



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

Case reference : **CAM/00KF/HMJ/2025/0011**

Property : **50A Eastern Esplanade, Southend-on-Sea, SS1 2ES**

Applicant : **Fern Logan**

Representative : **Mr Gershlick (Citizen's Advice Bureau)**

Respondent : **Rosalind Cobden**

Type of application : **Application for a rent repayment order by tenant** Sections 40 -44 of the Housing and Planning Act 2016

Tribunal : **Judge Wendy Banks
Tribunal Member David Hunt MRICS
FHEA
Tribunal Member Stephanie Johnson**

Date of decision : **13 May 2026**

DECISION

Decision

The tribunal orders the Respondent to repay to the Applicant the sum of £2,611 by way of rent repayment.

Reasons

Background

1. The Applicant applies for a rent repayment order against the Respondent under sections 40–44 of the Housing and Planning Act 2016 (“**the 2016 Act**”). The application is dated 24 March 2025 and was received by the tribunal on 25 March 2025.

2. The application is made on the basis that the Respondent was controlling and/or managing a property which was required to be licensed under Part 3 of the Housing Act 2004 (“the 2004 Act”) but was not so licensed during the period when it was let to the Applicant. The Applicant therefore contends that the Respondent committed an offence under section 95(1) of the 2004 Act.
3. The Applicant seeks repayment of rent paid for the period from 27 March 2024 to 26 March 2025, in the sum of £14,140, representing 12 months’ rent.
4. The tribunal was provided with an Applicant’s bundle of 111 pages and a Respondent’s bundle of 29 pages. Both bundles were carefully prepared and were of considerable assistance. The tribunal has considered the contents of those documents.
5. On 7 April 2026 the Applicant emailed the tribunal as follows:

“Thank you for your recent correspondence regarding the above case. I have witnesses to hand; could you kindly let me know how they are to be included in this case? I look forward to hearing from you at the earliest opportunity.”

6. The email was forwarded to the panel on Friday 10 April 2026. The hearing was listed for Tuesday 14 April 2026. Attached to the email was a further email dated 9 April 2026 from Mr Gershlick to the tribunal and the Respondent, with additional documents that were not contained in the bundle. Judge Banks replied as follows:

“The directions made by Judge Bernadette MacQueen, dated 22 September 2025 and amended on 1 December 2025, are clear. At paragraphs 3 and 4, they require the Applicant to send to both the tribunal and the Respondent, by 12 January 2026, all documents on which she wished to rely. As that deadline was not complied with, the Applicant does not currently have permission to rely on the documents sent to the tribunal on 9 April 2026. If the Applicant wishes to rely on those documents, she may make a formal application. Any such application will be considered as a preliminary issue at the hearing tomorrow.

The same directions also required the Applicant, by 12 January 2026, to confirm the names of any witnesses who would give evidence at the hearing and to provide their written statements. No witness names were provided. In addition, at page 107 of the Applicant’s bundle the Applicant states, when referring to witnesses, ‘None at present’. No witness statements have been provided to the tribunal or the Respondent.

As the deadline for providing witness details and statements had passed, the Applicant did not have permission to rely on any witness

evidence. If the Applicant wishes to do so, she may make an application, which will also be dealt with as a preliminary matter at the hearing tomorrow.”

