



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

Case Reference : CHI/18UC/HMF/2021/0003

Property : 23 Monks Road, Exeter, Devon, EX4 7AZ

Applicant : Chloe Munnerley
Jessica Ranger
Ellen Bowditch
Nicholas Reay

Representative : Chloe Munnerley

Respondent : Stephen Foweraker

Representative : Oliver Mitchell of Counsel

Type of Application : Application by Tenant for a Rent
Repayment Order- section 40 to 46
Housing and Planning Act 2016

Tribunal Member(s) : Judge J Dobson
Ms J Coupe FRICS
Mr P Gammon MBE

**Date and venue of
hearing** : 26th May 2021

Date of Decision : 7th June 2021

DECISION

SUMMARY OF THE DECISION

- 1. The Tribunal is satisfied beyond reasonable doubt that the Respondents landlords committed an offence under Section 72(1) of the Housing Act 2004.**
- 2. The Tribunal has determined that it is appropriate to make a rent repayment order.**
- 3. The Tribunal makes rent repayment orders in favour of the Applicants, in the overall sum of £12016.28, to be paid within 28 days to the individual Applicants in the following sums:**

Chloe Munnerley	£2930.80
Jessica Ranger	£3223.88
Ellen Bowditch	£2930.80
Nicholas Reay	£2930.80

- 4. The Tribunal determines that the Respondents pay the Applicants an additional £300 as reimbursement of Tribunal fees to be paid within 28 days. The sum is to be paid as £75 to each Applicant.**

Applications and Background

- 5. By an application dated 3rd January 2021 and so made well in time, the four named Applicants applied for a rent repayment order in respect of the rent paid during the period 1st September 2019 to 31st August 2020 against the Respondents on the ground that the Respondents had committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”)- having control or management of an unlicensed House in Multiple Occupation (“HMO”)- for failing to have a Licence for 22 Monks Road, Exeter, Devon, EX4 7AZ (“the Property”).**
- 6. The Property is a two-storey house with five bedrooms, an upstairs bathroom and a ground floor shower room, together with a kitchen in which there is seating. There is no separate living room. The Respondent is one of the two owners, the other being his ex-wife. The Applicants were students attending the university in Exeter. It was the Respondent with whom they dealt in relation to the tenancy.**
- 7. The four Applicants and one other tenant on the one hand (collectively “the tenants”) and the Respondent and his ex-wife, both named as landlords, on the other hand entered into a single written tenancy agreement (“the Tenancy Agreement”) in late 2018 for the whole Property for a term commencing on 1st September 2019 and lasting twelve months until 31st August 2020. The overall monthly rent was £2,040.00, for which the Applicants and the fifth tenant were jointly and severally liable.**
- 8. The sums paid to the Respondent by way of rent month by month by each of the Applicants were:**

Chloe Munnerley	£400.00
Jessica Ranger	£440.00
Ellen Bowditch	£400.00
Nicholas Reay	£400.00

9. The remainder of the rent was paid by the fifth tenant. The rent was paid directly to the Respondents by each of the Applicants in the above sums and the balance was similarly paid direct by the fifth tenant, except for the final month for which he did not make the payment. The total rent paid by the Applicants during the tenancy was therefore £19,680.00

The law and jurisdiction in relation to Rent Repayment Orders

10. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rogue landlords and agents and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are set out in sections 40 -46 Housing and Planning Act 2016 (“the 2016 Act”), not all of which relate the circumstances of this case.
11. Section 40 gives the Tribunal power to make a rent repayment order where a landlord has committed a relevant offence. Section 40 (2) explains that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority).
12. Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a specified offence, including the offence mentioned at paragraph 5 above, if the offence relates to housing rented by the tenant and the offence was committed in the period of 12 months ending with the day on which the application is made.
13. Under section 43, the Tribunal may only make a rent repayment order if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.
14. It has been confirmed by case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner.
15. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, section 44 applies in relation to the amount of a rent repayment order, setting out the maximum amount that may be

ordered and matters to be considered. If the offence relates to HMO licensing, the amount must relate to rent paid by the Applicants in a period, not exceeding 12 months, during which the Respondents were committing the offence.

The history of the case

16. In brief summary, on receipt of the application made by the named, the Tribunal issued Directions dated 23rd February 2021, providing for the parties to provide details of their cases and the preparation of a hearing bundle.
17. The application was listed for final hearing by way of video proceedings, the hearing which took place. There were no interim applications.

The hearing

18. Ms Munnerley attended the hearing. The Applicants were all represented by her. She additionally provided oral evidence further to the written evidence of the Applicants, who had signed pro-forma short statements in identical terms plus a joint response to the Respondent's witness statement. Ms Munnerley had therefore stated the relevant matters to be true in addition to her former- housemates having done so. The Applicants' written evidence principally included the tenancy agreement, evidence of rent payments, several photographs taken at different dates and various text messages between the Applicants themselves and between Applicants and the Respondent.
19. The Respondent attended, represented by Mr Oliver Mitchell of Counsel. Oral evidence was given by the Respondent. The written evidence on behalf of the Respondent consisted of the matters of fact contained in a detailed Statement of Response, signed by Mr Foweraker, together with other documents relied on by the Respondents. Those documents principally added tax returns, emails with Exeter City Council regarding a HMO Licence and confirmation of membership of a landlord association.
20. The essence of the Applicants' written case was that the Property was required to be licensed and was not. Additionally, issues were raised about the Respondent's response to matters relating to the condition of the Property and fire safety- related matters and also about failure to protect the deposit for several months following payment.
21. The essence of the Respondent's written case was that the Property was not required to be licensed and also argued there was in any event a reasonable excuse. Those matters aside, the case referred to positive conduct of the Respondent, some negative conduct of the Applicants and the Respondent's financial position.
22. The Respondent's Counsel also relied on a Skeleton Argument, filed on 24th May 2021. That did not entirely withdraw the argument that the Property was not required to be licensed, submitting that the Tribunal still

had to be satisfied that the Applicants and the other tenant were undertaking full-time courses, although it conceded part of the original argument. The Skeleton Argument maintained that there was a reasonable excuse for the failure to obtain a HMO licence. The Skeleton also argued in relation to the relevant period for any rent repayment order and the in respect of the factors relevant to the amount of any penalty.

23. The evidence received and the submissions made, both oral and written, are not dealt with more fully in this part of the Decision. They are dealt with as and when the issues to which they were relevant are considered below.

Has an HMO licensing offence been committed?

24. It is fundamental to determination of the application for the Tribunal to determine whether a relevant offence, in this case as to HMO licensing, has been committed. The Tribunal deals with this question step by step with headings distinguishing the different aspects.

