FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HA/HMF/2020/0032
Property	:	7 The Warehouse, Lymore Gardens, Bath.
Applicant	:	Jaye Williams Reagan Spinks Renee Bond Khalidah Muhammad
Respondents	:	Farleigh Regen (One) Limited
Respondents' Representative	:	Miss H Evans (of Foot Ansty LLP)
Type of Application	:	Rent Repayment Order (Sections 41 and 44 of The Housing and Planning Act 2016)
Tribunal Member(s)	:	Judge J F Brownhill, Mr P Gammon MBE, and Mr J Reichel MRICS
Date and venue of hearing	:	1st March 2021 – Video enabled hearing (fully remote)
Date of Decision	:	1st March 2021

DECISION

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1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal.

2 There was no inspection of the property given the current Covid-19 pandemic – and in any event an inspection was not properly required in order to properly and fairly determine the issues before the Tribunal.

The hearing:

3 The hearing was conducted as a fully remote video enabled hearing. This was because, given the COVID-19 pandemic, it was not practicable to hold a face-to-face hearing and all relevant issues could be fairly and properly determined by a remote hearing. The Tribunal had specific regard to the Senior President of Tribunal's Administrative Guidance and Directions, the Tribunal Procedure (Coronavirus)(Amendment) Rules 20202 and the Amended General Pilot Practice Direction: Contingency Arrangements in the First Tier Tribunal and the Upper Tribunal.

4 The Applicants were represented by Ms Williams (the lead Applicant), the Respondent was represented by Ms H Evans (Solicitor). Mr Lewis of the Respondent gave evidence to the Tribunal as did Ms Williams.

Preliminary issues/matters.

5 The application, as originally made, named Rengen Developments as the Respondent landlord. The current Respondent applied [12] to strike out the application or in the alternative substitute itself (Farleigh Rengen (One) Limited) as the Respondent to the application, explaining in Mr Lewis's first witness statement that in fact they were the correct Landlord.

6 Judge Tildesley in an Amended Direction Notice dated 21/01/2021 [15] recorded that the parties had agreed to the substitution of the Respondent and gave further amended case management directions.

7 More recently the Respondent has applied, in an application dated 19/02/2021, for permission to rely on a third witness statement of Mr Lewis. This application was formally made in writing, and the witness statement in question had been served on the Applicants on or around 19/02/2021. The witness statement covered a number of matters which had been raised by the Applicants in their previous witness statement, but which hadn't otherwise been addressed by the Respondent.

8 Ms Williams for the Applicants indicated that she had no objection to the third witness statement of Mr Lewis being admitted.

9 The Tribunal decided that it was appropriate and in the interests of justice to extend time and admit the third witness statement of Mr Lewis in all the circumstances, in particular given that it was likely to have the overall effect of shortening the oral evidence heard by the Tribunal; it addressed issues which

had been raised by the Applicants; and there was no objection to its admission.

10 The Tribunal confirmed the Applicants' previous written indication that they were no longer seeking reimbursement of the application and hearing fees. Ms Williams orally confirmed this to the Tribunal and the Tribunal therefore proceeded on the basis that those aspects of the application had been withdrawn.

The Legal Framework

11 The Application before the Tribunal was for a Rent Repayment Order (hereinafter referred to as an RRO) pursuant to Section 41 of The Housing and Planning Act 2016 (hereinafter referred to as 'the 2016 Act). The Application was made by the Tenants of 7 The Warehouse, Lymore Gardens, Bath (hereinafter referred to as 'the property').

12 Section 40 of the Housing and Planning Act 2016 "the 2016 Act") provides:

"(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

(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."

13 Section 43 of the 2016 Act provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that a relevant offence has been committed by the landlord.

14 For the purposes of the current application, the relevant offence was that pursuant to section 72(1) of the Housing Act 2004:

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

15 It was not in issue before the Tribunal, indeed the Respondent accepted and conceded, that from 01/08/2020 an offence under section 72(1) of the Housing Act 2004 had been committed by it. The property was an HMO, there were 4 households in occupation from 01/08/2020. The property required an HMO licence and did not, as at 01/08/2020, have one; this was not in issue between the parties. The Tribunal found, beyond reasonable doubt, that the offence had been committed.

16 The Tribunal also found that there was no reasonable excuse (pursuant to section 72(5) of the 2004 Act) for having control or managing the house in the

circumstances mentioned in subsection (1). Ms Evans on behalf of the Respondent indicated at the outset of the hearing that the Respondent did not seek to argue it had a 'reasonable excuse' defence. This was therefore not a live issue before the Tribunal.