7. The hearing was held remotely using the tribunal’s CVP system. The Applicant attended and was represented by Mr Alan Gershlick of the Citizens Advice Bureau. The Respondent attended in person. Both gave evidence and made submissions. Mr Selby also attended. The tribunal asked in what capacity he was attending, and the Applicant confirmed that he was the witness referred to in her email and that she wished to rely on his evidence.
8. The tribunal reiterated the position set out in Judge Banks’ email and asked Mr Gershlick whether the Applicant wished to make an application for permission to rely on Mr Selby’s evidence. After taking instructions, Mr Gershlick confirmed that the Applicant sought permission for Mr Selby to give oral evidence. The tribunal asked who Mr Selby was and the nature of the evidence he would give, given that no witness statement had been served. The tribunal was referred to pages 109 to 111 of the Applicant’s bundle, which included letters sent to the Respondent by Crisis Management UK and signed by Mr Selby.
9. The tribunal was also referred to Mr Gershlick’s email to the tribunal dated 9 April 2026. The tribunal asked whether the Applicant also sought permission to rely on the documents attached to that email. Those documents comprised: (i) a letter from Bairstow Eves dated 25 March 2024 showing sums of £12,900 paid in advance in respect of rent and £1,240 in respect of a tenancy deposit; (ii) two pages of bank statements; (iii) a further letter from Bairstow Eves dated 19 February 2025; and (iv) an undated email from Mr Gershlick to the Respondent setting out questions, followed by a partial reply from the Respondent. Mr Gershlick confirmed that he was instructed to apply for permission to rely on those documents.
10. Mr Gershlick submitted that a further email had been sent to the tribunal on 10 April 2026 enclosing an email chain between Mr Gershlick and Victoria Routledge of Southend-on-Sea City Council. The Respondent submitted that she had responded to that email chain to the tribunal on the same date. The panel had not seen those emails, and the hearing was stood down briefly so that copies could be forwarded to the panel members.
11. When the hearing resumed, Mr Gershlick confirmed that he was also instructed to apply for permission to rely on the email chain referred to above.
12. The tribunal directed that any application for permission to rely on documents or witness evidence served after the deadline must be determined in accordance with the three-stage test in *Denton*. The tribunal

asked Mr Gershlick to address: (i) whether the breach was serious or significant; (ii) the reason for the breach (and whether it was a good reason); and (iii) all the circumstances of the case, including the need for litigation to be conducted efficiently and at proportionate cost.

13. Mr Gershlick submitted that he had been instructed late and after the directions had been made. He submitted that, had he been instructed earlier, the documents, emails and witness evidence would have been served in accordance with the directions. He further submitted that the Applicant did not send the additional documents earlier because she had already disclosed an invoice from Bairstow Eves and believed that would be sufficient. The Applicant also submitted that she had only recently appreciated that issues relating to Housing Benefit/Universal Credit were relevant.
14. The tribunal asked the Respondent whether she objected to the applications. The Respondent did not object to the additional documents attached to Mr Gershlick's email of 9 April 2026. However, she objected to the admission of the email chain and to the application for permission for Mr Selby to give oral evidence. The hearing was stood down again to enable the tribunal to consider the applications.
15. When the hearing resumed, Judge Banks gave a short ruling. As there had been no objection to the additional documents attached to Mr Gershlick's email of 9 April 2026, and as they did not appear to add materially to what was already before the tribunal, permission was granted for the Applicant to rely on those documents. The tribunal refused permission for the Applicant to rely on the email chain between Mr Gershlick and Victoria Routledge. That material was opposed and had not been disclosed in accordance with paragraph 3 of the directions order. The tribunal applied the three-stage test in *Denton*, as considered in *Jalay Enterprises Ltd v Ramsdale* [2023] UKUT 247 (LC). The tribunal found that the breach was serious and that the late instruction of Mr Gershlick was not a good reason for non-compliance. Having considered all the circumstances, the tribunal concluded that the email chain added no material evidential value and that any matters arising could be explored by cross-examination of the Respondent.
16. In respect of the application for Mr Selby to give oral evidence, the tribunal noted that the Applicant had previously stated that she did not intend to call any witnesses (including at page 107 of the Applicant's bundle), notwithstanding that Mr Selby had represented her in December 2024. No witness statement had been provided. The tribunal concluded that admitting Mr Selby's evidence would require an adjournment to allow the Respondent to consider and prepare to meet it. In those circumstances,

and having regard to the overriding objective, the tribunal refused permission for Mr Selby to give evidence.

