FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/00MR/HMF/2025/0631
Property	:	14 Jubilee Terrace, Southsea, Portsmouth PO5 3AS
Applicant	:	Hester Redvers-Harris
Representative	:	
Respondent	:	Jemma Rumsey
Representative	:	
Type of Application	:	Application for a rent repayment order by Tenant Sections 40, to 44 of the Housing and Planning Act 2016
Tribunal Members	:	Judge C Skinner Mr E Shaylor MCIEH
Date of Hearing	:	18 June 2026
Date of Decision	:	13 July 2026

DECISION

Summary of the Decision

1. **The Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under section 72(1) of the Housing Act 2004 between 1 September 2024 and 25 March 2025.**

2. **The Tribunal has determined that it is appropriate to make a rent repayment order in favour of the Applicant against the Respondent as the landlord of the Property.**

3. **The Tribunal makes a rent repayment order against the Respondent in the sum of £1,564.08**

4. **Payment is to be made by the Respondent within 28 days of service of this order.**

5. **The Tribunal determines that the Respondent shall pay the Applicants £341 as reimbursement of Tribunal fees, such payment to also be paid within 28 days.**

Introduction

Background

1. This is an application by the Applicant, Hester Redvers-Harris, for a rent repayment order ("RRO") against the Respondent, Jemma Rumsey, in respect of the property at 14 Jubilee Terrace, Southsea, Portsmouth PO5 3AS ("the Property").

2. The application is made pursuant to sections 40–44 of the Housing and Planning Act 2016 ("the 2016 Act"). The Applicant seeks repayment of rent in the sum of £6,125 for the period from 1 September 2024 to 25 March 2025 (the "Relevant Period").

3. The Applicant's case is that, during the Relevant Period, the Property was a house in multiple occupation ("HMO") which was required to be licensed, and that the Respondent committed the offence of being in control or management of an unlicensed HMO contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

4. The Respondent's case is that she believed the Property was compliant and did not intend to operate it as a licensable HMO during the Relevant Period, or alternatively that she did not knowingly operate it as such, and she relies, inter alia, upon her understanding of the licensing requirements and subsequent engagement with the local authority.

Factual Background

5. The Applicant moved into the Property in or about April 2023 under a written licence agreement dated 21 February 2023. At that time, the Respondent resided in the Property and the arrangement was one of lodger and resident landlord.

6. In or about August 2023, the Respondent moved out of the Property on a full-time basis. At or around the same time, an additional occupier (Suyjaja) was introduced, and the Property ceased to be occupied by the Respondent.

7. On 1 September 2024 the Applicant entered into a further written licence agreement for a term of 12 months at a rent of £900 per calendar month.

8. From 1 September 2024, the occupation of the Property included the Applicant, a couple (Colin Chapman and Alexandra Lewis) who had taken up occupation following Suyjaia leaving in August 2024, and at times a further occupier (Charlie Hoy). The occupiers shared certain facilities, including a single kitchen and washing machine.

Events During the Relevant Period

9. During the relevant period, the Respondent continued to manage the Property and to arrange the occupation of rooms by individual occupiers. Rent was paid directly to her by the occupiers.

10. On 28 January 2025 the Respondent wrote to the occupiers indicating that, following an anticipated reduction in occupancy, rent would need to be increased or an additional occupier introduced.

11. The Applicant, shortly after receiving that indication, gave notice and vacated the Property in March 2025. The parties differ as to the circumstances in which that decision was made, though it is not in dispute that the Applicant left the Property in March 2025.

Local Authority Involvement

12. In April 2025, after leaving the Property, the Applicant contacted Portsmouth City Council seeking information as to the licensing status of the Property.

13. The Council confirmed that an additional licensing designation applied within the area from 1 September 2023, requiring licensing of HMOs

occupied by three or more persons forming two or more households sharing facilities.

14. The Council's records show that no HMO licence was in force for the Property, and no application for such a licence had been made, during the Relevant Period.

15. The Council subsequently undertook enquiries, including site visits and correspondence with the Respondent. However, it ultimately concluded that it had insufficient evidence in retrospect to determine whether the Property met the statutory definition of an HMO during the Relevant Period.

