



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

Case reference : **LON/00AZ/HMF/2025/0687**

Property : **21 Clarendon Rise, Hither Green,
London SE13 5ES**

Applicant : **Ms A***

Representative : **I/P**

Respondent : **Zan Wang (aka James Wang)**

Representative : **Ms Cheryl Reid, counsel**

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

Tribunal members : **Judge Tagliavini
Mr S Wheeler MCIEH, CEnvH**

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

Date of hearing : **30 October 2025**
Date of decision : **27 November 2025**

DECISION

**By the direction of Regional Tribunal Judge Powell made on 24 October 2025, the applicant was granted anonymity for the purpose of the publication of the tribunal's decision*

The tribunal's decision

- (1) The tribunal refuses the application for a rent repayment order.
 - (2) The tribunal refuses the respondent's application for costs under r.13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
 - (3) The applicant received assistance with the payment of the application and hearing fee and therefore the tribunal does not make an order requiring the respondent to refund these fees to 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 respondent has committed an offence under Part 2 of the Housing Act 2004, by reason of having the control or managing an unlicensed house in multiple occupation (HMO, which is an offence under s.40(3) of the Housing and Planning Act 2016. In a Notice of HMO Declaration dated 16 January 2025 issued by the London Borough of Lewisham it was stated that the subject property:

‘met the following test[s]:- [the standard test (section 254(2) of the Act)]

and the Authority declare the building to be a house in multiple occupation (HMO).

...

This notice will come into effect on **18th February 2025** (if no appeal is made against the authority's decision to a First-tier Tribunal (Property Chamber)).

3. The 'standard test' is defined in s.254(2) of the Housing Act 2004 as:

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.

4. Section 72(1)HA 2004 states:

(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.

5. In the application, the applicant claimed a RRO for the period **17 March 2024 to 27 January 2025 in the sum of £6,600**. This was amended at the hearing to **£6,460** to adjust for the payment of £100 (re) payment of (part) of her cash deposit of £200.

The background

6. The subject property at **21 Clarendon Rise, Hither Green, London SE13 5ES** is a house on 3 floors and divided into 7 or 8 bedrooms with 2 bathrooms and a kitchen. The property was said by the applicant to be occupied by her during the period 17/03/2024 to 13/02/2025 with exclusive use of one room at a rent of £600 per month (inclusive of council tax and utilities), with shared use of the kitchen and bathroom/w.c. with 6 other tenants/occupiers as well as the respondent's former wife and children. The applicant asserts the property was required by the London Borough of Lewisham to be licensed under the mandatory licensing scheme and was not so licensed during her occupation.
7. The applicant also asserted the respondent entered her room without permission on one occasion while she was out and failed to provide adequate heating. In addition the applicant asserted the respondent had deliberately concealed his true identity and had used (unspecified) manipulative tactics to control the occupiers in the property. In her claim, the applicant asserted that:
 - *The landlord was operating an unlicensed HMO*
 - *He knowingly collected rent under false pretences*
 - *He failed to maintain safe and lawful living conditions*
 - *He attempted to evade enforcement after being reported*
 - *He ceased all communication once I began pursuing my rights*

These actions merit the maximum rent repayment possible, as they indicate a willful (sic) disregard for both tenant welfare and housing law.
8. The respondent denied the commission of any offence during the period of the applicant's occupation and also relied upon a notice of temporary exemption granted by the London Borough of Lewisham with effect from 05 February 2025 for a period of three calendar months.

Litigation history

9. The application for a rent repayment order was made on 27 January 2025 and Directions were given by the tribunal on 25 April 2025. The Directions were subsequently amended on 1 September 2025. For personal reasons, the applicant also applied for and was granted anonymity for the purposes of the published decision by Regional Tribunal Judge Powell on 24 October 2025.

The Law

10. The applicant asserts the property was required to be licensed under the provisions of Part 2 of the Housing Act 2004. Section 55 of the 2004 Act states:

(1) This Part provides for HMOs to be licensed by local housing authorities where—

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

11. Section 72 of the Housing Act states:

72 Offences in relation to licensing of HMOs

(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

12. 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.

13. 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.

14. Section 72(5) of the Housing Act 2004 states:

(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,

...