17. The tribunal noted that the Respondent had filed witness statements from three witnesses: Ria Phillips, Natalie Isaaks and Rebecca Barry. None of those witnesses attended the hearing, and the Respondent confirmed that she would not be calling them to give oral evidence.
18. The tribunal noted that Ms Phillips' statement was unsigned and undated and did not contain a statement of truth, contrary to paragraph 7(c) of the directions. The tribunal informed the Respondent that she could not rely on that statement unless permission were granted and asked whether she wished to apply for permission to do so. The Respondent confirmed that she did not wish to rely on it.
19. The tribunal further noted that Ms Barry's statement was undated and therefore did not fully comply with the directions. However, the tribunal waived that formality under rule 8(2). As neither Ms Isaaks nor Ms Barry attended the hearing, the tribunal considered what weight, if any, should be attached to their statements.

Relevant statutory provisions

20. The relevant statutory provisions are set out in the Schedule to this decision.

Alleged Offence

Licensing of Houses

21. The Applicant contends that the Property was not licensed when it was let to her. The area in which the Property is situated was designated by Southend-on-Sea City Council as subject to selective licensing from 1 December 2021 and remained so throughout the Applicant's occupation. This was confirmed by the council in its email to the Respondent dated 13 December 2024 and was accepted by the Respondent. The Applicant occupied the Property from 27 March 2024 to 26 March 2025. The Respondent also confirmed that no selective licence was in place for the Property and that no application for a licence was made during that period.
22. The Respondent accepts that the Property fell within the selective licensing scheme and that she should have obtained a licence but did not do so. She also accepts that she owned the Property, let it to the Applicant between 27 March 2024 and 26 March 2025, and received rent from the Applicant during that period.

23. Accordingly, the parties and the tribunal were satisfied that the Property was required to be licensed under the selective licensing scheme.
24. The Respondent therefore accepts that, between 27 March 2024 and 26 March 2025, she was a person having control of and/or managing a house which was required to be licensed under Part 3 of the Housing Act 2004, by virtue of Southend-on-Sea City Council's selective licensing scheme, but was not so licensed. The Respondent accepts that, in those circumstances, an offence under section 95(1) of the 2004 Act may have been committed during that period.

Rent paid in advance

25. The tribunal heard that the rent for the full period of the tenancy (12 months) was paid in advance. In the Applicant's bundle at p87 is an invoice from Bairstow Eves dated 25 March 2024 for rent due in the sum of £12,900 plus a security deposit of £1,240 totalling £14,140 less the sum of £248, which had already been paid, leaving a balance of £13,892. The bank statements provided by the Applicant and unchallenged by the Respondent show a payment leaving her account for the sum of £13,892 on 28 March 2024. The tenancy commenced on 27 March 2024. The tribunal is mindful of the finding in *Pearton v Betterton Duplex Ltd* [2025] UKUT 175 (LC) however, as the rent was paid during the period that the offence was committed then the tribunal does not need to consider this further.

Reasonable excuse

26. Having established the ground for making a rent repayment order, the tribunal considered whether the Respondent had a reasonable excuse for committing the offence. If the Respondent had a reasonable excuse, that would provide a defence, and the tribunal would have no power to make a rent repayment order.
27. The Respondent's first reason was that she was unaware of the requirement for a selective licence. She explained that she was not a commercial landlord. She had bought the property intending to renovate and live in it, but decided instead to retain it as two flats which were occupied by her son and daughter. The Respondent stated that the Property was intended to remain a family-owned property, but following the sudden death of her son it was decided, after some time, to let his flat (the Property).
28. The Respondent said that she had not researched licensing requirements further because she was unaware of the concept of housing licensing.
29. The Respondent stated that she instructed Bairstow Eves to let the Property on her behalf and relied on them to comply with any legal

