



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

Case Reference : CHI/45UG/HMF/2021/0039

Property : 63 The Warren, Burgess Hill, RH15 0EA

Applicant : David Soanes

Representative : N/A

Respondent : Eileen Comar (1)
Kevin Comar (2)

Representative :

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

Tribunal Member(s) : Judge J Dobson
Mr M J Donaldson FRICS
Ms T Wong

**Date and venue of
hearing** : 31st March 2022

Date of Decision : 26th April 2022

DECISION

SUMMARY OF THE DECISION

- 1. The Tribunal is satisfied beyond reasonable doubt that the First Respondent landlord committed an offence under Section 72(1) of the Housing Act 2004.**
- 2. The Tribunal has determined that it is appropriate to make a rent repayment order.**
- 3. The Tribunal makes a rent repayment order in favour of the Applicant against the First Respondent, in the sum of £204.23, being the sum agreed by the parties, to be paid within 14 days.**
- 4. The Tribunal determines that the First Respondent pay the Applicant an additional £300 as reimbursement of Tribunal fees to be paid within 14 days.**

Application and Background

5. By an application dated 28th November 2021, the Applicant applied for a rent repayment order in respect of the rent paid for a tenancy during the period 23rd August 2020 to 11th December 2020 against both of the Respondents. No information was given as to the reason for the claim against both as opposed to one or the other.
6. The Directions first given on 21st January 2022 recorded that the application was brought, firstly, on the ground that the Respondents had committed an offence of having control or management of an unlicensed House in Multiple Occupation (“HMO”)- for failing to have a HMO licence (“licence”) for 63 The Warren, Burgess Hill, RH15 0EA (“the Property”). (an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”). Secondly, it was on recorded as being on the ground that the Applicant had suffered harassment.
7. The Property is a two-storey house with five bedrooms (one on the ground floor and with the benefit of an en-suite shower room and used by the First Respondent and four others on the first floor), together with a living room, kitchen, first floor bathroom and a ground floor cloakroom.
8. The First Respondent is the owner of the Property. The Second Respondent is her son. Both Respondents live at the Property.
9. The Applicant entered into an oral tenancy agreement for the renting of a room in the Property, together with shared use of the communal areas at a rent of £110 per week, payable four- weekly in advance. The Applicant stated that he paid the rent by bank transfer on two occasions and that other payments were in cash.

The law and jurisdiction in relation to Rent Repayment Orders

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

The history of the case

16. In brief summary, on receipt of the application made by the above named, the Tribunal issued Directions dated 21st January 2022, providing for the parties to provide details of their cases and the preparation of a hearing

bundle. The hearing was listed in person but provided for the parties to be able to apply to join by video.

17. Applications were subsequently made by the Applicant. The first was to delay the directions and for an order for third party disclosure of documents, refused by Regional Judge Tildesley OBE by Directions dated 8th February 2022. Time for the Applicant's statement of case was extended a little. It was emphasised that the Applicant must send his statement by 15th February 2022, including the evidence of each offence alleged and of the rent paid. The Applicant was also required to provide the terms of the oral tenancy agreement and any documents on which he relied. It was provided that unless he did so, the application would be struck out.
18. The Applicant provided a document called a statement of case dated 15th February 2022 consisting of six short paragraphs, nine lines long in total. That referred to other evidence in respect of the property being unlicensed and gave the rent claimed as £1728.57, with an indication as to the nature of the payments. Reference was made to evidence of harassment on a USB stick, which was said in correspondence regarding the USB stick to contain videos of events on the evening of 15th November 2020. Nothing was said as to the terms of the tenancy. Documents were produced in support of the Applicant's case, much of them photographs. No witness statement was filed and served providing any additional evidence of fact, expanding on the very brief allegations or making other allegations.
19. It is far from clear that the statement of case can be said to comply with the Directions dated 8th February 2022. However, the application was not struck out in subsequent Directions and neither did the Respondents request that it ought to be. Pursuant to the Directions, the Applicant's case was that referred to in his statement of case.
20. The Respondents provided a statement of case dated 3rd March 2022 and from Mr Comar, making certain admissions, including indicating acceptance of five occupants during the period of the Applicant's occupation. The Applicant did not file a reply to that.
21. A further application was made by the Applicant dated 9th March 2022 for the Respondents' cases to be struck out and for what was described as summary judgment, for third party disclosure of documents and for permission to rely on the contents of the memory stick but supplied in a different format. That was refused by Judge Tildesley OBE on 14th March 2022.
22. The Second Respondent applied on 13th March 2022, by email but providing adequate information, for the hearing to be adjourned. That was also refused, although the Respondents were given a little additional time for their statements of case and evidence.

