FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/HMF/2024/0135**
Property	:	28 Sherwood Court, 38 Bryanston Place, London W1H 5FE
Applicant	:	Jaime Riccomini Closa Alexandra Schwartz Annie Sarah Molly Darwent
Representative	:	Peter Eliot – Advocate for Justice for Tenants
Respondent	:	Tope Osazee
Representative	:	John da Rocha-Afodu
Type of Application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016
Tribunal Member(s)	:	Judge Tildesley OBE Richard Waterhouse MA LLM FRICS
Date and venue of the Hearing	:	22 November 2024 10 Alfred Place, London, WC1E 7LR
Date of Decision	:	9 December 2024

DECISION

Senior President of Tribunals Practice Direction: Reasons for Decisions 4 June 2024

1. This Practice Direction states basic and important principles on the giving of written reasons for decisions in the First-tier Tribunal. It is of general application throughout the First-tier Tribunal. It relates to the whole range of substantive and procedural decision-making in the Tribunal, by both judges and non-legal members. Accordingly, it must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made (paragraph 1).

2. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. These fundamental principles apply to the tribunals as well as to the courts (paragraph 5).

3. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved (paragraph 6).

4. Stating reasons at any greater length than is necessary in the particular case is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate court or tribunal, and is therefore inconsistent with the overriding objective. Providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In some cases a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter (Paragraph 7).

Application and Procedural History

5. The Application is for a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 ("2016 Act) for the offence of having control of, or managing, an unlicensed HMO, under Part

2 of section 72(1) Housing Act 2004 which is an offence under s40(3) of the 2016 Act.

6. Mr Closa applied for repayment of rent in the sum £11,639.93 for the period of 1 April 2022 to 31 March 2023. Ms Schwartz applied for repayment of rent in the sum of £7,684.04 for the period of 26 August 2022 to 18 April 2023. Ms Darwent applied for repayment of rent in the sum of £8,524.36 for the period of 26 August 2022 to 18 April 2023. The total amount claimed was £27,848.33.

7. The Tribunal heard the Application on 22 November 2024. Mr Eliot of Justice for Tenants appeared for the Applicants who all attended in person to give evidence. Mr Rocha-Afodu, solicitor, appeared for the Respondent who attended in person to give evidence.

8. In reaching its decision the Tribunal had regard to the relevant details in the Application, the directions, the oral testimony of the Applicants and their witness statements, the oral testimony of the Respondent witnesses and their witness statements and the documents in the parties' hearing bundles. The Tribunal drew the parties' attention to the Energy Performance Certificate (EPC) for the property which was a public document. The Tribunal took this course of action because the parties kept referring to the EPC in their evidence, but for some reason it had not been exhibited in their evidence.

9. The Tribunal applied the law as set out in in sections 40 to 47 of the 2016 Act, and took account of the following authorities: *Chan v Bilkhu & Anor* [2020] UKUT 0289 (LC); *Marigold v Ors* [2023] UKUT 33 (LC); *Aytan v Moore* [2022] UKUT 27 (LC) at [52]); *Hancher v David* [2022] UKUT 277 (LC); *Acheampong v Roman and others* [2022] UKUT 239 (LC); *Williams v Parmar* [2021] UKUT 244 (LC); *Daff v Gyulai* [2023] UKUT 134 (LC*); LDC (Ferry Lane) GP3 Ltd v Valentina Garra and others* [2024] UKUT 40(LC); and *Newell v Abbott and other* [2024] UKUT 181 (LC).

Decision

10. The Tribunal orders the Respondent to pay to Mr Closa the sum of £8,729.95; Ms Schwartz the sum of £5,763.03; Miss Darwent the sum of £6,393.27 making a total of £20,886.25 and to reimburse the Applicants with the application and hearing fees in the sum of £320.00 within 28 days from the date of this decision.

Reasons

11. The property was a three-bedroom self-contained flat located on the second floor in a five-storey purpose-built block of flats with a shared kitchen and two bathrooms. From 27 August 2021 to 25 August 2023 the property was occupied by at least three persons

living in two or more separate households and occupying the property as their main residence.

