FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HA/HMF/2022/0005 CHI/00HA/HMF/2022/0006
Property	:	Flat 3, 16 Alfred Street, Bath, BA1 2QU
Applicant	:	Roberta Dossi (1) Kurtis Pearce (2)
Representative	:	--
Respondent	:	Abbey Inns Assembly Ltd
Representative	:	
Type of Application	:	Application for a rent repayment order by Tenant Sections 40, 41, 42, 43 & 45 of the Housing and Planning Act 2016
Tribunal Members	:	Judge J Dobson Mr E Shaylor MCIEH
Date of Hearing	:	1st September 2022
Date of Decision	:	21st September 2022

DECISION

Summary of the decision

1. **The Tribunal is satisfied beyond reasonable doubt that the Respondent landlord committed an offence under section 72 of the Housing Act 2004 from 1st May 2021 until 22 July 2021.**

2. **The Tribunal has determined that it is appropriate to make a rent repayment order in favour of the Applicants.**

3. **The Tribunal makes a rent repayment order in favour of the 1st Applicant, Ms Dossi, against the Respondent in the sum of £840. The payment is to be made within 14 days of service of this order.**

4. **The Tribunal makes a rent repayment order in favour of the 2nd Applicant, Mr Pearce, against the Respondent in the sum of £1050. The payment is to be made within 14 days of service of this order.**

5. **The Tribunal determines that the Respondent pay the Applicants £300 as reimbursement of Tribunal fees to be paid within 14 days.**

Application and background

6. By an application dated 1st April 2022, the Applicants applied for a rent repayment order in respect of rent paid during the period of 1st May to 22nd July 2021 inclusive. The amount claimed was £400.00 per month for Mrs Dossi and £500.00 per month for Mr Pearce, in both cases for the months of May, June and July. Various supporting documents were provided, including bank statements in respect of payments of rent and a series of text messages.

7. The application was brought on the ground that the Respondent as established (see below) had committed an offence of failure to hold a licence for a house in multiple occupation ("an HMO Licence") and which required an HMO Licence in relation to Flat 3, 16 Alfred Street. The property is a single storey self- contained 4- bedroom flat ("the Property") situated on an upper floor of a building the ground floor of which is occupied by a public house, The Assembly.

8. The Respondent is, as established (see below), the owner of a sub-lease of the building, although it acts through its officers. The original Respondent (again see below) was Mr Alan Morgan, director of the Respondent. The superior leaseholder is Greene King Limited. The freehold is owned by Bath and North East Somerset Council ("the Council").

9. The Applicants' case is that oral tenancy agreements were entered into in relation to the property in January 2016 in respect of Mr Pearce and July

2020 in respect of Ms Dossi. There was a third tenant, Mr Lester Sargent (assuming that the Tribunal has understood separate apparent references to his first name and surname in different documents in the bundle correctly), although he played no part in the proceedings. The application asserted that another male, who may have been named Frank Frankin (again assuming a that the Tribunal has correctly understood a reference in an email) stayed at the Property for a period when not living abroad, although he also played no part in the application and no information was provided as to the nature of his occupation. Nothing turned on that.

The law and jurisdiction in relation to Rent Repayment Orders

10. Rent repayment orders are one of a number of measures introduced with the aim of discouraging rogue landlords and agents and to assist with achieving and maintaining acceptable standards in the rented property market. The relevant provisions relating to rent repayment orders are set out in sections 40 -46 Housing and Planning Act 2016 ("the 2016 Act"), not all of which relate the circumstances of this case.

11. Section 40 gives the Tribunal power to make a rent repayment order where a landlord has committed a relevant offence. Section 40 (2) explains that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant (or where relevant to pay a sum to a local authority).

12. Section 41 permits a tenant to apply to the First-tier Tribunal for a rent repayment order against a person who has committed a relevant offence, including the offence mentioned at paragraph 7 above, if the offence relates to housing rented by the tenant and the offence was committed within the period of 12 months ending with the day on which the application is made.

13. Under section 43, the Tribunal may only make a rent repayment order if satisfied, beyond reasonable doubt in relation to matters of fact, that the landlord has committed a specified offence (whether or not the landlord has been convicted). Where reference is made below to the Tribunal being satisfied of a given matter in relation to the commission of the offence, the Tribunal is satisfied beyond reasonable doubt, whether stated specifically or not.