The hearing

23. The Applicant and the Second Respondent attended the hearing. The Second Respondent did so on behalf of himself and his mother, the First Respondent.
24. The Tribunal explained to the Applicant that the date of the only harassment, or similar, offence pursuant to the Protection from Eviction Act 1977 (“the 1977 Act”) referred to in the statement of case, albeit rather obliquely by reference to the contents of the USB stick, was the conduct on 15th November 2020, whereas the application was dated 28th November 2021. The Judge provided the attendees with sections 40 to 44 inclusive of the 2016 Act and explained that he considered that the statute provides that an application for a rent repayment order may be made only if the offence was committed within the period of twelve months ending with the day on which the application is made, pursuant to section 41 of the 2016 Act.
25. It is abundantly obvious that 15th November 2020 is not a date within twelve months of 28th November 2021. The Tribunal indicated its preliminary view that the offence was not therefore committed within twelve months of the date of the application and was not an offence on which an application for a rent repayment order could be founded, as explained above.
26. The Tribunal invited the parties to make submissions that the above statement of the law is not correct if they wished to do so. Neither the Applicant or the Respondent sought to make any submissions or otherwise disagreed that the law is as the Tribunal had suggested. The Tribunal found that the law is as indicated above and hence the offence under the 1977 Act advanced could not form the basis for a rent repayment order in response to the application.
27. The Tribunal explained its preliminary view was also that the same point applied to the asserted HMO licensing offence and consequently, the Tribunal could only consider offences committed within the twelve month period prior to the application and so in this instance offences committed from 29th November 2020 onward. Hence the Tribunal would consider any lack of licence for the period 29th November 2020 to the end date of the tenancy on 11th December 2020.
28. The Tribunal explained its thinking that there was an apparently agreed commission of a licensing offence pursuant to the 2004 Act, given the contents of the Respondents’ statement of case, subject to the issue of whether there was a reasonable excuse for the failure to obtain an HMO licence. The parties did not seek to make submissions about that either in response to being given the opportunity to.
29. The Tribunal therefore proceeded on the basis that any wider period in respect of licensing and any actions prior to 29th November 2020 may be relevant to conduct and the amount of an award if a rent repayment order were made, but was not relevant to the question of whether an offence had

been committed on the basis of which a rent repayment order could be made or the relevant period of an offence for the purpose of such an order.

30. The Tribunal was mindful that it was asked to find a criminal offence was committed and hence must consider whether there may be a reasonable excuse for the lack of a licence, notwithstanding that the Respondents had not raised that defence explicitly. That question was therefore addressed, as set out below.
31. The limited evidence received, and the submissions made, both oral and written, are dealt with as and when the issues to which they were relevant are considered below.
32. Having worked through the matters below up to the question of conduct, the Tribunal noted that there could be evidence and submissions heard as to the extent of relevant conduct by one party or the other or the parties could seek to agree the figure for the award following the rent repayment order which the Tribunal had by then stated it would make. Matters related to that are referred to below towards the end of this Decision.

Was a relevant HMO licensing offence committed during the period 29th November 2020 to 11th December 2020 and by whom?

