FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/33UH/HMF/2020/0008**
HMCTS code (audio, video, paper)	**:**	**V: CVPREMOTE**
Property	**:**	**15 Tizzick Close Norwich Norfolk NR5 9HB**
Applicant	**:**	**1. Samuel Spilsbury 2. Ewan Kingdon 3. James Spooner 4. Finley Martin 5. Hugo Hodgkins 6. Thomas Griffiths**
Representative	**:**	**Mo Griffiths**
Respondent	**:**	**Fair Land Investments Ltd**
Representative	**:**	**Archie Maddan (Counsel)**
Type of application	**:**	**Application by tenants for a rent repayment order** – s.40, 41, 43 & 44 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge D Wyatt M Hardman FRICS IRRV (Hons)**
Date of decision	**:**	**20 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are in the Applicant's bundle (comprising their main bundle and their reply documents of 132 numbered pages), the Respondent's two unpaginated electronic bundles, and the further documents described in paragraph 46 below, the contents of which we have noted.

Decisions of the tribunal

The tribunal orders the Respondent to repay £1,260 of the rent paid by each of the six Applicants (the total sum of £7,560) within 28 days.

Reasons

Procedural history

1. On 19 August 2020, the Applicant tenants applied to the tribunal for a rent repayment order ("**RRO**") under the Housing and Planning Act 2016 (the "**2016 Act**").

2. On 7 September 2020, the tribunal gave case management directions, noting that the claim was for an RRO for £26,769.78 in respect of the period from 1 October 2019 to the date the application was made. These directions required the Applicants to produce their bundle of documents and the Respondent to produce their bundle in answer. The Applicant was given permission to produce a reply.

3. There was no inspection. The directions noted that the tribunal considered an inspection of the Property was not necessary and required the parties to write to the tribunal if they disagreed; neither did so. The parties produced photographs in their bundles.

Hearing

4. The hearing was conducted by video platform on 16 December 2020. Mrs Griffiths represented the Applicants and gave evidence. Ewan Kingdon attended to give evidence. Most of the other Applicants attended as observers. The Respondent was represented by Mr Maddan, with Christopher Langridge (a director of the Respondent) attending to give evidence. Mrs Langridge, the other director of the Respondent, also attended as an observer.

Power under the 2016 Act to make a RRO

5. The Applicants alleged that the Respondent had committed an offence under section 72(1) of the Housing Act 2004 (the "**2004 Act**"), of control or management of an unlicensed HMO (explained below).

6. Chapter 4 of Part 2 of the 2016 Act confers power on the tribunal to make a RRO (here, an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant) where a landlord has committed this offence (or any of the other offences specified in section 40 of the 2016 Act). By section 41, a tenant may apply for a RRO only if the offence relates to housing that, at the time of the offence, was let to that tenant, and the offence was committed in the period of 12 months ending with the day on which the application was made. By section 43 of the 2016 Act, the tribunal may make a RRO if it is satisfied, beyond reasonable doubt, that the landlord has committed the alleged offence.

The alleged offence – section 72 of the 2004 Act

7. By subsection 72(1) of the 2004 Act:

> "*(1) 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)) and is not so licensed.*"

8. By subsection (4), in proceedings against a person for an offence under subsection (1), it is a defence that: "*… at the material time … an application for a licence had been duly made in respect of the house under section 63, and that … application was still effective*." By subsections (8) and (9), such an application is "*effective*" at a particular time if at that time it has not been withdrawn and either:

   a) the authority has *not decided whether to grant* a licence; or

   b) the authority has *decided not to grant* a licence, and the period for appealing against that decision (or against any relevant decision of the tribunal) has not expired or an appeal has been brought and the appeal has not been determined or withdrawn.

9. Separately, by subsection (5), in proceedings against a person for an offence under subsection (1), it is a defence that: "*… he had a reasonable excuse … for having control of or managing the house in the circumstances mentioned in subsection (1) …*".

10. As mentioned above, we would only have power to make a RRO if we were satisfied beyond reasonable doubt that the landlord had committed the alleged offence under subsection (1). However, because the defences in subsections (4) and (5) are separate from the elements of the offence, we decide the question of whether the Respondent has either defence on the balance of probabilities.

