FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/HMF/2025/0621**
Property	:	**6 Smyrna Mansions, Smyrna Road, London, NW6 4LU**
Applicant	:	**Irena Matijevic**
Representative	:	**Mr C Weldrick**
Respondent	:	**(1)Karl Emanuelsson** **(2)Rohini Emanuelsson**
Representative	:	**In Person (First Respondent)**
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** **Mrs L Crane CEnvH, MCIEH**
Date of Decision	:	**26 May 2026**

DECISION

<u>Decision of the Tribunal</u>

(1) The Tribunal makes a rent repayment order against the Respondents in the total sum of £2242.80

(2) The Respondents must reimburse the tribunal fees paid by the Applicant in the sum of £330.

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

BACKGROUND

1. This application concerns the above premises, consisting of a three-bedroom flat on the second floor of a Victorian mansion block in West Hampstead. The Applicant occupied a room, which has been referred to as Room 1, from 13 April 2021 until 28 November 2025 when she was evicted by High Court Enforcement Officers pursuant to a County Court possession order.

THE PROCEEDINGS

2. On 13 November 2024 the tribunal received an application under s.41 of the Housing and Planning Act 2016 (the 2016 Act) from the Applicant for a rent repayment order (RRO) relying on s.72 of the Housing Act 2004. The Applicants assert that the Respondent committed an offence of having control of or managing an unlicenced property in multiple occupation that was required to be licensed pursuant to an additional licencing scheme but was not licenced. She sought a RRO in respect of rent paid between April 2021 and April 2022.

3. The Tribunal issued directions on 14 February 2025 and subsequently the Tribunal listed this matter for a hearing on 30th July 2025. On 16th April 2025 the Respondents applied for an order striking out the claim on the grounds that it was out of time because the entirety of the period in respect of which the Respondent sought an order was more than 12 months prior to her application to the tribunal, and because the matters raised in the RRO substantially overlapped with proceedings then ongoing in the County Court. The application was considered at a case management hearing on 15 July 2025 before Judge Shaw. He dismissed the application to strike out the claim, finding that it was not out of time but stayed the tribunal proceedings until the conclusion of the County Court proceedings, which included a claim for possession and rent arrears brought by the Respondents and a counter-claim for damages brought by the Applicant. The county court proceedings were determined at a trial which took place on 11 September 2025 before Mr Recorder Robertson. He granted the Respondents a possession order against the Applicant and granted judgement in respect of rent arrears in the sum of £26,408.97. He dismissed the Applicant's counterclaim for damages which was based on allegations of disrepair and failure to properly protect the Applicant's deposit.

THE HEARING

4. The Applicant attended the hearing and was represented by counsel Mr Weldrick. The First Respondent attended in person.

5. The Tribunal was provided with a 287-page bundle prepared by the Applicant for the hearing and a 44-page bundle prepared by the Respondents. Rather than compile a bundle as a single PDF as directed, the Respondent included links in their bundle to a further bundle containing documents relating to the County Court proceedings however the tribunal was not able to access these documents. The bundle contains copies of the Order of Recorder Roberson dated 11 September 2025 and a number of witness statements which they prepared for the County Court proceedings. We also read a 3-page Reply filed by the Applicant. Both the Applicant and the Respondents filed skeleton arguments. In addition the Applicant sent a large number of documents the evening before the hearing which she wished to rely on as evidence in her case. The Respondent had not seen these documents, nor had the Applicant's counsel, and we considered that we would not permit the Applicant to adduce this additional evidence as it was served too late. In the event the Applicant decided that she did not wish to rely on the new evidence.

<u>Has an Offence been Committed?</u>

6. It is common ground that at all material times and up until January 2024 the premises were occupied by 3 or more persons forming two or more households. It is common ground that the premises were located in a ward within the London Borough of Camden(LBC) which was subject to an additional licencing scheme which was introduced in 2015. This required all Houses in Multiple Occupation (HMOs), which are not otherwise subject to mandatory licencing, to be licenced pursuant to Part 2 of the Housing Act 2004 (the 2004 Act). It is common ground that, save for a few days in mid-January 2022, the premises were required to be licenced from 13 April 2021 when the Applicant moved in, until January 2024 when her flatmates, a couple named Nerius and Gerda, who have played no part in these proceedings, vacated. It is common ground that during that period the Respondents neither held nor had applied for the requisite licence.

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). The Respondents accept that from the date the Applicant moved into the property, being 14 April 2021 until 15 January 2022 the premises were occupied by three persons forming more than one household who lived there as their main residence.

