



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

Case reference : **CAM/38UC/HMF/2019/0017**

Property : **67 Harpes Road, Oxford, OX2 7QJ**

Applicants : **1. Tanya Prentice
2. Matthew Noon
3. Alastair Corbin
4. Jasmine Cairns**

Representative : **Justice for Tenants**

Respondent : **Melanie Towns**

Representative : **Unrepresented**

Type of application : **Application for a rent repayment order
by tenants**
Sections 40,41,43 & 44 of the Housing and
Planning Act 2004 (“2004 Act”)

Tribunal : **Judge J. Oxlade heard by telephone on
2nd June 2020**

Decision : **12th June 2020**

DECISION

For the following reasons I made the following Orders:

- (1) The Respondent shall repay rent (an RRO) for the period of 1st May 2018 to 30th April 2019, in the sum of (i) £1600 in favour of Matthew Noon, (ii) £1600 in favour of Jasmine Noon (nee Cairns), (iii) £1590 in favour of Alistair Corbin and (iv) £1590 in favour of Tanya Prentice,
- (2) The Respondent shall pay the sum of £300 to the Applicants by way of reimbursement of the application and hearing fees, to be apportioned as agreed between the Applicants.

REASONS

Application

1. Pursuant to section 40 of the Housing and Planning Act 2016 (“the 2016 Act”), the Applicants made an application for an order for repayment of rent (“a RRO”) in the sum of £19, 170, paid by them to the Respondent, during the period of an offence – 1st May 2018 to 30th April 2019 – which offence was failing to licence a home of multiple occupation (“HMO”).
2. They do so because during that period they were the occupants of 67 Harpes, Oxford (“the premises”), owned by the Respondent, and which should have been licenced as an HMO under section 72(1) of the Housing Act 2004, it being (i) a three storey house, (ii) occupied by four persons who did not form a single household, and was (iii) located within an area which fell within phase 1 of a selective licensing area designated by Oxford City Council on 25th January 2016, but it was not so licensed. No application had been made by the Respondent for such a licence.
3. The Applicants vacated the premises on 24th May 2019, and on 19th December 2019 made the application – so, within 12 months of the offence occurring. It is this application which came before me for hearing on 2nd June 2020.

Hearing

4. At the hearing the Applicants were represented by Alasdair Mcclenahan, from an organisation called Justice for Tenants. The Respondent was unrepresented, although she had secured some limited and late advice from Charles Snelling, albeit close to the hearing, but which enabled her to read out a prepared statement which formed part of her case.
5. The application required an oral hearing, and the parties helpfully agreed for this to be conducted remotely, over BT Meet Me, at which all participants were at the end of the telephone. This procedure was adopted to negotiate the problems of hearings taking place in public buildings, caused by the risks from COVID-19. Despite some initial technological challenges caused by Mr. Mcclenhan’s mobile phone, this was resolved and all participants were able to hear and to be heard. I have a handwritten note of the hearing, and (in the event that the record needs to be considered) it was recorded by the Tribunal, by means of the BT Meet me facility.
6. There was no application for anonymity by the Respondent; nor, would this have been appropriate in light of one of the aspirations of the RRO, which is for the decision to deter to others by publication of the outcome.
7. At the commencement of the hearing all parties confirmed that they had received the documents filed by the other pursuant to Tribunal Directions: for the Applicant, a blue file (“A” 140 page), for the Respondent a green file (“B”, not paginated, but divided into sections), a response filed by the Applicant to the Respondent’s bundle together this hand-written annotations made by the

Respondent (“C”). Whilst the Respondent had tried to send a prepared statement of Mr. Snelling to the parties and Tribunal, this had not been received, and so she read this out at the commencement of her submissions. The Respondent apologised repeatedly for the poor presentation of her bundle, arising from the scramble to get a bundle in amid the Covid-19 challenges coupled with her rising sense of panic/anxiety about the whole matter.