12. In respect of the Applicants Mr Closa lived at the Property from 27 August 2021 until 25 August 2023, Ms Schwartz lived at the Property from 26 August 2022 until 25 August 2023; and Miss Darwent lived at the Property from 1 September 2022 until 25 August 2023. The Applicants were students undertaking a full-time course of higher education and were not related to each other. By virtue of a tenancy agreement they paid a rent of £37,180.00 for the period 26 August 2022 to 25 August 2023 payable in advance by quarterly instalments.

13. Under the previous tenancy from 27 August 2021 to 25 August 2022 Mr Closa lived at the property with Miss Isabel Redman and Miss Fernanda Palavecino and they paid an annual rent of £35,360.00. The Tribunal understands that Miss Redman and Miss Palavecino were full-time students and occupying the property as their main residence.

14. The Tribunal finds that the property met the conditions of the self-contained flat test in section 254 of the 2004 Act, and was, therefore, a house in multiple occupation.

15. The Respondent, Mr Osazee, was named as the landlord in the tenancy agreement and is registered as the proprietor with absolute title of the long leasehold interest in the property at HM Land Registry under title number NGL875671. The Respondent received the rent for the property, and on his own admission managed the property.

16. The Tribunal is satisfied that the Respondent was the person having control of and managing the property.

17. On 21 April 2021 Westminster City Council exercised it powers under section 56 of the 2004 to designate HMOs occupied by three or more persons comprising two or more households for additional licensing. The designation order applied to the whole area of the district of the City of Westminster and came into force on 30 August 2021. The designation order ceases to have effect on 31 August 2026. The property is situated in the district of the City of Westminster.

18. The Respondent applied for an HMO licence on 19 April 2023. On 27 June 2023 the City of Westminster issued the licence and backdated it until 19 April 2023. The Respondent did not have an HMO licence for the property from 30 August 2021 to 18 April 2023. The City of Westminster confirmed that no Temporary Exemption Notice was issued to the Respondent for the period 30 August 2021 to 18 April 2023.

19. The Respondent argued that he had a reasonable excuse for not having an HMO licence. The Respondent contended that under section 61(4) of the 2004 Act the City of Westminster was under a duty to notify him that the property was subject to an HMO licence. The Respondent stated that the City of Westminster did not notify him of the requirement to licence the property until 3 April 2023. The Respondent said that following the notification he applied for a licence without undue delay on 19 April 2023.

20. The Tribunal observes that the Respondent has the evidential burden of establishing a reasonable excuse on the balance of probabilities. The Respondent's case for reasonable excuse is based on his assertion that the City of Westminster had a duty to notify him personally that the property required an HMO licence. The Respondent's understanding of the City of Westminster's legal responsibilities is incorrect. Regulation 9 of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, sets out the requirements for local authorities in publishing details of a designation of an area for HMO licensing and of notifying representative bodies. There is no requirement under regulation 9 for informing individual landlords. Further the Respondent failed to adduce any evidence to show that the City of Westminster did not comply with the requirements of Regulation 9.

21. Essentially the Respondent's case for reasonable excuse boiled down to one of ignorance of the legal requirements. As was pointed out by the Deputy President of the Upper Tribunal (Lands), Martin Rodger KC, in *LDC (Ferry Lane) GP3 Ltd v Garro* [2024] UKUT 40 (LC) at paragraph 38:

> "Occasionally ignorance has been accepted as providing a reasonable excuse (generally where there has been a reasonable excuse for that ignorance) but usually it has not. The answer given to such landlords by Tribunals has most often been that the responsibilities of managing residential property are not to be undertaken carelessly, and that managers and landlords are expected to make themselves aware of the current licensing or other regulatory requirements which affect their business. Generally, the bigger a landlord's business, the more difficult it will be to provide a reasonable explanation for a failure to keep up to date. Landlords are assisted in keeping up to date by the obligation placed on local authorities to publicise additional licensing schemes. If an additional scheme had not been properly advertised ignorance of it might be reasonable especially if it could be shown that a landlord had taken reasonable steps to keep informed but had nevertheless been unaware of the scheme".

