FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**CAM/38UE/HMK/2025/0624**
Property	:	**63 Southern Bypass, Oxford, OX2 0LA**
Applicant	:	**Mr A. Tenetova**
Representative	:	**Whitestone Solicitors Limited**
Respondent	:	**Mr W. Da Costa**
Type of application	:	**Application by tenant for rent repayment order – Section 41 of the Housing and Planning Act 2016**
Tribunal members	:	**Judge M. Hunt** **Dr J. Wilcox FRICS**
Date of hearing	:	**29 June 2026 (remote hearing)**
Representation at hearing	:	**Mr J. Norris (Applicant)** **Mr W. Da Costa and Ms S. Rebello (Respondent)**
Date of decision	:	**30 June 2026**

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1. The application for a rent repayment order is dismissed.

REASONS

Introduction

1. The Applicant rented a room at 63 Southern Bypass, Oxford, OX2 0LA (the "Property") from the Respondent from 7 August 2024 to 19 April 2025 pursuant to a "lodger agreement". The Respondent asserts he lived at the Property throughout the Applicant's residence.

2. On 27 August 2025, the Applicant applied to this Tribunal for a rent repayment order in accordance with section 41 of the Housing and Planning Act 2016. He seeks an order on the basis that the Respondent had committed an offence throughout the Applicant's occupation of the Property by failing to license it as a house in multiple occupation ("HMO").

3. The Respondent submits that the Property was occupied permanently only by four people at any given time, such that it did not need to be licensed. He accepts that it was occupied by five people for around seven weeks between 7 August and 30 September 2024 (and at other times). The Tribunal had understood the Respondent to have accepted that these five people *permanently* occupied the Property in August/September 2024, but on reflection that is not so. He had asserted that one of those five people was his girlfriend Maria, who was only an occasional occupier. He clearly did not accept that five people ever permanently occupied the Property at any other time. In any event, he asserts that he would have had a reasonable excuse for not having an HMO licence in August/September 2024, so would not have been committing an offence at the relevant time. Accordingly, he resists the application.

4. In reaching its decision, the Tribunal considered sets of documents provided by each party, including witness statements, together with a selection of further documents provided at the hearing. Of most note, the parties provided copies of WhatsApp messages and a copy of a witness statement presented by the Respondent in County Court proceedings relating to the deposit the Applicant paid prior to occupying the Property.

5. The Tribunal heard from the parties and Ms S. Rebello, the Respondent's former partner, joint owner of the Property and the person that effectively managed the Property. The Tribunal was grateful to all for their preparation of the papers and their assistance at the hearing.

6. Once each party's position was clarified, the Tribunal initially only invited submissions and evidence on the matter of whether the Property was at any point occupied permanently by five or more individuals such that it would have required an HMO licence. This was the principal dispute. As noted above, the Tribunal believed the Respondent had conceded that it was *permanently* so occupied between 7 August – 30 September 2024, but not beyond that. Once the Tribunal had established whether it had in fact been occupied by five people or more, it would then be better able to consider (if necessary) whether the Respondent had a reasonable excuse for not having a licence and, if so, whether that applied for all or part of the relevant period. There would be no need to hear submissions and evidence on the parties' conduct, the rent paid and any other matters relevant to the making and amount of a rent repayment order beforehand.

7. The Tribunal announced at the hearing its decision that it was not satisfied beyond reasonable doubt that the Property had been occupied permanently by five or more people beyond 30 September 2024 and dismissed that part of the application accordingly. On its understanding that the Respondent had accepted *permanent* occupation of the Property by five or more people prior to then, it proceeded to hear submissions on whether the Respondent had a reasonable excuse for failing to hold a licence during the period 7 August to 30 September 2024 and other matters relevant to the level of any rent repayment order.

8. I will outline below the relevant law, facts, issues and then the Tribunal's conclusions explaining why it arrived at its decision.

