FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UD/HMG/2020/0006
Property	**:**	Flat 3, 65 Warrior Square, St Leonards on Sea, TN37 6BG
Applicants	**:**	Fayth Garlick & Finlay Garlick
Type of Application	**:**	Rent Repayment Order: s.41 Housing and Planning Act 2016
Representative	**:**	In person
Respondent	**:**	Yvette O'Carroll
Representative	**:**	In person
Tribunal Members	**:**	Judge M Loveday Mr C Davies FRICS Ms P Gammon MBE
Date of hearing/venue	**:**	18 March 2021 (Remote hearing)
Date of decision	**:**	1 April 2021

DECISION

Summary

1. The Tribunal makes a Rent Repayment Order in the sum of £6,500.

Introduction

2. This is an application for a rent repayment order under s.41 Housing and Planning Act 2016 ("the 2016 Act"). The matter relates to a tenancy of a property at Flat 3, 65 Warrior Square, St Leonards on Sea, TN37 6BG. The Applicants are Fayth and Finlay Garlick, the former occupiers. The Respondent is Yvette O'Carroll, the landlord.

3. The application dated 25 November 2020 claimed £9,075 for the whole term of the tenancy, namely 6 December 2019 to 8 November 2020.

4. Directions were given on 13 January 2021 which provided, amongst other things, that the matter would be determined by way of telephone conference or video hearing. The parties filed statements of case and the Tribunal notified them on 17 February 2021 that a remote hearing was fixed for 18 March 2021. At the hearing, both the Applicants and the Respondent appeared in person and gave evidence.

The offence

5. The offence itself is at section 95 of the 2004 Act:

> *(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.*

Section 85(1) states that "*Every Part 3 house must be licensed under this Part …*"

6. Rent Repayment Orders are provided for in Chapter 4 of the 2016 Act. Section 40(3) applies them to certain offences "*committed by a landlord in relation to housing in England let by the landlord*" which expressly include offences under section 95 of the Housing Act 2004. Section 41 of the 2016 Act goes on to provide that:

> "*(1) A tenant … 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.*"

Section 43 of the 2016 Act then states that:

> "*(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).*"

Section 44 includes provisions in tabular form. But the material provisions are as follows:

> *(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.*
> *(2) … If the order is made on the ground that the landlord has committed … an offence [under s.95 of the 2004 Act] … the amount must relate to rent paid by the tenant in respect of … a period, not exceeding 12 months, during which the landlord was committing the offence.*
> *(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 …*
> *…*
> *(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.*

7. In the very recent decision in *Awad v Hooley,* [2021] UKUT 0055 (LC), Judge Elizabeth Cooke helpfully summarised the current position:

> "38. In *Vadamalayan v Stewart* [2020] UKUT] 183 (LC) the Tribunal said that it was no longer appropriate for rent repayment orders to be limited to the repayment of the profit element of the rent. Nor is it correct for the FTT to deduct from the maximum amount the amount of any fine or civil penalty imposed on the landlord:
>
> > "19. The only basis for deduction is section 44 itself. and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence."

39. More recently in *Ficcara v James* [2021] UKUT 38 (LC) the Deputy President said this:

> '49… the Tribunal's decision in *Vadamalayan* … rejected what, under the 2004 Act, had become the convention of limiting the amount payable under a rent repayment order to the amount of the landlord's profit from letting the property during the relevant period. The Tribunal made clear at [14] that that principle should no longer be applied. In doing so it described the rent paid by the tenant as 'the obvious starting point' for the repayment order and indeed as the only available starting point.'
>
> 50. The concept of a 'starting point' is familiar in criminal sentencing practice, but since the rent paid is also the maximum which may be ordered the difficulty with treating it as a starting point is that it may leave little room for the matters which section 44(4) obliges the FTT to take into account, and which Parliament clearly intended should play an important role…

40. I agree with that analysis".

The premises

8. Warrior Square is a much sought-after location on the seafront of St Leonards on Sea featuring Regency stucco fronted terraced houses set around three sides of a garden square. 65 Warrior Square is in the north eastern corner and has been converted into several flats. Flat 3 comprises a large open plan living room/kitchen, two bedrooms and bathroom/WC. There are also mezzanine levels providing additional accommodation. The flat is on the (principal) first floor of the premises, with high ceilings, floor to ceiling period windows and a balcony enjoying oblique views over the English Channel.

