FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/HMG/2025/0624**
Property	**:**	**Flat 9, Albert Westcott House, Alberta Street London, SE17 3SE**
Applicant	**:**	**Romain Faure and Stella Roux**
Representative	**:**	**Mr James Cairns of Justice for Tenants**
Respondent	**:**	**Anna Tereska Buzek Lynam**
Representative	**:**	
Type of application	**:**	**Rent Repayment Order**
Tribunal member(s)	**:**	**Judge Dutton** **Ms F Macleod MCIEH**
Venue	**:**	**10 Alfred Place, London WC1E 7LR on 13 November 2025**
Date of decision	**:**	**17 November 2025**

DECISION

DECISION

The tribunal determines that an offence under s95(1) of the Housing Act 2004 has been committed and by virtue of sections 40, 41, 43 and 46 of the Housing and Planning Act 2016 a rent repayment ORDER is made in the sum of £9,075 together with tribunal fees of £330, both to be paid within 28 days.

Background

1. This application for a Rent Repayment Order (RRO) was made by the Applicants on 3 March 2025. It alleged that the Respondent had committed the offence of having control or management of an unlicensed 'house', Flat 9, Albert Westcott House, Alberta Street London, SE17 3SE (the Property). House, by reason of section 99 of the Act, means a "building or part of a building consisting of one or more dwellings".

2. Directions were issued on 29 May 2025. Since that time the Respondent has sought to apply for extra time (see order 19 September 2025) which was granted and subsequently on a number of occasions to seek a postponement of the hearing scheduled for 13 November 2025. As an initial matter we considered whether we should accede to the Respondent's requests to adjourn the hearing, or whether we should proceed in her absence. We will turn to this matter shortly.

3. For the Applicants, Justice for Tenants had submitted a 151-page bundle containing details of the offence, details of the rental paid, the Applicants' witness statements, copy of the tenancy agreements, the licensing scheme details and correspondence with the Council. There was evidence supplied in the form of Land Registry entries confirming the Respondent as the owner of the Property. In addition, and in response to the defence filed by the Respondent Ms Lynam, a further 7-page document was lodged with us. We have noted all that is said.

4. There is a short defence form Ms Lynam which we will address in due course.

Hearing

5. We must firstly deal with the applications made by Ms Lynam seeking a postponement of the hearing. There are a number of documents submitted by her.

   (a) In July 2025 she sought to postpone the hearing which was refused. Judge Martynski's order of 25 July 2025, refused the request as the medical evidence produced failed to support her assertion that she could not attend the hearing.

(b) On 29 September 2025 the tribunal agreed to give the Respondent more time to deal with the directions, which as we have stated above, were issued on 29 May 2025.
(c) On 24 September 2025, just 5 days before the extension to the directions had been ordered the Respondent again sought to postpone the hearing set for 13 November 2025. This was a detailed submission and refers to the provision of medical evidence on request.
(d) On 1 October Judge Tueje wrote a letter refusing a stay and setting out the procedural status at that time.
(e) On 7 October Judge Walker again addressed the request to postpone the hearing and refused for the reasons set out therein. Stating that any further application must include medical evidence to demonstrate why the Respondent could not travel and or provide a bundle of documents.
(f) The Respondent replied on 8 October with 5 pages of response, in some detail and a further submission on 9 October.
(g) A further letter headed 'update and request for guidance' was sent to the tribunal on 3 November 2025. She asked the case worker whether she should submit the medical evidence she sought to rely on or wait until she had made a formal application.
(h) On 11 November the Respondent wrote again requesting a postponement of the hearing this time producing a letter from Mount Sinai Medical Center dated 22 October 2025 from a doctor/healthcare professional the contents of which we carefully read.
(i) It should be noted that the tribunal wrote to the Respondent on 8 October 2025 offering a video hearing and highlighting the need for giving evidence from abroad. She did not follow this suggestion.

6. We invited Mr Cairns for the Applicants to address us on the postponement issue. He said that the Respondent had not provided JfT with the basis of the adjournment and had months to deal with the attendance at hearing, possibly by video. There had been a volume of case management applications when she could and should have been addressing the issues. His submission was that the hearing should proceed.