obligations. She said that she was not aware that the Property fell within a selective licensing area and that Bairstow Eves did not make her aware of this. The tribunal was referred to a “Move-in Checklist” completed by Countrywide (part of Bairstow Eves). This was a tick-box form provided to the Applicant to sign to confirm receipt of the documentation required at the start of the tenancy (for example, the Gas Safety Record and Energy Performance Certificate). At clause 4 it referred to a current property licence, and “N/A” is circled. The document was signed by the Applicant and by Nick Gomes on behalf of Countrywide/Bairstow Eves and was dated 27 March 2024. The Respondent submitted that she relied on Bairstow Eves’ advice, and that they were also of the view that the Property did not require a licence.

30. The Respondent further stated that, when Bairstow Eves marketed the Property, they contacted her to request various documents (including an Electrical Installation Condition Report). She obtained the documents requested. The Respondent submitted that the checklist indicated that licensing might be relevant and that, as Bairstow Eves is a large national estate agent, she placed significant reliance on them to ensure that her legal obligations were met. She assumed they were familiar with the local area and would have identified that a selective licence was required.
31. The tribunal noted that Bairstow Eves were not instructed as managing agents and this was confirmed orally by the Respondent. Further, no evidence of any contractual agreement between the Respondent and Bairstow Eves was provided to the tribunal.
32. The tribunal also noted, that on 13 December 2024 the Respondent received an email from Victoria Routledge at Southend-on-Sea City Council (Respondent’s bundle, pages 9–12). The first two paragraphs state:

“I understand that you are the owner of the above property which you are renting without a Selective Licence. Who needs a licence? – Selective Licensing Scheme – Southend-on-Sea City Council and this applies to the lower flat as well. It is a criminal offence if a person controlling or managing a property within a selective licensable area does not have the required licence. Failure to comply with any condition attached to a licence is also an offence. The Council will consider all available enforcement options when dealing with unlicensed SL property and breaches of the licence conditions.

I have copied the selective licence team into this email so that they can start investigating the offence of failure to licence. This may result in a criminal prosecution with unlimited fines or service of a CPN (civil penalty notice) up to £30,000 for each of the flats, private-rented-sector-housing-enforcement-policy. Your tenants can also claim up to 12 months back in rent for any unlicensed

property. Non-Profit Free Advice and Representation For Tenants.
I suggest that you apply for a licence without further delay to avoid further ongoing offences ...”

33. The Respondent also sought to rely on an email to Property Licensing at Southend-on-Sea City Council dated 13 January 2025 (Respondent’s bundle, page 4). In that email she stated that she wished to speak to the council about whether she could apply for an exemption, because she had not been advised that the Property fell within a licensable area/postcode until she received the email of 13 December 2024 and the Property was now up for sale. She said that she was now aware that she needed a licence and intended to deal with this, but that Bairstow Eves had advised her that their system had failed to flag that the Property required a licence. She also said that the Applicant would be moving out in less than two months.
34. The Respondent also relied on a further email dated 12 February 2025 (Respondent’s bundle, page 3) in which she reiterated the contents of her email of 13 January 2025 and chased a response to her request for an exemption.
35. The tribunal asked the Respondent whether she ever obtained a licence for the Property, and she confirmed that she did not. The tribunal also asked whether she ever received an exemption, and she confirmed that she did not. The tribunal asked whether, when she received no response to her emails, she used any other method of communication to pursue the matter, and she confirmed that she did not. Finally, the tribunal asked whether she ever applied for a licence, and she confirmed that she did not.
36. The tribunal accepts that the Respondent was unaware of the requirement for a licence when the Property was first let. The Respondent said that she first became aware of the requirement when she received the email from Victoria Routledge on 13 December 2024, and the tribunal accepts that evidence. The tribunal further accepts that this was the Respondent’s only property and that she was not a commercial or experienced landlord. The tribunal also accepts that the Respondent relied heavily on her managing agent, Bairstow Eves, and that Bairstow Eves did not inform her of the licensing requirement. The tribunal also accepts that the decision to let the Property arose in the context described by the Respondent following her son’s death.
37. However, we do not accept that it was reasonable to place total reliance on marketing agents in relation to the issue of whether a licence was needed, in the sense that this is not a reasonable way to treat the marketing agents’ role and nor is it reasonable to abdicate responsibility for the important question of whether one’s property needs a licence to protect the rights of one’s occupiers. In any event there

is no real evidence in our view that such total reliance was indeed placed on the managing agents or accepted by them.