Procedural History

16. On 10 November 2025 the Applicant made the present application to the Tribunal for a rent repayment order. The Tribunal is satisfied that the application was made in time, namely within 12 months of a date on which the offence occurred or was continuing.

17. Directions were issued by the Tribunal on 7 April 2026, and the matter was listed for hearing on 18 June 2026.

18. The Tribunal has before it witness statements from both parties, documentary evidence, and a witness statement from an officer of Portsmouth City Council.

Issue for Determination

19. The principal issue for the Tribunal is whether it is satisfied beyond reasonable doubt, as required by section 43 of the 2016 Act, that the Respondent committed the offence of being in control or management of an unlicensed HMO during the Relevant Period, or was a landlord of a tenant in occupation of the same.

20. If that issue is determined in the Applicant's favour, the Tribunal must then consider whether to make a rent repayment order and, if so, in what amount, having regard to all relevant statutory factors.

21. The Applicant applied for a rent repayment order against the Respondent under Sections 40-44 of the 2016 Act. The basis for the application is that the Respondent was in breach of section 72(1) of the 2004 Act.

22. The Tribunal was provided by the Applicant a bundle consisting of 107 pages. The Tribunal read the bundle and all associated material.

References in this decision to page numbers in the bundle are indicated as [ ].

23. The lack of mention of any particular document or submission should not be regarded as indicating that it has not been taken into account. The Tribunal has focused on the key issues identified that require determination. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

24. The hearing was conducted remotely via CVP video hearing and was attended by the Applicant and the Respondent.

Relevant Statutory Provisions

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

Alleged Offence

26. As set out above, the application is based on an alleged breach of section 72(1) of the 2004 Act by the Respondent. The evidence presented by the Applicant from Portsmouth City Council ("the Council") was a witness statement dated 13 April 2026, made by Andrea Griffiths, a Housing Regulations Officer at the Council [52]. Ms Griffiths did not attend the hearing to be questioned on her statement however the content of that statement was not challenged by the Respondent.

27. The Respondent essentially accepted the evidence of the Council and put forward submissions that at all relevant times she engaged with the Council when she became aware the Council was investigating the Property and its licensing requirements.

28. The Respondent's evidence was that she had originally carried out research on websites prior to taking in any tenants to investigate the rules around HMOs that might apply. This was likely to have been at some point in early 2023 and prior to 1 September 2023 when the Council's additional licensing requirements for HMO's came into force.

29. The Respondent could not recall specifically where she found the information but claimed she believed only the mandatory licencing regulations applied, namely that no licence was necessary if there were less than 5 occupiers. The Respondent accepted that she did not carry out any further checks into whether that position had changed thereafter. The Respondent stated it was never her intention to allow the Property to become occupied to levels that would require an HMO licence and had based her subsequent actions on not allowing the

number of people occupying the Property to engage the mandatory scheme for HMO licensing.

30. The Tribunal accepts the evidence of the Council and finds that from 1 September 2023 the Property is located in an area which became subject to additional licencing requirements. The requirements of that designation applied to all HMOs as defined by section 254 of the 2004 Act that are occupied by three or more persons comprising two or more households, and HMOs as defined in section 257 (buildings converted into self-contained flats) but only including those section 257 HMO's that are mainly or wholly tenanted including those with resident landlords.

31. Having determined that the Property was subject to additional licensing requirements the Tribunal must determine if a breach of those requirements subsequently took place and if so for what period of time.

32. The Tribunal heard evidence from both the Applicant and Respondent that confirmed the Property did not contain self-contained flats. It was accepted that the Property was let with shared facilities. The Property had its own front door located on the ground floor with an entrance hallway and communal kitchen. On the 1st floor there was a shared lounge area with television, along with a bedroom and bathroom. On the 2nd floor there was a further bedroom and bathroom and on the 3rd floor there was a further bedroom, bathroom and office room.

33. The Tribunal accepted the evidence of the parties in respect of the layout of the Property.

34. The Tribunal must now determine if there was a breach of the requirements relating to the number of people and number of households occupying the Property during the Relevant Period.

35. The evidence of the Applicant was not disputed by the Respondent in respect of who was occupying the Property during the Relevant Period. It was admitted by the Respondent in evidence that the Applicant was occupying the bedroom on the third floor under a licence agreement and paid rent to the Respondent. It was also admitted that Colin Chapman and Alexandra Lewis were both in occupation of the bedroom on the second floor of the Property and paying rent (£1,400 per month) under a licence agreement during the Relevant Period, confirming evidence within the bundle [83] as to the date they moved into the Property.

