

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AZ/HMF/2025/0926**
Property	**:**	**8 WOOLSTONE ROAD, FOREST HILL SE23 2SG**
Applicant	**:**	**Ms Aletta Nash**
Representative	**:**	**Not represented**
Respondent	**:**	**Mrs Linda de Freitas**
Representative	**:**	**Not represented**
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** **Ms R Kershaw BsC.**
Date of Determination	**:**	**24 August 2026**

DETERMINATION

DECISION OF THE TRIBUNAL

(1) The Tribunal makes a rent repayment order against the Respondent in the total sum of £2,700

(2) The Respondent must reimburse the tribunal fees paid by the Applicant in the sum of £341.

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

THE PROCEEDINGS

1. On 12 August 2025 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 2004 Act). The Applicant asserts that the Respondent committed an offence of having control of or managing an unlicenced property in multiple occupation (HMO) that was required to be licensed under the 2004 Act but was not so licenced. She initially did not specify which period her application related to but has subsequently clarified that she is seeking a RRO in respect of rent paid between 1 April 2023 to 31 March 2024 totalling £9,000.

2. The Tribunal issued directions on 16 January 2026 and subsequently the Tribunal listed this matter for a hearing on 22 July 2026. The Respondent applied for an order striking out the claim on the grounds that she was a resident landlord and the Applicant was an 'excluded occupier' to whom s.72 of the 2004 Act did not apply. She subsequently withdrew this application.

THE HEARING

3. The Applicant and the Respondent attended the hearing attended in person. We heard evidence from them both, from the Respondent's husband Mr Jorge De Freitas, and from a Mr Simon Yeoman-Taylor, a former occupant of the premises.

4. The Tribunal was provided with a 396-page bundle prepared by the Applicant for the hearing and a 97-page bundle prepared by the Respondent. We also read a Reply filed by the Applicant consisting of a further witness statement with exhibits running to 37 pages and a formal Reply to the Respondent's statement of case. Both the Applicant and the Respondents filed skeleton arguments.

5. In addition the Applicant sought to rely on a 23 minute covertly recorded telephone conversation between another occupant of the premises, a Ms Silvana Haussener, and the Respondent. We considered whether it was in the interests of justice to listen to this recording, given that it was made without the Respondent's knowledge. The Respondent indicated she had no substantive objection to us hearing it, other than its relevance and length, and so we decided we should admit this evidence, and it was played in the course of the hearing.

THE BACKGROUND

6. The following factual summary is common ground between the parties save were otherwise indicated.

7. The Respondent is the sole freehold owner of the premises known as 8 Woolstone Road, Forest Gate London SE23 2 SG, a three-storey semi-detached Victorian/ Edwardian house. She resides in that property with her husband, Mr Jorge de Freitas. From 2018 to 2024 Mr Simon Yeoman-Taylor lived in the premises with the Respondent and her husband as a lodger. In or about 2020 Ms Silvana Hausner moved in as a second lodger. On 1 April 2023 the Applicant moved in as a third lodger, taking the total number of occupants to 5. It is common ground that the Applicant was introduced to the Respondent by the Applicant's former landlady, who also lived in a house on Woolstone Road and who also rented out rooms to lodgers.

8. It is common ground that Mr Yeoman-Taylor moved out of the premises on 8 May 2024 but for a number of reasons was unable to continue to occupy his new accommodation. The Respondent consented to him moving back to his old room which he did on 8 May 2024.

9. On 10 May 2024 the Applicant contacted the local authority, the London Borough of Lewisham (LBL) to enquire whether the Respondent required a HMO licence and if so whether she held a licence for the property. On 13 May 2024, LBL informed the Applicant by email that a licence was required if the number of lodgers exceeded two and that the Respondent did not have a licence. By email sent on 15 May 2024 the Applicant advised LBL that one of the lodgers was due to move out and that she did not wish to take the matter further. There was a cessation of correspondence between the Applicant and LBL until 14 August 2024 when the Applicant again emailed LBL asserting that the premises were still operating as an unlicenced HMO due to the number of unrelated occupants. A copy of this email appears in the Applicants bundle at page 135.

10. The Respondent's case is that on 9 June 2024 she was advised by a friend who also let accommodation in Lewisham that resident landlords required a HMO licence if the number of lodgers in the premises exceeded two. The Applicant disputes this and considers that the Respondent knew from the start of her occupation of the premises that the resident landlord exception did not apply if there were three or more lodgers in residence. It is common ground that on or about 10 June 2024 the Respondent informed all three lodgers that she wanted to terminate their occupancy agreements. It is the Respondent's case that later that month she verbally informed all three lodgers that she had been advised that she had too many lodgers in the premises to rely on the resident landlord HMO exemption, and that she may have breached HMO licencing regulations by accepting the Applicant as a lodger. She subsequently gave all three lodgers written notice to terminate their agreements by 31 October 2024. A copy of the letter she gave to the Applicant is in the Applicant's bundle at page 142. A copy of the reference letter she gave the Applicant is at page 144.

