



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **BIR/00FY/HMJ/2022/0004**

Property : **52, Thurgarton Street, Nottingham,
NG2 4AG**

Applicants : **Ebenezer Hagan & Farhan Bashir**

Respondent : **Nasir Ahmed**

Representative : **Crystal Law Solicitors. Leicester**

Type of Application : **Application for a Rent Repayment Order
By the Tenant.
SS40,41,43 & 44 Housing & Planning Act 2016**

Tribunal: **Tribunal Judge P. J. Ellis
Tribunal Member Mr R Chumley-Roberts
MCIEH. JP**

Date of Hearing : **10 November 2022**

Date of Decision : **22 December 2022**

DECISION

The Tribunal's decision is:

***A. The Respondent is guilty of two housing offences namely:
(i) having control of or managing a house, which was required to be licensed under Part 3 Housing Act 2004 (the 2004 Act) but was not so licensed***

(ii) engaging in a course of conduct intending to procure the eviction of the Applicants contrary to s 1(2) (3) or (3A) Protection from Eviction Act 1977.

B. There was no reasonable excuse for the failure to licence the property.

C. The Applicants are entitled to a rent repayment order under s43 Housing and Planning Act 2016 (the 2016 Act)

D. The period for which rent is repayable is 12 January to 30 June 2022

E. The sum payable for rent in the period is £3015.00

F. After applying the principles described in s44 of the 2016 Act the Applicants are entitled to a rent repayment order of £2817.40

Introduction and Background

1. This is an application for a Rent Repayment Order pursuant to section 40 Housing and Planning Act 2016 (the Act) by reason of the commission of offences to which Chapter 4 of the Act applies, namely eviction or harassment of occupiers contrary to s1(2)(3) and (3A) Protection from Eviction Act 1977 and the control or management of an unlicensed HMO contrary to s72(1) Housing Act 2004 (the 2004 Act).
2. The Applicants are Ebenezer Hagan and Farhan Bashir. They occupied the top bedroom of 52 Thurgarton Street Nottingham NG2 4AG pursuant to a tenancy agreement made between Mr Bashir and the Respondent on 12 January 2022 until 1 July 2022. The rent payable was £600.00pcm including all bills. The total sum claimed is £3015.00.

3. The Respondent is Nasir Ahmed of 1 Ferndale Road Nottingham NG3 7BE. Mr Ahmed and two others, Mr Hamad Ahmed and Sidra Ahmed are the joint legal owners of the 52 Thurgarton Street as trustees for the Haji Sahib Charity Trust.
4. The application was submitted to the Tribunal on 17 May 2022 by Mr Hagan. It was incomplete. The applicant provided further information including the address of the landlord sufficient for the Tribunal to issue the application with Directions on 24 June 2022. The Directions provided that as the application had been signed by Mr Hagan only, Mr Farhan Bashir, the person named as tenant in the tenancy agreement was required to provide confirmation of his desire to apply for the Rent Repayment Order and for Mr Hagan to represent him. Mr Bashir gave that confirmation on 30 June 2022. Accordingly, he was added as an applicant on 5 July 2022.
5. On 13 July 2022 the applicants provided a Bundle and Statement in support of their application. On 14 July 2022 the applicant added to the bundle correspondence with the Deposit Protection Officer with Nottingham City Council and Mr Bashir. On 26 July 2022 Crystal Law Solicitors put themselves on the record as acting on behalf of the Respondent Nasir Ahmed. On 27 July 2022 Crystal Law wrote to Mr Bashir at 52 Thurgarton Street, on behalf of the Respondent demanding payment of unpaid rent in the sum of £3600.00. On 22 August 2022 Crystal Law served the Respondent's response to the Applicants claim after a barring warning for non-compliance with Directions. In the meantime, the Applicants filed supplemental evidence of Mr Bashir on 19 August 2022 relating to payments of rent made by the Applicants.
6. On 26 August and 8 September 2022 the Applicants served bundles in reply to the Respondents statement of case.
7. There had been some confusion over when the Respondent served his reply caused by the Applicants having vacated the property on 1 July. Nothing turns on that but the use of the address of the Property by the Respondent was one of the issues in the Applicants case and for the delay in the Tribunal accepting the case.

8. The property was inspected by the Tribunal on 10 November 2022. The hearing took place later the same day. Mr Hagan represented himself and Mr Bashir. The Respondent was represented by Mr Miah of Crystal Law.

