retain a screen shot, but the Tribunal is satisfied that it was similar to the advertisement which Mrs Gaulet later placed in November 2023 when she readvertised the room (at p.130). The advert referred to a double bedroom flat with a living room which was fully furnished, wood flooring with all mod cons. No couples. Existing tenants 2 professionals (male). It would suit a single professional/graduate student, The rent was £1,000 per month including hot water, central heating, council tax, water rates and tv licence.

39. Ms [redacted] responded and Mrs Gaulet arranged for her to visit the Flat on 17 October 2022. She was shown round the flat by Tom Volk, one of the two tenants. Ms [redacted] had no direct contact with Mrs Gaulet and stated that she had seen her for the first time at the tribunal hearing. At this time. Mrs Gaulet was living in France. Ms [redacted] liked the Flat an on 19 October 2022, Mrs Gaulet emailed her a "Licence Agreement". Ms [redacted] signed this and emailed it to Mrs Gaulet.

40. Although the agreement is described as a licence, the Tribunal is satisfied that the substance and reality of the agreement was for the grant of a tenancy (see *Street v Mountford* [1985] AC 818). Mrs Gaulet was granted exclusive possession of her room at a rent of £1,000 per month for an initial term of 30 October 2022 to 30 April 2023. The rent was inclusive of all charges for water rates, council tax, and tv licence. However, the rent did not include expenses for gas, electricity, internet or cleaning.

41. By Clause 13.3, after the expiry of the Initial Term, the agreement provided that either party could determine the agreement by one month's prior written notice. However, the agreement was an assured shorthold tenancy

and the landlord could only terminate the agreement and increase the rent in accordance with the terms of Pat 1 of the Housing Act 1988. The tenant's right to determine the agreement was determined by the contract.

42. On 30 October 2022, Ms [redacted] took up occupation of her room. There were two tenants who rented each of the other rooms:

(i) Mr Sandro Mignuzzi was paying £895 for his room. He had been there for more than a year. He is Italian. He was an investment trader with Quant. He was still in occupation when Ms [redacted] vacated in November 2023. His licence agreement, drafted by Mrs Gaulet and signed by her on 26 August 2021 is at A1.126-9. Mrs Gaulet sought to argue that the Tribunal should have no regard to this licence as Mr Mignuzzi had not signed it. We reject this argument. We are satisfied that this agreement reflected the terms pursuant to which Mr Mignuzzi occupied his room. Mr Mignuzzi was the purse holder. He paid the communal bills and the two other tenants paid their 1/3 contributions.

(ii) Mr Tom Volk rented the third room. His tenancy started in May 2022 and he left on 5 November 2023. He is German. He worked in purchasing for Wayfair.

All the tenants shared the living room, the kitchen and the bathroom/toilet.

43. Mrs Gaulet sought to argue that Ms [redacted] had failed to establish that this was an HMO which required a licence in that she had failed to establish that Mr Mignuzzi and Mr Volk were renting their rooms and occupying the same as their "only of main residence". We reject this submission. They were both working in London. They may have returned to Italy and Germany to visit their families. However, we are satisfied beyond reasonable doubt that this was an HMO that required a licence under Westminster's additional licencing scheme.

44. On 4 September 2023 (at A1.183), Mrs Gaulet informed Ms [redacted] that she was minded to increase the rent from 30 October. Ms [redacted] did not consider that any increase in rent was justified, particularly given recent problems of a blocked toilet. On 2 October (at A1.187), Ms [redacted] indicated that she was looking at an increase of rent to £1,100 pm. On 11 October (at A1.186), Ms [redacted] stated that she was not willing to pay an increased rent and would be vacating on 10 November. On 1 November 2023 (at p.162), Ms [redacted] made her last payment of £330, computed on the increased rent of £1,100 pm.

45. On 5 November 2023, Mr Volk vacated his room. Jamie Gaulet, Mrs Gaulet's daughter, moved into the room which he vacated. She is aged 24 and was studying architecture. Mrs Gaulet stated that Jamie did not pay any rent, but rather moved in to supervise the refurbishment of the Flat.

The Respondent subsequently installed a new bathroom and kitchen and divided the living room to create a fourth bedroom.

46. In October 2023, Ms [redacted] learnt that the Flat required an HMO licence. She had taken advice as there was some tension during her last month at the Flat as Mrs Gaulet insisted on showing potential applicants around her room. At the hearing. Mrs Gaulet conceded that she had been wrong to do so.

