FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/18UC/HMF/2021/0005
Property	**:**	3 Tresillian Gardens, Exeter, Devon, EX4 7AJ
Applicant	**:**	Julius Lord Jamie Galal Owen Berry Daniel Waters
Representative	**:**	Mr Mcclenahan, Justice for Tenants
Respondent	**:**	David Peploe (1) Alison Peploe (2)
Representative	**:**	
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 Mr S Hodges FRICS Mr M Jenkinson
Date and venue of hearing	**:**	16th June 2021, North Somerset Courthouse and by video- hybrid hearing
Date of Decision	**:**	21st 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 a rent repayment order in favour of the Applicants, in the overall sum of £9262.66, to be paid within 28 days to the individual Applicants in the following sums:**

Julius Lord	**£2075.84**
Jamie Galal	**£2075.84**
Owen Berry	**£2555.49**
Daniel Waters	**£2555.49**

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.**

Application and Background

5. By an application dated 14th December 2020 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 July 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 HMO licence for 3 Tresillian Gardens, Exeter, Devon, EX4 7AJ ("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 living room and kitchen The Respondents jointly own the Property. The Applicants were, at the relevant time, students attending the University of Exeter.

7. The four Applicants and one other tenant on the one hand (collectively "the tenants") and the Respondents on the other hand entered into a single written tenancy agreement, as varied by a Deed of Assignment from one other originally intended tenant to Mr Berry, (as a whole "the Tenancy Agreement") for the whole Property for a term commencing on 1st September 2019 and lasting eleven months until 31st July 2020. The overall monthly rent was £498, 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 identical, £498 each. 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. The total rent paid by the Applicants during the tenancy was asserted to be £20,916.00, the sum being less than eleven months' worth of rent for each of the four Applicants, two of them having failed to make the agreed payment for the last month of the tenancy.

The law and jurisdiction in relation to Rent Repayment Orders

9. 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.

10. 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).

11. 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.

12. 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 in relation to the commission of an offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

13. 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.

14. 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. This aspect is discussed rather more fully below.

The history of the case

15. In brief summary, on receipt of the application made by the above named, the Tribunal issued Directions dated 11th March 2021, providing for the parties to provide details of their cases and the preparation of a hearing bundle.

16. The hearing was originally directed to be dealt with as video proceedings. Applications were subsequently made by the Respondents for a hearing in person due to internet difficulties at their home combined with reduced hearing on the part of the First Respondent, which was granted, and then following that grant, by the Respondent for a hearing by video.

17. The application was listed after consideration of the appropriate course for final hearing by way of a hybrid proceedings, varying the previous Directions to that extent. The Tribunal itself and the Respondents attended at North Somerset Courthouse. The Applicants and their representative attended remotely by video and were visible on personal devices and two large screens in the courtroom.

18. The hearing bundle was received, although not in accordance with the Directions. Those stated

    "21. The bundle shall contain **one** of each relevant document and shall include:"

19. The Applicants' representative did not follow that clear instruction, which it might be anticipated was given for a reason. The bundle contained two copies of the application form, the tenancy agreement, sixty pages of bank statements of each Applicant, the Respondents' title documents, Directions by the Tribunal and other documents which served no useful purpose at all. The net effect was a significant quantity of additional documents through which the Tribunal quite unnecessarily had to navigate.

20. It is trusted that those such as the Applicants' representative who regularly represent Applicants before this Tribunal- and indeed any others preparing bundles- will take the trouble to read and comply with the Directions as to the content of bundles. By a narrow margin, the Tribunal did not alter its approach to the fees paid for this reason: it should not be assumed that the same approach will necessarily be taken another time.

The hearing

21. Mr Mcclenahan and all of the Applicants attended the hearing. Mr Lord and Mr Berry provided the principal oral evidence further to their written evidence and the other documents containing statements of truth signed by all of the Applicants. Brief oral evidence was given by Mr Galal and Mr Waters. The Applicants' written evidence principally included the tenancy agreement, evidence of rent payments, photographs taken and documents about licensing and the deposit.

22. The Respondents attended, representing themselves. Oral evidence was principally given by the Second Respondent. The Respondents' written evidence consisted firstly of the matters of fact contained in a Statement of Response, signed by both Respondents, together with a further statement also signed by both. The other documents relied on by the Respondents principally added tax returns, emails with the tenants, communications with Exeter City Council, including the licence when granted, and inventory and other photographs at commencement and following vacation.

23. The essence of the Applicants' written case was that the Property was required to be licensed and was not. Additionally, issues were raised about certain matters relating to the condition of the Property. The essence of the Respondent's written case was positive conduct of the Respondent, some negative conduct of the Applicants and the Respondent's financial position.

24. The Tribunal additionally raised the issue of whether there was a reasonable excuse for the failure to obtain an HMO licence, given the matters set out in the Respondents' evidence. The Tribunal was mindful that it was asked to find a criminal offence was committed and the Respondents' case identified a potential defence, notwithstanding that the Respondents had not raised that defence explicitly.