22. The Respondent informed the Tribunal that he owned seven to eight properties of which five were currently being let for rent and another in the process of refurbishment. The Respondent said that

he had been letting property at market rent for around seven years and that he managed the rented properties except one property. Although the Respondent denied that he was a professional landlord saying it was a side business to his main activity as a recruitment specialist in the construction industry, the Tribunal is satisfied that the size of his rental portfolio, his hands-on approach to managing the properties and the length of time he had been engaged in such activities had all the hallmarks of a professional landlord. As such the Tribunal formed the view that it was reasonable to expect the Respondent to make himself aware of the current licensing and regulatory requirements in relation to his rental business. The Respondent supplied no evidence of the steps he had taken to keep abreast of the legal and regulatory developments affecting residential lettings.

23. The Tribunal finds that the Respondent did not establish on the balance of probabilities that he had a reasonable excuse for failing to licence the property as an HMO from 30 August 2021 to 18 April 2023.

24. The Tribunal is satisfied beyond reasonable doubt from the findings above that the Respondent had committed the specified offence of control or management of an unlicensed HMO contrary to section 72(1) of the 2004 Act from 30 August 2021 to 18 April 2023 in respect of the property and that he did not have a defence of reasonable excuse.

Should the Tribunal make a RRO?

25. In view of its finding that the Respondent has committed the offence of no HMO licence the Tribunal decides to exercise its discretion to make an RRO.

What is the Amount of the RRO?

What is the whole of the rent for the Relevant Period?

26. Mr Closa's occupation of the property spanned two tenancies. Mr Closa adopted 1 April 2022 to 31 March 2023 as the period of his claim which was 12 months, the maximum period permitted under the legislation. During that period Mr Closa paid £11,639.93 in rent. The period of the claims by Ms Schwartz and Miss Darwent was from 26 August 2022 to 18 April 2023. The amounts of rent paid by Ms Schwartz and Miss Darwent during that period were £7,684.04 and £8,524.36 respectively. Mr Rocha-Afodu indicated his agreement on behalf of the Respondent to the Applicants' calculations of the maximum rent payable for the relevant periods of the claim. The Applicants were not in receipt of Universal Credit during the relevant periods.

27. The Tribunal decides that the total amount of rent paid during the various periods for the claims was £27,848.33.

Should there be any deduction for any element of the rent that represents payment for utilities?

28. The Tribunal finds that the Applicants were liable to pay all charges in relation to the supply and use of utilities at the Property. The Tribunal decides that there should be no deduction from the total amount of rent paid during the relevant period.

What is the Seriousness of the Offence?

29. The offence of no HMO licence fell in the less serious category of offences covered by section 40(3) of the 2016 Act.

30. The Tribunal finds the following in relation to the spectrum of seriousness for no HMO licences:

i. The Respondent was a professional landlord for the reasons given in paragraph 22 above.

ii. The length of the Respondent's offending for not having an HMO licence was in excess of 18 months (30 August 2021 to 18 April 2023).

iii. The HMO licence granted in respect of the property specified that it was licensed for a maximum of five people living as two households regardless of age. The licence detailed the occupation of the rooms as follows: First Bedroom 2 persons; Second Bedroom 2 persons, and Third Bedroom one child. The size of the Third Bedroom was 5.86 square metres which was below the national minimum room size (6.51 square metres) for any room in an HMO used as sleeping accommodation by one person aged over ten. Thus throughout the period 30 August 2021 to 18 April 2023 the Respondent let the property to three persons living as three separate households with Mr Closa, an adult, sleeping in the Third Bedroom which would have contravened the condition of the HMO licence if one had been granted during the said periods.