33. It was not in dispute that pursuant to the Housing Act 2004 (“the 2004 Act”) and the regulations made under it the Property required a licence in order to be occupiable by five or more persons living in two or more separate households.
34. Section 72(1) of the 2004 Act is one of those listed in section 40 of the 2016 Act in respect of which the FTT may make a rent repayment order. The section provides that:

“A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed but is not so licensed”.
35. The Second Respondent accepted that there was no licence in place in the statement of case. Given that admission, the Tribunal had no difficulty in finding that there was no licence.
36. As set out above, there was no dispute that there were five occupiers of the Property.
37. The Applicant devoted most of his documentary evidence to seeking to show that two particular persons occupied the Property for some or all of the relevant period. However, the Tribunal considered it unnecessary to make any finding in respect of that. Given that the offence is committed if there are at least five occupiers, unless all in one household, it matters not whether there were in fact five, or six or seven. The effect is the same for these purposes. Whilst the Second Respondent only accepted that a further party had occupied temporarily for a brief period who was a friend of another occupier and required accommodation briefly because of

relationship difficulties, the Tribunal found the accuracy or otherwise of that to have no relevance to the need to an HMO licence in any event.

38. The next question is by whom the offence was committed and whether one or both of the Respondents. The Tribunal determined that the offence was committed by the First Respondent, being the person responsible as the owner of the Property and landlord.
39. The Applicant variously asserted the Second Respondent to be a servant, agent or independent contractor of his mother. It was common ground that he had placed an advert on behalf of his mother. The Applicant argued in the hearing that properly made the Second Respondent someone who committed the offence and that the Respondents' liability was joint and several. He said he had nothing to add.
40. That advert was as far as anything which could potentially be described as control or management went but the Tribunal found was insufficient by some distance. If, which the Tribunal considered it unnecessary to determine in those circumstances, the Second Respondent may properly be said to have acted as an agent of his mother for that purpose, that was as far as any agency went.
41. The Applicant described an oral agreement with the First Respondent as to rent and paid the rent to her, including paying such of the rent as was paid by direct transfer into her bank account. The Applicant said that the First Respondent made a note of rent payments and put cash payments into her bank account every Friday.
42. There is, the Tribunal finds, no evidence as to whether the First Respondent did in fact pay any cash rent payments into her bank account as opposed to doing anything else with them. Suffice to say there is no evidence of the Second Respondent being involved in those matters to gainsay his statement at the hearing that he was not so involved, or otherwise. There is no evidence of his receipt of any rent. There was no assertion of or evidence of other exercise of control or management.
43. The Tribunal finds on the evidence that the First Respondent had control of and/ or managed the Property. The Tribunal finds that the Second Respondent did not.
44. The Tribunal also makes it clear that the finding that the Second Respondent did not manage or have control of the Property- and that he was not the landlord for the purpose of the 2004 Act- precludes him from being the subject of a rent repayment order.
45. Where the First Respondent would otherwise have committed an offence under section 72(1) of the 2004 Act, there is a defence if the Tribunal finds that there was a reasonable excuse pursuant to section 72(5). The standard of proof in relation to that is the balance of probabilities. Where the Tribunal makes findings of fact in relation to such an aspect of the case, it does so on the basis of which of two matters it finds more likely. It does not

need to be sure in the manner that it does with facts upon which the asserted commission of an offence is based.

46. The offence is strict liability (unless the respondent had a reasonable excuse) as held in *Mohamed v London Borough of Waltham Forest* [2020] EWHC 1083, quoted on behalf of the Applicants as commonly it is. The intention or otherwise of the First Respondent to commit the offence is not the question at this stage, albeit there is potential relevance to the amount of any award. The case authority of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) in relation to reasonable excuse held that the failure of the company, as it was in that case, to inform itself of its responsibilities did not amount to reasonable excuse. The point applies just the same to individuals.
47. The Tribunal received no evidence that the First Respondent intended the Property to not be licensed where it was required to be. However, and more significantly, whilst the Second Respondent said on behalf of his mother that they had not realised the need for a licence, that was his only point relevant to the question. He had, on being asked, nothing he wished to submit as to there being a reasonable excuse. There was nothing which the Tribunal found to demonstrate a reasonable excuse.
48. Therefore the Tribunal determines that the circumstances of the First Respondent's failure to hold an HMO Licence at the time of this tenancy do not objectively amount to a reasonable excuse and so do not provide a defence to the HMO licensing offence, which the Tribunal finds beyond reasonable doubt to have been committed.
49. The Tribunal finds that the offence was committed for the entirety of the tenancy, namely 23rd August 2020 to 11th December 2020 inclusive, although as explained above, as the application for rent repayment order may be made only if the offence was committed within the period of twelve months ending with the day on which the application is made, for the purpose of any rent repayment order it is only from 29th November 2020 onward that the offence forms the basis for a rent repayment order in this instance.

