FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMK/2017/0016**
Property	**:**	**97 Burnham Tower, Fellows Road, London NW3 3JP**
Applicant	**:**	**Mr Karoly Mayer**
Representative	**:**	**Mr Karoly Mayer (In Person)**
Respondent	**:**	**Mr Shane Mulvihill**
Representative	**:**	**Ms Deirdre Gill (Partner)**
Type of Application	**:**	**S41(1) Housing and Planning Act 2016 - application for a rent repayment order**
Tribunal Members	**:**	**Judge John Hewitt** **Mr Trevor Sennett MA FCIEH**
Date and venue of hearing	**:**	**15 March 2018** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**20 March 2018**

DECISION

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The issue(s) before the tribunal and its decision

1. The single issue before the tribunal was an application by the applicant (Mr Mayer) for a rent repayment order against the respondent landlord (Mr Mulvihill).

2. The decision of the tribunal is that a rent repayment order shall be made in favour of Mr Mayer in the sum of £580.93 and that Mr Mulvhill shall pay (or if the parties mutually agree credit) that sum to Mr Mayer by no later **5pm [28 days]**

NB Later reference in this Decision to a letter and number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing. The letter 'A' refers to the applicant's file and the letter 'R' refers to the respondent's file. A number of documents were duplicated in both files and for ease of reference only we have tended to mark or annotate those in the applicant's file.

Procedural background

3. On 17 November 2017 the tribunal received an application pursuant to s41 (1) Housing and Planning Act 2016 (H&PA 2016). The application cited Mr Mulvihill as the respondent landlord and gave two addresses for him, but also cited Abbey Properties as the respondent's representative and gave an address for that firm.

4. Directions were prepared on 14 December 2017 and the respondent's copy was sent to Abbey Properties. But, unbeknown to Mr Mayer, Abbey Properties was not the duly appointed representative of Mr Mulvihill for the purposes of these proceedings and Abbey Properties did not forward the application and papers to Mr Mulvihill.

5. In January 2018 Mr Mulvihill came to learn of the fact of the proceedings from a comment made by Mr Mayer in an email. Following enquiries, contact was made with the tribunal. As a result revised directions were issued on 11 January 2018.

6. In accordance with directions each party has provided a file of documents they proposed to rely upon at the hearing.

7. The application came on for hearing before us on 15 March 2018. Mr Mayer attended in person and presented his case. At all material times Mr Mulvihill has been represented by his partner, Ms Deirdre Gill, and Ms Gill attended the hearing and presented the case on behalf of Mr Mulvihill.

8. The application concerns a letting of the property, 97 Burnham, a property comprising three rooms furnished or laid out as bedrooms, a living room, a kitchen and a bathroom/wc. Burnham is on the well-known Chalcott Estate owned by the London Borough of Camden (LBC) and is one of several tower blocks on that estate. At some time in the past the secure tenant of 97 Burnham exercised the right to buy and

LBC granted a long lease of the property. That lease is now vested in Mr Mulvihill. Under the terms of that lease LBC is obliged to provide services and to carry out repairs and maintenance and the lessee is obliged to contribute to the costs incurred by way of a service charge.

9. The letting of the property which is subject matter of these proceedings is a tenancy agreement [A2/1] entered into by Mr Mulvihill, as landlord, on the one hand and Mr Mayer, a Mr Sergio Vaquerizo Jaen, and a Mr Luis Miguel Lobato together jointly as the tenant, on the other hand. The tenancy agreement incorrectly cites Ms Gill as the landlord. Nothing turns on that. This probably came about because Ms Gill, acting on behalf of Mr Mulvihill, engaged Abbey Properties as the letting agent.

10. Mr Mayer, Mr Vaquerizo Jaen and Mr Lobato are friends/work colleagues and do not comprise a single family unit. Thus the letting of the property to them causes the property to fall within the definition of a house in multiple occupation (HMO) set out in s254 Housing Act 2004 (HA 2004). LBC is the local housing authority for the purposes of the HA 2004. LBC has exercised additional HMO licensing powers conferred by s56 HA 2004 such that for so long as the property was occupied as an HMO it was required to be a licensed HMO.

The statutory provisions

11. Before setting out the facts as agreed or found by us it is helpful to set out the statutory provisions material to the issues before us.

12. **HA 2004**

S72 Offences in relation to licensing of HMOs

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

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

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

(5) In proceedings against a person for an offence under subsection (1) .... 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) ...

(6) A person who commits an offence under subsection (1) ... is liable on summary conviction to a fine.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

249A Financial penalties for certain housing offences in England

(1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.

