



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

Case Reference : CHI/18UC/HMK/2019/0012

Property : Flat 4, 15 York Road, Exeter EX4 6BA

Applicant : Sean Hodges

Representative :

Respondent : Trustees of Exeter Mosque and Cultural Centre

Representative :

Type of Application : **Application for a rent repayment order by tenant**
Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016

Tribunal Member(s) : Judge Tildesley OBE
Mr W Gater FRICS

Date and venue of the Hearing : Exeter Magistrates' Court, The Court House, Heavitree Road, Exeter EX1 2LS
19 September 2019

Date of Decision : 12 November 2019

DECISION

Summary of Decision

1. The Tribunal determines that this is a case which justifies the maximum amount payable by means of a rent repayment order. The Tribunal orders the Respondent to pay Mr Hodges the sum of £4,400.00 and to reimburse Mr Hodges with the application and hearing fees in the sum of £300.00 within 28 days from the date of this decision.

Background

2. On 10 June 2019 Mr Hodges applied under section 41 of the Housing and Planning Act 2016 for a rent repayment order (RRO) in the sum of £4,400.00 plus reimbursement of costs of £300.00.
3. Mr Hodges is a student and held an assured shorthold tenancy of Flat 4, 15 York Road, Exeter (the property) jointly and severally with four other students. The term of the agreement was for 12 calendar months from 31 August 2018 to 30 August 2019. The rent payable under the agreement was £2,200.00 per calendar month. Mr Hodges' share of the rent was £440.00 per month.
4. Flat 4 is situated on the second and third floors of a converted three storey Victorian house with a basement. There are three other flats in the building which are all let out by the Respondent. The Tribunal understands that the basement flat was let to three persons, the ground floor to two persons and the first floor flat to three persons.
5. Mr Hodges alleged that the Respondent had committed an offence of not licensing the property as a house in multiple occupation. Mr Hodges produced a letter from Mr Scott Carpenter, Environmental Health Officer of Exeter City Council, dated 22 July 2019 stating that no HMO licence under Part 2 of the Housing Act 2004 had been applied for in relation to the property. Mr Carpenter pointed out that since 1 October 2018 properties with five or more unrelated tenants sharing facilities had fallen under mandatory licensing under Part 2 of the 2004 Act. Mr Carpenter in a subsequent email dated 5 August 2019 confirmed that no application to licence the property had been made as of that date.
6. On 18 July 2019 Judge Tildesley reviewed Mr Hodges' application. Judge Tildesley advised that he required further information before he issued directions. Judge Tildesley requested a copy of the tenancy agreement and the name of the landlord. Judge Tildesley pointed out that he believed Fulfords, the person named in the application as Respondent, was the agent acting for the landlord, and therefore not a party to the application. Judge Tildesley also required a letter from the Local Authority confirming that the property did not have a HMO licence. On 23 July 2019 Mr Hodges

supplied the requested information and stated that the landlord in the tenancy agreement was the “Mosque and Cultural Centre”.

7. On 29 July 2019 Judge Morrison issued directions requiring the parties to exchange evidence and a hearing date of 19 September 2019 was fixed at Exeter Magistrates’ Court. Judge Morrison also sought clarification of the legal status of “Mosque and Cultural Centre” requesting the Respondent to write to the Tribunal and the Applicant clarifying whether this was a legal entity and if not providing full details of the legal entity using this name. The directions also contained an explanation of the Tribunal’s jurisdiction to make a rent repayment order, and the issues for the Tribunal to consider.
8. On 20 August 2019 the Respondent replied and said that the correct name was “The Trustees of Exeter Mosque and Cultural Centre”.
9. On 6 September 2019 the Respondent applied for an adjournment of the hearing requesting further time to serve its response. The Tribunal refused to adjourn the hearing but extended the time until 12 midday on 16 September 2019 to supply its response to the application.
10. Mr Hodges attended the hearing in person on 19 September 2019 and was assisted by Ms Georgina Dornom. Mr Samuel Waritay of Counsel appeared for the Respondent. Mr Shaheed Ul Hassan, a Trustee, was also in attendance and gave evidence for the Respondent.
11. The Tribunal did not inspect the property.
12. Mr Waritay for the Respondent identified the following matters in dispute:
 - a. Whether the correct procedures were followed in amending the name of the Respondent?
 - b. The Respondent did not admit that it was the correct Respondent within the meaning of section 263 (1) of the Housing Act 2004.
 - c. The Respondent did not admit that the property was an HMO.
 - d. The Respondent stated that it had a defence of reasonable excuse against the alleged offence of no HMO licence.
 - e. The amount of the order.

