



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

Case reference : **CAM/00MX/HMK/2025/0613**

Property : **87 Orchehill Avenue, Gerrards Cross,
Buckinghamshire, SL9 8QL**

Applicant : **Brian Anthony Cowley**

Representative : **Brian Cowley in person**

Respondent : **(1) David Ross
(2) The estate of Marilyn Ross**

Representative : **David Ross in person**

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

Tribunal members : **First-tier Tribunal Judge K Neave
Mr M Ayres FRICS**

Venue : **Holiday Inn, High Wycombe**

Date of decision : **16 December 2025**

DECISION

Decisions of the tribunal

- (1) The tribunal is satisfied beyond reasonable doubt that the First Respondent was during the period 1 January 2024 to 19 February 2025 a person having control of a House in Multiple Occupation which was required to be licensed under section 61(1) of the Housing Act 2004 but which was not so licensed and that therefore he has committed an offence under section 72(1) of the Housing Act 2004.
- (2) The tribunal finds that the Applicant is entitled to a rent repayment order under section 41 of the Housing and Planning Act 2016 and that such an order ought to be made.
- (3) The amount of the rent repayment order, determined under section 44 of the Housing and Planning Act 2016, is £3471.50 payable by the First Respondent to the Applicant within 28 days of this decision.
- (4) The First Respondent shall pay the Applicant £341.00 in respect of the reimbursement of the tribunal fees paid by the Applicant within 28 days of this Decision.

The application

1. By an application received by the Tribunal on 28 April 2025 (“the Application”) made under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) the Applicant tenant sought a rent repayment order (“RRO”) against the Respondents.
2. The Applicant asserts that the First Respondent had control of or was managing a house in multiple occupation (“a HMO”) which was required to be licenced under the Housing Act 2004 (“the 2004 Act”) but which was not so licenced. He accordingly asserts that the Respondent has committed an offence under section 72(1) of the 2004 Act.
3. The background to this application is set out in the Applicant’s bundle of 24 pages, the First Respondent’s witness statement dated 12 November 2025 and the 9 pages of documents exhibited to that statement. The parties confirmed at the outset of the hearing that these were the relevant documents upon which they wished to rely, and we have considered them carefully.

The hearing

4. Both parties attended the hearing in person. Both the Applicant and the First Respondent gave oral evidence. The Applicant adopted the documents contained in his hearing bundle as his evidence in chief and was cross-examined by the First Respondent. The First Respondent

confirmed the content of his witness statement dated 12 November 2025 and was cross-examined by the Applicant. Both the Applicant and the First Respondent made closing submissions. We reserved our decision.

The background

5. The parties agree that the subject property is a five bedroom detached house located in Gerrards Cross. The First Respondent and his late wife are the registered freehold owners of the property under title number BM258674. Neither party requested an inspection of the property, and the tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.
6. The Applicant's case is that he was a tenant of a furnished double room in the property with shared use of the kitchen facilities pursuant to the terms of an agreement dated 3 January 2023. He asserts that the First Respondent changed the locks to the property on 22 February 2025, and since then the Applicant has not lived there. The parties are engaged in separate proceedings in the Reading County Court in respect of the events of 22 February 2025. In the proceedings before the Tribunal, the Applicant's case is that the property required a HMO licence but no licence was obtained by the First Respondent.
7. The Respondent points out that he was granted a temporary exemption notice under section 62(2) of the 2004 Act on 12 March 2025 following his application made on 19 February 2025. If he is found to have committed an offence, he asserts that no RRO should be granted or, if a RRO is granted, the sum awarded should be reduced.

The issues

8. The parties agreed at the outset of the hearing that the following issues remain in dispute and require determination:
 - (i) whether the tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence to which Chapter 4 of the 2016 Act applies.
 - (ii) whether the Applicant is entitled to a RRO under sections 41 and 43 of the 2016 Act; and if so
 - (iii) the amount of the RRO, to be determined in accordance with section 44 of the 2016 Act.
9. Having heard evidence and submissions from the parties and considered all the documents provided, the tribunal makes determinations on these issues below. We focus in our judgment on the main points that have

been identified by the parties, though we have considered all the documents and the evidence and the issues raised and have taken these into account.