9. It is an important feature of the application that the Respondent was marketing the premises for sale during the tenancy. The estate agents' sales particulars showed a stylish conversion with stripped floors, exposed brickwork and original plaster decorative features. Other photographs in the bundle confirmed the kitchen appliances, bathroom fittings and finishes were to a high standard.

The Applicants' case

10. The Applicants set out their case in a (joint) written statement and Reply, and the First Applicant gave oral evidence at the hearing. The Second Applicant supplemented this with brief oral evidence about text messages she had received. Both Applicants were cross-examined by the Respondent.

11. The Applicants produced a copy of their tenancy agreement dated 6 December 2019, which was for a period from 9 December 2019 to 8 December 2020. The rent was specified as £825 per calendar month, and the Applicants paid a deposit of £825 which was registered with the Tenancy Deposit Scheme ("TDS"). During the tenancy, the Applicants made 11 rent payments of £825 amounting to £9,045. At the end of the tenancy, there was a dispute about the deposit which was resolved by a TDS adjudication dated 5 January 2021. The adjudicator awarded the Respondent a further £400 from the deposit moneys for additional rent payable for November 2020. This brought the total rent "paid" to £9,475 and the application sought an order for a repayment of this amount.

12. The Applicants relied on a letter from Hastings BC dated 14 January 2012, which stated that the discretionary selective licensing scheme was in effect from 26 October 2015 to 25 October 2020. The flat fell within the designated area, and no application was received for a license from the Respondent.

13. The Applicants further relied on four relevant pieces of the evidence of the Respondent's conduct.

14. First, on 7 August 2020, the Respondent sent a letter to the Applicants in the following terms:

    "I am writing to inform you that we will not be renewing the one-year tenancy agreement on the above property which will need to be vacated by 5th December 2020. Please ensure that the property is left in the same clean condition that it was found in, and please leave the keys to property inside on your departure. Once the property has been inspected for damages, I will request the return of your deposit from the DPS."

    The Applicants had been advised this was not a proper notice under s.8 or s.21 Housing Act 1988. Moreover, the contractual tenancy expired on 8 December 2020, and the letter asked them to vacate three days early.

15. Secondly, the Applicants relied on the events which eventually led to them vacating before the term date. These were:
    (a) The Second Respondent gave evidence of an exchange of text messages in about July 2020. The gist of the messages was that the Applicant gave informal notice that she would not be "renewing the tenancy agreement". The Second Applicant then texted to ask whether there would be any potential to move out in January.
    (b) There is then the letter of 7 August 2020 referred to above.
    (c) On 4 September, there was an email from SLOS Property Management advising the Applicants that the property was under offer.
    (d) On 10 September, the First Applicant emailed to say they agreed to end the tenancy one month early on 7th/8th November 2020. There appears to have been a telephone conversation following this email.

(e) On 11 September, the First Applicant emailed to say that they agreed to "meet you halfway with November's rent and pay £400 as discussed".
(f) On 15 September, the Respondent emailed to pay that "after further reflection and review of our situation and finances over the past couple of days, unfortunately we are not able to end the tenancy agreement early I am afraid".
(g) The First Applicant responded the same day to say the Applicants were "very surprised" to receive this information, and that the Applicants had already paid a holding deposit for a new flat. The Applicants sought "middle ground we can reach".
(h) The Respondent replied that although she understood their predicament, she was "in a very similar position to yourselves".
(i) On 17 September, the First Applicant sent a long email explaining his position. The Applicants' legal advice was that there was an express surrender of the tenancy as set out in the email of 10 September. The Applicants would either leave on 7 or 8 November (as agreed) or they would continue to live at the flat for at least another 6 months.
(j) On 18 September, the Respondent emailed to say that "we agree to ending the tenancy on 8th November".