Consideration

13. The Housing Act 2004 introduced RROs as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 (2016 Act) Parliament extended the powers to make RRO's to a wider range of "housing offences". The rationale for the expansion was that Government wished to support good landlords who provide decent well maintained homes but to crack down on a small number of landlords who knowingly rent out unsafe and substandard accommodation.
14. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making a RRO.
15. The Tribunal intends to deal with the matters in dispute (12b-e) within the body of the decision.
16. The Tribunal considers separately the Respondent's challenge to whether it followed the correct procedures in substituting "The Trustees of Exeter Mosque and Cultural Centre" for "Fulfords Exeter" as the Respondent.
17. The Tribunal has set out the sequence of events giving rise to the substitution in paragraphs 6 to 8 above. Mr Waritay raised no specific objections to the process but queried whether the Tribunal followed the correct procedure.
18. The Tribunal is satisfied that it can substitute of its own motion a person as a Respondent under rule 10 of the Tribunal Procedure Rules 2013. In the Tribunal's view, there was a clear error on the face of the Application when it named "Fulfords Exeter" as the Respondent which was confirmed when Mr Hodges produced a copy of the tenancy agreement. Under section 40 of the 2016 Act only a landlord can be a Respondent to proceedings for a RRO.
19. The Tribunal in its directions dated 29 July 2019 naming the "Mosque and Cultural Centre" as the Respondent raised a question about the legal entity using that name. The Respondent did not challenge being named as such and answered the Tribunal's question about the identity of the legal entity using the title of "Mosque and Cultural Centre". The Tribunal determines there is no substance to the Respondent's challenge on whether the correct process was followed for substituting a Respondent to the proceedings.
20. The Tribunal is satisfied that Mr Hodges met the requirements for making an application under section 41 of the Act. Mr Hodges alleged that the Respondent committed the offence of control or management of an unlicensed HMO under section 72(1) of the Housing Act 2004 whilst the property was let to him. An offence under section 72(1) falls within the description of offences for

which a RRO can be made under section 40 of the 2016 Act. The alleged offence was committed from 1 October 2018 to 31 July 2019 which was in the period of 12 months ending on the day in which Mr Hodges made his application on 10 June 2019.

21. The Tribunal turns now to those issues that it must be satisfied about before making a RRO

Has the Respondent committed a specified offence?

22. The Tribunal must first be satisfied beyond reasonable doubt that the Respondent has committed one or more of seven specified offences. The relevant offence in this case is under s.72(1) of the Housing Act 2004, “control or management of an unlicensed HMO”.
23. Mr Hodges occupied the property with four other students who were not related under the terms of assured shorthold tenancy agreement dated 31 August 2018. The agreement was for a period of 12 months but subject to the “Special Tenancy Conditions” at clause 10. The Special Tenancy Condition permitted either party to terminate the agreement by giving not less than two months’ notice provided that the tenancy is not terminated before eleven months from the commencement of the tenancy. The Tribunal understands that the Special Condition was triggered in this case, which meant that the tenancy finished on 31 July 2019.
24. Mr Hodges was named as one of the tenants on the Agreement. The other four tenants were also named. None of the tenants shared the same surname. Two tenants were described as “Miss” and three as “Mr”. The five tenants were joint and several responsible and liable for all obligations under the Agreement.
25. The Respondent as the Mosque and Cultural Centre was named as the Landlord in the agreement. The address of the Landlord was given as 12-13 York Road, Exeter, Devon EX4 6PG. The Landlord’s alternative address was given as Fulfords, c/o Countrywide House, Lake View Drive, Sherwood Park, Nottingham, NG15 0DT. Under Clause 4.12 of the Agreement the Landlord was obliged to ensure that a valid House in Multiple Occupation (HMO) licence was in place to the satisfaction of the Local Authority (if necessary) as per Housing Act 2004, and to provide a copy of the licence to the Agent at the commencement of the Tenancy Agreement.
26. Mr Hassan explained that the Respondent appointed Fulfords to manage the property on its behalf. Mr Hassan said that the Respondent had no dealings with the tenants which were all handled by Fulfords. Mr Hassan stated that the Respondent received the rent for the property via Fulfords which charged for its services. The Respondent did not include a copy of the agreement with Fulfords in its documents bundle.