The Property

11. The Respondent is the registered proprietor of the freehold title to the Property. Mr Langridge said that they had purchased the Property with sitting tenants, liking the neighbourhood, the proximity to the University and the internal layout which was well suited to students. The Property was originally a four-bedroom house which had been converted so that it has six bedrooms. On the first floor, it has one master bedroom with an en suite bathroom, three other bedrooms and a main bathroom. On the ground floor, it has two further bedrooms and a kitchen for all six tenants to share.

Lettings

12. Mr Langridge said they arranged to let the Property through Nicholas J Humphreys letting agents, having considered other local agents and then appointed them in July 2018. He said that, as soon as the sitting tenants left in early August 2018, the Respondent refurbished the Property. He described fitting a new family bathroom and other improvements with total expenditure of about £13,641. The Respondent then let the Property to new tenants (not the Applicants) from 18 August 2018 until 17 August 2019.

13. On about 13 December 2018, the first four Applicants (Messrs Spilsbury, Kingdon, Spooner and Martin) entered into an assured shorthold tenancy agreement with the Respondent for a term from 24 August 2019 until 23 August 2020. The monthly rent was £2,520. In addition to the named tenants, the other Applicants, Messrs Hodgkins and Griffiths, were described as "*permitted occupiers*". On about 14 February 2020, the Applicants entered into a new tenancy agreement with the Respondent for a term from 24 August 2020 at the same rent, describing all the Applicants as the tenants. It was not disputed that the Applicants were in fact the tenants throughout the relevant period.

Was the alleged offence committed?

14. As the freehold owner receiving (directly or through the agent) the rent from the persons in occupation as tenants or licensees, the Respondent was clearly the "*person managing*" the Property as defined by section 263 of the 2004 Act.

15. By section 77 of the 2004 Act, "HMO" means "*a house in multiple occupation as defined by sections 254 to 259*". The Respondent accepted, and we are satisfied beyond reasonable doubt, that the Property was an HMO. By reference to each component of the standard test under section 254(2): (a) the living accommodation is not divided into self-contained flats; (b) it was occupied by people who did not form a single household; (c) they occupied the living accommodation as their sole or main residence; (d) their occupation of the Property constituted the only use of it; (e) a rent was payable; and (f) the occupiers shared the cooking facilities in the communal ground floor kitchen and the bathrooms (as noted below).

16. By section 61 of the 2004 Act, every HMO to which Part 2 applies must be licensed unless a temporary exemption notice is in force in relation to it. By section 55, Part 2 applies to any HMO which falls within a "*prescribed description*"; this is known as mandatory licensing. The relevant prescribed description from 1 October 2018 is in the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. It describes an HMO which: (1) is occupied by five or more persons; (2) is occupied by persons living in two or more separate households; and (3) meets the standard test under section 254(2), or one of the other tests specified in the Order. We are satisfied beyond reasonable doubt that the HMO satisfied these conditions and was required to be licensed. Mr Kingdon explained that most of the tenants were away between mid-March and early September 2020 because of the Covid-19 pandemic. However, some remained for longer, they all continued to pay the full rent and they all had the right to reside in the Property throughout. Moreover, the Respondent accepted that the Property required a licence throughout the relevant period.

17. Accordingly, if the Property was not licensed during the relevant period, and if the Respondent does not have a defence, the relevant housing offence was committed.

Was the Property not licensed? If not, does the Respondent have a defence?

18. By section 68(3) of the 2004 Act, a licence comes into force at the time that is "*…specified in or determined under the licence for this purpose…*", and (subject to exceptions which do not apply in this case) continues in force for the period so specified or determined.

19. Section 69 gives the local housing authority power to vary a licence with the agreement of the licence holder; such variation takes effect at the time when it is made. Schedule 6 sets out the procedure to be followed by a local authority before varying a licence, including service of notice of any proposed variation on any relevant person (as defined) unless the local authority consider that the variation is not material or that it would not be appropriate to do so.

20. The Applicants said they contacted the local housing authority, Norwich City Council (the "**Council**"), after the Respondent and/or their agents did not resolve problems with the bathrooms and mould in the Property. They made a formal complaint to the Council on 10 August 2020 and they were told by a "*public protection officer*" at the Council that the Property was unlicensed. The Council then confirmed twice (by letters in August and September 2020) that a previous HMO licence had expired on 30 September 2019 and as of 18 August 2020 the Property remained unlicensed. The Applicants said they had been advised (by the Council and/or Shelter) to apply for a RRO.

