FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HMF/2021/0274**
HMCTS Code	**:**	**V: CVP REMOTE**
Property	**:**	**153 Twickenham Road, Leytonstone, London E11 4BN**
Applicants	**:**	**Mr Ionut Andrei Radu (1)** **Mrs Ionela Radu (2)**
Representative	**:**	**Dr Roy Mahon (Legal Road Limited)**
Respondents	**:**	**Mr Rehan Rehman (1)** **Ms Narina Sahondra Macartney (2)** **Portico Letting Agency (3)**
Representative	**:**	**Mr Christopher McCarthy (counsel for the first and second respondents instructed by Law Lane Solicitors)**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge Donegan** **Mrs Louise Crane MCIEH (Professional Member)**
Date of Hearing	**:**	**18 May 2022**
Date of Decision	**:**	**06 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing, which has not been objected to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined at a remote hearing. The tribunal was referred to three bundles of documents, as referred to below, the contents of which were noted.

Decision of the tribunal

1. The application for a rent repayment order against the third respondent) is dismissed.

2. The tribunal makes the following rent repayment orders:

(a) The first respondent shall repay £1,988.06 (One Thousand, Nine Hundred and Eighty-Eight Pounds and Six Pence) to the applicants by 04 July 2022, and

(b) The first and second respondents shall repay £3,147.76 (Three Thousand, One Hundred and Forty-Seven Pounds and Seventy-Six Pence) to the applicants by 04 July 2022.

3. The first and second respondents shall reimburse the tribunal fees paid by the applicants in the total sum of £300. The first and second respondents must pay this sum to the applicants by 04 July 2022.

The application and procedural history

4. The applicants seek a rent repayment order ('RRO'), pursuant to sections 40 to 44 of the Housing and Planning Act 2016 ('the 2016 Act'). The application concerns their former tenancies of 153 Twickenham Road, Leytonstone, London E11 4BN ('the Property'). They are represented by Legal Road Limited ('Legal Road').

5. The RRO application was submitted on 22 November 2021 and named Mr Rehman, Ms Macartney and Portico Letting Agency as respondents. The first respondent (Mr Rehman) and the second respondent (Ms Macartney) are the joint leasehold proprietors of the Property. They are represented by Law Lane Solicitors ('Law Lane') and are referred to as R1 and R2.

6. The third respondent ('R3') is the letting agent for R1 and R2. They have not participated in these proceedings.

7. The tribunal issued directions on 02 February 2022 and the case was listed for a remote video hearing on 18 May 2022. Directions 5-11 dealt with filing and service of digital bundles. Direction 10 listed the documents to be included in the respondents' bundle, including:

> *"(f) A statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order (see Annex), including full details of any conduct by the tenant said to be relevant to the amount of the Rent Repayment Order sought. If reliance is placed on the landlord's financial circumstances, appropriate documentary evidence should be provided (redacted as appropriate)*
>
> *(g) Evidence of any outgoings, such as utility bills, paid by the landlord for the let property during the period"*

8. Direction 12 provided:

> "*By **9 May 2022** the tenants may send a brief reply to the issues raised in the respondent's statement and supporting documentation. Any such reply must be emailed to the tribunal at the address above and copied to the respondent."*

9. The applicants and R1 and R2 filed and served their bundles in accordance with the directions. Law Lane then applied for disclosure of additional bank statements in a letter to the tribunal dated 22 March 2022. They sought disclosure to establish if the applicants had received public funds (housing benefit or universal credit) during the tenancies. The applicants denied receiving public funds and the disclosure application was refused by Deputy Regional Judge Carr on 25 March 2022.

10. The applicants filed and served a document headed "*REPLY TO THE RESPONDENT*" on 09 May 2022. This addressed points in R1's witness statement, who queried if the applicants had received public funds during the tenancies. It also alleged that R1 and R2 had failed to return the tenancy deposits.