iv. The property was located on the second floor and had two smoke alarms, one in the hallway and the other in the kitchen. Access to the fire escape from the kitchen was via a locked door. The Applicants said they reported that the smoke alarm in the kitchen was not working and was not repaired until close to the end of the tenancy (12 April 2023). The Respondent in response to a question from the Tribunal indicated that he had not carried out a fire

risk assessment. The HMO licence required the licence holder to take general fire precautions including the carrying out of a fire risk assessment. Further the licence holder was required to install and maintain in good working order appropriate smoke alarms in the property. The additional condition to the licence required an automatic fire detection system in accordance with British Standard 5839: 6: 2019. The system should provide Category LD2 coverage with fire sensors located in all risk rooms within the letting (hallway, living/dining room, kitchen), and in the case of a flat at second floor level or above smoke alarms must be extended to all bedrooms. The licence granted to the property required fire safety works to be carried out on it. The Tribunal is satisfied that from 31 August 2021 to 18 April 2023 the property did not comply with the fire safety requirements for an HMO subject to the additional licensing scheme for the City of Westminster.

v. The Energy Performance Certificate (EPC) dated 4 July 2020 for the property had an energy rating of 43 E which was the minimum score for rental properties and was just 4 points above an F rating. The EPC described the energy assessments for the windows (single glazed) and the main heating (electric underfloor) as very poor. The assessment for the walls based on the assumption of no insulation as poor. The assessment for the main heating control was very good. The assessor recommended various works including insulation to the walls, draught proofing, double glazing, and changing heating to gas condensing boiler to improve the energy rating for the property.

vi. On 9 March 2023 Ms Schwartz received a letter from the City of Westminster Council addressed to the occupiers of the property regarding the existence of unlicensed HMOs in the area. Ms Schwartz contacted the Council which arranged an inspection of the property on 25 April 2023 by Mr Clough, Environmental Health Officer. On 11 May 2023 Mr Clough informed Ms Schwartz that hazards had been identified at the property which required remedial works and that the landlord had been given 14 days to consult with the Council over how he intends to complete the works required within the time scales. On 6 June 2023 the City of Westminster Council issued an improvement notice against the Respondent which identified a category 1 hazard of excess cold and a category 2 hazard of damp and mould at the property. Mr Clough found that the heating system was defective and expensive to run. Mr Clough stated, amongst other matters, that there were: significant heat loss from the windows, uncontrollable draughts in bedroom three,

disrepair to the heating system and no heat output detected in the largest bedroom, bathroom, hallway and kitchen. Mr Clough identified that the window in the third bedroom could not be opened due to seized up sash chains and that there was evidence of mould growth on the window in that room. Mr Clough specified a schedule of works to be carried out: excess cold: the installation of a whole flat gas fire central heating system or a full electric system using off peak storage heaters combined with a proprietary secondary system; damp and mould: thoroughly overhaul the defective and seized sash windows and cleanse internal surfaces of the window frames with antifungal wash solution.

31. A substantial part of the hearing on the 22 November 2024 was taken up by detailed examination of the parties' views on the condition of and the repairs carried out to the property. The Applicants asserted that the heating system was inefficient and difficult to operate, and that the bedroom windows would not open with the result that the property was permanently cold throughout the winter months and suffered from mould particularly around the windows The Respondent pointed out that only Ms Schwartz had complained to the landlord about the property and that she had asked the landlord to remain in the property for an additional week at the end of the tenancy. The Respondent asserted that he responded promptly to the Applicant's requests for repairs, and that the Applicants had chosen not to put on the heating system because of the cost. The Representatives' focus on the minutiae came to the fore on their disagreement on the meaning of the invoice of 9 December 2022 for repairs to windows, with the Applicant's contending that repairs were done to one window, whilst the Respondent said that the carpenter had repaired the three bedroom windows. The Tribunal in its attempt to bring this particular exchange to a conclusion stated that it accepted the Applicant's interpretation of the invoice which was substantiated by the Improvement Notice which required the Respondent to overhaul the defective and seized sash window in the third bedroom.

32. The Tribunal considers that the parties' representatives lost sight of the bigger picture portrayed by the EPC and the Improvement Notice in respect of the condition of the property. The findings of the Energy Assessor and the Environmental Health Officer who were independent of the parties corroborated the Applicants' evidence that the property was cold and in disrepair. The Respondent suggested that the grant of the HMO licence superseded the Improvement Notice. The Tribunal disagrees. The statutory framework for the grant of an HMO licence involves different considerations from the issue of an improvement notice. Further the Respondent adduced no evidence from the City of Westminster Council that it had revoked the improvement notice.