14. It has been confirmed by established case authorities that a lack of reasonable doubt, which may be expressed as the Tribunal being sure, does not mean proof beyond any doubt whatsoever. Neither does it preclude the Tribunal drawing appropriate inferences from evidence received and accepted. The standard of proof relates to matters of fact. The Tribunal will separately determine the relevant law in the usual manner. The standard of proof for matters found by the Tribunal other than in respect of the question of whether the offence was committed by the landlord is the balance of probabilities.

15. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, section 44 applies in relation to the amount

of a rent repayment order, setting out the maximum amount that may be ordered and matters to be considered –discussed further below.

16. The relevant offences are firstly those identified in various sections of the Housing Act 2004 ("the 2004 Act"). As touched upon above, one of those offence is being in control of or managing a licensable HMO without a HMO Licence being in place, pursuant to section 72(1) of the 2004 Act.

17. The other relevant offences under the 2004 Act relate to other aspects of housing management offences. Relevant offences can also be committed under section 21 of the 2016 Act and under older legislation in relation to unlawful eviction and violence to secure entry.

The history of the case

18. Directions were given on 11th July 2022 by a Legal Officer, although amended on 20th July 2022, providing for the parties to provide details of their cases and the preparation of a hearing bundle. The final hearing was listed as video proceedings.

19. Mr Morgan, as the original respondent, did not reply to the application as directed. The Applicants consequently did not file any reply.

20. An email was sent by Mr Alan Morgan on 28th August 2022 which stated that he was confused by how the proceedings worked and a reply was sent by the case officer explaining the procedure, including a suggestion that if a response to the application was sought to be served, it should be sent to the Tribunal so that the Applicants could, if they wished, object to it and the Tribunal could consider how to proceed.

21. Nothing else was submitted in reply to that.

The Hearing

22. The Applicants both attended the hearing and represented themselves.

23. Mr Alan Morgan was in attendance, as the original respondent but subsequently as the officer of and representative of the Respondent.

24. Mr Simon Morgan, the son of Mr Alan Morgan, was also in attendance. The Tribunal heard from him as well as from Mr Alan Morgan to an extent and principally in relation to the HMO Licence, as detailed below.

25. Following introductions and house-keeping matters, the first slice of the hearing until the first break concentrated on establishing who was the landlord and so correct respondent in respect of the Property. On the face of the application, the two possible outcomes were a rent repayment order against Mr Alan Morgan on the basis of commission of an offence by him or no rent repayment order at all. As to which of those would have been the outcome cannot be known.

26. The Tribunal noted that the application had been made against Mr Alan Morgan but that a draft tenancy agreement produced by the Applicants and with the named proposed tenant being Ms Dossi, the First Applicant, gave the name of the proposed landlord as Abbey Ales Assembly Limited. This was agreed by the parties in the hearing to be an error, and that the proposed landlord should have read Abbey Inns Assembly Limited.

27. In addition to the written cases of the Applicant, the Tribunal was in receipt of a witness statement of Ms Ali Kenney, an environmental health officer with the Council. That indicated an understanding that the proceedings had been brought against the Respondent and named the Respondent as the HMO Licence holder. The witness statement also stated that an application for HMO Licence was made on 23rd July 2021, also by the Respondent. The Tribunal was mindful that the Council was likely to have satisfied itself that the Respondent managed or was in control of the Property, and quite possibly had appropriate title to the Property, prior to granting the Licence to it.

28. The Tribunal's preliminary impression and subject to any relevant submissions was that the Applicants have mistakenly sought a rent repayment against the person they considered determined what occurred rather than against the correct legal entity itself. Mr Morgan had written to the Applicants, see further below, on Abbey Ales letterhead, referring to both Abbey brewery and to the Property.

29. The Tribunal raised the point with the parties. The Applicants had some difficulty in understanding the distinction and the different legal identity of the Respondent as against the individuals with whom the Applicants had dealt. However, it was clarified by hearing from both Mr Alan Morgan and the Applicants that the bank account into which rent had been paid was a bank account in the name of the Respondent. The Tribunal heard evidence of Mr Alan Morgan as to the Respondent's bank accounts. There was no contrary evidence in respect of the bank accounts and the Tribunal had no reason to doubt his evidence. The Tribunal did note that a landlord could ask that rent be paid into the account of a third party and so the account holder was not necessarily determinative.

30. In any event, the Tribunal asked whether the Applicants wished to amend their application from the respondent being Mr Alan Morgan to the Respondent. The Applicants stated that they did. Mr Alan Morgan as director of the Respondent did not oppose that application.

