



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

Case reference : **BIR/37UE/HMK/2022/0009**

Property : **19 Colbrook Place, Midland Road,
Carlton, Nottingham NG4 2GH**

Applicant : **Ms Tamara Henry**

Representative : **None**

Respondent : **Ms Veronica Mwondela**

Representative : **None**

Type of application : **Application by Tenant for a Rent
Repayment Order**

Tribunal member : **Judge C Goodall
Mr P Wilson BSc (Hons) LLB MRICS MCIEH
CEnvH**

**Date and place of
hearing** : **30 June 2022 by video hearing**

Date of decision : **26 July 2022**

DECISION

Background

1. On 11 November 2021 Ms Tamara Henry (“the Applicant”) applied for a rent repayment order against Ms Veronica Mwondela (“the Respondent”) under the Housing and Planning Act 2016.
2. The grounds of the application were that the Respondent had had control of a house which was required to be licensed but was not so licensed, under section 95 of the Housing Act 2004 (“the 2004 Act”), and that she had therefore committed one of the offences listed in section 40(3) of the Housing and Planning Act 2016 (“the 2016 Act”) and that the Tribunal were therefore permitted to make a rent repayment order in her favour.
3. Directions were issued by the Tribunal on 15 February 2022. Both parties were required to provide a full statement of reasons in relation to their case on the application and were directed to provide additional documentation. The Applicant did not provide a statement of reasons, but she did provide some additional documentation. The Respondent provided a statement of reasons and additional documentation.
4. The case was listed for oral hearing by video link. The hearing took place on 30 June 2022. This decision states the outcome of the application and the reasons for the order the Tribunal makes on it.

Law

5. The relevant provisions of Part 3 of the 2004 Act, so far as this application is concerned are as follows-

79 Licensing of houses to which this Part applies

(1) This Part provides for houses to be licensed by local housing authorities where—

(a) they are houses to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 85(1)).

(2) This Part applies to a house if—

(a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and

(b) the whole of it is occupied either—

(i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4)...

85 Requirement for Part 3 houses to be licensed

- (1) Every Part 3 house must be licensed under this Part unless—
 - (a) it is an HMO to which Part 2 applies (see section 55(2)), or
 - (b) a temporary exemption notice is in force in relation to it under section 86, or...
 - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still be effective (see subsection (7)).
- (3) In proceedings against a person for an offence under sub-section (1) it is a defence that, at the material time-
 - ...
 - (b) an application for a licence had been duly made in respect of house under section 87,

and that ... application was still effective.
- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition, as the case may be.

6. The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

40 Introduction and key definitions

- (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 ...
- (3) A reference to ‘an offence to which this Chapter applies’ is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	Section	General description of offence
6	Housing Act 2004	Section 95(1)	control or management of unlicensed house

41 Application for rent repayment order

- (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.

...

43 Making of rent repayment order

- (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).

- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
 - (a) section 44 (where the application is made by a tenant);

44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
<i>an offence mentioned in row ...6... of the table in section 40(3)</i>	<i>a period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (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.
- (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.

Applicant’s evidence

Proving an offence under section 95 of the 2004 Act and calculating the maximum amount of rent paid that may be the subject of a rent repayment order

6. The Applicant said she had sent in a written statement explaining her reasons for seeking a rent repayment order, as directed by the Tribunal. None had been received by the Tribunal however. We allowed her instead to give oral evidence concerning her application. No objection was raised by the Respondent.
7. The Applicant said she became the tenant of 19 Colbrook Place, Netherfield, Nottingham (“the Property”) in 2017, letting it through a letting agent called Saints Property Services, who had an office in Beeston, Nottingham. The rent was £500 per month. The tenancy agreement she signed on commencement of her tenancy (the landlord being the Respondent c/o Saint Property Services) commenced on 30 August 2017, and provided for rent to be payable on the 30th day of each month to Saints, in advance. A new tenancy agreement was entered into on 28 December 2020, still at £500.00 per month, also payable in advance on or before 28th day of each month. The reason for the new tenancy agreement is explained in the account of the Respondent’s evidence below. Both tenancy agreements have contractual promises by the Applicant not to change the locks without providing a key to the Respondent, and not to redecorate without consent.
8. The Applicant described the Property to the Tribunal. She said it was a second floor flat with 2 bedrooms (one ensuite) and a separate bathroom, with a kitchen and lounge, in a block of 11 or 12 flats. It came with white goods except for a washing machine. There was a door entry buzzer system which did not work. She stated that it had dirty walls and at some point the toilet and the fridge had broken and she had struggled to get them repaired through the Respondent. One of the toilets did not flush properly. The Respondent had eventually found someone to repair it, though the first workman’s work was not of an adequate standard and a second had to attend. The Applicant thought the time taken to remedy the problem had been around 2 months, though she conceded that it might have been 6 weeks.
9. Probably in the autumn or winter of 2021, the Applicant had become aware that on 1 October 2018, Gedling Borough Council had designated the area in which the Property was located as an area of selective licensing, and that the Respondent did not have a licence. She therefore sought a rent repayment order of £6,000.00, being the monthly rent of £500.00 for a period of 12 months.
10. In support, the Applicant provided an email from a Senior Environmental Health Officer at Gedling Borough Council confirming that the Netherfield ward was designated for selective licensing on 1 October 2018. The email confirmed that the Respondent had applied for a licence on 4 June 2021.
11. The Applicant submitted an undated email from Saints confirming that her tenancy with them existed between 30 August 2017 and 20 November 2020 and that the rent of £500.00 per month was paid on time. She also provided a document which she said was a copy of her bank statement