Relevant Law

9. Section 61 of the Housing Act 2004 requires that relevant HMOs are to be licensed by the local housing authority.

10. The definition of an HMO is found in sections 254 to 259 of the Housing Act 2004. So far as relevant, section 254 provides a "standard test" for an HMO. An HMO is a building that contains one or more rented units of living accommodation that are not self-contained flats, occupied by at least three people who constitute more than one household, as their only or main residence, and in which the occupiers share one or more basic amenities.

11. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 provides that only HMOs occupied by five or more people are subject to "mandatory" licensing pursuant to section 61 of the Housing Act 2004.

12. Section 62 of the Housing Act 2004 provides that an HMO can be temporarily exempted from the licensing requirement. This occurs when the local housing authority serves a "temporary exemption notice". The temporary exemption lasts for three months. A further temporary exemption can be sought, but only once and only in exceptional circumstances

13. Section 72 of the Housing Act 2004, so far as is relevant, provides that a person commits an offence if, without reasonable excuse, they have control of or manage an HMO which is required to be licensed but is not so licensed.

14. In accordance with section 72(4), no offence is committed if an application for a licence has been made or if the person notifies the relevant local housing authority that they are taking steps to secure that a licence is no longer required (i.e. seeks a temporary exemption notice) and the application or notification is still effective.

15. Section 263 of the Housing Act 2004 provides a definition of "person having control" and "person managing", which would include the Respondent.

16. There are certain exemptions to HMO classification, for instance concerning properties occupied by landlords. Such landlords are permitted to host up to two lodgers without their home being considered an HMO, pursuant to paragraph 6 of schedule 14 to the Housing Act 2004 read with regulation 6 of the Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006. These provisions are irrelevant to the application as the HMO licensing threshold would only have been met had there been at least three lodgers living in the Property, such that it would have been defined as an HMO irrespective of the Respondent's occupation.

17. Section 40 of the Housing and Planning Act 2016 provides that this Tribunal can make a "rent repayment order" – an order requiring a landlord to repay an amount of rent paid by a tenant – where the landlord has committed an offence under section 72(1) of the Housing Act 2004.

18. Section 43(1) of the Housing and Planning Act 2016 is as follows.

> "***43 Making of rent repayment order***
>
> *(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)*".

19. Section 44 of the Housing and Planning Act 2016 provides that the amount of rent to be repaid must relate to a period, not exceeding 2 years [previously 12 months], during which the landlord was committing the offence. Also, it must not exceed the rent that was paid in respect of that period, excluding any relevant award of benefit. Further, it provides as follows:

> "*(4) In determining the amount* [of the rent repayment order] *the tribunal must, in particular, take into account–*
>
> > *(a) the conduct of the landlord and the tenant...*
> >
> > *(b) the financial circumstances of the landlord,*
> >
> > *(c) whether the landlord has at any time been convicted of or received a financial penalty in respect of, an offence to which this Chapter applies, and*
> >
> > *(d) whether the landlord has at any time had a rent repayment order made against them*".

Main Issues

20. The main issues for the Tribunal to determine were as follows.
    1. Whether the Property was an HMO that required a licence.
    2. Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence at all relevant times, including considering whether he had a reasonable excuse for not having licensed the Property.
    3. If so, whether the Tribunal should make a rent repayment order.
    4. If so, in what amount, taking account of the rent paid, the parties' conduct and the financial circumstances of the Respondent.

21. Ultimately, it only needed to determine the first issue, but it considered also the second and third to an extent.

Facts

22. The main disputed fact between the parties was whether the Property was occupied as their sole or main residence by only four people (as contended by the Respondent) or five or more people (as contended by the Applicant). Part of that disagreement centred around whether one of those people was the Respondent. He said that he lived at the Property. The Applicant said that he did not. It did not actually matter: if five people had lived there, whether one was the Respondent or not was irrelevant.