31. The application to amend was granted by the Tribunal, such that the header of the application has been amended to show the Respondent in place of the formerly stated respondent.

32. The Tribunal was mindful that the application had not been formally served on the correct Respondent, albeit that the Respondent's director was aware and the Respondent would act through its officers.

33. It was far too late for there to be a written response to the application by the correct Respondent without an adjournment of the hearing. No request was made on behalf of the Respondent for such.

34. Mr Alan Morgan as director of the Respondent was content for the hearing to proceed. The Tribunal proceeded, being mindful that it could hear on behalf of the Respondent orally and the Applicants could respond and where there was no identifiably basis for concluding that the parties would be unable to deal with any matters likely to arise.

35. There was next to nothing in dispute in terms of factual matters. The periods of HMO Licence and lack of it, the occupancy and the communications towards the end of the tenancy were all agreed. Insofar as the parties differed as to effect or impact, that is dealt with where appropriate below.

36. Ms Kenney was not called by the Applicants to give oral evidence. The Respondent did not in any event challenge anything stated by Ms Kenney in her witness statement. The Tribunal accepted her written evidence.

Was a relevant offence committed and during what period?

37. The offence alleged in the application is being in control of or managing a licensable HMO without a HMO Licence being in place.

38. The circumstances of the commission of the alleged offence were unusual but not in dispute. Mr Alan Morgan indeed accepted at the outset of the hearing that an offence had been committed, although that did not avoid the need for the Tribunal to deal with the above matters in order to determine by whom such offence was committed. Neither does it avoid the need to find the specific nature and extent of any offence, not least given the relevance of that to the amount of any rent repayment order made.

39. It was also accepted that the Respondent was the party which would have committed any offence. It was not in issue that the Respondent held an HMO licence for the Property until late April 2021. It was said on behalf of the Respondent that a Licence had been held since September 2020. It was not disputed that the Applicant's tenancies had commenced in January 2016 but that the Property did not require an HMO Licence until January 2019.

40. The Property required a Licence if occupied by at least three occupiers as their main residence and living in two or more households. The Council required a property to be so licensed, extending the licensing regime from the minimum statutory requirement of an HMO Licence for a property with five occupying as their main residence and living in two or more households and adopting a discretionary Additional HMO licensing policy as it is permitted to do.

41. On 15th April 2021, the Second Applicant contacted Mr Simon Morgan with regard to him potentially being asked to provide a reference in respect

of the Applicants obtaining a tenancy elsewhere. The Second Applicant said that Simon Morgan was the usual contact. No notice terminating the tenancy and no leaving date were given. The text message produce says the following:

"Hey Simon, just letting you know I may be moving out pretty soon. Have put your name and number to the people who do referencing and checks. So if you get a call about that then that's why."

42. The text message was replied to by Mr Simon Morgan requesting a rough date for leaving, because of a meeting with Greene King. The Second Applicant expressed the hope, in the last text message produced for that date, that:

"Hopefully move out on the 27th".

43. Whilst the messages do not say so in terms, the Tribunal infers that the parties understood either on that date or subsequently that both of the Applicants and the third tenant would leave.

44. On 26th April 2021, Mr Simon Morgan, enquired by further text message whether the Second Applicant had heard anything, to which the Second Applicant replied that there was nothing final but it did not look like they would get the property hoped for as "Lester isn't gunna pass referencing".

45. However, also on 26th April 2021, Mr Simon Morgan acting on behalf of the Respondent company, applied to the Council for the HMO Licence to be revoked. It was revoked on 30th April 2021, Ms Kenney's witness statement stated. Mr Alan Morgan said that the Licence would have lasted until 2023 if not revoked, later clarified as on or about 23rd September 2023, which was not disputed and so the Tribunal adopts as correct.

46. Mr Simon Morgan responded to the Second Applicant's text stating that he had so applied and said:

"So as it stand I can only have 2 people up there….."

47. However, the Property remained a licensable HMO. The Applicants had not moved out and there remained three tenants in occupation. That is not in dispute.

48. Mr Simon Morgan said that it had been decided they did not want tenants in the Property again. He asserted that there had been issues with neighbours about noise. He considered that he had suffered "a red mist, with hindsight".

49. Ms Kenney attended at the Property on 27th May 2021, which she says confirmed there to be three tenants, with a fourth being reported as overseas at the time.

