



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

**Case Reference** : **LON/00BE/HMF/2025/0762**

**HMCTS Code** : **HMCTS: In person**

**Property** : **18 Millender Walk, London SE16 2BL**

**Applicant** : **Jeremy Harding**

**Represented by** : **Ms Eva Sherratt - Justice for Tenants**

**Respondents** : **Mr Kentaro Kobayashi**

**Type of Application** : **Applications for Rent Repayment Orders by Tenants  
Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**

**Tribunal Members** : **Judge Daley  
Ms Rachael Kershaw B.Sc.**

**Date of Hearing** : **10 February 2026, at 10 Alfred Place,  
London**

**Date of Decision** : **6 March 2026**

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## DECISION

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### Decision

- I) The Tribunal finds that on the admission of the respondent and on the evidence before it that grounds exist that the Premises were unlicensed in accordance with the Additional licensing scheme which was in place in 1 March 2022, and that an offence of failing to license the premises has been committed under Section 40(3) of the Designation for an Area ( the whole of the LB of Southwark) for the Additional Licensing Scheme.
- II) The Tribunal finds that on the admission of the respondent and on the evidence, an offence was committed to the required standard of beyond reasonable doubt.
- III) The Tribunal is satisfied that grounds exist to make a rent repayment order against the Respondent.
- IV) The Tribunal makes a Rent repayment order in the sum of £3000.00 for the rent paid by the applicant for the period April 2023-April 2024. (save for the periods: May 1-August 2023 when no license was needed)
- V) The Tribunal makes an order for the reimbursement of the application fee in the sum of £141.00 and the hearing fee in the sum of £200.00

### Introduction

1. This is an application by the Applicant's listed above for a Rent repayment Order under section 41 of the Housing & Planning Act 2016. The Application is made on the grounds that the Landlord had control and management of an unlicensed premises, that was subject to an Additional licensing requirement in breach of Section 40 of the Housing Act 2004. It is alleged that the landlord committed the offence by letting a three room flat without the necessary Additional licence. The Applicants seek a rent repayment order for the periods April 2023- April 2024 in the sum of £7987.00
2. The Tribunal issued Directions on 22 September 2022, setting out how the parties should prepare for the hearing. This matter was set down for an in-person hearing on 6 March 2023.

### Property Details

3. The Premises was a four room, two-storey flat with a shared kitchen and bathrooms, located at one end of a row of one- and two-storey apartments, located on the top-floor of an apartment building with external walkways

4. The Tribunal did not inspect the property and makes no assumptions about its current condition or regarding the accommodation.

### **The Hearing**

5. The hearing of this matter was held at the First Tier Property Tribunal Alfred Place, London. The following parties were in attendance, Mr Jeremy Harding, who was represented by Ms Eva Sherratt of Justice for Tenants and Mr Peter Elliot who was observing. Also in attendance were Mr Kentaro Kothe Respondent, who was supported by Mr Hiller (his father).

### **Preliminary Matters**

6. The Respondent had wanted to adduce evidence from a witness Mr Julius Schuster who was abroad, however he accepted that he had not complied with the application for the above's evidence to be heard from abroad and was content for the Tribunal to rely upon his witness statement.
7. Ms Sharratt made an application to rely upon an amended reply as there had been errors in the reply which had been filed. She also sought to rely upon additional copies of the WhatsApp communication as an error had arisen on filing the documents which meant that parts of the communications were missing.
8. Mr Kobayashi did not object to these documents being admitted. Accordingly, the Tribunal decided to admit them pursuant to rule 6 (D) and Rule 3 of The Tribunal (First-tier) Property Tribunal Rules 2013.

### **Relevant Law**

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

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 40(5) of the 2016 Act lists 7 categories of offence and offence no 6 refers to Control or management of an unlicensed house. Category 2 refers to eviction or harassment of occupiers.