showing rental payments from 6 October 2019 to 30 November 2020. Although this did not appear to be a copy bank statement, the Tribunal understands it was derived from a search against payees on her internet banking app. Looking at the payments from 1 June 2020 to 5 June 2021 (slightly longer than the relevant period the Tribunal has to consider in this decision), the Applicant accepted that rent was always paid in arrears, not in advance.

12. The Applicant did not submit evidence of payment of rent from December 2020 to June 2021, but the Respondent had exhibited a schedule of rent paid during this period which she had prepared in connections with the possession proceedings. The Tribunal took the Applicant through this statement. The Applicant agreed that it was accurate. It showed that rent had been paid in arrears at the end of the month, not in advance, during this period too, with the payments for April, May and June 2021 being between 5 and 8 weeks later than the contractual payment date.
13. Neither of the statements showed any rent payments in August and September 2020. The Applicant said that she had made cash payments to Saints for those two months. The Respondent did not dispute this.
14. From the statements referred to in the previous two paragraphs, confirmed by the Applicant in her oral evidence, the rental payments made in the period 4 June 2020 – 3 June 2021 were as shown in the table.

Date	Amount (£)
25 June 2020	500
27 July 2020	500
August 2020 (no date)	500
September 2020 (no date)	500
13 October 2020	250
14 October 2020	250
30 November 2020	500
28 December 2020	500
29 January 2021	500
1 March 2021	500
30 March 2021	500
17 May 2021	500
Total	5,500

The Applicant's case in respect of the Respondent's conduct

15. The Applicant complained that she had issues with the landlord over the time she had been at the property. She accepted that sometimes her rent payments had not been made on time, but she explained that she had to support herself whilst studying as a student. She felt that the Respondent should have been more understanding of her personal problems, which had been severe particularly in the early period of her tenancy.

16. The Applicant said that she had had a lot of stressful encounters with the landlord who had threatened her with eviction on a number of occasions. She was unable to provide any specific examples of these alleged threats. She considered that she had probably been threatened with eviction around ten times. She said the Respondent had been condescending in her tone when they had conversations and had texted or emailed at any time of day, triggering the Applicant's anxiety. She had not had a very good experience in her relationship with the Respondent.
17. At some point (the Applicant did not know when but thought it was within the last 2 years) there had been an infestation of insects. The company which was asked to resolve the problem asked her to take a picture of them and send it to them. This did not resolve the problem, and in the end the Applicant had to deal with it herself.
18. The Applicant also had cause to complain about the state of the carpet in the second bedroom, but she did agree that the Respondent replaced it eventually with a laminate flooring alternative, which was better.
19. A further complaint was that the intercom door entry system did not work, and indeed had never worked since the commencement of the tenancy. The Applicant said she had raised this with Saints but it had never been repaired.
20. The Applicant told the Tribunal that at one point she had not been provided with hot water. She accepted that the Respondent had organised a repair, which turned out to be the need to replace a battery to the boiler.
21. The Applicant complained that the Respondent had been attempting to terminate her tenancy for some time and had served more than one notice to quit. She had to obtain advice on at least one of these which had turned out not to be valid and had to be re-served because it had been served during a period when no licence was in place. It was whilst the possession proceedings were in train that the Applicant decided to make the application for a rent repayment order.