11. The reply took the form of a letter from Dr Roy Mahon of Legal Road but was not verified by a statement of truth. Law Lane objected to this omission and the matter was referred to the tribunal. Judge Donegan confirmed that a statement of truth was required and extended time for filing and service of the reply until midday on 13 May. The parties were notified of this variation to the directions in a letter dated 11 May. The letter also reminded the parties of the overriding objective at Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules') and their obligation to help the tribunal further this objective.

12. A second reply was filed and served on 13 May. Again, this was in letter form. It contained a statement of truth, digitally signed by the applicants, but the contents differed (in some respects) from the original. It stated

that the tenancy deposits had been returned but alleged the first deposit had not been transferred to the Tenancy Deposit Scheme ('TDS') and the second was transferred late. The applicants also alleged that they had been "*awarded damages from the Respondent in previous litigation due to this figure to adhere to the TDS.*" The second reply also included a request for a Romanian translator for the hearing on 18 May.

13. R1 and R2 applied to strike out the RRO application, pursuant to Rule 9 of the 2013 Rules, in a letter from Law Lane dated 13 May. They alleged the applicants had breached the varied directions, as the second reply differed from the original. They also took issue with the late request for a Romanian translator and queried why there were no Romanian translations of the documents. They also queried if the applicants were fully aware of, and understood, these proceedings. Alternatively, they asked the tribunal to sanction the applicants or Legal Road for providing misleading information in a letter to the tribunal dated 10 May. That letter explained the tenancy deposits had been returned, contrary to the assertion in the original reply. Legal Road attributed this error to "*a misunderstanding being bought to our attention owing to foreign language barriers and miscommunications*".

14. Law Lane filed and served a supplementary bundle on 13 April, which included the correspondence relevant to the strike-out application.

15. The relevant legal provisions are set out in the appendix to this decision.

The background

16. The applicants are of Romanian heritage and moved to the United Kingdom in February 2012. English is not their first language.

17. R1 and R2 are the registered proprietors of the Property. Their home address is 87 Greenhill Road, Winchester, Hampshire SO22 5EA.

18. The applicants were granted an assured shorthold tenancy ('AST') of the Property on 17 August 2019, for a term of 12 months. They were granted a further AST on 17 August 2020 for a term of 24 months. The rent payable under both tenancies was £1,400 per month. The first tenancy was granted solely by R1. The second tenancy was granted by R1 and R2.

19. The second tenancy included a break clause, entitling the parties to terminate after ten months on giving two months written notice. The applicants gave notice in an email dated 16 June 2021 and vacated the Property on 16 August 2021.

20. The Property is within the London Borough of Waltham Forest ('LBWF'). Under a designation dated 22 January 2020, LBWH designated an area for selective licensing pursuant to section 80 of the Housing Act 2004 ('the

2004 Act'). The designation applies to any house, as defined at sections 79 and 99 of the 2004 Act, which is let or occupied under a tenancy or licence (subject to certain limited exceptions). The Property is within the designated area. The scheme came into force on 01 May 2020 and expires on 31 March 2025.

21. It appears there was a previous designation as R1 obtained a Private Rented Property Licence for the Property on 23 November 2015. A copy of this licence, which referred to Part 3 and Schedule 5 to the 2004 Act was included in R1 and R2's bundle. It was granted by LBWF for the period 23 November 2015 to 31 March 2020 and was correctly addressed to R1 at 87 Greenhill Road. It expired on 31 March 2020 and there was no application for a new licence until February 2021.

22. R1 was granted a new licence on 21 March 2021. R1 and R2's bundle included a copy of a letter from LBWF to R2 of this date, informing her (as an associated person) but not the licence itself. The letter was incorrectly addressed to R2 at 91 Greenhill Road, Winchester SO22 5EA.

The hearing

23. The hearing took place on 18 May 2022, by remote video conferencing. The applicants both attended and were represented by Dr Mahon of Legal Road. R1 and R2 also attended and were represented by Mr McCarthy (counsel). Also in attendance were Mr Henri Felix (R1 and R2's solicitor) and Ms Raluca Harding (translator).