Common ground

8. At the commencement of the hearing, I confirmed that I had read the papers, from which it appeared that there was common ground on all matters, save quantum of the RRO.
9. The parties said that it was agreed that: (i) the Applicants had been tenants of the premises from 25th May 2017 to 24th May 2019, (ii) they formed two households, so (in accordance with the definition of HMO contained within section 258 Housing Act 2004) the premises had been occupied as an HMO, (iii) it was a three storey building and prior to the tenancy commencing it fell within the licensing scheme established by Oxford City Council, requiring licensing (iv) an offence had been committed by the Respondent in having control or managing an HMO which required to be licensed but was not so licensed, pursuant to section 72(1) of the 2004 Act, (v) the tenants had paid £19,170 during the period of 1st May 2018 to 30th April 2019, (vi) the application had been made on 19th December 2019 (vii) the Local Authority had not prosecuted the Respondent, and so there was no question of a fine having been made or a RRO having been applied for by the Local Authority.
10. That being so, the focus of the hearing was for the parties to address quantum. To guide them in what were the relevant matters that I had to consider I referred to the Tribunal’s jurisdiction, set out in section 43(1): the power is a discretionary one (“the First-tier Tribunal *may* make a RRO”); section 44(2) provides that the maximum award would be a period not exceeding 12 months during which the landlord was committing the offence; that the Tribunal must take into account particularly (section 44(4)) (a) the conduct of the landlord and tenant, (b) the financial circumstances of the landlord (c) whether the landlord had at any time been convicted, though the list of factors was not limited.
11. The Applicant’s bundle included (at Exhibit U) the guidance published by the Department of Local Government and Communities to assist *Local Authorities* when seeking a RRO; it acts as guidance to the Local Authorities, and whilst not binding on the First-tier Tribunal, provides that the Tribunal should have regard to it. In fact, the section relied on by the Applicant (3.2) is specifically prescribed as guidance to the Local Authority when seeking a RRO; here, the tenants were seeking to do so. However, case law on powers under the Housing Act 2004 (particularly, Parker v Waller [2012] UKUT 301) suggests that all factors should be taken into account, and so I do not consider that it is wrong to take into account the factors listed in Exhibit U; namely, punishment of the offender, deterrence to

the Respondent and others from committing similar offences, and removing the financial benefit to the offender as a result of committing the offence.

Evidence

12. Save with one exception, neither party had filed witness statements, which could have contained what they wanted to say in evidence, and so the application proceeded by way of oral submissions, to supplement that which had already been made in writing.
13. However, there was a witness statement which had been filed by the Applicants, from Michael Browning made on 14th June 2019, who was a Team Manager for Oxford City Council, and who had inspected the premises on 25th April 2019. He opined that the occupants at that time formed two households - the four tenants were two couples – and a check of the records showed that there was no licence granted for the premises to be used as an HMO, nor had an application been made; further, in his opinion, the premises were an HMO, which required to be licensed, but which was not.
14. As to condition, he further confirmed that the premises were generally in good order, both externally and internally - albeit that there was an area of ceramic wall tiles in the en-suite shower which had come away from the wall, allowing some water to discharge from the shower cubicle to discharge towards the landing area and so water staining. Further, there was a freestanding oven located in the kitchen which was not working. He noted that the tenants remarked on the gas installations recently having been inspected though he was not provided with a gas safety check nor an electrical safety check (and he provided no further information about this).

Submissions

15. I heard submissions from both the Applicant and then Respondent, which process was repeated several times, until all confirmed that they had said all that they could reasonably think that they wanted to say. Breaks were offered and taken, during the 2 ½ hour hearing.
16. At the commencement of the hearing, Ms. Towns raised as an issue the limitation of the length of the period for which the RRO could be made; saying that she had read something which supported an argument that the rent which could be returned could only be that which had been paid in the 12 months leading up to the application; so, in this case as the application was made in December 2019, it was only rent paid from December 2018 to the time that the tenants vacated in May 2019 which could be recovered. She was not able to quote from that which she had read but I drew to her attention the notes on page 1 of the application.
17. Mr Mcclenahan was arguing for the opposite position and said that there was some case law on point, namely 34 Sarsfield Road, Perivale, Greenford, Middlesex. It was a decision made by way of review heard by Judge Nicol on 15th May 2019 in case number LN/00AJ/HMF/2018/0053. Though it was not immediately possible for the Respondent to access this, she had done so by the end of the hearing, and I

directed that parties make submissions on it and the Respondent's point about the limitation, within 24 hours. They both did so, in short and to the point submissions, which I have read and taken into account.

