Case reference	**:**	**LON/00AL/HMF/2025/0179**
Property	**:**	**Flat 168 Building 22 Cadogan Road, SE18 6YN**
Applicant	**:**	**Daniel Stevens**
Respondent	**:**	**Akshay Gujrul**
Type of application	**:**	**Application for a rent repayment order by tenant Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal	**:**	**Judge Shepherd Fiona Macleod MCIEH**
Date of Decision	**:**	**2025**

DECISION

1. A rent repayment order of £3,251 shall be paid by the Respondent for the period 29th February to 30th September 2024 ("The relevant period"). The said sum must be paid within 28 days of this decision being issued. The Respondents shall also reimburse the Applicants with the application and hearing fee at a total of £320. This sum is also to be paid within 28 days of this decision being issued.

Background

2. The Application for a Rent Repayment was brought by the Applicant who is the former tenant of Flat 168, 22 Cadogan Road, London SE186YN ("The premises"). The Respondent is the leasehold owners of the premises.

3. The Applicant occupied the premises as an assured shorthold tenant protected under the Housing Act 1988. He lived there from 1st July 2020 until 13th November 2024.

4. The premises is a three bedroom property. The Applicant's case is that he occupied the premises with two other households . The households were variously : Ryan Carson who occupied from 20th May 2023 to 20th February 2025; Abby Lia who occupied between 9th September 2023 and February 2024; David Ng who occupied from 9th February 2024 and 9th August 2024 and Alberto Formica who occupied from August 2024 to 13th November 2024. The Applicant said that the occupation with two other households was constant save for about 4 days when David Ng moved out and Alberto Formica moved out.

The Applicants' case

5. The Applicant alleges that he is entitled to rent repayment orders of £6859.50. There was no dispute from the Respondent that this is the rent that he paid for the relevant period. The Applicant occupied the premises with his young son who stayed with him but not permanently. The Applicant is a Police Officer. He said he had no complaints about the condition of the premises. The Respondent had tried to increase the rent but had failed to do the paperwork properly and the Tribunal refused jurisdiction.

6. It is the Applicant's case that Greenwich Council were operating an Additional Licensing scheme from 1st January 2024. Under that scheme the premises were designated as an HMO that required a license. There is no dispute that the Respondent failed to obtain a license during the relevant period.

7. The Application was dated 27th February 2025. Accordingly the 12 month limit was complied with.

The Respondents' case

8. The Respondent said he was not a professional landlord. He only had this property and was currently living with his parents. He said that he had moved out of the premises to facilitate his work and he had let the premises out. He said that he had served the Applicant with a notice pursuant to s.21 Housing Act 1988 and had expected him to move out in 2023. The Applicant did not move out. He did not believe that he needed to obtain a license if he was seeking possession. He said that this was the advice he had obtained from Greenwich. There was no documentary proof of this but he said that he had phone calls with them. A letter from Greenwich dated 15th August 2025 stated that they had investigated the premises in August 2024 when they found that one of the rooms was vacant and they had therefore not taken any action. The letter also said that it was not the council's policy to take enforcement action in the early states of Additional Licensing and that enforcement had only begun in 2025.

9. It seemed likely that the investigation had been carried out during the period when Mr Ng moved out and Mr Formica moved in. The Respondent said that he had not applied for a license because he didn't think he needed to as he was seeking possession. He did not apply for a Temporary Exemption Notice. He said he had no intention of letting out an HMO and that once he had found out that he had fallen foul of the Additional Licensing Scheme he had sought to evict the Respondent.

The law

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

10. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an unlicenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

11. 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 states.

254 Meaning of "house in multiple occupation"
(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–
(a) it meets the conditions in subsection (2) ("the standard test");
(b) it meets the conditions in subsection (3) ("the self-contained flat test");
(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or
(e) it is a converted block of flats to which section 257 applies.

12. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence under the mandatory licensing scheme. 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.

13. Section 56 Housing Act 2004 deals with the designation of Additional Licensing Schemes:

56 Designation of areas subject to additional licensing
(1) A local housing authority may designate either–
(a) the area of their district, or
(b) an area in their district,
as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.
(2) The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
(3) Before making a designation the authority must–
(a) take reasonable steps to consult persons who are likely to be affected by the designation; and
(b) consider any representations made in accordance with the consultation and not withdrawn.
(4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.
(5) In forming an opinion as to the matter mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question.
(6) Section 57 applies for the purposes of this section.