50. On 23rd July 2022, a further application on the part of the Respondent for a HMO Licence for the Property was made. A landlord ceases to commit an offence at the time at which a valid application for a Licence is made and not the later date on which such application is granted.

51. The period of offence on which the application was based was therefore 1st May 2021 to 22nd July 2021, which the Respondent accepted as the correct dates.

52. Ms Kenney confidently states in her witness statement that an HMO Licence was required. In light of that and as no suggestion has been made that any of the three tenants known about, including the Applicants, did not occupy as their main residence or lived in the same household, the Tribunal finds that the three tenants did occupy as their main residence and in at least two households.

53. The Tribunal also identified that the Applicants' case set out matters which could potentially amount to an offence of harassment or unlawful eviction having been committed under section 1 of the Protection from Eviction Act 1977.

54. The Tribunal identified that the notice seeking possession served on the Applicants was not valid and that there were various other matters within the documents relied on by the Applicants and included in the bundle which might potentially support an argument that an offence had been committed. The matters are dealt with more fully in respect of conduct below.

55. The Tribunal asked the Applicants whether they wished to pursue the application on that additional ground. The Applicants stated that they did, observing that whilst they had only stated the lack of HMO Licence as a ground, they had mentioned the short notice given to vacate the property.

56. The Tribunal considered that request but decided that it would not permit the Applicants to add the additional ground. The Tribunal noted that whilst there were references to relevant factual matters in the application, there was only one ground for the application stated and that was stated in clear terms. There was no suggestion that the factual matters were intended to provide any further basis for the application itself and the Tribunal noted that they were set out in the context of explaining how the Property came to be without a Licence. The Tribunal considered that a respondent would reasonably not identify that it might have to respond to such an additional ground.

57. The Tribunal was further mindful the Applicants had been allowed to alter the application into the name of the Respondent and considered that to allow the Applicants to go further than that would be likely to require the hearing to be adjourned for the Applicants to set out their case in respect of the additional ground and to permit the Respondent to provide a written response before a further hearing date. The Tribunal considered that would involve considerable delay and resources, which would not accord

with the over- riding objective of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

58. The Tribunal accordingly does not deal with the matters which might potentially have founded such further ground at this point because of the determination by the Tribunal that it would not allow the Applicants to pursue such an additional ground.

59. Notwithstanding that Mr Alan Morgan had apparently accepted the commission of the offence, when the Tribunal mentioned the question of whether there was an assertion of a potential reasonable excuse for the lack of a Licence, Mr Alan Morgan did wish to make submissions as to that, which the Tribunal permitted him to do.

60. Mr Alan Morgan submitted that the Respondent is not a [residential] landlord but rather runs pubs. He said that he was under the impression that four more occupiers were required for a property to need licensing but accepted that in Bath it was in fact three. He said that when that was realised, they tried to get up and running.

61. Mr Alan Morgan added that as the Applicants were leaving, the Respondent revoked the licence. He also said that when they went to see the Property- it was not clear if that was Mr Simon Morgan, Mr Alan Morgan or both- the Property was "a right mess".

62. The Tribunal found that those matters did not amount to a reasonable excuse for failing to hold an HMO Licence. The Tribunal was mindful that issues can arise with discretionary licensing and landlords not being aware of the different requirements to wider licensing. However, that was not relevant in this case. The Respondent had held a Licence. The Tribunal found there to be no reasonable excuse where the Respondent in the knowledge that a Licence was required for three or more occupiers of the Property as their main residence in at least two households remained in occupation.

The decision in respect of making a rent repayment order

63. Given that the Tribunal is satisfied, beyond reasonable doubt, that the Respondents committed an offence under section pursuant to section 72(1) of the 2004 Act, a ground for the making of a rent repayment order has been made out.

64. Pursuant to the 2016 Act, a rent repayment order "may" be made if the Tribunal finds that a relevant offence was committed. Whilst the Tribunal could determine that a ground for a rent repayment order is made out but not make such an order, Judge McGrath, President of this Tribunal, said whilst sitting in the Upper Tribunal in The London Borough of Newham v John Francis Harris [2017] UKUT 264 (LC) as follows:

"I should add that it will be a rare case where a Tribunal does exercise its discretion not to make an order. If a person has committed a criminal offence and

the consequences of doing so are prescribed by legislation to include an obligation to repay rent or housing benefit then the Tribunal should be reluctant to refuse an application for rent repayment order."