The need for a Licence

25. It was not in the hearing in dispute that pursuant to the Housing Act 2004 (“the 2004 Act”) and the regulations made under it the Property required a Licence in order to be occupiable by these Applicants if they had been undertaking a full-time course of further or higher education.
26. For completeness, the original argument had been that the Applicants did not occupy the Property as their only or main residence for the purpose of section 254(2)(c) of the 2004 Act. However, Mr Mitchell quite properly drew the attention of the Tribunal to section 259(2)(a) of the 2004 Act, which specifically relates to students such as the Applicants were, stating that a building (or part of it) is to be treated as the only or main residence if occupied for the purpose of undertaking a full-time course of further or higher education.
27. It was common ground that the Respondent applied for a HMO Licence for the Property in February 2021. The Respondent said that occurred, and it was not disputed, immediately after his receipt of the Applicants’ application. Ms Munnerley submitted that application flew in the face of the Respondent’s argument against the need for a licence, although the Tribunal does not consider that it prevents the Respondent raising the limited issue of the full time, or otherwise, nature of the courses attended by the Applicants.
28. Mr Mitchell asserted that the Applicants had not in their written case stated that the five tenants were undertaking full-time courses. The Tribunal accepts that to be correct in terms. However, the Tribunal would have found little difficulty in drawing the inference that the tenants were undertaking full-time course from the evidence which had been provided. All else aside, they gave addresses on their application different to the subject Property, although it should be said they may have been addresses

moved into after the end of their studies, and they apparently needed to obtain and pay for accommodation for the purpose of undertaking their courses. The evidence strongly indicated the courses to have been full-time ones.

29. The point was effectively resolved by the evidence of Ms Munnerley taken specifically in relation to the issue. She explained that the tenants were undertaking full time courses, all or most of them having been four-year courses and including a year abroad because of involving one or more languages as the or an element of the course content.
30. The Tribunal was satisfied to the required standard with her evidence on the matter.
31. Accordingly, the Tribunal determined that the Property was required to be licensed.
32. Section 72(1) of the 2004 Act provides that:

“A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed..... but is not so licensed”.

33. That offence is one of those listed in section 40 of the 2016 Act in respect of which the FTT may make a rent repayment order. The Respondent did not argue that he was not “in control of” the Property and so it was effectively accepted that if there were no Licence in place, the Respondent committed the offence.
34. The Tribunal is satisfied, beyond reasonable doubt, that unless the Respondent has a defence of reasonable excuse the Respondent has committed an offence pursuant to section 72(1).

Is there a defence of reasonable excuse?

35. Mr Mitchell argued that in the event that the Respondent would otherwise have committed an offence under section 72(1) of the 2004 Act, there was a reasonable excuse pursuant to section 72(5).
36. The standard of proof in relation to that is the balance of probabilities. Where the Tribunal makes findings of fact in relation to this aspect of the case, it does so on the basis of which of two matters it finds more likely. It does not need to be sure in the manner that it does with facts upon which the asserted commission of an offence is based.
37. The Respondents’ argument as advanced by Mr Mitchell was that the Respondent had been “caught out” by the change to the circumstances in which a HMO licence is required. That change was the removal of properties being licensable only if they had three or more storeys by the Licensing of Houses in Multiple Occupation (Property Description) (England) Order 2018.

38. The Respondent's written evidence was that he and his ex-wife (and ongoing business partner) owned three other properties in the same road each of which had four bedrooms and were let to four persons, so did not require a licence. The Tribunal pauses to note that the Property was, the Respondent said, laid out in the same manner at the time of his purchase of it and he continued with there being five bedrooms and not a living room separate to the kitchen. In any event, insofar as it is at all relevant, if the Property had been arranged in the same manner as the Respondent's other properties in the same road, it would not have had five tenants in separate households and so would not have required licensing.
39. The Respondent also stated that he owned another property which had required licensing prior to the 2018 change, plus two others which did not require licensing. It was asserted that the Respondent would have applied for the Property to be licensed if he had known that he needed to do so.
40. The Tribunal accepts the Respondent's evidence. Notwithstanding criticisms of the Respondent's approach as set out below, the Tribunal accepted the Respondent to be honest in his evidence as to licensing and agrees that the surrounding circumstances corroborate his evidence that he would have applied for a licence if he had been aware of the need to do so. The Tribunal accepts as a matter of fact that the Respondents did not intend there to be a period in which the Property was not licensed and was required to be.
41. However, the offence is strict liability unless the Respondent had a reasonable excuse. The intention or otherwise of the Respondent to commit the offence is not the question.
42. Mr Mitchell correctly argued that the oft-quoted phrase "ignorance of the law is no excuse" is too broad-ranging and the reality is somewhat more subtle. Mr Mitchell relied on two case authorities, namely *Perrin v Revenue and Customs Commissioners* [2018] UKUT 156 (TCO) and *Thurrock Council v Daoudi* [2020] (UKUT)209 (LC). The latter, a decision of Martin Rodger QC, Deputy President of the Lands Chamber, to which any appeal from this Tribunal lies, is more immediately relevant and, as Mr Mitchell submitted, essentially applies the test laid out in *Perrin* to financial penalty cases, the considerations in which are fairly closely akin to those in HMO licensing cases.
43. Mr Mitchell submitted that there are two questions to be asked, namely whether what is said by the Respondent is genuine and whether the Tribunal accepts that amounts to a reasonable excuse. He submitted that *Perrin* provides that it is a matter of judgment for the Tribunal as to whether it is objectively reasonable for the Respondent, with his characteristics, to have been ignorant of the law.
44. The Tribunal has carefully considered the above caselaw, albeit that it was familiar with *Thurrock* in particular. The Tribunal has no difficulty in accepting that the Respondent is genuine that he did not know that the

Property required a licence and accepts that the Respondent applied swiftly once aware. The key question is whether there was a reasonable excuse.

45. The Tribunal accepts that the Property would not have required a licence prior to October 2018. Mr Mitchell argued that the Respondent was within “a margin of error”.
46. The Respondent was able to provide no steps taken by him to regularly keep up to date with the requirements placed on landlords. He was not a member of any relevant organisation and had not subscribed to any publications or online sources of information. If modest and sensible steps had been taken, the overwhelming likelihood is that the Respondent would have been aware of the change in the law.
47. The Respondent and his wife own seven properties rented out- see below- and that apparently provides most of their income. They are professional landlords. They derive a significant income from letting properties, it is understood all to students. The Tribunal finds them to have thirty or thereabouts lettable rooms, which would, if all let at approximately £400 per month, produce a monthly income of some £12,000, a not insignificant sum, and providing a substantial annual income.
48. The Tribunal determines that the circumstances of the Respondent’s failure to hold an HMO Licence at the time of this tenancy do not objectively amount to a reasonable excuse.

