



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

Case reference : **CAM/12UG/HMK/2025/0606**

Property : **96 Ermine Way, Arrington,
Cambridgeshire, SG8 OAH**

Applicant : **Jacob Brimmer**

Respondent : **Calogero Infanti**

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
Mohammed Z Batti MBE
David Hunt**

Date of Decision : **18th March 2026**

DECISION

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1. A rent repayment order of £1728.52 shall be paid by the Respondent to the Applicant. The said sum must be paid within 28 days of this decision being issued. The Respondent shall also reimburse the Applicant with his 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 Applicant who is the former tenant of a room at 96 Ermine Way, Arrington, SG80AH (“The premises”). The Respondent is his former landlord.
3. The Applicants occupied the premises as a assured shorthold tenant protected under the Housing Act 1988. His tenancy began on 15th July 2024. Although the Applicant signed an agreement to occupy room 8 in the Hardwicke Arms Hotel, it was clear that he had exclusive possession of the room, for a rent and term of three months and therefore he had an assured shorthold tenancy.
4. The building in which the Applicant’s room was located had 12 bedrooms and a shared kitchen. The Respondents provided a chronology of occupation which showed that the occupation of the building varied but by at least September 2024 there were over 5 separate occupiers.
5. The Applicants represented themselves as did the Respondent.

The Applicants’ case

6. The Applicants’ case is that the building although styled as a hotel was in fact a House in Multiple Occupation and should have been licensed but were not for the relevant period (July 2024-June 2025). The Respondent subsequently obtained a license on 19th August 2025. He also made various allegations as to harassment, including what he called aggressive texts, retaliatory service of a s.21 notice and entering his room without notice.

7. The Applicant was not receiving Universal Credit and the Respondents were responsible for the bills. They provided a useful summary of the services they paid for.

The Respondents' case

8. The Respondent didn't challenge that the premises needed a license, indeed they had applied for one but he said that his intention and the intention of his company My Space Ltd was to establish a hotel. He and Craig Viner his colleague, had purchased the building in August 2022 as a hotel. It was a Grade 2 Listed Building. It was previously a hotel. They made a plan to restore the building and advertised the rooms as 3 – month - lets. They later met with the Local Authority and got advice that it was an HMO. To all intents and purposes the rooms were let as rooms with a shared kitchen. No board and lodging was provided. Following further discussions with the council an application was made for a license on 22nd April 2025. It was accepted that they had been naive. They denied the allegations of harassment. They accepted that they had entered the Applicant's room when there had been a flood.

The law

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

9. 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.
10. It was accepted that the building met the criteria for a mandatory license by 1st September 2024 as there were 5 separate households in occupation.

11. 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”)

11. 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.

12. 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."

13. 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."

14. 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.

15. 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.

16. 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.

17. 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).”

18. 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.

19. 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.”

20. 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.

21. 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]).

22. 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%).

23. 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."

24. 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.

25. *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.
26. *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

27. We are satisfied beyond reasonable doubt that the Respondent was the Applicant's landlord during the relevant period. This is evidenced by the signed agreement.
34. We are satisfied beyond reasonable doubt that the building in which the premises were located should have been licensed as from September 2024 there were over 5 separate households and there were shared facilities. The period under focus here is between September 2024 and April 2025 when an application was made for a license. This is a period of 8 months.
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 he 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. Indeed they did not seek to argue this. We are however sympathetic with the Respondent. He and his colleague were genuinely confused as to the situation. Once they realized the building was an HMO they applied for a license.
38. Accordingly, we consider that the offence is established for the period of September 2024- April 2025 . No license was obtained or even sought during this 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 £6066.64 (£758.33 x 8 months).
41. In relation to utilities these were included in the rent. The Respondent provided evidence which we accept that the utilities cost him on average £141 per month per room for the 8 - months period.
42. The Applicant did not receive universal credit so there is no deduction required here.
43. We consider that this offence was only moderately serious as there was no license when there should have been however we consider the Respondent was genuine in his intentions albeit naive. In relation to conduct we don't accept that any of the Respondent's conduct alleged by the Applicants amounted to harassment. The Applicant was unimpressive in seeking to argue this. He appeared to have formulated a harassment case retrospectively in an attempt to bolster his case. The Tribunal were impressed by the Respondent's honesty. None of their emails were threatening. Neither can their attempt to get possession be described as retaliatory. They had entered the Applicant's room when an urgent repair was required.
44. Taking all of these matters into account we consider that an award of 35% of the rent for the relevant period is appropriate.
45. The calculations in full are the following:
- Rent – £6066.64
- Minus utilities - £1128
- Equals - £4938.64
- 35% = **£1728.52**
46. This sum should be paid within 28 days.
46. The Applicants were successful in their applications therefore we also require the Respondent 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

27th 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.