



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

**Case References** : **BIR/00CN/HMK/2024/0041**

**Property** : **17 Dovey Road, Moseley Birmingham.  
B13 9NT**

**Applicants** : **Wesley Richmond, William Kyeremeh,  
Zhane Kelly(formerly McCalla)**

**Representative** : **Mr James Cairns.  
Justice For Tenants.**

**Respondent** : **Limestone Contracts Limited formerly  
BC & RC Properties t/a Limestone Contracts**

**Representative** : **Mr Ben Clarke, Director.**

**Type of Application** : **Application for a Rent Repayment Order  
By the Tenant. Part 2 Housing Act 2004  
Ss40, 41, 43 & 44 Housing & Planning Act  
2016**

**Tribunal:** **Tribunal Judge P. J. Ellis  
Mr G. S. Freckelton FRICS**

**Date of Hearing** : **25 March 2026**

**Date of Decision** : **20 April 2026**

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**Decision**

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- 1. The Tribunal is satisfied to the standard required the Respondent is guilty of a housing offence namely having control or managing***

- a house which is required to be licensed pursuant to s72(1) Housing Act 2004.***
- 2. The Applicants severally are entitled to a rent repayment order pursuant to ss43 and 44 Housing and Planning Act 2016***
  - 3. The amount of rent paid in the relevant period for which a repayment order may be made in the case of each Applicant is:***
    - a. Wesley Richmond £2085.13***
    - b. William Kyeremeh £1470.90***
    - c. Zhane Kelly (formerly McCalla)£1778.02***
  - 4. The Tribunal determines 60% of the rent paid is a fair reflection of the seriousness of the offence and other factors set out in s44(4) 2016 Act.***
  - 5. THE TRIBUNAL ORDERS that the Applicants are entitled to a rent repayment order of***
    - a. Wesley Richmond £1251.08***
    - b. William Kyeremeh£882.54***
    - c. Zhane Kelly £1066.81.***
  - 6. The Respondent will also pay Applicants' costs of £337 Tribunal fees.***

## **Introduction**

- 1.** This is an application, issued on 13 August 2024, for a rent repayment order by reason of the failure of the landlord to licence the property as required by the Housing Act 2004 (the 2004 Act) and the Housing and Planning Act 2016 (the 2016 Act). There was also an application for a change of name by Zhane McCalla who produced a copy of a registered Deed Poll changing her surname to Kelly. The application was unopposed. The Tribunal directed that the name of Zhane McCall be changed on the record to Zhane Kelly.
- 2.** The Respondent is Limestone Contracts Limited formerly BC and RC Properties Limited. The Respondent changed its name to on 24 November 2024. Mr Ben Clarke a director of the Respondent who represented the Respondent and gave evidence and made submissions on its behalf, confirmed Limestone Contracts was the same company as BC & RC Properties, the company named on the relevant tenancy agreements.

3. The relevant period during which the offence was committed was 11 March 2023 to 13 August 2023 ending when the Respondent applied for the appropriate licence on 14 August 2023.
4. The Tribunal struck out the application on the grounds that the application was out of time but upon receiving submissions from the Applicants regarding correspondence notifying an intention to issue an application received by the Tribunal on 12 August 2024 the application was restored. Directions for service of evidence and preparation for hearing were issued on 12 August 2025.
5. The matter came on for determination by this Tribunal by video conference call on 25 March 2026. The Applicants were represented by Mr James Cairns an employee of Justice for Tenants. Mr Clarke appeared for the Respondent.
6. The reason for the claim was that the property was at the material time occupied by up to five people in more than two households and licensable under ss55 and/or 56 of the 2004 Act. Accordingly, an offence was committed under s72 of the 2004 Act entitling the Applicants who were three of the occupants at the relevant time, to make a claim for a rent repayment order under ss40, 41, 43 & 44 of the 2016 Act.
7. By his statement made on 24 September 2025 the Respondent accepted that there was a period during which the property was not licensed as a house in multiple occupation (HMO).

### **The Property**

8. The Tribunal did not inspect 17 Dovey Road Moseley Birmingham B13 9NT (the Property). The description of the property is taken from the non-controversial description by the Applicants confirmed by substantially unchallenged written and oral evidence of Zhane Kelly.
9. The Property was a five bedroom, two-storey mid-terrace house with a shared kitchen and bathroom and rear garden. The Applicants were each tenants of a

room in the Property. There are two bedrooms on the ground floor off a hallway which leads to a kitchen with rear door onto the garden. Three further bedrooms and a bathroom are on the upper floor.

