



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

Case reference : LON/00BH/HMF/2025/0784.

Property : 69 Kitchener Road, London E17 4LJ.

Applicants : Denisa Whitehouse (formally
Denisa Fouskova)
Paula Fouskova
Dale Whitehouse

Representative : In person

Respondent : Mark Novotny

Representative : Mr Petrov Krupski

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

Tribunal members : Judge H Carr
Appollo Fonka FCIEH

**Date and venue of
hearing** : 19th December 2025

Date of decision : 22nd December 2025

DECISION

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order of £9360.
- (2) The tribunal also orders that the Respondent reimburse the Applicants' application and hearing fees which total £330 within 28 days of the issue of this determination.
- (3) The tribunal makes the determination as set out under the various headings in this decision.

The application

1. The Applicant tenants, Denisa Whitehouse (formally Denisa Fouskova), Paula Fouskova and Dale Whitehouse, seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO) in relation to 69 Kitchener Road, London E17 4LJ, the property.
2. The Applicants allege that the Respondent landlord has committed the offence of control or management of an unlicensed house under s.95(1) of the Housing Act 2004.
3. The Respondent and registered owner of the property at the time of the alleged offence was Mr Mark Novotny.
4. The Applicants are seeking to recover £14,400 for the period November 2023 – November 2024.
5. The application was dated 15th April 2025 and received by the tribunal on 16th April 2025. Directions were issued in this matter on 1st August 2025. The Directions require the Respondent to provide the tribunal with a paginated bundle by 13th October 2025. This was not complied with.
6. On 21st October 2025 the tribunal wrote to the Respondent requesting that he makes contact within 2 days to explain why he had failed to comply with the Directions and what steps he will take to comply so that the hearing of 19 December 2025 was not affected. It was made clear to the Respondent that the tribunal may issue a Notice barring him from taking further part in the proceedings if he failed to comply. No response was received.

7. In response to an application from the Applicants dated 3rd November 2025 following the Respondent's non-compliance with the Tribunal's directions, the tribunal issued a notice dated that it was minded to bar the Respondent pursuant to Rule 9(3) and 9(7) and (8) of the Tribunal Procedure First Tier tribunal Property Chamber Rules 2013 on 13th November 2025. That notice required the Respondent to make representations by 4th December 2025 as to why he should not be barred. No such representations were made. The Respondent contacted the tribunal via email on 16th December 2025 to explain that he had failed to engage with the tribunal proceedings because of ill health. At the same time the Respondent applied to the tribunal to admit his evidence.
8. The Respondent also informed the tribunal that he had arranged for a representative to attend on his behalf due to his ill health. At the same time the Respondent provided his written evidence and applied to the tribunal to admit his evidence. He also informed the tribunal that he would not attend the hearing due to ill health but would be content with a paper determination if the tribunal thinks it appropriate. Also, that he had arranged for a representative to attend on his behalf if the hearing goes ahead.
9. His evidence was copied to the Applicants who were able to provide a reply on the 18th December 2025.
10. On 17th December 2025 the Respondent was sent a letter from Judge Foskett who made it clear that the hearing on 19th December would proceed when (i) the Respondent would be required to provide medical evidence in connection with his representations about his non-compliance with Tribunal Orders and (ii) that at the commencement of the hearing the tribunal would hear and determine an application about the evidence bundle that the Respondent sought to admit.

The hearing

11. Mr Dale Whitehouse of the Applicants appeared and represented the other Applicants.
12. The Respondent did not appear, nor did his representative appear. The tribunal organised for a telephone call to the representative on the morning of the hearing. Mr Krupski said that he had understood that if the medical evidence requested was not available then he should not attend the hearing.
13. The tribunal considered whether the hearing should go ahead in the absence of the Respondent or the Respondent's representative. It

considered the wording of Rule 34 of its procedural rules which provide as follows:

34.—(1) If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal— (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and (b) considers that it is in the interests of justice to proceed with the hearing.

