FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/OOBH/HMF/2025/0822**
Property	:	**14a Osborne Road, London E10 5QW**
Applicant	:	**Liam Miller**
Representative	:	**None**
Respondent	:	**Abdullahi Abdillahi**
Representative	:	**Mr F Pourveastegar**
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 N O'Brien** **Duncan Jagger MRICS**
Date of Decision	:	**29 April 2026**

DETERMINATION

<u>DECISION OF THE TRIBUNAL</u>

(1) The Tribunal makes a rent repayment order against the Respondent in the total sum of £1,875.

(2) The Respondent must refund the fees paid by the Applicant in the sum of £341.

(3) The above sums are to be paid within 28 days of receipt of this determination.

The Application

1. On 8 June 2025 the Tribunal received an application under s.41 of the Housing and Planning Act 2016 (the 2016 Act) for a Rent Repayment Order. The Applicant asserts that the Respondent committed an offence of having control of or managing an unlicenced house that was required to be licensed pursuant to a selective licencing scheme introduced under Part 3 of the Housing Act 2004 but was not licenced. He seeks a rent repayment order in the sum of £15,000 being the rent paid in respect of the period 22 September 2023 to 21 September 2024.

2. The Tribunal issued directions on 8 October 2025 and subsequently the Tribunal listed this matter for a hearing on 27 March 2026.

Background

3. The Applicant was, together with a Ms Louise Worrell, an assured shorthold tenant of the subject premises from 19th September 2019 until 21 September 2024. The premises consist of two-bedroom flat in a converted Victorian terraced house in the London Borough of Waltham Forest.

4. The premises were located in a ward within the London Borough of Waltham Forst (LBWF) which was subject to a selective licencing scheme which was in place at the commencement of tenancy. That selective licencing scheme lapsed on 21 March 2020 and another selective licencing scheme was introduced which commenced on 1 May 2020. This required all privately let dwellings in all bar 2 of LBWF's 22 wards to be licenced pursuant to Part 3 of the Housing Act 2004. It is common ground that the premises were required to be licenced pursuant to both schemes and that the Respondent held a licence under the first licencing scheme, which lapsed when that scheme ended, but did not apply for a further licence until December 2024.

The Hearing

5. The Applicant attended the hearing in person. The Respondent also attended and was represented by Mr Pourvastegar.

6. The Tribunal was provided with a 226-page bundle prepared by the Applicant for the hearing and a 144-page bundle prepared by the Respondent. In addition we considered skeleton arguments filed by both parties.

Has an Offence been Committed?

7. In order to make a rent repayment order against a person under s.40 of the 2016 Act the Tribunal has to be satisfied to the criminal standard (beyond all reasonable doubt) that the person has committed a relevant offence (s.43 of the 2016 Act). In this case the Applicant asserts that the Respondent committed an offence under s.95 of the Housing Act 2004 of being in control of or managing a

house that was required to be licenced under Part 3 of the 2004 Act (Selective Licencing) but was not so licenced. Mr Abdullahi accepts that he was in control of and managing an unlicenced house under Part 3 of the 2004 Act but asserts that he has not committed an offence because he had a reasonable excuse.

Reasonable Excuse

8. It is a defence to proceedings under s.72(1) if the person had a reasonable excuse for being in control of or managing an unlicenced HMO (s.72(5) of the 2004 Act).

9. The offence of having control of or managing an unlicensed HMO contrary to section 72(1) of the 2004 Act is a continuing offence which is committed by the person having control or managing the HMO on each day the relevant HMO remains unlicensed. To avoid liability for the offence the person concerned must therefore establish the defence of reasonable excuse for the whole of the period during which it is alleged to have been committed.

10. Mr Pourvestegar points to a number of matters which he says either individually or cumulatively amount to a reasonable excuse. Firstly he submits that the London Borough of Waltham Forest failed to publicise the scheme as they were obliged to do pursuant to Regulation 9 of the Licencing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions)(England) Regulations 2006. Secondly he points to the fact that Mr Abdulhahi enquired about renewing his licence prior to the expiry of the first scheme and was told by the council that he could not renew until the scheme portal was ‘live’ and that he would be contacted in due course once the portal was up and running. He was not given the option of submitting his application before the commencement of the second scheme or of submitting his application in writing. Thirdly, he points to a number of health crises experienced by Mr Abdillhai’s family in 2020. Firstly his mother contracted COVID 19 and was seriously unwell for a prolonged period afterwards. Secondly his father was diagnosed with cancer in 2020 and required extensive surgery. Mr Abdilhai is the eldest son of the family and most of the responsibility of looking after his parents fell to him at this time.