23. The Tribunal was tasked with determining whether an offence was being committed. Therefore, in accordance with section 43 of the Housing and Planning Act 2016, to succeed with his application the Applicant had to prove his contention beyond reasonable doubt.

24. The only other matters that were truly in dispute so far as relevant to the Tribunal's decision related to the occupation of the Property, including whether the Respondent had ever lived there. On its face, the witnesses' evidence would necessarily have been contradictory. However, on analysis, that was not so. This is because all agreed that the Respondent was regularly present at the Property and the Applicant had little detailed knowledge of who exactly had lived there and over what periods. The Applicant had simply formed a belief that the Respondent did not live at the Property and that it was occupied, most of the time he was there, by five people. The only real dispute therefore was the extent of the Respondent's (and others') occupation of the Property and whether it should be considered their sole or main residence. This is not always an easy question to answer and invariably involves a degree of interpretation.

25. The Tribunal heard what the witnesses had to say about it and considered that all gave relatively straightforward and consistent accounts. None were obviously seeking to mislead the Tribunal or were being demonstrably evasive. The Applicant quite candidly admitted that he was very busy during the relevant period, often either away from the Property or ensconced in his attic room studying. He openly admitted to being unsure of the exact dates others were staying at the Property or their identities. He accepted that the Property was likely inhabited by five people only for around half the time he was there. He did not socialise especially with anyone else at the Property, save that he would chat to whoever he met in the kitchen when he was preparing food. He often saw the Respondent at the Property, including with his baby.

26. The Respondent said that he too was often away from the Property working 14-hour shifts. He suffered a relatively serious injury that meant he stayed with family for a period or periods of recovery of some weeks. He said that his former partner lived just down the road and managed the Property as he was too busy and unavailable due to work commitments. She was not working so had more time to do so. This would explain why she was the Applicant's main contact. The Respondent's former partner and himself both said that references she made to "five people" being in the Property in messages included reference to him and his girlfriend. They both said that the girlfriend stayed regularly at, but did not live at, the Property. The messages were sent during periods when she was staying at the Property for a few weeks, so was fairly being included in discussions. The Respondent's account of who had been

staying at the Property was unsurprisingly more complete than the Applicant's and could correlate with all of the objective evidence presented.

27. None of this is to say that either party was necessarily telling the truth, just that the Tribunal had no real basis to safely conclude that either was not. The nature of the Tribunal's task in this case was not to make general findings of fact. It was to focus very much on whether the Applicant was able to establish, beyond reasonable doubt, that five or more people had been living at the Property at any relevant time. It will nevertheless help to provide some background facts, based primarily on the Respondent's account, most of which was unchallenged and/or not especially relevant.

28. The Property had been purchased by the Respondent jointly with his (allegedly) former partner in early 2024. They allege they had separated before then but the Property was purchased jointly as the Respondent could not obtain a sufficient mortgage. They appear to retain an amicable and supportive relationship. The Applicant was unclear if they had in fact separated but he failed to present any good evidence to prove otherwise. I will simply refer to the Respondent's allegedly former partner as Ms Rebello.

29. The Respondent says he intended to live at the Property and refurbish it for use as an HMO. He and Ms Rebello had lived down the road in a jointly-owned Property since 2016. They had just had a baby together, who would have been a couple of months old at the time the Property was purchased. The Property had required significant improvement, including a new roof. Once it was reasonably ready for occupation, rooms were let to tenants/lodgers.

30. The Tribunal had been presented with no plan of the Property, but the parties broadly agreed that there were two main bedrooms to the left of a hallway or corridor behind the front door. On the right was a further room, about which the Applicant had little knowledge. He believed it was a bedroom. The Respondent says it was his private lounge, which was to be transformed into a further bedroom in due course. There were two bathrooms on the ground floor, one larger one next to the main bedrooms, one smaller one next to a further bedroom, which the Respondent said was his spare bedroom (in which family members or guests would sometimes stay). There was a shared kitchen on the ground floor. The Property was a bungalow, in which the Respondent had converted the attic into a further bedroom – the Applicant's.