Legal framework

10. Section 40 of the 2016 Act provides that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.
11. Section 41 of the 2016 Act provides:

(1) A tenant ... 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.”
12. Section 43 of the 2016 Act provides:

(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).
(2) A rent repayment order under this section may be made only on an application under section 41.
13. The relevant offences to which Chapter 4 of the 2016 Act applies are set out at section 40 of the 2016 Act. They include the offence under section 72(1) of the 2004 Act of controlling or managing an unlicensed HMO.
14. Section 72 of the 2004 Act provides, so far as is material:

(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.
15. Section 72(4) and 72(5) of the 2004 Act provide a defence in proceedings for an offence under section 72(1) if the landlord has applied for a licence or a temporary exemption notice, or if he has a reasonable excuse for his actions.

16. The definition of a HMO is found in section 254 of the 2004 Act, which sets out various tests by which a building may fall within the definition of a HMO. By section 254(2) of the 2004 Act:

“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.

17. A person “having control” of premises means

“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”.

18. A person “managing” premises means:

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....”

19. The amount of a RRO is to be determined under section 44 of the 2016 Act as follows:

“...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 [the period of 12 months ending with the date of the offence / a period, not exceeding 12 months, during which the landlord was committing the offence], less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(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.”

Findings

Has the Respondent committed a relevant offence?

20. We consider first whether the First Respondent has committed an offence under section 72(1) of the 2004 Act, namely being a person having control of or managing an HMO which is required to be licensed but is not so licensed.
21. The First Respondent did not dispute what is said in the email from Matthew Tomes of Buckinghamshire Council dated 19 February 2025 in which Mr Tomes records that he had visited the property that day and found that the property was occupied by 7 people, including the First Respondent, none of whom were related to each other, and that the property required a HMO licence in order to be occupied in this manner.
22. Neither did the First Respondent suggest that the occupation of the property in 2024 or earlier in 2025 was materially any different to Mr Tomes’ assessment as the inspection. Indeed, he accepted that prior to 19 February 2025 the property required a HMO licence but that no such licence was in place.
23. Having considered Mr Tomes’ letter and the First Respondent’s evidence, we are satisfied beyond reasonable doubt and find that in the

period of at least 1 January 2024 to 19 February 2025, the property was occupied as a HMO which was required to be licenced under Part 2 of the 2004 Act and was not so licensed.

24. We are also satisfied beyond reasonable doubt that the First Respondent was a person managing the property in that period. As set out above, he is a registered freehold owner of the property and has been so since 2001. He agreed, and we find, that he received rent from the Applicant and the other occupiers of the property in the period 1 January 2024 to 19 February 2025.
25. We accept the First Respondent's unchallenged evidence that he did not know that a HMO licence was required in order to let rooms in his property until 19 February 2025, when the local authority visited. However, he accepted in his witness statement and his oral evidence that there was information available online about the licensing requirements, including on the website on which he advertised rooms for rent, and that he had used that website to place around 15 tenants in the property. He agreed that he had been letting rooms at the property for around 15 years. He did not suggest that he had ever contacted the local authority or any other third party to check whether the letting of rooms in his property required him to take any steps or obtain any permissions.
26. These facts do not in our judgment amount to an objectively reasonable excuse for the First Respondent's default prior to 19 February 2025. Information about the need to obtain a HMO licence was readily available to the First Respondent including on the website on which he advertised rooms for rent. It was in our judgment for the First Respondent as landlord to investigate, when he went about the business of letting rooms in his property for financial recompense, what the relevant requirements were and to take sufficient steps to make sure they were fulfilled. For the same reasons, we do not consider that the First Respondent's criticism of the Applicant for not telling him about the licensing requirements was warranted. We accept the Applicant's evidence that he did not appreciate the seriousness of the matter until around the end of January 2025. In any event, it was not in our judgment for the Applicant to inform the First Respondent about the applicable regulatory requirements.
27. We accept, as the First Respondent asserted, that by making an application on 19 February 2025 for a temporary exemption notice, the Respondent had a defence under section 74(4)(a) of the 2004 Act.
28. In light of these findings, we are satisfied beyond reasonable doubt that the First Respondent was from at least 1 January 2024 to 19 February 2025 a person having control of an HMO which was required to be licensed under section 61(1) of the 2004 Act and that he has committed an offence under section 72(1) of the 2004 Act by failing, without reasonable excuse, to obtain a licence for the property.