Decision on adjournment

7. We have considered the numerous requests for more time or for adjournments, which we hope we have fully listed above. Without being unsympathetic it is a pity that the Respondent did not devote such energy to dealing with any defence she felt she had, save for the short document before us, rather than seeking to put off the hearing. Again, without wishing to appear unsympathetic we were somewhat confused as to what her medical condition might be. There is reference to an incident in 2022, which we suspect is an error and should refer to an

accident in February 2025. There are no reports on this problem, just invoices for treatment. We then received a report from apparently a doctor or health care professional, many days after it had been written, which appears to refer to completely different issues.

8 We can see no reasons why, being able to marshal her arguments in support of an adjournment, she could not have used those skills to actually address the issues before us and attended the hearing by video.

9 In those circumstances and considering rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

> This rule states as follows:
>
> *Hearings in party's absence*
>
> *34.—(1) If a party fails to attend a hearing the Tribunal may proceed with the hearing if the*
>
> *Tribunal—*
>
> *(a) is satisfied that the party has been notified of the hearing or that reasonable steps have*
>
> *been taken to notify the party of the hearing; and*
>
> *(b) considers that it is in the interests of justice to proceed with the hearing*.

we have come to the conclusion that it is in the interests of justice to proceed. The Applicants were in attendance with legal representation. The taxpayer's money had been spent on the tribunal and the preparation for the hearing, and we are satisfied that the Respondent has had ample time to submit any further evidence in support of her defence and to provide financial details to assist the tribunal in reaching its decision and to have attended by video.

The hearing of the substantive issues.

10. We invited Mr Cairns to present the Applicants' case, which was set out in the bundle of papers before us. This included statements from both Applicants, details of the selective licensing scheme in the London Borough of Southwark, details of the rent paid, a copy of the tenancy agreement, a case statement and various sundry exhibits. .We have noted the contents of same and considered them in making our decision in this case.

11. We heard from both Mr Faure and Ms Roux who told of the issues they had with the property, in particular the heating, which appeared to be a communal system but with a faulty thermostat within the flat. They had apparently contacted the landlord's letting Agent, Winkworths and been given certain advice but that did not work,

and they did not take the matter further. It did however mean that the heating appeared to be constantly on. There were also issues with a bathroom cupboard, the washing machine and the state of cleanliness of certain soft furnishings. They did confirm that the tenancy was 'OK', although there were some noise issues with neighbours. The letting commenced on 7 March 2023 and ended on 6 March 2024.

12. In her defence Ms Lynam says that she was misled by her agents to believe a licence was in place. She told us that she had attempted to apply for a licence at the beginning of 2024 when she said Winkworths had told her there was an issue. She says she tried to apply but there were unstated problems with the Council's system. She says she made multiple attempts over the whole of 2024 and that any fault lay with her agents, property managers and the Council and not as a result of her negligence. She denied that there were any issues of conduct relevant to this case.

13. Mr Cairns made submissions on the level of penalty we should consider imposing. He referred to the Upper Tribunal cases of *Acheampong v Roman; Aytan v Moore and Newell v Abbott,* which we have borne in mind. He reminded us that the Respondent had employed professional letting agents, Winkworths, that the period of the offence was long, that there had been no response from the letting agents to the heating issue in particular and that we had no evidence before us of the financial status of the Respondent. He argued that we should award 70% of the amount claimed, which had been £19,800. He also asked for reimbursement of the tribunal fees which were £330.

14. We raised with Mr Cairns the Court of Appeal case of *Kowalek v Hossanien Limited [2022] EWCA Civ 1041* which was the appeal from the Upper Tribunal in case reference 2021 UKUT 143. In addition, there had been recent Upper Tribunal authority in the case of *Pearlon v Betterton Duplex Ltd 2025 UKUT 175.*

15. He submitted that an offence had been committed before the Applicants took possession as when they visited there appeared to be a tenant in situ and that therefore we could assume that an offence was made out from the time the tenants paid their rent, even though that was before the tenancy started.