14. The Respondent was provided with the application on 16th July 2025, the directions on 4th August 2025 and notified of the hearing date on 11th September 2025 and 21 October 2025. The Respondent failed to engage with the process until 16th December 2025. The letter from Judge Foskett dated 17th December 2025 made it clear that the hearing on 19th December 2025 would go ahead. The tribunal contacted the Respondent's representative on the morning of the hearing. In these circumstances there is no doubt that the Respondent has been notified of the hearing.
15. The tribunal also determines that it is in the interests of justice for the hearing to proceed. The Applicants have fully prepared their case, and Mr Whitehouse has gone to some inconvenience to attend the tribunal despite the lack of engagement of the Respondent. The Respondent failed to engage with the proceedings until extremely late in the day and failed to provide any medical evidence of the ill health. Nor has he explained how that ill health has impacted upon his ability to prepare the case and attend the hearing. It also appears that he had instructed a representative to attend the hearing on his behalf who has failed to attend. This is evidence of the Respondent's lack of cooperation with the tribunal. It would be unfair to the Applicants and inconsistent with the overriding objective as set out in Rule 3 of its procedural rules to delay hearing the Application in these circumstances.
16. The tribunal considered the application by the Respondent for admission of his evidence.
17. It noted that the evidence was very limited and that it had been copied to the Applicants who had had an opportunity to provide evidence in response on 18th December 2025. They copied their response to the Respondent.
18. Mr Whitehouse indicated that he had no objection to the evidence being considered by the tribunal on condition that his response was also taken into consideration.
19. The tribunal therefore determined to admit the evidence and the Applicants' evidence in response.

The background and chronology

20. The property is a three-bedroom two storey terraced house.
21. Ms Pavla Fouskova signed a 12 month tenancy on 23rd September 2012. The agreed rent was £ 1200 pcm.
22. Following the expiry of the fixed term tenancy the contract continued on a rolling monthly basis. No new written agreement was provided and during that period there was no communication from the landlord.
23. Mr Whitehouse moved into the property in May 2020 during Covid. The landlord was aware that Mr Whitehouse had moved in but did not produce any new agreement or discuss any new arrangements for the letting.
24. The property was the only residence of all three applicants.
25. In October 2023 the Respondent appears to have employed a managing agent. In December 2023 the landlord visited, which was the first time for more than 10 years. The Applicants say that the Respondent was concerned about the council and the need for a licence. They say that the Respondent said that the rent would have to increase to cover the costs of the licence and the managing agent's fees.
26. Following that visit the Applicants began getting communications from the agent about providing access to workmen to enable the various safety certificates to be obtained.
27. The Applicants received an email from the managing agents on 10th October 2024 who wanted them to sign a 12 month tenancy agreement. The Applicants received the contract on 11th October and it was only on reading that contract that the Applicants learned the rent was to go up to £1600. The Applicants told the agents that they would not be signing the agreement as they could not afford that rent increase and did not consider it appropriate considering the condition of the property. They told the agents that they would keep rolling contract in place till they were ready to move.
28. The Applicants agreed a moving date with the agents and left the property during the first week of November 2024. They paid rent up to 31st October, and the landlord deducted nine days rent from the deposit for the final nine days of the tenancy.
29. The Respondent is named as the immediate Landlord on the tenancy agreement, is in receipt of the rent, and is the owner of the property as shown by the land registry title deed.

The issues

30. The issues that the tribunal must determine are;

- (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
- (ii) Does the Respondent have a 'reasonable excuse' defence?
- (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenant?
- (iv) Should the tribunal refund the Applicants' application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

The Applicants' evidence

Licensing

31. The Applicants say

- (i) The property is situated within the London Borough of Waltham Forest and is within Chapel End, an area designated as a selective licensing area. Waltham Forest's selective licensing scheme came into force on 1st May 2020 and ceased to have effect on 30th April 2025. The selective licensing designation applied to 18 out of 20 wards in the London Borough of Waltham Forest, excluding Hatch Lane and

Endlebury. The property met the criteria to be licensed under the scheme and was not subject to any exemption.

