



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

Case reference : **LON/00AY/HMF/2025/0743**

Property : **44 Aberfoyle Road, London SW16 5AA**

Applicant : **(1) Elizabeth Harker
(2) Eleanor Grove**

Representative : **Ms Donnelly- Jackson (Justice for Tenants)**

Respondent : **Mr Rezaul Karim**

Representative : **n/a**

Type of application : **Application for a rent repayment order by tenant**
Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016

Tribunal : **Tribunal Judge N O'Brien,
Mr A Morrison MRICS**

Date of Decision : **28 November 2025**

DECISION

DECISION OF THE TRIBUNAL

- (1) The Tribunal makes rent repayment orders against the Respondent in the following amounts;
- (i) £7,089.28 to be paid to the First Applicant
 - (ii) £6286.72 to be paid to the Second Applicant
- (2) The Respondent must refund the fees paid by the Applicants in the sum of £337

- (3) The above sums are to be paid within 28 days of receipt of this determination.

BACKGROUND

1. The Applicants have applied to the Tribunal for a Rent Repayment Order against their former landlord. The Respondent was the Applicants' landlord pursuant to an assured shorthold tenancy of the subject premises which commenced on 20 May 2023. The premises consist of a 5-bedroom house and was let to the Applicants and three other persons on a semi-furnished basis from May 2023 until May 2024.

THE APPLICATION

2. On 3 April 2025 the tribunal received an application under s.41 of the Housing and Planning Act 2016 (the 2016 Act) from the Applicants for a rent repayment order (RRO). The Applicants assert that the Respondent committed an offence of having control of or managing a an unlicensed house in multiple occupation (HMO) that was required to be licensed but was not licensed. They assert that the premises fell within the description of HMOs which are subject to a mandatory licencing requirement i.e. it was occupied by 5 or more persons living in two or more households and met the standard test provided by s254(2) of the Housing Act 2004 (the 2004 Act) In the alternative they assert in their application that the property required a HMO licence pursuant to an additional licencing scheme introduced by the London Borough of Lambeth in 2021. The Applicants sought a RRO for the period 21 May 2023 to 17 April 2024.
3. The Tribunal issued directions on 27 June 2025 and subsequently the Tribunal listed this matter for a hearing on 28 November 2025.

THE HEARING

4. The Applicants attended the hearing. They were represented by Ms Donnelly-Jackson of Justice for Tenants. The Respondent did not attend and was not represented. The Respondent has not responded to the application or complied with the directions. He has not corresponded with the tribunal or with the Applicants in relation to these proceedings.
5. We considered whether we should proceed in the absence of the Respondent. Pursuant to Rule 34 of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013 (the 2013 Rules) this required us to firstly consider whether reasonable steps have been taken to notify the Respondent of the hearing. We noted that the Tribunal had notified the Respondent of the Application by post and email. The postal address used by the tribunal was the postal address recorded on the register of title for the premises, and was the same as the landlord's address for service as noted on the Applicants' tenancy agreement. The email address was an email address which the Respondent had used in the course of the tenancy to communicate with the tenants. The

directions and notice of the hearing were sent to the Respondent by post and email. In addition Ms Donnelly-Jackson informed us that the bundle had been sent by post and email to the Respondent and she had attempted to call him on the telephone number he had used to contact the applicants during the course of the tenancy and had left a voice message but got no response. We enquired of the case officer to see if there had been any indication that the tribunal's emails had 'bounced back' and were told that they had not.

6. In the circumstances we considered that reasonable steps had been taken to notify the Respondent of the proceedings and the hearing and that given that the other parties had complied with the directions and attended the hearing, it would be in the interests of justice to proceed to hear the application.
7. The Tribunal was provided with a 247 -page bundle prepared by the Applicants for the hearing. It included two witness statements from the Applicants. In addition we heard oral evidence from both Applicants.

Has an Offence been Committed?

