



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

Case Reference : **MAN/00BY/HMG/2024/0010**

Property : **39, Cheapside, Liverpool L2 2SX**

Applicant : **Gareth Mckelvey**

Respondent : **Neil Tilly**

Type of Application : **Housing and Planning Act 2016 –
Section 41(1)**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member J Fraser**

Date of Decision : **7 October 2025**

CORRECTION SLIP

In accordance with Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, (Clerical mistakes and accidental slips or omissions), the Tribunal corrects the typographical error in paragraph 40 of the Decision dated 5 September 2025 by replacing “60%” with “65%”.

A copy of the Decision dated 5 September 2025 as amended above is attached to this decision.



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DECISION

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Decision

1. The Tribunal orders the Respondent to pay £5850 to the Applicant by way of a rent repayment order. Payment shall be made within 28 days of the date of this Order.
2. Pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, (“the Rules”), the Tribunal orders the Respondent to pay £110 and £227 to the Applicant in reimbursement of the application and hearing fees respectively.

Background

3. By an application dated 22 February 2024, (“the Application”), the Applicant applied to the Tribunal for a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016.
4. Pursuant to the Directions dated 30 April 2025, both parties made written submissions in advance of the video hearing which was scheduled for 4 September 2025 at 10:00.
5. Both the Applicant and the Respondent attended the hearing. The Respondent was accompanied by Ms Catherine Mitchell (who did not participate in the hearing).

The Law

6. The provisions of the Housing and Planning Act 2016, (“the 2016 Act”), so far as relevant, are as follows –

Section 40 Introduction and key definitions

(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 ...

(3) A reference to ‘an offence to which this Chapter applies’ is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	section	General description of offence
2	Protection from Eviction Act 1977	Section 1(2), (3) or (3A)	Eviction or harassment of occupiers
6	Housing Act 2004	Section 95(1)	Control or management of unlicensed house

Section 41 provides –

(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. ...

Section 43 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.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant); ...

Section 44 provides-

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(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.

(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.

7. Section 95(1) of the Housing Act 2004, (“the 2004 Act”), provides as follows:

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part...but is not so licensed.

(2) ...

(3) ...

(4) ...

(5) In proceedings against a person for an offence under subsection (1)...it is a defence that he had a reasonable excuse-

(a) for having control of or managing the house in the circumstances mentioned in subsection (1)...

8. Section 1 of the Protection from Eviction Act 1977, ("the 1977 Act"), provides as follows:

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises...or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) ...

(3A) Subject to subsection (3B) below, the landlord of a residential occupier...shall be guilty of an offence if-

(a) he does acts likely to interfere with the peace or comfort of the residential occupier, or

(b) ...

And he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the...premises...

(3B) A person shall not be guilty of an offence under section (3A)...if he proves that he had reasonable grounds for doing the acts....

The Hearing

The Applicant's Case

9. In the Application, the Applicant sought a rent repayment order in respect of the Property by reason of the commission of an offence by the Respondent under s95(1) of the 2004 Act.
10. In the Applicant's statement of case, the Applicant also referred to the commission of offence(s) by the Respondent under the 1977 Act.
11. The Applicant's statement of case included the following documents:
 - 11.1 a tenancy agreement in the names of the Applicant and his then partner, Rachael Mellor, for the Property for an initial 12-month term from 28 January 2018, ("the Tenancy Agreement"). On the break-up of the Applicant's relationship with Ms Mellor in or about March 2023, the Applicant continued in possession of the Property;
 - 11.2 a letter dated 30 April 2025 from Liverpool City Council, apparently in response to an enquiry by the Applicant, stating that the Property has not been licensed from January 2018 to March 2025;
 - 11.3 copies of bank statements for the Applicant's account showing monthly payments of £750 each for rent for the period from 1 April 2023 to 31 March 2024; and,
 - 11.4 a letter dated 28 December 2023 from the Respondent giving the Applicant 3 months' notice to vacate the Property on 31 March 2024.
12. The Applicant's oral submissions made at the hearing are summarised as follows:
 - 12.1 the Applicant highlighted that, in addition to the Respondent's failure to obtain a licence for the Property, the Respondent failed (a) to protect the tenancy deposit paid at the outset of the tenancy; (b) to provide an EPC for the Property; (c) to provide evidence of an electrical safety inspection having been carried out; (d) to provide a renter's guide; (e) to respond to complaints by the Applicant and Ms Mellor regarding the inadequate heating at the Property; and (f) to follow a lawful process for possession of the Property;