The Property

9. 52 Thurgarton Street is a three-storey property constructed probably in the late 19th Century of brick and slate roof. It adjoins premises used as a social club on one side. A driveway on the other side leads to a close of newly constructed single storey studio apartments. It is accessed directly from the street. The front door leads to a hallway with ground floor bedroom off and living/dining room. A fitted kitchen is off the living room leading to a small hallway with door to the yard and bathroom comprising bath with shower over, w/c and hand basin. Stairs from the entrance hallway leading to the first floor with central hallway containing stairs to second floor, two bedrooms and a small storage or study room. The second floor consists of one room in roof space accessed directly from the stairway. All bedrooms are lockable.
10. The property is double glazed throughout and has a gas fired central heating system for space and water heating. All rooms were fitted with radiators. The rear exit door on the ground floor leads to an enclosed rear yard which leads to an off-street area shared by the studio apartments which were recently constructed by the Respondent and his partners or family and are owned by them on trust for the charity.
11. The Applicants occupied the room on the second floor.
12. The Tribunal did not see fire safety measures or information about the landlord

The Parties and the Tenancy Agreement

13. The tenancy agreement was made after the Applicants answered an advert on Gumtree offering a bedroom to let at £480.00pcm. Mr Bashir replied to the advert stating he and his partner would like to have the room if it was still available. Although Mr Bashir used the term “partner” to describe Mr Hagan,

the Applicants are not a couple. They are friends who teamed up during the pandemic to form their own social bubble. The Applicants met the Respondent who informed them that as there were two people taking the room the rent would be £600.00pcm “inclusive of all bills” The Applicants accepted the increase and a tenancy agreement was prepared. Mr Bashir is described as the tenant. Mr Nasir Ahmed is the landlord, but Mr Hagan witnessed the signatures of both parties.

14. In these proceedings the Respondent has asserted that Mr Hagan was not a tenant and as the agreement prohibits assignment or subletting, he occupied the room without permission.
15. The Applicants assert that the Respondent knew at all material times that the room was jointly occupied by both Applicants. The Tribunal was shown an email from the Respondent to Mr Hagan offering to show both Applicants how to operate the heating system. Further, Mr Hagan produced to the Respondent evidence from the Home Office of his entitlement to be in the UK, confirmation of his status as a student at Nottingham Trent University and evidence of holding a bank account in the UK.
16. The Tribunal is satisfied that although the tenancy agreement names Mr Bashir as the tenant both sides knew that the room would be occupied by both Applicants. The Respondent increased the rent from the offer price on learning two people would occupy the room, he met both men and corresponded with Mr Hagan on matters relating to the tenancy. Accordingly, the named Applicants are entitled to make this application.

The Parties Submissions.

The Applicants.

17. The Applicants submitted witness statements by Mr Bashir and Mr Teja Narisetty another occupier of the property. Mr Hagan submitted a statement of case and a short statement. All statements were adduced as evidence in chief. There was no cross-examination by Mr Miah on behalf of the Respondents.

18. As far as rent payments are concerned, the Applicants stated that at the time of making the tenancy agreement they paid £1215 to the Respondent, being £240 for the balance of the month of January, £600 advance payment of rent for February 2022 and £375 security deposit. The money was paid in cash. Further rent payments were made in March, April and May but no rent was paid in June because the landlord had failed to provide his address other than a care of address at the property. All payments were made in cash. The payment transaction of May was filmed by the Applicant and adduced as evidence. The short video showed cash being handed over and counted.
19. The Applicants adduced evidence of withdrawal of funds from bank accounts sufficient to pay the rent as it fell due. Also, they produced emails from the Respondent seeking a meeting to collect the rent.
20. At the time of moving into the property the Applicants were told there were two other occupants but on moving in they discovered that there were up to five other occupants in the property causing inevitable congestion and overcrowding of the only bathroom. The Applicants assert that the bathroom condition was so bad some use was made of a small, unfitted room in the house causing a health hazard.
21. On 27 May 2022 the Environmental Health Community Protection Office of Nottingham City Council served an Improvement Notice pursuant to ss 11 & 12 2004 Act. The Notice identified one Category 1 Hazard and five Category 2 Hazards.
22. The Category 1 Hazard related to Crowding and Space. On the date of issue of the Improvement Notice the local authority recorded that the property was occupied by six persons being the applicants on the second floor, two people occupied the first-floor front room and individuals occupied each of the other two rooms. The Notice recorded that the shared rooms were not occupied by cohabiting couples. The Notice further recorded the property requires a minimum of 2 shared wash hand basins, 2 shared toilets and 2 shared baths or

showers. It specified that the number of occupants should be reduced to four either as an HMO or a single household.