65. The very clear purpose of the 2016 Act is that the imposition of a rent repayment order is penal, to discourage landlords from breaking the law, and not to compensate a tenant- who may or may not have other rights to compensation. That must, the Tribunal considers, weigh especially heavily in favour of an order being made if a ground for one is made out.

66. The Tribunal is given a wide discretion and considers that it is entitled to look at all of the circumstances in order to decide whether or not its discretion should be exercised in favour of making a rent repayment order. That is a different exercise to any determination of the amount of a rent repayment order in the event that the Tribunal exercises its discretion and makes such an order, albeit that there may be an overlap in factors relevant. It necessarily follows from there being a discretion to make a rent repayment order, as opposed to such an order following as a matter of course, that there will be occasions on which it may considered not appropriate to make an order notwithstanding that a relevant offence has been found to have been committed, albeit such occasions are likely to be very rare.

67. The Tribunal asked Mr Alan Morgan whether he wished to make any representations, to which he replied he preferred there to be no order made but that if an order was made that it should be a "token amount" as the offence was based on "a misunderstanding".

68. The Tribunal having considered the circumstances and the submissions on behalf of the Respondent and giving the most weight to the purpose of the 2004 Act, exercised its discretion to make a rent repayment order in favour of the Applicants.

The manner of determining the amount of rent to be repaid

69. Having exercised its discretion to make a rent repayment order and determined the period for which the order should be made, the next decision was how much should the Tribunal order.

70. In the absence of a conviction, the relevant provision is section 44(3) of the 2016 Act, which states in respect of the offence found to have been committed by this Respondent that the amount ordered to be repaid must "relate to" rent paid during the period identified as relevant in the table in section 44(2), being:

> 'a period, not exceeding 12 months, during which the landlord was committing the offence'.

71. The up to twelve months rent which may be ordered to be repaid need not have been paid during the last twelve months prior to the date of the application and could, in principle, be any twelve months during which the

offence was committed. The point does not in any event arise in this instance and so need not be dwelt on.

72. Section 44(3) explains that the Tribunal must not order more to be repaid than was actually paid out by the Applicants to the Respondent during that period. The section explains that:

> "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."

73. The Tribunal has a discretion as to the amount to be ordered, such that it can and should order such amount as it considers appropriate in light of case law and the relevant facts of the case.

Relevant caselaw in respect of the amount of a rent repayment order

74. The Tribunal is mindful that there have been many decisions of the Upper Tribunal within the last approximately two years, in relation to rent repayment order cases. The Tribunal is also mindful that the parties did not cite any of those and the Tribunal did not raise any with the parties requesting any submissions from them. As the Tribunal formed the firm impression that the parties were unaware of the relevant caselaw, the Tribunal considered that the parties would inevitably be unable to make relevant submissions on it.

75. In those circumstances, the Tribunal has essentially only considered such of the judgments of the Upper Tribunal as are now well- established, as deal in broad principles and as are apparently uncontroversial and applied on a regular basis.

76. Section 44 of the 2016 Act does not when referring to the amount include the word "reasonable" in the way that the previous provisions in the 2004 Act did. Judge Cooke stated clearly in her judgement in *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) that there is no longer a requirement of reasonableness. Judge Cooke noted (paragraph 19) that the rent repayment regime was intended to be harsh on landlords and to operate as a fierce deterrent.

77. The judgment held in clear terms, and perhaps most significantly, that the Tribunal must consider the actual rent paid- and not simply any profit element which the landlord derives from the property, to which no reference is made in the 2016 Act. The Upper Tribunal additionally made it clear that the benefit obtained by the tenant in having had the accommodation is not a material consideration in relation to the amount of the repayment to order. However, the Tribunal could take account of the fact of the rent being inclusive of the utilities where it was so. In those instances, the rent should be adjusted for that reason.

78. Given that some confusion existed as to the appropriate amount of rent repayment orders, on 6th October 2021, the judgment of The President of the Upper Tribunal (Lands Chamber), Fancourt J, in *Williams v Parmar* [2021] UKUT 0244 (LC) was handed down. The judgment explains at paragraph 50 that:

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

79. Secondly, the award should be that which the Tribunal considers appropriate applying the provisions of section 44(4). There are matters which the Tribunal "must, in particular take into account". In *Williams*, they are described as "the main factors that may be expected to be relevant in the majority of cases". Fancourt J in *Williams* says this:

> "A tribunal must have particular regard to the conduct of both parties (including the seriousness of the offences committed), the financial circumstances of the landlord and whether the landlord has been convicted of a relevant offence."

