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

| | | |
|---|---|---|
| **Case Reference** | **:** | **LON/00AZ/HMF/2025/0686** |
| **Property** | **:** | **9 David's Road London SE23 3EP** |
| **Applicants** | **:** | **Stephen Delahunty (1)**<br>**Bradley Steptoe (2)**<br>**Sam Hancock (3)**<br>**Clive Fletcher (4)**<br>**Christopher James Walton (5)** |
| **Representative** | **:** | **In person for himself and the other Applicants** |
| **Respondent** | **:** | **Damon Nagel** |
| **Representative** | **:** | **Ms Zara Baig Solicitor-Advocate** |
| **Type of Application** | **:** | **Application for a rent repayment order by tenant - Housing and Planning Act 2016** |
| **Tribunal Member** | **:** | **Mr Charles Norman FRICS**<br>**Valuer Chairman**<br>**Mr Steve Wheeler MCIEH CEnvH** |
| **Venue of Hearing** | **:** | **10 Alfred Place, London WC1E 7LR** |
| **Date of Hearing** | **:** | **7 November 2025** |
| **Date of Decision** | **:** | **4 February 2026** |

---

**DECISION**

---

## Decisions of the Tribunal

1. The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £7,842.80.

2. The Tribunal determines that the Respondent shall also re-imburse the Applicants their application and hearing fees paid to the Tribunal within 28 days.

## Reasons

### The Application

3. On 25 January 2025 Mr Delahunty applied for a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") on behalf of himself and four other former tenants 9 David's Road London SE23 3EP. Each of the other former tenants had provided notices of representation in favour of Mr Delahunty. The basis of the application was that the property, described as 5 bedroomed, had been let as an unlicenced HMO. From Google Maps, the property is a mid-terraced Victorian house on lower ground, ground and two upper floors. At the hearing it emerged that it was built in 1880.

4. On 5 May 2025 (as amended on 11 September 2025), the Tribunal gave Directions pursuant to which the Applicants have served a Bundle of 88 pages and the Respondent 233 pages. A face to face hearing was directed. The hearing took place at 10 Alfred Place on 7 October 2025. Mr Delahunty represented all the Applicants. The Respondent, who is now resident in Australia, was granted prior permission to appear by video link. The Respondent was represented by Ms Zara Baig, Solicitor-Advocate.

5. At the start of the hearing the parties indicated that they had agreed the amount of rent repayment claimed as set out in a schedule handed up to the Tribunal. This was a gross amount of £34,800 from 8 June 2023 to 7 June 2024 of £34,000, less arears of £3,956 and Housing Benefit of £8,436. The net claim was therefore £22,408. The Applicants agreed that any RRO should be for a single amount and not apportioned to individual tenants. The AST provided that the tenants were responsible for payment of all utilities and council tax, at clauses 4.1.2 and 4.1.4.

### The Applicant's Case

6. Mr Delahunty gave evidence having served a witness statement verified by a statement of truth. His evidence may be summarised as follows. The lack of an HMO licence was brought to the attention of the Applicants following an inspection by London Borough of Lewisham (LB Lewisham) in January

2024. A section 21 notice was then served and later withdrawn. In view of the uncertainty, the tenants gave notice and vacated on 7 June 2024. The tenants did withhold some rent as a result of disrepair. This included water leaking from electrical points, (ceiling light fitting) damp and mould. A window in Mr Delahunty's bedroom broke and a repair took two months. Until the final few months the rent had been paid in full. The arrears should be deducted from the deposit which has not been returned.

7. The Applicants reject the Respondent's case that £50,000 was required to be spent as a result of tenant conduct. It reflected the poor condition of the property. The landlord was responsible for repairs required under s 11 Landlord and Tenant Act 1985. The failure to licence meant that the landlord had not sent annual gas and electrical safety certificates or testing of smoke alarms. He is managing director of a major Australian property management firm. The Respondent's financial position is much more favourable than that of any Applicant. The Applicants could not instruct a law firm.

8. In cross examination Mr Delahunty said that he had informed the letting agents of disrepair. Ms Zara Baig referred to clauses 4.2.1 4.3.1 and 4.6.1 which required the tenants to keep the property tidy and in good and tenantable condition and decorative order. The tenants were also required return the property in the same clean condition as when let. Mr Delahunty accepts that some repair works were done during the tenancy. Mr Delahunty accepted that when the remaining tenants vacated the property was not clean. The Applicants deposit had not been returned.