17 However, and in light of the Upper Tribunal comments in IR Management Services Ltd V Salford BC [2020] UKUT 81 at paragraph 31 of the Judgement, the Tribunal considered whether the explanation given by the Respondent amounted to a reasonable excuse, even though it was not relied on as a statutory defence.

18 The Tribunal found that the Respondent did not have a reasonable excuse for their failure to comply with the provisions of section 72(1). The Respondents were and are professional landlords, and have considerable experience of letting HMOs. Despite the impact of the Covid-19 pandemic and the March 2020 lockdown and furloughing of staff, the Respondents were still, in the Tribunal's view, to be reasonably expected to have applied for the relevant HMO licence for the property prior to allowing persons into occupation. The Tribunal noted that the Respondents had managed to let the property during the period of the first lockdown (the tenancy agreement had been signed on or around 21st May 2020 [65]) so despite limitations they had still be able to function sufficiently to secure the letting of its properties, including newly developed properties.

19 The Tribunal continued to be satisfied, beyond reasonable doubt, that the Respondent landlord of the property had committed an offence under section 72(1) of the 2004 Act.

20 The offence ceases to be committed once a valid application for a licence has been made (section 95(3)).

21 Having found, beyond reasonable doubt, that a relevant offence had been committed by the Respondent landlord, the Act provides that the Tribunal *may* make a RRO (Section 43(1)2016 Act). The Tribunal therefore still retains a discretion as to whether or not to make an RRO. The Tribunal found on the current facts that it was appropriate to make an RRO under section 43 of the 2016 Act. In reaching this conclusion the Tribunal took into account the purpose and nature of RROs in stressing the importance of marking and encouraging future compliance with HMO licensing requirements as well as the circumstances in which the offence had been committed.

22 Section 44 of the 2016 Act provides a framework by which the amount of an RRO is to be determined on application by a tenant. The Respondent had not been convicted of any relevant criminal offence and so section 46 of the 2016 Act did not apply.

23 Section 44 provides:

"(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: [The table provides, for the HMO licence offence, "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."

24 Recently the Upper Tribunal has considered the application of this precise provision in Vadamalayan v Stewart [2020] UKUT 183. There Upper Tribunal Judge Cooke stated at paragraph 14 onwards:

"But under the current statutory provisions the restriction of a rent repayment order to the landlord's profit is impossible to justify. The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied.

That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order.

In cases where the landlord pays for utilities, as he did in *Parker v Waller*, there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.

.....

19. The only basis for deduction is section 44 itself. and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord's expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence.

.....

> 53. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. The Applicant incurred costs for his own benefit, in order to get a rental income from the property; most were incurred in performance of the Applicant's own obligations as landlord. The respondents as tenants were entitled to the items set out in the Applicant's schedule of expenditure (insofar as they do relate to the property; in the circumstances I do not have to resolve disputes of fact for example about item 8). The respondents are entitled to a rent repayment order. There is no reason to deduct what the Applicant spent in meeting one obligation from what he has to pay to meet the other.
>
> 54 ...... More importantly, what a landlord pays by way of mortgage repayments – whether capital or, as in this case, interest only – is an investment in the landlord's own property and it is difficult to see why the tenant should fund that investment by way of a deduction from a rent repayment order."

The Facts.

25 The Tribunal heard evidence from Mr Lewis concerning the development in which the property was situated; The development was a former warehouse in Bath. The Respondent bought the property as a shell and, keeping the external façade, carried out a complete internal re-working of the building creating a development of 8 properties, consisting of a number of 4-bedroom houses and 1- and 2-bedroom flats.

26 The property which is the subject of the instant application is a 4-bedroom house, 7 The Warehouse. The property is laid out over 3 floors, consisting of:

a. On the ground floor, living accommodation (kitchen/diner) and a bedroom;

b. On the first floor, one or two bedrooms and a shower room/wc; and

c. On the second (or top) floor, a bedroom(s).

27 The property also has the benefit of access to a shared communal lounge enjoyed by the other properties within the development. Photographs of the interior of some of the properties on the development appear at [111] onwards (some are of the property but others are of other properties within the Respondents portfolio as an example of the standard of property they seek to achieve).

28 The development also has a communal bin store, and photographs of this are included in the exhibits to the Applicant's witness statement at [132].

29 The Tribunal heard (and read) evidence concerning the structure of the Respondents company and its place within a group of companies, Iesis Group. Without seeking to repeat the details set out in Mr Lewis's first witness statement [22], it was agreed that the relevant landlord and Respondent in this case is Farleigh Rengen (One) Limited.