8. In order to make a rent repayment order against a person under s.40 of the 2016 Act the Tribunal has to be satisfied to the criminal standard (beyond all reasonable doubt) that the person has committed a relevant offence (s.43 of the 2016 Act), in this case being a person in control of or managing a HMO that was required to be licenced by virtue of s.61 of the 2004 Act but was not licenced. This is an offence by virtue of s.72 of the 2004 Act.
9. The Applicant's unchallenged evidence can be summarised as follows; the Applicants were friends who had met at college. In or about May 2023 they decided to look for premises to rent together. They met the other three occupants, Aaron Roche, Charlie Wise and Dario Licata through SpareRoom.com. Aaron Roche and Dario Licata were friends. None of the occupants were in a romantic relationship with or related to any of the others. All 5 tenants occupied the property as their home.
10. Ms Harker found the property on Zoopla. It is a 2-storey 5-bedroom semi-detached house. She agreed to rent it on the same day she viewed it. Included in the bundle is a tenancy agreement signed by all 5 occupants as tenants and by the Respondent as landlord. It is dated 20 May 2025 and was for a term of 12 months at a rent of £3350. Ms Harker told us that the rent was paid from an account that she had at Lloyds Bank that each of the other occupants paid their share of the rent and their contributions to household bills into that account. The rent was paid from a single account at the Respondent's request. The tenants each had a bedroom and they shared two bathrooms, and an open plan kitchen/living room.
11. In Spring of 2024 the Applicants contacted the London Borough of Lambeth due to an ongoing issue, detailed below, regarding the presence of mould and damp in the property. An officer of the council inspected the property on 11

March 2024 and informed the Applicants that the premises were a HMO which was not licenced. Included in the bundle is an email from the council dated 12 March 2024 confirming that the landlord had been notified, and a copy of the letter sent by the council to the Respondent on the same date is included in the bundle. The Applicant's representatives have been informed by the council by email dated 25 November 2024 that the Respondent made an application for a HMO licence on 18 April 2024 which was granted on 19 July 2024.

12. A premises is subject to mandatory licencing if at any time it meets the prescribed description set out in the Licencing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. Regulation 4 provides that premises will meet the prescribed disruption if;
 - (i) it is occupied for 5 or more persons
 - (ii) living in 2 or more separate households
 - (iii) meets the standard test set in section 254(2) of the 2004 Act
13. S.254(2) of the 2004 Act provides that premises will meet 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
 - (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;
 - (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. In their oral evidence the applicants both stated that;
 - (i) Mr Roche occupied bedroom 1 from 20 May 2023 until 18 May 2024
 - (ii) Ms Grove occupied bedroom 2 from 21 May 2023 until 3 May 2024 and paid £625 per month
 - (iii) Mr Wise occupied bedroom 3 from 7 June 2023 until 30 May 2024
 - (iv) Mr Harker occupied bedroom 4 from 20 May 2023 until 3 May 2024 and paid £700 per month
 - (v) Mr Licta occupied bedroom 5 from 21 May 2023 until 21 May 2024

Both the witness statements contained errors as regards the years of occupation, however we were satisfied that these were obvious typographical errors and that the Applicants' oral evidence was accurate as it was supported

by the available contemporaneous documents such as correspondence and the tenancy agreement.

15. The premises were occupied by a total of 5 persons from 7 June 2023 until 3 May 2024. From 21 May 2023 they were occupied by only 4 persons. However the premises were situated in an area of Lambeth which is subject to an additional licencing scheme. Pursuant to that scheme, any HMO, that is premises occupied by three or more unrelated persons which meets the standard test, also required a HMO licence pursuant to the scheme. Any failure to obtain a HMO licence in respect of premises subject to an additional licencing scheme is also a relevant offence.
16. Section 263 of the 2004 Act provides that a person 'has control' of premises if he or she is the person who receives the rack-rent. A person is 'managing' premises if he or she receives the rents or other payments from the tenants or licensees. The Respondent is the owner of the premises and is the named landlord. Furthermore all rental payments were made directly to his bank account save for the first payment which was made to an agent. He fulfilled the test for both being in control of and managing the premises.
17. Consequently, having considered the evidence, we are satisfied beyond reasonable doubt that the Respondent committed an offence of being a person in control of and managing an unlicensed HMO throughout the relevant period being 21 May 2023 until 17 April 2024 when he applied for a HMO licence.