47. On 21 December 2023, Solicitors acting for Ms [redacted] sent Mrs Gaulet a pre-action protocol letter. We were not shown a copy of this letter. Mrs Gaulet stated that the letter alerted her for the first time to the need for an HMO licence. On 11 January 2024 Mrs Gaulet applied for a licence. On 10 May (R.33), Westminster granted a licence in the joint names of Mr and Mrs Gaulet. Muriel Nassar was named a "managing agent". The Flat was licenced for a maximum of 5 people living as 4 households, regardless of age. By this date, there were four bedrooms. Mrs Gaulet stated that Ms Nassar had assisted her in managing the Flat. Ms [redacted] had no contact with Ms Nasser.

<u>The Offence of control or management of an unlicenced HMO</u>

48. The Tribunal is satisfied beyond reasonable doubt of the following:

(i) The Flat was an HMO that required a licence under Westminster's additional licencing scheme between at lease 30 October 2022 and 5 November 2023. During this period Ms [redacted], Mr Mignuzzi and Mr Volk were each occupying a room in the Flat as their only or main residence. We are not satisfied that the Flat was an HMO which required a licence after Mr Volk left. The status of Jamie Gaulet is unclear.

(ii) The relevant landlords were Mrs Ashleigh Gaulet and Mr Vincent Gaulet. Whilst only Mrs Gaulet's name was on Ms [redacted]'s tenancy agreement, she was acting as undisclosed agent for the Mr and Mrs Gaulet, the two "joint tenants" holding the leasehold interest in the Flat.

(iii) The joint tenants were the persons "having control" of the Flat, as they received the rack rent from the three tenants.

(iv) The joint tenants were the persons "managing" the Flat as they were the lessees of the Flat who received the rent.

(v) The Tribunal accepts that the tenants paid the rent to Mrs Gaulet who did not account for the rent to her husband. This is irrelevant. Rent paid to Mrs Gaulet, was rent paid to the joint tenants. How Mrs Gaulet accounted for the rent to her husband is a matter between the two of them.

(vi) The joint tenants have not established the defence of "reasonable excuse".

The Tribunal is therefore satisfied beyond reasonable doubt that Mrs and Mr Gaulet are guilty of an offence of under section 72(1) of the 2004 Act, of having control of or managing an HMO which is required to be licensed under but was not so licensed. The offence was committed over the period 30 October 2022 to 5 November 2023.

49. Mrs Gaulet sought to argue that the Respondents had a defence of "reasonable excuse" as they were unaware of their legal obligation to obtain an HMO licence. Mrs Gaulet asserts that it was objectively reasonable for them not to be aware of the licencing requirements. She had qualified as a lawyer in the USA. She had not taken any course in residential property management. She had been residing in France since before the 2004 Act was enacted. She also refers to her personal circumstances. She was caring for her younger daughter who has learning difficulties and for her father-in-law who had been diagnosed with myeloma.

50. The Tribunal rejects this defence as it is satisfied that anyone who lets residential accommodation in the UK has an obligation to satisfy themselves as to the relevant regulatory requirements. Mrs Gaulet failed to do so. The government publishes an excellent "How to Let" Guide which is available on their website. This alerts any landlord to the need to consider whether a licence may be required for an HMO. Any deposit must be protected in a Rent Deposit Scheme. A landlord should supply their tenants with (i) the "How to Rent" guide; (ii) a gas certificate; and (iii) an EPC certificate. There should be smoke and carbon monoxide alarms and the landlord should have checked that these were functioning. The Respondents did not comply with any of these obligations.

51. Mrs Gaulet rather devised a "licence agreement" which she downloaded from the internet. She clearly thought that by granting a licence she could avoid these statutory obligations. It is not open to a landlord to do so. The Tribunal readily accepts that Mrs Gaulet is not a rogue landlord, but rather someone who had failed to take sufficient steps to inform herself of the regulatory requirements. These are matters of mitigation, as are the family problems which Mrs Gaulet needed to address. The fact that she had been living in France since 2002 is no mitigation. There was rather a greater obligation on her to ascertain the regulatory requirements of letting accommodation in the UK.

The Assessment of the RRO

52. Ms [redacted] argued for a RRO at the highest level. If any RRO were to be made, Ms Gaulet rather argued that it should be at the lowest level.

53. The Tribunal must first determine the whole of the rent of the relevant period. We are satisfied that the relevant period for a RRO should be 6 November 2022 to 5 November 2023. The rent paid was some £12,000. We make no adjustment for the period for four days over which rent was paid at a slightly higher level.