24. There were three bundles of documents; being a 161-page bundle filed by the applicants, a 75-page bundle filed by R1 and R2 and the supplementary bundle filed on 13 May (28 pages). The tribunal were also supplied with a helpful skeleton argument from Mr McCarthy.

25. At the start of the hearing, A1 and A2 answered various questions from the judge in English. They said they understood the nature of the RRO application and had read and approved their witness statements, before signing. They were happy for the hearing to be conducted in English, without translation and only required the translator for their oral evidence.

26. The tribunal then dealt with two preliminary issues, being the strike-out application and the admissibility of the reply. Mr McCarthy submitted that the tribunal application was invalid, given the language barrier referred to in Legal Road's letter of 10 May and the absence of Romanian translations for the witness statements. He maintained this position, notwithstanding the judge's initial questioning of the applicants.

27. Mr McCarthy invited the tribunal to disregard the reply. The first was not verified by a statement of truth and the second raised new matters, namely

whether a claim had been made for any failure to protect the deposits. This was highly prejudicial and R1 and R2 had not been given an opportunity to respond.

28. In response, Dr Mahon stated that the differences in the two replies were "*very slight*". There had been a misunderstanding in the preparation of original reply. The errors (regarding the deposits) had been quickly discovered and he then corrected these errors. He acknowledged that both replies were in letter format and did not formally respond to R1 and R2's statement of case. He suggested this was due to Legal Road being overwhelmed by the volume of correspondence from Law Lane. During these submissions, he described R1 and R2 as "*very good landlords*".

29. Following a short adjournment, the judge informed the parties the strike-out application had been refused. The tribunal was satisfied the applicants understood the nature of the RRO application and the contents of their statements. Their spoken English is excellent, and they clearly understood the judge's questions. Their application was validly made and there was no need for Romanian translations of the documents.

30. The judge also informed the parties that the reply would not be admitted and would be disregarded. The first reply was invalid and the second contained new evidence, which was largely irrelevant and did not formally respond to R1 and R2's case. Further, it would not assist the tribunal in deciding the relevant issues. The judge also explained that the applicants' evidence would be confined to the contents of their witness statements

31. The judge then queried R3's involvement in the case and Dr Mahon stated that RROs were only being sought against R1 and R2. The application against R3 is therefore dismissed.

32. The tribunal then heard evidence from the parties. Ms Harding translated for the applicants, but they answered many of the questions in English. The first applicant ('A1') verified a witness statement dated 18 March 2022, which gave details of the tenancies, the rent paid and the 2020 licensing designation. Various documents were exhibited to his statement, including the ASTs, bank statements showing rent payments to R1, official copy entries for the leasehold title to the Property, the 2020 designation and email correspondence between Legal Road and LBWF. This correspondence included an email from Ms Karen Stowe of LBWF dated 18 August 2021 stating, "*The initial application form was submitted to us on 5th February 2021*". This is a reference to R1's application for a selective licence under the 2020 designation. The applicants seek a RRO for the period 01 May 2020, the date the designation came into force, until 05 February 2021.

33. In cross- examination, A1 stated that a claim had been made against R1 and R2 arising from their failure to protect the deposits and they had paid compensation of £3,200, as well as returning the deposits. He said he

always enjoyed a good relationship with R1 but not with R2. In relation to disclosure, he and his wife had provided Legal Road with additional bank statements and proof of their income, and they had no need for Universal Credit. They would have supplied R1 and R2 with these documents, if ordered to do so but Judge Carr refused the disclosure application.

34. On questioning by the tribunal, A1 stated that he had his wife had never received public funds. He currently earns £42,000 per annum plus perks, working as a site manager for Makers Construction. R1 was aware of his financial circumstances, from discussions held during the tenancies.

35. A2 verified a statement, also dated 18 March 2022. This was in the same form as A1's statement and there was no cross examination or questions from the tribunal.