The period for which the offence was committed

49. Mr Mitchell raised interesting arguments, not previously encountered by the members of the Tribunal, in relation to the period for which the HMO licensing offence was committed. There were three elements of that, which the Tribunal takes in turn and spends some time on given the preceding comment.

Early September 2019

50. The Tribunal takes the first period of time chronologically and the shortest one first. The Respondent’s Counsel argued that the Property should not be regarded as requiring a licence, and so the Respondent did not commit an offence, until the last of the tenants moved in on or about 17th September 2019 and so there were then five occupiers occupying the Property as their main or only residence or treated as so doing. In relation to the date, it was put to Ms Munnerley that the last of the five arrived on 17th September and she said she thought that was correct, although she was plainly unsure when giving oral evidence. Nevertheless, the Applicants’ written evidence was clear as to that date.
51. The Skeleton Argument did not mention the point- or indeed the Christmas holiday point below- at all. The oral argument was short. The argument had been made in the witness statement of the Respondent,

which made brief reference to the Applicants not all moving in at the start of the tenancy but doing so over a period of time and to the need for the Applicants to occupy for the Property to be an HMO. However, that appeared to be in the context of the, abandoned, section 254 argument. The Applicants did not directly address this point in their case and that may be because the witness statement was unclear at best that the particular argument advanced by Mr Mitchell was intended.

52. The Tribunal gave thought to whether the argument ought to be considered in those circumstances. However, the Tribunal is required to be satisfied to the criminal standard that an offence has been committed. This is not simply a situation of finding either a certain way or the other on balance, but rather of one of needing to find itself sure of the commission of a criminal offence. In the absence of that, it must determine itself not satisfied to the required standard that such an offence was committed. In those circumstances, the Tribunal determined that it would not be appropriate to refuse to consider the point because it not identifiably been set out previously. A different approach may well have been undertaken in another situation.
53. Plainly as a matter of fact, the Applicants did not physically occupy the Property for the purpose of a full-time course, or indeed at all, during the period before any of them actually moved into it. On the other hand, they had a tenancy agreement covering the period and so had legal occupation, or at least the right to it, during the early part of September 2019.
54. The Tribunal notes that one approach may be to look at the reason for occupation under the Tenancy Agreement of the Property in the round and not to attempt to slice that into different periods. In effect, the relevant occupation could arguably be for the purpose of or incidental to the full-time course of further or higher education and so cover the entire period of a tenancy entered into in order to provide accommodation during the academic year, rather than the same Property with the same tenants who took a tenancy for a given purpose being licensable for some of the period but not for another small part of it.
55. The Tribunal determines however that landlords of properties can cease to commit an offence where the number of occupiers drops below 5 and that the actual position must be considered rather than ignoring changes.
56. In addition, protections such as fire safety, which the licensing regime seeks to reinforce, are less significant where the tenants have not yet moved in.
57. The Tribunal has determined that it is not satisfied that an offence was committed during the period to mid- September 2019 on the cases presented.

Mid- March 2020 onwards

58. It was also argued on behalf of the Respondent that the Applicants ceased to occupy the Property for the purpose of their education courses in March 2020. Hence, it is argued, the Property ceased to be a licensable HMO.
59. The Tribunal finds that a rather unappealing point for the Respondent to take but one which must properly be considered on its merits, nevertheless.
60. As the Skeleton Argument states, it was understandable that the Applicants and the other tenant vacated the Property in or about mid-March 2020. The Skeleton continues by noting that in the event, only two of them returned other than to collect possessions. The Respondent does thereby concede that the Applicants and the other tenant continued to keep possessions in the Property and, in any event, the parties' cases about attendances to collect possessions firmly corroborate the Applicants and the other tenant having done so.
61. Nevertheless, the Respondent's submission is that the Applicants were not occupying the Property for the purpose of full-time study and so not as, or to be treated as, their only or main residence.
62. Ms Munnerley gave oral evidence that students were advised by Exeter University on 16th March 2021 by email to leave and to return to or otherwise move to accommodation in which they could remain long-term if required, rather than remaining and being stuck if a tenancy ran out. The Applicants produce a copy of the email. She said that the tenants all left soon after, all lectures having been cancelled, facilities closed and there being no support network in Exeter should one be needed. Ms Munnerley went to her parents' house. She sought to make more than she needed to about that being somewhere she otherwise visited rather than home, which the Tribunal did not entirely accept, although nothing turns on that in the event.
63. Ms Munnerley also gave clear evidence- and was pressed on the point- that she and the others left possessions in the Property and expected as at March 2020 to return to it, continuing to pay rent and bills. As she noted, it was not known back in March 2020 that the pandemic would be so severe and that restrictions would continue for the period for which they did and that lectures and exams would have to be dealt with online for the remainder of their final years of their degree courses. Food was left in the freezer. She said that she had expected exams would go ahead as normal and the Applicants had various tickets for events.
64. She added that as time went on, it became increasingly clear that even returning for graduation and social events was less and less likely and that she waited to see if moving back for a while was realistic but then she felt that was not going to happen. Ms Munnerley also stated, and the Respondent gave no contrary evidence, that Ms Ranger had contacted the Respondent about what to do and he had said that he would like the tenants to move out early so that he could clean before the new tenants moved in.