23. On the same day the Environmental Health Community Protection Office served a Suspended Prohibition Order on the Respondent limiting occupancy to four persons due to the category one hazard “crowding and space”. The Prohibition Order also cited excess cold as a category one hazard and category 2 hazards of fire, entry by intruders, falling between levels and electrical hazards.
24. Copies of the Notices were sent to the Applicants. On the same day the local housing authority informed the Applicants that there was no HMO licence in force for the property nor was there any application or TEN for a licence.
25. During their occupation the Respondent had not given the Applicants his permanent address. It did not appear on the tenancy agreement. There were no formal rent invoices. Rent was collected in person by the Respondent. The Applicants then decided not to pay rent on 1 June 2022 until the defects were cured. In April, Mr Bashir complained about the landlords conduct to the relevant Trading Standards Department. On 28 April, he received an email from Mr James Maxwell of Nottingham City Council stating that he, Mr Maxwell, had spoken to the Respondent who acknowledged money was paid at the start of the tenancy as two months rent. It was not a deposit. Mr Bashir was advised that the final months rent is already paid.
26. The Applicants made a further case against the Respondent based upon his conduct throughout the period of the tenancy.
27. The complaints included persistently attending the property without good cause, sometimes at unusual times late at night or early morning. The visits were unconnected with attention to maintenance or repairs. Mr Bashir stated the Respondent accused him of leaving lights on or failing to open windows causing him and other occupants’ anxiety. A power outage occurred on 8 April 2022. When the Respondent attended, he threatened him with eviction for no

good reason. Mr Bashir further stated the Respondent entered his room in the early hours of 12 April demanding that he remove Mr Hagan from the property. When Mr Hagan, who is studying for his Bar Finals ordered the Respondent to leave the room he banged the door closed on Mr Hagan's hand causing injury. A picture of the injury was presented to the Tribunal. As he left the room and the property the Respondent made several racist abusive remarks about Mr Hagan.

28. The Applicants allege that further and more serious incidents of aggression and abuse occurred between 9 & 13 May 2022 leading to the preparation of this application for a Rent Repayment Order.

29. In his statement Mr Bashir described an incident on 9 May involving two men letting themselves into the property one of whom described himself as the son of the landlord. Mr Bashir stated this person, on behalf of the landlord, demanded the Applicant leave the property within 24 hours. They became aggressive when Mr Hagan explained their right to remain under their tenancy agreement. Mr Hagan felt the need to call the police whereupon the two men left the premises. On the following day, the landlord brought them to the property again. They remained in the living room throughout the day until midnight creating an intimidating atmosphere such that the Applicants felt unable to use the room nor the kitchen and bathroom alone.

30. Mr Bashir described another more serious incident one day later. He returned home from his part time work at about 11.00pm. The person who had described himself as the son of the landlord assaulted him in the living room. Mr Hagan attempted to intervene before both Applicants went to their room chased by the visitor who used force to break the door and threw objects into the room while calling on the Applicants to come out. The police were called again. Although the assailant left the property he was arrested and charged with assault and possession of a knife. He was granted bail but returned to the property in breach of bail conditions leading to another intervention by the police.

31. The Applicants submitted a statement by Mr Teja Narisetty who lived in the property between February and 30 June 2022. He did not witness the assault

but his evidence in connection with the incident confirmed the attendance of police officers to arrest the person who described himself as the son of the landlord for breaching bail conditions.

32. Mr Bashir described a further incident on 2 June 2022 involving threats of violence towards both Applicants unless money was transferred to the landlord to settle an alleged debt. Mr Narisetty described an incident which occurred on the same day involving him. The two men confronted him demanding to see his banking app on his phone. The men ceased their harassment of Mr Narisetty when the landlord intervened to direct them to the Applicants. The police were called again and the men left the property. Mr Narisetty also described observing the Respondent tampering with the heating boiler whereupon the property did not have heating or hot water. The Applicants averred that after persistent calls the boiler was restored to working condition on 5 June.

33. The Applicants left the property on 1 July 2022. They admit not making any payment of rent for June but rely on the failure of the landlord to supply an address and the advice from the local housing authority that the money paid at commencement of the tenancy did not include a deposit so that the sum of £375.00 could be treated as repayable rent under this application.