30 It was, in the Tribunal's view entirely understandable that the Applicants had erroneously named their landlord in the initial application as Rengen Developments, as opposed to Farleigh Rengen (One) Limited. The Tribunal noted that in fact even the tenancy agreement gave an incorrect name for the

landlord ([49] Rengen Farleigh One,) as well as also referring to the landlords as Rengen Developments in the heading to the tenancy agreement [47]. Therefore, without carrying out an Office Copy Entry search at HMLR it was difficult to see how the Applicants could have identified the correct Respondent. When asked about this, Mr Lewis while initially appearing reluctant did in the end agree with this. Though he stated that had the Applicants been in contact with the landlord before issuing the instant proceedings this mistake could have been prevented. In that regard the Tribunal note the evidence (detailed below) from the Applicants, and the difficulties they reported encountering in relation to contacting and communications with their landlord.

31 Mr Lewis explained to the Tribunal that the Respondent was the freeholder of the development (and hence the property) and was a SPV (special purchase vehicle) holding this one asset. The Respondent was part of the Iesis Group, which was described by Mr Lewis as consisting of a "...holding company at the top, with subsidiary companies beneath and each of those holds one asset/building." The group owned 30 or so properties, each building being owned by its own SPV. Other companies within the group carried out what Mr Lewis referred to as 'servicing the transactions' of the others. It was the "top group company", which Mr Lewis explained employed people who carried out the day-to-day functions of the group. The subsidiary companies did not employ anybody, but rather subcontracted services which were performed by the holding company and its employees or employees from elsewhere in the group. Mr Lewis described himself as the group Chief Executive.

32 There was conflicting evidence before the Tribunal as to the date on which the Respondents actually made their application for the HMO licence; and therefore, the date on which commission of the criminal offence ceased. Mr Lewis provided documentary evidence in the form of an emailed submission receipt dated 24/09/2020 [82] which showed that the HMO licence application had been submitted to the Local Authority on 24/09/2020. He was also able to confirm after the luncheon adjournment that the HMO licence application fee had been paid on the same date, and it was noted that this too accorded with what was said within the application itself [81].

33 In contrast the Applicants stated that they had been told by the local authority that the application for a licence had been made on the 13/10/2020. They in turn provided email correspondence [123] from an Ali Kenney (Assistant Environmental Health Officer) in which it was stated that the author had ".... received the valid HMO licence application date today and can confirm it is the 13/10/2020." Ms Williams gave evidence to the Tribunal that having seen the date and evidence provided by the Respondent suggesting an earlier date (24/09/2020) she had been in contact with the Local Authority once more for clarification. They had responded that the date of application was according to their records 13/10/2020 stated that they had already provided her with this information.

34 Neither party was able to explain the discrepancy in these dates.

35 The Tribunal found, on the balance of probabilities, that the HMO licence had been applied for by the Respondents on 24/09/2020, relying on the

documentary evidence at [82] which stated, explicitly, that the HMO application had been sent to the Local Authority for their consideration by, or at 16.46hrs on 24/09/2020 – a Thursday. The Tribunal noted that the application form contained a reference 1600961706787 ([68] in the top right-hand corner), and that this reference was the one referred to in the submission receipt at [82]. While it was not clear to the Tribunal why the Local Authority had told the Applicants that the relevant application date was 13/10/2020, the Tribunal was satisfied, on the balance of probabilities, that in fact the application was made on 24/09/2020. The Tribunal considered whether the delay might be attributable to the late payment of the fee but given the specific evidence before the Tribunal in relation to this, did not consider this was likely to be the case.

36 The Tribunal also wish to record that no criticism of the Applicants can be legitimately made in this regard; they had relied on information from the Local Authority, and had sought to clarify the same.

37 The Tribunal also wished to point out that the timing of the application being made on the 24/09/2020 was interesting. This was the day after the Applicants had first contacted the Local Authority and they and the Local Authority discovered that there was no HMO licence. The Tribunal asked Mr Lewis, in terms, what had prompted the Respondent to make the HMO licence application on the 24/09/2020, asking specifically whether it had in fact been due to a prompt from the Local Authority.