18. The Applicants sought a whole RRO, namely, for their rental payments for the whole year to be refunded, namely £19,170, divided between the couples as to their actual rental payments of £9,600 (the Noons) at £800 p.c.m. and £9570 (Prentice/Corbin) at £797.50 p.c.m. This was to reflect the gravity of the situation; the Respondent was a professional landlord, had failed to attend not only to the HMO licence, but to basic safety (a gas safety check) - though reminded by the tenants – and so approached safety with reckless disregard; she had sought to unlawfully evict the tenants when notified that the boiler had been condemned; further, she had lied to Oxford Council over the numbers of people to whom she had let the house (two not four), and failed to substantiate her income/income sources and outgoings over her financial circumstances – adding in detail about another London property, only once forced to do so by the tenants disclosure, so should not benefit for any reduction argued on the basis of affordability; she had tried to manipulate the situation by saying that she was not a professional landlord when she admitted having bought, renovated and let for 36 years; she had failed to issue an apology to the tenants and to appreciate the seriousness of the situation.
19. The Applicants also sought repayment of the costs of bringing the application – the application and hearing fees totalling £300. Further, an application was made for payment of costs under Regulation 13 (wasted costs order) by Mr Mcclenahan, though abandoned when appreciating that as costs had not been paid (nor would be paid) by the Applicants, they could not be said to have been “incurred”.
20. The Respondent did not feel able to suggest what level of RRO was appropriate, but made the following points: she accepted that she had “got this wrong”; she denied being a professional landlord, having made a hobby of buying/renovating/letting property over 36 years; had an excellent track record of relationships with the tenants, including these tenants; had relied on the advice of an cheap on-line agency (who had failed to advise her that she would need a licence, which came in just shortly before the tenancy started); had given the Applicants permission to get anything done in the house that was necessary (although with a £100 limitation, after which agreement was needed), and had not understood why they had not sorted out a gas safety check, if they were so concerned about it; herself had a gas safety check done prior to their first letting and disputed that the boiler was condemned prior to the point of their leaving; had realised that management of property was now beyond her capabilities, and was not planning to let otherwise than through agents, and only to families; had at the time been absorbed in family matters (aged parents living someway away, with complex health needs, and during the course of this had lost both her father and brother); she had apologised to Oxford City Council, who had taken no action against her, by fine or prosecution, and now issued an apology to the Applicants; she denied that the house was a “risk factory”, and said that all internal doors were firedoors; she

said that the tenants were all professionals, had a lot of stuff, so maintenance of the house was made more challenging, and they had left the garden overgrown, albeit that the tenancy deposit dispute was not decided in her favour as she failed to upload pictures of the garden, and so the whole deposit was returned to them; she did not consider that the absence of a licence had led to any detriment to the Applicant, and denied that there was any ulterior motive for having the tenancy agreement in the names of two men as opposed to all four tenants – rather it was less troublesome if there were fall outs between the couples and with singles; she had not understood the section 21 procedure, and had not proceeded with an unlawful eviction, and denied that the decision to seek to give notice was motivated as a vindictive measure.