Is the Applicant entitled to a RRO under sections 41 and 43 of the 2016 Act?

29. As set out above, we are satisfied that the First Respondent has committed an offence to which Chapter 4 of the 2016 Act applies and that this offence was committed during the relevant period of 1 January 2024 to 19 February 2025.
30. There is no dispute and we find that a double room in the property was let to the Applicant in this period under the terms of the tenancy agreement dated 3 January 2023.
31. The Application was made on 28 April 2025. The offence was therefore committed in the period of 12 months ending with the day on which the Application was made.
32. We are accordingly satisfied that the Applicant is entitled to an order under section 41 of the 2016 Act.
33. It is in our judgment appropriate, in light of the offending that we have found to be made out, to make a RRO.

The amount of the RRO

34. The parties agree that the Applicant paid rent of £8520.00 (12 x monthly payments of £710.00) in the 12 months to February 2025 and that no Universal Credit was paid to the Applicant or the First Respondent during the relevant period.
35. The parties also agreed that the Applicant's rent was inclusive of utilities (gas, electricity and wi-fi) and council tax. We were not provided with any documentary evidence of these costs but we accept the First Respondent's unchallenged and straightforward evidence that the total cost of these items during the relevant period was:

(i) Gas and electricity - £6195.00.

(ii) Council tax - £4544.00.

(iii) Internet access - £300.00.

Total: £11039.00

36. We divide this total sum between the 7 occupiers of the property to arrive at the figure of £1577.00, being the sum that we find represents payment for utilities and council tax that only benefited the Applicant. We therefore deduct £1577.00 from the total rent paid of £8520.00 to come to a figure of £6943.00.

37. We consider next the seriousness of the offence that we have found to be made out. In our judgment, the offence is more serious than the offence of having control or management of an unlicensed house under section 95(1) of the 2004 Act because of the risk of overcrowding, sanitation and fire hazards involved with managing properties occupied by multiple households. However, it is in our judgment considerably less serious than some of the other offences identified in section 40 of the 2016 Act, such as using violence to secure entry, the eviction or harassment of occupiers and/or the failure to comply with an improvement notice or prohibition order.
38. Further, we accept the First Respondent's straightforward evidence that he has been told by the local authority that the only work required to bring the property up to a condition in which the authority would be willing to grant a HMO licence is to put up notices within the property and to install self-closing devices on the internal doors. This work will cost around £200.00. This factor, and the fact that the local authority agreed to grant the First Respondent a temporary exemption notice in March 2025 and have not taken any further action against him is in our judgment indicative of the less serious nature of the offending in this case.
39. In our judgment, the less serious nature of the offending in this case warrants a reduction in the amount of the RRO for the relevant period. Subject to the remaining factors referred to in section 44 of the 2016 Act (i.e. the conduct of the parties and the financial circumstances and offending history of the landlord) we find that the less serious nature of the offending would warrant the making of a RRO of 60% of the rent paid for the relevant period. However, the seriousness of the offending is not the only matter that we are required to take into account, and we now consider those remaining factors in coming to our final assessment of the amount of the RRO.
40. The Applicant confirmed in his oral submissions that he did not raise or rely on any particular points as establishing poor conduct on the part of the First Respondent. We accordingly make no adjustment to the RRO to reflect any such conduct.
41. The First Respondent raises three points that he asserts reflect poorly on the Applicant's conduct. First, he asserts that the Applicant knew that the property required a HMO licence for over two years but that he did not tell him about the relevant requirements, in an attempt to "trap" the First Respondent and make it impossible for the Applicant to be evicted. For the same reasons as we have set out above, we do not consider that the Applicant's failure to tell the First Respondent about the need to obtain a HMO licence reflects poorly on the Applicant's conduct. We have accepted his evidence that he had not appreciated the seriousness of the failure to have a licence in place until shortly before he left the property. We also do not consider that he was in any event under any

duty to inform the First Respondent about his obligations. Having heard evidence from both parties, we do not accept that the Applicant intended to use the law to “trap” him.