38 Mr Lewis explained that immediately on the March 2020 lockdown the group had furloughed approximately 50% of their employees, with others taking a pay cut, and others being off with illness. Mr Cheng, (who made the HMO licence application in relation to the property) was still working over this period but his workload had significantly increased as he was having to cover others' rolls. His hours were, Mr Lewis thought, in the region of 60-70 hours per week. Mr Cheng was one of a number of people who under normal business conditions would make an HMO application and it was confirmed he had made a number of such applications in the past. Mr Lewis confirmed that "by July 2020" the group had brought employees back from furlough on a staged basis, though they weren't back at full capacity by that point. He referred to a 'serious backlog' of work having built up over March to July 2020 period, and that the group's employees were working through this. He explained each property was looked at one after the other – the Tribunal reminded itself that the group had 30 or so properties. And it was during that (working through the backlog) that it was noted by staff that there was no HMO licence in relation to the property; "...identified that when came to this one, ...late making the application and one should be made as soon as possible." Mr Lewis was unable to say when precisely it was noted that the licence was missing, but he was "...fairly sure that it was close to [the] date [of the application being submitted], there was no benefit in delaying [making the application] from our end."

39 . Later in his evidence on this point about what prompted the Respondent to apply for the licence Mr Lewis remarked "I didn't get the phone call. I don't know if anyone else did. It's not the feedback I got locally." This later evidence of Mr Lewis appeared to leave open the possibility that someone else within

the group was in fact specifically prompted by the Local Authority to make the application and it was not therefore as a result of the Respondent's or the group's own checks that the lack of a licence had been identified. There was insufficient evidence before the Tribunal for it to properly make a finding in relation to this, even on the balance of probabilities. Mr Lewis also explained that the Respondent had applied for HMO licences for the other properties at the development at the same time as this one.

40 The Tribunal:

a. Was satisfied beyond reasonable doubt that the Respondent landlord had committed a relevant offence;

b. Found that the date of the offence was from 01/08/2020 to 23/09/2020 (the application having been applied for on 24/09/2020);

c. Found that the offence was committed in the period of 12 months ending with the day on which the application was made (05/11/2020);

d. The rent payable for property was £2,000pcm (£500pcm per Applicant tenant) equating to £65.75 per day

e. The maximum amount of an RRO is therefore £3,484.75 (a period of 53 days (01/08/2020 to 23/09/2020) at £65.75 per day).

39 As set out above, if an RRO is to be made, section 44 of the 2016 Act set outs the circumstances which a Tribunal must in particular take into account. The Tribunal considered each in turn:

Conduct of the tenant

41 The Tribunal did not consider that it was appropriate to make any deduction to the RRO figure the Respondent was required to pay in light of the Applicants' conduct. The Tribunal found that the Applicants witness statements and applications were well drafted and were measured in tone and approach. The Applicants had apologised for naming the wrong Respondent initially, but as noted above the Tribunal considered this to be an understandable error in the circumstances.

42 The Respondent asked the Tribunal to make a reduction to the RRO amount pointing to;

a. The Applicants' incorrect naming of the Respondent when making the application.

    i. A costs schedule was served by the Respondent showing the costs which they alleged had been incurred as a result of this error being some £781.20; and

b. That there had been no pre-action communication from the Applicants in relation to this issue and Mr Lewis believed had this occurred an arrangement could have been reached and these proceedings avoided.

43 Looking at each in turn:

44 The Tribunal reiterates its comments above concerning, in its view, the understandable mistake made in incorrectly naming the Respondent landlord in the initial application.

45 The Tribunal also noted it seemingly took the Respondent's own solicitors some time to get to the bottom of the correct identity of the landlord given the amount of time noted in the schedule of costs (0.3 and 0.2 of an hour's attendances on their own client = 0.5hour) to have been taken by both Grade A and B solicitors.

46 Ms Evans on behalf of the Respondent was clear that the costs schedule was provided in an attempt to show the amount of 'wasted costs' incurred by the Respondent in rectifying the error in naming the correct landlord. Ms Evans was clear she was not making a wasted costs or other costs application, but rather asked for this to be taken into account by the Tribunal when assessing the factors listed at section 44(4) of the 2016 Act.

47 The incorrect naming of the Respondent would doubtless have been avoided if the correct landlord's name had clearly and correctly been specified in the tenancy agreement. It was not.

48 The Tribunal also noted that the Applicants apologised for their error in this regard and as a direct result withdrew their application for a reimburse of fees (both the application fee of £100 and the hearing fee of £200).

49 Ms Evans conceded that the Statement of Costs was in any event incorrect as it had incorrectly added VAT.

50 In terms of the lack of communication from the Applicants to the Respondents before the making the application, the Tribunal accepted that this would have been desirable, but were unconvinced that it would have resulted in the avoidance of the proceedings entirely. While the Tribunal noted Mr Lewis's assertion that an agreement could likely have been reached pre- action, and that the last place he wanted to end up was before a tribunal/court, the Tribunal noted that the proceedings had not in fact, been settled by the parties or any agreement reached prior to the Tribunal hearing date.