36. It was also clear from both the evidence of the Applicant and the Respondent that Charlie Hoy who would occupy the bedroom on the first floor at the Property was not at any stage during the Relevant Period using the Property as his only or main residence. This was

supported by evidence within the bundle [32/33]. Mr Hoy was said to typically arrive on a Tuesday evening and would have left most weeks by Thursday morning. The Tribunal was told in evidence that Mr Hoy had a family home in the Midlands where he lived with his wife and only used the room at the Property when he was working as a Researcher at the Portsmouth University. His reduced rent of £350 per month reflected his part-time occupation.

37. In evidence the Respondent told the Tribunal that it had never been the intention for Colin Chapman to reside with Alexandra Lewis for any extended period of time. The Respondent submitting in evidence [62] an e-mail from Colin Chapman setting out what had been his intention around occupying the room at the Property. That evidence and the evidence from the parties confirms that the original intention was for Colin Chapman to live at the property only when not working away until the 1st week of October 2024, however due to a medical issue and the requirement for treatment and recovery, his work plans changed and the Respondent “kindly” let Mr Colin Chapman reside permanently with Alexandra Lewis at the Property.

38. The Tribunal in considering the admissions made by the Respondent, the evidence presented by the Applicant and the e-mail from Mr Colin Chapman referred to above, finds that during the Relevant Period, the Property was occupied by the Applicant under an agreement for which rent was paid in respect of the room on the third floor. It further finds that Colin Chapman and Alexandra Lewis occupied the room on the second floor of the Property under an agreement under which rent was paid to the Respondent. The rental amount was indicative of double occupancy.

39. Therefore, the Tribunal finds as fact that during the Relevant Period the Property was occupied by 3 people and there were 2 households occupying the Property. The Tribunal finds that Charlie Hoy did not occupy the Property as his only or main residence and did not therefore count towards the number of occupiers or households at any time during the Relevant Period.

40. In light of the above findings, the Tribunal finds that during the Relevant Period, the Property was required to be licensed under the Council’s Additional Licencing Scheme.

41. Based on the Tribunal's findings, the Respondent was in breach of the HMO licencing requirements for the purposes of section 72(1) of the 2004 Act and the Tribunal finds beyond all reasonable doubt that the offence took place during the Relevant Period.

Entitlement to apply for a Rent Repayment Order

42. Section 41 of the 2016 Act entitles a tenant to apply for a rent repayment order against a person who has committed an offence to which that Chapter of the 2016 Act applies. An offence under Section 72(1) of the 2004 Act is one such offence. The Section provides for a time limit for applications to be made and the Tribunal is satisfied that the Applicant brought the claim before the required time limit. In addition, an application can only be brought by a tenant to whom the relevant property is let when the offence was committed. As the Property was let to the Applicant when the offence was committed, they are entitled to bring a claim against the person who has committed the offence.

43. Section 41 of the 2016 Act requires the claim to be brought against the person who committed the offence, in this case breaching the requirement for the Property to be licensed as an HMO. Based on the undisputed evidence of the parties on this point and the copy agreements contained in the bundle, the Tribunal finds that the Respondent is the Landlord and the person who has committed the offence.

44. The Tribunal therefore determines that the Applicant is entitled to bring their application for a rent repayment order against the Respondent, unless the Respondent has a reasonable excuse for the offence (as provided by Section 72(4A)) of the 2004 Act).

Reasonable excuse

45. Accordingly, the Tribunal considered whether the Respondent had a reasonable excuse for committing the offence. This would operate as a defence to the claim and mean that a rent repayment order could not be made.

46. The Tribunal found the Respondent to be an honest and open witness. The Respondent explained, as set out above, her initial inquiries around the law relating to HMOs and her intention to not allow the Property to fall into the definition of an HMO for the purposes of the mandatory licensing requirements that she believed applied. The findings of the Tribunal reflect that the Respondent did not allow the Property to reach levels of occupancy to meet the mandatory requirements and there is reference to that having been the Respondent's continued intention within the evidence presented.

