FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/HMB/2020/0005**
HMCTS	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 208 Trelawney Estate, Paragon Road, London E9 6PH**
Applicant	**:**	**Jara Senar Villadeamigo**
Representative	**:**	**In person**
Respondent	**:**	**Kamran Jalalian**
Representative	**:**	**In person**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Robert Latham** **Susan Coughlin MCIEH**
Date and Venue of Hearing	**:**	**3 March 2023 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**6 March 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The Tribunal has had regard to the following Bundles which have been files by the parties:

(i) Applicant's Bundle (171 pages). References: "A1.__"
(ii) Applicant's County Court Bundle (157 pages). References: "A2.__"
(iii) Respondent's Bundle (156 pages). References: "R1.__"
(iv) Respondent's County Court Bundle (121 pages). References: "R2.__"

Decision of the Tribunal

1. The Tribunal makes a Rent Repayment Orders against the Respondent in the sum of £2,152 which is to be paid by 31 March 2023.

2. The Tribunal determines that the Respondent shall also pay the Applicant £100 by 31 March 2023 in respect of the tribunal fees which she has paid.

The Application

1. By an application, dated 15 August 2020, the Applicant, Ms Jara Senar Villadeamigo, seeks a Rent Repayment Order ("RRO") against the Respondent, Mr Kamran Jalalian, pursuant to Part I of the Housing and Planning Act 2016 ("the 2016 Act"). The application relates to the Flat 208 Trelawney Estate, Paragon Road, London E9 6PH ("the Flat"). The Respondent seeks a RRO in respect of the following offences (i) control or management of an unlicenced HMO over the period 1 October 2019 to 31 January 2020; and/or (ii) harassment of occupiers over the period 1 October 2019 to 26 May 2020.

2. There have been separate proceedings in the County Court (G7qz86mo). This application was adjourned pending the determination of these proceedings. On 3 November 2022, District Judge Hayes determined these proceedings at a contested trial. He made the following Order:

(i) The Respondent was entitled to £2,940 in respect of rent + £157.32 in respect of council tax. This related to the period between when the Applicant had vacated the Flat and the expiry of her 12 month fixed term tenancy.

(ii) The Applicant was entitled to 2 x rent in respect of failure to protect her deposit of rent (£1,700)

(iii) The Applicant was entitled to the return of her deposit (£850)

(iv) Damages of £1,000 was awarded to the Applicant in respect of her claims for trespass; breach of covenant of quiet enjoyment; nuisance; and breach of section 1 of the Protection from Harassment Act 1997.

(v) The Applicant's set-off of £3,550 was sufficient to extinguish the Respondent's Claim.

(vi) No order as to costs.

3. The District Judge recorded, for the benefit of this Tribunal, that no findings of fact had been made in the County Court proceedings which the Judge considered would constitute grounds for a RRO. During the course of the hearing, the Judge pointed out that even though in the County Court, the Applicant only needed to prove her allegations on a balance of probabilities, in these proceedings, he would need to satisfy the Tribunal on the criminal standard of proof. He was directing his comments to the claim for a RRO relying on offences under section 1 of the Protection from Eviction Act 1977.

4. On 1 December 2022, Judge Martynski gave Directions pursuant to which the parties have each filed two bundles of documents.

The Hearing

5. Both Ms Villadeamigo and Mr Jalalian appeared in person. Both gave evidence and were questioned by the other party. The Tribunal also asked a number of questions.

6. Mr Jalalian's name has been wrongly referred to as "Jalaliean". We correct his title.

7. Ms Villadeamigo conceded that she faced evidential difficulties in establishing any offence under section 1 of the Protection from Eviction Act 1977. She therefore sought a RRO on the grounds of the offence of control or management of an unlicensed HMO under section 72(1) Housing Act 2004. It was agreed that Mr Jalalian had applied for an HMO licence on 29 January 2020. The offence therefore ceased on 28 January 2020. This application has not yet been determined.

8. There are two issues which the Tribunal is asked to determine:

(i) Whether we are satisfied beyond reasonable doubt that Mr Jalalian has committed an offence under section 72(1) of the Housing Act 2004 of

having control or management of an unlicenced HMO. Mr Jalalian raised the defence of reasonable excuse.

(ii) The amount of any RRO, assessed under section 44 of the Housing and Planning Act 2016.

