



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

Case reference : **LON/00AL/HMF/2025/0756**

Property : **Apt 101, 18 Hawthorne Crescent,
Greenwich, London SE10 9GU**

Applicants : **Katie Austin
Nadia Esani**

Respondent : **Andrew Sears**

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
Stephen Wheeler MCIEH CEnvH**

Date of Decision : **17th March 2026**

DECISION

1. A rent repayment order of £4,050 shall be paid by the Respondent to the Applicants. The said sums must be paid within 28 days of this decision being issued. The Respondent shall also reimburse the Applicants with their application and hearing fees at a total of **£341**. This sum is also to be paid within 28 days of this decision being issued.

Background

2. The Application for a Rent Repayment was brought by the Applicants who are the former tenants of Apt 101, 18 Hawthorne Crescent, Greenwich, London SE10 9GU (“The premises”). The Respondent is their former landlord.
3. The Applicants occupied the premises as assured shorthold tenants protected under the Housing Act 1988. Their tenancy began on 25th July 2023. Although Ms Austin signed a “lodging agreement” as the lead lodger, it was clear that she had exclusive possession of the premises and therefore they had an assured shorthold tenancy.
4. The premises is a two bedroom flats with a shared kitchen. The Applicants shared the premises with Pedro Magalhaes Lino. He gave evidence for the Respondent.
5. The Applicants represented themselves as did the Respondent.

The Applicants’ case

6. The Applicants’ case is that the premises were situated within an additional licensing areas as designated by the London Borough of Greenwich. The Additional licensing area began in January 2024. The Respondent accepted that an additional license was not in place during the relevant period which was April 2024- April 2025 (“ the relevant period”) and that an application for a licence had not been made during that period.
7. According to the Applicants the premises met all the criteria to be licensed under the Additional Licensing scheme. They say that during the relevant

period of April 2024-April 2025 the subject property was occupied by at least three persons living in two or more separate households and occupying the premises as their main residence. They say that there was no license in place for this period therefore the Respondents are liable for a Rent Repayment Order. The total amount claimed is the full rent paid by the Applicants during this period of £18000.

8. Neither of the Applicants were receiving Universal Credit and the Respondents were responsible for the council tax. The Respondents paid for the utilities at the amount of £150 per month .
9. The Applicants said as well as the licensing breach the Respondent's conduct was poor. In their extended reasons they stated the following:

But this case is aggravated far beyond the baseline. Instead of accepting responsibility, the Respondent sought to disguise the arrangement through a false "excluded licence," mischaracterised us as "nuisances," retaliated with eviction notices after we gave lawful notice, attempted to impose a punitive and coercive new tenancy, threatened to remove furniture and utilities under the guise of "compliance," failed to protect our deposit or conduct Right-to-Rent checks for nearly two years, and misused the property for electoral registration while living abroad. He then sought to recast these events as tenant obstruction, and only engaged with the notion of mediation once compelled by the Tribunal, even then resorting to condescension and misrepresentation.

The Respondents' case

10. The Respondent didn't challenge that the premises needed a license but said that he had a reasonable excuse for failing to license which was summarized as follows:

*During the relevant period (March 2024 – April 2025), we faced a combination of serious personal difficulties. I, Anneli, was suffering from depression and anxiety following burnout caused by my employer, which led to an attempted suicide on 12 July 2024 (**Exhibit AS2**), while caring for our newborn and first child, I had been having ongoing therapy from July 2023 and was prescribed sertraline an antidepressant in Sept 2024 (**Exhibit AS3**) Andrew was also receiving therapy for mental health issues (**Exhibit AS4**) and had left employment to start a business after a sustained period of work-related unhappiness. Between June and October 2024 we lived off savings, receiving only a small maternity payment and with no stable income, while*

relocating from Switzerland to Germany to provide stability for our family. in place. The absence of a licence had no impact on the tenants' safety or wellbeing.

11. The Respondent's wife was managing the premises on his behalf.
12. In addition the Respondent challenged the credibility of the Applicants. They said that the Applicants were in a relationship which they had sought to hide. They also made a robust challenge to the conduct allegations made by the Applicants.

The law

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

13. 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 licencing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicensed HMO and under section 95(1) of having control or management of an unlicensed 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.
14. Section 56 of the Act allows Local Authorities to designate additional licencing areas which we are dealing with her.
15. 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”)

18. Chapter 4 of the Act 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.

19. 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.”

20. 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.”

22. It is a defence to an 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.

23. 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.

24. 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.

25. 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).”

26. 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.

27. 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.”

28. 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.

29. 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]).

30. 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%).

31. 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."

32. 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.

33. *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.

34. *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

35. We are satisfied beyond reasonable doubt that the Respondent was the Applicants' landlord during the relevant period. This is evidenced by the Lodging agreement.
36. We are satisfied beyond reasonable doubt that the premises were in an additional licensing area and should have been licensed during the relevant period but were not. The Respondent accepted this.
36. We are satisfied beyond reasonable doubt that the Respondent was the person in control of the premises. We are also satisfied that the Applicants paid the rent they alleged during the relevant period. This was evidenced by rent statement.
37. We are not satisfied that the Respondent had a reasonable excuse during the relevant period. We are sympathetic with the illness suffered by the Respondent's wife but it was his responsibility as the landlord to ensure the premises were licensed. He did arrange for the license at the first opportunity after he realized it was required. Before that it was for him to make the necessary inquiries about the need for a license.
38. Accordingly, we consider that the offence is established for the periods claimed. No license was obtained or even sought during the relevant period.
39. 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):
40. The whole of the rent due was £18000.
41. In relation to utilities these were included in the rent. The Respondent, in his witness statement, had stated that £150 per month of the rent was towards the utilities. The Applicants, in their application, had stated that it was £150 each (i.e. £300 in total) per month but corrected that to £150 at the hearing. We accept that the utilities cost him £150 per month.
42. The Applicants did not receive universal credit so there is no deduction required here.
43. We consider that this offence was moderately serious as there was no license when there should have been. In relation to conduct we don't accept that any of

the Respondent's conduct alleged by the Applicants amounted to harassment. The Applicants were unimpressive in seeking to argue this. They appear to have formulated a harassment case retrospectively in an attempt to bolster their case. They could be criticized themselves for seeking to cover up their relationship when this was unnecessary as a license would still be required. We considered the Respondent and his wife to be a genuine couple who had sought to do the right thing. They were plainly not a large- scale landlord as this was their only property. They also applied for a license once they knew it was necessary. They have clearly learnt by their failure to keep themselves informed. This was a moderate risk property, and no complaints were made about the condition.

44. Taking all of these matters into account we consider that an award of 25% of the rent for the relevant period is appropriate.

45. The calculations in full are the following:

Rent – £18000

Minus utilities - £1800

Equals - £16200

25% = **£4050**

46. This sum should be paid within 28 days.

46. The Applicants were successful in their applications therefore we also require the Respondents to pay their application and hearing fees which total £341. This sum should also be paid within 28 days of receipt of the decision.

Judge Shepherd

17th March 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.