- (ii) The appropriate licence was not held during the relevant period. Whilst the Respondent did commence an application for an HMO licence in November 2024 this application was not completed as the Respondent decided to sell the property.

- 32. The Applicants produced the public notice of the selective licensing designation together with a map confirming that the property is covered by the selective licensing scheme. They also produced email correspondence from Moses Nyaunu a private rented sector officer with the London Borough of Waltham Forest which was dated 16th December 2025. The email stated that a selective license application was made for the first time on 19th November 2025 and that there had been no licence in place prior to that date.

The Respondent's evidence

- 33. The Respondent argued that the property did not require a licence as it was not an HMO.

The decision of the tribunal

- 34. The tribunal determines that the Respondent has committed the alleged offence.

The reasons for the decision of the tribunal

- 35. The tribunal relies on the evidence from the Applicants and the information provided by the local authority.
- 36. The licence that was required was a selective licence and not an HMO licence. That licence was not in place and therefore the offence was committed.

Does the Respondent have a 'reasonable excuse' defence?

- 37. Although the Respondent did not argue that he had a reasonable excuse, the fact that he argued that the offence related to the lack of an HMO licence and not a selective licence was considered by the tribunal to see if it constituted a reasonable excuse.
- 38. In addition, the tribunal noted that at the time that the tenancy commenced there was no selective licensing scheme in place.

39. The Applicants asked the tribunal to note their belief that the Respondent was fully aware of the need for the licence. The agents persistently talked about the need for a licence and the commencement of a licence application in November 2023, prior to any discussion of a rent increase and with the service of a s.21 notice does not conform with the Respondent's account that his intention was to let the property as an HMO.

The decision of the tribunal

40. The tribunal determined that the Respondent did not have a reasonable excuse defence

The reasons for the decision of the tribunal

41. The Respondent has a duty to ensure that his letting arrangements comply with the law. If he is not prepared to research the law himself then he must use the services of a reputable agent. Confusion about whether a licence is required is not an acceptable excuse for not researching the law or taking professional advice.

The maximum amount of the RRO which can be ordered

42. The period for which the RRO is sought is 1st October 2023 to 30th September 2024. The tribunal noted that the rent payments were made on the 1st of each of the month of the claim, other than a payment on 2nd May 2024, which was because 1st May was a bank holiday.
43. The Applicants provided evidence of the payment of the rent during the period of claim. The rent paid totalled £14400.
44. The Applicants confirmed that none of them were in receipt of a housing element of Universal Credit or Housing Benefit.
45. The tribunal found that the maximum RRO it could award was £14400

Other arguments concerning the amount of the RRO to be awarded.

46. The Applicants argue that no deductions should be made from the rent for utilities. They paid all the bills themselves throughout the period of the tenancy. The bills they paid included council tax, TV licence, electricity and gas charges, water charges and Wi-Fi.
47. The Applicants submit that the appropriate amount of an RRO would be the full amount claimed.

48. The Applicants argue that their conduct has been good. They paid their rent on time. There were never any rent arrears. In addition, they carried out repairs to the property, spending around £9000 over the period of their occupation dealing with among other things, the consequences of persistent damp and laying new laminate floors.
49. The Applicants thought that it was only fair to note that on occasions the landlord did reimburse them for repairs via deductions from the rent. However, during the period of claim, no such payments were made, and their rent was paid in full.
50. The Applicants argue that the condition of the property was poor
- (i) The landlord did not have the necessary certificates in place such as the EICR, the gas safety certificate and asked the tribunal to note that the agents employed in 2023 were asking for access to the property to enable them to do the necessary works for the certification.
 - (ii) Mould and damp were persistent issues due to poor ventilation and lack of upkeep. The Applicants accepted that they did not formally complain to the landlord about persistent damp.
 - (iii) The property had very high heating bills, which the Applicants believed was due to poor quality windows. The Respondent did agree to improve the windows, and he engaged a window fitter. However, the new windows promised were never delivered. The Applicants received no explanation as to why the works were not carried out. They had put themselves to inconvenience to facilitate visits by the fitter, but to no avail.
 - (iv) There were occasional leaks elsewhere in the home, and when the Applicants arranged for professional plumbers, the Respondent would deduct the cost from the rent.
 - (v) Overall, the property was neglected. Nothing was done to the property from the commencement of the Applicants occupation. It needed upgrading but the Respondent showed no interest.
51. The Applicants say that the conduct of the Respondent was poor. Despite the disrepair, the Respondent attempted to increase the rent by £400 per month, raising it from £1,200 to £1,600 — a 33% increase.