The Housing Act 2004 ("the 2004 Act")

9. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that a building or a part of a building meets the "standard test" if:

> "(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
>
> (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
>
> (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
>
> (d) their occupation of the living accommodation constitutes the only use of that accommodation;
>
> (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
>
> (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

10. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

11. In October 2018, the London Borough of Hackney ("Hackney") introduced an Additional Licencing Scheme that came into force in October 2018. This applies to all HMOs in the borough which are occupied by 3 or more persons occupying 2 or more households.

12. Section 263 provides (emphasis added):

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

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

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

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

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

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

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

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

13. Section 72 of the Act provides for offences in relation to the licencing of HMOs (emphasis added):

(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)) but is not so licensed.
.....

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time:

(a) .....

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either-

(a) the authority have not decided whether to .... grant a licence, in pursuance of the notification or application.

14. In the recent decision of *Marigold v Wells* [2023] UKUT 33 (LC) ("*Marigold*"), Martin Rodger KC, the Deputy Chamber President, gave guidance on the approach that should be adopted by First-tier Tribunals when considering the defence of "reasonable excuse". He gave the decision of the Upper Tribunal, Tax and Chancery Chamber, in *Perrin v HMRC* [2018] UKUT 156 (TCC), as a useful example.

"48. The Tribunal in Perrin concluded its decision with some helpful guidance to the FTT, much of which is equally applicable in the sphere of property management and licensing. At paragraph 81 it said this:

"81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:

(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).

(2) Second, decide which of those facts are proven.

(3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the

> relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"
>
> (I have omitted a fourth step because it is referable to a specific provision of the Finance Act 2009 and has no equivalent in the 2004 Act).

49. The Tribunal then dealt with a particular point which is regularly encountered in HMO licensing cases and which therefore merits attention:

> "82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long."

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

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

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

17. In the recent decision of *Kowelek v Hassanein [2022] EWCA Civ 1041; [2022] 1 WLR 4558,* Newey LJ summarised the legislative intent in these terms (at [23]):

> "It appears to me, moreover, that the Deputy President's interpretation of section 44 is in keeping with the policy underlying the legislation. Consistently with the heading to part 2, chapter 4 of part 2 of the 2016 Act, in which section 44 is found, has in mind "rogue landlords" and, as was recognised in *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324, "is intended to deter landlords from committing the specified offences" and reflects a "policy of requiring landlords to comply with their obligations or leave the sector": see paragraphs 36, 39 and 40. "[T]he main object of the provisions", as the Deputy President had observed in the UT (*Rakusen v Jepsen* [2020] UKUT 298 (LC), [2021] HLR 18, at paragraph 64; reversed on other grounds), "is deterrence rather than compensation". In fact, the offence for which a rent repayment order is made need not have occasioned the tenant any loss or even inconvenience (as the Deputy President said in *Rakusen v Jepsen*, at paragraph 64, "an unlicensed HMO may be a perfectly satisfactory place to live") and, supposing damage to have been caused in some way (for example, as a result of a failure to repair), the tenant may be able to recover compensation for it in other proceedings. Parliament's principal concern was thus not to ensure that a tenant could recoup any particular amount of rent by way of recompense, but to incentivise landlords. The 2016 Act serves that objective as construed by the Deputy President. It conveys the message, "a landlord who commits one of the offences listed in section 40(3) is liable to forfeit every penny he receives for a 12-month period". Further, a landlord is encouraged to put matters right since he will know that, once he does so, there will be no danger of his being ordered to repay future rental payments."

18. Section 40 provides (emphasis added):

> "(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
>
> (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
>
> (a) repay an amount of rent paid by a tenant, or
>
> (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

19. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are:

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

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

> "(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
>
> (2) A tenant may apply for a rent repayment order only if —
>
> > (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
> >
> > (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

21. Section 43 provides for the making of RROs:

> "(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted)."

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

> "(3) The amount that the landlord may be required to repay in respect of a period must not exceed—
>
> > (a) the rent paid in respect of that period, less
> >
> > (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

23. Section 44(4) provides:

> "(4) In determining the amount the tribunal must, in particular, take into account—
>
> (a) the conduct of the landlord and the tenant,
>
> (b) the financial circumstances of the landlord, and
>
> (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies."