27. Flat 4 was one of four flats in the converted building. Exeter City Council gave full planning permission for the conversion of 15 York Road on 27 June 2017 under application number 16/1484/03. Mr Hodges referred in the hearing to the drawings that accompanied the permission. These drawings were obtained via the Planning Portal for Exeter City Council. Mr Waritay did not object to the admission of the drawings on the understanding that the Tribunal drew no adverse inferences regarding the planning permission. Mr Waritay pointed out that drawings were often amended in the planning process. The Tribunal acceded to Mr Waritay's request.
28. The original drawings showed that Flat 4 was arranged over the second and third floors of the building. On the second floor there were two bedrooms, a study, a bathroom and a kitchen with a communal living/dining room area. On the third floor there were two bedrooms. The original drawings showed that the Flat 4 had originally been designed for an occupancy of four.
29. Mr Hodges pointed out that the actual layout of Flat 4 had altered from the original drawings. Mr Hodges supplied a drawing of the amended layout which overlaid the original drawings attached to the planning permission. The amended layout showed five bedrooms on the second floor together with a communal bathroom. The room marked as "Study" on the original drawing was now a bedroom. The kitchen and the communal areas were located on the third floor. Mr Hassan agreed that the amended drawing was an accurate depiction of the property when let to Mr Hodges and the four other students.
30. Mr Hodges occupied the former study. Mr Hodges had measured the room at 5.5m² by use of a tape measure which he verified by cross checking with the measurements of the study on the original scaled drawings submitted with the planning permission.
31. Mr Hodges described his bedroom as "sub-optimal". Mr Hodges referred to photographs of the room in the "Property Inventory/Schedule of Condition" prepared by Fulfords dated 28 August 2018 and included in the Respondent's bundle. It had space for one single bed pushed up against the window and a wardrobe on the left hand wall looking in from the door. The wardrobe was placed in front of the radiator in the room. The Yale lock on the door did not work. There was no space for a desk and chair in the room. Mr Hodges explained that there was constant presence of mould around the window frame even with the window slightly ajar.
32. Mr Hodges said that the bathroom with a shower over the bath and which contained the only toilet for the property was shared by five persons of mixed sex. Further the shared kitchen and communal space on the third floor had a single electric oven with hob and hood, a fridge/freezer, washing machine, single sink/drain, and

kitchen wall cupboards and base units with a work surface, a dining room table with four chairs and a sofa for two/three persons.