51 The Tribunal also accepted Ms Williams evidence that the Applicants had found it difficult to get a reliable and timely response from the Respondent in relation to any queries they had over the period leading up to November 2020. They had been given a contact number to be used in relation to any tenancy queries; the number of an Eve Martin. The Tribunal accepted the Applicants' evidence that they had sought to raise with Ms Martin a number of issues over the course of the first few months of their tenancy and had not always received a timely or particularly helpful reply (though it was noted that there was evidence of a reply to one email in September 2020 concerning the 'bin situation' – page [11] of the third witness statement of Mr Lewis). Indeed, in one communication with the servants or agents of the Respondent the Tribunal accept on the balance of probabilities that the Applicants were told not to expect any reply to their messages, the number they had been given was, they were told, to be viewed as a logging system only. It was easy to understand in those circumstances why no pre-action communication on the subject of an RRO was undertaken by the Applicants.

52 The Tribunal did not consider it was appropriate to reduce the RRO as a result of the Applicant tenants' conduct.

Financial Circumstances of the Landlord

53 The Tribunal accepted that the Covid-19 pandemic had had a significant impact on the group of companies which included the Respondent. The Tribunal noted the comments of Mr Lewis in his second witness statement of the impact on the group's finances and projects in general.

54 The Tribunal asked Mr Lewis about the impact on the Respondent company specifically, and he explained that there had been an impact as a result of the Group's finances as a whole. He referred to the Respondent having had to agree a payment plan with its mortgage lenders because of cash flow problems across the group. He explained though that the main impact on the Respondent had been the servicing companies within the group who provided (under subcontract) employees to carry out the relevant management and other work associated with the development/property. Mr Lewis also explained that the Respondent had not managed to achieve the rents that they had wanted but that they had just wanted to let the property in order to achieve an income stream, and that this had resulted in "... less income into the SPV, means less income across the group and service/group employees... people on furlough [affecting] the servicing requirements for this building."

55 Mr Lewis however confirmed that there was full occupancy of the development owned by the Respondent and in which the property was situated. He agreed that this had been the case since approximately 01/08/2020. He also confirmed that no tenants at the development had sought a rent reduction, and rent was being paid to the Respondent by the occupants though they were being lenient in terms of quarterly rent payment dates.

56 Mr Lewis told the Tribunal that from September 2020 *the group* had had to reach payment plans with some tenants. This in turn had impacted on the group's own cash flow and their ability to meet their own obligations.

57 This included, Mr Lewis stated, an impact on the Respondent being able to meet its own mortgage obligations in relation to the property/development. Mr Lewis agreed that the HMO application form which suggested that there was no mortgage over the property [73] was incorrect, as there was, he said a significant mortgage on the development. Mr Lewis explained that the Respondent had been forced to agree a revised payment plan with its own mortgage lender because of cash flow difficulties.

58 The Tribunal noted that Mr Lewis in his evidence sought to characterise the Applicants' application for an RRO as a rent reduction; "other than this case we haven't had anyone ask for a reduction in rent". The Tribunal reject the characterisation of the current application as an application for a rent reduction. The application arises because the Respondent failed to comply with its statutory obligations. They Applicants are in such circumstances entitled to apply for an RRO.

59 Mr Lewis also stated that the main impact on *the group* had been delays in relation to construction projects, which meant that some of the group's developments had not been finished and which meant they had not been able to "…move students in on time, and this resulting pain across the group.". The Tribunal noted that the Respondent did not itself have any ongoing construction projects- it was an SPV, and owned only one asset – the development, which consisted of 8 units.

60 While the Tribunal accepted that the Respondent had had to agree a revised payment plan with its mortgage provider because of the financial stresses across the group of companies as explained by Mr Lewis, it seemed to the Tribunal that in fact the RRO in this case was unlikely, given the financial position and assets of the Respondent, to cause particular hardship; see comments of Upper Tribunal Judge Cooke in Chan v Bikhu [2020] UKUT 289 at paragraph 24. The Respondent itself has one asset (the development of 8 units) which was fully occupied over the period to which this RRO relates.

61 The Tribunal was not satisfied that the making of the RRO would result in particular financial hardship for the Respondent. Therefore, it decided no reduction in the RRO should be made in relation to this heading.

Conduct of the landlord

62 The Applicants stated in their evidence that they considered the Respondent to be a 'good landlord'. It was clear to the Tribunal from the selection of photographs provided of the property and the development that the rooms were finished to what appeared to be a high standard.

