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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**CAM/00MC/HMC/2025/0004**
Property	:	**34 Howard Street, Reading, RG1 7XS.**
Applicant	:	**Mr Vukoje Mazic**
Represented by	:	**In person**
Respondent	:	**Mr Michael McSweeney**
Represented by	:	**Mr Neilson (c)**
Type of application	:	**Application for a rent repayment order under s.41(1) and (3) of the Housing and Planning Act 2016**
Tribunal	:	**Judge Stephen Evans** **Mr Christopher Gowman MCIEH**
Date of hearing and venue	:	**16 September 2025, by remote video**
Date of decision	:	**1 December 2025**

DECISION

DECISION

(1) The Tribunal determines that it shall exercise its discretion to make a rent repayment order, in terms that the Respondent shall pay to the Applicant within 28 days of the date of this decision the sum of £2856.

(2) The Respondent shall reimburse the Applicant the application fee of £100, together with the fee of £200 for the hearing, also within 28 days of the date of this decision.

REASONS

Background

1. The applicant Mr Vukoje Mazic occupies a 1 bedroom ensuite room in an HMO containing 4 bedrooms. There is a shared kitchen.

2. The Respondent Mr McSweeney was registered as the joint proprietor of the freehold of the Property on the 17 April 2012.

3. On 1 March 2023 a house share agreement was reached between the parties. This included the tenancy of a room to the Applicant on the second floor of which he enjoyed exclusive possession, for a term from month to month from 12 January 2023 at a rent of £595 pcm, plus a deposit of £525.

4. On 17 April 2024 Reading Borough Council served a hazard awareness notice on the Respondent in relation to a category 2 hazard at the Property. There was damp and mould, arising from a water leak in the shower room. There was also a risk of structural collapse, because some of the sections of the ceiling in the first floor had become loose and bowed. Although this was a hazard awareness notice, it still included at Schedule 2 a schedule of works which the local authority considered would abate the hazards.

5. There is nothing before us which indicates the Respondent took any action, and on 1 August 2024 an Improvement Notice was served on the Respondent by Ms McMahon, a principal environmental health officer at Reading Borough Council.

6. This Notice alleged a category 1 hazard of damp and mould, to the ceiling of the first floor front bedroom, occasioned by an intermittent leak from the shower room above; and that some sections of the ceiling were loose and bowed. There was mould growth to the walls and ceiling in the second floor shower room. Given that the ceiling was loose and bowed to the bedroom, there was also a category 2 hazard of structural collapse in this area, and in the understairs cupboard.

7. Again the leak was coming from the en suite shower room of which the Applicant has had exclusive possession, on the second floor.

8. In addition, to the basement area there was perished wall plaster, water staining to the living room wall, and to the kitchen wall at worktop height. There was also extensive mould growth to the walls and ceiling in the bathroom located in the basement.

9. The above Notice required remedial action to be started by Mr McSweeney by 5 September 2024 and completed by 5 November 2024.

10. Invoices dated 1 October 2024 and 10 October 2024 indicate that some remedial works were executed on his behalf in the sums of £5700 and £3162 respectively. As explained further below, these works related to the basement area only.

11. On inspection on 14 November 2024 Reading Borough Council found that there was outstanding work in relation to the Improvement Notice, in particular to remedy the leak from the second floor shower.

12. On 24 January 2025 Reading Borough Council notified the Applicant of this outstanding work, and on 10 February 2025 the Applicant made this application to the tribunal for a rent repayment order.

13. The Applicant has continued in occupation, paying rent. He has documentary evidence of rent payments up to 1 May 2025. These are not disputed.

14. On 19 June 2025 the Tribunal procedural judge gave directions towards a hearing of this matter.

15. On 18 July 2025 Reading Borough Council revoked the improvement notice, we were informed.

The Application

16. The Application dated 6 February 2025 alleges a failure to comply with the improvement notice served on the 1 August 2024, and relies on the further visit which took place by Reading Borough Council on 14 November 2024 in this regard.

17. The Application form itself does not state the amount which the Applicant seeks by way of rent repayment order.

The Hearing

18. At the start of the hearing, we requested that the Respondent's lawyers, LawHive, file a Rule 14 Notice of Representation.

19. The documents before us consisted of a 6 section bundle from the Respondent, and an 8 section bundle from the Applicant.