47. The Respondent's evidence was that she was simply not aware that the Council had designated the whole of Portsmouth to be an area subject to additional licencing requirements. The Respondent did confirm that she also lets other properties. One situated in Havant where the

Respondent has been a landlord for approximately seven years, the Respondent confirming to the Tribunal that following recent changes under the Renters Rights Act 2025 she had been updating her knowledge of the law applicable to landlords and that she had the same tenants under a tenancy agreement during that seven years.

48. The Respondent also told the Tribunal that she owned the whole building in which the Property is situated and that the basement (14A Jubilee Terrace) was let separately and that the Respondent was the landlord in respect of that property also.

49. The Respondent admitted that in respect of the Property, following the initial inquiries that she made in early 2023 around HMO licensing requirements, no further checks took place.

50. Whilst the Tribunal has a degree of sympathy with the Respondent's claim to have been unaware of the Council's designated additional licensing scheme, that of itself is not in the Tribunal's view sufficient to establish a defence of reasonable excuse in this matter. Although the Respondent is an individual and not a business, the evidence presented to the Tribunal shows that the Respondent is engaged with at least three different forms of letting, in association with three different properties. As such it is incumbent on any individual who lets properties to ensure they are aware of the relevant regulations that may apply when letting those properties and when occupancy levels change or circumstances around those occupancies change, they should take reasonable steps to ensure that the subject property of those lettings remains compliant.

51. In this case, the Respondent should have taken steps to ensure when letting the room to Alexandra Lewis, the position around HMO licensing requirements remained as she previously believed it to be. It became even more incumbent on the Respondent to do this when Colin Chapman's possible occupation at the Property became apparent, albeit that it was initially only believed to be for a temporary period of time. Another opportunity to check was missed when Colin Chapman's circumstances changed and Mr Chapman asked to remain occupying the room with Ms Lewis.

52. The Council's additional licensing requirements came into force in September 2023 meaning there was at least a year for the Respondent to have updated herself around the requirements that were in place by September 2024. As a person engaged in letting properties, it is not unreasonable to have expected the Respondent to make such enquires.

53. Therefore, in respect of establishing a reasonable excuse defence the Tribunal is not satisfied such a defence is made out. The Tribunal does except some of the arguments made by the Respondent may go towards

mitigation of the offence and the level of any rent repayment order made.

54. As a result, the Tribunal finds that the Respondent does not have a reasonable excuse for the offence.

Consideration of grounds

55. The Tribunal is satisfied beyond all reasonable doubt that the offence was committed by the Respondent, that the Respondent does not have a reasonable excuse for the offence and was at the time the Applicant's landlord. The offence was committed on 1 September 2024 and had not been remedied when the Applicant left the Property in March 2025. The Applicant's application was submitted on 10 November 2025.

56. The Tribunal finds the application was brought within the required timescales applicable under Section 41(2)(b) of the Housing and Planning Act 2016. Accordingly, the Tribunal is satisfied that the Applicant can bring their claim in respect of that period.

<u>Rent Repayment Order</u>

57. Section 43 of the 2016 Act provides that where the Tribunal is satisfied beyond reasonable doubt that a landlord has committed a relevant offence, it may make a rent repayment order. The Tribunal does therefore have a discretion as to whether to make an order although it has been established that it would be exceptional not to make a rent repayment order (*Wilson v Campbell* [2019] UKUT 363 (LC)).

58. In this case, the Tribunal is satisfied beyond reasonable doubt that an offence has been committed and that there is no reasonable excuse for the offence. It does not consider that there are any exceptional circumstances preventing it making an order and therefore determines that a rent repayment order should be made.

Submissions on amount of order

59. Having determined that a rent repayment order should be made, the Tribunal next considered what the amount of such order should be.

60. The Applicant's application form seeks repayment of the total rent paid through the Relevant Period. This breaks down to a total of £6,125 on the basis of 6 month's full rent of £900 per month and a pro-rata amount of £725 in respect of the time the Applicant occupied the Property until her departure in March 2025.

61. The Applicant accepted in her application form that a reduced amount may be appropriate to take into account the utility bills and other costs that had been met directly by the Respondent as per the terms of the licence agreement.