63 The Applicants raised a number of matters under this heading. The Tribunal considered each in turn.

64 One issue which had been raised by the Local Authority in the proposed HMO licence was that one of the 4 bedrooms in the property was said to be too small for occupation. Bedrooms are subject to a minimum space requirement of 6.51m squared [101]. Yet one of the bedrooms in the property fell short of this, measuring, according to the Local Authority measurements, only 6.40m squared [104]. The proposed licence gives the Respondent 18 months to rectify this, but it appeared that over this period the room could continue to be let.

65 Mr Lewis indicated to the Tribunal that the difference in sizes was equivalent to a wall having been placed incorrectly by 30-50mm. He explained that this may well be attributable to the construction tolerances applied. He indicated that the Respondent was willing to move the wall if in fact this was required, or that an alternative solution might be to make changes to the room door, but before doing either of these things he wished, understandably, to carry out his own measurements. In either event given the disruption involved to the tenant any work would be completed after the end of their tenancy.

66 The Tribunal did not consider this matter of particular note in terms of the conduct of the Respondent. And it was clear that the Respondents were planning on taking what appeared to be appropriate steps in due course (they had been given 18 months by the Local Authority to address this issue).

67 The proposed HMO licence also highlighted a further condition in relation to fire doors, which required rectification within 6 months [104]. Mr Lewis stated that the property had had full building control approval before it was occupied on 01/08/2020, but that sometimes there were what he termed "additional comments" resulting from an HMO inspection. He clearly placed this item concerning fire doors in that category. The Tribunal were of the view that the fire precautions required by the licence were more serious than suggested by labelling them 'additional comments' nonetheless noted that the Respondent had been given 6 months to carry out such related works.

68 The Applicants additionally highlighted a number of other matters which had arisen over the course of their tenancy and which it was suggested should be taken into account by the Tribunal:

a. That on 21/09/2020 a maintenance person was found in the kitchen of the property fitting a fire blanket [30-10] [34]. None of the tenants had agreed to or been asked about providing access to the property on this occasion. It appeared that this person had merely let themselves into the property in breach of the terms of the tenancy agreement (which as usual required notice to be given).

   i. Mr Lewis indicated that he had not been able to find out any information about this incident. He told the Tribunal that having looked he could find no record of a fire blanket being missing or needing to be installed or a contractor requiring access on this day. Without more information he was he said unable to comment further but that the group were very careful "...over our interface with tenants". He told the Tribunal that there was "nothing to suggest [this incident] did happen.".

   ii. There was of course the Applicants' own evidence that it did happen and the Tribunal accepted that evidence on the balance of probabilities.

69 Bins.

a. The Applicants provided evidence showing that there had been significant problems with the Local Authority refuse collection from the development. The Local Authority told the Applicants that there weren't aware of the location of the bin store or of the passcode required for entry.

b. The Respondent in turn provided evidence that they had in fact provided these details to the Local Authority in an email of 25/08/2020 (see [8] of Mr Lewis's third witness statement). The Tribunal noted however that this was 25 days **after** the commencement of the Applicants' tenancy. Despite this information having been provided in September the Local Authority were still, at the date of the hearing, not properly collecting refuse from the property. The Respondent however was taking active steps to address this. Importantly from the occupant's perspective the Respondent had been paying for private refuse collection from the development; copies of related invoices were provided attached to Mr Lewis's third witness

statement. The Tribunal considered that the Respondent could not in the circumstances be criticised for the problem with bin/refuse collection AFTER 25/09/2020.

70 Wardrobe

a. The Applicants complained that a wardrobe hanging rail was missing and had been since the commencement of the tenancy. This was they said still an active item on their Bunk log (their log with the managing/letting agents).

b. The Respondents produced an email ([21] of Mr Lewis's third witness statement) showing that they had understood this was to be actioned on or around 30/09/2020, and so far as they were aware the missing rail had then been sent out. They were unaware it had not been received.

c. The Tribunal noted that the email suggested that the missing rail would be sent, not that it had already been sent. The Tribunal accepted that this had not been received by the Applicants but considered this to be a minor inconvenience and nothing more.