21. The Respondent did not accept that the Property was unlicensed and contended that the Council had not kept their HMO licensing register up to date. The new prescribed description (set out above) for mandatory licensing came into force from 1 October 2018. It extended mandatory licensing to HMOs which, like the Property, have fewer than three storeys. Mr Langridge said he "*sought*" an HMO licence in September 2018 and on 4 June 2019 the Council "*purported*" to grant the licence, "*backdating*" it to 1 October 2018. Because the Council had taken the approach of granting HMO licenses for only one year at a time, the Council's records indicated that the HMO licence had expired on 30 September 2019. The Respondent said the Council should have licensed the Property for 12 months from the date of grant on 4 June 2019. They relied on e-mails which Mr Langridge had obtained from an individual at the Council (examined below) and a page from the Council's website which indicated that HMO licenses would be granted for a period of one year from the "*date of issue*". At the hearing, Mr Maddan submitted that this tribunal did not have jurisdiction to make different factual findings about what he described as the "*decision*" of the "*licensing authority*" in the more recent e-mail(s). These e-mails demonstrated, he said, that the public register was "*wrong*".

22. Further, in 2019 the Respondent had applied to a tribunal in this jurisdiction to appeal some of the terms of the HMO licence. They argued that as a result the licence was "*in abeyance*" until the matter was dealt with by the tribunal and did not come into effect until 20 November 2019, when that tribunal made a consent order concluding the appeal proceedings. The Respondent made detailed submissions contending that this would be consistent with the structure of the 2004 Act (with appeals as re-hearings, not reviews), that managers might otherwise have to apply for several annual licences while an original contested licence was still being appealed in the higher courts and that if the Council was slow to process applications and/or first instance proceedings took a long time the tribunal would otherwise be making "*sterile*" or "*pointless*" decisions about a licence which had already expired. We summarise only the key points in this decision, but we have considered all their submissions carefully. Mr Maddan also submitted that there was no reason to treat the 2019 appeal about the terms of the licence differently from an appeal against a decision to refuse to grant the licence at all.

23. The Respondent said that, if we find that the Property was not in fact licensed during the relevant period, it has a reasonable excuse because both the Respondent and the Council were uncertain about the licensing position. Mr Langridge said he contacted the Council on 22 November 2019, shortly after the consent order was made, to "*resolve the issue*". The Respondent argued that the Council took no action and made no further contact at that stage, so Mr Langridge "*assumed that the Property had been entered in the licensing register*." They said that until 24 August 2020 the Respondent "*continued to believe*" the Property was licensed. When Mrs Griffiths said that the Property was not licensed, Mr Langridge checked the public online licensing register and promptly made a "*precautionary*" licence application. He provided a copy of that application, which is dated 25 August 2020. Mr Maddan submitted that the unusually short licences granted by the Council were bound to cause chaos and speculated that they had issued their proposed licenses in late 2018 without proper consideration of individual properties. The notice of intention to issue (the document setting out the terms of the proposed HMO licence) had been given by the Council in November 2018. The Respondent made representations about the proposed terms of the licence and it was not until 4 June 2019 that the Council finished assessing the conditions in relation to the Property and issued the licence. The problem, said Mr Maddan, had been caused by the Council. He said that when the appeal proceedings had been resolved by agreement in October (as reflected in the terms of the consent order made in November) 2019 the "*least*" the Council could have done would have been to issue a "*fresh licence*".

24. In relation to all these issues, Mrs Griffiths submitted that the only reliable confirmation of the licensing position was in the formal letters from the Council and the licence documents. She pointed out that we did not appear to have copies of all the correspondence between Mr Langridge and the Council about the licensing issues, let alone a copy of the licensing file.