62. The Applicant submitted that the Tribunal should attach sufficient weight to the conduct of the Respondent when determining the level of any Rent Repayment Order made in respect of her seeking to increase the rent outside of the agreed terms of the licence agreement and based on the imbalance of power between the Applicant as an occupier and the landlord Respondent. The Applicant stated her dissatisfaction that in January 2025 the Respondent suggested increasing the rent to cover the shortfall when Mr Hoy moved out. The Applicant further inviting the Tribunal to understand the importance of landlord's ensuring they complied with legal requirements when letting properties.

63. In response, the Respondent had set out evidence around the cost of utility bills that had been met from the rent that was paid and also reiterated that she had never intended to allow unsafe or overcrowded conditions to occur at the Property. The Respondent suggested the conduct of the Applicant changed significantly from that of a happy and contented occupier, to one that was upset and disgruntled following her leaving occupation and not being permitted to stay for a night upon request when travelling back to the area subsequently. The Respondent submitting that she had tried her best all along to be a good landlord and this was reflected in the tone and engagement in the WhatsApp messages and correspondence evidenced to her statement.

64. The parties were in agreement, and it was not in dispute, that the Property itself was well maintained, let to a high specification, regularly cleaned and that the Respondent was a responsive landlord available to her occupiers, attempting to engender a friendly and open dialogue during the Relevant Period.

Method of assessing amount of order

65. Section 46 of the 2016 Act specifies circumstances where the Tribunal is obliged to make a rent repayment order in the maximum amount (subject to exceptional circumstances). These do not apply here. The Tribunal therefore has discretion as to the percentage of the rent it can order be repaid.

66. Section 44 of the 2016 Act specifies the factors that the Tribunal must take into account in making a rent repayment order. This has been qualified by the Upper Tribunal in guidance given in the case of *Acheampong v Roman* [2022] UKUT 239. That guidance is summarised as follows:

(i) ascertain the whole of the rent for the relevant period;

(ii) subtract any element of that sum that represents payment for utilities that only benefited the tenant, e.g. gas, electricity and internet access;

(iii) consider how serious the 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?

(iv) finally, 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), namely the matters the Tribunal must 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 identified in the table at section 45 of the 2016 Act.

Tribunal assessment of amount of order

67. The Tribunal agrees with the Applicant's calculation that the rent paid for the Relevant Period is £6,125. This was not disputed and accords with the sums due under the agreement [27] and evidenced as paid via the Applicant's bank statements submitted in evidence.

68. The Tribunal received from the Respondent calculations to account for the utilities that were met by the Respondent [73], being gas, electricity, water, council tax, Sky broadband and TV, TV licence, insurances, internal and external cleaning, totalling £796.80 per month. These utilities were set out in the licence agreement and at the hearing the Applicant confirmed that they had enjoyed the benefit of those utilities whilst occupying the Property, except that she queried the cost of cleaning which she said was weekly cleaning of the kitchen, bathrooms and lounge. The Applicant also said she did not use the Sky TV because the lounge was usually occupied by the other tenants. The Applicant did

not otherwise dispute the cost of those utilities or that provision was made for them within the licence agreement to be covered by the Respondent from the rent and chose not to give a view or make submissions on the amounts being claimed by the Respondent, the Applicant pointing out no invoices had been submitted to support the calculations set out by the Respondent.

69. The Respondent confirmed in evidence to the Tribunal that the figures had been taken from payments made by the Respondent to the respective utility companies set out within the schedule calculating the costs. The Respondent said the cleaning costs included the outside decking and some gardening, and that the Sky television was a basic package which came with the broadband service. In determining those amounts, the Tribunal has also applied its expert knowledge as an expert Tribunal when assessing those figures in respect of the Property and the number of people occupying the Property through the Relevant Period.

70. Upon considering the evidence before the Tribunal, accepting the Respondent's submitted calculations and applying its expert knowledge, the Tribunal finds that the Respondent's calculations in respect of the utility's claimed and the payments made in respect of the same at £265.60 per tenant per month are accepted. The Tribunal therefore reduces the rent paid by the Applicant for the Relevant Period by £1,656.21, being the monthly utilities cost for 6 months, plus a pro rata element for March up to the date the Applicant left the property.

71. The Tribunal considered the seriousness of the offence. The assessment of the seriousness of the offence is made not only against the other offences listed in Chapter 4 of the 2016 Act but also against other breaches of the same offence.