36. R1 verified a statement dated 21 April 2022. This gave details of the 2015 licence and addressed the delay in obtaining the 2021 licence. It also referred to a response to the RRO application dated 16 December 2021, served by Law Lane. Copies of the earlier licence, LBWF's letter to R2 dated 21 March 2021 and some of his correspondence with LBWF was exhibited to the response. R1 contended there was a reasonable excuse for the failure to licence the Property from 01 May 2020. He attributes this to the first Covid-19 lockdown, which commenced on 23 March 2020 and was highly disruptive. He was unable to travel to London and did not visit the Property between January 2020 and March 2021. This meant he did not see any local publicity or notices about the 2020 designation.

37. R1 said he had not received any reminder letters or newsletters from LBWF. These may have been sent, incorrectly, to 91 Greenhill Road. In an email dated 07 December 2021, Ms Lisa Smith of LBWF stated "*The reminder letters would have been sent to the address on the previous licence to the licence holder…No letters were sent by email, and these were just newsletters.*" In a subsequent email, dated 08 December, she stated "*From checking the system, it appears that the incorrect door number was added when your wife was added as an interested party. I have updated it now. Your address was correct.*"

38. R1's statement also took issue with the applicants' failure to disclosure additional bank statements and proof of their income, to establish if they received public funds. He also complained of their failure to sign authorities to enable Law Lane to obtain relevant information from LBWF. Copies of the relevant correspondence were exhibited to his statement. R1 also alleged the applicants may have received information about the 2020 designation, without passing this on.

39. In cross-examination, R1 said he expected a reminder from LBWF before the 2015 licence expired. This was still in force when the first lockdown commenced. He suggested that reminders had not been sent, due to the move to home working. Based on his experiences with Winchester City

Council, he assumed there was no-one in LBWF's office to deal with administrative tasks.

40. R1 acknowledged the Property was unlicensed for approximately 9 months. He was unable to say why LBWF held an incorrect postal address. They live at 87 Greenhill Road, rather than 91. The latter is let to tenants and no correspondence had been passed on by the tenants.

41. R1 said the additional disclosure had been sought to see where the applicants' money came from. He accepted there was no evidence the applicants had received state benefits.

42. On questioning from the tribunal, R1 explained that he and his wife own three other properties which are single-bedroom units in Winchester. There is no requirement to licence these units. R1 also runs a fast-food franchise.

43. R1 said he had no contact from LBWF between March 2020 and February 2021. He had forgotten the duration of the first licence and was unable to say what prompted the further application in February 2021. Bizarrely, he denied submitting this application despite paying the licence fee, online, after email correspondence from LBWF. He also said he had not viewed the LBWF website during 2020.

44. R2 verified a statement, also dated 22 April 2022. This was in similar terms to R1's statement. Again, there was no cross-examination or questions from the tribunal.

45. After a further adjournment, both representatives made oral submissions. The relevant law is to be found at section 95 of the 2004 Act. A person commits an offence if he is a person having control or managing a house which is required to be licensed under this Part but is not so licensed (s95(1)). It is a defence that he had a "*reasonable excuse*" for having control or managing the house without being licensed (s95(4)).

46. Mr McCarthy highlighted the four-month gap between public notice and implementation of the 2020 designation. This was not long in the context of the Covid pandemic and first lockdown, particularly as R1 and R2 live outside borough. They had an objectively reasonable excuse for their failure to licence, given the short notice period and the absence of any reminders or warnings from LBWF. They had a five-year licence previously but did not know, or remember, to obtain another licence. This was due to administrative oversight and lack of knowledge of the new regime. They do not live in the district and were unable to travel to London. The problem was compounded by LBWF having an incorrect address and sending reminders by post.

47. Mr McCarthy's primary position was the offence had not been proven beyond a reasonable doubt. If the tribunal was against him, the maximum RRO is £12,783.91 covering the period 01 May 2020 to 04 February 2021 (9 months 4 days at £1,400 per month). There is no presumption in favour of the maximum being payable subject to deduction for mitigation: ***Williams v Parmar & Ors [2021] UKUT244***. Rather, the tribunal must approach the matter holistically.

