



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

Case reference : **LON/00AK/HMG/2025/0674**

Property : **155 Winchester Road, Enfield, N9 9EX**

Applicants : **Salim Leulmi
Ichrak Omari**

Respondent : **Can Yildiz**

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
Fiona Macleod MCIEH**

Date of Decision : **6th May 2026**

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DECISION

A rent repayment order of £4666 shall be paid by the Respondent to the Applicants within 28 days. The Respondent shall also reimburse the Applicants with their hearing and application fees of £341 within 28 days.

Background

1. This is an application for a Rent Repayment Order (RRO) made pursuant to an alleged offence under s.41 of the Housing and Planning Act 2016 for the following offence:

Having control of, or managing, an unlicensed house, under Part 3 s.95(1) Housing Act 2004

2. It is alleged that the Respondent failed to license premises occupied by the Appellant. The local authority, Enfield designated a selective licensing area on 1st September 2021 and due to end on 31st August 2026. The premises at 155 Winchester Road, Enfield, London, N9 9EX (The premises) are located within the selective licensing area.
3. The Applicants occupied the premises as Assured Shorthold tenants. The premises consist of a self contained studio flat with bathroom and kitchen. The Applicants lived at the premises from the 14 February 2023 and moved out on the 26th September 2024. The Respondent was their landlord.
4. The “relevant period”, i.e. the period chosen by the Applicants for their RRO claim was 14th May 2023 – 13th May 2024. They seek to recover £9832 for this period. During the relevant period they were both in receipt of the housing element of Universal Credit.
5. In their application dated 1st May 2025 the Applicants claimed that there was no apparent smoke/fire alarm provision in the common parts although there were gas detectors. They alleged that the Respondent failed to give them gas safety certificates contrary to his duty under s 36 of *The Gas Safety (Installation and Use) Regulations 1998* . They also alleged that the Respondent failed to provide an electrical safety certificate, an EPC or a copy of the How to Rent Guide at the outset of the tenancy.

The hearing

6. The Respondent failed to comply with the directions but had submitted various documents and attended the hearing. The hearing took place remotely on 6th May 2026. The Applicants were represented by Edward Phillips of Justice for Tenants and Mr Yildiz represented himself.
7. Mr Philips outlined the case. The ward in which the premises were located were subject to a selective licensing scheme which expired in August 2026 and had been in place since 2021. The Applicant's claim amounted to £13200 in rent paid from which Universal Credit was subtracted which meant he total claim was £9832.
8. Mr Leulmi said he only had the tenancy agreement in his documents and did not think he had been given any other documents despite the tenancy suggesting that he had received:

EPC

EICR CERTIFICATE

GAS SAFETY CERTIFICATE

HOW TO RENT GUIDE

9. He said someone had inspected the premises but he was not sure if a gas safety check had been carried out. The premises had a gas supply fed by a communal boiler which powered the heating and hot water. Other than that the premises were powered by electricity which was paid for on a meter which the Applicants paid for. He did not believe they had received gas safety certificates. He said the premises were in a good smart condition. When they moved out there were issues in recovering their deposit.
10. The Respondent accepted that the premises should have been licensed during the relevant period. He said he had used David Key as property managers. He said full management was in place with a guaranteed rent. David Key were based in an office on Green Lanes in Haringey. They had dealt with all matters to do with the tenancy. They had since closed their doors and were uncontactable which was also an issue for the Applicants who could not recover their deposit. He took back management of the premises in March 2024. He was told that the premises needed a license by a friend and applied to get one in 2025. He accepted that there was a single council tax for the building which contained 4 bedsits. He also accepted that an EPC assessment had been carried out for the full building in 2015 and not for flat D until 13th March 2025. He admitted that he had started to receive the rent directly on 18th March 2024

having taken back the property from David Key. He said he had 2 other properties in Enfield. He had only applied for their license recently.

The law on Rent Repayment Orders

The Housing Act 2004 (“the 2004 Act”)

11. 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 licensing 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.
12. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which states.

254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if–

(a) it meets the conditions in subsection (2) (“the standard test”);

(b) it meets the conditions in subsection (3) (“the self-contained flat test”);

(c) it meets the conditions in subsection (4) (“the converted building test”);

(d) an HMO declaration is in force in respect of it under section 255;
or

(e) it is a converted block of flats to which section 257 applies.

13. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence under the mandatory licensing scheme. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

14. Section 80 Housing Act 2004 deals with the designation of Selective Licensing which is what we are dealing with here:

80 Designation of selective licensing areas

(1) A local housing authority may designate either–

(a) the area of their district, or

(b) an area in their district,

as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

(2) The authority must consider that–

(a) the first or second set of general conditions mentioned in subsection (3) or (6), or

(b) any conditions specified in an order under subsection (7) as an additional set of conditions,

are satisfied in relation to the area.

