



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References : **BIR/00CN/HMK/2025/0019**

Property : **10 Ladycroft , Birmingham, B16 8TG**

Applicants : **Sarah Staniforth**

Representative : **None**

Respondent : **Darren John Hetherington**

Representative : **None**

Type of Application : **Application for a Rent Repayment Order
By the Tenant. Part 2 Housing Act 2004
Ss40, 41, 43 & 44 Housing & Planning Act
2016**

Tribunal: **Tribunal Judge P. J. Ellis
Mr Wyn Jones FRICS**

Date of Hearing : **10 August 2026**

Date of Decision : **7 September 2026**

DECISION

DECISIONS

- 1. The Tribunal is satisfied to the standard required the Respondent is guilty of a housing offence namely having control or managing a house which is required to be licensed pursuant to s72(1) Housing Act 2004.***
- 2. The Applicant is entitled to a rent repayment order pursuant to ss43 and 44 Housing and Planning Act 2016***
- 3. The amount of rent paid in the relevant period for which a repayment order may be made is £1776.77***
- 4. The Tribunal determines 50% of the rent paid is a fair reflection of the seriousness of the offence and other factors set out in s44(4) 2016 Act.***
- 5. THE TRIBUNAL ORDERS that the Applicant is entitled to a rent repayment order in the sum of £888.39***

REASONS

1. This is an application for a rent repayment order issued on 2 August 2025. In it the Applicant Ms Sara Staniforth seeks repayment of rent paid by her between 7 April and 5 August 2024. The ground upon which this claim is made is that during this period the Respondent was in control of or managing an HMO which was required to be licensed under Part 2 Housing Act (the 2024 Act) but was not so licensed contrary to s72 of the 2024 Act.
2. The Applicant's tenancy of 10 Ladycroft (the Property) was from 5 April 2024 to 7 August 2024, but the Respondent applied for a licence on 5 August 2024. The application was issued within a period of twelve months within which the Respondent was committing the offence.
3. The rent due under the tenancy was £575.00 pcm, during the period of her tenancy the Applicant was in receipt of housing benefit. The Applicant claims the sum of £1776.77 after deducting housing benefit pursuant to s44(3)(b) Housing and Planning Act 2016 (the 2016 Act). However, the Applicant

moderated her claim to 80% of that sum because of her recognition that an award of 100% is exceptional.

4. Directions were issued on 6 November 2025. The matter was heard by video on 11 August 2026 when neither party was represented.
5. The Respondent, Mr Hetherington, admitted the property was unlicensed throughout the relevant period, and the local housing authority issued him with a licence without conditions on his application which was made immediately upon notification that a licence was required.

The Property

6. There was no dispute that the Property is a three-bedroom two storey house mid-terrace house in Ladywood. It was let room by room. There is one kitchen and one bathroom, both shared. It was acquired by the Respondent in 2020 through his company DJH Homes Limited. According to the Respondent after acquisition, it was occupied by a group of tenants who managed council tax and utilities between themselves. He was unaware of the obligation to licence the Property.

The Parties Submissions

7. The Applicant relied upon the lack of a licence as the offence entitling her to a rent repayment order asserting that the Respondent's lack of knowledge of the need for a licence is ignorance not a reasonable excuse for committing the offence.
8. The Applicant further submitted there were a number of factors which made the matter more serious than simply a lack of a licence. The relevant factors pleaded by the Applicant were
 - a. The unlicensed period was prolonged extending beyond the period of occupation by the Applicant on the Respondent's own admission

- b. The Respondent applied for a licence when prompted by the local housing authority not by reason of his own decision making
 - c. The Respondent did not hold appropriate safety certificates relating to gas and electricity for the Property
 - d. There was no fire blanket and other fire safety features in the Property
 - e. There was no carbon monoxide detector
 - f. The Respondent was operating a property-owning business as the Property was owned by a company.
9. Ms Staniforth had taken the trouble to inform herself of the law relating to this subject. She submitted that the factors amounted to conduct by the landlord which the Tribunal must take into account under s44(4)(b) of the 2016 Act and submitted the Tribunal should award her 80% of the value of her claim.
10. The Respondent admitted candidly and at once that he was at fault because the Property was unlicensed. He also admitted to being the person with control or management of the Property.
11. In answer to the Applicant's complaints he asserted he held all required certificates for the Property from the start of Ms Staniforth's tenancy including a gas safety certificate.
12. Mr Hetherington described efforts he had made to assist the Applicant throughout the period of her tenancy including discussions with her regarding conflicts with other tenants. Other tenants' complaints about Ms Staniforth's included her behaviour creating tensions in the house and her failure to pay her share of utility and council tax accounts. Eventually he issued possession proceedings in the county court which resulted in a costs order against her
13. He maintained the Applicant still owed him money for the unpaid bills. Moreover, the Applicant suffered no prejudice as a result of the lack of a licence. He was granted a licence in March 2025. He was surprised to receive the application so long after the tenancy ended.