48. In his skeleton argument, Mr McCarthy referred to s44(3)(b) of the 2016 Act and suggested the tribunal is required to reduce any RRO by "*any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period*." He invited the tribunal to draw an adverse inference from the applicants' failure to disclose basic financial information, either when assessing the amount payable or by applying a percentage reduction to reflect the likely award of universal credit.

49. In determining the amount of any RRO, the tribunal must, in particular take into account (a) the conduct of the landlord and tenant, (b) the financial circumstances of the landlord, and (c) whether the landlord has been convicted of an offence to which chapter 4 of the 2016 Act applies (s44(4)). Mr McCarthy suggested four bands when assessing the nature of the offence, with a starting point of 0-25% for minor infringements, increasing to 25-50% for moderate cases, 50-75% for serious cases and 75-100% for very serious cases. He put this case in the lowest band, highlighting the following factors:

    (a) The purpose of the legislation is to stop landlords profiteering from letting properties illegally, from letting sub-standard accommodation and to reduce rogue landlords. There is no suggestion R1 and R2 flouted their responsibilities and Dr Mahon had described them as "*very good landlords*."

    (b) R1 and R2 had not received correspondence from LBWF and were unaware of the 2020 designation. They live outside the borough and were reliant on third parties notifying them of changes in the rules.

    (c) The short notice period for the 2020 designation, in the context of the first lockdown.

    (d) LBWF had an incorrect address for R1 and R2 and have confirmed that reminder letters were sent by post rather than email.

    (d) The Covid-19 pandemic and first lockdown prevented R1 and R2 from visiting the Property and borough.

    (e) The breach was not wilful and was a pure oversight.

    (f) R1 and R2 had a previous licence that expired two months before the new scheme took effect.

    (g) Once the breach was realised, the licence application was submitted timeously.

(h) The rent remained the same through the applicants' occupation of the Property.

(i) R1 and R2 have not been convicted of any property offence.

(j) Apart from this application, the applicants have not complained about R1 and R2's conduct.

(k) The applicants have not complained about the standard of repair or management of the Property.

(l) The applicants submitted the RRO application in November 2021, three months after they vacated the Property, close to the 12-month deadline at s41(2)(b) of the 2016 Act.

(m) R1 and R2 instructed letting agents, as a responsible landlord would do.

(n) The rent paid for the Property was not all profit, as there were various outgoings. R1 and R2 did not provide details or evidence of these outgoings, or their financial circumstances, despite the prompt at direction 10 (see paragraph 7 above).

50. Dr Mahon expressed some sympathy for R1 and R2 but submitted that a substantial RRO was appropriate, given the Property was unlicensed for nine months. Further, it is unknown when LBWF started to use the incorrect address.

51. There was also a brief discussion about the need to apportion any RRO, if the application was successful. The nine-month period of the claim spans both ASTs and R1 was the sole landlord during the first tenancy. Both advocates agreed that any apportionment should be on a time basis.

Findings

52. The applicants had two ASTs of the Property. The first ran from 17 August 2019 to 16 August 2020 and the second ran from 17 August 2020 to 16 August 2021. The Property is a licensable 'house', under Part 3 of the 2004 Act and pursuant to the 2020 designation which came into force on 01 May 2020. It appears it was also a licensable house between 2015 and 31 March 2020, based on the 2015 licence. However, the tribunal cannot be sure of this as the bundles did not include the earlier designation.

53. The Property was unlicensed between 01 May 2020 and 20 March 2021. The second licence commenced on 21 March 2021. The application for the second licence was made on 05 February 2021. R1 denied submitting this but there must have been an application. The tribunal accepts the contents of Ms Stowe's email dated 18 April 2021, which gave 05 February 2021 as the date the "*…initial application form was submitted to us…*". This date was also relied upon by Mr McCarthy, both in his skeleton argument and oral submissions. Any offence ended when the application was submitted.