14. Section 263 of the Act 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."

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

15. 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.

16. 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. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

17. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

18. Section 40 provides (emphasis added):
    "(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."

19. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

20. It is a defence to the section 95(1) offence of having control of or managing an unlicensed house for the person concerned to show that they had a reasonable excuse for doing so (section 95(4)(a), 2004 Act). In this case Mr Newell maintained that he had such a defence in relation to the Flat.

21. In *Marigold v Wells* [2023] UKUT 33 (LC), at [48], borrowing from the approach taken by tax tribunals, the Upper Tribunal suggested that a property tribunal considering a defence of reasonable excuse. They had to first consider objectively if the defence could amount to a reasonable excuse. Secondly they have to decide if the facts relied on are proven and whether, viewed objectively, the proven facts provided an objectively reasonable excuse for the conduct of the appellant, taking into account their experience and other relevant characteristics.

22. 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.

23. 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)."

24. 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.

25. 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."

26. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

27. In Williams v Parmar [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).
(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).
(v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

28. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish 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 (the lower end of the scale being 25%).

29. In Acheampong v Roman [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:
"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."

30. Licensing offences may be 'less serious' than other offences for which an RRO can be recovered. However, in *Daff v Gyalui* [2023] UKUT 134 (LC) [49] it was stated that there are "more or less serious examples" of Section 72 offences.

31. *Newell v Abbott* [2024] UKUT 181 (LC) at [47]-[57] provides a comprehensive summary of the Upper Tribunal's recent decisions regarding the seriousness of particular licensing offences.

32. *Newell* also provides a 'neutral' baseline for assessing the seriousness of an RRO. Deputy Chamber President Martin Rodger KC assessed that case at 60% without putting weight on either party's conduct.

Determination

33. We are satisfied beyond reasonable doubt that the Respondent was the Applicants' landlord during the relevant period.

34. We are satisfied beyond reasonable doubt that the premises were a House in Multiple Occupation under the Additional Licensing Scheme and should have been licensed but were not during the relevant period.

35. We are satisfied beyond reasonable doubt that the Respondent was the person in control of the premises or indeed managing the premises at the relevant time. We are also satisfied that the Applicant paid the rent of £6859.50 during the relevant period.

36. We are not satisfied that the Respondent had a reasonable excuse during the relevant period. He knew about the Additional Licensing Scheme and the need to obtain a license. The letter from the council he relied on was written after the relevant period. It did not state that the Respondent did not need to get a license but that enforcement action was suspended until 2025. This did not prevent the Applicant from applying for a Rent Repayment order. The Respondent failed to get advice during the relevant period. If he had obtained advice he should at least have applied for a Temporary Exemption Notice.

37. Accordingly, we consider that the offence is established for the periods claimed. No license was obtained or even sought during the relevant period.

38. Having decided that the offence is made out we consider it is appropriate to make a Rent Repayment order in this case. We will then consider the amount of penalty that is due. Applying the test in *Acheampong* (above):

39. The whole of the rent due was £6859.50

40. In relation to utilities these were included in the rent and amounted to £1,440 per person. These included energy bills and TV.

41. The Applicant did not receive universal credit so there is no deduction required here.

42. We consider that although this offence was serious as the Applicant was potentially placed at risk by virtue of the fact that the premises were not licensed this was by no means the most serious case. The Respondent was letting out his home to accommodate his work. He was not a professional landlord. He did try and address the situation by trying to evict the Applicant. However his actions fell short.

43. The Tribunal were impressed by the honesty and candor of both the Applicant and the Respondent. There was no issue of poor conduct on either side. The Respondent had no previous convictions. He was not making a lot of money by the letting arrangement.

44. Taking all of these matters into account we consider that an award of 60% of the rent for the relevant period is appropriate. This amounts to £3,251 which must be paid within 28 days of receipt of this decision

45. The Applicants was successful in his application therefore we also require the Respondent to pay the application and hearing fees of £337. This sum should also be paid within 28 days of receipt of the decision.

Judge Shepherd

2nd December 2025

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.