20. The parties called their evidence and made representations, issue by issue.

The Issues

21. As the Tribunal directions state, the issues are:

    (1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

    (2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

    (3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

    (4) What is the maximum amount that can be ordered under section 44(3) of the Act?

    (5) What account must be taken of:

        (a) The conduct of the landlord?

        (b) The financial circumstances of the landlord?

        (c) Whether the landlord has at any time being convicted of an offence?

        (d) The conduct of the tenant?

        (e) Any other factors?

Discussion and determination

(1) Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed the alleged offence.

22. The Applicant relied on his documents in the bundle without further addition or explanation.

23. Mr Neilsen for the Respondent explained that the works were not completed fully on time because the landlord was taking steps to decant the Applicant.

24. He called Mr McSweeney to confirm his "Defence/Mitigation" documemnt. The Respondent confirmed he had drafted the document.

25. The layout of the Property was explained to the Tribunal:

26. The front entrance door leads to a corridor. On the left is a ground floor bedroom. Beyond that is a staircase to the first floor, where are situated 2 bedrooms; one street facing, and another on the left which is garden facing. There are also stairs to the attic conversion room at the top of the house. In the basement there is a communal area, a dead floor space area with access to the garden, plus a bathroom with shower unit and WC. This is for the use of the 3 tenants of the ground floor and 1st floor rooms, since the Applicant has his own ensuite. There is also a kitchen.

27. The Respondent confirmed that the 2 invoices which he had disclosed related to tanking issues in the basement; the first being for the deposit, and the second related to payment on completion of the works.

28. Mr Neilson referred us to *Marigold v Wells*, a decision of the Upper Tribunal (Lands Chamber) (Martin Rodger KC) on 3 February 2023, reported at [2023] UKUT 33 (LC); [2023] H.L.R. 27. In that case, the UT held that in considering whether a landlord had a reasonable excuse for failing to comply with a licensing or regulatory requirement, the first step for the First-tier Tribunal is to 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 facts; secondly, it should decide which of those facts are proven; thirdly, it should decide whether, viewed objectively, those proven facts initially amounted to a reasonable excuse and whether they continued to do so; the tribunal should take into account the experience and other relevant attributes of the landlord and the situation in which they found themselves at the relevant time or times; in this context, it might assist the tribunal to ask itself: "was what the landlord did (or omitted to do or believed) objectively reasonable for this landlord in those circumstances?" [48], [51].

29. Applying the approach in that case to the failure to comply with an Improvement Notice, the Tribunal is first satisfied beyond reasonable doubt that the works in the Improvement Notice were not all completed by 5 November 2024. We accept the letter from Reading Borough Council in relation to that. Indeed, it was not disputed that works were not competed on time.

30. Instead, the Respondent contends that on balance of probability he had a reasonable excuse defence. His statement says he did not comply with the Notice:

"because I was in the process of evicting the tenant under S 21. And my preference was to postpone the works until the room in the attic conversion

was vacant before attempting the necessary building works required to remedy the issue. The reason for the eviction was my intention to sell the property with vacant possession and quit the private landlord market. This is still my intention."

31. Mr Neilson's words (at paragraph 23 above) were something of a euphemism, therefore.

32. There was no evidence before us that the works to the ensuite shower room could not be executed whilst the Applicant was in occupation. Indeed that appears to have happened after 5 November 2024; hence the revocation of the Improvement Notice.

33. The Tribunal determines that it was not, objectively, reasonable for the Respondent, even in the position he was, to delay the second floor works in order to evict/decant the Applicant whose shower was the cause of the leak. There was no evidence before us, for example, that the Applicant's misuse of the shower was causing the water penetration into floors below. There was no plea of impecuniosity, even if that could be a defence, which we doubt. There was no explanation either as to why the Respondent did not appeal the improvement notice.

34. We therefore find that, on balance of probability, the Respondent had no reasonable excuse pursuant to s.30(4) of the Housing Act 2004.

(2) Whether the offence related to housing that, at the time of the offence, was let to the tenant.

35. The parties were agreed that it was, and we are satisfied of this requirement on the face of the tenancy agreement alone.

(3) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

36. We are satisfied the Respondent has, for the reasons already given.

(4) What is the maximum amount that can be ordered under section 44(3) of the Act?

37. Section 44(2) provides that in a case of failure to comply with an improvement notice, the amount of the rent repayment order must relate to rent "paid" during the period in which the landlord was committing the offence.