Specific evidence in relation to these issues

25. Mr Langridge confirmed that the Respondent owns two HMOs or other rental properties, and he owned three others with his wife. It appears these are all in Norwich. He said that they were members of the NRLA and had for more than 10 years managed their properties themselves, although recent changes (including young children) meant they had sought help from a letting agency. He handled licensing matters for the Respondent himself. He said that the Council struggled to cope with licence applications in late 2018 when (under the new prescribed description) it became mandatory to license HMOs with fewer than three storeys. Mrs Griffiths asked him about this, since the Council had responded quite promptly with their proposed licence terms in November 2018 - it was the Respondent's representations about the licence terms which the Council then took time to consider. Mr Langridge said that his point was not about timeliness; he suggested

that the Council had responded incoherently and sent out incorrect notices, and their website had crashed.

26. The first HMO licence makes it plain that "*the premises will be licensed until 30 September 2019*" and confirms on the cover page: "*Licence valid to 30/09/2019*". Mr Langridge accepted this, and accepted that on the face of it the licence expired on 30 September 2019, before he had even agreed terms with the Council for settlement of the appeal against the terms of the licence. He accepted that he had not made an application for a new HMO licence at that time.

27. We asked Mr Langridge why, if the licence had not come into effect until the appeal proceedings were concluded by the consent order on 20 November 2019, the Respondent had not been committing the offence of managing an unlicensed HMO for the period from 4 June 2019 until November 2019. He was not able to answer this. He said the appeal was "*primarily*" against conditions relating to the Council's amenity standards (which stipulated additional cooking facilities if there were six rather than five residents) and the length of the licence. He accepted that nothing in the consent order indicates that it would change the expiry date of 30 September 2019. Aside from an agreement on costs, it simply states that the conditions of the licence shall be varied so that the additional cooking facilities were not required. Mr Langridge said that he thought the words "*shall be*" suggested that the licence was still in existence in November 2019. The consent order refers to two licences, one for the Property and one for 44 Milton Close in Norwich. Mr Langridge indicated that the licences for these properties were "*in step*" and he had also applied for the current HMO licence for Milton Close on a precautionary basis.

28. Mr Langridge said in his witness statement that when he contacted the Council on 22 November 2019, after speaking to a junior member of staff, he had spoken to Anthony Shearman at the Council, who said he would get back to Mr Langridge but did not. The documents in the bundle indicate that Mr Shearman is the, or a, "*public protection manager*" at the Council. Mr Langridge told us he understood that a previous licensing manager had moved on and Mr Shearman had been brought in to "*sort things out*".

29. The documents included an e-mail of 20 October 2020 from Mr Shearman, providing what he described as a summary of the licensing history for the Property. This confirmed that the licence lapsed on 30 September 2019. It noted that after agreement was reached in relation to the appeal, the licence holder was unsure of the situation and contacted the HMO licensing team in November 2019 for clarification. It notes that "*The advice given by telephone was that a retrospective renewal application would have to be made*." It says that the licence holder sought further advice from the manager of the team about this, because it was felt that the licence should run from the time the appeal

was resolved, not the original application date. It says: "*Although the initial advice given was correct and a retrospective renewal application was required, this was never formally confirmed to the licence holder by the manager of the department, leading the licence holder to believe that the licence was still ongoing*." It added: "*There was a period between October 2019 and August 2020 when the property was unlicensed and although ultimately this is the responsibility of the licence holder, he had made attempts to get qualified advice from the authority which was not forthcoming*."

30. It is not clear how much of this e-mail is explaining the Council's position/records, or a summary of what Mr Langridge had said to the Council. We asked Mr Langridge about this, since he did not seem to be denying that he had been advised in November 2019 that his licence had lapsed and he needed to apply for a new licence. He said the first person he had spoken to was an administrator, that the Council had problems with their licensing team and that junior members of staff had often given information which was wrong. Mr Langridge said that Mr Shearman had then told him that he was "*unsure*" about the position and would get back to him on this. Mr Langridge's evidence was that, until he checked the licensing register on 24 August 2020, he had genuinely believed that the licence remained in force. He said that he had spoken to Mr Shearman and had taken a note of him apologising and saying this needed to be regularised/sorted. He said that Mr Shearman then confirmed to him on 29 September 2020 that a licence had not been in place. When Mr Langridge pursued this, Mr Shearman provided the e-mail of 20 October 2020 mentioned above.