38. In addition, the fact that the Respondent was unaware of the licensing obligation is not a reasonable excuse. Information can be obtained in a variety of ways, including via the internet, and if someone is renting out property in England it is incumbent upon them to check the rules in order to ensure that they will not be renting out that property in a way which gives rise to one or more criminal offences.

39. The tribunal reminds itself of the findings of Judge Elizabeth Cooke in *Aytan v Moore [2022] UKUT 27 (LC)*, paragraph 40

“We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”

40. In conclusion, we do not accept that the Respondent had a reasonable excuse for failing to obtain a licence.

Amount of rent to be repaid

41. Section 43 of the 2016 Act provides:

"(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).

...

(3) The amount of a rent repayment order under this section is to be determined in accordance with –

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc)."

42. Section 44 of the 2016 Act provides:

"(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table ...

(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.

(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."

43. Further, when considering the amount to be repaid the tribunal considered the guidance set out in *of Acheampong v Roman* [2022] UKUT 239

"13. That is not the law, and in *Williams v Parmar* [2021] UKUT 244 (LC) the Tribunal (the President, Fancourt J) explained why. Rent repayment orders may be made in response to a range of offences. To some of them section 46 applies and the whole of the rent must be repaid if the landlord has already been convicted. Therefore, necessarily, Parliament envisaged that in some cases the whole of the rent will not be ordered to be repaid (paragraph 23). At paragraph 24 the President said:

"It therefore cannot be the case that the words "relate to rent paid during the period" in s. 44(2) mean "equate to rent paid during the period ...".

25. However, the amount of the RRO must always "relate to" the amount of the rent paid during the period in question. ... Thus, the amount of the RRO may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. **But the amount of the rent paid during the period is not a starting point in the sense that there is a presumption that that amount is the amount of the order in any given case, or even the amount of the order subject only to the factors specified in s.44(4).**"

15. *Williams v Parmar* did not say in so many words that the maximum amount will be ordered only when the offence is the most serious of its kind that could be imagined; but it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it. It is beyond question that the seriousness of the offence is a relevant factor – as one would expect from the express statutory provision that the conduct of the landlord is to be taken into consideration. If the tribunal takes as a starting point the proposition that the order will be for the maximum amount unless the section 44(4) factors indicate that a deduction can be made, the FTT will be unable to adjust for the seriousness of the offence (because the commission of an offence is bad conduct and cannot justify a deduction). It will in effect have fettered its discretion. Instead the FTT must look at the conduct of the parties, good and bad, very bad and less bad, and arrive at an order for repayment of an appropriate proportion of the rent.

17. There are no rules as to the amount to be repaid; there is no rate card. But it is safe to say that if the landlord is ordered to repay the whole of the rent (after deduction of any payment for utilities), without consideration of the seriousness of the offence, or in a case that is far from the most serious of its kind, it is likely that something has gone wrong and that the FTT has failed to take into consideration a relevant factor.

Practical points for decision making

18. It is easy to say what the FTT should not do: it should not take the whole rent (less any payments for utilities) and regard that as the starting point subject only to deductions made in light of the factors in section 44(4) of the 2016 Act.

19. What should it do instead?

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.”