38. The period of the commission of the offence was 6 November 2024 to 18 July 2025.

39. The Applicant clarified in evidence that he continued to pay £595 pm after 1 May 2025, being the date of the last documentary evidence of proof of payment; that he has paid at all times up to 18 July 2025 and indeed beyond. We believe the Applicant, and the Respondent led no contrary evidence.

40. The Applciant did not pay on top any sum for utilities, and when asked if he received universal credit, the answer was "not that I know of".

41. We did not have any figures at all for utilities costs, not even an imprecise figure, so we have been unable on the evidence to determine any relevant deduction.

42. We have been referred by Mr Neilson to *Kowalek and another v Hassanein Ltd* [2022] EWCA Civ 1041, [2022] 1 WLR, in which the CA held that, on a true construction of section 44(2) of the Housing and Planning Act 2016, in order to be recoverable under a rent repayment order, the rent in question had both to have been paid to discharge indebtedness which had arisen during the relevant period of offending by the landlord, and in fact paid during that period; accordingly rent paid by the tenant after the landlord's offending had ceased could not be included in the calculation of the maximum amount of a rent repayment order even if it had been paid in order to satisfy a liability which had accrued during the relevant period.

43. In the instant case there was no payment after 18 July 2025 by the tenant.

44. We were also referred to *Pearton v Betterton Duplex* [2025] UKUT 175. In that case, the tenants paid 6 months rent in advance before the offence of failing to licence was ever committed. They paid none during the period of the offence. The UT refused to interfere with the FTT's decision that rent was not paid during the period of the landlord's offence, so a RRO could not be made.

45. In the instant case it was posited on the Respondent's behalf that, because the period of the offence started after the payment of rent made on 1 November 2024, we must ignore the rent paid on 1 November 2024, even though it was made "in respect of" some of the period when the offence was being committed.

46. In *Pearton* UT Judge Cooke held:

"I can find no error in the FTT's decision; the rent paid by the appellant was not paid during the period in which the offence was committed as section

43(2) requires, and so could not be the subject of a rent repayment order. The appeal fails."

47. We are bound by the above decision and cannot see a reason to distinguish it.

48. We therefore consider that the maximum amount is £4760, because the rent paid between 6 November 2024 and 18 July 2025 was the 8 months at £595 paid from 1 December 2024 up to and including 1 July 2025.

49. The corollary of the above is that we do not make a deduction, in respect of the rent paid from 1 July 2025 to 31 July 2025, simply because the offence ended on 18 July 2025. In other words we do not undertake a mathematical exercise of reducing £4760 to account for the 13 days in July 2025 when the offence was not being committed; e.g. by reducing the £4760 to £4510.49, using the following calculation for the deduction: 13/31 x £595 (£249.51).

50. Our reasoning for this is as follows:

51. Take the following hypothetical situation on similar facts to the instant case. The tenant is instead a weekly tenant, paying £137.31 pw, the equivalent of £595 pcm, with his first relevant rent payment starting on Friday 1 November 2024. The payment he makes on that day cannot be counted, because the offence starts to be committed only from 6 November 2024. But his payments made on 8, 15, 22 and 29 can be counted towards his RRO, whereas the Applicant (who pays monthly) cannot claim any amount until 1 December 2024.

52. Looking at the end date for offending, the weekly tenant will have paid his rent on Friday 4, 11 and 18 July 2025, but his payment on 25 July 2025 falls on a date after the offence ended on 18 July 2025 (assuming the improvement notice was revoked after rent was paid on that day).

53. The weekly tenant can claim a maximum of £5080.47 (37 weeks from 8 November 2024 to 18 July 2025). Even if one were to discount the payment made on 18 July 2025 (e.g. if rent was paid after the Improvement Notice was revoked) the sum would be higher than the Applicant's £4760, at £4943.16 (36 weeks), but only marginally so. However, it would be significantly higher if the Applicant's maximum amount was reduced to £4510.49.

54. We do not impute an intention to Parliament that it considered there should be a major discrepancy in amounts which different periodic tenants might claim under a RRO for an identical period of offending.

55. *Pearton* did not consider the above scenarios, and is best explained as a decision on its facts, most particularly that the rent was paid before a tenancy

even began. In the instant situation, the payment of rent on 1 July 2025 was made during the period the Respondent was committing the offence. That is different to the facts in both *Kowalek* and *Pearton*.