- 12.2 the Applicant also referred to the Respondent's statements regarding his previous experience as the director of a company which owned a number of rental properties;
- 12.3 the Applicant considered that all of these matters may be relevant as landlord's conduct in determining the amount of any order;
- 12.4 with regard to a possible offence under the 1977 Act and in response to questions from the Tribunal, the Applicant stated that:
- (a) he did not consider that there was any conduct on the Respondent's part which amounted to an unlawful deprivation of his occupation of the Property within section 1(2) of the 1977 Act. The Applicant confirmed that he finally moved out of the Property on 27 March 2024 although due to family circumstances he had not been living in the Property for several weeks previously; and,
 - (b) with regard to section 1(3A) of the 1977 Act, the Applicant referred to frequent visits made to the Property by the Respondent arising out of his continued use for storage of 1 of the bedrooms at the Property. The Applicant claimed that these visits made him feel "uncomfortable" and amounted to "acts likely to interfere with [his] peace and comfort";
- 12.5 with regard to the Respondent's financial circumstances, the Applicant suggested that, as the Respondent appears to spend 6 months of the year in Spain, it reflected a degree of financial security on his part;
- 12.6 the Applicant confirmed that he had not been in receipt of Universal Credit at any time during the period in question (or at all) and that the rent did not include any payment in respect of utilities.
13. In the event of a rent repayment order being made, the Applicant seeks an order by the Tribunal under Rule 13(2) requiring the Respondent to reimburse the Applicant with the application and hearing fees, (£110 and £227 respectively).

The Respondent's Case

14. The Respondent's oral submissions made at the hearing are summarised as follows:
 - 14.1 he explained the background to the letting of the Property to Ms Mellor and the Applicant i.e. that it was essentially a "friends' agreement" at a reduced rent; at the time of the letting, the Property had not been advertised and the Respondent did not own any other rental properties; the tenancy agreement was a pro forma downloaded from the internet;
 - 14.2 the Respondent acknowledged that he did not have a licence for the Property at the relevant time. He first became aware of the requirement for a licence in February 2024 and responded by making an application for an exemption (as he was intending to move back into the Property in or about the end of March 2024). That application was rejected (due to an error on the form) and he re-submitted the application. He has not received any further response from the Council in relation to the form re-submitted in April 2024. He moved back into the Property on 27 March 2024 and continues to live there;
 - 14.3 the Respondent said that he was responsive to complaints/concerns about the Property and had arranged visits to effect repairs/undertake an inspection of a window in the living room. He denied being made aware of specific concerns regarding inadequate heating at the Property. He explained that the Property has no gas supply but that, in his experience of having lived in the Property both before and after the Applicant's occupation, the two heaters in the living room provide adequate heat even in cold weather;
 - 14.4 in response to questions from the Tribunal, the Respondent acknowledged that, having regard to his previous experience as a director of a property rental company, he was aware that: (a) in certain circumstances, a licence may be required for a rented property but he was not aware of the introduction of a selective licensing regime in 2022 affecting the Property; (b) the requirement for a licence would not be

affected by the circumstances surrounding the granting of the tenancy to Ms Mellor and the Applicant ie as a favour to a friend;

14.5 the Respondent confirmed that his primary purpose in seeking the exemption and/or contacting the Council/searching their website was to establish if the exemption had any retrospective effect. He had not made any other enquiries;

14.6 the Respondent acknowledged that he had continued to use 1 of the bedrooms at the Property for storage following the letting to Ms Mellor and the Applicant but denied that this impacted their use of the Property because of its size; he further acknowledged that this resulted in him visiting the Property on occasions but that such visits were always by prior arrangement with the tenants.

Reasons

Determination whether to make a rent repayment order

15. In determining whether to make a rent repayment order, the Tribunal must be satisfied, beyond reasonable doubt, that the landlord has committed a relevant offence.