The complaint here was that the Applicants felt under pressure to leave, and that the Respondent changed her mind about the leaving date. In cross-examination, it was put to the First Applicant that there was always some confusion about the date the Applicants would leave. The date in the letter of 7 August had been an obvious typographical error, but the emails of 17 and 18 September made the dates abundantly clear. The First Applicant stated that at the time, there had been a discrepancy. He said that "I understood from" the letter of 7 August 2020 that the Respondent "was not renewing the tenancy agreement".

16. Thirdly, the Respondent had been very difficult about viewings of the property while it was being marketed. The substance of this evidence was given in cross-examination by the First Applicant. He stated that the Applicants had agreed to about 6-7 "block" viewings involving about 20 people in total, each of up to 1 hour. This had been inconvenient – and during the pandemic there had been no certainty who the Applicants were mixing with especially since some had come down from London.

17. Finally, the Applicants relied on uncertainty surrounding the management of the letting. In December 2019, the Respondent had texted the Second Applicant to say she was appointing SLOS Property Management to manage the property. In fact, it turned out this was a "fictional made up company" which was not registered at Companies House. It existed only as an email address.

18. In response to the Respondent's allegations about their own conduct, the Applicants denied the property was left in a dirty and damaged condition. The matter was settled via the TDS adjudication, which re-

sulted in a sum of £145 being awarded to the Respondent. Apart from this, nothing was said by the Respondent about damage during the course of the tenancy. The property was not professionally cleaned at the start of the tenancy, and there was no contractual requirement to do so. The Applicants produced photographs showing the good condition of the flat at the end of the tenancy. The Applicants paid their rent in full for the agreed duration of the tenancy and kept up to date with utilities. In relation to the suggestion the Applicants kept pets, the Respondent had given permission for one cat to be kept. The Applicants accepted that on one occasion a family member visited the flat at short notice and brought a second cat with her – but the issue of cats was dealt with by the TDS. The locks to the communal street door were changed by the freeholder, not the lessees.

19. In closing, the Applicants sought a Rent Repayment Order in the full amount of £9,475.

The Respondent's case

20. The Respondent set out her case in a witness statement dated 16 February 2021 and oral evidence at the hearing. She was also cross-examined by the First Applicant.

21. The Respondent unreservedly took responsibility for not having obtained a Selective Licence for the duration of the time that the Applicants were in the flat. She respectfully offered her sincere apologies to the Tribunal. The Respondent was not an experienced landlord and the flat was never purchased with the intention to let it. It was her family home which she spent time and money renovating but needed to let due to a change in family circumstances. When she let the property to the Applicants, she moved into privately rented accommodation. Through letting the property, she did not make any financial gain, as the rent of £825pm did not cover her mortgage of £858.68pm together with the service charge of approximately £120pm. The Respondent was a law-abiding citizen of good character.

22. The Respondent explained the circumstances of the offence. In 2019, she retained letting agents Wyatt Hughes, who were instructed to undertake the necessary work to let the flat. The agents sent her a three-page email, which set out the tasks that needed to be undertaken to let the property. These included matters such as gas and electric safety certificates, smoke alarm and insurance, all of which were already in place due to the HMO Licence requirements. At the very end of the email was a mention of the Selective Licencing Scheme, with a link at the bottom of the third page. She unfortunately overlooked this.