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

Section 44 of the 2016 Act sets out the amount of order:

- (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. Under Section 44(4) the Tribunal in determining the amount the tribunal must, in particular take account of (a) the conduct of the landlord and 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

### **The Applicants' Submissions**

9. The Tribunal heard from Mr Harding who had provided two witness statements in support of his application which the Tribunal accepted as his evidence in chief. In answer to additional questions from Ms Sharratt, he told Tribunal that during the tenancy the Respondent had adopted a very 'hands-off' approach as a landlord, and that he had become concerned whilst living in the property as initially there had been no smoke detectors/fire alarms. He told us that he had raised this with the respondent via WhatsApp, in November 2019, he told the Tribunal that the Fire Brigade fitted the alarm/ detectors in December 2019. However, he was concerned that he had been in the property since February 2019, and that this issue had not been sorted out until December 2019.
10. Mr Harding stated that there were no fire doors at the property and to his knowledge no safety checks had been carried out throughout his occupancy of the property.
11. He told us that there had been three issues with leaking from the bathroom into the kitchen. On two occasions the leaks had been fixed by changing a tap and the plumber dealt with this by reconfiguring the direction in which a pipe ran under the bath. Mr Harding told the Tribunal that whilst these matters had been fixed by plumbers the Respondent often delegated finding the plumbers to the tenants (this was undertaken by, Chris). Mr Harding told the Tribunal that on another occasion a leak from the basin had been fixed by himself and Chris another tenant. They had tightened screws at the bathroom basin.
12. Mr Harding also complained that at some point during his tenancy there was evidence of pest activity in the roof space as there had been scratching, and when the council removed the roof, a dead pigeon had been discovered.
13. He accepted that he had not experienced any issues with infestation within the flat, and Southwark Council who are the freeholders, had dealt with this by laying traps
14. Mr Harding told the Tribunal that an issue arose in the bathroom with water running down a wall. The respondent had tried to decorate this, however in May it became clear that the issue was not resolved and he had engaged a contractor who had removed the plastering on the wall and had later confirmed that it was an issue for the freeholder. Mr Harding did not accept that the repairs had been carried out within a reasonable time, or that the claimant had been proactive. He told the Tribunal that there had also been an issue with heating in the flat which predominantly affected those living downstairs in the flat in that the heating

system which was connected to a central system which was owned by the freeholder and operated by them. He told the Tribunal that the previous occupants of the room had to leave doors and windows open because it was too hot. This had been reported to the council who had adjusted it however they said that a valve needed to be replaced and that he had not noticed the issue until he moved into the room downstairs. He had complained to the Respondent and eventually the council had come to fix it.

15. In answer to questions from Mr Kobayashi, he told the Tribunal that he had not come to any direct harm in the Property. He stated that whilst the property was not overcrowded, it was what he described as cosy and that there was insufficient cupboard space.
16. In answer to Mr Kobayashi questions, he accepted that the WhatsApp's accurately portrayed the interaction between the respondent and the tenants.
17. The Tribunal heard that Mr Harding had not been provided with a tenancy pack and any certificates to indicate that electrical or gas safety inspections had taken place.
18. The Tribunal heard from Mr Kobayashi he told the Tribunal that he purchased the property in 2016, whilst he had been working and living in London. He had first taken in lodgers as a means to help him meet the cost. In 2019 he had decided to move to Japan where he worked and lived with his wife. As his mother lived in the UK and he visited often, he had felt that it was not necessary to engage a managing agent. He rented out the whole flat, which he managed through WhatsApp groups with the tenants informing him of issues, and with help from family and friends. He rented the rooms at the premises by using Spare Room.com; He told the Tribunal that he believed that he had always used a fair and standard procedure. He took pictures of the room for the viewing process and used a standard tenancy agreement.
19. Mr Kobayashi told the Tribunal that he did not accept that he had been '*hands off*', as a landlord, he considered that he had acted fairly in that throughout the whole of Mr Harding's tenancy he had not increased the rent, save when Mr Harding occupied a larger room.
20. He considered that the issues with Repairs and responsiveness had been overstated and that it was not true that there was a lack of engagement on his part.
21. He accepted that the property had not been licensed, and that it was required to be licensed. He told the Tribunal that he understood that larger HMOs needed a licence however he had not kept abreast of the regulations which underpinned renting.
22. He accepted that this was not an excuse.
23. Mr Kobayashi submitted that he considered that the seriousness of the offence was at the lower end of the spectrum in that there had been no harm to tenants or overcrowding, or serious disrepair. No improvement notices, or prohibition notices had been served at the property.
24. He asked the Tribunal to consider the relatively long tenancy of each tenant as evidence that the arrangements had been broadly satisfactory, and that there had been no rent increases in 5 years. He submitted that he had not deliberately set out to avoid the licensing regulations.
25. He asked the Tribunal to take account of the following the outgoings of the premises which included the following utilities, council tax, internet TV licence Communal heating His Financial circumstances, he had lost his job in the tech industry and now worked as a Freelance Musician in Japan D J with client work