10. The Property is supplied with gas central heating and double glazing throughout.
11. In the relevant period the Property was occupied by the Applicants and another person who is not a party to these proceedings. Also, the Respondent had permitted a person to occupy one room on a casual basis let through the Air BandB agency without telling any of the other tenants.

### **The Tenancy Agreements**

12. Each of the Applicants occupied a room in the Property under tenancy agreements in substantially the same terms.
13. Ms Kelly's tenancy of the property commenced on 27 January 2023 and ended when she vacated it on 25 November 2023. Her rent in the relevant period was £650.00pcm.
14. Mr Kyeremeh's tenancy of the property commenced on 1 February 2023 and ended upon his departure on 30 April 2024 His rent in the relevant period was £550.00pcm.
15. Mr Richmond's tenancy commenced on 11 March 2023 and ended upon his vacation of the property on 09 September 2023. His rent in the relevant period was £750.00pcm.
16. By Clause 2 of the agreements "*The Tenant will have exclusive occupation of the designated room and will share with the other occupiers of the Property the use and facilities of the common parts of the Property (including such bathroom, toilet, kitchen and sitting room facilities as may be at the Property).*"

17. Clause 43 imposed an obligation on the tenants to keep the Property in good repair and condition and in good decorative repair.
18. By clause 23 of the Applicants tenancy agreements the Respondent was responsible for the payment of the following utilities and other charges in relation to the property: electricity, water/sewer, internet and natural gas.
19. The agreement also provided that “*Subject to the provisions of this Agreement, apart from the Tenant, no other persons will live in the Property without the prior written permission of the Landlord, except for:*” at clause 3 although no person was named in the clause.

### **The Parties Submissions**

20. The Applicants claims for rent repayment orders were all presented on the basis that they did not constitute a single household, consequently the Property was an HMO which required a licence under Part 2 Housing Act 2004. In addition, the Applicants alleged the Respondent’s conduct during their time as tenants was relevant conduct which the Tribunal should consider under s44 of the 2016 Act. Much of the hearing was taken up with consideration of the parties respective allegations of misconduct by the other.
21. Ms Kelly by her written statement and her oral evidence complained that the Respondent had neglected to repair damage in the wall of her room. She presented photographs of the alleged damage. The Respondent had used inappropriate language when addressing her making her feel uncomfortable by calling her “Babe” and using that term in emails to her.
22. When a person turned up unexpectedly and without notice to her or the other tenants they were concerned the landlord was interfering with their rights of sole occupation of the Property.
23. A further complaint was that although he seemed professional at first the Respondent later became threatening. He did not interfere with her or other

tenants but reminded her that he had keys and he could let himself into the Property if they were not present.

24. There was a CCTV camera installed in the kitchen. Ms Kelly feared the purpose of the installation was to watch her and the other tenants. The garden was not maintained, and no garden tools were provided for their use in keeping the garden in a reasonable condition.
25. Mr Richmond complained that there was rodent infestation on the loft of the property requiring a attention. He also complained that there was disrepair of a hole in the kitchen ceiling allowing water leakage from the bathroom above. He also alleged the Respondent appeared professional at first but later became more forceful making him feel uncomfortable over inspections.
26. Mr Kyeremeh corroborated the evidence of the other claimants.
27. No other people who were tenants or occupiers at the time attended to give evidence.
28. In answer to questions from the Tribunal Ms Kelly confirmed the purpose of the photograph of the damage to the wall was to demonstrate it was there at the time of taking up occupation to protect herself from allegations of causing damage.
29. Mr Clarke confirmed the Property was unlicensed. He had acquired this and other properties in order to run a business of property letting. He established the business in June 2022. At the relevant time his property portfolio was twelve properties, but he has since reduced the size of the portfolio to two owned by the Respondent company although Mrs Clarke still owns some properties. Of the properties in the Respondent's portfolio, four were owned by the company, including the subject property, the remainder were acquired on a rent for rent basis.