25. The Tribunal further raised the question of whether the Applicants could demonstrate that an offence would in any event have been committed for the entire period of the claim, noting that the Applicants did not occupy the Property for the entire time of the tenancy agreement.

26. The evidence received and the submissions made, both oral and written, are not dealt with 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?

27. 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.

28. 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 were undertaking a full-time course of further or higher education. Irrespective of whether the Applicants occupied the Property as their only or main residence for the purpose of section 254(2)(c) of the 2004 Act, section 259(2)(a) of the 2004 Act specifically relates to students such as the Applicants were and states 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. The Respondents did not dispute that the occupation by the Applicants was for that purpose.

29. It was common ground that the Respondents applied for a licence for the Property in August 2021. The Respondents stated in evidence that they had been contacted by Exeter City Council and indicated that to have been in or about, March 2020. Mrs Peploe was unsure when, saying that the Applicants were in Cornwall for approximately two months of early 2020 fixing the roof of one of their holiday properties. She said that a paper form was requested, did not arrive and was chased, after which one was sent. However, for various reasons, which were not the Tribunal finds related to the condition of the Property or its ability to be licensed, they did not apply straight away. The application was only made- and the Respondents only have the statutory protection that comes from having applied- in August 2020. The Respondents had not, Mrs Peploe said, contacted Exeter Council prior to being written to, which the Tribunal accepted.

30. 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".

31. 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 Respondents accepted that there was no Licence in place and did not suggest that they did not manage or control the Property. Indeed, they plainly did do.

32. 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) on dates considered below.

Is there a defence of reasonable excuse?

33. Where the Respondent would otherwise have committed an offence under section 72(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 72(5).

34. 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.

35. The Respondents' factual case amounted to the Respondents having been "caught out" by the change to the circumstances in which an 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.

36. The Respondents' evidence was that they instructed a student letting agent, Cordens, when they first rented out the Property in 2010. The agent told them about the relevant regulations, including advising that the Property would not need a HMO licence, entirely correctly at that point in time. Advice was also received about fire and other relevant regulations. Mrs Peploe said that the Property was already "incredibly well catered for" in terms of fire safety from its previous use as a home for young adults with learning disabilities and with live-in carers. Mrs Peploe also said in response to questioning that the Respondents undertook regular PAT testing, testing of smoke alarms and fire alarms, gas safety checks and had replaced the boiler eighteen months prior to the Applicants' tenancy. The Respondent checked the house, including fire doors, and garden before letting. The electrics and plumbing were checked by tradesmen. The Respondent complied, Mrs Peploe said and the Tribunal accepts, with the regulations of which they were aware. The bundle revealed that the deposit had also been protected within the required time.

37. It was asserted that the Respondents would have applied for the Property to be licensed if they had known that they needed to do so. Further, that on being contacted by the Council, the Respondents' initial reaction was that the Council must have made a mistake. The Tribunal had no difficulty in fully accepting the Respondents' evidence on that matter.

38. 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.

39. However, the offence is strict liability (unless the Respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083, quoted on behalf of the Applicants as commonly it is. The intention or otherwise of the Respondent to commit the offence is not the question at this stage, albeit there is potential relevance to the amount of any award.

40. Mr Mcclenahan argued the oft-quoted phrase "ignorance of the law is no excuse" applied. However, the Tribunal considers that is too broad-ranging and the reality is somewhat more subtle. He also argued that if these Respondents had a reasonable excuse then almost every landlord would do and the purpose of the legislation would be undone. The Tribunal considered that rather over-stated matters.

41. Reliance was placed by the Applicants on the case authority of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) in relation to reasonable excuse and in which it was held that the failure of the company to inform itself of its responsibilities did not amount to reasonable excuse. The Tribunal is aware of the authority.

42. The Tribunal determines that there are essentially two aspects to consider, namely whether what is said by the Respondent is genuine and whether the Tribunal accepts that amounts to a reasonable excuse. It is a matter of judgment for the Tribunal as to whether it is objectively reasonable for the

Respondent, with his or her characteristics, to have been ignorant of the law. The Tribunal has no difficulty in accepting that the Respondents are genuine, as explained above.

43. However, the Respondents were not able to provide any effective steps taken to regularly keep up to date with the requirements placed on landlords. The First Respondent stated in closing, not mentioned or hinted at in any earlier evidence, that the Second Respondent was a member of the National Landlords Association.

44. As the Tribunal noted and as Mr Mcclenaham also raised, that membership had been the subject of a closing comment where no evidence had been adduced. However, the Tribunal considered it appropriate to briefly explore the matter, in response to which the First Respondent said that her husband had been a member since 2010. Whilst the references to such membership at that stage in the case was unsatisfactory, the Tribunal will make reference to it below, given that it does not, in the event, alter the outcome and so any potential issues arising from the late revelation do not merit detailed analysis.

45. The Tribunal infers that any information circulated by the Association to its members- where it is inconceivable that the change to the provisions in respect of HMOs were not so circulated- had not been read by the Respondents or at the very least had not been properly considered. Neither was there any suggestion made that the Respondents had subscribed to any other publications or online sources of information or had otherwise kept themselves up to date with changes.