The decision in respect of making a rent repayment order

50. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondents committed an offence under section 72(1) of the 2004 Act, a ground for the making of a rent repayment order has been made out.
51. Pursuant to the 2016 Act, a rent repayment order "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in *The London Borough of Newham v John Francis Harris* [2017] UKUT 264 (LC) as follows:

“I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and the consequences of doing so are prescribed by legislation to include an obligation to repay rent or housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order.”

52. The very clear purpose of the 2016 Act is that the imposition of a rent repayment order is penal, to discourage landlords from breaking the law, and not to compensate a tenant- who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.
53. The Tribunal considers that this is a rather closer case than most to being a rare case in which an offence has been committed but a rent repayment order should not be made, given the short period involved. The Second Respondent did not, however, seek to argue that the discretion should be exercised such that a rent repayment order was not made.
54. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making a rent repayment order. The Tribunal determines that it is entitled to therefore consider the nature and circumstances of the offence and any relevant conduct found of the parties- of which in the event there was none either way as explained below- together with any other matters that the Tribunal finds to properly be relevant to answering the question of how its discretion ought to be exercised.
55. On a fine balance but giving the most weight to the purpose of the 2004 Act, the Tribunal exercised its discretion to make a rent repayment order in favour of the Applicant.

The amount of rent to be repaid

56. Having exercised its discretion to make a rent repayment order and determined the period for which the order should be made, the next decision was how much should the Tribunal order.
57. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act. Therefore, the amount ordered to be repaid must “relate to” rent paid in the period identified as relevant in section 44(2), the subsection which deals with the period of rent payments relevant. The period is different for two different sets of offences. The first is for offences which may be committed on a one-off occasion, albeit they may also be committed repeatedly. The second is for offences committed over a period of time, such as a licensing offence.
58. In relation to the second category, the relevant rent to consider is that paid during “a period, not exceeding twelve months, during which the landlord was committing the offence”. In this instance, the period for which an

order may be made would in any event be limited by the period of the tenancy.

59. However, the amount is further limited by the fact that the period in which the offence was committed for these purpose is such period as falls within twelve months of the application, therefore the period 29th November 2020 to 11th December 2020. That is thirteen days. The maximum rent able to be awarded is therefore £204.23, the daily rate of rent being £15.71.
60. The Tribunal was mindful of the fact that the last documented payment by the Applicant was on 30th October 2020. However, the Second Respondent accepted that the Applicant had paid rent for the entirety of the tenancy, such that the Tribunal found that the £204.23 had been paid for the relevant period.
61. The next sub-clause, section 44(3) moves on to the amount that the Tribunal may order be repaid. Specifically, the Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period (ignoring for these purposes a provision about universal credit not of relevance here). That is entirely consistent with the order being one for repayment. The provision refers to the rent paid during the period rather than rent for the period.
62. There was a potential question as to whether rent paid for the period but prior to the period was not relevant rent for these purposes. However, in the circumstances referred to below, the question of whether any of that rent had been paid during the period 29th November 2020 to 11th December 2020 was not the subject of a finding by the Tribunal and so no other comment is made.
63. The Tribunal has a discretion as to the amount to be ordered, such that it can and should order such amount as it considers appropriate in light of case law and the relevant facts of the case. In part that is relevant as the Tribunal took the parties through potentially relevant factors.