31. On 11 November 2020, Mr Shearman e-mailed Mr Langridge to say that his legal advisers had advised the licence dates of 1 October 2018 to 30 September 2019 were: "*…incorrect and the licence should have reflected that it was granted on the 4th June 2019 and expired on the 3rd June 2020*." Mr Langridge replied on 13 November 2020 to say: "*So to paraphrase, are you saying that this property was licensed from 4th June 2019 to 3rd June 2020?*". Mr Shearman replied that day: "*Yes, this is correct*." Mr Shearman sent another e-mail to Mr Langridge on the same day, confirming that: "*the information regarding the amended licence dates*" had been sent to Mrs Griffiths.

32. Mr Langridge confirmed that no new or revised licence had been issued in respect of any period between 1 October 2019 and 24 August 2020. He also acknowledged that the (draft) current HMO licence for the Property is expressed as having been granted with effect from 25 August 2020 (the date of his application), expiring on 24 August 2021. He said he had raised this with the Council and they had asked him to inform their processing team that the actual licence would need to be issued from 4 June 2020. He said that, when this issue came to light in August 2020 he had looked at the Council's website and he had seen "*for the first time*" the page stating that their HMO licences will run for one year from the date of grant.

Conclusions

33. For the purposes of these proceedings, we are satisfied beyond reasonable doubt that the Property was not licensed for the relevant period (from 1 October 2019 until 19 August 2020), as explained below.

34. The licence documents, the licensing register and the formal letters from the Council all confirm that the licence expired on 30 September 2019. Generally, Mr Maddan could only submit that the licensing register was "*wrong*", and complain that the "*least*" the Council could have done was issue a fresh licence in November 2019; nothing of the sort was done. Most of the communications from Mr Shearman say the same thing, or later that the licence *should* have run from 4 June 2019 to 3 June 2020, not that it did.

35. Mr Shearman said in one e-mail that Mr Langridge was "*correct*" (to "*paraphrase*" that this means the Property was licensed until 3 June 2020), and his other e-mail refers to "*amended*" dates, but these e-mails are short replies to the (perhaps understandable) attempt by Mr Langridge to rewrite history. We cannot put as much weight on these two (very brief) e-mails as the Respondent would like because they are not consistent with the more substantive earlier correspondence and we do not have details of all the correspondence or other communications between Mr Langridge and Mr Shearman, let alone proper witness evidence from the Council. Nor do we know what (if any) delegated authority Mr Shearman has from the Council or their licensing committee in relation to licensing matters. While Mr Shearman seems to have tried to help (or appease) Mr Langridge, these e-mails do not change the position; we have seen no evidence to suggest that any actual amendments were made to the licence. We are satisfied beyond reasonable doubt that these e-mails, sent months after the licence had already expired, are not determinations under the licence.

36. Accordingly, applying section 68 of the 2004 Act to the evidence produced to us, the HMO licence for which the Respondent applied in September 2018 was in force from 1 October 2018 until 30 September 2019, but not during the relevant period. Similarly, the proposed terms of the current HMO licence indicate that it is in force from 25 August 2020, not 4 June 2020. Despite the discussion described by Mr Langridge that he should ask the "*processing team*" at the Council to back-date this, we have seen no evidence that it has been.

37. The appeal proceedings did not change the position. When in October 2019 the parties agreed terms to dispose of the appeal about the terms of the 2018/19 licence, it had already expired. Mr Langridge said the length of the licence was one of the points he sought to challenge in the appeal, but the agreed changes set out in the consent order in November 2019 (based on which, under rule 22 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the

relevant tribunal consented to withdrawal by the Respondent of its appeal) make no reference to any change to the period of the licence. The Respondent's submissions about the effect of the appeal proceedings do not fit with the scheme of the 2004 Act. This does not specify a minimum duration for licenses, only a maximum. As might be expected, it does not give a defence to the HMO licensing offence under subsection 72(1) in the case of a decision to grant a licence on terms which are appealed. The defence in subsection 72(4), as set out above, only applies in the case of an appeal against a refusal to grant, or a pending decision. If the Respondent was right and the effect of the appeal proceedings was that the licence was only in force from November 2019, the Respondent could have been committing the offence under section 72(1) (at least from June to November 2019) despite having applied for an HMO licence, and made its appeal, in time. The effect of the consent order in the 2019 appeal proceedings (or the agreement reflected in it) was to vary the conditions in the HMO licence which was in force from 1 October 2018 until 30 September 2019. That was not "*sterile*" or "*pointless*"; otherwise, the Respondent could have committed an offence under section 72(3) of failing to comply with the original conditions in the licence (which prohibited occupation by any more than five people unless an additional hob was provided in the Property) during that period, despite having appealed against the relevant conditions and ultimately succeeded in removing this prohibition.