46. If modest and sensible steps had been taken, most obviously reading and acting upon information of relevance received from the Association, the overwhelming likelihood is that the Respondent would have been aware of the change in the law and the need to act upon it.

47. The Respondents own, either personally or through a management company of which the First Respondent is the Director, several properties of various types rented out and that apparently provides most of their income. That no longer includes this Property, in respect of which the Respondent's unchallenged evidence of it having been sold is accepted. As Mr Mcclenehan established from Mrs Peploe in cross-examination, the Respondents have bought and renovated properties in the past.

48. Notwithstanding the Respondents assertion to the contrary, the Tribunal considers that objectively they are professional landlords. They derive a significant income from letting properties. The Tribunal accepted that the Respondents only owned one property let to students- this one- and had bought it originally for occupation by daughters who were to attend Exeter University.

49. Therefore 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 and so do not provide a

defence to the HMO licensing offence, which the Tribunal finds to have been committed..

The period for which the offence was committed

50. The Applicants must prove to the criminal standard that a licensing offence was committed in relation to any given date on which they sought a rent repayment order. 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.

51. The Tribunal raised in that regard the question of the period for which the HMO licensing offence was committed. There were two obvious potentially relevant time periods, which the Tribunal takes in turn.

52. The Tribunal pauses to mention having encountered arguments about holiday periods and periods of absence from university because of advice to return home due to restrictions arising from the Covid-19 pandemic. Those were not raised in this case and were dismissed when previously encountered, essentially on the basis of finding that the tenants continued to have possessions in the given property and an intention to return at the end of the holiday or other period. Those situations are not entirely the same as the two identified as of potential relevance in this case.

53. The sums involved in this instance are not especially high, less than one-month worth of rent per Applicant for both of the two potentially relevant periods combined, although if replicated across a considerable number of tenancies per year, the sum becomes substantial. The Tribunal has taken appropriate care in reaching its determination of the question.

Early September 2019

54. The question was essentially whether the Applicant could prove a licensing office to be committed until the last of the five tenants moved in on or about mid to late- September 2019 at which time there were then five occupiers occupying the Property as their main or only residence or treated as so doing. It was not argued that they formed part of the same household.

55. 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.

56. In relation to the moving in date, Mr Lord, Mr Berry and Mr Galal gave dates in early September, albeit not identical to those in the written evidence. Mr Berry also said that those after him moved in by late teens to

early twenties of the month. Mr Walters said that he did on or about mid-September 2019. He said that he was one of the last ones, indicating that he was not therefore the last one.

57. It follows that the rather unclear evidence of the Applicant does not demonstrate that the Property was physically occupied by five persons from 1st September 2019. The Tribunal cannot be sure on the evidence that there were five occupiers until the early twenties of September and is satisfied to the required standard only from 23rd September 2019. Mr Mcclenahan argued in closing a date of 15th to 17th September 2019 but the Tribunal was not satisfied of that on the evidence received.

58. Albeit that their courses did not re-start until a few days later, the Tribunal determines that the Applicants' occupation thereafter can only properly be categorised as being for the purpose of their higher education courses from the dates on which they moved in.

59. Whilst it might be argued on a very strict interpretation that the occupation was not for that reason until such time as the courses actually started, so a few days later, the Tribunal does not consider that to take such an approach is appropriate. The Tribunal considers that the overall purpose of occupation of the Property was because of the higher education course and that to seek to divide periods between the exact term dates and any other dates of physical occupation would fly in the face of the purpose of section 259(2).

60. The Tribunal's approach effectively looks at the reason for physical occupation under the Tenancy Agreement of the Property in the round and does not to attempt to slice that into different periods. The relevant physical occupation should be treated as occurring for the purpose of or incidental to the full- time course of further or higher education for the entire period of such physical occupation.

61. The next question is therefore whether the Tribunal ought to apply a similar approach to the question of the number of occupants and treat there as being five occupants for the entirety of the tenancy irrespective of how many were or were not in physical occupation. In effect whether the Tribunal should treat the requirement for occupation in section 254 of the Act as being one of legal occupation, or at least the right to legal occupation, irrespective of physical occupation. Hence the Tribunal would hold that a tenancy entered into in order to provide accommodation during the academic year would be licensable for the whole of the tenancy, 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 other small parts of it because less than five had moved in.

62. There is a certain neatness and attraction to that approach.

63. Mr Mcclenahan argued that the situation is covered by section 259(2) and the purpose of that section. The Tribunal does not agree. The Tribunal considers that section is designed to address the fact that accommodation

occupied by students for the purpose of their course is not usually their only residence, or indeed arguably their main one, albeit that it is the one in which they spend most of the given year of being a student.

64. The section does not, the Tribunal determines, alter the need for there to be five occupiers in different households, which is the pertinent section in relation to this issue. Section 259(2) makes no reference to that and particularly does not vary it.

65. A Property may have five occupiers and be licensable. An identical property may have four occupiers and not be licensable. There may alternatively be five or more occupiers, but they form part of the same household. The property would still not be licensable. Landlords of properties can cease to commit an offence where the number of occupiers not in the same household drops below five and similarly only commit an offence when the number of occupiers reaches five in more than one household. The actual position must be considered. It is not impossible for certain occupiers to start in different households and subsequently form part of the same household, notwithstanding that they may retain separate legal rights to occupy, or indeed the opposite.