65. No specific case authorities were relied on by the parties on the point of whether the above was sufficient to constitute continued occupation. However, the Tribunal determines from its experience of other cases that across landlord and tenant and wider property law, such circumstances are accepted to constitute occupation and properly so.
66. The Tribunal rejects the argument that the Applicants and the other tenant ceased to occupy the Property for the purpose of their courses in March 2020, determining that they continued to do so, irrespective of the fact that in the event they were not themselves physically there, save for limited periods in the case of two of them, Ms Ranger and Mr Reay. Ms Munnerley could not say when they returned or for how long, but the Tribunal does not find that relevant.
67. The Tribunal has no difficulty in finding that by leaving possessions in the Property, not least where rent and utilities continued to be paid and the Applicants expected- at least initially and no doubt hoped if nothing more thereafter- to be able to return to, the Applicants continued to occupy the Property.
68. The Tribunal further finds that occupation was for the purpose of their courses at Exeter University. There was no other reason for the Applicants to occupy the Property. The Applicants courses did not finish until the end of the academic year. The Applicants may have been able to return to face-to-face teaching and to have taken exams at the university had matters turned out differently. The fact that restrictions were only relaxed somewhat later into 2020 such that they were then able to return to the Property if they wished to do so, does not alter their occupation from March 2020 having been for the purpose of their courses.
69. The Tribunal observes that the situation applicable to the Applicants is likely to have the same been as that applicable to many thousands of students at the time. The notion that they continued to pay rent and utilities for a property that they had expected to live in but were not in the event able to actually live in for an unexpected reason although which they retained and had possessions in anticipating return to it, but that they would be unable to seek repayment of rent otherwise repayable would run entirely contrary to the purpose of the legislation, such that any interpretation of the law that produced such a result would require a very clear basis for it. The Tribunal does not find one to exist.
70. The Tribunal rejects the Respondent's argument that there was no offence committed for the period from March 2020.
71. However, whilst it was not separately argued in this case, the Tribunal did give consideration to the question of whether occupation could have been said to still have been for the purpose of attending a full-time course of further or higher education once the Applicants had removed their possessions and returned the keys. Hence, whether there may have been the absence of an offence.

72. In this instance, the tenancy continued past that date and until 31st August 2021. As a matter of fact, the Applicants also did not occupy the Property for the purpose of a full-time course, or indeed at all, during the last weeks of the tenancy.
73. The position is therefore akin to that in early September 2019- see above. The fact that the Respondent encouraged the tenants to move out by early August despite having paid rent for the entirety of that month renders the rent repayment period ceasing at the point of the tenants moving out particularly unattractive. The Tribunal has considered carefully whether it should simply treat the period after around or about August 2020 the same as the remainder of the period later March 2020 in the absence of a specific argument being advanced in relation to the later and shorter period against that background.
74. The Tribunal has concluded, albeit with no great enthusiasm, that it cannot adopt that course.
75. The Tribunal is again required to be satisfied to the criminal standard that an offence has been committed and again, it is a situation of needing to find itself sure of the commission of a criminal offence. In the absence of that, the Tribunal must again determine itself not satisfied to the required standard that such an offence was committed. The attractiveness or otherwise of the outcome of that exercise is not relevant to its proper undertaking.
76. The Tribunal has concluded that it must therefore examine whether it is so satisfied in relation to any given period irrespective of whether the point has separately been taken in respect of that, not least where the August 2020 onwards period does form a part of the March 2020 onwards period.
77. The Tribunal has determined that from the date at which the first of the five tenants gave up possession by removing possessions and handing keys back, such that there were four tenants at most- and thereafter rapidly reducing to none- it is not satisfied to the requisite criminal standard that the Property continued to be licensable.
78. In terms of the relevant date, the evidence is that there were fewer than five tenants continuing in occupation after 31st July 2020. Ms Munnerley's oral evidence in response to questions by the Tribunal was that she left "some time at the end of July" and so was not precise that 31st July was the exact date. The Tribunal considered the possibility that the date may be a day or two earlier.
79. However, the rent for July 2020 had been paid at or about the start of July 2020 for the entire month, where the Tribunal is satisfied that an offence was committed at that time. If the Respondent did not commit an offence for the last day or two of July, there is no effect on the rent paid during the time in which an offence was committed and hence the Tribunal has

determined that it can safely adopt the date of 31st July 2020 for the purpose of this application.

80. It is not completely clear that any later tenants only occupied from 1st September 2020. However, more pertinently for these purposes, the Tribunal cannot be sure that the Property did become licensable again during the remaining period for which the Applicants had paid rent and because of five or more new occupiers.
81. The Tribunal therefore determines that the Respondent did not commit an offence from 1st August 2021 inclusive onward.

Christmas holidays 2019 to 2020

82. On a rather more limited level, Mr Mitchell also argued that all of the occupiers left over the Christmas break and were not present in the Property during that period. Hence, he argued that no licensing offence was committed during that period.
83. The Tribunal addresses that in short order. The same principles apply and even more so than did in relation to period March 2020 onward, namely that the Applicants kept possessions in the Property and intended to return, as indeed they did for the next term. Leaving the Property for the period of a holiday period with the academic year of a full-time course cannot sensibly mean that they ceased to occupy the Property for the purpose of that course.
84. It follows that the Tribunal rejects the Respondent's case in respect of that short period.

The decision in respect of making a rent repayment order

85. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondents committed an offence under section 72(1) of the 2004 Act, a ground for the making of a rent repayment order has been made out.
86. Pursuant to the 2016 Act, a rent repayment order "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, such circumstances will be rare and in the normal course, it will be plain that a rent repayment order should be made.
87. That the very clear purpose of the 2016 Act is to support good landlords and to crack down on rogue landlords and the fact that the imposition of a rent repayment order is penal, to discourage landlords from breaking the law, and not to compensate a tenant- who may or may not have other rights to compensation- must, the Tribunal considers, weight especially heavily in favour of an order being made if a ground for one is made out.
88. The Tribunal can identify no reason why this should be a rare case in which an offence has been committed but a rent repayment order should

not be made. The Tribunal exercises its discretion to make a rent repayment order in favour of the Applicants.

The amount of rent to be repaid

89. Having exercised its discretion to make a rent repayment order and determined the period for which the order should be made, the next decision is how much should the Tribunal order. 100% of the rent paid is the mandatory amount during the appropriate period, if there had been an actual conviction unless there are exceptional circumstances. In the absence of conviction, the relevant provision is section 44(3) of the 2016 Act.
90. Therefore, the amount ordered to be repaid must “relate to” rent paid in “a period, not exceeding twelve months, during which the landlord was committing the offence”. In this instance, the period for which an order may be made is less than twelve months, given the periods in which the Respondent was and was not found to have committed an offence. The Tribunal cannot order more to be repaid than was actually paid out by the Applicants to the Respondent during that period.
91. In that regard, the Tribunal is mindful of the fact that the other tenant paid 11 months’ worth of £400 per month of the overall rent paid to the Respondent. That was not rent paid by these Applicants. The month’s rent not paid by the other tenant does not relate to these Applicants but in any event, there was no licensing offence committed in relation to that month.
92. The Tribunal has a discretion as to the amount to be ordered, such that it can and should order such amount as it considers appropriate in light of caselaw and the relevant facts of the case.