County Court Proceedings

22. In the Respondent's documents, a document relating to County Court possession proceedings had been provided. The Applicant said there had been a recent County Court hearing at which a suspended possession order had been made against her. All arrears of rent up to the court hearing had been cleared. The Applicant said she was still renting the Property.

Response to allegations of poor conduct by the Respondent

23. The Respondent had alleged that the Applicant had repainted the whole flat in white paint without any permission. The Respondent would not have given permission to use white; the paint colour was cream, and they

preferred that it remain so. The Applicant denied that she had repainted the flat; she said it was just small sections on some walls.

24. A further allegation made by the Respondent was that the Applicant had failed to provide her with a new key after she had changed the locks early in her tenancy. The Applicant accepted that she had changed the locks but said she had sent new keys on two occasions. She stated she had changed the locks because of her anxiety about security following an assault in the immediate vicinity.

Respondent's evidence

Background, management, and failure to apply for a licence

25. The Respondent said that she and her husband had responded to an internet offer to invest in property in around 2008 which included the opportunity to invest in a new build flat in Nottingham, being the Property. The Respondent is a primary school teacher, and her husband works as an IT contractor to the NHS. They live in Essex, but they decided to buy the Property nevertheless. They have three daughters and seven grandchildren and wished to make an investment for their family in the future.
26. The Respondent was aware that they would need an agent to manage the Property and they selected Saint Property Services ("Saints"). In their minds, they were not intending to run a commercial business; they were simply buy-to-let investors. The Respondent accepted that she was not up to date with property management issues. They carried out some due diligence in that they checked that Saints were registered with an estate agent's association.
27. The Respondent said they had no problems with Saints for many years. They found tenants, formed the necessary contract, collected the rent and accounted to the Respondent for it each month.
28. In May 2018, Saints sent the Respondent an email about selective licensing. In her statement, the Respondent explains what happened as follows:

"We received an email from our then managing agent containing information about the impending Nottingham Selective Licensing. We made a telephone call to the agent who further explained that the area in which the property was situated, Carlton, Netherfield, was not on the list of designated areas (highlighted under "who will need to apply"). He added that should that change they would update us and manage the whole process on our behalf confirming what they had stated in the email (highlighted under "what should you do next")

We received no further communication from our managing agent with regard to selective licensing."

29. In oral evidence, the Respondent confirmed the information set out in her written statement. A copy of the email referred to was provided to the Tribunal. It is dated 11 May 2018. It offers information on the selective licensing scheme being introduced “through parts of Nottingham”. It confirms that “anyone who owns a privately rented home in the designated Nottingham areas will need to apply for a licence.” A list of the areas is given, which does not include either Carlton or Netherfield.
30. The email provides details of a web-site to allow entry of a postcode to find out if the property requires to be licensed. It is a “nottinghamcity.gov.uk” web page.
31. At the end of the email, there is a “what should you do next” section. This states:

“Saint Property Services will be there every step of the way, so please don’t worry. We will be contacting you in June to start the process, and applying from 1 July onwards. If you have any questions in the meantime, please feel free to email us, we are always happy to help in any way we can.”
32. As explained in her statement, the Respondent confirmed that she made a telephone call to Saints upon receipt of the email who confirmed that Carlton was not in the Selective Licensing area. The Respondent relied upon that assurance, saying that Saints had been a very good in the past, there was no reason to distrust them, and she trusted them to do what they said about contacting her if the Property became subject to Selective Licensing.
33. Through judicial questioning, it was put to the Respondent that the advice from Saints was misleading as the Property is in Gedling Borough Council (“Gedling”) and the information Saints had provided related to the Selective Licensing Scheme in Nottingham City Council. Carlton and Netherfield would therefore never be on the list of areas subject to Selective Licensing on the email from Saints. Did she not realise that the advice from Saints was flawed?
34. The Respondent replied that she did not know the local area around the Property at all. She did not know which local authority borough it was in. She had never corresponded with Gedling about the Property. She had never been contacted by Gedling about any council tax demands.
35. Going back now to the history of management of the Property, the Respondent said that she became more and more concerned as the Applicant’s tenancy went on about persistent delay in the payment of rent by the Applicant and the failure of Saints to manage the late payments. Documentary evidence was provided between the Respondent and Saints about failure by the Applicant to pay rent in time in September 2018, January 2019, February 2019, March 2019, April 2019, June 2019 (by when the Applicant was two months in arrears), September 2019, June 2020, July 2020, September 2020, and October 2020.