66. The statutory provision distinguishes between different situations. The nature of the provisions indicate that it is the actual occupation of the Property which is the key question and not the legal right to such occupation.

67. 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. It is not inconsistent for a property unoccupied or not occupied by five persons at the given time to be one in relation to which a licensing offence is not committed.

68. The Tribunal determines that there were not five occupiers in separate households for the purpose of the Act until five such persons physically occupied the Property, irrespective any legal right to have gone into such occupation earlier.

69. Plainly the net effect of the above determination is that there may very well be periods for which rent is paid and for which a property has no Licence but where the tenants cannot recover the rent. However, the licensing regime is designed to ensure landlords hold licences in given situations. The impact or otherwise of the regime on the amount of rent repayment order which might be awarded is incidental and a long way from central to the reasons for that regime.

70. The Tribunal has determined that the Applicants have not satisfied the Tribunal that an offence was committed during the period to 23rd September 2019 on the cases presented.

<u>Late July 2020 onwards</u>

71. Adopting similar reasoning to that set out above, the Tribunal has determined that from the date at which the first of the five tenants gave up possession by removing possessions and vacating the Property, 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.

72. In terms of the relevant date, the evidence is that there were fewer than five tenants continuing in occupation before the end of July 2020. Mr Lord said that he left on 26th July 2020, being the second last to do so. Mr Galal gave his leaving date as the 26th July 2020 and also said that he was the second last to leave. It is not apparent how both he and Mr Lord could be correct. Mr Berry said that he left on 26th also. Although it was not entirely clear how that fitted with Mr Lord's evidence, it did not necessarily contradict it. More significantly, Mr Waters gave his leaving date as a week or so before Mr Galal but gave that as the 24th July or so, which it could not have been if Mr Galal gave anything like the correct date.

73. The Tribunal is not satisfied to the required standard that an HMO licensing offence was committed after 20th July 2020, in light of the evidence of Mr Walters as to his approximate leaving date. .

74. In addition to the reasoning applied to the period to mid- September 2020, the Tribunal considers it is highly relevant that the occupiers were leaving and not returning. The Tribunal does not consider that they could properly be regarded as being in occupation of a property that they have specifically left of their own accord, removing their possessions and not intending, it must sensibly be inferred, to return to the Property to occupy for the purpose of their completed course.

75. However, the rent for July 2020 had been paid by Mr Waters and Mr Berry 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 and the relevant matter is, as explained further below, the rent paid during the period and is not stated to be the rent paid for time during that period. If the Respondent did not commit an offence for the few days of July, there is no effect on the rent paid during the time in which an offence was committed.

76. Necessarily in relation to Mr Lord and Mr Galal, who the Tribunal finds did not pay rent for July 2020, there cannot be an order for repayment of July's rent in any event.

The decision in respect of making a rent repayment order

77. 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.

78. 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. That the very clear purpose of the 2016 Act is 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, weigh especially heavily in favour of an order being made if a ground for one is made out.

79. The Tribunal considers that this is a rather closer case than most to being a rare case in which an offence has been committed but a rent repayment order should not be made. However, it is not such a case. The Tribunal exercises its discretion to make a rent repayment order in favour of the Applicants.

The amount of rent to be repaid

80. 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. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act.

81. Therefore, the amount ordered to be repaid must "relate to" rent paid in the period identified as relevant in section 44(2), the subsection which deals with the period of rent payments relevant. The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.

82. In relation to the second category, the relevant rent to consider is that paid during "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. Rent paid outside of that period cannot be ordered to be repaid irrespective of any offences committed during that other time.

83. The next sub-clause, section 44(3) moves on to the amount that the Tribunal may order be repaid. Specifically, the Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period (ignoring for these purposes a provision about universal credit not of relevance here). That is entirely consistent with the order being one for repayment. As referred to above, the provision refers to the rent paid during the period rather than the time during the period to which the rent relates.

84. In that regard, the Tribunal is mindful of the fact that the other tenant paid 11 months' worth 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. In addition, Mr Lord and Mr

Galal failed to pay for the final month of the tenancy and so necessarily cannot be repaid rent that they failed to pay in the first place.

85. 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 case law and the relevant facts of the case.

Relevant caselaw

86. 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.

87. 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 decisions are all well-known to the Tribunal.

88. Section 44 of the 2016 Act 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.

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

90. 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.

91. Judge Cooke confirmed the approach to be taken as indicated in *Vadamalayan* in her subsequent decision in *Chan*.

92. 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."

93. 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. It has taken on considerable significance in that regard. 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.

94. The relevant period of up to twelve months is, as explained above, that which is used in section 44(2) to identify the rent paid which should be taken account of, as opposed to rent paid during other periods. As referred to above, section 44(3) identifies that the rent ordered to be repaid cannot exceed the rent paid during that period. It does not refer to the amount of rent paid in any other manner.

95. 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 any starting point for the amount of the repayment 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.