8. It is common ground that on or about 15 January 2022 one of the Applicant's flatmates moved out and her room was vacant for a period of about 2-3 days after which Gerda and Nerius moved in. The Respondents accept that save for that short period, they required a licence by virtue of the additional licencing scheme. The Respondents accept that they were the persons having control of the unlicenced HMO at all material times.

9. Consequently we are satisfied beyond reasonable doubt that the Respondents were persons in control of an unlicenced HMO from 14 April 2021 to 15 January 2022 and from 17 January 2022 until mid-January 2024. The exact date in

January 2024 upon which the offence ceased is not material to the outcome of this case.

Reasonable Excuse

10. 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). The Respondents did not expressly assert that they had a reasonable excuse but did submit that they were not aware of the need for a licence until summer of 2023. In answer to our questions the First Respondent informed us that he did not apply for a licence because they were concerned that they would not be able to afford any works which LBC might have required them to carry out prior to granting a licence. He told us that instead he asked his tenants to vacate the property so it could be sold, describing his approach as 'informal'. Nerius and Gerda moved out in January 2024. He informed us that he did not serve notice seeking possession on the Applicant until June 2024.

11. 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.

12. In this case we do not consider that the fact that the Respondents were unaware of the need for a licence amounts to a reasonable excuse. Mr Emanuelsson told us that the premises were the first property he and his wife had rented out. By 2023 he and his wife owned 12 properties which were let to tenants. Additionally the additional licencing scheme had been in place for some 6 years prior to the start of the Applicant's tenancy. In these circumstances in our view a reasonable landlord should have known of the relevant licencing requirements applicable to all of his or her properties before the Applicant moved in.

13. Consequently we are not satisfied that the Respondents had a reasonable excuse for not having a licence from 13 April 2021 to January 2024.

Quantifying the RRO

14. The leading authority on the correct approach to quantifying a RRO is ***Acheampong v Roman* [2022] UKUT 239**. 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. The first issue which we have to consider is the maximum order. The Applicant seeks an order in respect of the period April 2021 to April 2022 in the sum of £9,000. She has supplied the tribunal with evidence of rental payments for that period with the first payment of £1450 being made on 12 April 2021. There was some dispute as to whether part of that sum was rent in advance or a deposit. However it is common ground that it was paid 2 days prior to the commencement of her occupation of the flat and in those circumstances at the time that this payment was made, no offence was being committed.

17. In Kowalek v Hassanein [2022] EWCA Civ 1041 the Court of Appeal held that in order to form the basis of a rent repayment order, the rent in question must be both paid during and relate to a period during which the Respondent was committing the relevant offence.

18. Consequently we must disregard the sum of £1450 paid on 12 April 2021 when calculating the maximum RRO. We must also take account of the rent paid in respect of the 3-day period 15 January 2022 to 17 January 2022 when the offence was not committed for a full day, leading to a further reduction of £73.97. It is agreed that none of the rent paid by the Applicant to the Respondents in the period April 2021 to April 2022 was paid in respect of utilities. The Applicant was not in receipt of universal credit. Consequently the maximum Rent Repayment Order is £7476. 03

19. We then consider the seriousness of the offence. 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"*

20. 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.

21. Turning to the facts of this case; We bear in mind that, as in *Newell v Hallett* this is a licencing offence. It was committed over a period of 2 years and 10 months. We accept that the Respondents, on discovering the fact that an offence was required, took steps to reduce the number of occupants in the property and that within approximately 6 months the number of occupants was reduced to one and the offence ceased. Consequently the offence was not committed deliberately. We consider that a starting point of 60% of the maximum is appropriate.

22. The next matter that we have to consider is the conduct of both the Applicant and the Respondents. Most of the argument in this case relates to the question of conduct. The applicant submits that the conduct of the Respondents was extremely poor. In support of her assertion she submitted the following;

    (i) The Respondents never supplied her with a valid Gas Safety Certificate.
    (ii) The Respondents failed to act when informed that the Applicant was left paying all the bills for the occupants' energy and water consumption as

the accounts for the supply of utilities were all placed in her name without her knowledge or consent and the other occupants failed to pay their share;

(iii) The Respondents failed to properly protect her deposit;

(iv) The Respondents permitted other persons to enter the property in or about March 2024 who acted aggressively towards her which led to her calling the police;

(v) There was an interruption to the supply of gas and water between 20 February 2024 and 10 March 2024;

(vi) There was disrepair in the property;

(vii) There were unspecified breaches of Fire Safety Regulations. There were no fire doors.