71 Communication

a. The Applicants, as noted above had been given one contact phone number to report any issues or problems concerning their tenancy. They referred to reports of issues going unanswered, and on one occasion a servant or agent of the Respondents speaking to them rudely over the phone (the individual did not give his name), telling them they should not expect individual replies to their emails, but should rather consider their emails as merely logging items.

b. Mr Lewis stated he was surprised that any of his staff would have spoken to the Applicants rudely, that was not something he tolerated from employees of the group and that the group prided itself on customer service. It was he said important not to get negative feedback from occupants. He had been unable to follow up the allegation of rudeness as there was no name given for the individual in question. He also explained to the Tribunal that his staff didn't ignore tenants' contacts but that there might have been a volume of emails which caused a delay in actioning matters. In answer to Ms Evans' questions he explained that he had undertaken investigations into the Applicants' complaints. He referred to continual monitoring and feedback of customer service as necessary. No missed emails had been noted and Mr Lewis expressed pleasure at the service provided to the Group's tenants over the last 12 months given the difficult circumstances.

c. The Tribunal considered that the Applicants were disappointed with the response to queries they had raised with the Respondent's servants/agents. The Tribunal accepted the Applicant's evidence that on one occasion they had been spoken to rudely by servants or agents

of the Respondent – the Tribunal considered the Applicants evidence to be credible and measured in other respects and it seemed unlikely that this allegation had been manufactured. Being spoken to rudely can however be a matter of perception and as no specific details of the rudeness were given the Tribunal did not consider this matter any further. In relation to the lack of response, or rather lack of direct response to contact from the Applicants the Tribunal noted there was evidence of a direct response from the Respondents to the Applicants in one email about the bins – but no other direct responses had been produced by the Respondent. There was evidence that the issue with the wardrobe rail was addressed by the Respondents – seemingly unsuccessfully, but it wasn't clear that this had been communicated directly to the Applicants. The Tribunal also found, given the evidence before them that the Applicants queries concerning the car park had not been replied to for some time and only then in the form of a generic email. Despite such criticism it was clear to the Tribunal that the Respondents were generally a receptive landlord and acted on issues drawn to their attention.

72 Car park.

a. The Applicants alleged that the property had been advertised as having the use of private car park for an additional fee. This had not, they explained been finished or available to them. When they enquired further about its use they received, later, a general circulation email which stated the car park would not be completed until the Summer of 2021 – after their tenancy had ended.

b. Mr Lewis explained that the use of the car park was intended and advertised as being subject to separate provision with supplementary charges. He indicated as "…no-one chose to take up the offer of a car parking space, therefore the Respondent decided to carry out decoration works."

c. Ms Williams for the Applicants indicated that she was unaware that she had had to express a prior interest in a car parking space before moving in. Elsewhere in her evidence she referred to the availability of onsite car parking as a particular draw of the property.

d. The Tribunal had not been shown any advertising material in relation to the car park and whether it would be available (and how it would be available) to tenants. The Tribunal found that the provision of car parking facilities was not a term of the tenancy agreement and did not consider its availability or otherwise to be a matter which was relevant to the amount of the RRO or conduct of the landlord. There had clearly been a miscommunication at some stage between the Respondent and the Applicants in relation to use of the car park. This was perhaps not surprising given the impact of the pandemic on the Respondent's access to staff, the date the tenancy agreement was signed (May 2020) and that this was not an express term of the tenancy agreement.

73 The Respondents sought a deduction from any RRO made, in relation to the costs set out in Mr Lewis's second witness statement at [27]. I will not repeat the same here, other than to note that in addition to 'utilities' expenses in the form of electricity costs, the Respondent also sought to have deducted broadband costs, mortgage costs, cleaning costs and sundries.

74 As was clarified in the Upper Tribunal decision of Vadamalyan (ante) it is not appropriate for a landlord's costs incurred in connection with dealing and maintaining a property to be deducted from an RRO figure.

75 On the current facts, the Applicants' rent is expressly stated to include a sum for [54] "17.1 The Utility bills of water, electricity and gas (if applicable) are included in the rent. 17.2 If your property comes with free broadband internet access supplied please note that this service does not form any part of the rent and that it is supplied free of charge."

76 Mr Lewis gave evidence and the Tribunal accepted that there was no gas at the property/development and that they had not yet received any water bills in connection with the development either – though they had recently started to chase this.

77 It was not possible, on the evidence before the Tribunal, to quantify what the relevant water charges may be as and when they were levied in connection with the property. Therefore, it was not possible, in the absence of any evidence as to figures to allow a deduction in relation to the same for water costs.

78 The electricity charges specified were not supported by any documentary evidence but the amount in question was not specifically challenged by the Applicants. Mr Lewis explained that the £199.63 cost of electricity specified was a pro-rata figure taken from the electricity costs of the development as a whole for the period 01/08/2020 to 24/09/2020. Mr Lewis explained that the total electricity costs for the development had been calculated for this period and on the basis of the Respondent's experience then divided by 8 to arrive at the Applicant's property's 'share'. The Tribunal asked Mr Lewis about the suitability of such an approach given that, although there were 8 properties in the development these included 4-bedroom houses as well as some 1-bedroom flats. He responded that given his experience in the field he considered this to be an appropriate approach. The Tribunal very much doubted that a four-bedroom 3 floor house was likely to use the same amount of electricity as a one bedroom flat. The Tribunal also noted that the total electricity costs for the development would likely include lighting of shared/common areas including the communal living area and external areas, which was something the Respondents would otherwise have been expected to provide under the provisions of the terms of the tenancy. However, in the context of the current RRO application the Tribunal accepted that, a 1/8 share of the development's total electricity costs over the relevant period, given as £199.63, should be deducted. These were utility costs which were clearly paid by the Respondent to a third party in respect of utilities used by the Applicants.