96. 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"

97. 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."

98. 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."

99. 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."

100. 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. 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.

101. 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".

102. 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 *Vadalamayan* considering the relative provisions of the 2004 Act and the 2016 and move away from the apparently commonly perceived effect of that case.

103. The Tribunal considers that the language of section 44(3) is clear in what it says and in what it makes no reference to, to which the first sentence quoted in paragraph 102 above refers.

104. The Tribunal does not consider that the effect of *Vadalamayan* was that 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 more pertinently that it 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, up to the maximum provided for where appropriate.

105. 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 <u>appropriate</u> figure applying the relevant factors.

106. 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.

107. Mr Mcclenahan argued on behalf of the Applicants that the correct approach to take was to make an award of the full rent unless the balance of other factors was such as to make a lower amount appropriate. He argued that where the other factors are even, that leaves the appropriate award as being the full rent. The Tribunal does not, as will be appreciated from the above discussion of the legal position, accept those arguments to be correct.

108. It should be recorded for the sake of completeness that the Respondents sought to rely on a First Tier Tribunal decision in the course of closing submissions, but one not mentioned previously and of which the Applicants' representative was unaware. The Tribunal did not take account of it, noting that it dated from late 2019 in any event and so pre-dated the Upper Tribunal decisions discussed above.

The relevant factors and the appropriate award

109. 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 2016 Act applies when considering the amount of such order.

110. 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.

111. Mr Mcclenahan argued against what he described as banding or criteria as to levels of order and asserted that the Tribunal did not have the tools to be "proportionate". The Tribunal reiterates that the level of repayment order is, aside from considering the period of applicable rent and the rent paid during that period, such sum as the Tribunal considers appropriate having regard to any relevant circumstances, but in particular taking account of the above factors provided for in the statute. The level of repayment will properly be affected by those.

Financial circumstances

112. In terms of the financial circumstances of the Respondents, the information provided was somewhat less than the Respondents should

have provided and which *Vadalamayan* said to be required of Respondents. They did provide tax computations for themselves.

113. It is apparent from the written cases and oral evidence that the Respondents still own two holiday let cottages in Cornwall, a property in Torquay and a commercial development, as well as Wilverley Court Management Company Limited, of which Mr Peploe is the sole director, owning a number of flats let on tenancies. The Property was said to have been sold, which was not challenged. The Respondents own their home.

114. The Respondents asserted that there was little equity in the properties but provided no evidence of that. Whilst it is hard to be precise in those circumstances, the Tribunal finds from its own experience of property prices generally that the combined value of the properties will be considerable. The Tribunal accepts the net equity may well be somewhat lower than the market value but cannot have greater regard to that in the absence of evidence.

115. The fact that the Property was 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. However, full information about mortgage payments was not provided.

116. The Tribunal has no difficulty in finding that the Respondents' financial circumstances are no reason to reduce the level of rent repayment order otherwise appropriate. Potentially, the financial circumstances could be a reason to increase it and the Respondents failed to take the opportunity to provide evidence to persuade against that course, although in the event the Tribunal has concluded that in the context of other factors the Respondents' financial circumstances do not justify such an approach on this occasion.

<u>Conduct- Respondent</u>

117. There are allegations by the Applicants in relation to the Respondents' conduct with regard to repairs.

118. One of the items, the raising of which the Tribunal finds serves to reveal the weakness of this aspect of the Applicants' case as to conduct, is that the living room carpet was worn near the doors out to the garden and that worn area was covered with a mat. That appears to have been the case at the start of the tenancy and no evidence was given that the situation was markedly, if at all, different when the Applicants took the tenancy. There was no mention that the worn area and covering of it with a mat caused any difficulty or that any issue, if indeed there was one, was ever reported. Mrs Peploe accepted some wear but said there had never been an intention to do anything other than that done, namely covering the worn area with a mat. There was nothing remotely close to the Respondents having an obligation that they failed to fulfil, still less anything that could possibly be regarded as relevant conduct in this case.

119. There was passing mention of the self-ignition on the hob not working and a separate lighter being required. However, no apparent weight was placed on that by the Applicants. There was no report of any problem and the Applicants appear to have been able to operate the hob without difficulty. The Tribunal does not therefore consider the matter to require further attention.

120. The other, and principle, item, related to the ground floor shower to the Property. On 26th October 2019, a report was made to the Respondents by the other tenant Mr George, who took the lead in such matters, that they had noticed that the downstairs shower was leaking. It was accepted in oral evidence that was the first report. The Second Respondent replied that say saying that they would be in touch with a plumber. Mr Berry said that the problem had got worse for a period before then, but the Tribunal finds that the Respondents cannot be expected to resolve a problem they were unaware of.

121. It was common ground that a plumber attended before 4th November 2019. The Applicants stated that he said that the drain outside was blocked and suggested that the Applicants should attend to that themselves. The Respondents had no direct knowledge of that. It was also common ground that having been so informed by Mr Berry, the Respondents themselves attended on or about 9th November 2019. They said in an email they used drain unblocker but that unblocking the drain had not proved successful and that they had arranged for a drain clearing company to attend. None of that was challenged. The specific cause of the apparent blockage does not appear to have been identified.