56. Notwithstanding the above, the case law also provides that we are not compelled to grant the maximum amount sought. In this regard we follow *Acheampong v Roman* [2022] UKUT 239 (LC):

> "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)."

57. We have already conducted the exercise in (a) and (b) above.

58. As to (c), Mr Neilson accepted that 3 out of the 7 offences in the table under s.40(3) are more serious than an offence under s.30 Housing Act 2004, because custodial sentences may result. He further contended that this offence was lower down the scale in relation to possible s.30 offences; the Respondent had partially complied with the Improvement Notice; the Applicant himself had not suffered adverse health (certainly none evidenced independently) and that the Applicant had been able to use the shower in the basement if he wanted. Accordingly, a sum of 35-40% of the maximum should be deducted, before any consideration of the s.44(4) factors.

59. The Applicant contended that he could not shower in the basement because there was mould in both shower rooms, although he accepted he had been advised by the Council to use the downstairs shower. He also complained orally the Respondent took away his internet and entered his room without permission. He contended it "was agony for me".

60. The Applicant accepted he had no medical evidence of any psychological impact, but would not accept he had no issues with mould after 5 November 2024.

61. We agree with a deduction of 40%, although this was still a fairly serious offence. The photographs reveal how impactful the offence was in relation to the first floor and ground floor street facing rooms. But the impact on the Applicant was not as great as alleged by him.

(5) What account must be taken of:

(a) The conduct of the landlord?

62. We cannot find on balance of probability on an oral assertion made only at the hearing that the Respondent took away the Applicant's internet and entered his room without permission.

63. Mr Neilson accepted the failure to comply with the Hazard Awareness Notice was an aggravating factor/was relevant landlord conduct, but only minimally, notwithstanding that a category 2 hazard had deteriorated to a category 1 hazard between April and August 2024. Mr Neilson emphasised the Respondent was not a professional landlord, and had not been convicted.

64. In short, Mr Neilson said there were no significant allegations of conduct either way. We tend to agree.

(b) The financial circumstances of the landlord?

65. We had no evidence on paper concerning this. We reject the contention we could have taken an inquisitorial approach to this during the hearing. There was no suggestion whatsoever in the papers of any impecuniosity on the Respondent's part, and the Applicant would have been ambushed by any (self-serving) evidence the Respondent gave orally.

66. This case is therefore distinguishable from *Daff v Gyalui* [2023] UKUT 134 (LC); [2024] 1 P. & C.R. DG5 where the Upper Tribunal (Lands Chamber) Deputy Chamber President, Mr Martin Rodger KC held that the FTT had erred because it had some evidence of Ms Daff's financial circumstances, but did not take that evidence into account.

67. We do note the Respondent intends to sell the Property, and is at risk of further penalties from the Council, but that risk is unquantified.

(c) Whether the landlord has at any time being convicted of an offence?

68. The parties accepted the Respondent has not been convicted.

(d) The conduct of the tenant?

69. We do not consider there is any conduct of the tenant which impacts on the amount to be paid.

(e) Any other factors?

70. There was nothing advanced by either party in this regard.

Conclusions

71. Given all the above, the Tribunal is satisfied that it should make a Rent Repayment Order in favour of the Applicant in the sum of £2856, being 60% of the maximum.

72. The above sum of £2856 shall be paid by the Respondent to the Applicant within 28 days, we determine.

73. The above sum is recoverable as a debt, if not paid: s.47(1) of the 2016 Act.

74. The Applicant being successful, we also order that the Respondent shall reimburse the Applicant the application fee of £100, together with the fee of £200 for the hearing, within 28 days of the date of this decision.

Post script

75. On a final note, the Tribunal would wish to emphasise that the Respondent did not provide a skeleton argument, nor cite authorities to the Tribunal at any time before the closing arguments in the hearing, and as far as we are aware, not to the Applicant either. To raise cases in closing submissions for the first time, and without copies of the same, is not acceptable practice. We do not consider the Applicant was prejudiced by this, because whilst he was master of the facts, the Applicant (with the greatest respect to him) had little interest in the law; and we have been able to consider the relevant cases after the hearing. Part of the delay in giving this decision arose from the need to consider in detail caselaw which should have been provided much earlier.

Judge:

S J Evans

Date:

1/12/25

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 (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.