Relevant caselaw

93. The Tribunal has had particular regard to the decisions of the Upper Tribunal within the last approximately twelve months, during which time several decisions have been made in relation to rent repayment order cases, in particular four decisions in relation to the amount of such an order in cases where the application does not follow the landlord being convicted of an offence.
94. The first was *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) which was followed last year by *Chan v Bilkhu* [2020] UKUT 3290(LC). Early this year came *Ficarra and others v James* (2021) UKUT 0038 (LC) and then a little more recently *Awad v Hooley* [2021] UKUT 0055 (LC), the last of which was specifically referred to by the Respondent’s Counsel and which refers to the earlier decisions. The decisions are all well-known to the Tribunal.
95. Section 44 of the 2016 Act identifies factors to be considered in respect of an application such as this one which is made by a tenant. Section 44 does not when referring to the amount include the word “reasonable” in the way

that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan* that there is no longer a requirement of reasonableness. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. For the avoidance of doubt, the Respondent in this case did not pay the utilities and so the rent does not require adjusting for that reason.

96. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on landlords and to operate as a fierce deterrent.

97. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid- and not simply any profit element which the landlord derives from the property, to which no reference is made in the 2016 Act.

98. The Upper Tribunal confirmed the approach to be taken and as indicated in *Vadamalayan* in its decision, also of Judge Cooke, in *Chan*.

99. In *Vadamalayan*, the Upper Tribunal also said as follows:

“That means that there is nothing to detract from the obvious starting point, which is the rent itself for the relevant period of up to twelve months. Indeed, there is no other available starting point, which is unsurprising; this is a rent repayment order so we start with the rent.”

100. The above statement has generally been treated as suggesting the starting point for the level of award following an exercise of discretion to make a rent repayment order was the award of the full rent paid during the applicable period. That is rather than the statement having related to awards being made with consideration of the actual rent as opposed to profit derived from renting out.

101. The Tribunal understood the reference to the rent paid being the starting point, insofar as there is one, was to emphasise that the Tribunal must consider the rent as opposed to profit on rent and is not, as commonly perceived, to indicate that the starting point for the amount of the award is properly the full rent for the relevant period. To the extent that the wording may have appeared to indicate the latter, the Tribunal considered there to be some doubt whether that was intentional. In any event, matters have moved on.

102. In *Ficarra*, the Deputy President, Martin Rodger QC, observed in paragraph 50 as follows:

“The concept of a starting point is familiar in criminal sentencing practice, but since the rent paid is also the maximum which may be ordered the difficulty with treating it as starting point is that it may leave little room for matters which section 44(4) obliges the FTT to take into account, and which Parliament clearly intended should play an important role”

103. The Deputy President continued in paragraph 51 by stating:

“It has not been necessary or possible in this appeal to consider whether, in the absence of aggravating or mitigating factors, the direction in section 44(2) that the amount to be repaid must relate to the rent paid during the relevant period should be understood as meaning that the amount must equate to that rent. That issue must await a future appeal. Meanwhile *Vadamalayan* should not be treated as the last word on the exercise of discretion which section 44 clearly requires.”

104. He noted that:

“neither party was represented in that case and the Tribunal’s main focus was on clearing away the redundant notion that the landlord’s profit represented a ceiling on the amount of the repayment.”

105. The Deputy President also stated prior to that and in paragraph 32:

“One would naturally expect that the more serious the offence, the greater the penalty.”

106. In *Awad*, Judge Cooke noted that as there had been a number of decisions about the amount of rent repayment orders pursuant to section 44 of the 2016 Act, it may be helpful for her to summarise the position. The summary is briefer than that set out above but the two are consistent. Much of the summary comprises quotation of *Ficarra*, most of which is quoted above.

107. Judge Cooke continued in paragraph 40 by stating that she agreed with the above analysis, noting that *Awad* could not be the last word on the matter either.

108. The Judge then stated;

“The only clue that the statute gives is the maximum amount that can be ordered, under section 44(3). Whether or not the maximum is described as the starting point, it clearly cannot function in exactly the same way as a starting point in criminal sentencing, because it can only go down: however badly a landlord has behaved it cannot go up. It will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4). The statute gives no assistance as to what should be ordered in those circumstances; nor can this Tribunal in the absence of a suitable appeal”.

109. Whilst neither *Ficarro* or *Awad* therefore provide a definitive statement that the full rent paid is not the “starting point” but rather is the maximum possible, it is apparent that the emphasis was firmly placed on considering the factors in the 2004 Act and moves away from the apparently commonly perceived effect of *Vadalamayan*.

110. The Tribunal does not consider that the effect of Vadalamayan is the Tribunal should award the maximum amount of rent repayment in the absence of conduct on the part of the Applicants to merit a reduction and is certainly not the position following Ficarra and Awad, which re-emphasise the Tribunal's discretion to award the sum considered appropriate, applying the provisions of the 2004 Act.
111. The Tribunal considers that it follows from all of the above Upper Tribunal authority that the Tribunal should not approach the amount of a rent repayment order by looking to award repayment of the rent in full in the absence of a sufficient reason to reduce it. Rather, considering the full rent paid as opposed to the landlord's profit element or some other lower figure, the Tribunal should then consider in the round the level of rent repayment order that imposes the appropriate level of penalty on the landlord in light of all of the factors relevant. That is not the "reasonable" figure- and may or may not appear reasonable as compared to other types of awards or penalties- but which is the appropriate figure applying the relevant factors.
112. The Tribunal needs to do so in the particular circumstances of the given case, where each case will continue to be different to others. Such an exercise is a regular occurrence in the work of the Tribunal.

The relevant factors and the appropriate award

113. An offence having been found to the criminal standard to have been committed and the Tribunal having decided to make a rent repayment order section 44(3) of the 2016 Act then requires the Tribunal to, in particular, take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which Chapter 4 of the HPA 2016 applies when considering the amount of such order.
114. Whilst the listed factors must therefore be taken into account, and the Tribunal should have particular regard to them, they are not the entirety of the matters to be considered- other matters are not excluded from consideration. Any other relevant circumstances should also be considered, requiring the Tribunal to identify whether there are such circumstances and, if so, to give any appropriate weight to them.

Financial circumstances

115. In terms of the financial circumstances of the landlord, the Respondent's representatives' Skeleton Argument indicates that the Respondent is retired and that the rental income from the Property and other is his main source of income, which the Respondent repeated in his oral evidence. The Respondent did produce a tax return but that was not the clearest as to income and financial resources. The Respondent stated in oral evidence that he has in the region of £15,000 savings in ready funds and is asset-rich but not cash-rich, most monthly income being spent.