72. The Tribunal notes that an offence under section 72(1) Housing Act 2004 is at the lower end of offences when comparing other offences for which rent repayment orders can be made. Breach of section 72(1) Housing Act 2004 is punishable by way of a fine only. One of the purposes of the HMO licensing requirements is to ensure landlords let properties to suitable occupancy levels and that properties meet required standards in terms of conditions and safety for those occupying.

73. The Tribunal accepts and agrees with the Applicant that the importance of compliance with the regulations that landlords are subject to, including HMO licensing requirements, are important. They are designed to keep occupiers safe and it is imperative landlords understand compliance with such legislation is not optional. Any person letting property is obliged to consider the laws and regulations that may apply.

74. The Tribunal does accept and attaches some weight to the Respondent's evidence that this was not a deliberate breach of the regulations. The breach occurred as a result of a failure to keep updated in respect of regulations that applied to the Property and at various key times during the Relevant Period. As indicated above, whilst that itself does not amount to a reasonable excuse in defence of the office, it does factor into the level of Rent Repayment Order the Tribunal will make.

75. The Tribunal also accepts that the Property was not overcrowded, the number of HMO occupiers was the minimum 3, the HMO was licensable under additional licensing rather than mandatory licensing and was kept and maintained to a high standard and that the Property did not present a health and safety risk. The parties evidence confirming that the Respondent did act as a reasonable landlord and was open and responsive to the Applicant and other occupiers during the Relevant Period. The offence is therefore at the lower end of a scale of similar offences under section 72(1) of the 2004 Act.

76. Considering the Upper Tribunal authority of *Hallett v Parker [2022] UKUT 165 (LC)*, the Tribunal finds that in all the circumstances 25% of the rent paid is an appropriate starting point when setting the rent repayment order in this matter where this is not the most serious offence under which rent repayment orders can be made. It is the Respondent's first offence and the Respondent has sought to engage with the Council fully upon being made aware of the potential offence.

77. The Tribunal has considered the conduct of both the Applicant and the Respondent during the Relevant Period. The Applicant was a good tenant. The Applicant paid the rent on time when due and as is evident from the exchange of messages evidenced in the bundle, engaged in a positive relationship with the Respondent. The Applicant was a good tenant and the Respondent was disappointed when the Applicant choose to end her licence agreement.

78. Likewise, the Respondent conduct was that of an engaged landlord, responsive to issues raised by tenants. The Property was not in disrepair and presented no hazards. However, the Tribunal does find that the Respondent did engage in a course of conduct that sought to increase the rent and apply pressure to the Applicant to accept that increase in rent despite there being a valid agreement in place which fixed the rent due until September 2025.

79. The Tribunal further accepts that the relationship between the Applicant and Respondent deteriorated significantly following the Applicant leaving the Property. Given this conduct took place after the Relevant Period, the Tribunal attaches little weight to either parties evidence or submissions on this point. It was within the Applicant's rights to seek advice around whether the Property was an HMO for the purposes of obtaining a rent repayment order and the Respondent was

entitled to object to that and defend her position if she wished to. The parties both challenge the conduct of the other in this respect and question the motivations behind each other's conduct however the Tribunal attaches little weight to either parties position on the others conduct in this specific regard.

80. The Tribunal as found above, acknowledges the Respondent lets other properties and has taken that into account when considering the Respondent's overall conduct. Unlike the Hallett v Parker case, the Respondent was not let down by a third party agent, she was solely responsible. The Tribunal received no evidence relating to the Respondent's financial circumstances nor was any evidence provided that the Respondent has ever been convicted of any other relevant convictions identified in the table at section 40(3) of the 2016 Act.

81. When considering the above factors and conduct of the parties as a whole, the Tribunal finds it proportionate and reasonable to increase the amount payable under the Rent Repayment Order by 10%, from 25% to 35%. This reflects the period of time the Respondent allowed the offence to continue without making further inquiries around the need for a licence, that the Respondent sought to infer a rent increase would be required and is a landlord to at least 2 other properties. However it also takes into account and limits that increase due to the fact that the Respondent was an available and engaging landlord and the property was in good condition throughout the Relevant Period, and that the offence was at the lower end of the scale of offences under section 72(1) of the 2004 Act.