80. However, the President then adds:

> "The Tribunal should also take into account any other factors that appear to be relevant."

81. Since the decision in *Williams*, further applications in relation to which the Tribunal had made awards prior to that decision have been the subject of hearings before the Upper Tribunal. There have also been judgments of the Upper Tribunal in respect of other issues in rent repayment order cases, up to and including the current week.

82. The Tribunal cautiously briefly refers to two judgments have been handed down by Martin Rodger QC, Deputy President of the Upper Tribunal (Lands Chamber) in the cases of *Hallett v Parker and Others* [2022] UKUT 165 (LC) and *Simpson House 3 Limited v Osserman and Others* [2022] UKUT 164 (LC). Both related to offences of failures to hold HMO Licences. The outcome of those cases in terms of the amount of the rent repayment order made and the percentage of the rent to which that was equivalent differed considerably. The consistent factor was the importance of the conduct of the parties.

83. The Deputy President also said, at paragraph 51 as follows:

> "The policy underlying the rent repayment regime is directed towards the maintenance of good housing standards. It is consistent with that policy that a landlord who lets a property in good condition and who complies with its repairing obligations should be treated differently from one who lets property in a hazardous or insanitary condition."

84. It was also said in paragraph 53:

"Proper compliance with a landlord's duties in relation to fire precautions is of the utmost importance."

85. Those matters were relevant in those two cases. The size of the landlord's portfolio and the extent of the landlords' professionalism was relevant, although there was quite particular, and vindictive, conduct in the latter case which plainly weighed heavily in respect of the level of award made being a much higher percentage of the rent- 90%- than in the former case- 25%. That is quite a contrast and demonstrates the potentially wide range of outcomes dependant on the nature of the offence, the factors specified in the 2016 Act and the other circumstances.

86. Whilst the Tribunal has been writing and considering this Decision, the Upper Tribunal has also handed down a further judgment dated 5th September 2022, in a case *Acheampong v Roman (and Others)* [2022] UKUT 239 (LC). That cannot, to state the obvious, yet be described as a well- established authority- it was only published to this Tribunal on the morning of 8th September 2022 and has probably been seen by very few others at this point in time.

87. However, it sets out the approach to be taken to the level of rent repayment orders. The words used to describe the approach are clear and simple. The Tribunal sets them out below.

88. At paragraph 20, the judgment of Judge Cooke says this:

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

The amount of rent paid during the relevant period

89. The Applicant provided evidence by way of bank statements of the rent paid. Whilst that was somewhat piecemeal in the early part of May 2021, the Applicant explained the reason for that, no issue has been taken and for immediate purposes the only relevant point is to establish the sum paid.

90. The evidence demonstrates that the rent was paid in full for the period 1st May 2021 onward, the June and July payments have been made in a single sum of the full rent for the month in each of those two months. The last payment made during the relevant period, by each of the Applicants, was paid on 5th July 2021. The rent actually paid during the period was determinative, rather than the period to which the payments related to. So although the offence ceased on 23 July, when an application for HMO licence was submitted, no deduction is made in respect of 23-31 July, the rent for the full month having been paid during the period of commission of the offence.

91. The payments therefore totalled £1200 in respect of the First Applicant Mrs Dossi and £1500 in respect of the Second Applicant Mr Pearce.

92. There was no evidence presented that the rent included any payment for utilities that only benefited the tenant, for example gas and electricity or other relevant amenities such as internet access. The Tribunal therefore finds no basis for adjustment of the rent to reflect any such.

The relevant factors

93. The Tribunal turns to the factors relevant in this application and to the particular facts of this application and to the outcome of weighing those factors.

Financial circumstances

94. In terms of the financial circumstances of the Respondent, the Tribunal was not in possession of any relevant information. The Tribunal therefore did not alter the level of order otherwise considered appropriate.

Conduct

95. The Respondent asserted relevant conduct of the Applicants. The Tribunal rejects that but sets out the assertion made and the reason for its rejection.

96. Mr Morgan had indicated at the start of the hearing that he wished to address the circumstances of the offence. More particularly at the point of the hearing at which the Tribunal explained about conduct, he submitted that it had cost a lot to put the Property back into a habitable condition. Reference had also earlier been made suggesting potentially excessive noise.