79 However, the Tribunal considered that the broadband charges fell into a different category and should not be deducted from the maximum RRO

amount. This was because the tenancy agreement specified in terms that such charges were not part of rent, and indeed were provided free of charge.

80 The cleaning costs, and sundry charges (which Mr Lewis was vague about but thought might relate to items such as paint etc) are not to be deducted. This was because such charges relate to the cost of the Respondent's complying with their own usual obligations under the terms of the tenancy agreement, and as noted in Vadamalyan (ante) should not be deducted; see clauses 43 and 47 concerning repairing obligations and [63] comments in relation to cleaning.

81 Nor, for the reasons detailed above and set out in Vadamalyan (ante), should the Respondent's mortgage costs be deducted from the maximum RRO amount. The Tribunal noted in passing that while the Respondent claimed such mortgage costs secured on the property/development as a relevant expense [27], in the application for an HMO it was stated that in fact there was no mortgage on the property [73]. Mr Lewis accepted in his oral evidence that the statement in the HMO licence application was incorrect, and that there was a mortgage secured on the development.

82 It was clear that the Respondent was a professional landlord. The Tribunal considered that on the basis of the evidence before them that the Respondent provided accommodation of a good quality, finished to a high standard, and was desirous of providing a high level of accommodation and service. The Applicants themselves described the Respondent as a good landlord.

83 There had been an error which had resulted in a failure to apply for the HMO licence in a timely manner. The Respondent was though an experienced landlord and had specific experience of dealing with HMOs. They had been able to let the property despite the pandemic, with the Applicants tenant's agreements being signed in May at a time when the development was not yet finished. The Tribunal would have expected a system to be in place administratively to ensure that even given the pandemic and all that was going on at that time, the need for an HMO licence was highlighted and prioritised BEFORE tenants had moved into the property. Even with the pandemic going on the application for the HMO licence should not have been missed. The Respondent had still been able to let the property, and secure signatures on tenancy agreements and required the Applicants to provide appropriate guarantors etc. While the Tribunal accepted that the Respondent's subcontracted staff had been put on furlough in March 2020, they were being brought back by July 2020, the Applicants had not moved into the property until 01/08/20 and yet it was only towards the end of September that the HMO licence was applied for.

84 On balance and taking all of the above into account, the Tribunal considered that it was appropriate to exercise its discretion (see Ficcara v James [2021] UKUT 38) to make a 10% reduction in the maximum level of RRO awarded. This was to reflect the fact that while the Respondent's conduct was not by any means at the 'worst' end of the scale when considering a landlord's conduct and in fact the Applicant regarded the Respondent as a good landlord, there was nonetheless a need to mark the fact that the failure to apply for an HMO licence in a timely manner was a serious matter and the Tribunal would have

expected processes to be in place to ensure this occurred, especially in given the size and experience of the operation in question.

85 The Tribunal also accepted that the electricity costs which were included in the rent should also be deducted from the RRO. On the balance of probabilities, the Tribunal accepted these costs as amounting to £199.63 over the period 01/08/2020 to 23/09/2020.

Relevant Convictions.

86 The Tribunal found on the basis of the evidence before it that the Respondent had not been convicted of any relevant offences previously nor over or since the period in question. The Tribunal also noted that the Local Authority had not imposed any separate financial penalty on the Respondent.

Conclusions

87 The Tribunal therefore makes a rent repayment order for the period 01/08/2020 to 23/09/2020 in the total sum of £2,936.64.

88 This is calculated as follows:

a. Rent of the property £2,000pcm, equating to £65.75 per day

b. Maximum RRO permitted is for 53 days (01/08/2020 to 23/09/2020), so 53 x £65.75 = £3,484.75

c. A deduction of 10% is made in relation to the conduct of the Respondent Landlord (see reasoning above); i.e. less £348.48 = £3,136.27

d. Less electricity costs £199.63

e. Total Rent Repayment Order to be paid by the Respondent = £2,936.64

(which equates to £734.16 for each of the Applicant tenants)

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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. 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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).