## The Respondent's Case

9. Mr Damon Nagel gave a witness statement verified by a statement of truth which may be summarised as follows. The subject property was the Respondent's former family home prior to relocation to Australia in 2003. The Respondent instructed Ludlow Thompson estate agents to let the property. Subsequently in 2016 Daisy Lets were instructed to take over. They were later acquired by Northwood Dulwich in 2022. The property was first let to five medical students in 2016. It was only with white goods and no furniture.

10. On 8 September 2021 Daisy Lets let the property to the Applicants under an AST for 12 months at an initial rent of £2,760 per calendar month. The AST was exhibited. On 7 February 2024 the Respondent was informed by LB Lewisham that the property required an HMO licence. Copy correspondence was exhibited. Mr Nagel and his estate agent made multiple attempts to apply for a licence, but difficulties were encountered.

11. The property was not in serious disrepair. A window leak arose from a fault in the window seal and the minor delay in addressing it occurred because the Respondent was on leave. The broken window was caused by damage by the Applicants. As a result of living abroad the Respondent

decided to sell the property. He served a section 21 notice on 16 February 2024 which was later withdrawn. The Applicants vacated on 7 June 2024 following notice. At vacation the Applicants were in rent arrears of £3,956, which remains the position. When the Applicants commenced occupation, the property had been recently painted and carpeted and both kitchen and bathroom refurbished. Work of £5,366 was carried out between May 2021 and May 2023. Conversely the checkout inventory, exhibited, demonstrates damage to the property. This includes broken furniture personal belongings and rubbish strewn throughout the property. The Respondent was forced to spend £50,000 restore the property. A schedule of works was exhibited. He spent £4,000 clearing the rubbish.

12. In general Mr Nagel had approved repair works quickly. The exception was repair of the bedroom window. This took 4-6 weeks because his agents blamed the tenants and he was annoyed with the tenants who were in arrears. The ceiling stain was caused by defective flashings which were remedied within 2 months.

13. When the tenants left there was damage to bed frames, the sofa, the fridge was full of mouldy food, and the washing machine was full of clothes. A check out report was exhibited from Arnold Inventories dated 13 June 2024 supported by a check in report from InvenHomes Professional Inventory Service dated 28 September 2018. The report was detailed and included extensive check out photographs. However, there was no check in report at the start of the Applicants' AST.

14. The Respondent submitted that the Tribunal should refuse or significantly reduce any RRO under section 44(4) of the 2016 Act. The Respondent might have the defence of reasonable excuse because his proactive efforts to obtain a licence constitute a reasonable excuse. Alternatively, the Tribunal should consider the conduct of the landlord and the tenant under section 44(4)(b). He ensured all necessary works were authorised and executed as required. He did not seek to profit from non-compliance. There had been a significant emotional burden on him and his wife.

15. In submissions, Ms Baig submitted that the defence of reasonable excuse under section 72(5) applied. In the alternative, on quantum, she relied on Para 40 of *Aylan & Ors v Moore & Ors* [2022] UKUT 27 (LC), *Hallet v Parker* [2022] UKUT 165 (LC) and *Acheampong v Roman* [2022] UKUT 239. These matters are addressed below.

## **The Law**

16. Section 61 of The Housing Act 2004 Act provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that 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. Separately, section 56 empowers a local housing authority ("LHA") to designate an area to be subject to additional licencing. On the evidence on 5 April 2022 LB Lewisham introduced additional licencing "for all other HMOs not included in the mandatory scheme. i.e. premises consisting of 2 or more non-related households consisting of 3 or more people sharing facilities such as a bathroom or a kitchen (and other properties otherwise excluded)."[R29] [1]

18. Section 263 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. [...]

19. Section 72 specifies a number of offences in relation to the licencing of HMOs. The material parts provide:

[1] Numbers in square brackets denote bundle page references

> "(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.
> […]
> (5) In proceedings for an offence …it is a defence that he had a reasonable excuse …"

20. Section 40(3) of the 2016 provides that the offence of control or management of unlicenced HMO contrary to section 72(1) of the 2004 Act is an offence that gives rise to a potential rent repayment order.

21. Section 41 provides that 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. The offence under s 72(1) must be committed in the period of 12 months ending with the day on which the application is made.

22. Section 43 provides that 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).

23. By section 44(2) the amount must relate to rent paid during the period when the landlord was committing the offence, not exceeding 12 months. Section 44(3) provides that the amount must not exceed the rent, less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

24. 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."