Section 95(1) of the 2004 Act

16. The Tribunal notes that:

16.1 as the recipient of the rent for the Property and as its owner, the Respondent is a person “having control of or managing a house” at the relevant time;

16.2 the Property was subject to a selective licensing regime with effect from 1 April 2022;

16.3 no licence was obtained for the Property. The Tribunal notes the admission by the Respondent to this effect.

17. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under s95(1) of the 2004 Act.

Has the Respondent established a reasonable excuse defence under section 95(4) of the 2004 Act?

18. As indicated to the parties by the Tribunal at the hearing, it considers that the Respondent's submissions regarding the circumstances at the grant of the tenancy and the making of the exemption applications are considered to be a claim for a reasonable excuse defence.
19. The Tribunal notes that the burden of proof on the Respondent in this respect is the balance of probabilities.
20. The Tribunal notes that:
 - 20.1 the friendly relationship between Ms Mellor and the Respondent did not in any way displace his legal obligations at the time of the grant of the tenancy or at any time thereafter;
 - 20.2 there is no evidence that the Respondent made any enquiry during the period of the tenancy as to whether there was any licensing requirement affecting the Property which it considers it would have been reasonable to have done, especially in view of his previous experience as a director of a rental property company;
 - 20.2 it is unreasonable for the Respondent to have placed any reliance on the obtaining of an exemption to discharge the requirement to have obtained a licence for the Property at the relevant time ie from April 2022.
21. The Tribunal is satisfied that the Respondent has failed to establish a reasonable excuse defence to the s95(1) offence.

Sections 1(2) and (3A) of the 1977 Act

Section 1(2)

22. The Tribunal believes that it may be possible to construe the Respondent's failure to use a lawful procedure to obtain possession of the Property from the Applicant as an "unlawful deprivation of occupation" by the Respondent but during the hearing the Applicant did not develop this argument further.

Section 1(3A)

23. The Tribunal accepts that the Respondent's continued use of a bedroom at the Property for storage purposes/visits to the Property in connection with that use may have made the Applicant feel "uncomfortable" but considers that there is insufficient evidence that they constituted acts likely to lead the Applicant to give up possession of the Property.
24. The Tribunal further accepts that such use and/or visits may have been "likely to interfere with the peace or comfort" of the Applicant but that as this arrangement had been established at the outset of the tenancy, in accordance with section (3B) of the 1977 Act, the Respondent had reasonable grounds for doing the acts complained of. In this respect, the Tribunal accepts the Respondent's evidence that all such visits were made by prior arrangement with the tenants.
25. For the above reasons, the Tribunal is not satisfied beyond reasonable doubt that the Respondent has committed an offence under section 1(2) or (3A) of the 1977 Act.

Decision to make a rent repayment order

26. The Tribunal notes that:
 - (1) the offence was committed in the period of 12 months ending with the day on which the Application was made on 22 May 2024; and,
 - (2) the period in respect of which the Application relates is a period not exceeding 12 months, namely, the period 1 April 2023 – 31 March 2024 during which the Respondent was committing the offence.
27. The Tribunal therefore determines that it is appropriate to make a rent repayment order.

Amount of the rent repayment order

28. Guidance on how the Tribunal should approach quantification of the amount of a rent repayment order has been provided by the Upper

Tribunal in *Williams v Parmar* [2021] UKUT 244 (LC) and also in *Acheampong v Roman* [2022] UKUT 239.

29. In *Williams v Parmar*, the Chamber President said that when quantifying the amount of a rent repayment order:

“A tribunal should address specifically what proportion of the maximum amount of the rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.”

30. In *Acheampong v Roamn*, Judge Cook said as follows:

“ *Williams v Paramar* did not say in so many words that the maximum amount will be ordered only when the offence is the most serious of its kind that could be imagined; but it is an obvious inference both from the President’s general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious of cases or where some other compelling and unusual factor justified it. It is beyond question that the seriousness of the offence is a relevant factor – as one would expect from the express statutory provision that the conduct of the landlord is to be taken into consideration. If the tribunal takes as a starting point the proposition that the order will be for the maximum amount unless the section 44(4) factors indicate that a deduction can be made, the FTT will be unable to adjust for the seriousness of the offence (because the commission of an offence is bad conduct and cannot justify a deduction). It will in effect have fettered its discretion. Instead the FTT must look at the conduct of the parties, good and bad, very bad and less bad, and arrive at an order for repayment of an appropriate proportion of the rent.”