38. We are not satisfied that the Respondent had a reasonable excuse for committing the offence. On our assessment of the evidence, it was not sufficiently diligent; as explained below, its failure to apply for the 2019/20 licence was not reasonable in all the circumstances.

39. The Council's arrangements and timings were not helpful and it seems the Council did not send a renewal reminder. These matters are relevant to our consideration below of the conduct of the Respondent. However, Mr Langridge is an experienced professional landlord with other HMOs and it appears the Respondent had another HMO with the same licensing timetable with the same licensing authority. The Respondent had the benefit of the HMO licence for the year from 1 October 2018, and the Council's modest annual application fee of approximately £40 was no obstacle. The Respondent could and should have made the next application in September 2019. As noted above, the period covered by the licence was clear and, in the circumstances, it was not reasonable to assume that the Respondent's appeal proceedings extended or deferred this. Mr Langridge was told by the first person he asked at the Council (in November 2019) that the licence had expired and he needed to apply for a new one. He challenged that advice, but there is no suggestion that he was given any conflicting advice at the time. Some of the e-mails from Mr Shearman suggest that he accepts there were mitigating factors for the failure to license and/or that Mr Langridge was led to believe that the licence remained in force, but we do not unquestioningly adopt what is suggested in these e-mails. Again,

we do not have details of all communications with, or witness evidence from, the Council. We give weight to the comments in the e-mails from Mr Shearman, but we make our own assessment. We are not satisfied that it was reasonable for Mr Langridge to believe that the licence was continuing when Mr Shearman did not get back to him to confirm the advice the more junior officer had given in November 2019. He was not misled by the page on the Council's website indicating that HMO licences would last for a year from the date they were granted, not least because he did not see this until August 2020 or thereafter.

For what period was the offence committed?

40. The written submissions on behalf of the Respondent argued (in effect) that by section 72(4) of the 2004 Act the alleged offence could not have been committed until 18 December 2019 at the earliest, because the appeal proceedings were ongoing until the consent order of 20 November 2019. This submission is not sustainable. The parties agreed that the licence was issued on 4 June 2019. From that date, the application was no longer "*effective*" as defined in section 72(8). The Council had decided to grant the licence and the appeal by the Respondent was only against the terms of that licence. Accordingly, the defence under section 72(4) does not assist the Respondent.

41. We are satisfied beyond reasonable doubt that the offence under section 72(1) of the 2004 Act was being committed from 1 October 2019 until the end of the relevant period on 19 August 2020.

Should we exercise our discretion to make a RRO?

42. It is clear from the wording of the 2016 Act that the tribunal has a discretion as to whether to make a RRO if satisfied beyond reasonable doubt that the relevant offence has been committed.

43. The Upper Tribunal in Vadamalayan v Stewart [2020] UKUT 183 (LC) confirmed (at para. 19) its understanding that in making the 2016 Act Parliament intended a: "*…harsh and fiercely deterrent regime of penalties for the HMO licensing offence*." The written submissions made on behalf of the Respondent invited us not to follow Vadamalayan. They contended that if we decide to make a RRO the amount should not be a matter of starting points and adjustments, but an open consideration of the appropriate sum. We are bound by the decision in Vadamalayan, which indicates at para. 12 (in the context of deciding that a RRO should not be limited to the profit made by the landlord during the relevant period) that the "*obvious starting point*" is the rent paid for the relevant period. Here, that was £26,769.78.

44. By section 44 of the 2016 Act, where we decide to make a RRO in favour of a tenant, in determining the amount we 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 any of the offences set out in section 40. We bear in mind the suggestion in Vadamalayan (at para. 53) that this leaves "*less scope*" for the balancing of factors envisaged in cases decided under the less "*hard-edged*" provisions of the previous legislation for RROs, but we note this is not a closed list of factors.