30. When the subject property was acquired, Mr Clarke was told by the selling agent it was “HMO ready”. He took that to mean he could use it as he intended without doing anything more.
31. Mr Clarke had received some training in landlords’ duties from Progressive Property of Peterborough. He did not subscribe to any newsletters or landlords’ information schemes. Although other properties in the portfolio had HMO licences he relied on the information given to him by the sellers agent without checking the position for himself.
32. In 2024 the trading conditions became very difficult. He decided the Respondent was not likely to succeed as he had hoped and decided to reduce the business operation.
33. In answer to the Applicants submissions, he said the property was in good condition at the start of the tenancies. He adduced photographic evidence of the rooms showing their condition to support his claim. He asserted the hole in the kitchen ceiling was caused by misuse of the bathroom above. He had warned the tenants by WhatsApp message not to splash water. He had arranged a visit by his plumber on multiple occasions in response to tenants’ requests.
34. He further alleged the tenants were careless with cleaning away food scraps in the kitchen and generally with lack of cleaning the communal areas necessitating the appointment of cleaners.
35. The CCTV cameras showed the kitchen and the street at the front of the Property. They were installed for the safety of the tenants.
36. He acknowledged he had called Ms Kelly “Babe” or Baby and apologised for doing so. The comments were made at a time when he had invited Ms Kelly to accept a job with the Respondent acting as its manager. The job would have included use of a car a photograph of which was presented to Ms Kelly. The photograph was produced to the Tribunal.

37. Mr Clarke's written statement included copies of various messages exchanged with the Applicants and other persons not included in this case indicating occasional complaints by him about the state of cleanliness of the property, and of smoking contrary to the terms of the tenancy agreement.
  
38. Mr Clarke gave evidence regarding the Respondent's financial circumstances including copies of recent accounts. The accounts for year ending 31 December 2023 showed net profit of £42,122.00 on turnover of £424, 277 up from 205,027 in 2022 when the business started and the acquisition of properties. The balance sheet showed capital and reserves of £33,314.00 profit in 2022 was below £6000.00
  
39. Mr Clarke did not give any evidence regarding the cost of providing the utilities described in cl23 of the tenancy agreements. The Tribunal used its experience to ascertain a reasonable
  
40. Mr Clarke prepared his written statement in September 2025. In it he stated his income had fallen below £2,000 per month and his business was close to collapse. At the hearing he reiterated that his income was not in a good position. He had not made a success of his plan to make an income from property letting.
  
41. He acknowledged that there was no HMO licence in place as alleged but as soon as he learned of that position, his wife Rhoda Clarke made an application for one. On 28 March 2024 the local housing authority notified Mrs Clarke of its intention to grant a licence to her on behalf of the Respondent.
  
42. None of the Respondent, Mr or Mrs Clarke have not been convicted of any housing offences before or since commencement of these proceedings.

## **The Statutory Framework.**

43. The 2016 Act comprises a comprehensive framework for identifying the offences created by the legislation and the consequences of failing to comply with it. The provisions relevant to this case are set out below.

44. S40 2016 Act provides:

*(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.*

*(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.*

*(the general description of offences has been omitted)*

*Act*

*Section*

*5 Housing Act 2004*

*72(1)*

45. S72(1) Housing Act 2004 provides “

*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. Subsection 5 provides*

*In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse—*

*(a) for having control of or managing the house in the circumstances mentioned in subsection (1),*

46. S43 2016 Act provides that a Tribunal may make a rent repayment order only if made under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies, whether or not the landlord has been convicted. By s43(3) the amount of a rent repayment order

in the case of an application by a tenant is to be determined in accordance with s44.

47. S44 2016 Act provides that where a First-tier Tribunal decides to make an order under s43 the amount to be repaid must not exceed the rent paid in respect of the unlicensed period “*less any relevant award of universal credit paid ...in respect or rent under the tenancy during that period*” s44(3)(b). 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 been convicted of an offence to which the Chapter applies.

### **Discussion and Decision**

48. Mr Clarke on behalf of the Respondent has not pleaded any defence to the allegation of managing or controlling an unlicensed HMO. In fact, he has admitted the failure to obtain a licence blaming his reliance on a representation made by a third party that the Property was ready for use as a residential letting.
49. However, the Tribunal is obliged to consider whether the Respondent had a reasonable excuse for not having a licence.
50. The Tribunal is satisfied the Respondent did not have a reasonable excuse. The onus is on the owner of a property to ensure compliance with relevant regulations. Although there are situations where it is reasonable to rely on the advice or representation of a third party such as a representative of the local housing authority in this case Mr Clarke did not verify the information he was given regarding the readiness of the Property for letting by an agent for the seller of the Property.
51. There was insufficient evidence to support the alleged assurance. Mr Clarke was vague about the circumstances of the alleged assurance. Even if it was given as alleged the Tribunal cannot be satisfied the assurance was intended to

cover the proposed use of the Property or that the person making the assurance was under a duty to give that assurance.