(2) In this section *"relevant housing offence"* means an offence under—

(b) section 72 (licensing of HMOs),

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or

(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,

(b) appeals against financial penalties,

(c) enforcement of financial penalties, and

(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

13. **H&PA 2016**

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.

....

Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO

....

41 Application for rent repayment order
(1) A tenant ... 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.

...

[Section 72(1) HA 2004 - 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 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.

47 Enforcement of rent repayment orders
(1) An amount payable to a tenant … under a rent repayment order is recoverable as a debt.

As regards the application before us, the above provisions came in to effect on 6 April 2017 and replaced the provisions concerning rent repayment orders set out in the HA 2004

The facts

14. There was a large measure of agreement between Mr Mayer and Ms Gill as to the background facts. The facts set out below were not in dispute between the parties save where otherwise indicated.

15. Ms Gill was contacted by Abbey Properties, a letting agent in London NW3 which was soliciting for business. Ms Gill had used the services of Abbey Properties on a previous occasion but was dissatisfied with the level or quality of service which had been provided. Ms Gill was informed that the person she had dealt with previously was no longer employed by Abbey Properties and she was persuaded to give them another chance when next she was looking for a tenant for one the flats she and/or Mr Mulvihill owned and rented out.

16. In the summer of 2017 a tenancy of the subject flat, under which the rent was £2,275 pcm, was due to come to an end and a new tenant was required. Ms Gill thus instructed Abbey Properties as letting agent only to try and find a new tenant for the flat.

17. Mr Mayer and two colleagues/friends were looking to rent a three bedroomed flat in the area. Mr Mayer contacted Abbey Properties which had flats on its books. Mr Mayer viewed two flats and decided that the subject flat was the preferred one because it was larger and initially it was offered at a rent of £2,100 pcm which was slightly lower than the rent on the other flat.

18. At a late stage (but unbeknown to Ms Gill) Abbey Properties informed Mr Mayer that the landlord had another offer on the flat at a rent of £2,300 pcm and if he wanted the flat he would have to match that offer. Mr Mayer consulted with his proposed flat mates and (with some reluctance) they agreed to match the £2,300 pcm.

19. Abbey Properties proceeded to organise the paperwork/references. Ms Gill booked Commercial Clean 4 You to carry out a deep clean of the flat on 15 August 2017 and also booked Storm Inventories to manage a check-in inventory and asked Abbey Properties to co-ordinate the arrangements.

    Due to some mismanagement on the part of Abbey Properties the inventory could not be arranged for a date convenient to all concerned prior to the commencement of the tenancy. In fact the inventory was not undertaken until a few days after the commencement of the tenancy.

    Both parties were dissatisfied with the manner in which Abbey Properties managed the letting arrangements and clearly there were some shortcomings as regards the paperwork, but none of them are material to what we have to decide.

20. The tenancy agreement is dated 21 August 2017. The copy signed by the tenants is at [A2/1]. It grants a term of 12 months from and including 21 August 2017 at a rent of £2,300 pcm payable on the 21st of each

month. The liability of the tenants is joint and several. Section 8 provides that at any time after six months from the commencement date either party may invoke a break clause by providing a minimum of two months written notice *"to the tenant"*. That might properly be construed as reading *"to the other party"*. There are some other provisions in section 8 which are plainly a nonsense and, whilst not material to what we have to decide, are further examples of the sloppiness with which Abbey Properties prepared the paperwork.

21. Evidently, Mr Mayer had had a previous bad experience concerning a letting and was cautious and wary from the outset. He was nervous that he did not think he had been provided with sufficient documentation and/or receipts for the first month's rental and the deposit and was disappointed to be told on 21 August 2017 that the tenancy agreement signed by or on behalf of the landlord would be provided in 'due course'. (Evidently Mr Mulvihill and Ms Gill are resident in or spend a deal of time in Dublin and it takes a while for documents to go back a forth).

22. Despite these misgivings Mr Mayer and his co-tenants moved in. There was further initial disappointment with a number of matters including the alleged poor cleanliness of the flat, some damage to some of the furniture and fittings, lack of shelving in the refrigerator, and that neither the microwave nor the vacuum cleaner worked. These matters rather cemented the poor vibes which Mr Mayer was getting. They also appear to have caused him to send a fairly aggressive email to Ms Gill on 24 August 2017 [A5/32] indicating that reports to LBC and legal assistance would be sought if Ms Gill did not respond to him during the course of the following day. This email was the first direct correspondence sent by Mr Mayer to Ms Gill.