21. However, the Respondent conceded that she should pay the costs of the Applicant in bringing the application of £300.

Findings

22. I have carefully considered the evidence filed and the submissions made by both parties.

Offence

23. The Tribunal can only exercise its jurisdiction to make a RRO, if gateway conditions are met. Namely, that the Tribunal finds beyond all reasonable doubt (section 43(1)) that an offence to which that Chapter applies was committed, that at the time of the offence it was let to the tenant (s41(2)(a)), and that the offence was committed within a period of 12 months ending with the day on which the application is made.
24. In this case, the evidence filed - consisting of the witness statement of Mr. Browning, together with the tenancy agreement, the bank statements of the two tenants named in the agreement, a copy of the public notice setting out the terms of the designation order, and a copy of the application form – and not challenged on these relevant points, has satisfied me beyond reasonable doubt that the gateway conditions are all met. I am therefore satisfied that as the landlord committed an offence to which this Chapter relates, so that I may make a RRO.

Discretionary Power

25. The Tribunal must be satisfied that it should exercise its discretion to make an order, rather than to not make an order (s43(1)).
26. In deciding to exercise discretion to make an RRO, I bear in mind the dictum in Parker v Waller [2012] UKUT 301, which having reviewed Hansard, identified the mischief of the legislative power to make an RRO, to enable a penalty in the form of a civil sanction for operating an unlicensed HMO, to prevent the landlord from profiting from an illegal letting, and to resolve problems of a tenant withholding rent where demanded for an illegal letting.

27. I have decided to exercise my discretion to make an RRO in this case, to act as further deterrence to the Respondent against future letting out property. Whilst she promised that this was the case, this is not binding. Whilst she said that she recognises that she could not do so anymore, I was very concerned that she failed to recognise that the landlord's obligation have moved on so significantly in the past 20 years, and why that was so - namely to put tenant's safety as a priority. Further, a RRO will be publicised and act as deterrence to others from doing so.

Quantum

28. The issue of substance in this case is quantum.

29. I again bear in mind the guidance given in Parker v Waller, paras 26 and 27, as follows; any facts relevant to quantum must be decided by reference to the same standard of proof as the offence, that all of the circumstances are relevant, that there is no presumption in favour of a whole RRO, that inadvertence is likely to be dealt with less harshly than deliberate flouting of the requirements, that penalties are likely to be harsher for professionally engaged landlords over the non-professional landlord; further, that there is no traction in the landlord's argument that the tenant has had the benefit of occupation. Later case law considered that only substantial misconduct on the tenant's part would be relevant to any reduction in the size of an award.

30. Further, I have regard to the factors to which I am specifically required as set out in section 44(4)(a) to (c), and I am guided by the factors set out in the Local Authority guidance.

Landlord's Conduct

31. I first turn to considering the conduct of the landlord, under the headings which arose in this case.

Professional or not

32. Though I was encouraged by the Applicants to find that the Respondent was a "professional" landlord, I do not find that this is so; I do not find that that she lets out property as a "business".

33. Whilst I heard her account that she and her husband had (during their 36 years of marriage) made a hobby of buying property, renovating, and then letting it – information given in the context of the Respondent having had a good track record with her tenants, enjoying good relations with them and suffering no problems during that time – she was simultaneously bringing up a family, whilst working piecemeal as an educational psychologist, and now is retired. Whilst the Respondent has disclosed belatedly an additionally source of income in the letting not only of these premises (her former home) but an ex-council flat in Tower Hamlets - both of which give her an income - I do not consider that she makes a business out of doing so. Rather, I find that it is a side-line, which has arisen out of necessity in the past, and currently used to supplement her state and work-place pensions.