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

The hearing

16. At the hearing, the applicant provided a digital hearing bundle of 250 pages and a supplemental digital bundle comprising 71 unnumbered pages and also gave oral evidence to the tribunal. Ms Reid objected to the admission of the supplementary bundle which she alleged was late in being served and also sought to 'widen' the applicant's case. The applicant told the tribunal that the supplemental bundle had in fact only been 5 hours past the time specified in the amended directions and should be admitted.
17. The tribunal was unable to identify any prejudice caused to the respondent by this minor, technical breach of the tribunal's Amended Directions and found it was reasonable to permit the applicant to rely on the supplemental bundle in addition to her other evidence.
18. The respondent attended in person and was represented by Ms Cheryl Reid of counsel and provided a hearing bundle of 69 digital pages which contained a witness statement dated 11/08/2025 from the respondent on which he relied as his evidence in chief. In this the respondent accepted he managed the property which was owned by his parents who lived abroad. The respondent denied having let the property as an HMO and asserted the applicant had failed to provide evidence of occupation by 4 other tenants/occupiers.
19. The respondent accepted that his former wife and their children resided at the property for a period and that his parents, family members and friends as well as himself, would stay at the property from time to time. Consequently, the respondent asserted that at the date of inspection by Mr Blaise Macklin, Senior HMO Licensing and Enforcement Officer from the London Borough of Lewisham, the applicant was the only tenant in occupation.

The tribunal's reasons

20. In reaching its decisions the tribunal took into account the burden and standard of proof required in this application. It also took into account all of the written and oral evidence provided by both parties.
21. The tribunal finds the applicant has failed to prove the offence alleged. Although the applicant referred to other occupiers as 'Rose' and 'Agnes' she was unable to give any further details about their occupation as no other tenant had provided a witness statement in support or a copy of any tenancy or licence agreement.
22. The applicant also referred to a 'Chinese lady' and someone called 'Tina' who arrived in around March 2024 and moved out a few months later in May 2024 and replaced by a person who had a cat. In addition, the

applicant told the tribunal that members of the respondent's family occupied the ground floor rooms.

23. The tribunal finds the applicant was unable to prove the identity of any of the other occupiers; the nature, purpose or length of their occupation at the subject property. In addition, the applicant accepted during the course of her oral evidence, that at the date of the inspection carried out by Mr Macklin, only herself and one other tenant had been present at the property on that date. Consequently, without being provided by the applicant with a witness statement from Mr Macklin or any other Local Authority Officer to explain the findings of the inspection and the reasons why the property was declared to be an HMO as from 16 January 2025, the tribunal is not satisfied so that it can be sure, that the subject property was occupied by 5 or more persons, or the number of households present, either on this date or at any time during the period of the applicant's occupation and/or the period for which the rent repayment order is claimed.
24. As the tribunal finds the applicant has failed to prove the respondent committed the offence alleged it is not required to consider the amount of any RRO it would otherwise have awarded

Rule 13 respondents' application for costs

25. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states:

13.—(1) Subject to paragraph (1ZA), the Tribunal may make an order in respect of costs only—(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings...

26. At the end of the hearing, Ms Reid made an application for the respondents costs in the sum of £6,800. Ms Reid was however unable to explain to the tribunal how the applicant's conduct in making or pursuing the application met the tests set out in *Willow Court Management (1985) Ltd v Alexander* [2016] UKUT 0290 (LC) which can be summarised as:

- (i) 'Has the person acted unreasonably?' This is a high threshold and only satisfied if there is no reasonable explanation for the conduct complained of.
- (ii) If 'yes, should an Order be made?' The Tribunal has a discretion whether to make an order or not.

(iii) 'What should the order be?' If the above two stages above are satisfied, it does not necessarily follow there will be an order for costs.

27. The tribunal is not satisfied the applicant acted unreasonably in making or pursuing the application. As a litigant in person, the tribunal determines the applicant was unaware of the rigorous demands placed upon any applicant alleging and being required to prove on the criminal standard of proof, an offence in an otherwise civil forum or the need to enlist further assistance from the London Borough of Lewisham.
28. Therefore, the tribunal finds the respondent has failed to satisfy the tribunal that the first test in *Willow* has been met and dismisses the application for costs.
29. As the applicant has had (welfare) assistance in paying the application and hearing costs, the tribunal declines to make any order requiring the respondent to refund those fees.

Name: Judge Tagliavini

Date: 27 November 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).