Conduct

45. The Respondent accepted that the conduct of the Applicants had been reasonable. They had been frustrated by various matters in relation to the tenancy, resulting in some intemperate correspondence, but had been reasonable. They had been informed by the Council (by letter) that the Property was unlicensed and had been advised to make this application for a RRO. Mr Langridge confirmed that the Respondent had received the full rent from each of the Applicants for the relevant period from 1 October 2019 until 19 August 2020, subject to the compensation of £450 provided by the Respondent (as explained below). Mr Maddan submitted that the conduct of the Respondent had been reasonable in relation to the complaints made by the Applicants. Further, he submitted that the behaviour of the Respondent had been reasonable in relation to the licensing issue which had caused the offence, and that they had been let down by the Council.

46. By her e-mail of 15 December 2020 (at the end of the day before the hearing), Mrs Griffiths sought to introduce new evidence. Her e-mail alleged that on 9 December 2020 workmen had entered the Property without "*permission*" using the management keys from the agents, and produced a note from the Council of alleged issues with the Property under the management regulations which apply to HMOs. Mr Kingdon said that he had not been at the Property at the time, but had been told there had been correspondence from the agents seeking to arrange access, that the workmen had turned up at 8:30am and knocked, then let themselves in, did not leave when they were asked to and became "*aggressive*"; one of the Applicants had called the Council and an officer had attended. Mr Maddan said that he would be unable to take instructions on these allegations without time for his client to investigate and produce any evidence in response, pointing out that there was no witness statement or advance notice of these allegations in respect of what was said to have happened on 9 December. As we explained to Mrs Griffiths, we cannot make findings about these allegations because they were raised too late in these proceedings. We have taken into account the other concerns raised by the Applicants, but we summarise below only the main items.

47. The Applicants said the garage was important to them, but they had been unable to store equipment in it because belongings had been left there by the Respondent. They said the letting agents had showed them

inside the garage in December 2018 and where the keys were kept in the kitchen, so they expected they would be able to use it. The Respondent said that the garage was not included in the tenancy agreements, and we see there is no specific reference to it. Mr Langridge said that he expected the agents would have shown the garage to the Applicants, it was not included in the agreement but tenants were welcome to use it. He confirmed that he did have items stored in the garage, did not know whether there was any space left for storage, said that there had previously been room for bikes and said he suspected that the previous tenants might have left "*stuff*" behind.

48. The Applicants had problems with the bathrooms and mould in the Property. They said that the shower in the main bathroom did not work; the Respondent said that it did work and produced correspondence from his contractor asserting that it had been functioning but the water pressure was low. Mr Kingdon said that it had taken many months for this to be resolved, during which time they all had to use the en-suite shower, intruding on the bedroom of the Applicant who lived there and causing mould to build up from the excessive use. Mr Langridge said that he had investigated and had chosen the most expensive option of installing a new cylinder to provide the pressure the Applicants were hoping for, but he had to chase the contractor to get the work done and it had ultimately been completed in January 2020. The e-mail correspondence indicated that the Applicants were "*really pleased*" with the work done to improve the main bathroom and related matters in January 2020. Mr Kingdon confirmed that the remaining work mentioned in that correspondence (to clean away the (then) remaining mould and re-paint the affected area) was carried out in about January 2020. The parties had then agreed through the agents in about February 2020: (a) that the Respondent would pay compensation of £450 for the various issues; and (b) the Applicants would enter into a new tenancy agreement for a term from 24 August 2020 at the same rent. Mr Kingdon said that they had hoped that "*things would go better*" in future. Mr Langridge explained that the compensation payment had been funded in equal shares by the Respondent, the plumbing contractor and the agent to reflect their responsibility for the delay.

49. From about March 2020, the Applicants had been dissatisfied because it had taken a long time to deal with mould in various areas and the agents then suggested that they pay the costs (£145) of remedying the mould in the bathroom. The parties disagreed about whether at various stages extractor fans had been correctly installed and/or switched off by the Applicants. The Applicants said they had been exposed to the mould and potential respiratory problems or other issues for many months and had the impression that the agents were minimising works to maximise income. Mr Maddan asked whether the Applicants were living at the Property from April to August 2020 and Mr Kingdon accepted that they were not. Mr Maddan asked whether it was reasonable to expect it to be more difficult to have works carried out

during the "*lockdown*". Mr Kingdon acknowledged this, but said that he knew tradespeople who were working during this period. Mr Maddan put it to him that the Applicants may also have been unhappy that the Respondent was unwilling to agree a rent reduction for the period of the main Covid-19 lockdown when they were away staying with their parents.