33. Mr Hodges relied on the correspondence from Mr Scott Carpenter, Environmental Health Officer of Exeter City Council, dated 22 July 2019 which showed that the property had no HMO licence under Part 2 of the Housing Act 2004 from 1 October 2018 to 5 August 2019.
34. The Respondent acknowledged that it did not have an HMO Licence for the property. The Respondent stated that there was no requirement to licence the property when the tenancy commenced on 31 August 2018 because it predated the change in law on 1 October 2018. The Respondent said that it had no intention to break the law and that its failure to comply with the law was inadvertent. The Respondent stated that it had not applied for a licence after Mr Hodges and the other tenants had left because of the advice from Exeter City Council to reduce the number of occupiers to four which brought the property within the law.
35. The Tribunal begins its consideration of whether the Respondent had committed an offence by examining the definition of an HMO which requires to be licensed under section 61(1) of 2004 Act.
36. Section 55(2)(a) of the 2004 Act states that section 61(1) applies to any HMO in the Authority's district which falls within the prescribed definition of an HMO.
37. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 amended the definition of a licensable HMO under section 55(2)(a) of the 2004 Act by removing the requirement of three storeys from 1 October 2018.
38. The 2018 Order gives the prescribed definition of an HMO which is required to be licensed under section 61(1), namely that the property:
 - a) is occupied by five or more persons;
 - b) is occupied by persons living in two or more separate households; and
 - c) meets either
 - i. The standard test under section 254(2) of the 2004 Act or
 - ii. The self-contained flat test under section 254(3) of the Act but is not a purpose built flat situated in a block comprising three or more self contained flats or
 - iii. The converted building test.
39. Mr Waritay argued for the Applicant that the property did not meet the prescribed description for an HMO on two separate grounds.

40. The first ground was that the tenants did not occupy the flat as their only or main residence which is a requirement of the “standard” and “self-contained” flat tests under section 254 of the Act. Mr Waritay submitted that the tenants were students and went home during their vacations. The Tribunal pointed out to Mr Waritay that under section 259 of the 2004 Act a person who occupies a building as a person’s residence for the purpose of undertaking a full-time course of higher education is to be treated for the purposes of section 254 as occupying the building as his/her only or main residence. The Tribunal understands that the five tenants in Flat 4 were full-time students at Exeter University, and, therefore, the provisions of section 259 applied in this case.
41. Mr Waritay’s second submission was that the property ceased to be an HMO at the end of June 2019. Mr Hodges accepted that he and all but one of his fellow students returned to their parent’s home at the end of June 2019. Mr Hodges pointed out that although he and most of his fellow tenants left the property, the landlord did not permit them to surrender their tenancy until the 1 August 2019. Mr Hodges produced an email dated 1 August 2019 from the Landlord’s agent thanking them for vacating the property and surrendering the keys on 1 August 2019.
42. The Tribunal finds that the tenancy agreement for five persons remained in force until 1 August 2019. Under the terms of the agreement the five tenants were joint and several liable to pay the rent of £2,200 per calendar month until 1 August 2019. The fact that most of the tenants chose to reside at their parent’s home after the exams in June 2019 did not alter the contractual position that they were entitled to occupy the property until the agreement was surrendered on 1 August 2019. In the Tribunal’s view it is the contractual position that determines whether the property was occupied by five persons not the actual position on the ground.
43. The Tribunal is satisfied that the property met the prescribed definition of an HMO from 1 October 2018 to 31 July 2019.
44. The next issue raised by Mr Waritay was that Fulfords controlled or managed the property and was the person not the Respondent which had committed the offence of having no HMO licence in respect of the property.
45. Mr Waritay’s submission regarding Fulfords was based on the facts that the Respondent had never met the tenants of the property, that Fulfords had drafted and produced the tenancy agreement, that Fulfords were at all times in direct receipt of the rents from the tenants of the property, and that the Respondents paid Fulfords £5,827 for providing their management fees in the property. Mr Hassan said at the hearing that Fulfords paid over the rent for the property to the Respondent.

46. According to Mr Waritay, it was Fulfords which controlled the property, and that if a prosecution for no HMO licence had been taken out the Local Authority would have chosen Fulfords instead of the Respondent. Finally Mr Waritay said that Mr Hodges had been correct in naming initially Fulfords as the Respondent.

