



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

Case References : **BIR/00FY/HMF/2025/0003**

Property : **503 Marco Island Huntingdon Street
Nottingham NG1 1AR**

Applicant : **Amir Arsalan**

Representative : **None**

Respondent : **Theo Ellinas**

Representative : **Nest Lettings**

Type of Application : **Application for a Rent Repayment Order
By the Tenant. Part 3 Housing Act 2004
Ss40, 41, 43 & 44 Housing & Planning Act
2016**

Tribunal: **Tribunal Judge P. J. Ellis
Tribunal Member
Mr R. Chumley Roberts MCIEH JP**

Date of Hearing : **22 December 2025**

Date of Decision : **20 January 2026**

Decision

- ***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 s95(1) Housing Act 2004***
- ***The Applicant is entitled to a rent repayment order pursuant to ss43 and 44 Housing and Planning Act 2016***
- ***The amount of rent paid in the relevant period for which a repayment order may be made is £1875.***
- ***The Tribunal determines 40% of the sum of £1875 is a fair reflection of the seriousness of the offence. Accordingly, the Tribunal orders that the Applicant is entitled to a rent repayment order of £750.00.***

Introduction

1. This is an application for a rent repayment order. The grounds for the application are that the property is in an area of selective licensing, but the property was not so licensed. Selective licensing was introduced into the area in which the property is situated with effect from 1 December 2023. The application was issued on 10 March 2025 seeking repayment of rent for twelve months.
2. By the application the Applicant sought an extension of the period of repayment to commencement of the selective licensing in the area and a further ten days “under the forthcoming Renters Rights Bill. The Tribunal has no jurisdiction to entertain these additional claims.
3. Directions for preparation and service of evidence were given on 16 June 2025. The Applicant complied with the direction, but the Respondent failed to comply with all directions save those given after the abortive hearing on 9 October 2025.

4. The matter was listed for hearing on 9 October 2025 at the Nottingham Justice Centre. Unfortunately, both parties were late arriving at the hearing room. The Tribunal gave further directions specifically directing the Respondent to address the matter of the want of registration of the property. The Applicant was given leave to make such further submissions in reply as he considered necessary. Upon receiving the parties' further submissions the matter was listed for final determination by the Tribunal on the Applicant's submissions and the parties' further papers on 22 December 2025.

The Parties Submissions

5. There is no dispute the property was unlicensed for a period not less than twelve months ending with the date of the application (the relevant period). There was also no dispute the Applicant was the tenant throughout the relevant period nor that the Respondent was the landlord throughout the relevant period. At all material times the Respondent retained Nest Lettings as his agent although no evidence was submitted regarding the terms of their agency.
6. The Respondent did not address the direction to explain the want of licensing. The only reference to the selective licence was contained in the written statement of Sally McQuillan owner of Nest Letting that "I would also like to note that while Theo was late in renewing his selective licence, the property itself was fully compliant with all the requirements for obtaining the licence. This included a valid and up-to-date EPC, electrical safety certificate both of which were in place." . Further, by his submission the Respondent who accepted he made a late application for a selective licence but that he applied for one as soon as he was aware he needed one. Other evidence filed by the Applicant in connection with his enquiries into the existence of a licence indicated the Respondent made an application for a licence after this application was issued. The property is now licensed.
7. The Tribunal decided to proceed without a further oral hearing as it was satisfied beyond reasonable doubt on the evidence of both sides that the

Respondent has committed an offence to which Chapter 4 s43 Housing and Planning Act applied (the 2016 Act).

8. The area of dispute between the parties related to allegations of misconduct by both sides. The Applicant in his written submissions and at the hearing on 9 October 2025 alleged that the Respondent or his agent had failed to maintain the property. He or the agent on his behalf had neglected or ignored his calls for maintenance needs including leaks of water. The Respondent and the agent denied all the allegations and adduced written evidence from his agent's employee that the Applicant had been a very difficult tenant causing her stress.
9. In answer to questions from the Tribunal the Applicant admitted that throughout the relevant period he had been in receipt of universal credit including a sum for housing benefit. The rent from March 2024 to December 2024 was £700pcm. The rent was increased to £775 pcm with effect from January 2025 making the total rent susceptible to a repayment order of £8550. Universal credit was £550pcm. The Applicant claimed repayment of £8475.00, the difference of £75 being one month paid at the lower level after the increase. Total universal credit paid in the relevant period was £6600.00

The Property and the Tenancy Agreement

10. The Tribunal did not inspect the property. Its description is taken from the evidence of the Applicant. The property is a 42square metres studio style apartment comprising kitchen living room and bedroom. The only enclosed room is the bathroom.
11. The Applicant took on the tenancy with effect from 8 April 2022. The tenancy agreement requires the tenant to pay all utilities and outgoings. The rent of £700pcm did not include any services. The Applicant left the property on 15 May 2025.

The Statutory Framework.

12. 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.

13. 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

1 Housing Act 2004

95(1)

14. S95(1) Housing Act 2004 provides “A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

(b).....

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) 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), or

(b).....

15. 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.

16. 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 of 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

17. The Tribunal is satisfied the Respondent, by his failure to obtain a licence for the property as required, has committed an offence to which Chapter 4 Housing and Planning Act 2016 applies. Consequently, the Applicant is entitled to apply for a rent repayment order pursuant to s41(1) of the 2016 Act.

18. According to documentary evidence submitted by the Applicant, the property fell within an area designated for selective licensing for the period 2023-2028 but the Respondent admits to having overlooked his obligation to make a licence application until 2 April 2025 which was granted by the time of the hearing.

19. The Tribunal is obliged to consider whether or not the Respondent has a reasonable excuse for not having a licence. A specific direction was issued requiring the Respondent to explain why the property was unlicensed. No explanation was offered other than oversight on his part. As a landlord the Respondent is obliged to ensure he is familiar with all obligations associated with renting property. The Tribunal were not shown any evidence the Respondent had employed the agent to take responsibility for ensuring compliance with regulations and obligations. The Tribunal is satisfied the Respondent was responsible for ensuring compliance with regulations but failed to do so. He had no reasonable excuse for failure to obtain a licence throughout the relevant period although his evidence suggests an application made at the right time would have been successful without additional work.
20. The principal area of dispute between the parties is in connection with their respective allegations of misconduct by the other. The Applicant complains of lack of attention to maintenance matters particularly in connection with a storage heater and a water leak at the kitchen sink. The Respondent and his agent strongly denied any lack of attention to the issues of maintenance and made their own allegations of difficult behaviour on the tenant's part which caused unnecessary stress for the agent's employee.
21. Having considered the respective parties' complaints about the other the Tribunal does not regard their complaints of misconduct as such as to affect the determination of any award of rent repayment.
22. The Respondent did not give any evidence regarding his financial circumstances. He has not been convicted of any offences to which the relevant legislation applies.
23. 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.*”

24. 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).*

25. 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.
26. The whole rent paid in the relevant period was £8475 according to the Applicant. No element of the rent represented payment for utilities or other services only benefitting the tenant. In the relevant period the Applicant received universal credit of £6600. The rent identified pursuant to s44(3) is £1875.
27. Had the Respondent applied for a licence upon implementation of the selective licensing scheme in 2023 the application would have been successful in all probability. The Tribunal finds that the Respondent's fault is not a matter of significant seriousness and determines 40% of the sum of £1875 is a fair reflection of the seriousness of the offence. Accordingly, the Tribunal orders that the Applicant is entitled to a rent repayment order of £750.00 to be paid by the Respondent.

Appeal

28. 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