116. It is also apparent that the rent achievable on the properties rented out, as mentioned above, was in the broad region of £12,000 per month between the Respondent and his ex-wife. That in itself, and ignoring any other sources of income, is a significant monthly sum, as also noted above. There is no information as to how that is divided between the two of them.
117. It is apparent that seven properties owned by the Respondent and his wife have capital value. Whilst no evidence was provided of the specific value of the two properties rented out the Tribunal finds from its own experience of property prices generally and of Exeter and its surroundings that the combined value will be considerable, probably at the very least £2million. The Tribunal accepts the net equity to be somewhat lower than the market value.
118. The Applicant have also referred to the Respondent having a property in Spain, which was not disputed on behalf of the Respondent, although the Tribunal has no information as to the nature or value of that property. No information was provided as to whether the Respondent owns the house in which he now resides.
119. The fact that the Property and the other ones owned are said to be mortgaged, is of no relevance to the level of rent, applying *Vadalamayan*, albeit the amount of any mortgage payment reduces the money available to the Respondent to otherwise spend.
120. The Tribunal has no difficulty in finding that the Respondent's financial circumstances are no reason to reduce the level of rent repayment order otherwise appropriate. Potentially, the financial circumstances are a reason to increase it, although in the event the Tribunal has concluded that in the context of other factors they do not on this occasion.

Conduct- Respondent

121. There are a number of allegations by the Applicants in relation to the Respondents' conduct. The majority of the oral evidence heard, and so most of the morning of the hearing, related to this aspect.
122. The first of the Applicants' assertions was with regard to repairs. Mr Mitchell put to Ms Munnerley that the Respondent had been responsive generally and had not fobbed off the Applicants. She accepted that he was to the extent of replying to text messages but was less accepting otherwise. She replied to questions of the Tribunal that the Respondent asked the tenants to do things that he should, referring to specific matters addressed below. She agreed that when the Respondent had been contacted by two of the tenants about their mattresses, he had replaced them.
123. Ms Munnerley also accepted when pictures of mould growth were sent to the Respondent in December 2019, the Respondent replied that there appeared to have been storm damage and that he arranged a roofer, who resolved that. She also accepted that ceiling mould seemed to relate to that. In relation to the mould and damp, the Tribunal notes that the Applicants'

photographs show black mould and not obvious tide marks or other water staining. It is not obvious that there was much, if any contribution from storm damage and how that occurred. The Tribunal agrees with the evidence of the Respondent that the mould appears to arise from internal sources.

124. Much of the mould shown to Ms Munnerley's room is to an outside corner, likely to a colder than average area of the room, and behind a desk, where air flow is likely to have been limited, and so not obviously indicative of defects normally the responsibility of the landlord, being more obviously the consequence of internal moisture and mould having formed in areas prone to that. Ms Munnerley also accepted that clothes had been dried in the property, stating they had been put on clothes driers because there was no tumble drier and they would not dry outside. The Tribunal considers that may well be correct but nevertheless the high likelihood is that the moisture from the clothes contributed to damp and mould growth.
125. It was also said that the tenant of one of the ground floor room had asthma and was concerned about ventilation for his room, to which there was no window, only an external door. He was said to be reluctant to open the door because of concerns as to security. The Tribunal did not consider the position ideal and could identify benefits in an opening window but noted that there was no suggestion of anything defective with that area of the house and was doubtful that the door could not have been opened when the particular tenant was in the Property.
126. Nevertheless, as referred to further below, there was a period in which the boiler was not operating properly and the Applicants' case, which the Tribunal finds cogent, is that the heating did not work as it should during that period. The Property was therefore colder than it would have been if the heating had been in proper working order. Necessarily that meant that the capacity of the air in the Property to hold moisture was lower and encouraged mould growth, not least in the particularly cold areas and areas with less air flow.
127. Ms Munnerley stated that because of concerns about the fact that following the attendance of the roofer the mould continued to get worse the tenants contacted Exeter City Council, from where one Scott Carpenter, described as a senior environmental health officer, attended, the Applicants' written evidence said on 28th February 2020. Ms Munnerley stated in oral evidence that Mr Carpenter said that he believed that some of the mould related to the tenants' lifestyle and some from issues with the boiler and heating. There is no direct evidence from that officer. However, his opinion is consistent with that which the Tribunal regards as most likely on the evidence and as set out above.
128. It follows that there was some obligation on the part of the Respondent to attend to damp and mould to the extent that was contributed to by the boiler problems. However, addressing only the mould and related elements of the condition of the Property and separate to the other aspects

separately discussed below, taking the mould and damp and related in the round and given the different contributory factors, in part caused by the Applicants and in part by the Respondent save to any extent caused by storms out of the control of either, the Tribunal does not find there to be conduct which should increase or decrease the level of rent repayment order otherwise appropriate.

129. The most significant element of conduct in relation to the boiler relates to the fact that it did not, Ms Munnerley said, work properly. Her evidence in that regard was not challenged.
130. One of the elements of delegation to the tenants by the Respondent was to ask them to open a valve on it. The Respondent freely accepted that. He said that he considered that the water needed topping up and said that once it had been, the boiler started. However, he also accepted that the boiler kept losing pressure and he said that he arranged for a gas engineer to attend when problems continued and he realised it couldn't be topped up. All that was done by him from afar. He stated that the boiler ended up with a new valve being fitted by his gas engineer. The Tribunal has insufficient information to determine that the approach was dangerous. However, asking students with no know knowledge of boilers to tinker with them is scarcely satisfactory and the second relevant element of conduct.
131. In a similar vein and thirdly, the Tribunal finds the Respondent's approach to fire safety to be some way from satisfactory and potentially more dangerous. He asserted that he addressed the smoke alarms. However, the Respondent did not provide working smoke alarms at the start of the tenancy but rather provided a pack of battery-operated smoke alarms for the tenants to fit, that much was agreed, asking them to be placed where the old ones were situated. Ms Munnerley added and the Tribunal accepted, that the new alarms did not fit where the old ones were and had to be screwed into the ceiling, by Ms Munnerley herself and with considerable difficulty given the locations in which they had been asked to be placed. It is not entirely clear whether the alarms operated properly, although no occasion arose in which that was put to the test.
132. The Tribunal further finds that there was no adequate fire protection by way of a fire door. Ms Munnerley put to the Respondent that there should have been, Mr Carpenter advising so. The Respondent replied that it has been addressed now but he conceded that he had not thought of it previously.
133. Whilst the Respondent's oral evidence was that although he had not kept up to date with legal requirements in terms of licensing, he was concerned to in relation to safety, the Tribunal was not persuaded that evidence was correct, in light of the above.
134. The Tribunal expresses some doubt as to whether the Property should have been able to obtain a licence as let to the Applicants and the other tenant. All else aside, the acceptance by the Respondent that fire doors had to be hung indicated not, although it should be mentioned that the

Respondent said that no other work was required before the licence was granted, which the Tribunal has no reason to disbelieve.