54. The tribunal accepts the applicants did not receive universal credit during the ASTs. Legal Road explained this to Law Lane before the disclosure application and A1 confirmed this in his oral evidence. R1 accepted there was no evidence that state benefits had been paid. The application for disclosure was clearly a fishing expedition and was understandably refused by Judge Carr. The tribunal draws no adverse inference from the applicants' refusal to give voluntary disclosure.

55. R1 and R2 appear to believe that any universal credit should be deducted from an RRO. This is a misinterpretation of s44(3)(b), which provides that any RRO must not exceed "*any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.*"

56. There was no reasonable excuse for R1 and R2's failure to licence the Property between 01 May 2020 and 04 February 2021. The 2020 designation was dated 22 January 2020, over four months before the new scheme came into force. This was ample time for R1 and R2 to obtain details of the new scheme and apply for a new licence. They are experienced landlords with four letting units. Their gross rental income from the Property alone was £16,800 per annum (12 x £1,400). They were clearly aware of licensing requirements, as they obtained the 2015 licence and clearly had dealings with LBWF. It was incumbent on them to diarise the expiry of this licence and check for details of any new licensing scheme.

57. R1 and R2's inability to visit the Property does not excuse their failure to licence. The first lockdown commenced on 23 March 2020, two months after the designation and did not prevent them from ringing or emailing LBWF. Equally, they could have obtained details of the new scheme by checking LBWF's website. Furthermore, R1 and R2 had professional letting agents, who should have known and informed them of the scheme. The tribunal notes that R3's address, as stated on the ASTs, is Suites 1-3, 24 Southwark Street, London SE1 1TY.

58. The incorrect address argument does not assist R1 and R2. LBWF clearly had a correct address for R1, as the 2015 licence was addressed to him at 87 Greenhill Road. At some unspecified point, LBWF started using an incorrect address (91 Greenhill Road) for R2. However, there is no evidence that reminders to R1 were incorrectly addressed. To the contrary, Ms Smith stated "*The reminder letters would have been sent to the address on the previous licence to the licence holder…"* in her email dated 07 December 2021 and on 08 December she said R1's address was correct. Furthermore, as experienced landlords, R1 and R2 should have made their own enquiries rather than relying on reminders from LBWF.

59. The tribunal is satisfied, beyond a reasonable doubt that an offence has been committed under section 95(1) of the 2004 Act in that R1 and R2 controlled or managed an unlicensed house during the ASTs. They have

been the registered leasehold proprietors of the Property since 19 March 2010, as evidenced by the leasehold title and have had control and management of the Property since that date.

60. The tribunal accepts the failure to licence the Property was an oversight and inadvertent, but this is not a reasonable excuse.

61. In their response to the RRO application, R1 and R2 also referred to the Upper Tribunal decisions in ***Ekweozoh v London Borough of Redbridge [2021] UKUT 180 (LC)*** and ***D'Costa v D'Andrea & Ors [2021] UKUT 144 (LC).*** These were not mentioned by Mr McCarthy, either in his skeleton argument or oral submissions. This is unsurprising as the facts can be distinguished and neither case assists.

The tribunal's decision

62. Having satisfied itself that an offence had been committed under section 95(1) of the 2004 Act, the tribunal then considered whether to make an RRO. Given the failure to licence for nine months, it is appropriate to make such an order.

63. This is an application under section 41 of the 2016 Act and the amount of the RRO falls to be determined under section 44. R1 and R2 have not been convicted of any offence (s44(4)(c)) and did not supply details of their financial circumstances (s44(4)(b). Mr McCarthy made the general point that rent received is not pure profit but there were no details of any outgoings for the Property, despite the clear prompt in the directions.

64. The only relevant factor is the conduct of the parties (s44(4)(a)). There has been misconduct on the part of R1 and R2 as the Property was unlicensed for nine months. They did not act timeously, contrary to Mr McCarthy's submission. However, the delay in obtaining a licence is the only relevant misconduct on their part. Mr McCarthy's submissions as to good conduct carry some force and the tribunal notes Dr Mahon's description of R1 and R2 as "*very good landlords*".