47. The Tribunal makes the following findings of fact:

- a) The Respondent owned the building in which Flat 4 was situated.
- b) The Respondent was the landlord named on the tenancy agreement for Flat 4.
- c) Under clause 4.12 of the Agreement the Landlord was obliged to ensure that a valid House in Multiple Occupation (HMO) licence was in place to the satisfaction of the Local Authority (if necessary) as per Housing Act 2004,
- d) The Respondent appointed Fulfords to manage the property as its agent for which the Respondent paid Fulfords a fee.
- e) The Respondent received the rent paid by the tenants under the tenancy agreement for the property via Fulfords.
- f) The facts relied upon by Mr Waritay as set out in paragraph 45 above substantiate the conclusion that Fulfords acted as the Respondent's managing agent.

48. The Tribunal decides on the facts found that

- a) The property met the prescribed definition of an HMO from 1 October 2018 to 31 July 2019.
- b) The property required an HMO Licence from the 1 October 2018.
- c) The property did not have an HMO Licence from 1 October 2018 to 31 July 2019.
- d) The Respondent is the landlord within the meaning of Chapter 4 of the 2016 Act entitled Rent Repayment Orders.
- e) The Respondent under the terms of the tenancy was responsible for ensuring that the property had a valid HMO Licence.
- f) The Respondent met the definition of a person managing an HMO under section 263 of the 2004 Act. The Respondent was the owner of the property and received through its managing

agent, Fulfords, the rents from the tenants in occupation of the property.

49. Before the Tribunal concludes whether the Respondent has committed an offence under section 72(1) of the 2004 Act, the Tribunal is required to consider the defence of reasonable excuse which was put forward by Mr Waritay on behalf of the Respondent under section 72(5) of the 2004 Act.
50. The Respondent has the evidential burden of establishing the basis for reasonable excuse on the balance of probabilities. Once the Respondent had discharged the evidential burden it was for the tenant to satisfy the Tribunal to the criminal standard of proof that the excuse was not a reasonable one (*Polychronakis v Richards & Jerrom Ltd* [1998] Env LR).
51. Mr Waritay argued that Exeter City Council had misled the Respondent about whether the property required an HMO licence. In this regard the Respondent relied on an e-mail from a Jamie Turner of Private Sector Housing of Exeter City Council dated 19 February 2019 which said

“Good Morning Mr Hassan: Following our conversation regarding the above property (15 York Road) I can confirm that as the conversion to flats was done after 1991 with building regulations the property does not require an HMO licence”.
52. Mr Hassan said in evidence that Fulfords had informed Mr Ali, the office manager for the Respondent, that an HMO licence was required for 15 York Road. Mr Hassan had decided to contact Exeter City Council to find out whether the information from Fulfords was correct and spoke to Mr Turner who said the property did not require a licence which he later confirmed in the e-mail sent on 19 February 2019.
53. Mr Hodges pointed out that Mr Turner’s e-mail referred to the building of 15 York Road, and not to Flat 4. The Respondent did not have an answer to Mr Hodges’ observation. Mr Hodges added that the Environmental Health Officer for Exeter City Council was in no doubt that the property required an HMO Licence. Finally Mr Hodges cited the Respondent’s statement that it had received advice from Exeter City Council after the tenants had moved out to reduce the number of occupiers to four in order to comply with the law.
54. The Tribunal finds that the Respondent had failed to persuade it on the balance of probabilities that it was misled by Exeter City Council regarding the need for an HMO licence for the property. The Tribunal is satisfied that Mr Turner’s e-mail related to 15 York Road and not to Flat 4. Further the Respondent produced no evidence to indicate that Mr Hassan’s enquiry of Mr Turner

concerned Flat 4 and no evidence from Fulfords about the information conveyed to the Office Manager. Finally, the Tribunal is convinced that if the Respondent had identified Flat 4 as the object of its enquiry it would have received the answer from Exeter City Council that it required an HMO licence.