34. Nor do I find that she secures any income derived from the management of property.

Deliberate avoidance of licensing as an HMO

35. I was encouraged by the Applicants to draw an inference that the Respondent's conduct in letting to only two named tenants (as opposed to naming all four tenants), suggested that she was aware that these premises were required to be licensed as an HMO; naming two was an ineffective attempt to negotiate around that requirement. Although, I detected some inconsistency in the Respondent's various explanations as to why she did so – variously telling the tenants at the time that the agency would only accept two names, yet at the hearing saying that she only wanted to deal with two people not 4 or there was a reduced chance of a fall out - the inference which I was asked to draw, cannot reasonably be drawn. Not only does the number of people appearing on the face of the agreement not in itself define whether the premises falls within the definition of HMO, but having named the two male adults - who were not brothers, and so would have demonstrated that it was an HMO, as they would not have formed a single household – scuppers that point.
36. Rather, I find that the Respondent did not know that the property was in an area designated as a selective licensing area, and so did not deliberately ignore liability to secure a licence; rather, I found that she was oblivious to the need to do so, as she with other mandatory aspects of management. Whilst the Respondent said that the premises fell within the selective licensing area only a month or so before this tenancy was granted, I find that this is not so; the order made in October 2015 designated a licensing area within the City of Oxford in October 2015, and phase 1 (defined as “comprising three storeys”) therefore included the subject premises (see pages 122 to 125 in the Applicant's bundle) from 25th January 2016 – so over a year before this tenancy was created.

Neglect of Responsibilities

37. The Applicant referred to the Respondent's failure to secure an HMO licence, compounded by a general lack of proper management of the premises surrounding gas safety certificates and an attempt to unlawfully evict the tenants.
38. The Respondent said that she had relied on a cheap-on line agent costing £150 - which she acknowledged to be a mistake, having failed to advise her that she needed a licence; this was despite their knowing what they were advertising (as to location and the size of the accommodation). However, she had not filed in evidence a copy of their terms and conditions, or any standard advice that they issued. It was not the case that she had relied on a reputable agent of some standing upon whom she could reasonably have placed reliance to assure herself that all matters had been complied with; rather, it was paying the minimum, for a basic service, which implies that she would have to warrant that all other requirements were met. I find that whilst the information amounts to an explanation - that she had an on-line agent to list the property for rent and to draft a tenancy agreement - this does not in any way mitigate her obligation to be aware and the liability to secure a licence.

39. There was a dispute between the parties about the existence of a gas safety check in place at the time of the tenant's first occupation; the Respondent said that she had left one there, with the booklets in a drawer near the cooker, the Applicants denied that there was one there, and said that the cooker had last been serviced in 2011. However, the Respondent accepted (email page 137) that there was no gas safety check in existence in 2018. Worryingly in her oral evidence she referred to the emails from the tenants as "nagging her" about the gas safety certificate, saying that they had general authority to get done anything they needed under £100 without prior authority, and to deduct it from the rent. Her approach then amounted to a total abdication of responsibility of basic essential management, designed to but failing to put tenant's safety at the forefront. There were two gas safety checks done in April 2019; one by the tenants (where the boiler was condemned and so they were without heating or hot water, though the photograph of it was blurred and so I could not reliably discern all that might have otherwise have been gleaned) and one by the Respondent, which was passed. The witness statement of Oxford City Council did not assist in resolving this. The Respondent explained that the angle of the flue, meant that differing engineers had differing views of its safety; she said one year it would fail and the next year it would pass. Whilst I cannot resolve the point in the Applicants favour, in light of the standard and burden of proof, what can be said (and amounts to relevant conduct) is that a prudent landlord would have taken no chances with this and would have taken direct action.
40. The Applicants referred to the Respondent's vindictive response to their requesting evidence of a gas safety check having been carried out in 2018 and asking for one to be done in 2019; namely, to serve a notice to quit by email. She denied this interpretation on her decision to terminate, and said that she had lost her enthusiasm for the let, because the garden was overgrown and they would not either keep it tidy or increase the rent to pay for a gardener, and so issued notice. Whilst I accept that she placed high regard on the state of the garden, I reject her justification for serving notice in light of the timing and when seen in the context of her general approach to the tenant's rights in this regard – to regard it as "nagging", and that they should have organised it themselves. Rather, I take the view that she has little appetite for proper management, wanted minimal involvement, and she regarded as an inconvenience those who expected more than she would give. Whilst she (wisely) did not proceed with a defective notice to terminate the tenancy, it was a vindictive act linked to the need to obtain a gas safety certificate and the tenants asserting their rights.
41. In her submissions before me, it was apparent that she did not have any comprehension of why licencing was important, and regarded it simply a hurdle to clear, without any sense that there was a raft of safety legislation behind it. To obtain a licence there would be an application process (and fee) a fire assessment and perhaps conditions applied (which might require further expenditure and delay to a let). There would have been a requirement to have an electrical safety certificate – the need for which, even by the time of the hearing, had bypassed the