creating music he earned about £9000.00 per year. He lived with his wife who helped by supporting payments of their mortgage.

26. In answer to questions from Ms Sherratt, he accepted that he did not have a copy of the signed tenancy agreement, and that in his initial correspondence with Mr Harding he had not appreciated the necessity for a tenancy agreement. He stated that he had been developing as a landlord, and that he had improved his practice overtime. He agreed that he had not known about the necessity for a fire alarm/system,
27. He did not accept that he had not carried out checks in the building around fire and gas and electric safety.
28. He also did not accept that he had unduly delayed once he had become aware of the licensing produced, he stated that he had wanted to make sure that he had updated all the required certificates.
29. He was asked about the bathroom leak down the wall; he considered that it had been appropriate for him to carry out the painting initially rather than engage contractors straight away.
30. He accepted that he did not have any additional evidence of his income however he stated that it was accurate. He acknowledged that he had not used a managing agent, however he had not considered this to be necessary as he frequently visited.

#### *Ms Mai Hao- Former Tenant*

31. The Tribunal also heard from Ms Mai Hao, who reiterated that the contents of her witness statement were true and that she had found Mr Kobayashi to be a proactive and responsible landlord. In answer to questions from Ms Sherratt, she confirmed that she had not been given information on renter's rights, and had not been provided with safety certificates, she stated that she had been new to renting and had not requested these.

### **The Closing Submissions**

#### **On behalf of the Applicant**

32. The Tribunal heard submissions from Ms Sherratt, she told the Tribunal that Mr Kobayashi ignorance of the law was not a reasonable excuse, neither was the fact that he resided abroad, he had demonstrated that he was able to use the internet and he could have kept himself information as to what was required.
33. She referred to the fact that there were only two tenants were living at the property between 1-May 1-August 2023, and as such during this period there was no requirement for an additional licence and that the applicant cannot recover for this period accordingly a rent repayment order in the sum of £7987.10 was sought.
34. Ms Sherratt rejected the submissions that the breach was at the lower end and given this, she did not consider that this was akin to the situation in Hallet –v- Parker [2022] UKUT 165 where the culpability of the respondent was at the lower end.
35. She accepted that the Tribunal had a discretion to deduct for utilities, however she submitted that the Tribunal should not make deductions. She stated that if the Tribunal did not agree it should make a distinguish in respect of council taxes, which Southwark's Website suggested were payable by the landlord.

36. Ms Sherratt submitted that *Vadamalayan and Stewart (2020) UKUT 183* was the starting point of authority that the full rent paid was the starting point for the repayment order, and that the point of an order was to serve as a deterrent and to have a punitive effect on the landlord. Ms Sherratt told the Tribunal that in acknowledging the Seriousness of the offense and that there ought to be an element of punitiveness to serve as a deterrent to irresponsible landlords she submitted that the Tribunal should make an award of at least 90%.
37. In respect of fees paid by the claimant for the hearing, she requested that the sum of £341.00 be awarded to the Applicant for the hearing and application fee.