25. In *Acheapong v Roman* [2022] UKUT 239 (LC) (cited by the Respondent), Upper Tribunal Judge Elizabeth Cooke gave guidance. The Judge stated:

> "20. The following approach will ensure consistency with the authorities:
>
> a. Ascertain the whole of the rent for the relevant period;

b. [...]

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 [...] 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."

26. These guidelines have recently been affirmed by the Deputy President of the Upper Tribunal (Lands Chamber), in *Newell v Abbott* [2024] UKUT 181 (LC). This included a review of *Hallett v Parker* [2022] UKUT 165 (LC) (as referred to by the Respondent). The Deputy President distinguished 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 (25%).

27. Ms Baig also referred to Para 40 of *Aytan v Moore* [2022] UKUT 27 (LC) which states "We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licencing requirements ; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licencing requirements without relying upon an agent, for example because the landlord lived abroad."

## Discussion and Findings

## The Offence of control or management of an unlicenced HMO and the defence of reasonable excuse.

28. The Tribunal finds that the requirement to licence arose in 2016 when the first cohort of 5 tenants moved in. It finds that all the tests for mandatory licencing are fulfilled. It therefore finds that the property whilst let was always within the mandatory licensing scheme under section 254 (see above). It follows that the need for a licence did not arise in 2022 but in 2016. However, even if the Tribunal is wrong about that, the need for an additional licence arose in 2022.

29. The Tribunal rejects the defence of reasonable excuse, applying the ordinary civil standard of proof. Although the Respondent was resident overseas, he did not reference any contract with Ludlow Thomson or Daisy Lets which required either of them to advise on licencing. In addition, on any view the unlicenced period has started in 2016 under section 254 or 2022 under the additional licencing regime.

30. For the above reasons, the Tribunal is satisfied beyond reasonable doubt that the Respondent is guilty of an offence under section 72(1) of the 2004 Act of having control of or managing an HMO which is required to be licensed under but was not so licensed. It is sufficient for the Tribunal to find that the offence was committed, at least, during the 12 months prior to 7 June 2024. Mitigation is addressed below.

## The Assessment of the RRO

31. The Applicants seek a RRO in the sum of £22,408, namely 100% of the qualifying rent for the twelve month period prior to 7 June 2024.

32. The Tribunal must first determine the whole of the rent of the relevant period. The Tribunal is satisfied that the relevant period is 8 June 2023 to 7 June 2024. An offence was committed throughout this period.

33. The Tribunal must then consider the seriousness of the offence. The Upper Tribunal has held that licencing offences are less serious than other offences giving rise to RROs. In the UK the landlord owns only the subject property being the former family home and the former home of his wife. He is therefore a small residential landlord in the jurisdiction.

34. The Tribunal must then have regard to the following:

    (a) The conduct of the landlord.

The Tribunal has found the following mitigating factors: (i) the Respondent's residence in Australia (ii) he has always employed managing agents (iii) he has carried out some repairs (v) the rent was at the lower end of the spectrum (vi) he attempted to apply for a licence as soon as he became aware of the need to do so.

Aggravating factors are (i) he was deliberately slow to have the bedroom window repaired which caused discomfort and inconvenience to the first Applicant and which the Tribunal finds was not damage caused by the tenant (ii) the mansard roof leak was not addressed quickly enough (iii) the extended time without a licence.

Issues relating to the return of the deposit are not a relevant consideration in this application, because it is subject to a separate regime, where disputed.

(b) The conduct of the tenant.

35. Aggravating factors are (i) the rent arrears and (ii) the condition in which the property was left, particularly with regard to the volume of rubbish left which the Tribunal accepts cost £4,000 to be cleared. The Tribunal has not placed weight on the £50,000 expenditure by the landlord. It considers that that was required to bring the property up to modern standards and did not directly relate to actions by the tenants. The general tone of the check in report (2018) (see above) was that the property was in a tired condition when let and required cleaning. At check out the property was in a worse condition and required extensive cleaning.

(c) The financial circumstances of the landlord. Based on documents in the bundle this is unknown. The Tribunal does not place weight on informal investigations by the Applicants in relation to the Respondent's business in Australia.

(d) Whether the landlord has at any time been convicted of an offence to which this Chapter applies. There is no relevant conviction.

36. Taking all relevant factors into account, the Tribunal makes a RRO in the sum of £7,842.80 namely 35% of the relevant rent.

37. The Tribunal also determines that the Respondent must reimburse the Applicants their application and hearing fees in the Tribunal within 28 days.

Mr Charles Norman FRICS
4 February 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.