97. In respect of noise, the Tribunal lacked sufficient detail to make any finding of that being excessive. In respect of the former, it was apparent that work was required to the Property, given that the evidence was that an Improvement Notice had been issued, but there was otherwise inadequate information. The Tribunal was inclined to consider that the Notice indicated rather more fault on the part of the Respondent than the Applicants in respect of the condition of the Property but in the absence of sufficient information, made no finding one way or the other.

98. The Tribunal can identify nothing in respect of conduct of the Applicants which should properly be taken into account in respect of the level of the rent repayment order.

99. There was relevant conduct on the Respondent's part, upon which the offence itself was founded.

100. The text message of 26th April 2021 from Mr Simon Morgan to the Applicant makes it plain that the Respondent had a financial motivation for not continuing to license the Property. The message refers to £1420 for the HMO licence and then states the following:

> "To carry in with Hmo I would need to get Kev to do £1000s of work plus new heating system in all the rooms. As you know the place needs a complete refurbishment and I would rather spend the money on that"

101. The Tribunal finds the decision not to attend to the Licence because of cost despite the Property to continue to be occupied by the Applicants and the third tenant to plainly be relevant, and significant conduct.

102. In addition, the Respondent through Mr Simon Morgan, responded to the Applicants not being able to leave on the date they had hoped for by seeking to end their tenancy, which the Tribunal regards as a wholly inappropriate response.

103. By 27th April 2021, Mr Simon Morgan appears to have had a change of heart. He sent a text message to the Second Applicant on that date which included the following:

> "As it stands I am trying to comply with the HMO licence".

104. If that was the case, it may be that the revocation of the Licence could have been cancelled, noting that did not occur until a couple of days later, although it is not the role of the Tribunal to speculate on what might have been. However, the Tribunal finds it was not the case in any event. When

questioned, Mr Simon Morgan accepted that he may have confused HMO Licence with Improvement Notice and the Tribunal finds on balance that he did so.

105. Then on 28th April 2021, Mr Simon Morgan sent a further message stating:

"Kurt given you 2 weeks to get out the flat same as Roberta."

106. The Second Respondent noted that he had previously been told about a month's notice, which was now reduced.

107. A letter was sent said to be in the name of Mr Alan Morgan to both of the Applicants purporting to be a notice seeking possession dated 28th April 2021 and pursuant to section 21 of the Housing Act 1988. That attempted to give a little under three weeks of notice.

108. Mr Simon Morgan was asked by the Tribunal whether he was aware of the amount of notice legally required. He replied that he was not.

109. As noted above, the Tribunal identified that the purported notice seeking possession served on the Applicants was not valid. It is not valid because it gives nothing like the required period of notice at the relevant time. It is also not valid because it is not in anything like the correct format giving the appropriate information. The Tribunal infers that some of the wording of the purported notice may have been copied from a better form of notice because there is reference to "see note 1 below", although no such note appears.

110. The purported notice concluded with the sentence:

"Please empty your room…….. If not a clearance fee will be involved and passed on to you".

111. The Tribunal finds that sentence to have been designed to encourage the Applicants to leave, at threat of incurring cost, by the date specified and despite the Applicant not being entitled to possession on that date. In addition, there is no identifiable basis on which the Respondent was properly able to charge any such fee. Such charge ought not to have been threatened in the purported notice or at all. The Tribunal considers the Second Respondent to be correct, or at least likely to be correct, in stating that the Tenant Fees Act 2019 would have precluded such a fee being charged.

112. It is plain that the Applicant and those acting on its behalf did not have any proper understanding of landlord and tenant law and did not trouble themselves to obtain that, or it take any advice. It is to state the obvious that before serving a tenant with a notice to leave the tenant's home, a landlord ought at the very least to establish the parties' respective rights and then to follow the legal requirements if a decision is made to take any action. The Respondent wholly failed to.

113. A failure to know or understand the law may be one thing: then taking action seeking to end a tenancy without attempting to obtain an understanding is another matter entirely. Whilst arguably it may be worse to actually know the required period of notice but not apply it, the failure to find out is not much better.

114. Those matters having been said, it is not apparent that the Respondent then followed the above actions by taking any steps to act on the notice or to otherwise end the Applicants' tenancy. That mitigates to an extent.

115. It should be said that whilst the Applicants swiftly rejected the ability of the Respondent to obtain possession pursuant to the purported notice or to charge the fee referred to, that does not alter the fact of what the Respondent did.

