FIRST - TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**HAV/00MR/HMF/2025/0622**
Property	:	**97 Manners Road, Southsea, Hampshire, PO4 0BD**
Applicant	:	**Kalyani Balkrishna Sinalkar**
Respondent	:	**Robert Fazal**
Representative	:	**Carl Geary (Counsel)**
Type of Application	:	**Rent Repayment Order**
Tribunal Members	:	**Judge Dovar** **Mr E Shaylor MCIEH**
Date and venue of Hearing	:	**2nd June 2026, Havant**
Date of Decision	:	**9th July 2026**

DECISION

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1. This application, dated 23rd August 2025, is for a Rent Repayment Order ('RRO') under s.41 of the Housing and Planning Act 2016 ('the Act'). The Applicant seeks payment of £7,110 being the rent paid for her occupancy of the Property in the period 17th May 2024 to 3rd March 2025.

2. Section 41 of the Act provides that a tenant may apply for a RRO against a landlord who has committed one of the offences specified in s.40, and the application must be based on a prescribed offence which was committed within the period of 12 months ending with the day on which the application was made (s.41(2)(b)). In this case therefore the offence in question must have occurred in the 12 months leading up to the date of the application, which was 23rd August 2025; i.e. in the 12 months from 24th August 2024. The Tribunal was satisfied the application was made in time because, for the reasons set out below, the period of the alleged offence continued until March 2025.

3. In this case the relevant offence is a failure to licence the Property as an HMO when there was a requirement on a person in control of or managing the HMO, or on a landlord of a tenant in occupation of the HMO, to do so (s.72(1) of the Housing Act 2004).

Background

4. The Applicant rented a bedroom at the Property and had the use of shared facilities. Before taking up occupation, the Applicant paid to The Property Zone Limited ('TPZ') £137 as a holding deposit and then on 29th April 2024, £1,053 to TPZ being the first months rent and one month's rent in advance. After that £595 was paid per month to TPZ from 3rd

June 2024 to 6th January 2025. Then £585 was paid to a Zak Bacon on

4th February 2025 and £575 to the Respondent on 5th March 2025. The Tribunal was satisfied that the holding deposit of £137 was in fact rent, because it was deducted from the first rent payment on 29th April 2024.

5. The reason the Applicant initially paid her rent to TPZ and not the Respondent was because TPZ was her landlord under the terms of the Assured Shorthold Tenancy Agreement that she entered into on 17th April 2024. A copy of that agreement was provided to the Tribunal, which named TPZ as landlord on the tenancy which was for a fixed period from 3rd May 2024 to 2nd November 2025 at a rent of £595 per month. It was signed on behalf of TPZ by Lewis Horburgh. There was no mention of the Respondent in the tenancy agreement.

The Applicant's case

6. On 17th December 2024 'Zak & Lewis' messaged the Applicant saying that as their business was shutting down she needed to vacate the Property by 24th February 2025. We assume that 'Lewis' was Lewis Horburgh, who had signed the tenancy agreement and that their business was TPZ. 'Zak' we also assume was the person who the penultimate instalment of rent was paid to.

7. During most of her occupation the Applicant shared the Property with three other individuals who were not related to her. One of the other occupants, Rose Peaceful, complained to the local authority ("the council") in January 2025 about the notice to leave given in December 2024, but was more concerned that the broadband had been cut off, as had been the cleaning services. The council in response notified her that the Property was an unlicensed house in multiple occupation.

8. The Applicant relies on a witness statement provided by Millie Hunter, Housing Regulations Licensing Team Leader of the council, who in her statement dated 9th March 2026, confirms that the Property as at February 2025 was an unlicensed house in multiple occupation for the purposes of Housing Act 2004. On 13th February 2025, the Respondent applied for an HMO licence, but the council rejected the application because a floor plan had not been provided. Ms Hunter also stated that on 27th March 2025, the Respondent had attended the council's offices as part of his attempts to licence the Property and had said that at that time there was only one remaining occupant.

9. Once TPZ had been wound down, the Applicant and at least Rose Peaceful remained in occupation and as mentioned above paid the penultimate instalment of rent to Mr Bacon. Once he had left the scene, and the Respondent stepped in, the last months rent was paid directly to him, less a sum to account for the lack of broadband and cleaning
services.

The Respondent's case

10. The Respondent accepted that this had been an unlicensed house in multiple occupation but resisted the application on the basis that he was not the Applicant's direct landlord, nor was he in control of or managing the Property until March 2025. Further, that by the time he had accepted a direct payment of rent in March 2025, there were less than three occupants and so it was no longer a house in multiple occupation.