The whole rent for the relevant period

44. The relevant period for the rent repayment order is 13 December 2024 to 26 March 2025. The Applicant initially sought repayment of £14,140. However, as noted at paragraph 25 above, that figure includes a tenancy deposit of £1,240 and is therefore not wholly referable to rent. The Applicant accepted this at the hearing and Mr Gershlick confirmed that the sum sought by way of rent was £12,900. The tribunal accordingly treats £12,900 as the whole rent for the relevant period.

Subtract any element that represents utilities or Universal Credit

45. It is common ground that the rent did not include any element for utilities, and no deduction is therefore made on that account. However, the Applicant’s bundle records that the Applicant received Universal Credit during the relevant period and Mr Gershlick accepted that any relevant award in respect of rent must be deducted from the amount of any rent repayment order. The Universal Credit payment records at pages 90–106 indicate an award running from 18 July 2024 to 17 March 2025 at £680 per month. The total Universal Credit received during the relevant period (13 December 2024 to 26 March 2025) is £5,440. Deducting £5,440 from the whole rent of £12,900 leaves £7,460.

Seriousness of the offence

46. Although not relied upon by either party at the hearing, the tribunal is assisted by the judgment of Martin Rodger KC, Deputy Chamber President in *Newell v Abbott* [2024] UKUT 181 (LC)

“33. In determining the amount to be repaid under a rent repayment order the FTT is required by section 44(4) of the 2016 Act to take into account, in particular, (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 Chapter 4 applies. Where the landlord has been convicted of one of five different housing offences or has been the subject of a financial penalty other than on conviction (i.e. under section 249A, 2004 Act) the FTT is required by section 46(1) to order repayment of the maximum amount permitted by section 44 . Parliament appears to have taken the view that (in the absence of exceptional circumstances) the fact that one of these five offences has already resulted in a conviction or a civil financial penalty justifies the additional imposition of the maximum possible rent repayment order. But section 46(3)(a), 2016 Act excludes licensing offences from the five housing offences for which this maximum penalty is mandated.

34. Since its decision in *Ficcara v James* [2021] UKUT 38 (LC) the Tribunal has emphasised the seriousness of the offence which has been committed as a significant factor to be taken into account when determining how much of the rent paid by a tenant should be ordered to be repaid. At paragraph [32] of that decision, I said this about the factors identified in section 44(4), 2016 Act , as those which the FTT must in particular take into account:

"First amongst those relevant factors is the conduct of the landlord, which must include the conduct which amounts to the relevant housing offence or offences. One would naturally expect that the more serious the offence, the greater the penalty."

Later in the same decision, at paragraph [50], I drew attention to the relevance of section 46(1) in setting the framework within which the FTT is required to exercise its discretion. Section 46(1) provides that where the landlord has already been convicted, *other than of a licensing offence* , in the absence of exceptional circumstances the amount to be repaid is to be the maximum that the Tribunal has power to order. The exclusion of licensing offences, including the offence of managing an unlicensed Part 3 house contrary to section 95(1), 2004 Act , may be taken to indicate the relative seriousness which Parliament attributes to the different housing offences for which a rent repayment order may be made.

35. In *Williams v Parmar* [2021] UKUT 244 (LC) Mr Justice Fancourt, Chamber President, reiterated, at paragraph [41], that "the

circumstances and seriousness of the offending conduct of the landlord are comprised in the "conduct of the landlord", so the FTT may, in an appropriate case, order a lower than maximum amount of rent repayment, if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise."

36. In *Hallett v Parker* [2022] UKUT 165 (LC) I referred to statements made in Parliament about the purpose of the rogue landlord provisions in Part 2 of the 2016 Act and said this, at paragraph [25]:

"This explanation of the purpose of Part 2 , with its battery of measures against "rogue landlords", suggests that the power to make rent repayment orders should be exercised with the objective of deterring those who exploit their tenants by renting out substandard, overcrowded or dangerous accommodation. The differential treatment of licensing offences and more serious offences in section 46 , and the greater flexibility given to tribunals when ordering rent repayment in the former category, are likely to be a reflection of that objective."