31. She then said that the following approach will ensure consistency with previous legal 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).”
32. Those two decisions are binding on the Tribunal and are borne in mind when calculating the amount of the rent repayment order to be made in this case.

Maximum amount of rent repayment order

33. The Tribunal notes that there is no dispute between the parties that the rent paid by the Applicant during the relevant period (1 April 2023 – 31 March 2024) is £9000.

Seriousness of the offence

34. Although any failure of compliance with the law should be taken seriously, in the context of the licensing regime, the Tribunal does not consider that the failure to obtain a selective licence for a property occupied by a single household is to be considered at the higher levels of seriousness when compared with, for example, a failure to licence an HMO.
35. Further, the Tribunal is not satisfied that the Applicant has established that he was exposed to poor or dangerous conditions which were prolonged by the failure to licence. In this respect, the Tribunal accepts the Respondent's evidence that there is adequate heating in the living room at the Property and that he was responsive to the Applicant's complaints about the Property.
36. As such the Tribunal considers that it is appropriate to consider that the seriousness of the offence warrants the making of a rent repayment order of
65% of the rent paid for the relevant period, subject to the remaining s44(4) factors, which are:
- (1) the conduct of the landlord and the tenant;
 - (2) the financial circumstances of the landlord; and,
 - (3) whether the landlord has ever been convicted of another relevant offence.

Conduct of the Landlord

37. The Tribunal considers that the various omissions by the Respondent as landlord e.g. failure to make enquiry as to whether a licence was required for the Property during the tenancy; failure to protect the deposit; failure to produce an EPC; absence of evidence of an electrical installation safety inspection; failure to provide a renter's guide, when viewed in the context of the Respondent's previous experience as a professional landlord, are all matters to be taken into consideration as relevant conduct of the Respondent. The Tribunal notes that none of these omissions were disputed by the Respondent.

38. The Tribunal also accepts the Respondent's evidence that the decision to grant the tenancy was not in the context of a commercial landlord/tenant relationship but rather as an act of friendship and, further, that on becoming aware of the need for a licence, he responded quickly by making the exemption application (although it is not clear to the Tribunal what was the purpose the Respondent hoped to achieve by doing so).
39. The Tribunal also notes that the Applicant provided no evidence to support his claims that the Property was "unfit for human habitation" and/or that any complaint made to the Respondent and/or to the Council would provoke "retaliatory action" by the Respondent. The Tribunal is satisfied that the primary reason for the Respondent wanting possession of the Property in March 2024 was to enable him to move back into it.
40. On balance, the Tribunal considers that the Respondent's conduct is to be regarded as careless, rather than deliberate or reckless. In that circumstance, the Tribunal considers that the amount of the rent repayment order should be reduced to 65% of the total rent paid.

Conduct of the Applicant

41. The Tribunal determines that there is no adverse conduct on the part of the Applicant which is relevant to their quantification of the rent repayment order.

Conviction of relevant offence

42. There is no evidence before the Tribunal of the Respondent having been convicted of a relevant offence.

Financial circumstances of the Respondent/landlord

43. The Tribunal notes that the Respondent's written evidence regarding his financial circumstances is limited to a statement that he is in receipt of a

private pension and has some savings. No further detail has been provided.

44. The Tribunal notes that the Respondent has provided copies of service charge demands for the period from 1 April 2023 – 31 March 2024 in support of his claim that such expenditure should be deducted from the amount of any rent repayment order made.
45. The Tribunal considers that it is unusual for a tenant to be liable for service charges, in the absence of any express agreement to this effect. No deduction is made in this respect accordingly.
46. In the absence of such evidence, the Tribunal determines that there are no financial circumstances relating to the Respondent which should be taken into account in its quantification of the rent repayment order.

Determination of the amount of the rent repayment order

47. Taking all relevant matters into account, the Tribunal determines that the appropriate order in this case is for repayment of 65% of the rent paid being the sum of £5850.
48. Further, pursuant to Rule 13(2) of the Rules, the Tribunal orders the Respondent to pay to the Applicant the sum of £337 in respect of the application and hearing fees.