122. Mr Berry suggested that the Respondents did not deal with the matter urgently when Mr Peploe put that to him, as compared to others, not having dealt with it the next day. The Tribunal does not consider that to be fair criticism and regards the timescale to respond to the nature of the problem indicated to be within an acceptable range. Mr Berry also could not say when the plumber or the Respondents attended.

123. On 20th January 2020, Mr George emailed the Respondents to say that damage to a wall had got worse and that "unblocking the drain was effective originally but it now seems not to have worked". Mr Lord's oral evidence was that the living room mould was not seen at the same time as the initial shower problem but rather was later and, whilst he could not recall when, he presumed when it was notified.

124. The email exchange shows that the Respondents attended two days later to check the drains, but no problem could be seen. They offered to go inside if any of the tenants were present, but it appears that they were not. On 25th January 2020, Mr George identified that the damage appeared to follow the shape of the pipes in the wall. The Respondents arranged for a different plumber to attend and it was agreed that he did so from 6th February 2020. The shower room tiles were removed, the wall pipes were attended to and the shower room was reinstated. The Tribunal finds no

basis for criticism of the Respondent's approach which rather was entirely reasonable.

125. It was common ground that there was no ongoing problem with water leak from the pipes and no ongoing damp to the living room. Instead, the wall dried out. Mr Berry said that green mould marks- spots- remained on the wall and that nothing was done about those, although neither was there any report of an ongoing problem to the Respondents. Ms Peploe put that there were no photographs and the Respondents were not informed, to which Mr Berry said he presumed that if the Respondents had wanted photographs they would have asked for them- as for why the Respondents would have done so in the absence of knowledge of an ongoing problem was not explained. He said that the plumber left a mat and a saw at the Property, from which he perceived that the plumber intended to return. However, Mr Lord said in response to questions from the Tribunal that someone came out to the Property and that he did something to the living room wall which sorted it out.

126. The Tribunal is not satisfied on what the Tribunal considered to be the directly contradictory evidence of Mr Lord and Mr Berry that there was an ongoing issue. Much as the Tribunal in general preferred the evidence received from Mr Berry to that of Mr Lord and he was clear on this point, the net effect of the evidence of the two on this matter in combination with a lack of any photographic or other evidence of an ongoing problem was that the Tribunal found on balance that there was not.

127. Mr Berry said that he considered that the problem had not been fixed quickly as it lasted from the first term to the second. However, the Tribunal is not persuaded on the evidence that there were not two separate issues. It may be that the blockage caused, or less likely was caused by, the leak to the pipes in the wall but there was no evidence to confirm that. Given differences in the nature of the problems and the time between them and given the evidence received, the Tribunal does not find that they amounted to one identified ongoing problem about which the Respondent failed in their responsibilities.

128. Even if the Tribunal is wrong in that regard, the Tribunal also finds nothing wrong with the approach taken by the Respondents to repairs and certainly nothing which amounts to relevant conduct in the context of this application.

129. Mr Berry also made an allegation in his written evidence that the black mould which he said formed on part of his bedroom wall was the responsibility of the Respondents. However, no evidence was provided of any structural problems which might have been likely to cause black mould to the wall of Mr Berry's bedroom. In contrast, Mr Berry stated in an email to the Respondents dated 4th November 2019 that he would stop drying his towels in his room.

130. The Tribunal finds that the black mould, of its nature indicative of moisture arising from within the Property rather than water finding its way

in, was caused by a combination of drying items in the room, as Mr Berry accepted doing, coupled with inadequate ventilation and/or heating. There was no relevant conduct on the part of the Respondents.

131. Consequently, none of that comes remotely close to amounting to negative conduct of the Respondents relevant to the amount of the award in a rent repayment order. Mr Mcclenahan's criticism of the Respondents in respect of those matters in closing was not well-founded.

132. Neither Mr Lord or Mr Berry was prepared to accept that the Respondents had done any more than they had to. Mr Berry was very definite in stating other landlords had been better and the Respondents had provided the "minimum". However, no examples were given, and the Tribunal could not identify any failings in the Respondents approach to dealing with the Applicants or, save for the obvious lack of a HMO licence, the Property. As to how other landlords had dealt with Mr Berry, the Tribunal has no information, but certainly if they had been better, that was not apparently because of a poor approach of the Respondents.

133. Mr Mcclenahan also sought to advance in cross-examination that the Respondents might have been put off from attending at the Property because of the distance from their home. Mrs Peploe denied that and the Tribunal can identify no evidence that she was wrong. Mrs Peploe did say that the starting point in relation to any work required would be to contact local trades people but the Tribunal finds no fault thereby.

134. Mr Mcclenahan put to Mrs Peploe that the Respondents had relied on reports and had not pro-actively inspected every six months of the tenancy as they would have been required to pursuant to the terms of a HMO licence. Mrs Peploe asserted that they would inspect in the normal course of events but matters such as the Covid 19 pandemic had an impact. The Tribunal accepted that, on balance. Mr Mcclenahan put that there had been no inspection prior to the Covid- 19 restrictions and Mrs Peploe responded that the Respondent had asked for keys to be left in the garage when they went down about the drain but no keys had been left. There was brief debate about whether the email 27th October 2019 had referred to keys for the Respondents or for the plumber. The Tribunal did not consider that the inspection issue took matters anywhere.

