



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

Case Reference : **LON/00AY/HMF/2021/0092**

HMCTS : **V: CVPREMOTE**

Property : **9 Linom Road, London SW4 7PB**

Applicants : **Tamsin Nowell
Seraphina Paisey
Aurelie Leroy
Aidan Griffiths
Summer Pocock**

Representative : **Summer Pocock**

Respondent : **Sekhpayal Khnumpri Limited**

Representative : **Archie Madden (Counsel)**

Type of Application : **Application for a Rent Repayment
Order by Tenant – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016**

Tribunal Member : **Judge Robert Latham
Rachael Kershaw BSc**

**Date and Venue of
Hearing** : **6 September 2021 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **20 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicant provided a Bundle of Documents which extended to 59 pages. The Tribunal has considered the Bundles of Documents filed by the parties and to the additional documents referred to in this decision.

Decision of the Tribunal

2. The Tribunal makes a rent repayment order against the Respondent in the sum of £19,090 which is to be paid by 12 November 2021.
3. The Tribunal determines that the First Respondent shall also pay the Applicants £300 by 12 November 2021 in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. By an application, dated 26 March 2021, the Applicants seek a Rent Repayment Order (“RRO”) against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The application relates to the accommodation which they occupied at 9 Linom Road, London SW4 7PB (“the Property”). The application was accompanied by rent statement and a copy of their tenancy agreement. The Applicants seek a RRO in the sum of £38,180.31 which is the rent which they paid for the period 8 April 2020 to 22 March 2021.
2. On 20 April 2021, the Tribunal gave Directions pursuant to which:
 - (i) On 7 June, the Applicants filed their Bundle of Documents (135 pages). References to this bundle will be prefixed by “A.____”. The bundle includes: (i) the tenancy agreement which the Applicants all signed dated 10 April 2020 (at A.4); (ii) witness statements from each of the Applicants (at A.50-59); (iii) An email from Richard Umelo (an environmental health officer employed by the London Borough of Lambeth (“Lambeth”), dated 19 April 2021 (at A.66) confirming that the Property required an HMO licence and that no HMO licence was in place) and (v) proof of rental payments (A.47-49).
 - (ii) On 23 July, the Respondent have filed their Bundle of Documents (397 pages). References to this bundle will be prefixed by “R.____”. The bundle includes: (i) The Respondent’s Statement of Case (at R.1); (ii) witness statements from Ms Gloria Wang (the majority shareholder and director of the Respondent Company) (at R.15-26); Alex Manenti (R.27-32A) and

Max Manenti (R.33-35); (iii) The terms of engagement whereby the Respondent appointed Hamptons International (“Hamptons”) to manage the Property (at R.51-71); and (iv) a Notice, dated 27 July 2021 (at R.364), whereby Lambeth stated that it was minded to grant an HMO licence. The majority of the bundle contains documents upon which the Respondent seeks to rely in support of its averment that it had a reasonable excuse for having control or management of an HMO without a licence, in that it took all reasonable steps to obtain an HMO licence. It did not include the Notice of Intention to impose a Civil Penalty (“Notice of Intention”) which Lambeth had served on it on 7 July 2021

(iii) The Applicants have filed a Reply (4 pages). This included a response from Hamptons, dated 3 August 2021, to a Notice of Intention which had been served on it by Lambeth.

3. On 3 September, the Respondent filed a second statement from Ms Wang responding to the allegation raised by Hamptons in their response to Lambeth.

The Hearing

4. The Applicants appeared in person and gave evidence. Tamsin Nowell is a video editor; Seraphina Paisey works as a freelance writer; Aurelie Leroy works for Age UK London; Aidan Griffiths is a French editor for e-com platform, and Summer Pocock liaises with vineyards. They adduced evidence from Mr Umelo. Mr Umelo became their critical witness on the real issue, namely whether the Respondent had made all reasonable efforts to apply for an HMO licence.
5. Archie Maddan (Counsel) appeared for the Respondent. He was accompanied by Kate McAlinden from his instructing solicitor, Commercial and Business Lawyers (“CBL”). Mr Maddan adduced evidence from Ms Wang and Mr Alex Manenti. Mr Max Manenti was not available to give evidence as he was in South America. Mr Maddan asked the Tribunal to have regard to his witness statement. The weight that we give to it is limited given that he was not available to be cross-examined.
6. At the commencement of the hearing, Mr Maddan applied for an adjournment relying on Rule 6(3)(d)(ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the ground that Lambeth had failed to disclose documentation that the Respondent had requested. Lambeth is not a party to this application and no application had been made to this tribunal for disclosure.
7. It became apparent that 7 July 2021, Lambeth had served Notices of Intent on both the Respondent (a financial penalty of £22.5k) and on Hamptons (£5.5k). On 5 August, the Respondent had made detailed representation in response. On 3 August, Hamptons had responded accepting that there had

been an error that had been rectified. Hamptons did not resist the imposition of a financial penalty but rather looked for credit for an “early guilty plea”. Hamptons gave the following explanation for their error:

“It would appear that a member of staff was confused and did not (contrary to practice), seek clarification in accordance with the frequent licencing training in the business. This resulted in the licence application not being completed and established prior to the commencement of the tenancy. That flawed decision served to disengage the settled and established programme for the management of such a property.

The second error is a misunderstanding between staff about whether the licence had been applied for. The error was discovered when as part of our established processes, the landlord was chased to see if the licence had been issued and it came to light that they had not completed their application. HI (Hamptons) then sought to ensure an appropriate licence was secured. HI was repeatedly assured that the licence application was being processed. That was untrue. HI was, in effect, “fobbed off” by the landlord. The Council knows that the response of HI was to end the agreement (in line with applicable law), whilst at the same time cooperating.”

8. The Respondent took particular exception to the suggestion that it had “fobbed off” Hamptons. Neither party has called anyone from Hamptons to give evidence and the Tribunal therefore gives little weight to this comment.
9. On 23 August, having received the Applicants’ Reply on 9 August, CBL wrote to Mr Umelo complaining that it had disclosed Hampton’s response to the Applicants. The Solicitor referred to the Upper Tribunal decision of *D’Acosta v D’Andrea and Others* [2021] UKUT 144 (LC) and complained that Lambeth was not treating the parties fairly. The email ended “please let us have a copy of all documents supplied to the applicants and all related documents in your possession.”
10. On 24 August, Mr Umelo responded. He provided a copy of Hamptons’ response. He stated that it had by disclosed to the Applicants as they had requested it. He referred to section 49 of the 2016 Act which expressly provides for local housing authorities to help tenants to apply for RROs. He stated that he would be attending the hearing on 6 September and would give evidence if requested. He further stated that Lambeth was considering the Respondent’s applications which had been made in response to the Notice of Intention. Lambeth were in discussion with their legal and IT teams.
11. Mr Maddan complained that Lambeth had not yet made a decision on whether to impose a financial penalty. He was also concerned that Lambeth had failed to check its servers to ascertain whether Lambeth had

received a number of emails which the Respondent alleged that it had sent together with a letter which had allegedly been sent in November 2020.

12. The Tribunal refused the Respondent's application for an adjournment. Mr Umelo agreed to email to the parties all their correspondence with Hamptons. We granted a short adjournment to enable this to occur. Mr Umelo disclosed a number of emails with attachments.
13. Having regard to the overriding objectives in Rule 3 of the Tribunal Rules, we were satisfied that we could deal with the case fairly and justly. Mr Maddan would have preferred for Lambeth to have reached their conclusion on the imposition of any financial penalty before we determined this application for a RRO. However, we are satisfied that Lambeth were justified in awaiting our decision.
14. At the end of the hearing, the Tribunal invited Mr Umelo to provide further evidence in respect of Lambeth's procedures in respect of applications for HMO licences in March/April 2020. We requested (i) a screen shot of the relevant webpage; (ii) any guidance to assist applicants through the process of applying for a licence; and (iii) an explanation as to how an applicant registered under the "IDOX" system. Mr Umelo also agreed to make further inquiries as to whether various emails and an application allegedly posted to Lambeth in November had been received by Lambeth.
15. On 10 September, Mr Umelo emailed to the Tribunal and the parties the information which had been requested. This was extensive. Mr Umelo provided screenshots of the web pages which were available at different dates, and had made inquiries as to whether various emails and a letter had been received by Lambeth. The Tribunal afford both parties an opportunity to respond to this. On 17 September, Mr Maddan provided written submissions in response. These confirm that the substantive issue that we are required to determine is whether the Respondent has established that it had a reasonable excuse for having control or management of an HMO without a licence under section 72(5) of the Housing Act 2004 ("2004 Act"). If it fails to establish a reasonable excuse, the efforts made to apply for a licence are relevant to the size of any HMO.
16. On 4 October, the Tribunal reconvened to review this further material and determine the application.

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

17. Section 40 of the 2016 Act provides:

“(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.”

18. Section 40(3) tabulates seven offences. These include the offence of “control or management of an unlicensed HMO” under section 72(1) of the 2004 Act.

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

“(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

20. Section 43 provides for the making of RROs:

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

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

“(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

22. Section 44(4) provides (emphasis added):

“(4) In determining the amount the tribunal must, in particular, take into account—

- (a) the conduct of the landlord and the tenant,
- (b) the financial circumstances of the landlord, and
- (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.”

The Housing Act 2004 (“the 2004 Act”)

23. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of “tests”. Section 254(2) provides that a building or a part of a building meets the “standard test” if:

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

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

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

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

.....

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

(a)

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

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

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition, as the case may be.

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

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

26. In the current case, the Respondent accepts that it had not made a formal application for a licence. However, it contends that it had a reasonable excuse for having control or management of an HMO without a licence in that it took all reasonable steps to apply for a licence. It was unable to navigate Respondent’s online system. Unable to do so, it posted an application to Lambeth in November 2020. A respondent must establish that it has a reasonable excuse on a balance of probabilities (see *IR Management Services v Salford City Council* [2020] 81 (LC). The Respondent recognises that the defence not whether it had a reasonable excuse for **not** applying for a licence, but rather whether a reasonable excuse for having control or management of an unlicensed HMO (see *Thurrock Council v Palm View Estates* [2020] UKUT 355 (LC); [2021] HLR 34).
27. Section 63 makes provision for applications for licences (emphasis added):

(1) An application for a licence must be made to the local housing authority.

(2) The application must be made in accordance with such requirements as the authority may specify.

(3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.

(4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).

(5) The appropriate national authority may by regulations make provision about the making of applications under this section.

(6) Such regulations may, in particular–

(a) specify the manner and form in which applications are to be made;

(b) require the applicant to give copies of the application, or information about it, to particular persons;

(c) specify the information which is to be supplied in connection with applications;

(d) specify the maximum fees which are to be charged (whether by specifying amounts or methods for calculating amounts);

(e) specify cases in which no fees are to be charged or fees are to be refunded.

28. Regulations have been enacted which prescribe the information that must be provided by an applicant. However, these do not relate to the manner in which an application is made.

29. Section 263 defines the concepts of “person having control” and “person managing”:

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

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

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

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

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

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

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

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

Lambeth’s Requirements for Applying for an HMO Licence

30. Mt Umelo gave evidence of Lambeth’s “requirements” for an application for an HMO which were applicable between 2 March 2020 and the end of 2020. On 4 March, Lambeth (Mark Preston) sent these to the Respondent. Applications were required to be made online.
31. Thai Truong, a Digital Officer employed by Lambeth, has provided copies of the screen shots from the relevant web pages which were applicable from January 2020 and which were updated in September 2020. In March 2020, the website specified details of the relevant information and documents which would be required. There were three hyperlinks depending upon whether an applicant is (i) applying for a licence; (ii) renewing a licence; or (iii) returning to complete an application. New applicants applying for a licence would be required to create an account which asked them to set up a username and password.
32. Between 29 April 2019 and 2 March 2021, the platform was being hosted by Idox Software Limited (“Idox”). During this period, some 264 applications were submitted. Having created a new account, the applicant would be taken to a page which would enable them to fill out an HMO application. An applicant was not required to submit it immediately. An applicant could save a partially completed application and return to complete it later.
33. Mark Preston, Lambeth’s team manager at the relevant time, was very involved with the management of the Idox system. He has advised Mr

Umelo that the form was interactive and provided help along the way. This has also been corroborated by Idox.

34. Mr Umelo has provided a copy of Lambeth's HMO register. Between March 2020 and December 2020, Lambeth received approximately 128 HMO licence applications via Idox, with at least 7 each month. The dates of issue indicate that licence applications were processed throughout 2020. Many were new applicants.

The Background

35. The Property at 9 Linom Road is a two-storey Victorian terraced house in Clapham. It initially had four bedroom, but the Respondent has converted a living room to create a fifth bedroom.
36. On 28 February 2020, the Respondent acquired the Property for £828k. The Land Register of Title records Gatehouse Bank as the freeholder and the Respondent as leaseholder. However, this is an arrangement to comply with Sharia law.
37. In September 2018, The Respondent Company had been incorporated. Ms Gloria Wang is the majority shareholder and sole director. In 1999, Ms Wang came to the UK from China. She still has family in China, and visited China in 2020. Ms Wang runs the property business and is also a consultant. She has worked for a number of multinational companies. The Respondent owns six properties. Ms Wang exhibits documentation relating to HMO licences which she has obtained for other properties. She currently lives in Gloucestershire.
38. In about March 2020, the Respondent appointed Hamptons to manage the Property. The Terms of Engagement (undated and unsigned) are at R.51-57. The Respondent paid a letting fee of 15% and a management fee of 3% (see R.248). Clause 3 relates to licencing. The Respondent warranted that she was in possession of the relevant HMO licence. If it later becomes apparent that such a licence is not held, Hamptons reserve the right to terminate the agreement with immediate effect. In the event that a proposed tenancy requires a licence, Hamptons will refer the Respondent to a specialist third party provider. Clause 3.9.3 provides: "We will not apply for or hold a licence on your behalf".
39. In March 2020, both Hamptons (Ellie Black, an Assistant Manage) and Ms Wang emailed Lambeth (Mark Preston, Interim Private Sector Enforcement and Regulation Team Manager) about the need for an HMO licence:
 - (i) 2 March at 09.36: Ms Black: "My client has just purchased a 4 bedroom property in Linom Road and is converting it to 5 bedrooms. Please would

you be able to visit ASAP to recommend re works needing to be done? Her builder is in there this week so can provide access anytime”;

(ii) 2 March at 10.04: Mr Preston: “Good Evening. Is this to be a conversion to an HMO please? If so we usually allow 10 working days to respond to these forms of request”. There is a footer to the email: “Are you renting an HMO? You might need a licence – find out and apply here – www.lambeth.gov.uk/Apply-HMO-Licence;

(iii) 2 March at 17.43: Ms Wang to Mr Preston and Ms Black: “Thursday will be best as my builder will be there. However I can check with him about other days too.”

(iv) 2 March at 18.11: Ms Wang to Mr Preston: “Many thanks for your email reply. I am doing everything to satisfy the HMO requirement. However do we need you to visit before we can move the tenants in?”;

(v) 3 March at 08.53: Mr Preston to Ms Wang: “Thank you for your email. If you are creating the HMO to hold 5 persons, it will require a HMO Licence. You can apply online for a licence here - www.lambeth.gov.uk/Apply-HMO-Licence. Further information on requirements can be found here - www.lambeth.gov.uk/HMO-Licensing-Guide-&-HMO-Register and here - www.lambeth.gov.uk/HMO-guide. Once you have made your application an officer will be allocated to your case and will arrange to inspect your HMO.”

(vi) 3 March at 23.46: Ms Wang to Mr Preston: “What’s your number to be reached at? I will certainly apply online for an HMO licence, however, do I have to wait for your visit before the tenants move in?”

(vii) 4 March 2020 at 11.48: Mr Preston to Ms Wang: “Thank you for your email. We are very used to working with occupied HMOs and there is nothing stopping you from occupying the building as an HMO, but please keep in mind that we may ask for additional works and amenities to bring the property up to standard following the inspection., which may cause disruption to your tenants. I look forward to receiving your HMO Licence application.”

40. At this stage, the email exchange ended. The Tribunal was provided with no adequate explanation as to why Ms Wang did not proceed to apply for a licence. Her builder was converting the Property to create a fifth bedroom. She knew that an HMO licence would be required. On 11 March, there was a further exchange of emails between Ms Black and Mr Preston. However, this seemed to relate to another property in Clapham.

41. On 23 March, the first Covid-19 lockdown was imposed. The Applicants, who were all friends, saw the Property advertised on Open.Rent.co.uk. On 27 March, Ms Paisey went to view the Property. On 30 March, the Applicants paid a deposit. On 8 April, Hamptons prepared an Inventory (at R.72). On 9 April, the Applicants moved into occupation of the

Property. On 10 April (at A.11), the Respondent and the Applicants signed a tenancy agreement for a term of twelve months from 9 April at a rent of £3,400 per month. They paid their rent to Hamptons (see A.47).

42. The Respondent has disclosed a number of photographs which show that the Property had been converted to a good standard. There were some snagging items which needed to be resolved. However, overall the Applicants were happy with its condition. Summer Pocock described the Property as being “beautiful” (R.181). However, the Applicants have subsequently learnt that they should have been provided with an Emergency Performance Certificate together with gas and electrical safety reports. These had not been provided.
43. On 22 December 2020 (at R.191), Ms Paisey complained to Ms Wang that that her bed was in disrepair. On 6 January 2021, Ms Wang referred three items of disrepair to Marta Prodaniuk who was now the contact at Hamptons. On 4 February (at R.211), Hamptons emailed the Applicants to ascertain their intentions when their tenancy agreement expired on 8 April. On 11 February, Ms Nowell responded that they were still considering their options. In February, Mr Alex Manenti replaced the boiler. However, he found that the radiators also needed to be replaced.
44. It is apparent that this correspondence caused Hamptons to check whether the Respondent held an HMO licence. On 4 February (at R.210), Ms Wang emailed Lambeth about the difficulties that she was facing in applying for a licence online. On 5 February (R.209), Lambeth (Ms Singh) responded. On 22 February (at A.61), Ms Nowell emailed Ms Wang to inquire whether the Property had an HMO licence. She also inquired whether the appropriate fire precautions and fire safety certificate was in place.
45. As a result of the Respondent’s failure to secure an HMO licence, Hamptons cancelled their management agreement. On 22 February (at R.142), Ms Wang informed the Applicants that the reason for this was “delays with HMO licence”. On 26 February (at A.63), Ms Prodaniuk informed the Applicants that the termination of their management service would be on 1 March. Thereafter, Hamptons would only collect the rent and hold their deposit.
46. On 2 March (at T.64), the Applicants emailed Ms Wang stating that they were shocked to hear that there was no HMO licence. They had learnt that an electrical report in August 2020 had identified defects. Fire safety doors were required. The Applicants were not willing to remain in the “unsafe premises” and were keen to leave as soon as possible.
47. The Applicants contacted Lambeth and Mr Umelo was allocated their case. He confirmed that there was no HMO licence. On 19 March, he inspected the Property. On 22 March, the Applicants vacated the Property. Their deposit was returned to them.

48. On 24 March, Lambeth served notices pursuant to section 235 of the 2004 Act on both the Respondent and Hamptons requiring the production of documents. Both complied with these notices.
49. On 7 July, Lambeth served Notices of Intent on both the Respondent (proposing a fine of £22.5k) and on Hamptons (5.5k). The Notices specified the offence of failing to licence an HMO under section 72(1) of the 2004 Act between “9 April 2020 until at least 19 March 2021”. The Notice of Intention against the Respondent specified the following mitigating circumstances: (i) no previous convictions; and (ii) the landlord was extremely communicative and complied with the Section 253 Notice; and the following aggravating factors: (i) inappropriate fire safety standards in the Property. Thin panel doors and smoke detectors; (ii) landlord relet the Property and continues to operate an unlicensed HMO.
50. On 3 August, Hamptons responded to the Notice. On 5 August, the Respondent responded. The Tribunal has been provided with copies of both these responses. Lambeth has not yet decided what financial penalty, if any, to impose on either party.
51. On 3 May 2021 (at R.364), Lambeth received an application for an HMO licence from the Respondent. On 27 July (at R.364), Lambeth notified it that it was minded to grant an HMO licence.

Our Determination on Liability

52. The Respondent accepts that the Property was an HMO which required a licence and that there was no licence between 9 April 2020 and 19 March. Further, no application had been made for a licence. The ingredients of an offence under section 72(1) of the 2004 Act are therefore established. The only issue which the Tribunal is required to determine is whether the Respondent has established that it had a reasonable excuse for “having control of or managing” the Property during this period.
53. The Respondent has set out its defence in its response to the Notice of Intention served by Lambeth and we consider this in the context of the evidence that we have heard. The Respondents first averment is:

“The company was in contact with the council’s Mr Preston regarding the property in early March 2020. Mr Preston confirmed that it would be possible to commence occupation prior to the council carrying out a licencing inspection. At that time it was not clear whether the property would require a licence due it being unclear how many tenants would occupy. In late March 2020 the company agreed to let the property to a group of five tenants. This decision meant that the property would require a licence. However as the country moved into restrictions due to the public health emergency the company and it’s agent, Messrs

Hamptons, decided that the priority was to complete the tenancy grant and move the tenants into the property. For this reason no licence application was made prior to the commencement of the tenancy since this would have delayed the provision of the accommodation to the tenants.”

54. The Tribunal is satisfied that the Respondent should have applied for a licence prior to granting the tenancy on 10 April 2020. We have considered the email trail at [39]. By 2 March 2020, the Respondent had decided to convert the Property into five bedrooms so that it could maximise the rent that it would receive from the Property. In their Terms of Engagement, Hamptons expressly excluded any responsibility for applying for a licence. Ms Wang assumed this responsibility. She knew how to apply for a licence.

55. There is no reason why Ms Wang could not have applied for a licence between 3 March and 10 April. Whilst Ms Wang gave evidence that she had difficulty in navigating Lambeth’s online system, we received no evidence that she faced any problems during this period. She had an excellent line of communication with Mr Preston. Had she faced any problems, we would have expected her to raise them with Mr Preston.

56. The Respondent’s second averment is:

“Following the start of occupation the company’s agent attempted to make contact with the council to check the requirements for a licence. However the agent was unable to speak to the relevant department and in the middle of April 2020 the agent went onto furlough and ceased work.”

57. The Tribunal does not accept that Hamptons made any attempt to apply for a licence after the tenancy was granted on 10 April. It would not have been within their remit to do so. The Respondent adduced no evidence from Hamptons that they had made any effort to do so.

58. The Respondent’s third averment is:

“The company’s director Ms Gloria Wang then attempted to make a licence application using the council’s online service. Ms Wang accessed the council’s website and was then taken to an external site marked “IDOX”. This site carried no identification that it was a site used by the council, such as the council’s name, badge or even corporate typeface. Furthermore, the IDOX web page did not allow users to create an account; a necessary step before making an application for a HMO licence. Ms Wang was therefore unable to commence applying for a licence for the property in the name of the company (since neither she nor the company had had previous dealings with the council and therefore did not already have an account). Ms Wang attempted to contact the council for advice

regarding these matters but was unable to obtain answers to either her emails to the council's HMO email address or to telephone calls to the council's HMO team."

59. Ms Wang expended upon this account in her evidence. The substance of her defence was that during the Covid-19 lockdown period, it was not possible to navigate Lambeth's online application system and that it was not possible to contact any Lambeth officer for assistance. We are unable to accept her evidence. We prefer the evidence of Mr Umelo that during this period a large number of online applications were made and that throughout the lock-down period, officers were providing a telephone service. We are satisfied that anyone with even the most basic computer literacy would have been able to navigate the Idox system. The problem seems to have been that Ms Wang did not recognise the need to create a new account before proceeding to complete her application. Ms Wang printed a web page (at R.390). This would only be relevant had an applicant created an account.
60. We accept that Ms Wang made some attempts to contact Lambeth. She referred us to emails dated 15 April 2020 (at R.187), 12 May 2020 (at R.186) and at p.185 (the date is in Chinese characters). A number of these emails have Chinese characters. Some were sent by Tracy Cai, Ms Wang's mother, from China. Mr Umelo has found no evidence that these were received on Lambeth's server. Mr Preston has confirmed that he has no knowledge of them Mr Umelo also raised it with Lambeth's IT department, but received no response. Mr Umelo suggested that Lambeth's server may have rejected them because of their questionable origin.
61. The Respondent's final averment is:
- "In early May 2020 Ms Wang therefore employed AA Housing Recovery to assist with applying for a HMO licence."*
62. Mr Tribunal heard evidence from Mr Manenti, the director of AA Housing Recovery and had regard to the statement of his brother, Max Manenti. We did not find Mr Manenti to be an entirely satisfactory witness. The Tribunal accepts that Ms Wang approached him in May 2020 for assistance in applying for a licence. He states that he attempted to apply for a licence online and to contact Lambeth staff without success. We find this surprising, given that Lambeth was processing online applications throughout the Covid-19 lockdown.
63. In May 2020, Mr Manenti agreed a fee of £850 + expenses with Ms Wang to personally deliver an application to Lambeth. This fee was not paid as he failed to secure a licence. Mr Manenti found a paper application form from an archive page on Lambeth's website and completed this (at R.319-334). Ms Wang signed this on 5 June 2020. She also made out a cheque to Lambeth in the sum of £1,395. The stub is at R.313. Mr Manenti stated that on 30 June and on 7 October 2020, he visited a housing office in