Respondent (and possible costs). Further, the Respondent would have had to have appointed a manager, who would effectively manage the premises – rather than, as her usual practice, to leave it to the tenants to police it.

42. My overall finding is of an absentee landlord, who wanted tenants to manage premises, to have minimal involvement, save to gather in the rents. I found it astonishing that she had failed to grasp the requirement to have a gas safety certificate, though required as an annual event for over 15 years. I reject the mitigation advanced, that her inadvertence could be excused because she was caring for elderly parents and dealing with other difficult family circumstances; not only was her knowledge of gas and electrical safety minimal/non-existent, though being a long-held requirement, she manifestly had time to be troubled by the state of the garden, and so should have made the time to attend to safety matters. The fact that a landlord is personally very busy, is not a good explanation.
43. On the positive side, the Respondent conceded that she should not in future manage property; she had engaged agents for the Oxford and London properties. Further, despite the issues of gas safety and wall tiles, the premises were reported to generally be in good condition, as asserted by the Respondent, and supported by Oxford City Council in the witness statement and an email. I should also add that the rent charge by the Respondent was not shown to be of the magnitude that HMO's are let for; her evidence was that a subsequent rent charged to a family was much higher than a subsequent rent. It was not a case of the Respondent capitalising on the greater number of lets in a building, which increases the HMO rents, and is the usual motivation for landlords which benefits off-set against the additional challenges of letting.

Apology/recognition

44. The Respondent made the point that she had apologised to Oxford City Council for failing to secure a licence, and (in effect) the trouble that this had caused. It was only at the hearing that she made apology to the tenants. It was rather late in the day – the Respondent saying that she had not thought that an apology would “cut it”; however, despite having been made, their remained a total failure on the Respondent's part to appreciate the reasons behind the raft of safety legislation put in place, to actively manage property to make a property as safe as possible for the tenants.
45. That Oxford City Council did not prosecute, and the Landlord was not fined, does not necessarily speak to the gravity of how the offence is to be seen; rather it appears from the email that they had taken a pragmatic view.

Tenants' Conduct

46. The Respondent said that the Applicants conduct should be taken into account: the Respondent complained that there was misuse of the shower, leading to broken tiles and some flooding; the tenant's multiple possessions made it difficult to do works; that garden was overgrown during and at the end of the tenancy, which lead to her having to expend money at the end of the tenancy, which – but for her

inability to upload photographs – she should have been able to deduct from the deposit.

47. However, I find that (at their highest) these do not amount to a serious breach of the terms of the tenancy or in any way impact on the Respondent's ability to perform her statutory obligations. I do not find that they are relevant to the assessment of quantum.