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

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);

(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);

(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

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

26. In *Acheampong v Roman* and *Choudhury v Razak [2022] UKUT 239 (LC); [2022] HLR 44 ("Acheampong")*, Judge Cooke has issued further guidance. However, First-tier Tribunals have found it difficult to reconcile these with the most recent decision of the Court of Appeal in *Kowalek* and the guidance from the President and Deputy President, see for example the

First-tier Tribunal decision in *965 Fulham Road, SW6 5JJ* (LON/HMG/2022/0018).

The Background

27. Mr Jalalian is a retired civil engineer. He lives in North Weald, Essex, in a property which he owns. He lives there with his wife who owns a property in Spain. He has bought two properties to let out to help fund his retirement. He jointly owns, with his son, a flat in Edmonton. In 2002, He bought the subject Flat for £121k. It is on the Trelawney Estate in Hackney, a block owned by the local authority.

28. The Flat has two bedrooms. However, Mr Jalalian has let it as a three bedroom unit, the living room being used as a third bedroom. On occasions, Mr Jalalian has let the whole flat to a family. However, since October 2018, he has let it as an HMO.

29. Ms Villadeamigo is Spanish. She has been resident in the UK for the past 8 years. She currently works for the Hackney Recovery Service managing a rough sleeper project. In September 2019, she saw the Flat advertised on the SpareRoom website. Her tenancy agreement is at A1.13-16. The tenancy was for a fixed term of 12 months from 1 October 2019 at a rent of £735. She was required to pay a deposit of £850.

30. Two days after Ms Villadeamigo moved into the Flat, the two other rooms were let to Boris Massot and Allan Folliard. Rather than protect their deposits separately, Mr Jalalian protected in a single account (see A1.68). This was a breach of the statutory requirements and resulted in the penalty imposed by DJ Hayes.

31. The tenants were required to pay for utilities. They were also required to pay the council tax. Mr Jalalian notified the Hackney council tax department of the names of the three tenants. This caused practical problems. Council tax was levied on the Flat. Mr Jalalian was registered as the account holder. Normally, a landlord would pay the council tax and reflect this in the rent. The individual tenants were unable to pay this directly to Hackney as they were not account holders. This dispute led to Mr Jalalian sending a number of emails to Ms Villadeamigo making unjustified threats to impose penalties for late payment which were not permitted by the Tenancy Fees Act 2019 (see R1.117-112). DJ Hayes found that this conduct amounted to both nuisance and harassment under section 1 of the Protection from Harassment Act 1997.

32. As a result of this dispute, the tenants contacted Hackney. On 20 January 2020, Hackney wrote to the tenants (at A1.46) alerting them to the fact that the Flat might be an unlicenced HMO. Hackney also contacted Mr Jalalian. Mr Jalalian initially tried to argue that the Flat did not require a licence because it was a flat located in a purpose built block containing 3 or

more flats (R1.39). He also argued that a HMO licence was only required if the flat was occupied by five or more tenants (at R1.40). However, on 29 January 2020, he submitted an application and paid the required fee of £950 (R1.51).

33. The conditions within the Flat were generally acceptable. There was an occasion when Ms Villadeamigo in attempting to unblock the bath waste, herself damaged it causing a flood. She paid her landlord £180 in respect of the cost of calling a plumber. Ms Villadeamigo complained of a fire safety risk when a tenant was accidentally locked inside the flat. It seems that at some stage someone had installed a lock on the front door which once locked from the outside could not then be opened from the inside. Mr Jalalian said that the front door was not demised under his lease and was not his responsibility.

34. Mr Jalalian showed little sympathy for reasonable requests from the tenants. Ms Villadeamigo asked for locks to be installed on the doors on the rooms, including the bathroom. She states that Mr Jalalian "kindly declined" (A2.2).

35. Ms Villadeamigo had a more serious complaint that Mr Jalalian had no regard to the legal rights of his tenants. He felt free to enter the rooms without permission from the tenant. He stated that if he found out that Ms Villadeamigo's sister was staying, he would throw her belongings out of the window. He also threatened to contact her employer to find out her working hours. Ms Villadeamigo made three separate complaints to the police. DJ Hayes awarded damages of £1,000 in respect of these incidents. As a result of these incidents, Ms Villadeamigo vacated the Flat four months before her tenancy expired.

Issue 1: Has an Offence been Committed?