34. On 27 July 2022 Crystal Law wrote to Mr Bashir on behalf of the Respondent demanding payment of alleged unpaid rent of £3600. The amount due comprised six months unpaid rent of £600 per month.

The Respondent

35. The Respondent's response to the Applicants' case was sent to the Tribunal on 22 August 2022. It comprised substantially of bare denials of all allegations. The principal assertion was that the property was not an HMO on the grounds that the property was occupied by four tenants only which, according to the submission, fell below the threshold of need for an HMO licence.

36. The allegations of harassment and attendance at unsocial hours were denied. The payment of rent was denied and the Applicants were put to strict proof of

their payments. The assertion of rent arrears was repeated. Mr Hagan's tenancy was denied. Although the attendance of representatives of Nottingham City Council to the property or the service of a Housing Act 2004 notice on him was not denied, the Respondent claimed the description of the defects at the property were overstated.

37. The Respondent did not attend the hearing by reasons of ill health. Mr Miah made submissions on behalf of his client.

38. He relied on *Street v Mountford [1985] UKHL 4* to repudiate the pre-contract negotiations to demonstrate Mr Hagan was a tenant. He asserted the property was set up for four tenants only and that consequently it fell below the limit for mandatory licensing. Further at the time of negotiations with Mr Bashir there were only three tenants in occupation. However, after questions from the Tribunal it was accepted the property was subject to the selective licence and additional licensing scheme and that it should have been licensed.

39. He did not accept the evidence of withdrawal of money from bank accounts was conclusive that rent was paid as alleged.

40. It was accepted that the Respondent's son had attended the property and that some bad language had occurred, but he denied there had been threats and other harassment or abuse as alleged.

41. Mr Miah, on behalf of the Respondent accepted he was either in control of or the manager of the property. He produced no evidence of the Respondent's means but averred any award will fall on the charity which is the beneficial owner of the property. No information was provided about the outgoings covered by the "bills" which the landlord agrees to pay in the tenancy agreement.

42. After closure of the hearing, the Respondent submitted a copy of a Selective Licence in respect of the property, issued by Nottingham City Council on 12 September 2022 valid until 7 June 2027. The date of application for the licence

was not given but licences are issued for a period between one and five years. The Tribunal was shown evidence from the Nottingham City Council that there was no licence or TEN in place for the property as at 27 May 2022. The Applicant opposed the admission of this document as evidence on the grounds that the Respondent had not submitted evidence relating to an application for a licence during the hearing and that the licence was issued after the Applicants had left the property.

43. The Tribunal decided to admit the document as evidence that the property was the subject of a Selective licence with effect from 7 June 2022.

The Statutory Framework

44. Mandatory licensing of houses in multiple occupation was introduced by Part 2 of the 2004 Act requiring every HMO to which this part of the Act applies to be licensed unless either a temporary exemption notice (TEN) was in force or an interim final management order is in force (s61(1)). The mandatory scheme introduced by the Act was defined by Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2006 effective from 15 February 2006 which applied to HMOs of three or more storeys occupied by five or more persons and it is occupied by persons living in two or more households (Para 3)

45. S59 of 2004 Act empowered local housing authorities to designate the area of their district or an area the subject of additional licensing in relation to a description of HMOs specified in the designation.

46. Nottingham City Council introduced additional licensing with effect from 1 January 2019 specifying houses with three or more households must be licensed. It had introduced selective licensing applying to all rented properties throughout its area, with effect from 1 August 2018. All three types of licensing applied to the area in which the property is situated.

47. The Act of 2004 gave the First-tier Tribunal the jurisdiction to make a rent repayment order against a person who had been convicted of controlling or managing an unlicensed premises. Chapter 4 of the Housing and Planning Act

2016 replaced the jurisdiction to make a rent repayment order where a landlord has committed an offence to which the Chapter applies after 6 April 2017. The Chapter provides the framework by which decisions are made.

S40(2) of the 2016 Act defines a rent repayment order as an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant, and subsection (3) provides; *“A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord”*

48. The following items in the table are relevant to this case:

- a. Item 2 eviction or harassment of occupiers
- b. Item 5 control or management of an HMO
- c. Item 6 control or management of an unlicensed house

49. By s41 of the 2016 Act *(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

50. S43 provides that a Tribunal may make a rent repayment order only if made under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies, whether or not the landlord has been convicted. By s43(3) the amount of a rent repayment order in the case of an application by a tenant is to be determined in accordance with s44.