31. The chronology of occupation of the various rooms was clearly an important matter, but the Applicant had very little good evidence about that. The Tribunal will simply

record the Respondent's position. The Respondent said that he occupied the first of the two main bedrooms, that the other one had consistently been let, and that the Applicant was the first lodger/tenant to occupy the attic room.

32. The Respondent said the second main bedroom had originally been let to someone named Hedayat, who vacated on 27 August 2024. An American named Katelyn then moved in for around a month prior to commencing university studies. She was replaced with two French students – Louis and Romain. The Applicant said that he believed they each occupied one of the main bedrooms downstairs. The Respondent says they shared the second bedroom. The Respondent said that the spare room had been occupied from before the Applicant arrived until 30 September 2024 by someone named Pranav. The Respondent said that he had expected Pranav to move out a month earlier, prior to Katelyn's arrival, but he had requested to stay longer as he was awaiting approval for employment as a nurse before vacating. The Respondent said that this was part of "unforeseen circumstances" that resulted in the Property being classified as an HMO as it was then hosting three rather than two lodgers (the Applicant, Katelyn and Pranav). From a legal perspective, that would have been correct. The Tribunal did not see why that was any different, however, to when all of the Applicant, Hedayat and Pranav had been living at the Property. Regardless, importantly, that would not have meant the Property required an HMO licence. That would only have been necessary if five or more people had been residing at the Property, irrespective of whether they were lodgers or tenants.

33. As I recorded at the outset of this decision, the Respondent accepted that in fact five people were occupying the Property throughout the period 7 August to 30 September, when Pranav finally did move out. He says that the fifth person was his girlfriend – Maria – who worked internationally as a nurse. He said she would move around frequently dependent on her work and, although she stayed at the Property when working around Oxford or on visits (including around August/September 2024), she never lived there permanently. The Applicant had no knowledge whether Maria was the Respondent's girlfriend and believed she occupied the spare bedroom. He accepted that she was not always there, however, and came and went. He recalled she had been there around the start of his occupation, had moved out and had returned towards the end of his stay.

34. The parties agreed that the French tenants/lodgers moved out in early 2025, and the Respondent said they were replaced by someone named Fazeel. A rather mysterious additional person was referred to – Kelly. The Respondent believed she was the Applicant's girlfriend but he denied all knowledge. Quite how she ended up at the Property was entirely unclear, but all seemed to agree she stayed during relatively fleeting visits (or at least they could not firmly say otherwise).

35. Throughout the Applicant's occupation, messages were exchanged between Ms Rebello and the lodgers/tenants. Those presented to the Tribunal referred principally to domestic tasks. Two of them referred to five people staying at the Property (as explained above, the Respondent says this included reference to him and Maria). Some were written in a way that suggested the Respondent was not always at the Property, but he admitted that he was not always physically there due to work and other commitments.

Conclusions

Issue 1: was the Property an HMO that required a licence?

36. As explained above, this issue revolves around whether the Applicant had proven, beyond reasonable doubt, that five or more people were living at the Property at any relevant time.

37. The Tribunal concluded he had not. Certainly some factors suggested that might have been the case, particularly for the periods August-October 2024 and February 2025, when the Respondent admitted to five people occupying the Property, including Maria.

38. However, on proper analysis the Applicant's case was woefully insufficient to prove, beyond reasonable doubt, that five people had ever been living simultaneously at the Property. The Applicant was very unsure about the details of the Property's occupation. He had provided little objective evidence about that, certainly none that was remotely clear. The Respondent's case was plausible and broadly consistent with the little evidence that had been presented. In reality, even had the Tribunal been making findings only "on the balance of probabilities", it would have been unlikely to have concluded the Applicant had proven his case.