65. The tribunal does not agree Mr McCarthy's banding categories but accepts the offence is at the lower end of the seriousness scale and was not wilful.

66. The applicants acted reasonably throughout the tenancies, paying their rent on time and there has been no misconduct on their part. The tribunal rejects the criticism of the timing of the RRO application. The application was submitted within the twelve-month deadline, and it was entirely reasonable to make it after the applicants vacated the Property.

67. It is no longer appropriate RROs to be limited to repayment of the profit element of the rent (***Vadamalayan v Stewart and Others [2020] UKUT 1083 (LC)***). The amount of the RRO is a matter for the tribunal's

discretion but cannot exceed 100% of the rent paid. It will be unusual for there to be nothing to take into account under s44(4) (***Awad v Hooley [2021] UKUT 0055 (LC)***). At paragraph 51 of ***Williams***, the President of the Upper Tribunal observed:

"It seems to me to be implicit in the structure of Chapter 2 of Part 2 of the 2016 Act, and in sections 44 and 46 in particular, that if a landlord has not previously been convicted of a relevant offence, and if their conduct, though serious, is less serious than many other offences of that type, or if the conduct of the tenant is reprehensible in some way, the amount of the RRO may appropriately be less than the maximum amount for an order. Whether that is so and the amount of any reduction will depend on the particular facts of the case. On the other hand, the factors identified in paragraph 3.2 of the guidance for local housing authorities are the reasons why the broader regime of RROs was introduced in the 2016 Act and will generally justify an order for repayment of at least a substantial part of the rent."

68. Having regard to all these factors, including the reasons behind the broader RRO regime in the 2016 Act, the appropriate order is that R1 and R2 should repay 40% of the rent paid by the applicants for the period 01 May 2020 to 04 February 2021. During the first AST the rent was payable solely to R1. It was then payable to R1 and R2 during the second AST. The sum to be repaid by R1, for the period 01 May to 16 August 2020 is £1,988.06 (108 days @ £46.02 per day x 40%). The sum to be repaid by R1 and R2, for the period 17 August 2020 to 04 February 2021 is £3,147.76 (171 days @ £46.02 per day x 40%). These sums are to be paid within 28 days of this decision.

69. At the end of the hearing Dr Mahon applied for reimbursement of the tribunal application and hearing fees totalling £300, pursuant to rule 13(2) of 2013 Rules. Given the outcome of this case, it is entirely appropriate the respondents should bear these fees. The tribunal orders R1 and R2 to reimburse the sum of £300 to the applicants within 28 days of the date of this decision.

70. The applicants' statement of case foreshadowed a possible application for costs under Rule 13(1) of the 2013 Rules. As explained at the hearing, any such application should await the tribunal's decision. The parties are reminded of the time limit at Rule 13(5).

71. Finally, and for the sake of completeness, the tribunal refuses the alternative application to sanction the applicants. Their request for a Romanian translator was made very late but this did not delay the case or prejudice R1 and R2. Further, the use of translator was reasonable as English is not the applicants' first language.

Name: Judge Donegan **Date:** 06 June 2022

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Housing Act 2004

PART 3

SELECTIVE LICENSING OF OTHER RESIDENTIAL ACCOMMODATION

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 Part 1 (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),

(ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4).

(3) A tenancy or licence is an exempt tenancy or licence if –

(a) it is granted by a non-profit making registered provider of social housing,

(b) it is granted by a profit-making registered provider of social housing in respect of social housing (within the meaning of Part of the Housing and Regeneration Act 2008), or it is granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996.

(4) In addition, the appropriate national authority may by order provide for a tenancy or licence to be an exempt tenancy or licence –

(a) if it falls within any description of tenancy or licence specified in the order, and

(b) in any other circumstance so specified.

(5) Every local housing authority have the following general duties –

(a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part, and

(b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time.