37. In *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraph 15 , the Tribunal (Judge Cooke) concluded in the light of these decisions that "an order in the maximum possible amount would be made only in the most serious cases or where some compelling and unusual factor justified it". With that calibration in mind, the Judge then suggested at paragraph 20(c) that having determined the upper limit of what might be ordered to be repaid, decision makers should adopt the following approach when assessing the seriousness of an offence:

"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."

38. *Acheampong* was the first occasion on which the Tribunal had referred specifically to the need to consider the seriousness of the offence relative to "other types of offence in respect of which a rent repayment order may be made" and not just to "other examples of the same type of offence", which is the exercise Mr Newell complains was not undertaken by the FTT in this case. The Tribunal has nevertheless commented on a number of occasions (and particularly in *Hallett v Parker* at paragraph [30]) that, in a list of housing offences which includes the use of violence to secure entry, unlawful eviction, and failure to comply with an improvement notice, a prohibition order or a banning order, licensing offences are relatively of lesser seriousness. It did so again in *Daff v Gyalui* [2023] UKUT 134 (LC) where, at paragraphs [48]-[49], I tried to rank the housing offences by references to their general seriousness, as follows:

"48. The seven offences in respect of which a rent repayment order may be made are identified in section 40(3), 2016 Act . Two are offences of violence or intimidation (the use of violence for securing entry contrary to section 6(1), Criminal Law Act 1977 , and eviction or harassment of occupiers contrary to section 1 , Protection for Eviction Act 1977). Those offences are plainly the most serious of those listed in section 40(3) and in the Magistrates Court they punishable by a fine and a term of imprisonment of up to six months (up to two years in the Crown Court). The offence of breaching a banning order contrary to section 21, 2016 Act , is also particularly serious and is punishable by a term of imprisonment of up to 51 weeks or a fine or both. These three offences are at the upper end of the range of seriousness covered by section 40(3).

49. The remaining four offences all involve breaches of provisions of the 2004 Act (failure to comply with an improvement notice or a prohibition order, and control or management of an unlicensed HMO or Part 3 house) and are generally of a less serious type. That can be seen by the penalties prescribed for those offences which in each case involve a fine rather than a custodial sentence. Although generally these are lesser offences, there will of course be more or less serious examples within each category. The circumstances relating to a failure to comply with an improvement notice, for example, may vary significantly. So too may be circumstances pertaining to a licensing offence."

47. Having regard to the relative seriousness of the offences identified above, the tribunal considers that the failure to license the Property is towards the lower end of the spectrum. The appropriate starting point is therefore an award of 25%.

Any other factors to be considered

Conduct of the parties

48. The tribunal has considered the written and oral evidence. In the Applicant's bundle (page 21) there is an Improvement Notice served on the Respondent by the council, together with a schedule describing hazards and deficiencies (including damp and mould, domestic hygiene and pests, falls on stairs, electrical hazards, fire hazards, and collision/entrapment) and a specification of works (pages 22–33). There is also a statement of reasons (page 34) and a further Improvement Notice, schedule of works and reasons in respect of fire hazards. However, those notices are dated 22 July 2025 and therefore fall outside the relevant period.

49. The tribunal does, however, take into account the notice at page 19 of the Applicant's bundle (a "section 4 notice"), dated 31 January 2025, which

falls within the relevant period. The notice was served on the Respondent in respect of a rodent infestation and the failure to supply appropriate bins for the external storage of rubbish. It required the Respondent to take steps to eradicate rodents and prevent their return using a professional pest control contractor, and to provide appropriate bins, by 14 February 2025. The tribunal notes that, as at the date of that notice, no steps had been taken to comply with it. At page 23 of the Applicant's bundle, the council recorded a high likelihood of rodents accessing the upper flats due to poor workmanship, multiple gaps and a lack of maintenance to internal and external components, together with the lack of party walls to the loft void allowing access from a neighbouring empty property. The tribunal finds that those issues were likely to have been present during the relevant period and are relevant to the assessment of conduct.