55. Mr Waritay submitted that the Respondent was not aware of the change in law regarding HMO's and that in any event the Respondent had 18 months in which to implement the requirements of the new legislation. Mr Hodges countered Mr Waritay's submission by stating that the extension of HMO licensing to a wider range of properties received extensive publicity which was self evident from his researches on the internet.
56. The Tribunal does not consider ignorance of the law amounts to a reasonable excuse. The Tribunal finds that the Respondent should have been aware of the changes from the extensive publicity about them. Finally Mr Waritay's reference to the transitional provisions only takes effect if the landlord applies for an HMO licence and a licence is granted.
57. The Tribunal is satisfied beyond reasonable doubt from the findings above that the Respondent had committed the specified offence of control or management of an unlicensed HMO contrary to section 72(1) of the 2004 Act from 1 October 2018 to 1 August 2019 in respect of the property and that it did not have a defence of reasonable excuse.

What is the maximum amount that the Respondent can be ordered to pay under a RRO (section 44(3) of the 2017 Act)?

58. The amount that can be ordered under a RRO must relate to a period not exceeding 12 months during which the landlord was committing the offence. The Tribunal decided that the Respondent committed the offence from the 1 October 2018 to 31 July 2019, a period of ten months. Mr Hodges paid the Respondent a total of £4,400 in rent for the property during that period. The maximum amount payable by the Respondent under a RRO is £4,400.

What is the Amount that the Respondent should under a RRO?

59. In determining the amount, the Tribunal must, in particular, take into account the conduct and financial circumstances of the Respondent in its capacity as landlord, whether at any time the Respondent had been convicted of a housing offence to which section 40 applies, and the conduct of Mr Hodges.
60. Mr Waritay said that the Respondent was part of the wider and diverse community of Exeter and took its legal obligations extremely seriously. Further the Respondent was a charity and that its resources funded its charitable activities. The Trustees of the

Respondent gave their time freely and received no remuneration or other financial benefits for their services. The Respondent devoted time and resources to education which was a fundamental part of its constitution. The Respondent worked hard to raise awareness about Islam and to dispel misconceptions about the faith through hosting visits from various educational institutions, faith groups and community based organisations and individuals. In 2017/2018 over 2,300 students and teachers stepped through its doors. According to Mr Waritay, the Respondent was not a professional landlord, and that it engaged a well respected longstanding letting agent to manage the four flats available for rent in 15 York Road. Mr Waritay stated that the Respondent had never been convicted of similar offences.

61. Mr Waritay referred to the Respondents' Annual Report for the year ended 30 June 2018 which showed that the expenditure exceeded the income received during the year by £30,000. The Tribunal notes that the Report concluded that there were no material uncertainties about the Charity's ability to continue. The accounts recorded that the Respondent received rental income of £53,549 from 15 York Road which constituted about 40 per cent of its total income during the year.
62. Mr Waritay contended that a substantial RRO would damage the Respondent's finances and reputation.
63. Mr Waritay said that Mr Hodges' conduct had been less than satisfactory. Mr Waritay contended that under the tenancy agreement Mr Hodges was liable for the defaults of his fellow tenants. Mr Waritay stated that there were seven occasions during the year when one of the tenants did not pay the rent on time and that the tenants had committed waste at the end of the tenancy by leaving the property dirty with broken furniture. Mr Waritay maintained that the tenants had committed a breach of contract by terminating the tenancy one month early. Finally Mr Waritay submitted that Mr Hodges had willingly accepted the smaller bedroom in the property and that he was being opportunistic in now seeking to rely on the fact that the bedroom was below the prescribed minimum size for a bedroom sleeping one person.
64. Mr Hodges responded by pointing out that he had never been late with the payment of his rent, and that his room had been left in an acceptable condition. Mr Hodges said that the termination of the tenancy a month early had been agreed with the Respondent's agent and was in accordance with the terms of the agreement. Mr Hodges stated that this was the first time he had rented a property and that he was naive when he agreed to the tenancy at the property. Mr Hodges asserted that the size of the room had an impact on his well-being and that the room had originally been designed as a study and not as a bedroom.