51. S44 provides that where a First-tier Tribunal decides to make an order under s43 the amount to be repaid must not exceed the rent paid in respect of the unlicensed period and in determining the amount the Tribunal must in particular take into account:

- a. The conduct of the landlord and the tenant,
- b. The financial circumstances of the landlord, and
- c. Whether the landlord has been convicted of an offence to which the Chapter applies.

52. The Protection from Eviction Act 1977 provides at section 1(1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of

the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

53. It is a defence to a charge of letting an unlicensed house that the person had applied for a licence (s95(3)) or had a reasonable excuse for having control or managing the house without a licence as provided by s95 (4) 2004 Act
- “In proceedings against a person for an offence under subsection (1), (2) or it is a defence that he had a reasonable excuse*
- (a)for having control of or managing the house in the circumstances mentioned in subsection (1), or*
- (b)for permitting the person to occupy the house, or*
- (c)for failing to comply with the condition, as the case may be.*

Decision

54. The Applicants allege the Respondent is guilty of two housing offences which entitle them to seek repayment of the rent paid during their period of occupation. First the failure of the Respondent to licence the property under any of the three applicable schemes in Nottingham City. Second, the behaviour of the Respondent amounts to conduct intended to cause the Applicants to vacate the property. The Tribunal must be satisfied beyond reasonable doubt that either or both alleged offences have occurred.
55. The Tribunal is satisfied to the standard of proof required that the property was an HMO which required a licence under the Additional licencing scheme and was not licenced at the date of occupation until 7 June 2022. Further having regard to the number of occupants the Tribunal is satisfied the property required a licence under the Selective licensing scheme as well.
56. The Respondent’s denial of his duty to obtain a licence was groundless. His response to the Applicant’s claim acknowledged there were four households in the property. It was apparent that at best he misunderstood his obligations as landlord to licence this property.
57. As far as the allegation of misbehaviour is concerned, the best evidence adduced was that of the Applicants. The Respondent’s denials were not

supported by any evidence. Mr Miah accepted that there had been instances of shouted bad language from the street by men apparently representing the Respondent but submitted that behaviour did not amount the intrusive behaviour alleged. The Respondent denied he attended at unusual hours or cut off the heating.

58. The Tribunal did not find the Respondent's evidence or assertions satisfactory. That of itself, does not mean the Applicants have proved beyond doubt that there was abusive behaviour but the evidence of Mr Narisetty who was abused albeit by reason of mistaken identity, does indicate a course of abusive behaviour directed at the Applicants without explanation. Accordingly, the Tribunal is satisfied the Respondent was guilty of behaviour calculated to cause the Applicants to leave the property contrary to the Protection from Eviction Act 1977 throughout the period of occupation.
59. At the inspection the Tribunal noted there was no fire safety equipment installed. There was no notice board giving the landlords name address and contact details. The Tribunal was shown evidence of overcrowding identified by the local housing authority. The Tribunal is satisfied that in addition to the coercive and abusive behaviour the Respondent had not complied with duties of landlord under the Licensing and Management of HMO (Additional Provisions) (England) Regulations 2007.
60. The Tribunal has considered whether the Respondent had a reasonable excuse for failing to licence the Property. In *Thurrock Council v Palm View Estates [2020] UKUT 0355 (LC)* HHJ Cooke said "*this is a defence that the defendant, in criminal proceedings, or the Respondent in these civil proceedings, must prove to the civil standard of proof*". In the absence of evidence from the Respondent the Tribunal has not heard any reason for the failure to obtain a licence but it takes into account that the local housing authority has stated it had not received any application for a licence at 27 May 2022. The Tribunal has decided the Respondent has ignored his responsibility and had no excuse for failing to obtain a licence. In effect he continued with this default until the issue of these proceedings.