42. Secondly, the First Respondent points out that the Applicant did not pay the full rent due for February 2025 on 1 February 2025, when it was due. Instead, he paid £200 on 2 February 2025, £155 on 9 February 2025 and £177.50 on 22 February 2025, a total of £532.50. These payments are shown on the Applicant’s bank statements and we find as a fact, having considered the oral and documentary evidence, that they were paid to the First Respondent by the Applicant by BACS transfer on the dates recorded immediately above.
43. The Applicant explained in his oral evidence that he had given one month’s notice to leave the property on 8 January 2025, but that his plans had changed at the last moment and he stayed longer than expected, which was why he had initially not paid the full rent in February 2025. He pointed out that he had paid a deposit at the outset of his occupation of the property. He also said that he had always paid his rent in full in advance before February 2025 and that, as the Respondent had changed the locks to the property on 22 February 2025 and the Applicant could no longer live there after that date, he had in fact paid more rent than was due for the 22 days in which he had actually occupied the property in February 2025. We accept the Applicant’s clear and straightforward evidence on this point. Though we take into account the fact that the agreement between the parties provided for rent to be paid on the first day of the month, we do not consider that the Applicant’s failure to pay the full rent on 1 February 2025, in the context of his previous timely payments and the fact that rent for the period up to the date of the change of the locks has been paid in full, justifies any reduction in the amount of the RRO.
44. Thirdly, the First Respondent pointed out that the Applicant had left his belongings in his room at the property after 22 February 2025 and did not collect them until 2 July 2025. He complains that the Applicant’s room was a mess and that it took time to pack up the belongings and store them in his garage.
45. Having heard the oral evidence of both parties, we find that the facts are as follows. On 22 February 2025, the First Respondent changed the locks to the front door of the property. The Applicant attended the property accompanied by police officers but could not remove all of his belongings that day because there was not sufficient space in the officers’ vehicle. The First Respondent gave the Applicant, via the police officers, a key to the Applicant’s room in the property, but not a key to the front door. The First Respondent confirmed in his oral evidence, and we find, that he would not permit the Applicant to enter the property in order to collect his belongings from his bedroom unless the Applicant paid him rent of £800 per month, relating to the period after the locks were changed. On

26 April 2025, the First Respondent removed the Applicant's belongings from his room and stored them in the garage. The parties were able to make mutually convenient arrangements for the Applicant to collect his belongings on 2 July 2025.

46. On the facts as we have found them to be, we do not consider that the Applicant is guilty of any poor conduct in relation to the collection of his belongings. The First Respondent can in our judgment hardly complain that the Applicant's belongings remained in his room when he would not allow him access to collect them, other than on terms that he pay rent for a room that he was unable to occupy, because the locks to the front door had been changed. We make no reduction to the RRO.
47. We consider next the First Respondent's financial circumstances, as he set them out in his witness statement and in his oral evidence before us, which was unchallenged on this point. We accept that the First Respondent has a limited income, comprising his state pension, the rent that he receives from letting four rooms at the property, and £380 per month from the pension(s) held by his late wife. We accept that the First Respondent has been involved in litigation with other family members, the cost of which has caused him to accrue debts to the local authority in respect of council tax and to utilities companies in the sum of £8000. He is paying back these debts on a payment plan. He also pays the utilities costs referred to above from the rent received from the property, as well as the costs of maintaining the property from time to time, and indeed his own costs of living. Though he owns the property, it is his home and the home that he shared with his late wife. Though the First Respondent's financial circumstances are not dire and he is not destitute, we accept that he is not a person of any significant financial means and that the making of a RRO in his particular circumstances would cause him financial difficulty. In our judgment, the amount of the RRO ought to be reduced by 10% to reflect the First Respondent's financial circumstances.
48. There is no suggestion that the First Respondent has been convicted of an offence to which Chapter 4 of the 2016 Act applies.
49. In light of our findings set out above, we determine that the appropriate order in this case is for the repayment of 50% of the rent paid.
50. We therefore make a RRO of £3471.50, being 50% of £6943.00.
51. We also order the First Respondent to reimburse the Applicant for the tribunal fees that he paid in the sum of £341.00 (being the application fee of £114.00 and the hearing fee of £227.00).

Name: Judge K Neave

Date: 16 December 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 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).