52. The Applicants explained that as a result of the proposed rent increase, they were searching for alternative accommodation and that this increase was unreasonable under the circumstances. Nevertheless, the letting agent continued to pressure the Applicants into signing a 12-month tenancy agreement with the increased rent and even suggested that they backdate the contract. The Applicants were told in emails that if they signed the agreement, it would later be converted into a monthly rolling contract. This intimidating and misleading pressure made the Applicants fearful as they thought they were going to be evicted, causing significant stress and anxiety for the Applicants. They could not think of any other rational explanation for the conduct of the agents.
53. The Applicants also said that the poor living conditions had a serious impact on their health, with Mr Whitehouse's asthma being aggravated by mould, draughts, and the damp conditions.

The decision of the tribunal

54. The tribunal determines to award an RRO of £9360.

The reasons for the decision of the tribunal

55. There is extensive case law on how the tribunal should reach a decision on quantum of a rent repayment order. In reaching its decision in this case the tribunal has been guided by the very helpful review of the decisions in the Upper Tribunal decision *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC).
56. *Acheampong v Roman* (2022) UKUT 239 (LC) established a four-stage approach which the tribunal must adopt when assessing the amount of any order. The tribunal in this case has already taken the first two steps that the authorities require by ascertaining the whole of the rent for the relevant period and subtracting any element of that sum that represents payment for utilities that only benefitted the tenant. The figure in this case is £14400.
57. Next the tribunal is required to consider the seriousness of the offence in comparison with the other housing offences for which a rent repayment order may be made. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.
58. However, although generally the failure to licence is a less serious offence, the Upper Tribunal recognises that even within the category of a less serious offence, there may be more serious examples.

59. In this case the tribunal considered that the case is a moderate example of one of the less serious offences in which a rent repayment order may be made.
60. The reasons for this are as follows:
- (i) It takes account of the fact that the failure to licence was in connection with a selective licensing scheme which came into effect during the course of the tenancy.
61. On the other hand, the tribunal determines that the Respondent has taken a cavalier attitude to his legal responsibilities to the property and to the tribunal. He has failed to keep up to date with the law, failed to keep the property in a decent condition and failed to provide the necessary safety certification. He has also been cavalier in relation to the tribunal proceedings. The tribunal does not consider his failure to engage until three days before the hearing is an appropriate way to behave. Although the Respondent says that he has health issues no medical evidence has been provided to date. Nor did he attempt to contact the tribunal to explain any issues that he may have.
62. The Respondent's cavalier attitude is corroborated by his attitude to the Applicants offer to mediate the issues. He simply replied with one word, what? In further contact with the Applicants the Respondent claimed that he was completely in the dark about the proceedings despite the Applicants copying him their application at the outset of the tribunal process.
63. The result of the Respondent's attitude is that the property was in a poor condition, legal requirements were not complied with, and the Applicants were not able to benefit from the additional protections offered by the selective licencing scheme.
64. A more careful attention to the legal requirements could well have led to a settlement, avoiding the public cost of a hearing.
65. For these reasons the tribunal has uplifted the amount of the RRO by 5%.
66. The tribunal decided not to reduce the amount payable because of the conduct of the Applicants. There was no evidence to support any allegation that the Applicants' conduct was anything but good.
67. Taking all of these matters into account the tribunal determines to award the Applicants 65% of the maximum RRO payable.

68. The tribunal also orders the Respondent reimburse the Applicants for their hearing fees in this matter totalling £330.

Name: Judge H Carr

Date: 22nd December 2026

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).