61. The Tribunal is satisfied the Applicants are entitled to a Rent Repayment Order because the Respondent is guilty of two housing offences namely failure to licence an HMO and conduct contrary to the Protection from Eviction Act 1977 being respectively offences 2 and 5 in the table in s40(3) 2016 Act.
62. The Respondent asserts that the Applicants are in arrear with their rent payments. The Applicants adduced evidence of conversations with the local housing authority who had confirmed with the Respondent that the Applicants had paid £1215.00 on taking up occupation. There was evidence of the Applicant making arrangement to pay rent at the beginning of March. The Applicants admit that they did not pay rent in June because of the Respondent's failure to supply his address, as was their right under s47 Landlord and Tenant Act 1987. The Tribunal is satisfied the Applicants paid a total of £3015.00 to the Respondent being one payment of £1215 in January 2022 and four further payments of £600.00.
63. In *Williams v Parmar* [2021] UKUT 244 (LC) the President of the Upper Tribunal gave guidance regarding the approach the Tribunal should take in determining the amount to be awarded after identifying the rent. After saying at paragraph 25

“..... the amount of the RRO must always “relate to” the amount of the rent paid during the period in question. ... Thus, the amount of the RRO may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both.”

went on at paragraphs 50 & 51

“ A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the

landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

51. *It seems to me to be implicit in the structure of Chapter 4 of Part 2 of the 2016 Act, and in sections 44 and 46 in particular, that if a landlord has not previously been convicted of a relevant offence, and if their conduct, though serious, is less serious than many other offences of that type, or if the conduct of the tenant is reprehensible in some way, the amount of the RRO may appropriately be less than the maximum amount for an order. Whether that is so and the amount of any reduction will depend on the particular facts of each case. On the other hand, the factors identified in para 3.2 of the guidance for local housing authorities are the reasons why the broader regime of RROs was introduced in the 2016 Act and will generally justify an order for repayment of at least a substantial part of the rent”.*

64. In *Acheampong v Roman* [2022] UKUT 239 (LC) HHJ Cooke applying the general principle enunciated by The President gave further principles for determining what sum should be repaid at paragraph 20

“The following approach will ensure consistency with the authorities:

- a. Ascertain the whole of the rent for the relevant period;*
- b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.*
- c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:*

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

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

65. Further in *Hancher v David* [2022] UKUT 277 (LC) HHJ Cooke said

“The central issue in the appeal is the FTT’s approach to the assessment of the amount of rent to be repaid. Despite the citation of the Williams v Parmar, the FTT treated the maximum possible order as the default order, from which only deductions have been made, which is precisely what Williams v Parmar said should not be done. The tenants say that the award is correct in light of the condition of the property, but that is to miss the point; the FTT’s reasoning started in the wrong place, and the FTT failed to give any consideration to the seriousness of the offence.”

66. In this case there was no evidence of previous offending by the Respondent.

The property was licensed with effect from 7 June 2022 when offending under item 5 of the table at s40(3) 2016 Act ceased and it appears the Respondent was under a misapprehension as to when a property should be licensed.

67. However, notwithstanding those issues the Tribunal considers the

Respondent’s conduct as a landlord was a serious matter. He persisted with his erroneous assertions the property did not need a licence even though a simple property search of the Nottingham City Council website would have revealed the need for a licence. He made unfounded allegations of non-payment of rent. After issue of proceedings, he gave instructions to solicitors to send a demand for payment. He made persistent visits to the property including at unsocial hours. He made and permitted others to make threats against the Applicants. There were other failings on the Respondent’s part to correctly manage the entire property relating to overcrowding and other hazards as noted earlier in this Decision. In the conduct of these proceedings,

he has not given any information about his financial circumstances and suggested through his solicitor that any repayment will be taken from the charity which is the beneficial owner of the property.

68. The Tribunal has considered the seriousness of the offence particularly the circumstances leading to the allegations of attempted eviction or harassment of the Applicants which continued until they left at the end of June.

69. The Tribunal has made its own estimate of the likely sum attributable to the bills payable for their part of the property and assessed them at £35pcm by reviewing the average energy bills as published by various agencies at present in light of the current energy price increases, cross referring the Tribunal's own experience of energy prices then allowing an extra for council tax and water rates. Applying the deduction, the Tribunal determines the Applicants are entitled to repayment of rent as follows:

The Rental paid in the period was £3015.00 including the £375 deposit, £240.00 for the balance of the month of January and February's rent of £600.00 being the sum of £1215 paid at commencement of the tenancy. Applicants made three payments of £600.00 in March April and May. Total paid being £1800.00 and £1215.00 is £3015.

For the four whole months the Tribunal deducts £35.00 pcm leaving £565 pcm rent.

For the 20 days in January deduct £1.13 per day (£35.00 divided by 31 days) so deduction is £240.00 minus £22.60 leaving £217.40.

The £375.00 deposit is held against June's rent less £35.00 leaving £340.00 rent.

Total RRO is £565.00 x 4 = 2260 + £217.40 + £340.00 = £2817.40

Appeal

70. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.