135. Fifthly and at a lower level, whilst it was put to Ms Munnerley that the Energy Performance Certificate and gas safety one were on top of the fridge and in the meter cupboard, Ms Munnerley was very clear that they were not, which the Tribunal accepts. In addition, the Tribunal was not impressed with the Respondent asking the Applicants and the other tenant to move out in early August so that he could clean the Property. There is no hint that any accommodation was proposed by him in respect of the rent for the remainder of the tenancy. The Tribunal considers that it is for the Respondent to provide a suitable gap between tenancies such as to facilitate cleaning, redecoration and any similar matters that may be required, not to seek tenants leaving early but still paying, or only attending to matters such as cleaning after a tenancy has commenced and tenants are already paying.
136. Another aspect of conduct of the Respondent, albeit one that the Tribunal has determined in this instance should be given modest weight, is that the Respondent plainly sought to encourage the tenants to vacate the Property ahead of 31st August 2020, despite the fact that they had paid until that date and unquestionably could have remained in the Property to the very last minute on that date had they wished to do so. The Tribunal finds on the evidence presented, included copies of text messages, that the Respondent pushed the Applicants to leave early and for the Respondent's convenience in arranging the undertaking of works ahead of the commencement of the next tenancy.
137. The text messages say that the Respondent's builder will be painting over the next weeks from late July to the end of August 2020, although not because of any reason connected to the actual tenants. There was a threatening tone in relation to deducting costs of cleaning and similar from the deposit paid. The Respondent had, the Tribunal determines, sought to maximise the income generated by leaving no gap between tenancies. If the Applicants had remained until the last day of their tenancy, as they were entitled to, and the Respondent had no time to attend to the Property ahead of the new tenancy, that would have been the Respondent's own problem and one avoidable by providing for an appropriate fallow period.
138. The final element of conduct of the Respondent it is not in dispute that he failed to protect the Applicants' deposit of £4200 within 30 days of receipt in accordance with section 213 of the 2004 Act. The Respondents' representative submitted that was an oversight. That may well be corrected- and no contrary evidence was adduced, nor was the assertion challenged. However, that makes two contended oversights- failure to obtain an HMO licence and failure to protect a deposit in anything like the required time and both in relation to fundamental protections for tenants pursuant to legislation.

139. That does demonstrate a sloppy approach to compliance with the responsibilities of a landlord. The Tribunal finds the dealing with the deposit significant relevant conduct.
140. The deposit was repaid by the Respondent in full following the Applicants vacating the Property. That was notwithstanding the asserted failure to pay the final month of rent by the fifth tenant and notwithstanding the assertions by the Respondent that the Applicants did not leave the Property in a satisfactory condition on vacating it.
141. The Tribunal accepts that no loss was suffered by the Applicants and the required protection was put in place, albeit most of a year later and only in November 2019, following payment in November of the previous year. Equally, the deposit was, as said above, paid back in full following the end of the tenancy. The Tribunal makes no finding as to whether that affected the decision of the Respondent to repay the deposit in full, as to which there was no evidence and no inference can properly be drawn.

Conduct- Applicants

142. The Tribunal does not accept the Respondent's assertion that the condition of the Property on the vacation of it is such as to amount to relevant conduct on the part of the Applicants. The Tribunal noted the Respondent's evidence that his own children had attended university and his perspective as a parent was relevant, which is understandable. The Tribunal also noted that the Respondent said that the Property was to be decorated. Set against those matters and in light of the return of the deposit in full, the Tribunal finds that the condition of the Property may well have been within a range of potential acceptable conditions. On balance, there was insufficient to persuade the Tribunal of negative conduct on the part of these Applicants impacting on the level of rent repayment order.
143. The Respondent said in evidence that Ms Munnerley's room was left in good condition but the rooms of others of the tenants were not. He was adamant that there were two van loads of bedding and personal items to clear. Ms Munnerley could not give contrary evidence. The Respondent was not precise as to whose items and from which room(s)- he was asked but was candid that he could not remember. Ms Munnerley queried the Respondent's lack of photographic evidence to support his oral evidence, although the Tribunal accepted the Respondent's explanation that he had not required evidence because he was returning the deposit in full rather than retaining any of it. That was an entirely plausible and sensible explanation. Nevertheless, the lack of photographic evidence necessarily meant that the only evidence available to the Respondent was his own oral evidence.
144. In any event, there was something of a dispute as to whether the condition of the Property was satisfactory at the start. The Tribunal accepts the evidence of Ms Munnerley that the Respondent was cleaning the Property on the day she moved in, thirteen days into the tenancy, and was

removing items such as duvets and pillows. Ms Munnerley was quite clear that the Respondent said to her parents that he was in a rush and that they helped her to clean. Her evidence was cogent and credible.

145. The Tribunal further notes that the Respondent's own evidence was that he only removed items left by the previous tenants in the garden in February 2020, approaching six months into the tenancy. That is indeed a further aspect of unsatisfactory conduct on the part of the Respondent, although of relatively modest weight.
146. The net effect of the various above matters is that the Tribunal finds that there were some failings on the part of the Respondent as to the condition of the Property at the start of the tenancy. Whilst those are far from the most significant aspect of the conduct elements, it does add to the unsatisfactory picture. The Tribunal finds there to be insufficient evidence for it find that the Respondent had been letting the Property during the term of the tenancy but prior to the tenants moving in date, albeit noting that the Respondent was adamant in evidence that he had not been and Ms Munnerley was adamant that he had said the contrary. Nothing as to the amount of the rent repayment order turns on the point.
147. The unchallenged evidence of Ms Munnerley was additionally that Mr Carpenter told the tenants that the Property had no licence for a HMO and required one. Ms Munnerley said, and it appeared to the Tribunal entirely likely, that the tenants hitherto had no knowledge that a licence was required. The fact that the Applicants had been informed by the Council in February 2020 does not, the Tribunal determines, take matters very far for the Respondent. Mr Mitchell sought to argue that it was very relevant, which it follows the Tribunal does not fully accept.
148. It is undoubtedly right to say that if the Applicants, or more obviously the Council, had told the Respondent in or about February 2020 that the Property was required to have an HMO licence, the Respondent would most likely have applied for one. The fact that he did so swiftly on receipt of this application provides strong evidence for that. Similarly, the Tribunal accepts his evidence that he was not told. Assuming no issues with that application such that it was rejected, the period for which the Applicants could have applied for a rent repayment order would unquestionably have been that much shorter. The Tribunal can understand that the Respondent might, with some foundation consider that if only he had been told then, the amount now sought would be much lower.
149. However, having considered this point carefully, the Tribunal finds that it was not for the Applicants to inform the Respondent. Rather, it was for the Respondent to have established the relevant requirements and to have complied with them. There is a good argument for saying that it was also the responsibility of the Council to inform the Respondent or to otherwise take action. However, the Council is not a party and the absence of action by it should not reduce the order in favour of the Applicants. Mr Mitchell properly raised the fact that Mr Carpenter was said to have told the Applicants that he could hold off action. He asserted that Ms Munnerley

asked him to do so. However, she did not state that in terms in her evidence and was not asked in such detail about the conversation.