54. Ms Gaulet, relying on *Kowalek v Hassanein* sought to argue that we should ignore the rent paid in advance, and should only have regard to the rent paid during this 12 month period. Section 44(3)(a) of the 2016 Act refers to the "rent paid in respect of that period". The situation in *Kowalek* was a tenant in arrears of rent who sought to rely on sums paid to clear those arrears. In the current case, Ms Gaulet has always paid her rent on time. There were occasions when she had a write to set-off modest sums which she had expended on repairs. The legislation is not intended to penalise those tenants who pay their rent in advance.

55. The Tribunal must then consider what deductions should be made in respect of sums expended on council tax, water rates, gas, electricity and the TV licence. Ms Gaulet argued that reductions should be made in respect of the following (see R.20-21):

(i) Council Tax: £1,092;

(ii) TV Licence: £164;

(iii) Water rates: £247;

(iv) Hot water and central heating: £2,122. The service charge accounts for the year to 39 September 2023 are at R.104. Whilst the tenants paid for the gas in respect of the cooker and the electricity for the Flat, the Respondents paid a service charge of 2.26% of the expenses in respect of the communal gas central heating and electricity supply. The charges in respect of communal electricity were £27,043 and gas were £53,841. These sums total £80,841 of which £1,827 (2.26%) relates to the Flat. We do not make any deduction for the boiler repairs/maintenance.

56. These four items total £3,330, of which 33%, namely £1,110 relates to the Applicant's room. The net rent is therefore £10.890. The Tribunal notes that the period of the service charge accounts and some of the bills do not correspond directly with the period of time over which we are assessing the RRO. However, the Tribunal is making the best adjustments as it can, in a summary assessment on the material before it.

57. We are then required to consider the seriousness of the offence. The Upper Tribunal considers licencing offences to be less serious than other offences for which RROs can be imposed. We readily accept that we are not dealing with a "rogue" landlord, against whom a RRO should be made at the higher end of the scale but rather a landlord whose failure was to take

sufficient steps to inform herself of the regulatory requirements. However, we note that Mrs Gaulet had been letting rooms in the Flat for a number of years. She had devised a sham licence agreement which purported to deprive her tenants of their statutory rights as assured tenants under the Housing Act 1988. Further, she has failed to comply with a number of her statutory obligations as landlord.

58. We are finally required to have regard to the following:

(a) The conduct of the landlord.

(b) The conduct of the tenant.

(c) The financial circumstances of the landlord. Ms Gaulet has provided some material at R.19.

(d) Whether the landlord has at any time been convicted of an offence to which this Chapter applies. There is no relevant conviction.

59. The parties sought to adduce extensive evidence relating to the respective conduct of landlord and tenant. *In Newell v Abbott*, the Deputy President reminded us that RROs are blunt instruments, not susceptible to fine tuning to take account of relatively trivial matters. The following matters have been raised:

(i) Disrepair. There were two periods when the toilet was blocked. On one occasion, there was a cloth in the toilet pipe work (see R.46). This seems to have been untenant like behaviour by one of the tenants. We reject Ms [redacted]'s evidence that this was in the main stack. There was some mould growth, but this seems to have been because a tenant had taped off the air vent (see R.66). We are not satisfied that there was any significant disrepair.

(ii) A positive reference provided by Emanuele Pirrera, a previous tenant (at R.36).

(iii) We reject Ms Gaulet's criticisms of the conduct of Ms [redacted]. Complaint was made that Ms Gaulet had given inadequate notice of her intention to leave. However, we are satisfied that Ms [redacted] gave one months notice after Ms Gaulet had sought to unilaterally increase the rent. Indeed, Ms [redacted] had paid the increase rent for the last days of her tenancy.

(iv) The Respondents applied for an HMO licence as soon as they became aware that one was required. Westminster granted a licence without requiring any works to the flat.

(v) Whilst Mrs Gaulet failed to comply with her wider regulatory obligations, she returned Ms [redacted]'s deposit within three days of her vacating the Flat.

(vi) We have regard to the personal circumstances of both Ms [redacted] and Mrs Gaulet. On one occasion that the toilet was blocked, Ms [redacted] was suffering from appendicitis. Mrs Gaulet had her care responsibilities in France for both her daughter and her father-in-law.

60. Taking all these factors into account, we make a RRO in the sum of £3,811.50, namely 35% of the net rent of £10,890 which was paid over the period 6 November 2022 to 5 November 2023. We also order the Respondents to reimburse to the Applicant the tribunal fees of £350 which she has paid. These sums shall be paid 6 December 2024

Robert Latham
15 November 2024

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.