11. The Applicant's email to LBL of 14 August 2024 appears to have prompted the local authority to telephone the Respondent on or about 16 August 2024 to tell her that it had been informed that there were three lodgers in the premises and that consequently she may be operating an unlicenced HMO. This led the Respondent to email the Applicant to enquire when she would be moving out. She also called Ms Housner to see when she would be moving out. This

telephone conversation was recorded by Ms Housner without the Respondent's knowledge and is relied on by the Applicant. In the course of that telephone call the Respondent stated that she suspected the Local Authority had been alerted to the fact that there were three lodgers in the house by the Applicant. Ms Housner expressed surprise and professed herself to be entirely unaware of the situation. Both the Applicant and the Respondent state that Ms Housner was in fact fully aware that the Applicant had reported the Respondent to the local authority, and was also fully aware that if the premises were being run as an unlicenced HMO, that all three lodgers could apply for a RRO. In the course of that conversation Ms Housner said she would be moving out at the end of that month.

12. It is common ground that the atmosphere in the premises deteriorated significantly after the Local Authority first made contact with the Respondent. The Respondent considers that the Applicant became hostile and very difficult to live with. The Applicant considers that the Respondent harassed and belittled her in her final weeks in the premises. We discuss the Applicant's allegations and the Respondent's counter-allegations in more detail below.

13. Mr Yeoman-Taylor moved out of the premises on 17 August 2024. Ms Housner moved out on 1 September 2024 and the Applicant moved out on 23 September 2024.

Has an Offence been Committed?

14. Paragraph 11 of Schedule 14 to the Housing Act 2004 provides that a building which is occupied by the building owner and members of his or her household, and 'no more than such number of other persons as are specified' are not HMOs for the purposes of the 2004 Act. Regulation 6 of the Licencing and Management of Houses in Multiple Occupation (Regulations states that the specified number for the purposes of Paragraph 11 of Schedule 14 is two. Consequently if the number of occupants who do not form part of the landlord's household exceeds two, and the premises otherwise meet the criteria for mandatory HMO licencing, the premises must be licenced pursuant to Part 2 of the 2004 Act.

15. 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). It is common ground that throughout the period 1 April 2023 to 17 August 2024 the Respondent required a HMO licence. The Respondent accepts that she was the person having control of an unlicenced HMO at all material times. It is common ground that at all material times and up until 17th August 2024 the premises were occupied by 5 persons forming 2 or more households and that the premises were required to be licenced under the statutory HMO licencing regime. We are satisfied beyond reasonable doubt that the Respondent was a person in control of an unlicenced HMO from 1 April 2023, when the Applicant moved in, to 3 May 2024, when Mr Yeoman-Taylor moved out for a few days, and from 9 May 2024 to 17 September 2024, when he left permanently.

16. 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 Respondent does not expressly assert that she had a reasonable excuse but submits that she was genuinely unaware of the need for a licence until about 9 June 2024. In this case we do not consider that the fact that the Respondent was unaware of the need for a licence amounts to a reasonable excuse. A general on-line search regarding the resident landlord HMO exemption would have revealed that the exemption only applies if the number of lodgers does not exceed two. Consequently we are not satisfied that the Respondent had a reasonable excuse for not having a licence during the relevant period.

17. Consequently we are satisfied that the Respondent has committed the offence and we are satisfied that we should make a RRO in the Applicant's favour.

Quantifying the RRO

18. 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) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That 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)."

19. 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.

20. The first issue which we have to consider is the maximum order. The Applicant seeks an order in respect of the total rent paid from 3 April 2023 to 31 March 2024 period in the sum of £9,000.

21. The Respondent told us that the rent covered heating, broadband, council tax and cleaning costs. However we have only been provided with evidence regarding council tax. She has not calculated how much of the rent represented the cost of utilities or services which benefitted the Applicant alone. We do not consider that we should make any reduction in relation to council tax in the relevant period; the amount payable would have been the same irrespective of whether the Respondent had lodgers or not.

22. We then consider the seriousness of the offence. In ***Newell v Abbot*** **[2024] UKUT 181 (LC)** the Upper Tribunal determined an appeal relating to inadvertent breach of the statutory mandatory HMO licencing requirements. 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"*

23. 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.