82. Taking all these factors into account, the Tribunal determined that the amount payable by the Respondent should be 35% of the rent paid after deducting £1,656.21 for utilities, leaving the amount to be repaid as £1,564.08.

Tribunal determination

83. The Tribunal finds beyond all reasonable doubt that the Respondent was in breach of section 72(1) Housing Act 2004 during the Relevant Period and committed an offence in doing so. The Tribunal finds that the Respondent does not have a reasonable excuse for the offence and was at the time the Applicants' landlord. The offence had not been remedied when the Applicants left the Property.

84. The Tribunal has determined that it should make a rent repayment order for it and has calculated the amount of that order as £1,564.08.

85. Accordingly, the Tribunal orders the Respondent to repay to the Applicants the sum of £1,564.08 by way of rent repayment, such repayment to be made within 28 days of the date of this decision.

Application for Reimbursement of Fees

86. The Applicant also made an application for the reimbursement of the fees paid to the Tribunal. The Tribunal has therefore considered whether to make an order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse the application fee of £114.00 and the hearing fee of £227.00.

87. As the Applicant has been successful in this claim, the Tribunal is satisfied that an order for reimbursement of these fees should be made. It considers that on balance, the Applicant was justified in bringing these proceedings and incurred those fees as a result of needing to bring the application to secure the rent Repayment Order.

88. The Tribunal therefore orders the Respondent to reimburse to the Applicant each of the application fee of £114 and the hearing fee of £227 (amounting to £341 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

RIGHTS OF APPEAL

90. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

91. 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.

92. 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 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

93. 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.

SCHEDULE

Relevant statutory provis25ions

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
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	Housing Act 2004	section 32(1)	failure to comply with prohibition order etc
5	Housing Act 2004	section 72(1)	control or management of unlicensed HMO
6	Housing Act 2004	section 95(1)	control or management of

			unlicensed house
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.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2	the period of 12 months ending

of the table in section 40(3)	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

72 Offences in relation to licensing of HMOs

(1)If an HMO is required to be licensed under this Part (see section 61(1)) but is not so licensed, an offence is committed by—

(a)any person within subsection (1A), and

(b)any person who as landlord under a tenancy or licensor under a licence to occupy has an estate or interest in, or a right in relation to, the HMO that is superior (whether directly or indirectly) to the estate, interest or right of any person within subsection (1A).

(1A)The following are within this subsection—

(a)any person having control of or managing the HMO, and

(b)any person who is the landlord or licensor in relation to a person occupying the HMO under a tenancy or licence.

(2)A person commits an offence if—

(a)he is a person having control of or managing an HMO which is licensed under this Part, (b)he knowingly permits another person to occupy the house, and

(c)the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b)he fails to comply with any condition of the licence.

(4)In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a)a notification had been duly given in respect of the house under section 62(1), or

(b)an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(4A)In proceedings against a person for an offence under subsection (1)(a) it is a defence for them to prove that they had a reasonable excuse—

(a)for having control of or managing the HMO, or

(b)for being the landlord or licensor in relation to a person occupying the HMO under a tenancy or licence,

in circumstances in which the HMO was required to be licensed under this Part but was not so licensed.

(4B)In proceedings against a person for an offence under subsection (1)(b) it is a defence for them to prove that they—

(a)did not know, and had a reasonable excuse for not knowing, that the building or part of the building concerned was an HMO,

(b)took all reasonably practicable steps to ensure that the HMO was licensed under this Part, or

(c)had some other reasonable excuse for failing to ensure that the HMO was so licensed.

(4C)For the purposes of subsection (4B), a term in the tenancy agreement or licence to occupy relating to the occupation of the building or part of the building that is an HMO does not on its own constitute a defence under any of paragraphs (a) to (c) of that subsection.]

(5)In proceedings against a person for an offence under [subsection (2) or (3)] it is a defence that he had a reasonable excuse—

(a). . . . .

(b)for permitting the person to occupy the house, or

(c)for failing to comply with the condition,

as the case may be.

(6)A person who commits an offence under subsection (1) or (2) is liable on summary conviction to [a fine].

(7)A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[(7A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B)If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]

(8)For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a)the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b)if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9)The conditions are—

(a)that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of [the appropriate tribunal]) has not expired, or (b)that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10)In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).