Relevant caselaw

64. The Tribunal is mindful of the various decisions of the Upper Tribunal within the last approximately two years, in relation to rent repayment order cases.
65. Section 44 of the 2016 Act does not when referring to the amount include the word “reasonable” in the way that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) that there is no longer a requirement of reasonableness. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on landlords and to operate as a fierce deterrent.
66. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid- and not simply any profit

element which the landlord derives from the property, to which no reference is made in the 2016 Act. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. However, the Tribunal could take account of the rent including the utilities where it did so. In those instances, the rent should be adjusted for that reason.

67. In *Vadamalayan*, there were also comments about how much rent should be awarded and some confusion later arose. Given the apparent misunderstanding of the judgment in that case, on 6th October 2021, the judgment of The President of the Lands Chamber, Fancourt J, in *Williams v Parmar [2021] UKUT 0244 (LC)* was handed down. *Williams* has been applied in more recent decisions of the Upper Tribunal, as well as repeatedly by this Tribunal. The judgment explains at paragraph 50 that:

“A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions.”

68. Secondly, the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal “must, in particular take into account”. The Tribunal is compelled to consider those and to refer to them. The phrase “in particular” suggests those factors should be given greater weight than other factors. In *Williams*, they are described as “the main factors that may be expected to be relevant in the majority of cases”- and such other ones as it has determined to be relevant, giving them the weight that it considers each should receive. Fancourt J in *Williams* says this:

“A tribunal must have particular regard to the conduct of both parties (including the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence, The Tribunal should also take into account any other factors that appear to be relevant.”

69. The Tribunal would have carefully considered the amount of the rent for the relevant period of the licencing offence that should be awarded in the event the parties had not reached the agreement as to the sum but did not in the circumstances need to apply that or any other caselaw.

The relevant factors and the appropriate award

70. It was explained to the parties in the hearing that an offence having been found to the criminal standard to have been committed and the Tribunal having decided to make a rent repayment order section 44(3) of the 2016 Act then requires, as the above cases refer to, the Tribunal when deciding the amount to, in particular, take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether

the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies when considering the amount of such order.

71. Further that whilst the listed factors must therefore be taken into account, and the Tribunal should have particular regard to them, they are not the entirety of the matters to be considered- other matters are not excluded from consideration. Any other relevant circumstances should also be considered, requiring the Tribunal to identify whether there are such circumstances and, if so, to give any appropriate weight to them.
72. Prior to referring to such factors, as far as required, the Tribunal first established whether the rent paid should be reduced for the purpose of the amount of any rent repayment order on the basis that it included contribution to utilities.
73. The Applicant stated that he did not pay any separate contribution to any utility bills. However, the Second Respondent could not say how much, if any, of the weekly rent figure related to any contribution to such bills and he did not ask the Tribunal to alter the rent figure from the full weekly sum for the purpose of any rent repayment order.

Financial circumstances

74. In terms of the financial circumstances of the First Respondent, the Tribunal noted the rent figure relevant and invited the Second Respondent to make any submission on behalf of his mother as to any impact on the First Respondents financial circumstances on the appropriate amount of the award. He did not identify any.

Other circumstances than those listed in the 2016 Act

75. Neither party sought to advance any other factor as relevant to the Tribunal's consideration of the amount of the rent repayment order.

Conduct and agreement

76. The Tribunal observed that the only other factor which may therefore affect the level of the rent repayment order was that of conduct. The Tribunal noted that there appeared to be matters in dispute as to which it would be necessary to hear evidence but where the difference which could be made appeared to be a portion of the difference between nothing and £204.23 and hence a very modest sum. The Tribunal asked whether the attendees wished to agree a figure in light of all else that had been said.
77. The Applicant and Second Respondent stated that they did wish to. The Tribunal adjourned for a short time to allow such discussion.
78. The parties returned and stated that they had reached an agreement that the rent repayment order should be made for the £204.23 and on the Second Respondent admitting that he had entered the Applicant's room twice on the night of 10th/11th December 2020.