Decision

16. We are satisfied beyond reasonable doubt that the offence of controlling and or managing a 'house' which is required to be licensed has been committed by the Respondent (s95(1) of the Act). 'House' is defined at s99 of the Act as being a building or part of a building consisting of one or more dwellings. The Property is a flat within a block and was required to be licensed under the Council's selective licensing scheme. The London Borough of Southwark designated part

of the borough in which this property sits as an area for selective licensing which came into force on 1 March 2022 for a period of 5 years. The Property fell within the designated area. The Respondent is the owner and the landlord on the tenancy agreement.

17. The defence is not really a defence. The Respondent cannot hide behind her agents. There is no evidence before us that they were responsible for applying for and getting a licence for the property. The Respondent appears to have been within the jurisdiction of the tribunal in April 2023 as she and Mr Faure met and therefore had ample opportunity to ensure she was aware of the licensing arrangements relating to her property even though she may now be abroad.

18. The question we need to consider is what level of RRO we should make. There are numerous authorities on this, perhaps the main being Acheampong v Roman [2022] UKUT 239 which set out guidance as to how we should decide the amount of the Order. We have borne that case in mind in reaching our decision.

19. The first issue is that which we raised with Mr Cairns at the start of the hearing concerning the payment of rent on 15 February 2023 some 3 weeks or thereabouts before the tenancy started on 7 March 2023. The question was whether this was caught by the Court of Appeal decision in Kowalek as affirmed by the UT in the case of *Pearlon v Betterton Duplex Ltd 2025 UKUT 175.* In that case it was held that rent paid in advance was not capable of being the subject of an RRO. In this case the Applicants paid to the Respondent one month's rent and a deposit totalling £3173.08 rent in advance on 15 February 2023 for a tenancy commencing nearly three weeks later. At the time this rent was paid we are satisfied that no offence being committed. Mr Cairns suggestion that we should find there was a 'tenant' in the property at the time the Applicants inspected and thus an offence was being committed is not compelling. We have no idea as to her identity or her status and accordingly applying the judgment of the Upper Tribunal we find that there is no power for us to make an award in respect of this initial period of one month's rent of £1,650

20. We were told that the Applicants met all outgoings and of course the Respondent did not provide any evidence on this point. We therefore accept the evidence of the Applicants and will not make any deductions in respect thereof.

21. The offence is not the most serious of those listed at s40(3) of the 2016 Act. There does appear to be some problems with heating at the Property, but this was not pursued by the Applicants. There is no suggestion of any issues of conduct on the part of the Applicants. The Respondent, by contrast does not appear to have investigated issues that were raised and has had no real contact with the

Applicants. There is no conviction, and we are not aware that the this is a professional landlord.

22. We have considered the judgment of Martin Rodgers KC in the Newell case cited above. At para 57 he said this "*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.*"

Further at para 62 he said this "*I therefore approach the level of penalty in this case without giving weight to the allegations of poor conduct on either side. Nor has Mr Newell provided evidence of his financial circumstances. On that basis, bearing in mind that the offence was committed by the landlord of a single property and was the result of inadvertence, or lack of attention, rather than being deliberate, and that the accommodation provided was generally of a good standard which attracted long term residents and which the Respondents were disappointed to leave, the appropriate order is for the repayment of 60% of the rent received. Had the offence been committed for a much shorter period the penalty I would have imposed would have been equal to 50% of the rent, but the effective operation of selective licensing schemes depends on landlords keeping themselves properly informed and a prolonged failure to obtain a licence therefore merits a higher penalty.*"

23. The landlord took some time to apply for the licence. It was however, granted soon after the application was made suggesting that there were no problems with the standard of the property. There is no evidence that there was a problem with applying to the Council for a licence in early 2024 and there were clearly none when applying in late 2024. It was interesting to hear from the Applicants that they had attempted to contact the Council about help with the RRO application but had no real response but did receive an acknowledgement stating the Council was very busy.

25. Taking the matter in the round and considering the judgment in the Newell case we consider that a reduction of 50% would reflect the appropriate award, this to be from the £18,150 after reducing for the first month's payment, leaving the sum of £9,075, such sum to paid within 28 days.

26. In addition, given the success of the Applicants we order that the Respondent should repay the tribunal fees of £330, also within 28 days.

Judge Dutton **17 November 2025**

ANNEX – 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 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 to 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 (ie 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.