Reasonable Excuse

18. It is a defence to proceedings under s.72(1) of the 2004 Act if the person had a reasonable excuse for being in control of or managing an unlicensed HMO (s.72(5)). There is no evidence to suggest that the Respondent had any excuse for being in control of and managing an unlicensed HMO.

Quantifying the RRO

19. The leading authority on the correct approach to quantifying a RRO is ***Acheampong v Roman [2022]***. The Upper Tribunal established a four-stage approach which this Tribunal must adopt when assessing the amount of any order (at paragraph 20):
 - 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 is expected to make an informed estimate where appropriate.
 - 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 percentage of the total amount applied for is then the starting point (in the sense 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)."

20. Section 44(4) of the 2016 Act provides;

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.

21. In **Newell v Abbot [2024] UKUT 181 (LC)** the Upper Tribunal, having reviewed a number of recent authorities on the correct approach to quantification, observed at para 57;

"This brief review of recent decisions of this Tribunal in appeals involving licencing 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 whether the tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors which tend to justify lower penalties include inadvertence on the part of the smaller landlord, property in good condition such that a licence would have been granted without one 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"

22. In that case the Upper Tribunal noted that the landlord was not a professional landlord and that he had committed the offence of controlling an unlicensed HMO through inadvertence rather than deliberately. The property was in reasonably good condition during the tenants' occupation. It made a RRO equating to 60% of the net rent paid.

23. Turning to the facts of this case; the maximum order which can be made in this case is £16,270 which was the rent paid by the applicants during the relevant period being 21 May 2023 to 17 April 2024. Neither applicant was in receipt of

universal credit and no part of the rent represented payment for utilities. We consider that for the majority of the relevant period the premises were an unlicensed HMO which was subject to mandatory licensing. We bear in mind that this is a licensing offence which is a less serious than the other offences for which a RRO can be made such as unlawful eviction and using violence to secure entry. It was committed over an 11-month period. In our view the correct starting point for this offence is a rent repayment order of 60% of the maximum.

24. As regards the conduct of the landlord, the Applicants evidence is that while the premises appeared to be in good condition when they moved in, the condition of the premises was significantly affected by the presence of extensive damp and mould on the ground floor. The problem became apparent in late 2023. Bedroom 2 occupied by Ms Grove was particularly badly affected, as was the shared kitchen. Included in the bundle is lengthy correspondence passing between the Applicants and the Respondent regarding the latter's ineffectual efforts to resolve the issue. The Applicants consider that the likely cause of the damp was defective plumbing in the upstairs bathroom, and possibly a leak from the flat roof above the kitchen and bedroom 2. Ms Grove suffers from asthma which was exacerbated by the conditions in her room. She has exhibited correspondence which shows that the Respondent was aware of this. She was forced to purchase a de-humidifier. She had to dispose of a number of her belongings which were ruined by mould. The applicants have included photographs which show extensive mould in the kitchen and large areas of soaked spalled plaster in the hallway and in bedroom 2. Due to the Respondent's failure to resolve the issue the Applicants approached the London Borough of Lambeth in March 2024. They both told us that the ongoing issue with mould and water ingress was a reason for their decision to move out in May 2024.
25. In addition the property had inadequate fire safety measures. There was no fire blanket or fire extinguisher in the kitchen. The property was not fitted with an interlinked mains powered fire detection system until January 2024.
26. Finally while we have no evidence to suggest that the Respondent's failure to licence was deliberate, we consider that the evidence shows that he intentionally arranged the property so that it could be more easily rented to 5 unrelated persons. Each bedroom door had a key. In addition the kitchen had two fridges.
27. In our view the above aggravating conduct of the Respondent merits an award of 80% of the maximum. This will result in an award of £7,089.28 in favour of the Miss Grove and £6286.72 in favour of Miss Harker based on their respective contributions to the rent.
28. The Applicants have also requested an order that the Respondents do reimburse the hearing and application fees under rule 13(2) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. As they have succeeded in their application we are satisfied that such an order is justified.

Name Judge N O'Brien

Dated 28 November 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.