23. The property was let in good condition. 65 Warrior Square had a Mandatory HMO Licence, which ensured the property was maintained to a high and safe standard. Throughout the tenancy, the Applicants raised several issues which were responded to appropriately and in a timely manner. For example, light bulbs needed replacing in the hall and wet

room. The Respondent purchased and paid for them, despite it being the tenants' responsibility under the tenancy agreement. There were problems with the Applicants locking themselves out, and an issue with a loose ceiling rose in the bedroom. In April 2020, there was a leak from the wet room in the flat into the flat below, which the Respondent dealt with immediately. The Respondent referred to the TDS adjudication, which awarded the Respondent a total of £545.00 out of the £825.00 deposit which included £400 rent arrears, £120 for cleaning, £20 for damages and £5 for gardening. During the tenancy, the Applicants breached clause 8.10.1 of the tenancy agreement by housing a pet in the property without seeking permission, and by not having "the premises cleaned to a standard commensurate with the condition of the property at the commencement of the Tenancy". These were confirmed by the outcome of the TDS dispute. Along with debris and dirt, there were residual pet hairs left on the floor of the property and the premises were generally in a dirty condition. In addition, when a new fire door was installed, the tenants failed to inform her that the locks to the front door had been changed. They subsequently retained all keys to the property.

24. As far as the issue of early termination was concerned, the Respondent particularly relied on the emails of 11 and 17 September 2020, where they threatened to remain in the property for a minimum of 6 months beyond the end of the fixed term of the Assured Shorthold Tenancy Agreement, if she did not agree to them terminating the tenancy early. The issue over the £400 was also decided in her favour by the TDS adjudicator. The Respondent submitted that the sum of £9,475 was wholly disproportionate.

25. In cross examination, the Respondent explained that SLOS Property Management was run by a "family member", although "no money changed hands" for managing the flat. It was simply more convenient to ask someone else to manage the premises. She considered the tenant's behaviour was "mixed". There was no consent for the pets and the premises were left dirty (which was bad), but they paid the rent on time (which was good). The Respondent accepted she had listed the premises for sale on Zoopla two days before the tenancy began, and it had always been her preference to sell the flat, not let it. As far as the door locks were concerned, the Respondent was not aware the locks had been changed. She knew the fire doors were being changed, but not the locks.

26. The Tribunal asked the Respondent about her financial circumstances. When she let the premises to the Applicants, the rent did not cover the mortgage and service charges the Respondent paid for the flat. She therefore made no profit from the letting. The Respondent was employed as a Social Worker and was paid c.£38,000pa gross. She lived with her husband (who was also working) and 3 other family members. Initially, they had rented other accommodation (at £1,000pm) but they now paid a mortgage. She shared the family outgoings with her husband.

27. The Respondent concluded by submitting that she took full responsibility for the lack of a licence. She had throughout been helpful to the tenants, even agreeing to end the tenancy early. There was nothing unsafe about the property. She would never let a property again and the rent repayment order sought was disproportionate to any default.

The Tribunal's Decision

28. There is no dispute that the grounds for making a rent repayment order are made out. The premises required a licence, and they were not licensed. No procedural or other defence was put forward. The Respondent candidly admitted having no licence and apologised. The Tribunal is satisfied beyond reasonable doubt that an offence was committed under s.95 of the 2004 Act.

The period of the offence

29. Before turning to the Tribunal's consideration of the factors in section 44(4) of the 2016 Act, it is necessary to say something about the amount of "rent paid" under s.44(2). There is no dispute that for the first eleven months of the tenancy (i.e., December 2019 to November 2020, the Applicants paid rent of £825 a month. In addition, there is the disputed additional £400 for the last month. For the reasons given below, the Tribunal need not decide whether the award by the TDS adjudicator amounts to "rent paid" for the purposes of s.44(2). But the Tribunal agrees with the Applicants that the sum of £400 was strictly speaking "rent paid" for the purposes of s.44(2) of the 2006 Act. On this issue, the parties are bound by the adjudicator's decision which (under the heading "rent arrears") expressly treated the £400 as "rent … which had not been paid".

30. But it does not necessarily follow from this finding that the entire sum of £9,475 claimed in the application was paid by the Applicants "in respect of … a period … during which the landlord was committing the offence" under s.95 of the 2004 Act. This is because (on the Applicants' own case) the Hastings BC selective licensing scheme ended on 25 October 2020. After 25 October 2020, the Respondent ceased to control or manage a property which was "required to be licensed under" Part 3 of the 2004 Act. It follows that the Tribunal has no jurisdiction to order repayment of rent paid by the Applicants "in respect of" the period after 24 October 2020.