36. Our starting point is section 263 of the 2004 Act (see [12] above). We are satisfied that the Respondent falls within the statutory definitions of the "person having control" of the Flat as he received the rack rent.

37. The Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) The Property was an HMO falling within the "standard test" as defined by section 254(2) of the 2004 Act which required a licence (see [37] above):

> (a) it consisted of three units of living accommodation not consisting of self-contained flats;
>
> (b) the living accommodation was occupied by persons who did not form a single household;

(c) the living accommodation was occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constituted the only use of the accommodation;

(e) rents were payable in respect of the living accommodation; and

(f) the households who occupied the living accommodation shared the kitchen, bathroom and toilet.

(ii) The Flat required a licence under Hackney's Additional Licencing Scheme which had been introduced in October 2018.

(iii) The First Respondent had not licenced the HMO as required by section 61 of the 2004 Act. This is an offence under section 72(1).

(iv) The offence was committed between 1 October 2019 and 28 January 2020, the date on which an application for a licence was made. That application has still not been determined.

38. Mr Jalalian raised the defence of "reasonable excuse" for letting the Flat without a licence. The evidential burden is on him to establish the defence. He said that he was not aware that Hackney had introduced their Additional Licencing Scheme in October 2018. He stated that he was aware of the mandatory requirements. However, Hackney had not notified him of the Scheme, albeit that the Flat was on an estate managed by the local authority. He had also notified Hackney's council tax department of the three tenants who were occupying the Flat.

39. We have regard to the guidance given by the Deputy President in *Marigold* (see [14] above). We accept the evidence given by Mr Jalalian on this issue. However, viewed objectively, we do not accept that a reasonable excuse has been established. Hackney introduced their Additional licencing scheme in October 2018. Since that date, he has had two sets of tenants. Mr Jalalian has been letting out flats in both Hackney and Edmonton. We are satisfied that he should have made reasonable inquiries from the local housing authority as to whether a licence was required. Hackney's Private Sector Housing Team is quite separate from their finance department which is responsible for collecting council tax.

Issue 2: The Assessment of the RRO

40. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. We are satisfied that this is an appropriate case for a RRO to be made.

41. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period,

less any award of universal credit. Ms Villadeamigo was not in receipt of any State benefits.

42. The offence was committed between 1 October 2019 and 28 January 2020. The maximum award is therefor three months at £735 and £664 for 28 days in January, a total of £2,869.

43. Having determined the maximum award, section 44(4) of the 2016 Act requires us to take into account the following factors:

(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. There is no suggestion that Mr Jalalian has been convicted of a relevant offence. However, we give limited weight to this. LHAs are under considerable financial pressures and are only able to take action in limited cases. A conviction would have been an aggravating factor.

44. We do not consider that an offence of failing to licence an HMO is less serious than the other offences specified in section 40(3) as has been suggested by Judge Cooke in *Acheampong*. As an Expert Tribunal, we have considerable knowledge of housing conditions in London. Unlicenced HMOs with inadequate means of escape carry a serious risk of death or serious injury. Equally, properties let in in unfit condition with inadequate ventilation, dampness and mould growth also carry a risk of death or serious injury to health. These are serious hazards when assessed under the Housing Health and Safety Rating System introduced by the 2004 Act. We are not willing to minimise the social evil at which the 2016 Act is addressed.

45. However, we consider that this particular offence under section 72(1) of the 2004 Act is less serious than many. The offence was committed for a relatively short period of time. Mr Jalalian applied for a licence promptly when notified that a licence was required. The only issue raised in respect of the condition of the property was the means of escape hazard caused by the lock on the entrance door.

46. We have regard to the conduct of the landlord which we have considered above. DJ Hayes has made findings in respect of these and has awarded damages of £1,000. We note that on 12 December 2022, Mr Jalalian successfully completed a NRLA training course in "HMO Fundamentals 2021"

47. We also have regard to the conduct of the tenant. The rent arrears arose after she vacated the flat. These have been addressed by DJ Hayes. Ms Villadeamigo paid the landlord £180 in respect of the flooding incident.

48. We consider the financial circumstances of the landlord. He has adduced no evidence of financial hardship.

49. Taking all these factors into account, we make a RRO in the sum of £2,152, namely 75% of the maximum award of £2,869.

50. We are also satisfied that the Respondent should refund to the Applicant the tribunal fee of £100 which she has paid.

Judge Robert Latham
6 March 2023

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.