Financial Circumstances of the Landlord

48. I am required to have regard to the financial circumstances of the landlord.
49. There were some documents filed showing a state pension providing an income of £588.28 p.c.m., and I was told that there was a work place pension of £760 p.c.m. Further, there was usually rental income of £1600 to £2100 p.c.m from the subject premises, though if let through agents this would be approximately £1600 p.c.m, though it was currently unlet. It had a mortgage secured on it, which enabled her to buy her own home in Bradford-on-avon, and which costs £486 p.c.m. Further, there was a flat in Tower Hamlets with a rental income of £1600 pm, though there is a mortgage of £460, service charges and a structural works charged of £850 per month, so (I calculate) £280 net per month. It is currently unlet (for reasons not given). I was told that there were small credits to the Respondent's bank account, but that she has credit card debts of £10,000. She puts aside £1245 per month for tax. As to outgoings she referred to providing help for her father and step-mother in the sum of £600 per week, but when I clarified whether I had understood her to say that her father had recently died, she corrected this to the current situation and said she is not currently paying for her (step) mother's care, but makes expensive weekly trips there, though how often was not clear. She reckoned on helping to the tune of £500 p.m.
50. Regrettably, most of the income was not documented, most of the outgoings were not documented (save the mortgage on the premises), and there were no tax returns filed.
51. Whilst I appreciate that the pressures and challenges of Covid 19 can make it difficult to submit documents, most of what was needed would have been available through keeping proper records for taxation purposes, and so should have been fairly easy to submit. Further, there was no documentary evidence filed of debts, save the mortgage debt.
52. It was asserted by the Applicants that irrespective of the Respondents current income and outgoings, it would be possible for the Respondent to raise money on the equity of her home/the premises, and gave an estimated sale value of the premises, which was not specifically challenged or evidenced by the Respondent.

Assessment

53. Applying the principles set out in Parker v Waller and subsequent case law, the factors to which I must in particular pay regard as set out in section 44(4)(a)(c) and the guidance offered by the Local Authority, and the above findings of fact I decline to make a whole payment award, as requested by the Applicant. There is no presumption that a whole rent award should be the starting point, and it should be reserved for the worst cases.
54. In this case, I find that the Respondent is not a professional landlord, and I further find that she has not wilfully avoided the HMO licensing provisions. Accordingly, it would not be appropriate to award the maximum amount.
55. However, her consistent disregard for basic safety requirements – gas safety and boiler safety, with a flue which was not consistently assessed as safe – and view (which she maintained at the hearing) that she was being “nagged” for a gas safety certificate, requires an award of significance. It must be an award of sufficient significance, to act as a punishment and deterrence, and partly removes the financial benefit to the offender of having committed the offence.
56. I find that a fair balance would be struck in making a total RRO to repay 4 months of rent to the tenants, so £6,380; to be divided as £3200 to the Noons and £3180 to the Prentice/Corbin.
57. I did not consider from the less than full account of the Respondent’s finances that it would be inappropriate to expect that she can meet this order.
58. I further make an order to reimburse the application and hearing fee paid by the Applicants to the Tribunal.

Limitation on sums payable

59. The Respondent argued – having taken her lead from the application form – that the Applicants were limited in seeking a RRO, by being able to seek repayment of sums paid by them only in the period of 12 months ending with the date of the application (i.e. 19th December 2018 to 19th December 2019), and as they vacated in May 2019, this meant that they could in fact only seek a maximum RRO from 19th December 2018 to 24th May 2019.
60. Whilst I appreciate that the form does indeed say “the Tribunal is not permitted to order payment of any amount in respect of any time falling outside the period of 12 months ending with the date of this application” (Page 21 of the bundle, page 1 of 10 of the application form) there is no statutory basis on which the RRO is limited.
61. Section 41 provides a time limit within which the application must be made by reference to the offence complained of, (see section 41(2)(b) “a tenant may apply for a RRO only if the offence was committed in the period of 12 months ending with the day on which the application is made”). Section 44 (1) sets out the maximum amount that can be ordered; section 44(2) provides that in respect of a row 5

offence, the maximum amount must be the rent paid in the period, not exceeding 12 months, during with the offence was committed. Sections 41 and 44 fulfil different functions: section 41 sets out when the application must be made and section 44 sets out the maximum RRO payable. The case relied on by the Application in rebuttal of the Respondent's submissions, whilst not binding on me, is persuasive, and helpfully explains the different functions of sections 41 and 44. It also acknowledges in that case, that whilst both parties (and the Tribunal) were misled by written guidance, that cannot override the effect of the statutory provisions.

62. It follows that I find no statutory support for the submission that the RRO is limited to less than 12 months; rather I limit it in accordance with the findings above, in exercise of discretion in accordance with section s44(4).

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Judge J. Oxlade

12th June 2020