23. The Respondents deny that they failed to supply valid Gas Safety Certificates and have exhibited a witness statement from a Mr Hacince of Regency Plumbing and Heating which states that he inspected the gas installations annually and supplied the Respondents with gas safety certificates. They accept that there was a period of time when the water and boiler were disconnected but they say that this was due to a leak from the mains stopcock which took a couple of weeks to repair. They have included a witness statement from a Mr Nemes who they engaged to carry out maintenance between 2020 and 2025. They state that the Applicant's assertions regarding the deposit were considered as part of the County Court proceedings but were dismissed. They submit that the person who entered the property was an acquaintance of theirs who they had permitted to stay in one of the unoccupied rooms in March 2024 and who the Applicant had threatened. They submit that the Applicant's claims of disrepair were considered as part of her counterclaim in the county court and were dismissed.

24. In our view the issues regarding the utility bills were not the fault of the Respondents but was a matter between the occupants. It is not clear whether the Applicant was supplied with copies of the gas safety certificates however we accept that the Respondents had gas safety certificates throughout the period of her occupation. It appears to be accepted by the Applicant that the county court considered the Applicants allegations of disrepair and failure to protect her deposit and dismissed them. We note that at paragraph 14 of her skeleton argument, the Applicant's counsel states 'Mr Recorder Robertson did make findings in respect of the deposit and disrepair claims'. Given that Applicant's counterclaim was dismissed we infer that the county court has already considered these matters. In any event, save for the interruption to utility supplies in 2024, the disrepair asserted is unparticularised. Similarly the allegations of breach of fire safety regulations are unparticularised. Counsel for the Applicant referred us to documents relating to a fire alarm in his skeleton argument but we were unable to find any such documents in the Applicant's bundle.

25. We do consider however that the Respondents in general terms demonstrated an unacceptably ‘laid back’ approach to their legal duties as landlords, in particular we were unimpressed by the fact that the Respondents, on discovering that the property required a licence, did not apply for a licence or even investigate what steps they would have to take to obtain an additional HMO licence, but instead tried to reduce the number of tenants.

26. The Respondents submit that the conduct of the Applicant has been extremely poor. They submit;

(i) The Applicant failed to pay any rent for a period of over 2 years and by the time she was evicted owed over £26,000 in rent arrears. The period over which she claims a RRO was the only period over which she consistently paid rent;
(ii) The Applicant failed to pay towards the utilities for a period of over two years prior to her eviction;
(iii) The Applicant smoked in her room in breach of the terms of her tenancy. The room was advertised as a flat share in a strictly non-smoking flat
(iv) The Applicant behaved in a profoundly anti-social way towards her flatmates. They rely on a statement from a Victoria Bulbas which was prepared for the County Court proceedings who resided in the flat until January 2022 who said that the Applicant’s behaviour was at times odd and threatening.

27. The Applicant accepts that she did not pay rent for a substantial period of time and sought to justify this by reference to the dispute regarding the utility bills. In our view this is highly relevant conduct when considering quantum of the RRO. She denied smoking in her room but pointedly refused to answer our questions as to whether she was a smoker on the grounds that she did not consider it relevant. We note that there are a number of signed witness statements in the bundle confirming that the Applicant persisted in smoking in her room. The First Respondent told us that when he entered the room after the eviction, the ceiling was stained yellow with nicotine and the room smelled strongly of cigarettes. We accept his evidence and find that the Applicant did smoke in her room in breach of clause 6 of her lease. We have not had any oral evidence to support the Respondent’s assertion that she behaved on an anti-social manner towards her flatmates and we make no finding in that regard.

28. Additionally we have to consider the financial circumstances of the Respondents. Mr Emauleson told us that while the combined value of their property portfolio is in the region 6 to 7 million pounds, he and his wife are significantly overstretched and at times have had to resort to using credit cards to pay for everyday outgoings. They consider that the actions of the Applicant have led them to incur losses of over £130,000. However we have no evidence of their financial circumstances and no evidence of the asserted losses other than the money judgment which they have obtained in respect of the rent arrears. There is no evidence before the tribunal to support the Respondents assertions of straitened financial circumstances.

29. In our view in light of the above an appropriate award is 30% of the maximum and we make an RRO in favour of the Applicant in the sum of £2,242.80

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

31. The Respondents have applied for costs against the Applicant on the grounds of unreasonable conduct pursuant to Rule 13(1)b of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. As her claim has succeeded there are no grounds on which we could do so. We do not consider that the manner in which she has pursued and conducted these proceedings amounts to unreasonable conduct.

Name Judge N O'Brien   Date 26 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.

5. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal