FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:BIR/00CN/HMJ/2022/0001-3**
Property	**: 3 Heaton Drive Sutton Coldfield B74 2QZ**
Applicant	**: (1) Max Ingram Redmayne** **(2) Nina Gabrielle Townsley** **(3) Daniel Jowett-Hall**
Respondent	**: Mr Brendan Dowd**
Type of Application	**: Application for Rent Repayment Order by tenant** Sections 40,41,43 and 44 Housing and Planning Act 2016
Tribunal Members	**: Judge T N Jackson** **Mr R Chumley-Roberts MCIEH, J.P**
Date and venue of Hearing	**: 23rd August 2022** **Video Platform**
Date of Decision	**: 27 October 2022**

DECISION

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Decision

The Tribunal makes Rent Repayment Orders against the Respondent as set out below, to be paid to each of the Applicants within 28 days of the date of this Decision:

Mr Redmayne £4849
Ms Townsley £4426
Mr Jowett-Hall £4013

The Tribunal orders that £300 to reflect the cost of the application and hearing fees be reimbursed to Mr Redmayne and £100 to reflect the cost of the application fee be reimbursed to Mr Jowett -Hall.

The Tribunal does not make any determination regarding the Respondent's costs. If the Respondent wishes to pursue the application, he must do so within 28 days of the date of this Decision.

Reasons for decision

Introduction

1. The Applicants applied for a Rent Repayment Order stating that the Respondent had failed to licence the Property as a House in Multiple Occupation ('HMO'). Mr Jowett-Hall also applied in relation to illegal eviction or harassment. The Applicants sought Rent Repayment Orders in the amounts set out below:

   Mr Redmayne £6,768
   Ms Townsley £6,240
   Mr Jowett-Hall £5,724

2. Mr Redmayne applied for reimbursement of the application and hearing fees of £100 and £200 respectively. At the hearing Mr Jowett-Hall applied for reimbursement of the £100 application fee. The Respondent applied for his out of pocket expenses including legal costs.

3. As all applications dealt with the same Property and landlord, the cases were heard together.

Background

4. From 2018, the Respondent let out rooms on the ground and part of the first floor of his three storey house. He occupied part of the second storey and the whole of the third storey.

5. Mr Jowett-Hall, occupied a room in the Property under an assured shorthold tenancy agreement dated 28th May 2018 from the same date at a rent of £563 per calendar month to be paid on the 1st of the month. Due to personal circumstances, in approximately January 2019, Mr Jowett-Hall moved to a different room at a lower rate of £477 per month.

6. Mr Redmayne occupied a room in the Property under an assured shorthold tenancy agreement dated 25th February 2021 from 5th March 2021 to 5th March 2022 at a rent of

£564 per calendar month, (with a pro rata of £473 being paid for the period 5th March 2021 to 31st March 2022) to be paid on the 1st of the month.

7. Ms Townsley occupied a room in the Property under an assured shorthold tenancy agreement dated 20th August 2020 from 1st September 2020 to 1st September 2021 at a rent of £520 per calendar month to be paid on the 1st of the month.

8. The tenancy agreements were based on a standard form from the Residential Landlord's Association (RLA), although the Respondent was not a member of the Association. We have been provided with an unsigned and undated document in relation to each tenancy headed 'Schedule of Rent due payment dates and specific conditions relating to…'. In relation to utility bills, it states that the rent is inclusive of gas, electric, water and council tax and there is free use of wifi. It states that 'this is based on a fair usage assessed as normal for occupancy. Landlord estimates cost of bills £10 per week per person. If excessive bill cost this will be reassessed during the tenancy term'.

9. At the conclusion of the 12 month tenancy periods, the tenancies became statutory tenancies on the same terms.

10. Since May 2018 when Mr Jowett-Hall became a tenant, the Property has been continuously occupied by at least 5 tenants none of whom were known to each other or were related. The Property has not been licensed as an HMO under the mandatory HMO licensing scheme.

11. On 16th January 2022 by email, the Respondent gave Mr Redmayne 2 months' notice to vacate the Property.

12. On 17th January 2022 via email, Mr Redmayne raised the issue of a lack of an HMO Licence with the Respondent. Following the receipt only of a gas safety certificate, on 16th February 2022, Mr Redmayne raised concerns with Birmingham City Council regarding the Property.

13. A Council officer inspected the Property on 25th February 2022 and carried out an investigation.

14. On 7th March 2022 the Respondent emailed the Council officer and had a subsequent telephone conversation.

15. On 9th March 2022, the Respondent emailed the Council officer to advise that two tenants would be leaving within the next 2 months, one by 31st March 2022 and Mr Jowett-Hall by 24th April 2022.

16. In an e-mail dated 7th March 2022, to the Local Housing Authority (Birmingham City Council) the Respondent applied for a Temporary Exemption Notice.

17. On 28th March 2022, the Respondent was granted a Temporary Exemption Notice which was in force i.e valid, until 20th June 2022.

18. By letter dated 29th March 2022, a Council Officer advised the tenants of the Property that they were investigating an allegation that the Property was operating as an unlicensed HMO. The letter advised the tenants that they may be able to make an application for an RRO.

19. Two tenants vacated around the end of March/early April 2022, including Mr Jowett-Hall (1st April 2022).

20. On 21st April 2022 Mr Redmayne, on behalf of Ms Townsley wrote to the Respondent's solicitors regarding an incident on 9th April 2022. Ms Townsley and Mr Redmayne vacated the Property on 30th May 2022 and 6th June 2022 respectively having been served with section 21 Notices approximately two months prior.

Inspection

21. Due to Covid-19 measures, we did not inspect the Property either internally or externally. Having regard to the issue to be addressed and the photographic evidence in the bundle we did not consider it necessary to inspect the Property. The Respondent describes the Property as a three storey house. On the ground floor and part of the first floor there are 6 rooms used as bedrooms (four of which are en-suite) and shared space including living room, kitchen, conservatory, bathroom and a cloakroom WC. These areas comprise the area rented to tenants. The Respondent lives on part of the first floor and on the second floor of the Property. He has his own separate independent entrance, kitchen, bedrooms and bathroom and his own separate means of fire escape. There were no fire safety measures, including fire doors, smoke and fire alarms in the area of the Property occupied by the tenants. The Respondent had interlinked fire alarms in the part of the Property he occupied. We are told that there is sufficient parking for 5 cars on the driveway and there is a garage.

22. There are two boilers in the garage. One boiler was replaced in January 2021 but a gas certificate was not obtained.

Hearing

23. The hearing took place via video platform. The hearing was attended by Mr Redmayne, Ms Townsley (represented by Mr Redmayne), Mr Jowett-Hill and the Respondent.

The Law

24. Section 41 of the Housing and Planning Act 2016 ("the 2016 Act"), provides that a tenant may apply to the Tribunal for a Rent Repayment Order against a landlord who has committed an offence to which the 2016 Act applies.

25. The 2016 Act applies to an offence committed under section 72(1) of the Housing Act 2004, namely the control or management of an unlicensed HMO and section 1(2), (3), or (3A) of the Protection from Eviction Act 1977, namely unlawful eviction or harassment of occupiers.

26. Section 43 provides that we may make a Rent Repayment Order if satisfied, beyond a reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies (whether or not the landlord has been convicted).

27. Section 44 of the 2016 Act provides for how the Rent Repayment Order is to be calculated. The rent the landlord may be required to pay in respect of the period specified in section 44 must not exceed the rent paid in respect of that period, less any relevant award of universal credit paid in respect of rent under the tenancy during that period.

28. Section 44(4) of the 2016 Act states that in determining the amount of a Rent Repayment Order, we 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 that Chapter of the Act applies.

Submissions

<u>The Applicants</u>

29. Mr Redmayne on behalf of the Applicants submits that the Respondent has let out the Property for at least 6 years and had ample opportunity to research and comply with the law. He cannot be regarded as a novice landlord and has a responsibility to understand and comply with obligations of a landlord.

30. Mr Redmayne submits that despite the Respondent being made aware on 17th January 2022 of the need for an HMO licence, it was not until the Council became involved in February 2002 that the Respondent applied for a licence exemption.

31. Mr Redmayne submits that despite the tenancy agreement stating that deposits would be dealt with 'under one of the Government approved schemes' and being made aware of the issue on 10th August 2021 in an email from Mr Redmayne, the Respondent failed to protect the deposits until 8th March 2022 and 19th April 2022 for Mr Redmayne and Ms Townsley respectively following a conversation with Mr Redmayne. Mr Jowett-Hall's deposit was not protected before he left the Property. Mr Redmayne asserts that this is evidence that the Respondent fails to comply with his obligations until enforcement is threatened.

32. Mr Redmayne states that the Respondent failed to allow tenants the use of the garage where the Respondent kept his car, work machinery and tools, and that the garage falls within the definition of 'shared area' within the tenancy agreement. It is further alleged that the Respondent failed to allow the tenants' quiet enjoyment of the Property by engaging decorators without informing the tenants and that the decorators were present for weeks and had a habit of leaving the front door open, blocking the driveway with guttering, scaffolding, cladding, a scissor lift and several vans which has resulted in them being unable to enjoy the address during the daytime and, on several occasions, being unable to use the drive. This impacted on Mr Redmayne on 27th May 2022 when it hampered his ability to remove things from the Property.

33. Mr Redmayne refers to an incident on 9th April 2022 when Ms Townsley was approached at the door of her room by the Respondent whom, it is alleged, berated' her 'at length' for allowing the Council officer to inspect her room and for providing a written statement to the officer. By email dated 21st April 2022, Mr Redmayne, on her behalf, raised the matter with the Respondent's solicitors but did not receive a response.

34. Mr Redmayne has produced photographic evidence of the condition of the Property.

35. Regarding the Respondent's financial circumstances, Mr Redmayne asserts that the Respondent owns the Property, a further property in Ireland and that Rossway Ltd, of which the Respondent is a director, recorded net assets of £128,541, on the companies balance sheets, as of 30th April 2021.

36. Mr Redmayne submits that the Respondent's figure of £17,208 per annum for utility expenditure is in excess of the true figure. No proof has been provided of the costs. He queries the unit rate for gas which was based on a bill dated June 2022 rather than a bill dated during the relevant period. He advises that the OFGEM capped unit rate for gas as at October 2021 was 4 pence per unit until it was increased to 7 pence per unit in April 2022. Whilst there were inaccuracies in the electricity bill, he accepts that these are de minimis. He further submits that some of the costs detailed in the Respondent's analysis should not fall to the Applicants as these charges would have been incurred by the Respondent if he had not let out rooms in the Property. He submits that a more likely rate for utility expenditure would be an average of £44 per month per tenant (and the Respondent).

37. Mr Redmayne submits that this is a serious offence, as from at least 2016, the Property has not been licensed and therefore appropriate fire precautions such as gas safety certificate, electrical safety records, fire blanket, fire doors, fire signage, adequate smoke and heat alarms have not been in place. Ms Townsley had bought carbon monoxide and smoke alarms and placed them in the shared kitchen and her bedroom.

The Respondent

38. The Respondent submits that in 2018, when Mr Jowett-Hall became the fifth tenant at the Property, there was no requirement to have an HMO Licence, as the area of the house being rented out did not comprise 3 storeys even though there were 5 occupants. He submits that the area being used as an HMO was the ground and first floor only, therefore 2 storeys only. He was not aware of the changes in legislation on 1st October 2018 and had not been informed by anyone of the changes until the Council officer's visit in February 2022. He did not consider that fire alarms were required in the let rooms due to their large size but had put fire alarms in the area he occupied.

39. The Respondent states that the Property is in a good state of repair and complies with Birmingham City Council's 'Property and Management Standards applicable to Private rented properties, including Houses in Multiple Occupation'. He submits that with the exception of the issue of fire precautions, the Applicants' evidence has not identified any shortcomings in the standard of accommodation or facilities and nor were any shortcoming raised by any tenant prior to the 16th March 2022 email from Mr Redmayne. He had gas safety certificates in place pre 2021 but did not have one for 2021 due to the Covid pandemic.

40. The Respondent submits that Mr Redmayne's conduct has been poor in relation to the use of the garage. The Respondent says that all tenants were advised by him that he used the garage to park his vehicle and that it was not to be used without his consent. The Respondent submits that the garage has never been part of the HMO and states that the fact that prior to moving in Mr Redmayne had sought consent to store his bike in the garage, confirms that Mr Redmayne was aware of this. The Respondent gave consent for Mr Redmayne to keep his bike in the garage. He subsequently moved vehicle maintenance equipment, trolley jacks, tools, axle stands, oil and vehicle parts in the garage. There was an exchange of email correspondence initiated by the Respondent on 11th April 2021 regarding Mr Redmayne's use of the garage and also relating to Mr Redmayne positioning a second vehicle on the drive on axle stands in April 2021 until its removal in February 2022.

41. The Respondent advised Mr Redmayne that he could not take up storage space in the garage nor use the premises for commercial gain.

42. The Respondent states that he was not made aware of any safety issues during the Applicants' tenancies and that the first time it was raised by Mr Redmayne was after he had served him with notice to vacate at the end of the tenancy agreement. If there were indeed safety issues, he asserts that Mr Redmayne and the tenants had a duty to notify him of them.

43. The Respondent states that Mr Redmayne has a degree level legal qualification and is a serving police officer and therefore well versed in the legal requirements of tenancies. The Respondent refers to the timing, in that Mr Redmayne only contacted the Council after his tenancy term had expired. The Council had inspected the Property and, as at the date of the hearing, had not taken any action against the Respondent. The Respondent suggests that Mr Redmayne's actions and their timing illustrate that Mr Redmayne's objective is to manipulate the system for personal gain and is in retaliation for the Respondent acting as a responsible landlord in relation to Mr Redmayne's conduct.

44. The Respondent alleges that Mr Redmayne used the Property to undertake vehicle repairs and trade in vehicles and vehicle parts. He bought and stored tyres and aluminium wheel hubs which he stored on the premises without the Respondent's consent. He stored them at the front entrance door to the Annex (a designated fire escape route) occupied by the Respondent where they remained for several months with Mr Redmayne ignoring the Respondent's requests to have them removed. There are statutory requirements for the safe storage of vehicle tyres and the storage by Mr Redmayne was a disregard for the safety of the Respondent and the other occupants.

45. The Respondent alleges that in relation to Mr Jowett-Hall, during March 2021 to April 2022 he paid rental totaling £5274, leaving a shortfall of £1032.

46. In relation to utilities (gas, electricity, broadband, council tax, water rates, Four Oaks estate charge and garden maintenance), the Respondent has provided copies of meter readings and has provided a calculation based on the number of occupants and days of occupancy between 28th March 2021 and 28th March 2022 as a result of which, the assessed cost is £158.45 per month per tenant and himself.

47. The Respondent submits that whilst the tenancy agreements state that the rent is inclusive of utility costs (and gives a figure of £10 per week), it allows the landlord to reassess if excessive utility costs are incurred and to claim from the tenant. The Respondent submits that due to Covid the tenants were not going out to work but working from home and therefore living and working full time at the Property which incurred additional running costs during daytime hours and for the full week. However, at the hearing he accepted that Mr Redmayne and Ms Townsley had gone to their respective jobs during the day.

48. The Respondent submits that he is contractually entitled to recover from the Applicants the increase in actual utility costs (less the £10 a week included within the tenancy agreement) from the date they each commenced occupation. In relation to Mr Redmayne, Ms Townsley and Mr Jowett-Hall he submits that the relevant figures are £1726, £2390 and £5,338 respectively.

49. In relation to matters of fire safety, the Respondent says that this issue was not raised by Mr Redmayne until 17th January 2022.The Property has both a protected escape route and a separate means of escape. In the cases of Ms Townsley and Mr Jowett-Hall, their accommodation is on the ground floor with a suitable openable escape window (to Building Control Standards) to external. In the case of Mr Redmayne, there is a secondary means of escape through an openable window onto a balcony, which, because of the sloping site, exits on to a ground level at number 1 Heaton Drive. This information, together with detailed Fire Risk Assessment with relevant certification, EPC Certificate, Gas and Electric Certificate have been provided to the Council.

50. One matter the Council brought to the Respondent's attention was the storage of goods and equipment in the garage, which goods and equipment belonged to Mr Redmayne and had formed the basis of correspondence between the Respondent and Mr Redmayne.

51. The Respondent says that he does not see the relevance of the reference by Mr Redmayne to tenant's deposits but confirms that all deposits have been returned in full to all 3 Applicants. However, at the hearing he accepted that he did not protect the deposits until approximately March 2022 and did it then as it was a pre-requirement to be able to serve a section 21 Notice.

52. The Respondent denies the allegation of harassment in April 2022 in relation to Ms Townsley. He states that, in April 2022, he had decided to cease operating the Property as an HMO and had a discussion with Ms Townsley, the purpose of which was to establish what would be the most convenient basis on which she could vacate the Property in consideration of the fact that she worked within the education field and would be affected by the academic year. The Respondent says that Ms Townsley stated that she was unhappy with the Respondent having asked Mr Redmayne to vacate after a year as they had become friends and that was why she was seeking the RRO. The Respondent's evidence is that he advised her that her tenancy agreement was a separate matter to that of Mr Redmayne's and any issue he had with Mr Redmayne did not concern her.

53. The Respondent comments on the 44 photos included within the Appellants' bundle and notes that only 3 were taken during the period March 2021 to March 2022 which is the period for which the RRO is sought.

54. In relation to maintenance works being undertaken at the Property, the Respondent says that an access platform was brought to the site on 16th May 2022 and removed on 27th May 2022. It was parked in the driveway which has sufficient space to park 5 cars and the platform occupied one parking space. During this period there were 4 tenants in the Property with only 2 with vehicles so there were no issues with parking on the drive as suggested by Mr Redmayne. The platform was necessary to gain safe access to carry out external works including replacement fascia and soffit to the high level and canopy roofs and repainting of external walls and windows. The works were external and did not affect occupation. They were undertaken during normal working hours when Mr Redmayne and Ms Townsley were out. Tree felling, which did create some noise, lasted only one day.

55. Internal works were also carried out including redecorating and cleaning of ground floor rooms, conservatory, living room and the replacement of damaged floor tiles to the kitchen. Three of the ground floor rooms were unoccupied bedrooms and the communal space took a day each, during the day whilst Mr Redmayne and Ms Townsley were out.

There was a crack in 2 of the kitchen tiles. The tiles were removed to obtain a colour match and a temporary covering put over them. This did not affect the ability to use the kitchen.

Deliberations

56. We considered the applications in four stages –

    a. Whether we were satisfied beyond a reasonable doubt that the Respondent had committed an offence under section 72(1) of the Housing Act 2004, namely the control or management of an unlicensed HMO and/or section 1(2), (3), or (3A) of the Protection from Eviction Act 1977, namely unlawful eviction or harassment of occupiers.

    b. Whether the Applicants were entitled to apply to the Tribunal for a Rent Repayment Order;

    c. Whether we should exercise our discretion to make a Rent Repayment Order;

    d. Determination of the amount of any Order

Offences

Section 72 (1) of the 2004 Act

57. Section 72(1) 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 under section 61(1) of the 2004 Act but is not so licensed.

58. The Respondent owns the Property and received rent from tenants who occupied it and therefore is 'a person having control'. Whilst the Respondent asserts that prior to 1st October 2018 as only 2 storeys of the Property were being used for occupation by tenants and therefore was not an HMO, he accepts that post 1st October 2018 (when the legislation changed) the Property was an HMO. The Applicants and Respondent's evidence suggest that the Property meets the conditions of the standard test as set out in section 254(2) of the 2004 Act and we therefore determine that the Property was an HMO after 1st October 2018 and a Licence for the Property as an HMO was required under section 61(1) of the 2004. The Respondent accepts that there was no Licence and neither did he make such an application for one.

Defences

Duly made application

59. The Respondent applied for a Temporary Exemption Notice on 7th March 2022 and therefore under the provisions of section 72(4) of the Housing Act 2004, the offence ceased on 6th March 2022.

Defence of reasonable excuse

60. The Respondent's evidence was that he did not know that a Licence was required. Pre October 2018, he considered that as tenants only occupied two of the three storeys, it did not comprise a licensable HMO and that he was not aware that the law changed in

October 2018. He was not running a business but rather letting out rooms in his own home where he remained a resident, like Air BnB. He accepted that ignorance of the law was no excuse but stated that the law was complex and advice was hard to obtain. Whilst it was an oversight, he considered that he kept within the standards required of an HMO as described in the Council's guide entitled 'Property and Management Standards Applicable to Privately rented Properties, including Houses in Multiple Occupation'. He had used the tenancy agreement template from the Residential Landlord's Association but was not a member and did not seek advice from them nor read the advice available on the internet.

61. We do not accept that the Respondent had a reasonable excuse to the commission of the offence. Whilst we accept that this is the only property he was renting out, that does not absolve him of the responsibility to ensure that he complies with all requirements when doing so. Whilst he was able to locate a standard tenancy agreement from a professional organization, he did not venture further to satisfy himself as to his obligations as a landlord.

62. We disagree with the Respondent's submission regarding whether the Property required a Licence under the pre -October 2018 legislative provisions. However, even if we accepted the point, it was his responsibility as a landlord, to keep up to date with any changes which affected the letting out of his Property, as occurred on 1st October 2018.

63. On the basis of the facts set out in pararaphs 10, 58, 60, 61 and 62 above, we are satisfied beyond a reasonable doubt that between 1st October 2018 and 6th March 2022 the Respondent had committed an offence under section 72 (1) of the 2004 Act, namely being a person having control or managing an HMO which was required to be licensed under section 61(1) of the 2004 Act but was not so licensed.

Section 1(2), (3), or (3A) of the Protection from Eviction Act 1977

64. Although Mr Jowett-Hall has claimed in his application to the Tribunal that there was an offence under the Protection from Eviction Act 1977 in relation to illegal eviction or harassment, he has not provided any details in the application form nor produced evidence to substantiate the claim as required by Directions dated 27th May 2022. The onus is on Mr Jowett-Hall to satisfy the Tribunal that an offence has been committed. In the absence of any evidence, we determine that the Respondent has not committed an offence under section 1 of the Protection from Eviction Act 1977.

Entitlement of the Applicants to apply for a Rent Repayment Order

65. In accordance with section 41(2), the offence relates to housing that, at the time of the offence, was let to the Applicants and the offence was committed in the period of 12 months ending with the day on which the applications to the Tribunal were made (namely 1st May 2022, 12th May 2022 and 17th May 2022 in relation to Mr Redmayne, Mr Jowett-Hill and Ms Townsley respectively). There is no dispute that the Property was let to the Applicants during this period. We determine that the Applicants are entitled to apply for a Rent Repayment Order

Discretion to make a Rent Repayment Order

66. Having considered the matter, including in particular the Respondent's written submission, we were satisfied that there was no ground on which it could be argued that

it was not appropriate to make Rent Repayment Orders in the circumstances of this case.

Amount of Rent Repayment Order

67. Under section 44 of the 2016 Act, the amount of an Order must relate to rent paid in a period, not exceeding 12 months during which the landlord was committing the offence under section 72 of the 2004 Act. The Respondent ceased to commit the offence on 7th March 2022 when the application for the Temporary Exception Notice was duly made. The offence was therefore committed between 1st October 2018 to 6th March 2022.

68. For ease of calculation, we have taken the 12 month period 5th March 2021 to 5th March 2022 during which the offence was being committed. During the relevant period Mr Redmayne, Ms Townsley and Mr Jowett-Hall paid £6240, £6768 and £5724 respectively. We do not accept the Respondent's assertion that Mr Jowett-Hill had a 'shortfall' of £1032. At the hearing the Respondent confirmed that this reflected the difference (lower) in rent paid by Mr Jowett -Hall for the smaller room when he moved from the original larger room. Mr Jowet-Hall had a new tenancy of the smaller room from approximately January 2019 at the reduced rent of £477 per month and the Respondent confirmed that he had never raised the 'shortfall' during the 3 years that Mr Jowet-Hall had been paying the rent at £477 per month.

Conduct

69. We do not find anything in the conduct of the Applicants that need to be taken into account. The Respondent confirmed that he had had no problems with Ms Townsley or Mr Jowet-Hall throughout their tenancies. We accept that the Respondent had issues throughout the tenancy with Mr Redmayne regarding the use of the garage and car repair. There appeared to be a genuine disagreement regarding the extent of the HMO and whether the garage fell within it as the tenancy agreement is silent on it. In relation to the use of the Property for car repairs, it was open to the Respondent to take action under the tenancy agreement if he considered it to be a breach but did not do so. Whilst Mr Redmayne was clearly an informed tenant and may have proven challenging, that of itself does not mean that his conduct was poor or such as to warrant a deduction from a Rent Repayment Order.

70. In relation to the Respondent, both Ms Townsley and Mr Jowett-Hill confirmed that they had had no problems with him as a landlord during their tenancies until the section 21 Notices were served. In relation to the outdoor maintenance works at the Property, they were after the date of the application to the Tribunal. In relation to the maintenance works to the kitchen floor, we consider this to be the action of a responsible landlord as opposed to something for which he can be criticized.

71. We do not accept that the Respondent harassed Ms Townsley on 9th April 2022. Ms Townsley's evidence was that the conversation took place halfway down the corridor outside her room and she accepted that he had said to her that he didn't want to look at her to avoid the impression of intimidation. He had asked why she had made a statement to the Council and she had answered him and then made her way out of the house as she was due at an appointment.

72. However, despite the Respondent having been a landlord from 2018, there is little evidence that he has ensured that he has understood and complied with the obligations that brings. The Property has been an unlicensed HMO for over 3 years which has

allowed tenants to be in occupation of a house with no fire safety measures, although he had ensured that fire safety measures were in place within the part of the Property he occupied. Whilst he said that he would have responded to issues regarding fire safety if they had been raised by the tenants, with respect, it is his responsibility as a landlord to ensure that the Property is safe before and whilst he is renting it out rather than rely on others to bring matters to his attention. Upon being made aware in January 2022 that the Property should be licensed he took no steps to inform himself of or remedy the position and took no action until the Council contacted him. At the hearing he confirmed that he had not read the tenancy agreement but had merely downloaded it from RLA despite not being a member. He did not register tenants' deposits as required, although we accept that he subsequently returned the deposits in March 2022. However, in the interim, the tenants did not have the protection offered by the deposit scheme. He did not have a gas safety certificate for 2021 despite saying to Mr Redmayne that he had. He served defective section 21 notices. He has failed at the basics of being a landlord and whilst willing to accept the income from the tenancies, he has not satisfied himself as to the corresponding obligations. It is irrelevant that, as at the date of the hearing, that there has been no legal action by the Council.

Financial

73. At the hearing the Respondent advised us of his annual salary of £45k and that his assets included the Property and a family home in Ireland.

74. In relation to the cost of utilities paid for by the landlord to be deducted from any Rent Repayment Order, we considered the elements identified by the Respondent on page 3 of Appendix 1 of his bundle. We found that the use of gas and electricity could be deducted as they are provided to the tenant by third parties and consumed at a rate the tenant chooses. Regarding broadband, there was no evidence that the Respondent had made any different arrangements or had any increased cost to reflect that there were the number of tenants using it rather than just himself and we therefore do not allow that cost. The water bill is based on rateable value rather than metered use and the council tax is based on the council band and therefore neither are affected by the number of tenants in the Property and are therefore excluded from the 'cost of utilities'. The Four Oaks Estate Charge and Garden Maintenance are also unaffected by the occupation or otherwise of tenants. The Estate charge is an obligation in relation to the Respondent's ownership of the Property. The Garden Maintenance enhances the Respondent's Property and thus enables him to charge a rent for it. We therefore also exclude those two items from the 'cost of utilities'.

75. We are therefore solely concerned with the cost of electricity and gas as utility costs. Following concerns expressed by Mr Redmayne that the calculation of the cost of the gas through the relevant period had been based on a gas bill from June 2022 at a rate of 7 pence per unit, the Respondent accepted that the OFGEM capped rate of 4 pence per unit as at 1st October 2021 was more appropriate. This resulted in a calculation of approximately £18 per month for each tenant (and the Respondent) for the use of gas. Mr Redmayne accepted that inaccuracies on the electricity bill were de minimis and therefore electricity was calculated at £40.88 per month for each tenant (and the Respondent). The true cost of the utilities of £58.88 total per month (£18 gas and £40.88 electricity) is therefore higher that the £10.00 per week stated to be included in the rent, and in accordance with the tenancy agreement can be recovered.

76. In relation to each tenant this results in a deduction from the rent paid of £706.56 for the 12 months (£58.88 x 12).

77. We do not accept the Respondent's assertion that the Applicants owe him for increased utility costs back to the date they each commenced their respective tenancies. He should have raised this at the time.

Conviction

78. We had no evidence that, at the date of the hearing, the Respondent had been convicted of any housing related offences or received any financial penalties.