(3) The first set of general conditions are–

(a) that the area is, or is likely to become, an area of low housing demand; and

(b) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, contribute to the improvement of the social or economic conditions in the area.

(4) In deciding whether an area is, or is likely to become, an area of low housing demand a local housing authority must take into account (among other matters)–

(a) the value of residential premises in the area, in comparison to the value of similar premises in other areas which the authority consider to be comparable

(whether in terms of types of housing, local amenities, availability of transport or otherwise);

(b) the turnover of occupiers of residential premises;

(c) the number of residential premises which are available to buy or rent and the length of time for which they remain unoccupied.

(5) The appropriate national authority may by order amend subsection (4) by adding new matters to those for the time being mentioned in that subsection.

(6) The second set of general conditions are–

(a) that the area is experiencing a significant and persistent problem caused by anti-social behaviour;

(b) that some or all of the private sector landlords who have let premises in the area (whether under leases or licences) are failing to take action to combat the problem that it would be appropriate for them to take; and

(c) that making a designation will, when combined with other measures taken in the area by the local housing authority, or by other persons together with the local housing authority, lead to a reduction in, or the elimination of, the problem. “Private sector landlord” does not include [a non-profit registered provider of social housing or]¹a registered social landlord within the meaning of [Part 1](#) of the [Housing Act 1996 \(c. 52\)](#).

(7) The appropriate national authority may by order provide for any conditions specified in the order to apply as an additional set of conditions for the purposes of subsection (2).

(8) The conditions that may be specified include, in particular, conditions intended to permit a local housing authority to make a designation for the purpose of dealing with one or more specified problems affecting persons occupying [Part 3](#) houses in the area. “Specified” means specified in an order under subsection (7).

(9) Before making a designation the local housing authority must–

(a) take reasonable steps to consult persons who are likely to be affected by the designation; and

(b) consider any representations made in accordance with the consultation and not withdrawn.

(10) [Section 81](#) applies for the purposes of this section.

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”)

16. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to

be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

17. Chapter 4 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.

18. 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."

19. 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."

20. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities has been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

21. It is a defence to the section 95(1) 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 (section 95(4)(a), 2004 Act). In this case Mr Newell maintained that he had such a defence in relation to the Flat.

22. 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.

23. 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.

24. 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).”

25. 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.

26. 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.”

27. 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.

28. 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) ARRO 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]).

29. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osseman* [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%).

30. 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."

31. 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.

32. *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.

33. *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

34. We are satisfied beyond reasonable doubt that the Respondent was the Applicants' landlord during the relevant period. We are satisfied beyond reasonable doubt that the premises were in a selective licensing area and should have been licensed during the whole relevant period but were not.

35. 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.
36. We are not satisfied that the Respondent had a reasonable excuse during the relevant period. The fact that he used the agents David Key did not excuse him from responsibility for ensuring the premises were licensed. He did not provide the Tribunal with the management agreement. Although we have some sympathy because he had been let down by the agents, ultimately he would have been the responsible party for ensuring the premises were compliant. He had other properties in the same borough which he had not licensed until recently. We do not consider he was a bad landlord indeed the premises were in a smart condition but the fact remains they were unlicensed and the Respondent was responsible for this.
37. Accordingly, we consider that the offence is established for the periods claimed. No license was obtained or even sought during the relevant period.
38. 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):
39. The whole of the rent due was £13200. Once Universal Credit paid to the Applicants is deducted this amounts to £9832.
40. In relation to utilities a notional deduction needs to be made for the services the Respondent paid for. We assess this as £500 for 12 months of gas which powered the heating and hot water in the premises. We had no evidence on which to base a council tax deduction.
41. We consider that this offence was moderately serious as the Applicants were potentially placed at risk by virtue of the fact that the premises were not licensed. The Respondent did have other properties and ought to have known about the licensing requirement earlier than he did.

42. We were not impressed by the conduct arguments raised by the Applicants. We could not find beyond reasonable doubt that the Applicants had not been given necessary documentation at the start of the tenancy. Although the premises were small the Applicants thought they were smart and there was no significant disrepair. Speculation as to the status of planning permission when the premises were converted was unhelpful.

43. Taking all of these matters into account we consider that an award of 50% of the rent for the relevant period is appropriate. This amounts to £4666. This sum should be paid within 28 days.

44. The Applicants were successful in their application 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

6th May 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.