135. Mr Mcclenahan asserted in closing that the Respondent had not prepared a proper inventory but neither expanded on that nor had put the matter in cross- examination. The allegation was not raised in the Applicants' written cases. The Tribunal considered the allegation misplaced in any event. Mr Mcclenahan also asserted that the Respondents had allowed a tenant to occupy with no tenancy agreement. He did not explain how that fitted with the Deed of Variation. Again, he neither expanded on that nor had put the matter in cross- examination and the allegation was not raised in the Applicants' written cases. The Tribunal took no account of the point in those circumstances but considers that it would not have affected the level of award in any event.

136. The Tribunal also notes the comment made by Mr George, the other tenant, who did not pursue a claim, to Mrs Peploe that "I strongly refute the claim that you were not a good landlord". The Tribunal takes account of that comment having been made in an email and not in a witness statement endorsed with a statement of truth. However, the sentiment expressed is not hard to accept having seen and heard from the Respondents during the hearing.

137. The Tribunal finds that no loss was suffered by the Applicants arising from the lack of a HMO licence and that, aside from the licence itself, everything that ought to have been in place was in place and that the Respondents were otherwise good landlords. The Property appeared to the Tribunal to have been in very good condition, far beyond some other student properties encountered, and with nothing identifiably lacking.

Conduct- Applicants

138. The Tribunal was not impressed by the suggestions made by both Mr Lord and Mr Galal that they did not notice that they had not paid the rent for the final month of the tenancy. The provision (clause 1.3) in the tenancy agreement was, inevitably, also very clear that it was the tenants' responsibility to make the payments.

139. Mr Galal said that in relation to not paying the last month of rent that he did not know until this case and said, "sorry about that", no more. He gave no hint that he had contemplated paying at any point. Mr Lord said he also did not know and offered no apology and nothing else to the Respondent. In answer to the Tribunal's questions, he said that the Respondents had emailed when he had missed payment and so he did not know anything was wrong.

140. The Tribunal finds that wholly implausible and found that Mr Lord and Mr Galal would have well known what they had paid and not paid. Mr Lord and Mr Galal would have been well served by accepting that which the Tribunal had no difficulty finding to be the correct position.

141. Mr Mcclenahan sought in cross-examination and in closing to assert that the Respondents were at fault for not reminding Mr Lord and Mr Galal that they had failed to pay. That was a very poor point, which the Tribunal firmly rejects. It was the tenants' obligation to pay the rent and not for the landlords to remind them. He similarly suggested that it was to the Respondents' advantage that Mr Lord and Mr Galal had not paid. That was no better a point and is similarly firmly rejected.

142. Mr Lord's approach to giving evidence was disappointing and the Tribunal considered that he forgot at times the merit of assisting the Tribunal in favour of evasiveness and seeking to score points against Mrs Peploe when she asked him questions. He was not prepared to concede anything positive about the Respondents, whereas the Tribunal considers that he ought. To a lesser extent, the same applied to parts of the oral evidence of Mr Berry, although his evidence was generally more

considered. The Tribunal considers that the Applicants were at best disingenuous to the Respondent and at worst seeking to paint a deliberately negative picture in the hope of increasing the level of any award.

143. In contrast, the Tribunal accepts the Respondent's assertion that the condition of the Property (as also evidenced by photographs) on the vacation of it is such as to amount to relevant conduct on the part of the Applicants.

144. The evidence of Mr Lord and Mr Berry indicated acceptance that the condition of the Property was less than entirely satisfactory, although Mr Lord suggested the photographs just showed the worst parts, which the Tribunal accepts to have been likely. Mr Lord said that the tenants worked for three days cleaning the Property and the garden to the best of their ability before vacating, suggesting the Respondents could not ask for more. That suggests to the Tribunal that the condition of the Property prior to that attempt to clean it had been exceptionally poor. However, in the absence of detail of the prior condition and the extent of the effort made on any given day, the Tribunal does not consider further any potential earlier condition, which is in any event irrelevant. The only relevant point is the condition in which the Property was ultimately left.

145. It was not in dispute that the Respondents had attended the Property following the tenants leaving. Mr Peploe said that his wife had been in tears at the condition in which they found the Property. The ovens, to give one example, were said to be filthy. However, that was merely one part. The Second Respondent sent an email to the other tenant, Mr George, expressing disappointment in relation to the condition of the Property. It was accepted that the Applicants were given the chance to return and clean the Property better. The evidence demonstrates that the tenants would have been unperturbed about leaving the Property in that condition if the Respondents had not contacted Mr George.

146. To a degree of credit to the Applicants, they arranged that one of them, Mr Berry, would return to the Property to undertake further cleaning. Mr Berry said, without challenge, that he returned to the Property on or about 8th August 2020 specifically to undertake further cleaning on that date for four hours and a similar period on the morning of the following day. His oral evidence was that the Property was then "fairly clean…. not immaculate…… not everything was spotless". Taking matters in the round, the credit to be accorded to Mr Berry for attempting the task does not on balance increase any award to Mr Berry.

