FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BB/HMF/2025/0755**
Property	:	**93 Stokes Road, East Ham, E6 3SF**
Applicant	:	**OHIOZE PIUS AGGE**
Respondents	:	**(1) ADEGBOYEGA EWEBAJO** **(2)ADEBOLA OLAYINKA DEHINBO**
Type of application	:	**Application for a rent repayment order by tenant** **Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal	:	**Judge Shepherd** **Fiona Macleod MCIEH**
Date of Decision	:	**7th January 2026**

© Crown Copyright 2026

DECISION

1. A rent repayment order of £6,720 shall be paid by the Respondents. The said sums must be paid within 28 days of this decision being issued. The Respondents shall also reimburse the Applicants with their application and hearing fees at a total of £320. This sum is also to be paid within 28 days of this decision being issued.

Background

2. The Application for a Rent Repayment Order was brought by the Applicant who is the former tenant of 93 Stokes Road, East Ham, London E6 3SF ("The premises"). The Second Respondent is the freeholder and landlord of the premises and the First Respondent is her agent and son .
3. The Applicant occupied the premises as an assured shorthold tenant protected under the Housing Act 1988. He occupied the premises between 10th April 2023 and 24th May 2024.
4. The premises is a five bedroom house with a shared kitchen. The Applicant's case is that he occupied the premises at a time when a total of five people were in occupation with more than two separate households therefore the premises needed a mandatory HMO license.

The Applicants' case

5. The Applicant was represented by Represent Law.
6. He alleges that he is entitled to a rent repayment order of £9000 for the period 10th April 2023 – 24th May 2024. The Applicant provided evidence of the rent payments during these periods.
7. It is the Applicant's case is that he was entitled to these sums because the Respondent was operating the premises without an HMO License throughout the time he was a tenant.
8. The Application submitted by the Applicant was dated 11th April 2025. Accordingly the 12 month limit was complied with.

9. The Applicant was not receiving Universal Credit and the Respondents were responsible for the council tax. The Respondents paid for the utilities.

10. The Applicants said as well as the licensing breach the Respondents had delayed in returning his deposit which caused considerable problems. There were problems with the heating. He occupied his double bedroom with his wife and children. There were three tenants living upstairs one man and two women One of the women was called Mommy Greig and the other Mama who was elderly. They all shared the bathroom and kitchen which was small. The back garden had not been maintained. He said that the Second Respondent had not lived at the premises. He said that the First Respondent called himself the landlord and this was reflected in his whatsapp messages. We were shown messages of the Applicant seeking to recover his deposit. The First Respondent replied that the house had to be refurbished because "the other tenants left abruptly".

11. The Applicant showed evidence where the LB Newham had confirmed that the premises did not have a license.

The Respondents' case

12. In her statement of case the Second Respondent claimed that she had lived at the premises with other members of her family which she believed exempted her from needing to have a license. At the hearing she adjusted this account by stating that the other occupiers were not members of her family but people from her church. She produced no evidence of her occupation or the occupation of the others during the relevant period.

13. In his statement to the Tribunal the First Respondent said that the other occupiers were "my uncle Pastor Sewodor, Aunties Patience Bski and Temidayo Onabanjo". He did not seek to challenge his mother's evidence that these people were in fact not family members at the hearing.

The law

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

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

15. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which states.

> *254 Meaning of "house in multiple occupation"*
>
> *(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–*
>
> *(a) it meets the conditions in subsection (2) ("the standard test");*
>
> *(b) it meets the conditions in subsection (3) ("the self-contained flat test");*
>
> *(c) it meets the conditions in subsection (4) ("the converted building test");*
>
> *(d) an HMO declaration is in force in respect of it under section 255; or*
>
> *(e) it is a converted block of flats to which section 257 applies.*

16. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence under the mandatory licensing scheme. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

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

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either–

(a) the area of their district, or

(b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

(2) The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.

(3) Before making a designation the authority must–

(a) take reasonable steps to consult persons who are likely to be affected by the designation; and

(b) consider any representations made in accordance with the consultation and not withdrawn.

(4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.

(5) In forming an opinion as to the matter mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question.

(6) Section 57 applies for the purposes of this section.

18. Section 263 of the Act provides:

"(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the

premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

The Housing and Planning Act 2016 (“the 2016 Act”)

19. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

20. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted

that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

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

22. Section 40 provides (emphasis added):

"(1) This Chapter confers power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

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

by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

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

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

26. Section 41 deals with applications for RROs. The material parts provide:

"(1) A tenant or a local housing authority may apply to the First-Tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

27. Section 43 provides for the making of RROs:

"(1) The First-Tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted)."

28. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

"(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

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

29. Section 44(4) provides:

"(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies."

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

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

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);

(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);

(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

32. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

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

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

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

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

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

Determination

37. We are satisfied beyond reasonable doubt that the Second Respondent was the Applicants' landlord during the relevant period and the First Respondent was her agent.

38. We are satisfied beyond reasonable doubt that the premises were a House in Multiple Occupation and that it was subject to mandatory licensing as at all relevant times there were five occupiers and at least two separate households. The premises should have been licensed but were not during the relevant period.

39. We are satisfied beyond reasonable doubt that the Respondents were the persons in control of the premises. We are also satisfied that the Applicant paid the rent he alleged during the relevant period.

40. We are not satisfied that the Respondents had a reasonable excuse during the relevant period. We simply don't believe that the Second Respondent was in

occupation during the relevant period. The Applicant presented as a shy but entirely honest witness. We believe him when he says that she was not in occupation. At best the other occupiers were members of the church used by the Respondents but this provides no exemption.

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

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

43. The whole of the rent due was £9000.

44. Utilities were included in the rent so a deduction of £600, being a fifth of the estimated costs, will be applied giving a starting point for the Rent Repayment Order of £8400.

]

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

46. We consider that this offence was serious as the Applicant was potentially placed at risk by virtue of the fact that the premises were not licensed There was also evidence of poor conduct by the Respondents in failing to return his deposit promptly. We were also not impressed by the Respondents evidence which was evasive. They were happy to alter their account in the hope that it would gain some mileage.

47. Taking all of these matters into account we consider that an award of 80% of the rent for the relevant period is appropriate. This amounts to an award of £6720. This sum should be paid within 28 days.

48. The Applicant was successful in his application therefore we also require the Respondents to pay their application and hearing fees which total £320.This sum should also be paid within 28 days of receipt of the decision.

Judge Shepherd

21st January 2026

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.