11. In relation to the first line of defence, the Respondent relied on the Supreme Court decision in *Rakusen v Jepson* [2023] UKSC 9 and the

confirmation that when s.40(2) of the Act referred to a rent repayment order being available against '*the landlord under a tenancy of housing*' that was a reference to the direct landlord and not to any superior landlord. In that case the Supreme Court recognised that this rendered the legislation less effective than it could have been, but considered that that was for Parliament to address; which it has done, but only in respect of matters that arose after 1st May 2026, when the relevant parts of the Renters' Rights Act 2025 came into force. That new legislation does not apply to this application given that the material facts occurred before 1st May 2026.

12. The uncontroversial evidence was that in July 2020 the Respondent had engaged an independent sales and lettings agency GD3 Property Ltd ("GD3") to manage the property for him, and procure a tenant. By a Company Letting Agreement dated 1st October 2020, GD3 had let the Property to TPZ for a term of 36 months from 3rd October 2020 at a rent of £1,000 per month. A copy of the Company Letting Agreement was provided in the bundle, it named the Respondent as "landlord" and TPZ as "tenant" and in the opinion of the Tribunal had the form of a tenancy or lease. Zak Bacon and Lewis Horsburgh were the guarantors under that agreement. There were a number of addendums from time to time, including one on 2nd October 2020 in which the Tenant, TPZ, was given permission to sub-let to a maximum of four unrelated individuals.

13. That agreement between the Respondent and TPZ was renewed by GD3 on 1st October 2023 for a period of 36 months, with rent rising to £1,060 per month from 3rd October 2024 and then £1,095 per month from 3rd October 2025. A similar slew of addendums was made at the same time,

including that of limiting any sub-letting to four un-related people and permitting TPZ to choose utility providers. The Respondent claimed he had no knowledge of these addendums arranged by GD3 which changed the terms of letting permitted of TPZ, in effect allowing TPZ to let the property as an HMO.

Discussion

14. We are satisfied that the agreement dated 1st October 2023 was a valid and effective tenancy agreement, with the result that the Respondent was not the Applicant's direct landlord and therefore no application can be made in respect of the Applicant's tenancy against the Respondent for the period when he was not her direct landlord.

15. Further, the Respondent, by virtue of the agreement dated 1st October 2023 was neither the person in control of the Property nor the person managing it. Under s.263 of the Housing Act 2004, a person in control is a person who receives the rack rent, being at least two thirds of the market rent. Assuming that the four rooms were all let at a similar rent, and that the rent was a market rent, the rental income from the Property was in the region of £28,800 per annum, whilst the income received by

the Respondent from GD3 was only a little over £12,000, considerably less than the rack rent. A person managing is an owner who would receive the rent from tenant occupiers unless it is received by another person who is a leaseholder or tenant, which was the case here.

16. The Respondent therefore did not commit an offence of failing to licence an HMO (the offence being committed by TPZ) because the Respondent

was neither the landlord of a tenant in occupation, nor a person in control nor a person managing the HMO.

17. The issues that the Applicant had regarding loss of deposit and the stress and inconvenience of losing her accommodation are matters that arise because of TPZ's conduct, not the Respondent. Indeed this application should have been brought against TPZ; although it seems that even if that company were still in existence it may have little if any funds.

18. There was one remaining point, which was the last payment which was made directly to the Respondent by the Applicant. The circumstances of that payment were that TPZ had decided to leave the renting business; which had precipitated asking the Applicant to leave in December 2024. Once TPZ had effectively surrendered its lease, the Respondent became a person managing the Property, and attempted to obtain an HMO licence or Temporary Exemption Notice from the council and wanted to put the Property on the market for sale. At this point there was only the Applicant and Rose Peaceful left in occupation. The Applicant confirmed that the others had left in light of TPZ's request for them to vacate.

19. It seems to us that at this point, in March 2025, there were only two people occupying the Property, and there was no intention to rent to anymore individuals, with the result that it was no longer a house in multiple occupation for the purposes of the Housing Act 2004. It follows that there was no offence committed at this date by the Respondent.

20. Even if an offence had been committed in this period, any award would have been small given that this would only have covered one payment of rent, £575 and a deduction would be made from any RRO for utilities costs

included in the rent, which the Applicant cautiously estimated might be in the region of £90 per month per tenant. Further in terms of the severity of the offence, this type of offence falls on the low side of those that attract liability for a rent repayment order and as the

Applicant accepted there was nothing otherwise wrong with the Property.

Conclusion

21. Accordingly, the application is dismissed.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.