50. The Applicants also referred to times when Mr Langridge or tradespeople arrived at the Property without prior notice (for example, on 24 August 2020). Mr Langridge said that if he was working on a property nearby he would knock on the door and ask the tenants if it was convenient for him to look at anything. He said that he would always "*try*" to give notice when work was being done.

Financial circumstances/convictions of the landlord

51. The Land Registry title entries for the Property as at 13 August 2020 indicate that the declared purchase price on 20 December 2017 was £276,000. They do not include a mortgage or any other financial charges. We noted that the Respondent has been advised throughout these proceedings but no evidence of its financial circumstances have been produced. We said that accordingly we proposed to treat the Respondent as a company with the means to pay the RRO sought by the Applicants. At the hearing, Mr Langridge accepted they were not "*on the breadline*". He said that money for their properties had come from an inheritance and the income from the company was for his older children, not money Mr and Mrs Langridge live from. He said that their money came from other properties and normally their hospitality business which had as a result of the pandemic caused them "*no end of issues*" this year. He said that because of these problems they had not been "*in a position*" to offer the Applicants a rent reduction. Mr Langridge told us that (as declared in his HMO licence application) the Respondent and its directors have not been convicted of any relevant offences.

Conclusions

52. In our assessment, the main factor is the conduct of the Respondent in relation to the licensing issue. It was not diligent enough to have a reasonable excuse and we have decided that we should exercise our discretion to make a RRO. However, the combination of the approach by the Council in granting short annual licences, their delay in not issuing the final licence until about nine of the 12 months had expired (so that almost inevitably the appeal proceedings in relation to the licence conditions were ongoing when the licence expired) and the various e-mails from Mr Shearman in support of the Respondent about "mistakes" made by the Council and Mr Langridge's understanding at the time (as noted above) lead us to conclude that we should substantially reduce the starting point. It is striking that, if the Council

had done what Mr Shearman and its own website suggested it "*should*" have done and issued the licence for the year from 4 June 2019, the Respondent would "only" have committed the relevant offence for about 2.5 months, for the period from 4 June 2020 until the end of the relevant period on 19 August 2020.

53. Whether it is properly considered as a matter of conduct or as separate relevant factor, we also take into account the fact that the tenants were away for several months because of the Coronavirus restrictions. In relation to the property matters complained of by the Applicants, we have seen no evidence of any substantial failures by the Respondent. Compensation was agreed in relation to the earlier problems with the bathroom in 2019, and the Applicants renewed their tenancy in early 2020. Even allowing for the Coronavirus restrictions, Mr Langridge probably spent a little too long trying to negotiate the best deals for works; the matters complained of from March 2020 all appeared to be of the type which should be quick to remedy, cleaning away mould and treating/re-painting what Mr Maddan described as "*cold spots*" which caused condensation. This alone is not a substantial negative factor, not least because the tenants were away for most of the period they were complaining about, but they were paying the full rent throughout. The lack of clarity about the garage, and the earlier occasions on which prior notice did not seem to have been given to the Applicants before people attended at the Property, are also negative factors, but again on the evidence produced to us they were not substantial.

54. The Respondent gave no real evidence of its financial circumstances and did not give particulars of the general statements made by Mr Langridge at the hearing. Accordingly, as we indicated at the hearing, we take it that the Respondent has the means to pay a RRO and make no adjustment for the financial circumstances of the Respondent. We accept the unchallenged evidence of Mr Langridge that neither the Respondent nor its directors have been convicted of any relevant housing offence and we are satisfied that we should make no adjustment to reflect this.

55. Taking into account all the circumstances, including the specific factors identified above and the compensation paid to the Applicants in early 2020, we have decided to make a RRO for the equivalent of three months' full rent. This would have been nearer to 2.5 months' rent but for the negative factors noted above in relation to the Respondent's conduct. During the relevant period, each of the Applicants paid an equal share (£420) of the monthly rent of £2,520. Accordingly, our order is that the Respondent shall pay £1,260 to each Applicant, the total sum of £7,560.

Name: Judge D Wyatt **Date:** 20 January 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).