79. The Tribunal had some concern that the admission was of a matter which was not part of the Applicant's case as set out in his statement of case, the only basis of his case that he filed, and may be of a criminal offence which the Second Respondent had not received prior notice would be raised and on which the Second Respondent had not had the opportunity to take advice. The Tribunal noted that the Second Respondent may wish to take advice in respect of making the admission. However, the Second Respondent did not.
80. At that very late stage in the case and the hearing of it and after the various matters dealt with above including determining against whom a rent repayment order would be made, the Applicant asserted that harassment on 10th/11th December 2020 had been referred to in his case. The Tribunal found that it had not.
81. There was reference to the matter, it was established by the Applicant, in two short paragraphs- six lines in total- of a statement made in support of the case management application dated 9th March 2022, which was refused. However, the Tribunal determined that was not any document which complied with the Directions, where the statement of case had not made mention of any alleged harassment other than that shown in video clips taken on 15th November 2020. The Tribunal found any such other harassment formed no part of the application being determined.
82. The Tribunal noted that the asserted further harassment was not committed by the First Respondent against only whom the Tribunal had determined earlier in the hearing a rent repayment order could be made. There was also no assertion that any actions of the Second Respondent were at the instigation of, or even with the knowledge of the First Respondent. The Tribunal indicated that it was unclear whether that allegation would have taken the Applicant's case further if advanced in his case but where the Tribunal did not consider any need to hear evidence or submissions on that point, given the incident did not form part of the Applicant's case as presented and being determined. The First Respondent, against whom the rent repayment order was to be made, was not present and her position about the further allegation was not known. Whilst the Applicant sought to criticise the lack of written response to the allegation by the Respondent, the Tribunal found, and stated, that to be wholly inappropriate where the statement of case and related evidence did not advance the allegation and so inevitably the Respondents had not addressed it.
83. The Applicant was adamant that the compromise reached was for that admission to be made as well as the rent repayment of £204.23. The Second Respondent stated that he was content to admit the 10th/11th December 2020 incident.
84. The Tribunal accepted there to have been a concluded compromise between the parties on a rent repayment order against the First Respondent in the sum of £204.23 together with the admission by the

Second Respondent. The Tribunal therefore records that the Second Respondent admitted that he had entered the Applicant's room twice on the night of 10th/11th December 2020.

85. As that incident falls outside of the case as presented by the Applicant in respect of obtaining a rent repayment order and as the Tribunal made no finding as to conduct in the course of making that order, made against the First Respondent and not the Second, the Tribunal considers that recording the admission is as much as the Tribunal can do. The admission is separate to the determinations made.
86. The Tribunal did not, it repeats, make any finding as to conduct in the circumstances of the agreement reached between the parties as to the amount of the rent repayment order.
87. The Tribunal additionally did not decide whether, or not, any rent paid by the Applicant had also been paid during the period in which the HMO licensing offence could form the basis of the application for the rent repayment order as made and so was relevant rent for the purpose of the order, there being no need to do so in light of the concluded compromise.

The amount of the repayment

88. The Tribunal therefore awards the Applicant the sum agreed between the parties, namely £204.23.

Application for refund of fees

89. The Applicant asked the Tribunal to award the fees paid in respect of the application should they be successful, namely reimbursement of the £100 issue fee and the £200 hearing fee.
90. The Second Respondent said nothing in opposition to the application.
91. An application fee having needed to be paid in order to bring the claim and the Applicant having been successful in the proceedings, the Tribunal considered that there was some argument that the fees should be paid by the Respondent. Weighing against that could be the disproportionate nature of the fees as compared to the amount received by the Applicant. It is of questionable logic to incur fees of £300 to recover £204.23. If arguments had been raised on behalf of the First Respondent, it is entirely possible that the Applicant would have been awarded a reduced sum in respect of the fees.
92. However, in the particular circumstances that nothing was said in opposition to the application to the award of the full sum of the fees, the Tribunal does order the Respondent to pay all of the fees paid by the Applicant and so the sum of £300.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.