31. The Tribunal has computed the sums which were paid in respect of the period up to 24 October 2020. One can immediately disregard the £400, which (on any analysis) relates to rent payable in November 2020. As to earlier payments, the papers include a rent statement dated 24 January 2021 which shows 11 monthly rent payments in advance between 6 December 2019 and 5 October 2020 = £9,045. The last of these payments must be apportioned to reflect the fact that the premis-

es ceased to require a licence after 24 October 2020. The date the licensing scheme ended falls almost exactly half-way through the relevant monthly rental period. The Tribunal therefore adopts a figure of £8,662.50 (10.5 x £825) for rent paid by the Applicants in respect of the period during which the Respondent was committing an offence.

The conduct of the landlord – s.44(4)(a)

32. The Tribunal deals with the first two issues of conduct raised by the Applicants together, namely the letter of 7 August 2020 and the discussions about early termination.

33. The Tribunal finds (as a matter of law) that the letter of 7 August 2020 was not a valid s.8 or s.21 notice. Quite apart from the erroneous termination date specified in the letter (which was not an "obvious" mistake for the purposes of *Mannai Investments*), the notice is not in prescribed form for the purposes of s.8 Housing Act 1988. It was also not a valid s.8 notice because (apart from anything else) s.98 of the 2004 Act applied. But in any event, the Respondent did not seek to argue that the letter was ever intended as a formal notice requiring possession.

34. However, the Tribunal does not consider the Respondent can be criticised for this letter, or indeed the subsequent correspondence. Taking the messages and emails as a whole, they amounted (on both sides) to the kind of informal and sensible correspondence between a landlord and her tenants which one might hope to see about their mutual intentions for a rental property once the tenancy came to an end. As already explained, the letter of 7 August 2020 was not intended as a formal notice under the Housing Act 1988. Whether the outcome was (as a matter of law) a consensual surrender of the tenancy early, there was essentially nothing wrong with the discussions on either side. It is true that in the course of these discussions, the Respondent modified her position about the dates, which may well have made things confusing for the tenants. But that was not wholly unreasonable in the context of discussions about the parties' intentions, especially against a background of the flat being on the market. Equally, it is true that the Applicants expressed the view that they wanted either to leave early or to stay on until well after the Christmas period. But the Tribunal rejects the suggestion that the Applicant's emails of 11 and 17 September were in any way threatening – they were expressed as preferences and no more. It follows that the Tribunal does not consider the conduct of either party was unreasonable in relation to the letter of 7 August 2020 or the negotiations for the surrender of the tenancy.

35. As to the viewings, there is a provision in the tenancy agreement (at clause 8.3) requiring the tenant to allow access for sales viewings during the last 2 months of the term. The viewings in this case took place outside that period, apparently with the agreement of the Applicants. But there is no suggestion the tenants ever objected to sales "viewing days" in the summer of 2020. Moreover, it seems that attempts were made to minimise disruption this caused by grouping viewers into sin-

gle 1-hour sessions. Again, the issue involves conduct on the part of the Respondent which can be criticised.

36. Finally, the Tribunal heard some (albeit rather limited) evidence about SLOS Property Management. Insofar as SLOS Property Management is the trading name of an individual, that is not unlawful in itself. And the decision as to who the Respondent retains as manager is a matter for her – whether it is a family member or otherwise. There is no suggestion the tenants were in any way inconvenienced by the employment of SLOS as the Respondent's Manager and (as the Respondent stated) the family member was not even paid for managing the property. The Tribunal does not consider this issue is relevant to the amount of the repayment order.