150. The Tribunal notes that Ms Munnerley was candid that Mr Carpenter had told her that an application for a rent repayment order could be made and even provided an example of broadly similar case of students who did so. It is not hard to imagine that contributed to the Applicants making this application when they later did so.
151. On careful consideration, the Tribunal accepts the evidence of Ms Munnerley that the Applicants did not at the time contemplate an application for rent repayment order, albeit that some months later they went on to make one. She said that the Applicants were concerned not to cause any difficulties with the Respondent and hoped issues with the Property could be resolved. There is no other evidence to gainsay her evidence and the Tribunal was generally happy with her credibility. Equally, it is reasonable to perceive that raising issues might cause difficulties and that students, not least ones not long from final exams, might be reluctant to do that.
152. In contrast, the Tribunal accepts that the Applicants would have expected the Council to take any relevant action. The Tribunal is also mindful that not long later, the Covid-19 pandemic caused the university to issue its advice and so the Applicants, who were also facing final exams, probably had other apparently more significant matters with which to concern themselves.
153. The Applicant were entitled to seek an order in relation to the time for which the Property was not licensed. The Tribunal would not consider appropriate any assertion that the Applicants have been opportunistic, which in fairness to the Respondent was not raised by him. Nevertheless, the Tribunal did put the point to Ms Munnerley. It is of some note that the Applicants, as Ms Munnerley submitted, continued to pay the rent- and they could not know how much rent they might receive back even if they hoped to receive some- and that they also paid bills, acting simply in a manner consistent with tenants expecting to return to the Property and otherwise in accordance with their obligations.
154. For the avoidance of doubt, the Tribunal also finds that the Applicants were perfectly entitled to remain as tenants of the Property until the end of their tenancy on 31st August 2020 and it is understandable that they did not seek to obtain other accommodation during the period of tenancy agreement by which they were bound, in the middle of an academic year and in lockdown. It is also of some relevance that the fifth tenant paid the rent, save for the last month, and has not pursued an application. The Respondent retains in these proceedings the benefit of his payments.
155. The Tribunal does not consider that there is any other conduct on the part of the Applicants which might properly go to reduce the level of award otherwise appropriate.

Other consideration

156. Adding the offence and the conduct together, the Applicants resided in and paid rent for a house unlicensed, without a secured deposit for much of the time, without full fire safety and with a less than satisfactory approach to other matters as set out above.
157. There is no evidence to suggest that the Respondent has received any previous convictions in respect of any relevant offence. The Tribunal does not consider that there are factors other than those identified above to which weight ought to be given.
158. Albeit that there are examples of “rogue” landlords whose dealings with the relevant obligations were far worse than the Respondent, including with much worse behaviour about wider and/ or more substantial matters and for longer periods, and the Tribunal does not consider that the Respondent should be described as a “rogue” landlord, the Respondent did commit an offence. In addition, there were instances of conduct which caused difficulty to the Applicants in the ways described above or otherwise were in breach of requirements or otherwise unsatisfactory. The Respondent did not come across as in any way unpleasant or difficult but did present as not fully appreciating the requirements on landlords and the importance of compliance with them.
159. The Tribunal considers those elements of conduct must go to increase the amount of the repayment order appropriate. The Respondent’s efforts to argue a series of matters related to the need for the licence or the period of that and various other matters does not improve his position at all. The Tribunal does not find that the Respondents’ financial position should, on balance and in this instance, increase the level of order appropriate from that otherwise appropriate for the offence and conduct.
160. The fact that the Applicant’s did not suffer identifiable harm in the event by the failure to obtain a licence and comply with any requirements has no relevance to the level of penalty appropriately imposed on the Respondent; it might well if the Tribunal had been considering the appropriate level of a payment of compensation.
161. The fact that the Applicants in principle and the Council more particularly were aware that the Property should be licensed as at February but the Respondent was not informed is, whilst not a matter of conduct on the part of the Applicants, a consideration which should be given a degree of weight when taking matters in the round, much as the Tribunal considers that degree must in the context of other matters be a relatively modest one, bearing no direct relation to the rent during the remaining months of the tenancy.

The amount of the repayment

162. Having considered the cases presented, the findings made and the factors specifically referred to in section 44 of the 2016 Act, and no others

having been advanced, the Tribunal determines that the appropriate level of rent repayment order is 70% of the rent paid during the period from 17th September 2019 until 31st July 2020.

163. The Applicants had clearly agreed to pay different contributions towards the rent. The Tribunal considers that treating the rent payments separately Applicant by Applicant is the appropriate approach to take.

164. The total rent paid by each of the Applicants during the above period was:

Chloe Munnerley	£4186.86
Jessica Ranger	£4605.55
Ellen Bowditch	£4186.86
Nicholas Reay	£4186.86

165. Therefore, the rent to be repaid is apportioned to reflect the level of rent paid by each of the Applicants, being 70% of that rent in each instance.

166. The level of rent repayment order in favour of each Applicant is therefore as follows:

Chloe Munnerley	£2930.80
Jessica Ranger	£3223.88
Ellen Bowditch	£2930.80
Nicholas Reay	£2930.80

Application for refund of fees

167. The Applicants asked the Tribunal to award the fees paid in respect of the application should they be successful, namely reimbursement of the £100 issue fee and the £200 hearing fee.

168. An application fee having needed to be paid in order to bring the claim and the Applicants having been successful in the proceedings, the Tribunal considers that it is appropriate to order and the Tribunal does order the Respondent to refund £100 to the Applicants. The Applicants necessarily paid the hearing fee for the hearing held and having been successful, it is also appropriate to order the Applicants to be refunded from the Respondent the £200 hearing fee paid.

169. Ms Munnerley stated that the Applicants split the fees between them. The Tribunal accordingly orders the fees to be paid the Respondent one-quarter to each Applicant.

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 by email to rpsouthern@justice.gov.uk 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.