52. Accordingly, the Tribunal finds to the standard required that the Respondent has no reasonable excuse for managing or controlling a house in multiple occupation without a licence. Consequently, the Applicants are entitled to pursue a rent repayment order pursuant to s43 2016 Act.

53. The amount payable s44 of the 2016 Act the Tribunal must consider the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of an applicable offence (s44(3)(b)). None of the Applicants was in receipt of Universal Credit. The Respondent has not been convicted of an offence. The principal area of dispute between the parties was in connection with their respective allegations of misconduct by the other.

54. The Applicants complaints of lack of attention to maintenance matters such as a water leak at the kitchen sink, unintended repairs, suspected rodent infestation do not amount to significant misconduct. Mr Clarke's remark to Ms Kelly was offensive but did not amount to a threat of physical abuse. The landlords complaints relating to failure to maintain the property were not serious breaches of the tenancy agreements.

55. Having considered the respective parties' complaints about the other the Tribunal does not regard their complaints of misconduct are such as to affect the determination of any award of rent repayment.

56. In *Newell v Abbott* [2024]UKUT 181(LC) WL 03165724 Mr Martin Rodger KC conducted a review of recent decisions of the Upper Tribunal in appeals involving licensing offences. At paragraph 57 he said his review “*illustrates that the level of rent repayment orders varies widely depending on the circumstances of the case. Awards of up to 85% or 90% of the rent paid (net of services) are not unknown but are not the norm. Factors which have tended to result in higher penalties include that the offence was committed deliberately, or by a commercial landlord or an individual with a larger property portfolio,*

*or where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work being required, and mitigating factors which go some way to explaining the offence, without excusing it, such as the failure of a letting agent to warn of the need for a licence, or personal incapacity due to poor health.”*

57. In *Acheampong v Roman* [2022]UKUT 239 (LC) HHJ Cooke set out the four stage approach to determining a repayment claim which in summary are
- 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.*
  - 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).*
58. The Tribunal has had regard to the four stages identified in *Acheampong* and the dicta of Mr Martin Rodger KC in *Newell* and the cases referred to by the learned judge when making its decision.
59. The relevant period in which rent was paid was 11 March -13 August 2023. The rent paid and utilities consumed in that period by each Applicant is set out in the schedule attached. In summary the Tribunal has calculated the maximum rent in the period for each Applicant under the first and second stages is:
- a. Wesley Richmond: £2085.13

- b. William Kyeremeh: £1470.90
- c. Zhane Kelly: £1778.02

60. Although the Respondent's accounts show payments for utilities the Respondent was unable to assist the Tribunal with details of any of the costs appertaining to this property. The Tribunal has therefore used its own knowledge and experience to arrive at what it considers to be a reasonable amount to cover gas, electric, water, sewage and internet charges as detailed on the attached calculation schedule.

61. As far as stages three and four are concerned the Tribunal does not consider this offence to be of the utmost seriousness. Had the Respondent applied for a licence at the right time it is likely one would have been readily granted as appears to be the case when an application was made. There was no deliberate intention on the part of the Respondent to avoid its responsibility. The tenants were not exposed to a substantial risk of harm by a prolonged period without a licence or at all.

62. However, the Respondent was seeking to establish a business of property letting with a portfolio of twelve properties. Failure to obtain a licence was not inadvertence but mismanagement of the portfolio. The Tribunal is satisfied that a fair determination is a discount of 40% from the maximum possible award for each Applicant as follows:

- a. Wesley Richmond: Maximum possible award £2085.13. 60% = £1251.08
- b. William Kyeremeh: Maximum possible award £1470.90 60% = £882.54
- c. Zhane Kelly: Maximum possible award £ 1778.02. 60% = £1066.81

63. In addition the Applicants are entitled to the return of Tribunal fees paid of £337.

## **Appeal**

64. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in

writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge P.J.Ellis