36. The Respondent considered that there must have been a failure by Saints to properly vet the Applicant when she applied for a tenancy. She and her husband therefore decided to end their agency arrangement with Saints in November 2020. The Respondent then self-managed, through an on-line property management portal called OpenRent. It seems that the Respondent considered it necessary to create a new tenancy document at this point, though as she was the landlord under the Saints tenancy agreement, this was not strictly necessary. A new tenancy was signed at the same rent for a new fixed term of six months, and dated 28 December 2020.
37. In correspondence between the parties in December 2020, the Respondent made it clear to the Applicant that they were only willing to let her continue with her tenancy as long as she paid her rent on time, a point she felt she needed to stress because of the history of late payment through late 2018, 2019, and 2020.
38. When registering with OpenRent, the Respondent was not asked any questions about selective licensing. She had to prove ownership of the Property and her identity, but otherwise there were no issues raised about the licensing status of the Property. We asked her whether she had considered the Selective Licensing issue again at the point of taking on management of the Property herself. She said the issue didn't even cross her mind. She said she was not in the circle of people who think about that sort of issue.
39. The Respondent received a letter from Gedling dated 28 May 2021 following a visit by them to the Property in May 2021. This was the first time she had heard of them. The letter informed the Respondent about the selective licensing scheme and sought further information. The Tribunal does not have the whole letter, so we do not know what remedial action (if any) the Council required the Respondent to take. In any event, the Respondent immediately set about preparing an application for a licence, which was submitted on 4 June 2021.
40. The documents provided for the hearing included a witness statement for some County Court proceedings for possession. At some point after taking management of the Property into her own hands, the Respondent had decided that she wished to recover possession of the Property potentially for a family member or because she wished to find a tenant who did not persistently delay in paying rent. Proceedings had been brought under section 8 Housing Act 1988 on the grounds of persistent delay in paying rent. The Tribunal was interested to know the reason the Respondent proceeded on a fault based ground rather than under section 21 of the Housing Act 1988. The Respondent said she was not aware of section 21.
41. In August 2021, following a meeting between the Applicant and the Respondent, the Respondent said that the Applicant had agreed to a rent increase because in the Respondent's view the current rent of £500.00 per month was substantially below market rent. She sent the Applicant a

“Form 4” for her to sign and processed the rental increase through OpenRent. The Respondent did not know what Form 4 was, but it is reasonable to suppose it is Form 4 of the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015. The Applicant refused to sign the form and OpenRent then automatically cancelled the rental adjustment. Neither the Respondent nor OpenRent seemed to understand that agreement to the rent increase (provided the Form 4 was properly completed) is irrelevant; the increase will automatically take effect subject to the provisions of section 13 of the Housing Act 1988 which allow the Applicant to raise certain challenges to it.

42. On 30 November 2021, the Respondent received a letter from Gedling serving her with Notice of Intent to impose a Financial Penalty of £525.00 under section 249A of the 2004 Act, and inviting written representations. No representations were made and on 13 January 2022 Gedling confirmed the financial penalty. It was paid promptly.

The Respondent’s complaints about the Applicant’s conduct

43. The Respondent had some specific complaints about the Applicant’s conduct in addition to the problem of persistent delay in paying rent, as follows:
 - a. That at the August meeting the Applicant agreed to a rent increase to £600 as from 1 October 2021, as the Respondent had some evidence that the current rent of £500 per month was below the current market rent which could be as high as £650 per month. She then went back on her agreement and refused to sign the Form 4 confirming the new rent;
 - b. That the Applicant never provided a key for the Property to the Respondent after she changed the locks in around 2018 until the parties met at court for the possession proceedings hearing;
 - c. That the Applicant had repainted the Property without consent;
 - d. That the Applicant refused to allow the Respondent to visit the Property after the August 2021 meeting, on the grounds that a second visit was “excessive”.

44. The Respondent agreed that the Applicant had kept the Property clean and tidy.

The Respondent’s financial position

45. Both the Respondent and her husband are working, the Respondent in employment and her husband being self-employed. They own their own home in Essex. When they moved out of London some years ago, they were able to retain that home for renting, and they have let it to a housing

association which lets it out to short-term residential tenants. They have little additional savings. Outgoings for the Property are mortgage costs, fees to OpenRent, service charges, costs of repair to the Property and tax out of the rent of the Property. They estimate these expenses consume some 92% of the monthly income.