### ***Closing submissions of the Respondent***

38. Mr Kobayashi submitted that he wanted to reiterate that although the property was unlicensed, he respectfully submitted that the offence was at the lower end of the scale of offences.
39. The respondent told the Tribunal he had become aware of the offence through the tenant seeking a rent repayment order. Once he became aware he had taken action to ensure that his property was brought up to the standard required for registration. He did not consider that the standard of the property had been poor or defective before. Mr Kobayashi told the Tribunal that he had co-operated and had addressed all the repair issues raised by the tenants at that time, within a reasonable time frame.
40. Mr Kobayashi acknowledged that there were delays, where repairs had involved action being taken by the freeholder, however this had been outside of his control.
41. He referred to the utility bills which were for services which had benefitted the tenant, He also asked that the other utilities should be considered. He considered that he had been mischaracterized not caring about the welfare of the tenants.
42. He submitted that in all the circumstances an award in the sum of 30-40% would reflect the admitted breach.

### **Tribunal Decision**

43. The Tribunal having accepted the admission of the respondent on the facts before it, found that the offence under Section 40(3) of the Housing and planning Act was proved beyond a reasonable doubt. The tribunal then applied the following test
  - (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
  - (iv) Determination of the amount of any order.
44. The Tribunal accepted that the sum of £7987.10 was the sum of applicable rent which had been paid for rent during the period in issue.
45. The Tribunal also reminded itself of the law which had been referred to above and the case law referred to by the parties. The Tribunal noted that the starting point was the maximum rent that had been paid, however the Tribunal noted that it had an obligation to exercise its discretion in the making of an order.
46. The Tribunal also had regard to the cases referred to, the fact that the landlord was the landlord of a single property, which the Tribunal found was throughout most of the period in issue in either good or fair condition.

47. It noted that there was the issue of the bathroom, and that the repair which was needed was part of major works which involved scaffolding and was under the control of the superior landlord. It noted that there was no issue raised that the bathroom was unusable during this period. It noted that the property had been without fire alarms/ smoke detectors, which was very serious, however it noted that this had fallen outside the Additional licensing period and had been remedied by the landlord. The Tribunal took account of the fact that the tenant had continued in occupation of the premises for another 5 years after. It also noted that there was an issue with the valve of the radiator, which had been replaced by the superior landlord.
48. The Tribunal considered the WhatsApp correspondence; it noted that Mr Kentaro Kobayashi had asked the tenants to contact contractors which one of the tenants Chris had undertaken. However, it found that he was generally responsive and that there was not a great deal of correspondence between the applicant and Mr Kobayashi to suggest that the claimant had concerns about repairs which had not been actioned by the respondent.
49. The Tribunal reminded itself of the purpose of the licensing regime and noted that although in its view it would not characterize the respondent as a rogue landlord, He was responsible for ensuring that he had complied with any requirements to license the property prior to embarking on renting the property. It reminded itself that there had been a change in the status of the property in 2023, however it was still for the respondent to keep abreast of the changes. Given this the Tribunal was not minded to reduce the rent repayment as submitted by the Respondent.
50. However, it was mindful that Mr Harding had received the benefit of the rental of the property, and that for most of the 4 years that he had lived in the property this had been without serious fault or complaint. The Tribunal finds on the evidence before it, and on the admission of the respondent that the property was in an area covered by licensing provisions and that the premises required an Additional license.
51. When considering all the factors, and the seriousness of the offence the Tribunal was satisfied that a rent repayment order in the sum of 50% of the rent paid was the correct starting point (£3993.50). It then considered the financial circumstances of the respondent and made a deduction for utilities for the 9 months which is the subject of the rent repayment order in the sum of one third (approximately 1100.49). It then asked itself whether this sum reflected the seriousness of the breach, in doing so it determined that the sum payable by way of a rent repayment order should be £3000.00 (rather than a lesser sum, produced by deducting all 1/3 of the utilities).
52. The Tribunal considered that this is the appropriate order to make, which marks the offence which has been committed by the landlord in failing to apply for an additional licence for the periods in issue.
53. The Tribunal makes an order in respect of reimbursement of the hearing and application fees in the sum of £340.00.

Signed: Judge Daley

Dated: 6 March 2026

## **Right to Appeal**

54. 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.
55. 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.
56. 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.
57. 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.