23. But, despite the initial misgivings, Mr Mayer accepted that when the above and other matters were brought to the attention of Ms Gill, she dealt with them properly and promptly. Mr Mayer gave an example concerning the boiler which failed and which Ms Gill had repaired within a few days.

24. It also took a little while to get the utilities into the names of the tenants and this caused Mr Mayer some further frustration. One particular issue was the supply of gas. LBC has a bulk supply contract in place to procure the supply of gas to the estate and it recovers the metered cost from the lessee via the service charge. Mr Mayer wanted the supply to be in his name but LBC will only bill the long lessee and deal with it as part of the service charge regime. This was explained to Mr Mayer but it was an arrangement with which he was not familiar and with which he was not comfortable. Mr Mayer was also irritated that he could not pay for the gas on a monthly basis.

25. Thus for all the above reasons, so far as Mr Mayer was concerned the tenancy did not get off to a good start.

26. Mr Mayer did accept however that neither at the commencement of the tenancy nor at any time during it have there been any issues about the inadequacy or safety of the flat or the fittings or equipment within it. Mr Mayer had no complaints at all on that score. We might also add that despite the various issues which have emerged neither party has yet seen fit to exercise the mutual break clause in the tenancy agreement.

27. On 6 October 2017 Abbey Properties sent an email to Ms Gill [A5/50] enquiring whether an application had been made to LBC for an HMO licence and if so if they could have copies. Ms Gill said she did not know what prompted this email. Also she was not aware at that time that an HMO licence was required. Having looked into the subject Ms Gill began to collect together the paperwork required to complete the rather daunting online application form.

28. On or about 30 October 2017 Mr Mayer raised with Ms Gill the issue of noise nuisance disturbance arising from remedial works being carried out by LBC. Evidently following the Grenfell Tower tragedy LBC carried out tests on tower blocks on the Chalcott Estate and identified Burnham as one on which urgent works to replace defective or unsafe cladding was required. Scaffolding was erected and works were put in train commencing in October 2017. It was said that these works caused a disturbance to Mr Mayer and his flatmates. It appears that the tenants work in hospitality and have unsocial hours, often returning home at about 5am so that there is a need for them to sleep during the daytime. Mr Mayer complained that the landlord or Abbey Properties should have informed him about the proposed works and that had they done so he would not have taken the tenancy on the flat. In so far as may be relevant in these proceedings we accept Ms Gill's evidence and find as a fact that neither the landlord not Ms Gill had any prior notice from LBC about these works and they were not consulted about them in any way. The only information which they had in August 2017 was simply a link to a statement on an LBC website which was not that informative and which Ms Gill had provided to Abbey Properties to pass on to any potential tenants [A5/57].

29. As a direct result of the noise disturbance Mr Mayer lodged a complaint with LBC. On 2 November 2017 a Ms Grace House of LBC Private Sector Housing visited the flat. We do not know what was said about the noise disturbance issue, but Ms House asked to see the tenancy agreement, was shown it and then informed Mr Mayer that the flat was an HMO, that it should be licensed, that it was not licensed, that the landlord was committing an offence and that the tenants had the right to seek a rent repayment order. Ms Gill was unaware of the complaint lodged with LBC or the proposed visit by Ms House.

30. An email string between Mr Mayer and Ms Gill concerning the works and the noise disturbance commenced on 2 November 2017 [A5/59]. Mr Mayer sought compensation for the noise nuisance and the poor

service provided by Abbey Properties and negotiations over those claims ensued.

31. On 3 November 2017 Ms Gill lodged with LBC an application for an HMO licence. This was lodged as a result of the prompt received by Ms Gill from Abbey Properties in early October 2016. It was a coincidence that it was lodged the day after Ms House' visit.

32. By letter dated 14 November 2017 [R1/2] Ms House, on behalf of LBC, wrote to the 'Occupiers 97 Burnham'. In that letter Ms House referred to her visit on 2 November 2017 and made the point that the council was satisfied that *" … the property you occupy was operating as an unlicensed … HMO …"*. The letter went on asserting that a person having the control of or managing a property which requires a licence but which is unlicensed commits a criminal offence carrying an unlimited fine. The letter also drew attention that the landlord can be made the subject of a rent repayment order and if awarded the landlord can be required to repay rent. It is curious that the complete focus of the letter is the absence of an HMO licence and its consequences but there is no mention at all about the noise disturbance emanating from the works being undertaken by LBC which was the substance of the complaint to LBC.