11. Finally Mr Abdilhai has health issues of his own. He sustained a hypoxic brain injury in February 2008 following a post-operative cardiac arrest when he was 25 years old. This has left him with a significant and permanent neurological deficit. He finds it difficult to concentrate and to remember tasks and his cognitive processing capacity is reduced. He also experienced psychological symptoms such as flashbacks and depression. In his bundle he has included a report from a Dr Cockerell, Consultant Neurologist dated 29 September 2011 which sets out the extent of the impairment experienced by the Respondent following his brain injury. Mr Abdillahi is currently employed in a computer-based role for a sales company. He has included in his bundle a report from an occupational therapist who considered that he required reasonable adjustments to cater for his neurological symptoms such as frequent breaks and increased working from home, and flexible working patterns.

12. Mr Abdillhai was married in September 2024 and in his statement says that his wife now helps him with his finances and with life 'admin'. He states that it was his wife who prompted him to re-apply for a selective licence in December 2024.

13. Whilst we have considerable sympathy for the Applicant particularly with regard to the difficulties he has faced due to his brain injury, we do not consider that he had a reasonable excuse for the period during which the Applicant seeks a rent repayment order. Firstly, notwithstanding any failure on the part of LBWF to properly advertise the selective licencing scheme, it is common ground that the Respondent was aware that a new scheme was being introduced and that he would at some stage require a licence. Secondly while a failure on the part of LBWF to notify him that the portal was 'live' might have provided him with a reasonable excuse in 2020 or even in 2021, in our view it would be reasonable to expect him to ascertain the position for himself by 2022 at the latest. The same can be said for the health issues experienced by his family in 2020. Thirdly we do not consider that his own health issues would have made it significantly more difficult for him to apply for a licence, and certainly not over a period of nearly 4 years. Consequently we are not satisfied that the Respondent had a reasonable excuse for not having a licence during the relevant period being 19 September 2023 to 18 September 2024.

Quantifying the RRO

14. The leading authority on the correct approach to quantifying a RRO is ***Acheampong v Roman* [2022]**. The Upper Tribunal established a four-stage approach which this Tribunal must adopt when assessing the amount of any order (at paragraph 20):

    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 is expected to make an informed estimate where appropriate.
    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) an 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 percentage of the total amount applied for is then the starting point (in the sense 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)."

15. Section 44(4) of the 2016 Act provides;

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.

16. In ***Newell v Abbot* [2024] UKUT 181 (LC)** considered an appeal which has a number of similarities to the instant case. In that case the Upper Tribunal, having reviewed a number of recent authorities on the correct approach to quantification, observed at para 57;

> *"This brief review of recent decisions of this Tribunal in appeals involving licencing offences 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 whether the tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors which tend to justify lower penalties include inadvertence on the part of the smaller landlord, property in good condition such that a licence would have been granted without one 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"*

17. In that case the Upper Tribunal noted that the landlord was not a professional landlord and that he had had committed the offence of controlling an unlicenced HMO through inadvertence rather than deliberately. The property was in reasonably good condition during the tenants' occupation. It made a RRO equating to 60% of the net rent paid.

18. Turning to the facts of this case; the Applicant has provided proof of 12 payments of rent of £1250 during the relevant period totalling £15,000. The rent was paid from his account but he accepts that both he and his co-tenant contributed towards the household expenses and in the absence of any evidence from him as to their respective shares we have assumed that they both contributed equally. He did not receive housing benefit or the housing element of Universal Credit. No part of the rent was used to discharge utilities or other outgoings. The maximum rent repayment order we can therefore make is £7,500.

19. We bear in mind that, as in *Newell v Hallett* this is a licencing offence. We do not consider that this is a particularly serious offence, bearing in mind that the offence related to selective licencing as opposed to mandatory HMO licencing, and our starting point is a rent repayment order of 50% of the maximum.

20. The next matter that we have to consider is the conduct of both the landlord and the tenant. It is an unusual feature of this case that neither party had a bad word to say about the other. Mr Abdillhai considered that the Applicant and Ms Worral were good tenants. Mr Miller considered that Mr Abdillhai was a good landlord who attended to matters as the arose in the course of the tenancy reasonably quickly. Mr Pourvasteger submitted that, save for the requirement to have a licence, Mr Abdillhai was fully compliant with the conditions of the previous selective licence throughout the period of the Applicant's occupation. He further submitted that the premises are the Respondent's only rented property and he has no previous convictions for a housing related offence.

21. Mr Abdillhai also asserted that his financial circumstances are relevant. He submits that he and his wife are expecting a baby and in addition he remits a significant portion of his income to his wider family in Somalia. However he has not provided us with any proof of his income or expenditure and consequently we are not satisfied that his financial circumstances are grounds to reduce the rent repayment order

22. While we did not consider that the matters relied on by the Respondent in support of his defence amounted to a reasonable excuse, we considered that they amounted to significant mitigation in this case. Further it is relevant that his tenant considers that he was a good landlord. For these reasons we consider that a rent repayment order of 25% of the maximum award is appropriate. We made a rent repayment order in favour of the Applicant in the sum of £1875.

23. The Applicant has also requested an order that the Respondent do reimburse his hearing and application fees under rule 13(2) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013. As he has succeeded in his application we are satisfied that such an order is justified.

Name Judge N O'Brien Date 29 April 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.