Discussion

46. On this application for a rent repayment order, the first issue for the Tribunal is to decide whether the Respondent has committed an offence under section 95 of the 2004 Act, namely whether the Respondent has had control of or management of a property which requires to be licensed, but which is not so licensed. No rent repayment order can be made unless this offence is established beyond reasonable doubt.
47. There are 6 elements to the offence:
 - a. That the Property must be a “house”;
 - b. That the Property must be in area which the local authority has designated as an area of selective licensing;
 - c. That the Property is let under a single tenancy or licence that is not an exempt tenancy or licence;
 - d. That the Property is not licensed;
 - e. That the Respondent is “a person having control” of the Property;
 - f. That there is no reasonable excuse for the Respondent having control of the Property without it being licensed (which has to be proved by the Respondent on the balance of probabilities).
48. The first five elements of the offence are not seriously in doubt. The Property is part of a building, consisting of a dwelling, which therefore falls under the definition of “house” in section 99 of the 2004 Act. The Tribunal accepts the email evidence from Gedling that the Property was both within a selective licensing area as from 1 October 2018, and that no application for a licence was made until 4 June 2021. The copy tenancy agreements provided to us in the bundles of documents have confirmed that the Property is let under a single tenancy. The Respondent receives the rack rent, meaning that by virtue of section 263 of the Act she is a person in control of the Property.
49. There is, though, an issue concerning whether the Respondent has a reasonable excuse for failing to licence the Property. The excuse she offered was that she was unaware of the need to licence it until notified by Gedling of that need in the letter dated 28 May 2021. We find as a matter of fact that the Respondent was indeed unaware of the need to licence the

Property until notified by Gedling that she must. We consider that she was informed by her agent in May 2018 that the Property was not in an area of selective licensing. We do not believe she noticed that that advice was wrong. She was not familiar with borough boundaries in Nottingham as a resident of Essex, nor was knowledge of the borough in which the Property was located of great significance when she purchased the Property in 2008. We find it understandable that the question then went out of her mind until she received the Gedling notification in May 2021.

50. The question is whether the Respondent's lack of awareness of the need to licence the Property, through receiving misleading information from her agent, can be regarded as a reasonable excuse. Although this question was not specifically raised by the Respondent, Tribunal's are exhorted to be live to the issue and to explore it in appropriate cases (see paragraph 30 in *I R Management Services v Salford Council* [2020] UKUT 81)).

51. In the recent Upper Tribunal case of *Aytan v Moore* [2022] UKUT 27 (LC), the Upper Tribunal said:

“40. We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.”

52. We were not provided with a copy of the contract between Saints and the Respondent, but it may be that the obvious acceptance by Saints, demonstrated in their May 2018 email and subsequent confirmatory telephone call advising that no licence was needed could constitute a legally binding assumption of responsibility. We also considered that in May 2018, the Respondent had no reason not to rely upon the competence and experience of Saints. However, the third element of the test in *Aytan v Moore* cannot be met in this case. The Respondent could have checked the selective licensing status of Gedling through an internet search at any time.

53. With some reluctance, our conclusion is that having been made aware of the existence of selective licensing schemes in general, a landlord, acting reasonably, should have realised that these schemes may be designated in any local authority area and should have kept a check on the situation via the local authority website. Had the Respondent used the Nottingham City Council website checker (as she thought the Property was in that Council area), she would have realised that the Property was in Gedling and would have established that there was a selective licensing scheme in place in that area. We are conscious that we should not interpret *Aytan v Moore* as if it were a statutory provision, but the thrust of the argument in that

case is that a Tribunal will need to be cautious in accepting reasonable excuse where reliance on an agent is offered as the excuse, and we adopt that approach. We therefore find that there was no reasonable excuse for failure to licence the Property.