33. On 17 November 2017 the tribunal received Mr Mayer's application for a rent repayment order. As noted above Ms Gill was unaware of this application until early in January 2018 when it was mentioned in passing in the course for the negotiations about compensation for the noise nuisance. Mr Mayer's representative mentioned that if a figure for compensation could be agreed then *" the tenants are happy to immediately put aside … the RRO and Abbey Property issues and withdraw the RRO prosecution."*

34. The negotiations of the claims for compensation for noise nuisance and Abbey Properties' role continued and offers and counter-offers were made but the parties were not able to reach an agreement. The withdrawal of the present proceedings was an element in those negotiations. Those negotiations were plainly subject to 'without prejudice privilege,' even if that expression did not appear on the emails. For that reason we do not propose to take into account the reasons why the negotiations failed to result in a concluded agreement and at the hearing we declined to hear oral evidence on that subject. Further, we took the view that the substance of the negotiations were the claims for compensation over the noise nuisance and Abbey Properties' role and that neither issue was relevant or material to what we have to decide.

The approach we should adopt

35. S43(1) H&PA 2016 provides that we may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed an offence. From the outset Ms Gill, on behalf of Mr Mulvihill, accepted that an offence contrary to s72(1) was committed. We have no

reason to go behind that admission. We have therefore decided we are entitled to make a rent repayment order.

36. S44 sets out provisions that relate to the amount of a rent repayment order which the tribunal may make:

    36.1 The amount must relate to (and not exceed) the rent paid during the period over which the landlord was committing the offence. In the subject case the parties were agreed that period was 21 August to 2 November 2017 – a period of 74 days.

    36.2 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 Chapter 4 H&PA 2016 applies.

37. So far as we are aware the Upper Tribunal (Lands Chamber) has not as yet given guidance on the approach this tribunal should adopt when considering applications under s44 H&PA 2016.

However, the current scheme replaces several provisions which were set out in the original scheme in the HA 2004. S74 of that Act provided

> The amount required to be repaid (to an occupier) under a rent repayment order is such amount as the tribunal considers **reasonable** in the circumstances and the tribunal **must** take into account:
>
> (a) the total amount of relevant payments made by occupier while the offence was being committed;
> (b) whether appropriate person has at any time been convicted under s.72(1);
> (c) the conduct and financial circumstances of appropriate person; and
> (d) the conduct of the occupier

38. Guidance on the approach tribunals should adopt when considering an application under s74 HA 2004 was given by the Upper Tribunal (Lands Chamber) in:

Parker v Waller and others [2012] UKUT 301 (LC); and

Fallon v Wilson and others [2014] UKUT 300 (LC)

Whilst the expression 'reasonable' used in s74 HA 2004 is not used in s44 H&PA 2016 the two schemes are very similar and of course any amount which a tribunal orders should always be 'reasonable' so that we consider the guidance given in the above authorities should be applied in general terms to the consideration of the amount of a rent repayment order made pursuant to s44 H&PA 2016.

In *Parker,* the then President turned to Hansard to discern the purpose of the statutory provisions and recorded that they were:

1. To provide for a further penalty in addition to any fine imposed;
2. To help discourage illegal letting of properties by landlords, and
3. To resolve problems that would arise from a withholding of rent by tenants.

The President then went on to decide that:

1. Any fine imposed is a relevant factor;
2. There is no presumption or starting point of a 100% refund of payments made;
3. The tribunal should consider the length of time that the offence was being committed;
4. The benefit obtained by the tenant having had accommodation is not a material consideration;
5. Payments made in respect of utilities should normally be excluded; and
6. The culpability of the landlord is relevant – a professional landlord is expected to know better

In that case the President made an award of 75% of the landlord's profit, less the amount of the fine imposed by the magistrates' court. The amount of mortgage payments made by the landlord was taken into account.

A broadly similar approach was taken in *Fallon* and there the judge held that the tribunal must take an overall view of the circumstances in determining what amount would be reasonable. Expenses properly incurred by the landlord and the profit of the landlord should be taken into account.

39. In the present case the parties were agreed that the rent of £2,300 pcm equates to £75.616 per day; that the offence was committed over a period of 74 days so that the rent paid for that period amounted to £5,595.58. Mr Mayer told us that he and his flatmates shared the rent equally so that of the £5,595.58 Mr Mayer had paid one third which equals £1,865.19

40. Although s44(4)(b) obliges the tribunal to take into account the financial circumstances of the landlord, no evidence about or details of Mr Mulvihill's financial circumstances, in terms of his assets, liabilities, income and outgoings were provided to the tribunal.