14. Mr Hetherington admitted he owned other properties which are let to residential tenants. His company owns other properties let to residential properties. In addition, he is employed in a company as a business development director, and he is able to meet any award the Tribunal makes.

The Statutory Framework

15. The 2016 Act comprises a comprehensive framework for identifying the offences created by the legislation and the consequences of failing to comply with it. The provisions relevant to this case are set out below.

16. S40 2016 Act provides:

(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, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(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.

(the general description of offences has been omitted)

Act

Section

5 Housing Act 2004

72(1)

17. S72(1) Housing Act 2004 provides “

A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed. Subsection 5 provides

In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1),

18. S43 2016 Act provides that a Tribunal may make a rent repayment order only if made under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies, whether or not the landlord has been convicted. By s43(3) the amount of a rent repayment order in the case of an application by a tenant is to be determined in accordance with s44.
19. S44 2016 Act provides that where a First-tier Tribunal decides to make an order under s43 the amount to be repaid must not exceed the rent paid in respect of the unlicensed period “*less any relevant award of universal credit paid in respect of rent under the tenancy during that period*” s44(3)(b). 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 been convicted of an offence to which the Chapter applies.

Discussion and Decision

20. On the Respondent’s admission the Tribunal is satisfied to the standard required that the Respondent is guilty of a housing offence namely controlling or managing an unlicensed property without reasonable excuse. Although the Respondent was candid with his admission’s the Tribunal must still consider whether there was a defence but in this case the Tribunal is satisfied the Respondent did not have an excuse.
21. The Applicant is entitled to a rent repayment order. In her submission’s the Applicant recognised that any award is determined by reference to a number of principles established by the Upper Tribunal in applying the statutory provisions.
22. By s44(4) of the 2016 Act the Tribunal must consider the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of an applicable offence. There was no dispute the Applicant was in receipt of Universal Credit. Further the Respondent has not

been convicted of an offence. The principal area of dispute between the parties was in connection with their respective allegations of misconduct by the other.

23. Having considered the respective parties' complaints about the other the Tribunal does not regard their complaints of misconduct as such as to significantly affect the determination of any award of rent repayment. Also, the power of the Tribunal comes from s44 of the 2016 Act which does not give the Tribunal power to set off from any award any sum which may be due to the landlord from the tenant. Accordingly, this decision is confined to identifying what sum if any is payable as rent repayment.
24. In *Newell v Abbott* [2024]UKUT 181(LC) WL 03165724 Mr Martin Rodger KC conducted a review of recent decisions of the Upper Tribunal in appeals involving licensing offences. At paragraph 57 he said his review "*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 where tenants have been exposed to poor or dangerous conditions which have been prolonged by the failure to licence. Factors tending to justify lower penalties include inadvertence on the part of a smaller landlord, property in good condition such that a licence would have been granted without additional work 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.*"
25. In *Acheampong v Roman* [2022]UKUT 239 (LC) HHJ Cooke set out the four-stage approach to determining a repayment claim which in summary are
 - 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.*

- 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 figure is then the starting point (in the sense that 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).*

26. The Tribunal has had regard to the four stages identified in *Acheampong* and the dicta of Mr Martin Rodger KC in *Newell* and the cases referred to by the learned judge when making its decision.

27. There was no dispute that the sum for rent the subject of the dispute after deducting housing benefit was £1776.77. The Respondent has a property portfolio and acknowledges he had no excuse for failing to register the property. However, the Property was licensed without onerous conditions on an application which was made immediately his fault was explained. The Tribunal does not consider the Respondent has made any gain from the default nor has the tenant suffered any prejudice by the lack of registration by reason of exposure to poor or dangerous conditions. The Tribunal is satisfied that an award of 50% of the sum susceptible to an award is the correct decision. The tenants were responsible for all utilities and taxes which do not form part of the determination. The sum due to the Applicant is £888.39

Appeal

28. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a

review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge P.J Ellis