Decision

79. We had regard to the cases of *Vadamalayan v Stewart and others* [2020] UKUT 0183; Rakusen v Jepsen *[2020] UKUT 298 (LC); Williams v Parmar [2021]* UKUT 244 (LC); *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC) and *Hallet v Parker [2022]* UKUT 165 (LC).

80. In *Rakusen v Jepsen*, the Upper Tribunal stated that the purpose of the repayment regime is not compensatory (an unlicensed HMO may be a perfectly satisfactory place to live):

> '*The policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of 'rogue landlords' in the residential sector by the imposition of stringent penalties*'.

In *Williams v Parmar,* the Upper Tribunal noted the comments in Hansard regarding the explanation of the purpose of Part 2 of the then Bill and states:

> '*This explanation of the purpose of Part 2, with its battery of measures against 'rogue landlords', suggests that the power to make rent repayment orders should be exercised with the objective of deterring those who exploit their tenants by renting out substandard, overcrowded or dangerous accommodation. The differential treatment of licensing offences and more serious offences in section 46, and the greater flexibility given to Tribunals when ordering rent repayment in the former category, are likely to be a reflection of that objective.*
>
> *Tribunals should also be aware of the risk of injustice if orders are made which are harsher than is necessary to achieve the statutory objectives*'.

81. In *Williams v Parmar,* the Upper Tribunal held that '*there is no presumption in favour of the maximum amount of rent paid during the period*'. It was noted that when **calculating** (our emphasis) the amount of an RRO, the calculation must relate to the maximum in some way and the amount of the RRO can be '*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*'. Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the 2016 Act.

82. The Upper Tribunal also highlighted that a Tribunal is not limited to those factors referred to in section 44(4) of the 2016 Act and '*that the circumstances and seriousness of the offending conduct of the landlord are comprised in the 'conduct of the landlord'* and ought to be considered. The Upper Tribunal held that a Tribunal may in appropriate cases order a lower than maximum amount of rent repayment if the landlord's conduct '*was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise*'.

83. In *Hallett v Parker,* the Upper Tribunal stated that '*where section 46 does not apply, an order requiring repayment of the full amount of the rent received by the landlord should be reserved for the most serious offences justifying the most exemplary sanction. Where the offence concerned is a failure to licence an HMO or an individual house, section 46 indicates that it was not Parliament's intention that the maximum penalty should usually be imposed. Circumstances may exist where such an order may be appropriate (for repeat offending, for example) but they will be the exception not the rule*'.

84. In fixing the appropriate sum, the Tribunal has had regard to the matters identified in paragraphs 69-78 above and also took account of the following: that the offence is not of the most serious type; that proper enforcement of licensing requirements against all landlords, good or bad, is necessary to ensure the general effectiveness of the licensing system and to deter evasion; that the Respondent failed to take sufficient steps to inform himself of the regulatory requirements associated with letting a property particularly when it is an HMO; other than the fire safety precautions, the condition of the Property was good; on the evidence, the Respondent is a first offender with no relevant convictions; he lets no other property. We decided that an appropriate level for the Rent Repayment Order would be 80% of the rent paid (after the deduction of the utilities of £706.56). This results in the following amounts:

   Mr Redmayne £4849
   Ms Townsley £4426
   Mr Jowett-Hall £4013

85. By Section 47 of the 2016 Act, a Rent Repayment Order is recoverable as a debt. If the Respondent does not make the payment to the Applicants in the above amounts within 28 days of the date of this decision, or fails to come to an arrangement for payment of the said amounts which is reasonable and agreeable to the Applicants, then they can recover the amounts in the County Court.

Costs

Applicant

86. Mr Redmayne applies for reimbursement of the application and hearing fees of £100 and £200 respectively. Mr Jowett-Hall applies for reimbursement of the application fee of £100.

87. As the Applicants have been successful in their applications, we award the costs in the amounts above.

The Respondent

88. The Respondent had applied for the cost of defending this application which includes legal costs. He has engaged solicitors and has tried to reach a settlement with each of the Applicants which has been rejected. At the hearing he asked that the matter be reserved pending his receipt of the Decision, following which he will determine whether to continue with the application.

89. We do not make any determination regarding the Respondent's costs. If the Respondent wishes to pursue the application, he must do so within 28 days of the date of this Decision.

Appeal

90. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

....

Judge T N Jackson