24. 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 16 months. We accept that the Respondent, on discovering the fact that an licence was required, took steps to reduce the number of occupants in the property and that within approximately 2 months the number of occupants was reduced and the

offence ceased. There is no evidence which shows that the Respondent was aware that the resident landlord exemption did not apply earlier than June 2024. Consequently we accept that the offence was not committed deliberately. We note that the Applicant asserts that Respondent breached fire safety regulations. However she did not refer us to any specific regulation which she asserted had been breached. She asserted in her skeleton argument that the doors in the property were not what she considered to be 'HMO compliant' but is not clear what she meant by this. She pointed to the fact that the doors were all fitted with thumb turn locks in the Autumn of 2024 but it is not clear why she believed that this proved that there had been a prior breach of any regulations.

25. Additionally we consider that it is highly relevant that the Respondent was a resident landlord. We consider that the risks which unlicenced HMOs generally pose to their occupants are less likely to pertain in situations where the landlord herself resides in the premises. Additionally we bear in mind that the number of lodgers in this case only just exceeded the number permitted by the 2006 Regulations. The Respondent has included photographs of the house in her bundle which shows it to be a comfortable house in good condition. In his witness statement Mr Yeoman-Taylor states that the property was comfortable and well maintained, and that the Respondent was a considerate and diligent landlord. The Applicant did not challenge his statement in any respect. For these reasons we consider that the correct starting point is 30% of the rent paid in the relevant 12-month period.

26. The next matter that we have to consider is the conduct of both the Applicant and the Respondent. The vast majority of the argument in this case relates to the question of conduct. Both parties accuse the other of poor conduct particularly in the last few weeks of the Applicant's occupancy of the premises.

27. The Applicant submits that the conduct of the Respondent was poor. She asserted that the Respondent deliberately obstructed the local authority's investigations by instructing legal representatives who did not admit that she was guilty of an offence. She asserts that the Respondent cut power in the premises for an hour while electrical works were being undertaken without notifying the Applicant in advance, and relied on this as evidence of harassment. She asserted that the Respondent had falsified evidence by altering the date on an email which appeared in her bundle, and that she had deliberately sought to mislead the Tribunal when she applied to strike out the claim.

28. We reject these assertions. It was apparent to us that the Applicant has tended to ascribe iniquitous intent on the part of the Respondent where there is none. The Respondent was entitled to instruct legal representatives following the council's approach. As regards the email, the Respondent provided a copy of the original which showed it was sent on the date she said she had sent it. She explained that the send date on the copy in the bundle may have become obscured when the PDF file was flattened for submission to the tribunal. As regards the Applicant's assertion that the Respondent deliberately misled the Tribunal when she applied to strike out the application, it was apparent to us

that the Respondent simply misunderstood the law. We consider that the Applicant had no reasonable basis for concluding that the fact that the power in the premises was cut for 1 hour was done deliberately to harass her. The Applicant submitted that the telephone conversation between Ms Hausner and the Respondent showed that the Respondent knew at all times that she required a HMO licence and that she resented the Applicant for reporting her to the local authority. In our view the telephone conversation showed that the Respondent was very worried about the possibility of a fine and a conviction, but it revealed no animosity on her part towards the Applicant. It did not show that she had always known that she required a licence.

29. The Respondent and her husband told us that the conduct of the Applicant in the last weeks of her occupancy was extremely poor. They consider that she deliberately made the atmosphere in the house unbearable. Mr de Frietas told us that the Applicant behaved in a hostile and resentful way towards his wife during this period. The Respondent's evidence was that the Applicant's behaviour was at times aggressive. In her witness statement and in her oral evidence she told us that on 18 September 2024 the Applicant deliberately barged into her with force as she was walking out of the utility room, leaving the Respondent shocked and in tears. She gave a detailed description of where she and the Applicant had been standing relative to each other. She relied on an email dated 18 September 2024 written to her then legal representatives which contains a detailed description of the incident. She considers that the Applicant's actions amounted to a deliberate assault. Her account was supported by her husband who did not witness the event directly, but witnessed the Respondent's emotional state afterwards.

30. In her witness statement the Applicant denies that the incident took place.

31. A deliberate assault such as that described by the Respondent could be relevant conduct for the purposes of quantifying the RRO. Having considered the evidence of the Respondent and her husband, and the Applicant, we accept that the Applicant bumped into the Respondent as she describes but we are not satisfied that it was done deliberately with the intention of hurting or intimidating her.

32. In our view the relationship between the Applicant and the Respondent, which prior to August 2024 had been cordial, broke down completely as a consequence of the Respondent asking the Applicant to leave, and because the Respondent suspected that the Applicant had reported her to the local authority. We accept that the atmosphere in the premises was oppressive and tense in the last few weeks of the Applicant's occupation, but we do not consider that either party has proved that the other engaged in conduct that might be relevant to the amount of the order which we make.

33. 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 £2,700.

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

Name Judge N O'Brien Date 24 August 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.