Kennington Lane. He was unable to deliver the application as the office was closed. Finally, “around mid-November 2020” he posted the application to “Lambeth Council, PO Box 734, Winchester, SO23 5DG”. His brother was with him when he posted the letter. Lambeth have no record of having received this letter. Public authorities are normally particularly careful if any correspondence encloses a payment. Mr Manenti gave no adequate explanation as to why he waited five months before posting the letter or why, when he finally decided to do so, this was not sent by recorded delivery.

64. The Tribunal therefore rejects the Respondent’s contention it had a reasonable excuse for having control or management of an HMO without a licence. We are satisfied that the Respondent should have applied for a licence before the tenancy was granted. No adequate explanation has been provided for failing to apply for a licence at the beginning of March 2020. She knew that an inspection would be required and that works might be required. It would be preferable for those works to be done before any tenants moved into occupation. However, she had been told there was nothing to stop her letting the Property before Lambeth had carried out their inspection. The critical point was that the Respondent needed to apply for a licence online.
65. Having decided to let the Property without first applying for a licence, it was the more important for the Respondent to make a valid application in accordance with Lambeth’s requirements. Mr Preston had referred Ms Wang to Lambeth’s website. There was nothing on the website to suggest that an application could be made by post. Mr Manenti was only able to find an application form by searching the archive pages on the website. An application by post would not have been made in accordance with Lambeth’s requirement for a valid application.
66. The Tribunal accepts that Covid-19 has presented practical problems. However, we accept Mr Umelo’s evidence that throughout the lockdown, Lambeth had a functioning system for receiving applications on line and that throughout this period officers were providing a telephone service. We did not find the evidence of Ms Wang and Mr Manenti of their attempts to engage with Lambeth to be convincing. It is for the Respondent to satisfy us that they had a defence of reasonable excuse on a balance of probabilities. It has failed to do so satisfy us.

Our Determination on the Appropriate RRO

67. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. We are satisfied that none of the Applicants were in receipt of any state benefits. They paid their rent from their earnings.

68. The Applicant seeks a RRO in the sum of £38,180.31 based on the rent which they paid during the period that they occupied the Property. The rent account confirms that they paid this rent.
69. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account: (i) the conduct of the landlord: (ii) the conduct of the tenant: (iii) the financial circumstances of the landlord. (iv) whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.
70. We have had regard to the recent decisions of the Upper Tribunal and, in particular, the recent decision of the Chamber President, Mr Justice Fancourt, in *Williams v Parmar* and others [2021] UKUT 244 (LC). We have had regard to the written and oral submissions of the parties. We have determined to make a RRO in the sum of £19,090, namely 50% of the rent paid by the Applicants. We have had regard to the following factors:
- (i) The sums which the Respondent has expended on the Property (see R.248-251). However, most of these expenses were incurred in discharge of the Respondent's obligations as landlord. It is not appropriate to make any deduction for the rental payments made to Gatehouse Bank.
- (ii) The conduct of the landlord: The Respondent owns a number of properties and was aware that a licence was required. The fire precautions were inadequate an HMO and that there was some disrepair. We accept that the Respondent made some efforts to apply for a licence after the tenancy had been granted, albeit that these were insufficient and ineffective. This is the significant factor in the deduction that we have decided to make.
- (iii) The conduct of the tenant: There has been no criticism of the conduct of the tenant.
- (iv) The financial circumstances of the landlord: We are not persuaded that we should reduce the RRO on this ground. We note that the Respondent owns six valuable properties in London.
71. We are also satisfied that the Respondent should refund to the Applicants the tribunal fees of £300 which they have paid in connection with this application.

Judge Robert Latham
20 October 2021

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.