147. The Tribunal has had careful regard to the fact that the Respondents returned the deposit, save for a relatively small deduction for the cost of having the oven cleaned. No issue was taken with the appropriateness of that. Taken in isolation, that would indicate that the condition of the Property on the tenants vacating it was otherwise acceptable. Mr Lord suggested in his evidence that the amount taken had been that which the

Respondents considered appropriate and would not otherwise be drawn as to whether the Property had been left in an acceptable condition.

148. Mr Mcclenahan sought to put in cross-examination that the Property may have been in a less good condition at commencement of the tenancy than the Respondents asserted. He was able to demonstrate that a bottle shown on top of a kitchen wall cupboard in a photograph taken by the Respondent after the Applicants had moved out, was also present before they moved in. He also put that there were items photographed after the tenants left the condition of which was not photographed at the outset, preventing comparison.

149. Those points were not without some merit. However, the Tribunal accepts the Respondent's evidence that the condition fell below the starting condition less fair wear and tear and notes carefully that Mr Berry's evidence conceded that the Property was not clean, only "fairly clean". That said, the Tribunal does find that the Applicants had made some efforts and that the condition of the Property was not as bad as some are left. Equally, the Tribunal notes the decision of the Respondents to complete the cleaning themselves, not to seek further cleaning by the Applicants and not to deduct anything else from the deposit after £98 for the cost of the ovens being cleaned.

150. The Tribunal finds there to have been some relevant conduct on the part of the Applicants in relation to the condition of the Property. Mr Mcclenahan's submission in closing that it was fair to say that the conduct of the Applicants had been "very good" was at best optimistic.

151. The Tribunal regarded that conduct as more significant on the part of Mr Lord and Mr Galal, in relation to failure to pay rent, then on the part of Mr Berry and Mr Walters. Awards reflect that.

152. Returning briefly to the ground floor shower, the Respondents case included an assertion essentially that the Applicants had allowed it to become mouldy whereas it had not been at the start of the tenancy. However, Mr Lord said there were some marks at the start, which the inventory offered support to. The Respondents had omitted to provide any photographs of that shower as at the start of the tenancy- the photographs provided were agreed to be of the upstairs bathroom- and the inventory referred to "marks". Mrs Peploe found what she said were the relevant photographs during the hearing but that was most of the way through the Applicants' evidence and necessarily had not been provided sooner, such that the Tribunal ruled that any further photographic evidence was not admissible. In those circumstances, whilst the Tribunal finds it very likely that the Respondents would have provided the shower in good condition, the Tribunal has concluded that the position is not clear enough and any fault clear enough to count the matter as relevant conduct on the part of the Applicants and so considers no more need be said about it.

Other consideration

153. 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.

154. There are, regrettably, many 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. The Tribunal does not consider that the Respondent should be described as a "rogue" landlord, in the usual sense in which the term would be understood.

155. Whilst the Applicants did not entirely come across well, the Respondents did. The Tribunal, as will be anticipated from the above, found them to be essentially conscientious landlords, who did not have a licence or a defence to a lack of a licence but who tried their very best to provide good accommodation and achieved that, being careful to fulfil- and arguably exceed- the obligations that they were aware of.

156. The Respondents, perhaps rather unwisely, delayed in applying for a licence after being contacted by the Council and would have been rather better applying swiftly. Whilst it is consistent with their presentation generally that they sought a paper form and took some time to put everything in place, the Respondents do appear to have misunderstood the importance of licensing even if it had no effect on the condition of the Property. In the event, the Tribunal did not consider that affected the appropriate level of order one way or the other.

157. Nevertheless, the Respondent did commit an offence and the Tribunal has concluded that it should exercise its discretion to make a rent repayment order. The Tribunal is mindful of the intention for there to be a harsh penalty and the amount ordered in this instance may well appear harsh to some. The submissions of the Respondents in closing that it was immoral, unfair or similar of the Applicants to apply for rent repayment order were misguided.

The amount of the repayment

158. 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 50% of the rent paid during the period from 23rd September 2019 until 31st July 2020 by Mr Berry and Mr Waters (ten months and eight days) and 45% of such of the rent as was paid for the same period by Mr Lord and Mr Galal (nine months and eight days).

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

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

Julius Lord	£4612.98
Jamie Galal	£4612.98
Owen Berry	£5110.98
Daniel Waters	£5110.98

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161. Therefore, the rent to be repaid is apportioned to reflect the level of rent paid by each of the Applicants, being 50% of that rent and 45% as appropriate. The level of rent repayment order in favour of each Applicant is as follows:

Julius Lord	£2075.84
Jamie Galal	£2075.84
Owen Berry	£2555.49
Daniel Waters	£2555.49

Application for refund of fees

162. 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.

163. 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.

164. Ms Mcclenahan stated that the fees had been paid by his organisation and that the fees should be treated as split between the Applicants. 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.