

FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AZ/HMF/2025/0888**
Property	**:**	**52 Warwickshire Path London SE8 4LN**
Applicants	**:**	**Ms Eve Bernadette Nentwig**
Respondent	**:**	**Ms Marian June Richardson, Mr Daniel Tolland**
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 Shepherd** **Duncan Jagger FRICS**
Date of Decision	**:**	**27th October 2026**

DECISION

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1. A rent repayment order of **£5663** is to be paid to the Applicant by the Respondents. The said sum must be paid within 28 days of this decision being issued. The Respondents shall also reimburse the Applicant with her application and hearing fees at a total of **£341**. This sum is also to be paid within 28 days of this decision being issued.

Background

2. The Application for a Rent Repayment Order was brought by the Applicant who is the former tenant of **52 Warwickshire Path London SE8 4LN** ("The premises"). The Respondents were the landlords of the premises. They employed managing agents called Kallars.

3. The Applicant occupied the premises as an assured shorthold tenant protected under the Housing Act 1988. She resided there for the relevant period namely 18th October 2022- 17th October 2023 ("The relevant period").

4. The premises is a two-storey terraced house with a shared kitchen, cloakroom and bathroom on the first floor. It stands adjacent to a property owned by the local authority. We estimate the property was built in the 1970s. The Applicant occupied with two other people who were not part of her household.

5. The premises are located in the London Borough of Lewisham. It is common ground that Lewisham operated an Additional Licensing Scheme for smaller houses in multiple occupation throughout the relevant period. It is also common ground that the Respondents did not have a license for the premises during the relevant period even though they should have.

The Applicant's case

6. The Applicant represented herself at the hearing. On occasions she became emotional when recounting her experiences at the premises. We were grateful that she was brave enough to represent herself and prepare her case in such a professional manner.

7. The Applicant's case is that during the relevant period the premises should have been licensed under the additional license scheme but were not. She claims back the rent she paid during this period - £8090.

8. The Applicant did not receive Universal Credit and she paid for the services so no deductions are required.

9. The Applicant said as well as the licensing breach there was serious disrepair. There was a leak in the roof and adjacent lead valley which particularly affected her bedroom. There was a further leak to the panel bath sealant which caused extensive water ingress to the walls in the kitchen. We were shown compelling photographs of the damage caused by the water ingress. She said that it was like living on a construction site because builders were seeking to rectify the leak without much success. We have seen evidence of repeated complaints to the managing agents. As well as the disrepair the Applicant said she felt harassed and bullied by the managing agent who did not take her complaints seriously and she had seen emails which appeared to be derogatory towards her. Finally, the Applicant complained that she was unlawfully evicted.

The Respondents' case

10. The Respondents were represented by Mr Pope. They admitted that the property was unlicensed during the relevant period. They said that they had handed everything over to the managing agents who had not told them about the need to license the premises. They accepted that this was not a reasonable excuse however but put it forward as mitigation. They owned and let out the premises for around 20 years. This was their only property that they let out. They had sold the premises at auction after the Applicant moved out. In relation to the disrepair they accepted that there had been problems with the roof. They had sought to rectify the problems by sending builders around. Eventually it was discovered that the problem originated from the council property next door. They didn't carry out remedial works at this stage because they were intending to sell the premises. They denied that they had unlawfully evicted the Applicant.

The law

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

11. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs"). S.56 of the Act allows the designation of Additional Licensing Areas. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an unlicenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

12. Section 263 of the 2004 Act provides:

"(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

The Housing and Planning Act 2016 ("the 2016 Act")

(The amendments made by the Renters Rights Act 2025 do not affect this decision)

13. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

14. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

15. Section 40 provides (emphasis added):

"(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."

16. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

17. It is a defence to the section 95(1) offence of having control of or managing an unlicensed house for the person concerned to show that they had a reasonable excuse for doing so (section 95(4)(a), 2004 Act). In this case Mr Newell maintained that he had such a defence in relation to the Flat.