65. The Tribunal starts its determination on quantum by considering the decision of the Upper Tribunal in *Parker v Waller* [2012] UKUT 301. The then President of the Upper Tribunal referred to Hansard to discover the purpose of the legislation for introducing RROs in favour of tenants. The President decided that the RROs have a number of purposes, namely:
- “to enable a penalty in the form of a civil sanction to be imposed in addition to the fine payable for the criminal offence of operating an unlicensed HMO; to help prevent a landlord from profiting from renting properties illegally; and to resolve the problems arising from the withholding of rent by tenants”.
66. Following his analysis the President concluded that
- “There is no presumption that a rent repayment order should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The Tribunal must take an overall view of the circumstances in determining what amount should be reasonable”.
67. The 2016 Act extended the scope of rent repayments orders with an emphasis upon the landlord not benefiting from the letting of sub-standard accommodation and also removed the requirement for the Tribunal to determine such amount as it considered reasonable for the eventual order.
68. The structure of the 2016 legislation requires the Tribunal to determine first the maximum amount payable under an RRO and then to determine the actual amount payable by taking into the circumstances of the case, having particular regard to specific factors.
69. The Tribunal finds that the Respondent had arranged for the conversion of 15 York Road into four flats and had engaged a well-known letting agent to manage the properties on its behalf. The Respondent applied the rental income from its properties to fund its charitable activities. Although the Respondent was not in the business of letting properties, the management of its property portfolio was conducted on professional lines which carried with it the expectation that the Respondent’s properties met legal requirements.
70. The Tribunal finds that the property (Flat 4) was not suitable for five persons. The Tribunal notes that the property had originally been designed for four persons. The Respondent’s decision to let out the property to five persons meant that the accommodation was inadequate and fell below the requisite standards for an occupancy of five persons. The property had one bathroom without a separate toilet which was shared by all the occupants who comprised two females and three males. The communal space on the second floor

of the flat was insufficient for five unrelated persons. Mr Hodges occupied a room which had been designed as a study and fell below the prescribed minimum size of 6.51m² for sleeping accommodation for one person. Finally the Respondent has chosen not to pursue an HMO licence for the property and have accepted the advice of Exeter City Council to restrict the accommodation to four persons.

71. The Tribunal is not convinced that the making of a RRO would have an adverse effect on the Respondent's financial circumstances. The published accounts for the year 30 June 2018 indicated that the Respondent holds sufficient assets.
72. The Tribunal applauds the Respondent for its good work in the local community and for supporting its worshippers but the Tribunal is not persuaded that this is a relevant factor for determining the amount of the RRO payable to Mr Hodges.
73. The Tribunal finds that Mr Hodges was not complicit in the circumstances giving rise to the Respondent's failure to obtain an HMO licence for the property. The Tribunal does not consider that Mr Hodges was in breach of his tenancy agreement.
74. The Tribunal places weight on the fact that the accommodation at the property was not suitable for five persons and if the Respondent had applied for an HMO licence it would have been highly unlikely a licence would have been granted. The Respondent would have been advised to restrict it to four persons which was what Exeter City Council told the Respondent when it enquired after the tenants had left. The rent claimed by Mr Hodges was for a room which should not have been let in the first place.
75. The Tribunal is satisfied that the Respondent's failure to apply for an HMO licence and its letting out of sub-standard accommodation are the determinative features of this case and outweigh any mitigation on the Respondent's behalf. The Tribunal, therefore, determines that this is a case which justifies the ordering of the maximum amount allowable under a RRO.

Decision

76. The Tribunal orders the Respondent to pay Mr Hodges the sum of £4,400.00. Mr Hodges also applied for an Order against the Respondent to reimburse him with the £100.00 application fee and the £200.00 hearing fee. The Tribunal considers that as Mr Hodges has been successful with his application the Respondent is ordered to reimburse Mr Hodges with the £300.00 in fees. The Tribunal Orders the Respondent to pay the sums due to Mr Hodges of £4,400.00 and £300.00 which makes a total of £4,700.00 within 28 days from the date of this decision.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.