37. Of more relevance were the points raised by the Respondent. The Tribunal heard her evidence and was satisfied that she managed the premises conscientiously throughout the tenancy. She ensured the premises complied with HMO licensing and there was a proper tenancy agreement. The Respondent dealt with routine repairs and callouts when required, and where there were disagreements (as there are with even the best managed premises), these were quite properly dealt with through the appropriate channels of the TDS. The Respondent communicated regularly and effectively with her tenants about access and termination. There was no evidence that the premises were in any significant disrepair – indeed the photographs suggested the very opposite.

The conduct of the tenants – s.44(4)(a)

38. Turning to conduct of the Applicants, the Tribunal accepts that there were very minor problems with the condition of the premises when they were handed back to the Applicant. The parties are bound by the decision of the TDS adjudicator on that point. But on any analysis the defects were fairly trivial. According to the adjudicator, the condition of the flat resulted in a fairly nominal loss of £145. The issue was dealt with by the tenants through the proper channels.

39. The Applicants paid their rent throughout the tenancy and it is not suggested they were otherwise in breach of the tenancy conditions. The Tribunal does not consider this issue is relevant to the amount of the repayment order.

40. The Respondent alleged that the tenants acted unreasonably in relation to light bulbs, the Applicants locking themselves out and an issue with a loose ceiling rose in the bedroom. These are again fairly minor items – which can be characterised as the kind of 'give and take' in any relationship of landlord and tenant. There was an issue with the keys the premises, but it seems that the locks were changed by the freeholder – and any failure to provide a proper set of keys to the Respondent was not the Applicants' fault. There was an additional cat kept in the property for what may have been a very short time – which is again a very minor incident which did not (it appears) even lead to a complaint by

the Respondent. The Tribunal has already dealt with the issue of the negotiations to end the tenancy early above – and concluded the Applicants did not behave unreasonably.

41. Looking at things in the round, the conduct of the tenants cannot be considered unreasonable. They paid their rent, they largely complied with their obligations under the tenancy agreement, co-operated with sales viewing requests and communicated properly with the landlord about important issues. There is no reason to reduce the Rent Repayment Order to reflect their conduct.

The financial circumstances of the landlord - s.44(4)(b)

42. The evidence of the Respondent's financial circumstances is fairly limited. Although she evidently made no "profit" on the letting itself, and a substantial rent repayment order will no doubt cause some financial impact, Parliament plainly intends that the penalties for breach of the licensing requirements cause a significant impact on landlords. Suffice it to say there is no suggestion a significant Rent Repayment Order would result in undue hardship to the Respondent.

Landlord's previous convictions – s.44(4)(c)

43. The Respondent has not previously been convicted of a relevant offence.

Conclusions

44. A general pattern emerges from the statutory considerations above. The commonly encountered aggravating features (bad conduct by landlord, previous convictions) are wholly absent. Equally, the common mitigating features (bad conduct by tenant, landlord's hardship) are equally absent.

45. Section 44(4) makes it abundantly clear that paras (a) to (c) are not an exhaustive list of material considerations for the Tribunal. In this case, the Tribunal also considers the specific circumstances of the offence, namely that:
    a. The Respondent is not a professional landlord.
    b. The Tribunal accepts the explanation that the Respondent simply overlooked the advice she received from the letting agent.
    c. The Respondent candidly admitted the offence.
    d. The Tribunal is also satisfied the Respondent is unlikely to re-offend. The letting was a one-off event while the flat was on the market and (on her own admission) the Respondent is unlikely to ever rent out a property again.
    e. The Respondent is of good character.
    f. The premises complied with HMO licensing requirements.
    g. She made no profit from the letting.
    h. The flat was generally to a high standard of specification and repair.

The starting point is the total amount of rent paid. However, in all the above circumstances (including the specific s.44(4) matters and the specific circumstances of the offence), the Tribunal considers it would be appropriate to discount the rent paid by 25%.

46. Applying this to the above figure of £8,662.50 (10.5 x £825) produces a repayment of £6,496.87. The Tribunal rounds this to £6,500 for the rent Repayment Order in this matter.

Judge Mark Loveday
1 April 2021

Appeals

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.