18. In *Marigold v Wells* [2023] UKUT 33 (LC), at [48], borrowing from the approach taken by tax tribunals, the Upper Tribunal suggested that a property tribunal considering a defence of reasonable excuse. They had to first consider objectively if the defence could amount to a reasonable excuse. Secondly they have to decide if the facts relied on are proven and whether, viewed objectively, the proven facts provided an objectively reasonable excuse for the conduct of the appellant, taking into account their experience and other relevant characteristics.

19. Section 41 deals with applications for RROs. The material parts provide:

> "(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.

20. Section 43 provides for the making of RROs:

"(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)."

21. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

"(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.

22. Section 44(4) provides:

"(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."

23. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

24. In Williams v Parmar [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

> (i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
>
> (ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
>
> (iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).
>
> (iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).
>
> (v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

25. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

26. In Acheampong v Roman [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

> *"20. The following approach will ensure consistency with the authorities:*
>
> *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 will be able to make an informed estimate.*

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).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

27. Licensing offences may be 'less serious' than other offences for which an RRO can be recovered. However, in *Daff v Gyalui* [2023] UKUT 134 (LC) [49] it was stated that there are "more or less serious examples" of Section 72 offences.

28. *Newell v Abbott* [2024] UKUT 181 (LC) at [47]-[57] provides a comprehensive summary of the Upper Tribunal's recent decisions regarding the seriousness of particular licensing offences.

29. *Newell* also provides a 'neutral' baseline for assessing the seriousness of an RRO. Deputy Chamber President Martin Rodger KC assessed that case at 60% without putting weight on either party's conduct.

Determination

30. We are satisfied beyond reasonable doubt that the Respondents were the Applicant's landlord during the relevant period. We are satisfied beyond

reasonable doubt that the premises were within an Additional Licensing Area and should have been licensed for the relevant period but were not.

31. We are satisfied beyond reasonable doubt that that the Applicant paid the rent she alleged during the relevant period.

32. We are not satisfied that the Respondent had a reasonable excuse during the relevant period indeed they did not argue this. It was their responsibility to ensure the right license was in place. They said that they were not told by the agent about the need for a license but there was no agreement requiring the agent to do this.

33. Accordingly, we consider that the offence is established for the period claimed. No license was obtained or even sought during the relevant period.

34. Having decided that the offence is made out we consider it is appropriate to make a Rent Repayment order in this case. We will then consider the amount of penalty that is due. Applying the test in *Acheampong* (above):

    - The whole of the rent due is shown above as £8090.
    - In relation to utilities there are no deductions that need to be made.
    - The Applicant did not receive universal credit so there is no deduction required here.
    - We consider that this offence was moderately serious and we accept that there was some mitigation. The Respondents were not professional landlords and they were mistaken in relying on the agent to tell them about the need for a license. It was their responsibility to keep themselves informed as to their licensing responsibilities. They failed in this regard during the relevant period.
    - In terms of conduct we do consider that there was some serious disrepair and this was an aggravating factor. We have no doubt that the enjoyment of the Applicant's room was severely affected by the water ingress. We are surprised that it took so long to identify the cause of the water ingress. We do consider that the Applicant was treated in a derogatory manner by the Respondents and their agent. She was paying rent for the use of a room which was severely affected by water ingress.

- We do not consider that the Applicant was unlawfully evicted but understand that she felt considerably let down by the Respondents' conduct. In simple terms she and her flat mates had given notice to end their tenancy and this had been accepted by the Respondents. The Applicant then asked if she could stay while she finished particular university work. Although the Respondents initially agreed they then found out that they needed vacant possession before the property could go to auction and they withdrew their agreement to allow the Applicant to stay on. We have no doubt that this caused considerable distress to the Applicant but it was not an unlawful eviction. If the Applicant had refused to move out the Respondents accepted they would have needed to bring proceedings.

35. Taking all of these matters into account we consider that an award of 70% of the rent for the relevant period is appropriate . This amounts to **£5663.** This sum should be paid within 28 days.

36. The Applicant was successful in their application therefore we also require the Respondents to pay their application and hearing fees which total **£341**.This sum should also be paid within 28 days of receipt of the decision.

Judge Shepherd

27th October 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.