39. As explained in introduction, the Tribunal had initially believed the Respondent had accepted that five people were living at the Property between 7 August and 30 September 2024. However, that included Maria. The Respondent was not a lawyer and cannot be blamed for failing to appreciate the nuances between the statutory classification of an HMO (and its "lodger disregard") and the requirement for an HMO to be licensed only when it is occupied permanently by five or more people (to the extent that played any role in the Respondent's concerns about Pranav's extended stay). The Respondent's case had always been that Maria did not reside permanently at the Property and the Applicant has not proven otherwise. Accordingly, the

Tribunal determined that it had likely misunderstood any "concession" and/or that it was made mistakenly towards the end of a long hearing.

40. Accordingly, the Tribunal was not satisfied the core elements of the offence were made out beyond reasonable doubt, notably that the Property had at any relevant point been occupied by five or more people as their only or main residence.

Issue 2: was an offence committed?

41. In light of the finding above, it was not strictly necessary to address any other issues. Nevertheless, as the Tribunal had initially believed the Respondent had made the concession that five people had been living at the Property between August and September 2024 (i.e. including Maria), it had considered whether the Respondent may have had a "reasonable excuse" for failing to licence the Property, even if the Property had in fact been a licensable HMO. If he did, he would have committed no offence. Findings of fact in this regard need only be made "on the balance of probabilities". The Tribunal had no good reason to doubt the Respondent's evidence about this period, so accepted it.

42. From 7 August 2024, the Respondent had installed one long-term lodger/tenant (the Applicant). He was expecting Pranav to leave within two to three weeks. Due to an unanticipated delay in securing employment, he asked to stay a few weeks longer. By this time, Katelyn was due to arrive shortly from the United States of America, having already paid her deposit for Hedayat's old room. The Respondent felt he could not fairly ask Katelyn to find somewhere else to stay and felt uncomfortable requiring Pranav to leave with nowhere else to go for such a relatively short period, presumably especially when his room would in fact otherwise have been vacant.

43. Even if he had believed Maria was a permanent occupant at the time, it would have been for a relatively limited period, as demonstrated by the fact that she did vacate the Property not very long after the Applicant moved in. In itself, this might well provide reasonable grounds for believing she was not a permanent resident, even if ultimately proven wrong.

44. The Respondent was unaware of the possibility of requesting a temporary exemption from obtaining an HMO licence, but there is no obvious reason he would not have been granted one in the circumstances. He said that he had envisaged transforming the Property into a licensed HMO and had undertaken works to the occupied parts accordingly. Presumably fire and other risks were therefore adequately mitigated and in any event the Applicant presented no evidence to the contrary.

45. So, although the Tribunal will not readily find a “reasonable excuse” when a property is knowingly permitted to become a licensable HMO, in all the circumstances the Tribunal would likely have accepted the Respondent had one, particularly from the end of August onwards when Pranav was initially due to leave.

Issue 3: whether to make a rent repayment order?

46. The Tribunal had no reason to consider this issue in any depth. It simply opined that, even in the period prior to Pranav’s initially expected departure, when there would have been less of an excuse to have accepted a fifth occupant, he was only expected to be staying for around two to three weeks. It was simply a transition period. The Respondent could have asked the Applicant to have delayed his arrival but by his own account he was very busy and was no doubt happy to have found somewhere suitable to stay for his studies. Had the Respondent decided to apply for a temporary exemption, it would very likely have been granted (if it had been decided at all by the time Pranav had left).

47. There was nothing otherwise sub-standard about the Applicant’s accommodation. It was promptly repaired when required. It was kept clean and tidy throughout his stay. It was actively managed. There was no evidence it was insalubrious or unsafe or that the Respondent should in any way be considered a “rogue landlord”. In these circumstances, the Tribunal may well have concluded not to have made an order in any event, which would have been a fraction of one month’s rent, in all likelihood less than the Tribunal application fee. When deciding whether to make orders, and their amount, the Tribunal will always consider whether it would be proportionate to make an award at all.

Judge M. Hunt

30 June 2026