54. Had we found that there was a reasonable excuse for failure to licence due to the misleading advice received from the agent in this case, that reasonable excuse would in any event have ceased when the Respondent dispensed with the services of the agent in November 2020. It cannot be the case that a landlord could successfully argue reasonable excuse based on the incorrect advice of an agent if that agent is no longer in place.
55. Our conclusion on the first issue is that the Respondent did commit an offence under section 95 of the 2004 Act between 1 October 2018 and 3 June 2021.
56. The second question for us is to determine the maximum possible award we could make as a rent repayment order. It cannot be higher than the rent that was paid in a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) and 44(3)(a) of the 2016 Act).
57. The Respondent ceased committing the offence when she submitted her application for a licence (see section 95(3)(b) of the 2004 Act). The application was made on 4 June 2021. It is the convention, which we adopt in this case, that when selecting the period for calculation of the maximum rent repayment award, the 12 months immediately prior to the cessation of an offence is used. We are therefore looking at the period 4 June 2020 – 3 June 2021, and we have to identify both the rent paid *during* that period and the rent payable *in respect of* that period (see *Kowalek v Hassanein Ltd* [2021] UKUT 143 (LC)).
58. The evidence was (see paragraph 14 above) that the sum of £5,500 was paid as rent during the period 4 June 2020 to 3 June 2021. Furthermore, the first payment in that period was for the rent from 28 May 2020 to 27 June 2020. The sum due from 28 May to 3 June 2020 (8 days) we calculate to be £129.03. This amount is for rent outside the relevant 12 month period, and this must be deducted from the maximum rent repayment that can be ordered so that we can calculate the rent payable in respect of that period. The maximum award we can make is therefore £5,370.97.
59. The third question for us is to determine the amount we are willing to order, taking into account the factors we are obliged to consider contained in section 44(4) of the 2016 Act. We may also take into account any other factors we consider are relevant (see paragraph 50 of *Williams v Parmar* [2021] UKUT 0244 (LC)).

60. We heard evidence from both parties as summarised above. Where their evidence of fact diverged, we preferred the evidence of the Respondent. We were concerned that on two occasions the Applicant said she had carried out actions or made statements that transpired not to be correct. The first was her statement that she would send the keys back to the Respondent via tracked post made in an email dated 25 October 2021. We accept the Respondent's evidence that the keys were not handed over until the county court hearing, and we therefore conclude that the Applicant promised to do something which she then failed to do. The second occasion was the back-tracking on the discussions between the parties regarding the review of the amount of rent.
61. We take into account therefore:
- a. This is the Respondent's first offence;
 - b. From the evidence, the Property is in generally good condition;
 - c. We have no evidence that the Respondent has not complied with all statutory requirements to ensure the health and safety of the Applicant;
 - d. Whilst the Property was bought as an investment, the Respondent does not appear to be a professional landlord in the broader sense; indeed it might be said she is somewhat naïve about the technicalities of property letting and management and would be well advised to seek effective professional help;
 - e. The Respondent was misled, albeit most probably through error, by her agent as to the position on selective licensing for the Property;
 - f. That as a matter of fact, the Respondent did not know that she had to licence the Property until May 2021;
 - g. It is clear from *Ayton* and other Upper Tribunal cases that the intention of Parliament with this legislation was to target "rogue" landlords and the Respondent clearly does not fall within that description
 - h. The Property would appear to be being let at below market rent at present;
 - i. The Applicant has persistently delayed the payment of rent and is subject to a suspended possession order at the present time;
 - j. The Applicant breached the tenancy agreement in changing the locks without consent and consistently failing to provide a new key to the Respondent until the county court case hearing;

- k. The Applicant redecorated the flat in breach of the tenancy agreement.
62. We do not give any weight to the following factors:
- a. The Applicant's allegations of persistent threats from the Respondent. Our view is that there is clear evidence of persistent delay in payment of rent and that the Applicant is being unreasonable in complaining that the Respondent informed her that she must pay her rent on time or face the possibility of possession proceedings. In our view, the Applicant seemed rather unwilling to face up to her legal obligations;
 - b. The Applicant's further allegations of poor conduct on the part of the Respondent listed in paragraphs 8 and 17 to 20 above. There is no evidence that, with the exception of the door entry system, the Respondent failed to remedy any issues notified to her or that she delayed unreasonably in doing so. All properties require some attention or maintenance at some point;
 - c. Any effect upon the amount of any order we make as a result of the Respondent's financial circumstances. We are satisfied that the Respondent is able to afford the amount of rent repayment that we order, and neither so wealthy as to justify an enhanced amount, or so poor as to justify a reduced amount;
 - d. The fact that any rent repayment ordered may be considered by some to be an underserved windfall for the tenant. This is not a factor we are able to take into account.
63. Our view is that it would be unjust not to make a substantial discount to the maximum sum we can order as a rent repayment. Balancing all the factors listed above, our view is that a discount of 90% is appropriate.
64. We order that the Respondent must make a rent repayment to the Applicant in the sum of £537.00.

Appeal

65. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)