50. The tribunal also takes into account, as a matter of conduct, the Respondent's failure to apply for a licence after receiving the email of 13 December 2024 informing her that a licence was required.
51. In relation to the Applicant's conduct, the Respondent sought to rely on witness statements from Ria Phillips, Natalie Isaaks and Rebecca Barry. As set out above, the statement of Ms Phillips did not comply with the directions and the Respondent confirmed that she did not wish to apply for permission to rely upon it. The tribunal therefore treated that statement as withdrawn. That left the statements of Ms Isaaks and Ms Barry. Neither attended the hearing and therefore neither could be cross-examined. The tribunal has considered their statements only to the extent it is fair to do so. The statements raise allegations about the Applicant's conduct, including an allegation by Ms Isaaks (who moved into the Respondent's daughter's flat after 30 November 2024) that the Applicant repeatedly slammed doors and was verbally aggressive when asked to stop.
52. Ms Barry's statement refers to an isolated incident on 31 December 2024, when she and Ms Phillips attended the Property to collect some belongings. Ms Barry alleges that the Applicant threw items out of the Property and became aggressive and abusive, and that the police were called. The tribunal makes no finding on those allegations. As Ms Barry did not attend the hearing and could not be cross-examined, the tribunal places no weight on this evidence and makes no deduction in respect of the Applicant's conduct.
53. Taking the matters set out above into account, the tribunal considers that the Respondent's conduct warrants an uplift. The tribunal therefore adds 10% to the award.

Financial circumstances of the Landlord

54. The tribunal was not provided with any detailed information about the Respondent's financial circumstances. The Respondent stated that she had been unable to sell the Property and that a possession hearing was listed in respect of her own home. However, no documentary evidence was provided in support, and the tribunal is therefore unable to make findings on financial circumstances beyond those statements.

No conviction of an offence

55. The tribunal next considered whether the landlord has at any time been convicted of a relevant offence.

56. The tribunal was provided with no evidence that the Respondent has been convicted of a relevant offence.

Conclusion

57. In summary, the tribunal determines that a rent repayment order should be made in the sum of £2,611, representing 35% of the relevant sum of £7,460.

Cost applications

58. No application was made in respect of costs and the Tribunal has therefore not considered the same.

Name: Judge Wendy Banks **Date:** 13 May 2026

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

SCHEDULE

Relevant statutory provisions

Housing and Planning Act 2016

Section 40

(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 ...

(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.

Act	section	general description of offence
1	Criminal Law Act 1977	section 6(1) violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A) eviction or harassment of occupiers
2A	Housing Act 1988	section 16J(1) knowingly or recklessly misusing a possession ground
2B	Housing Act 1988	section 16J(2) breach of restriction on letting or marketing dwelling-house
2C	Housing Act 1988	section 16J(3) tenancy reform: continuing breaches
3	Housing Act 2004	section 30(1) failure to comply with improvement notice
4		section 32(1) failure to comply with prohibition order etc
5		section 72(1) offences relating to unlicensed HMOs
6		section 95(1) offences relating to unlicensed houses
7	This Act	section 21 breach of banning order

Section 41

(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.

Section 43

(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).

(2) A rent repayment order under this section may be made only on an application under 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with – (a) section 44 (where the application is made by a tenant) ...

Section 44

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(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.

(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.

Housing Act 2004

Section 95

(1) 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 ... but is not so licensed.

(4) In proceedings against a person for an offence under subsection (1) ... it is a defence that he had a reasonable excuse ... for having control of or managing the house in the circumstances mentioned in subsection (1)

Section 263

(1) In this Act “person having control”, in relation to the 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.

(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 –

(ii) in the case of a house to which Part 3 applies , persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises ...

(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