80 Designation of selective licensing areas

(1) A local housing authority may designate either –

(a) the area of their district, or

(b) an area in their district,

as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

...

83 Notification requirements for designation

(1) This section applies to a designation –

(a) when it is confirmed under section 82, or

(b) (if it is not required to be confirmed) when it is made by the local housing authority.

(2) As soon as the designation is confirmed or made, the authority must publish in the prescribed manner a notice stating –

(a) that the designation has been made,

(b) whether or not the designation was required to be confirmed and either that it has confirmed or that a general approval under subsection (2) applied to it (giving details of the approval in question),

(c) the date on which the designation is to come into force, and

(d) any other information which may be presribed.

(3) After publication of a notice under subsection (2), and for as long as the designation is in force, the local housing authority must make available to the public in accordance with any prescribed requirements –

(a) copies of the designation, and

(b) such information relating to the designation as is prescribed.

(4) In this section "prescribed" means prescribed by regulations made by the appropriate national authority.

...

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))

(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.

(2) A licence under this Part is a licence authorising occupation of the house concerned under one or more tenancies or licences within section 79(2)(b).

(3) Sections 87 to 90 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.

(4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of houses in their area which are required to be licensed under this Part but are not so licensed.

(5) In this Part, unless the context otherwise requires –

(a) references to Part 3 houses are to a house to which this Part applies (see section 79(2),

(b) references to a licence are to a licence under this Part,

(c) references to a licence holder are to be read accordingly, and

(d) references to a house being (or not being) licensed under this Part are to it being (or not being) a house in respect of which a licence is in force under this Part.

…

95 Offences in relation to licensing of houses under this Part

(1) A person commits an offence if he is a person having control or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2) A person commits an offence if –

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6); and

(b) he fails to comply with any condition of the licence.

…

(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.

<u>Housing and Planning Act 2016</u>

40 Introduction and key definitions

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

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

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

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

(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 to that landlord.

	Act	***section***	***general description of offence***
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

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.

(3) A local housing authority may apply for a rent repayment order only if –

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

...

43 Making of a rent repayment order

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

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

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 this table.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

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

(a) the rent 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,

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Overriding objective and parties' obligation to co-operate with the Tribunal

3. - (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes –

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it –

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must –

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

…

Striking out a party's case

9. - (1) The proceedings or case, or the appropriate part of them, will automatically be struck out if the applicant has failed to comply with a direction that stated that failure by the applicant to comply with the direction by a stated date would lead to the striking out of the proceedings or that part of them.

(2) The Tribunal must strike out the whole or a part of the proceedings or case if the Tribunal –

(a) does not have jurisdiction in relation to the proceedings or case or that part of them; and

(b) does not exercise any power under rule 6(3)(n)(i) (transfer to another court or tribunal) in relation to the proceedings or case or that part of them.

(3) The Tribunal must strike out the whole or part of the proceedings or case if -

a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it;

(b) the applicant has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly and justly;

(c) the proceedings or case are between the same parties and arise out of facts which are similar or substantially the same as those contained in a proceedings or case which has been decided by the Tribunal;

(d) the Tribunal considers the proceedings or case (or part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding

(4) The Tribunal may not strike out the whole or a part of the proceedings or case under paragraph (2) or paragraph 3(b) to (e) without first giving the parties an opportunity to make representations in relation to the proposed striking out.

(5) If the proceedings or case, or part of them, have been struck out under paragraph (1) or (3)(a), the applicant may apply for the proceedings or case, or part of it, to be reinstated.

(6) An application under paragraph (5) must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to that party.

(7) This rule applies to a respondent as it applies to an applicant except that –

(a) a reference to the striking out of the proceedings or case or part of them is to be read as a reference to the barring of the respondent from taking further part in the proceedings or part of them; and

(b) a reference to an application for the reinstatement of proceedings or case or part of them which have been struck out is to be read as a reference to an application for the lifting of the bar on the respondent from taking further part in the proceedings; or part of them.

(8) If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.