The Respondent supplied an email informing the City of Westminster Council that he had completed the remedial works to the window of the third bedroom but made no mention of the required works to the heating system. The Tribunal noted that HMO licence revealed that the property did not comply with the fire safety standards for HMO's and that works were required to the fire alarm system and to the doors to bring up the property to the required standards. Also the property was occupied throughout the relevant periods above the maximum occupation level of two households permitted by the licence.

33. The Tribunal is satisfied that the Applicants were living throughout the relevant periods of their claims in a property which was a danger to their health from categories 1 and 2 hazards of excess cold and damp and mould, and was unsafe with its inadequate fire safety arrangements.

34. The Tribunal turns to its assessment of the seriousness of the offence. In the Upper Tribunal decision of *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC) at paragraph 57, Martin Rodger KC, Deputy Chamber President, summarised the principles governing the level of RROs in licensing offences:

> "This brief review of recent decisions of this Tribunal in appeals involving licensing 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 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".

35. The Tribunal has found in this case that the Respondent was a professional landlord who had committed the offence of having no HMO licence for a period in excess of 18 months and had exposed the Applicants to dangerous living conditions. The facts found by the Tribunal on the seriousness of the HMO offence would justify an order at the top end of around 90 per cent.

36. The Tribunal, however, has not yet considered the Respondent's culpability for the commission of the offence. The Tribunal formed the view that the Respondent did not give sufficient attention to his responsibilities as a landlord. This was summed up by his comment that he regarded his letting business as a side issue to his principal

job as a recruitment consultant. The Respondent compounded his inattention by his decision to manage his portfolio apart from one property. The Tribunal decides that the Respondent was reckless with the management of his letting business which had serious consequences for the Applicants. The assessment of recklessness is one step below a deliberate commission of the offence.

37. The Tribunal decides that an order of 75 per cent would be appropriate to reflect the seriousness of the offence.

Whether Adjustments should be made in the light of the factors identified in Section 44(4) of the 2016 Act?

38. The Tribunal finds that the Applicants were good tenants who had paid their rent on time. The Respondent adduced no persuasive evidence to challenge the Tribunal's conclusion on the Applicants' conduct.
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39. The Respondent produced a schedule of "Earnings and Liabilities per month which showed earnings comprising monthly salary of (£10,000) and rental income (£3,358) totalling £13,358 with monthly outgoings of £14,330. The Respondent produced no documentation to substantiate his financial statement. The Tribunal was sceptical about the accuracy of the statement which was highlighted by the figure of £3,358 for rental income. His rental income for the subject property alone was £37,180.00 (£3,098 per month). The Respondent had a portfolio of seven properties of which at least five were rented out.

40. The Tribunal noted from the HM Land Registry Title document that the Respondent purchased the subject flat for £1,165,000. The Respondent supplied a copy of a mortgage statement for the property which showed a closing balance of £740,769.70 as at 31 March 2023. The Tribunal concluded from the documentation that the Respondent had an equity of around £400,000 in the subject property. When this figure was put to the Respondent he said that he had side loan with his father of around £400,000 on the property. The Respondent did not substantiate his assertion about the side loan, and there was no entry of it in the charges register for the property. The Tribunal was satisfied that the Respondent had the financial means to pay a RRO of 75 per cent.

41. The Tribunal decides that the amount of the RRO should be 75 per cent of the total rent claimed during the relevant periods which was £20,886.25 (75 per cent of £27,848.33).

Reimbursement of Fees

42. Under rule 13(1) of the Tribunal Procedure Rules 2013 the Tribunal has a discretion to make an order requiring a party to reimburse the other party the whole or part of the fees. The Tribunal took the

view that the Applicants had been successful and had been awarded a substantial RRO. The Tribunal decides that the Respondent should reimburse the Applicants with the application and hearing fee totalling £320.

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.