41. Ms Gill included in her papers details of some expenses incurred by the landlord, including:

Mortgage	£13.02 per day	[A4/5]
Pre-let cleaning	£240.00	[A4/2]
Pre-let repairs	£85.00 + £190.00	[A4/2]

Letting fee	£1,080.00	[A4/2]
Replacement microwave	£69.00	[A4/3]
Replacement fridge shelves	£77.07	[A4/3]
Replacement vacuum cleaner	£135.00	[A4/3]
Boiler repair and service	£425.00	[A4/3]
LBC service charges	£9.75 per day	[A4/4]

Ms Gill did not submit that all of the above should be taken in account but she had included the details in her file in order to demonstrate that the landlord had taken a reasonable and professional approach to the letting and had acted properly and responsibly.

We have taken into account the mortgage repayments, the service charges and the boiler repair and service. These expenses are in line with the guidance and help identify the landlord's profit during the period when the offence was being committed.

We decline to take into account the provision of replacement equipment, and the pre-let cleaning and repairs as these are expenses the landlord should have incurred prior to the commencement of the letting of a flat at a rent of £2,300 pcm, and hence prior to the commencement of the offence. Ms Gill urged us to take into account the letting fee of £1,080. We decline to do so for the same reason plus, both parties agreed that a very poor quality service was provided and that Ms Gill told us that when the case was over she would have a discussion with Abbey Properties about its fee. Thus we are not satisfied that the whole of the expense will ultimately be incurred.

42. Given that Mr Mayer paid one third of the rent we find it is only fair to him that one third of the expenses should be taken into account. This will also avoid the risk of any double counting in the event that any other applications for a rent repayment order are made. In gross terms we find that the maximum amount of a rent repayment order we can make is:

Rent:	74 days at £75.616	=		£5,595.58
Less expenses:				
Mortgage:	74 days at £13.02	=	£963.48	
Service charges:	74 days at £9.75	=	£721.50	
Boiler repair/service		=	<u>£425.00</u>	<u>£2,109.98</u>
Net profit		=		£3,485.60
One third		=		£1,161.86

43. The authorities make clear that the starting point is not 100%. The tribunal is to take into account the conduct of both the landlord and the tenant.

44. We find there is no adverse conduct on the part of Mr Mayer that we should take into account.

45. We find that although Mr Mulvihill and Ms Gill appear to have a number of properties which they let, they are not large scale commercial landlords backed by a professional team. We take into account the following factors:

    1. The need for the HMO licence arose not from any physical features of the flat itself but from the fact the three joint tenants were not a family unit. If the letting had been to a family of three persons the need for an HMO licence would not have arisen.
    2. The landlord was let down badly by its letting agent which was very slow to mention the requirement for the licence.
    3. When attention was drawn to the need for the licence Ms Gill acted reasonably promptly in collating the materials required and in submitting an application to LBC.
    4. HMO licensing was part of the scheme set out in HA 2004 to assist local housing authorities to improve the quality of private sector housing within their areas, particularly with regard to health and safety matters. Where a licence is required and applied for the local authority has the opportunity to inspect the property and to satisfy itself on these matters and bring to attention any shortcomings. In the present case Mr Mayer was quite clear that there were no adverse health and safety features of the property. Ms House of LBC inspected the property on 2 November 2017 and has not drawn attention to any deficiencies with the property. LBC has not (as yet) seen fit to exercise powers conferred on it by the H&PA 2017 to impose a financial penalty or to bring a prosecution in relation to the offence. We infer from this that LBC does not see this case as such a serious one that requires the imposition of significant financial penalties.
    5. Throughout Mr Mulvihill has been a reasonable, responsible and attentive landlord who has responded to issues promptly as they arose and attention was drawn to them.

46. The two main concerns that Mr Mayer had was the noise nuisance and that the paperwork was poorly managed by Abbey Properties. As regards the noise nuisance, we have not taken that into account. That nuisance was not brought about by reason of the conduct of the landlord. It was the conduct of the superior landlord over which neither Mr Mulvihill nor Ms Gill had any knowledge or control. It is perhaps an irony that those works are being undertaken by LBC with the very purpose of making the property safer for the occupiers to reside in. If Mr Mayer considers that he has a civil claim against his landlord arising out of the noise nuisance, he is entitled to pursue that claim in the county court. Another reason we should not take it into account is that if Mr Mayer pursues a claim there is a risk of double counting.

47. Drawing the various threads together we find that whilst an offence was committed it was not wantonly and knowingly committed with a view

to financial gain and there was no intention on the part of Mr Mulvihill to avoid his statutory obligations. There are no adverse health or safety issues arising in this case need to be marked by a significant penalty. In these circumstances we find that a reasonable amount for the rent repayment order is one half of the maximum permitted under the H&PA 2016. We have therefore made an order in the sum of £580.93.

Judge John Hewitt
20 March 2018

ANNEX - 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.