116. The First Applicant described the circumstances at the time as very stressful. She stated that she had just finished a university course and was working and that it was the end of a lockdown. She stated that the pressure of potentially being evicted added to pressure and stress. The Tribunal found that plausible and accepted her account.

117. Mr Alan Morgan submitted that the Applicants were not evicted and left of their own accord. The Tribunal considered that whilst the first of those matters was correct, the second ignored any pressure and stress the Applicants may have been, and the Tribunal accepted were, under. The Tribunal instead accepted the case of the Applicants that they left as soon as they could, although mindful that the Applicants had been looking to leave in any event.

118. The other matters to which the Applicants referred as relevant conduct related firstly to the undertaking of work to the Property.

119. Whilst the Tribunal received no clear evidence about the details of it, it is apparent that at some stage the Council had served an Improvement Notice. That is apparent for three reasons.

120. Firstly, the reply by the Second Applicant to the purported notice states that an Improvement Notice has been served within the last six months. Secondly, and given less weight by the Tribunal as far from definitely correct, is that whilst the text messages sent to Mr Pearce the Second Respondent refer to work to comply with a HMO Licence, it makes more obvious sense that there would be works to comply with an Improvement Notice and so it is not clear that the works relate to licensing rather than another reason. There might be works required before a property could be licensed but the Property was already licensed: there might be works before the Licence could be renewed but the Licence was not due for renewal. Whilst the Tribunal applies a good deal of caution in respect of this second reason, the notion of works being required at least fits with there having been an Improvement Notice and does not detract from that. The third reason is that one of the elements of work was in respect of

heating. Mr Pearce suggested that there had been a problem about heating for some years. Mr Alan Morgan said nothing (else) had been needed until the Council was involved. That work in respect of heating was the sort of work that the Tribunal often encounters in relation to Improvement Notices.

121. Ms Dossi was concerned that a lot of workman attended and a lot of times when she was there. It was apparent that she had not been comfortable with that. The impression given to the Tribunal was that inadequate notice had been provided.

122. The Tribunal inferred that the Respondent dealt with the situation in respect of undertaking work imperfectly and that in doing so additional inconvenience and concern was caused to the Applicants. However, the Tribunal does not consider that the Respondent acted to that extent seeking to persuade the Applicants to leave or was otherwise more than careless as to the impact on the Applicants.

123. In this instance, the Tribunal considers that the particular conduct weighs only lightly and soes not require more detailed comment.

124. Secondly, the Applicants relied on the First Applicant being asked not to attend a work meeting in relation to fire safety. The Tribunal is unable to find that to be relevant conduct on behalf of the Respondent.

125. The Tribunal has little doubt that upset was caused to the First Applicant, who may have been fearful for her job, although no specific evidence was given, or sought by the Tribunal because of the point which follows. That point is that the evidence given on behalf of the Respondent was that the Respondent had contracted with a self- employed manager agent (as she was termed) who received the profit/main part of it and she employed such staff as she required, so that the Applicants worked for her and not the Respondent. There was nothing to corroborate that placed before the Tribunal but not to demonstrate it to be incorrect either.

126. In any event, there was no evidence as to whether the apparently contracted manager had taken that step on the instruction of anyone from the Respondent or off her own back and of the basis on which any conduct could properly be treated as conduct of the Respondent for the purpose of these proceedings.

127. The Tribunal therefore has nothing on which it can find that the request not to a attend a work meeting emanated from Messrs Morgan or otherwise from the Respondent. Aside from a lack of direct evidence, the Tribunal has concluded that there is insufficient for any appropriate inference to be drawn.

Previous offence

128. The Applicants did not assert any previous relevant offence had been committed by the Respondent. Mr Alan Morgan was adamant that there

had been none. The Tribunal found there was no previous relevant offence to take account of.

Other circumstances than those specifically listed in the 2016 Act

129. The Tribunal did not identify any other relevant circumstances on the evidence presented.

130. It appears to the Tribunal that the Property was in a some- way less than perfect condition. The content of the text message quoted above indicates extensive work to have been required. However, there was no evidence before the Tribunal as to the condition of the existing heating system.

131. The fact of oral tenancies and the lack of clear terms, save for payment of the rent, is not of relevance. Equally, there is no argument advanced that the tenancy was a service one and that occupation of the Property was because of any requirement arising from the Applicants' employment, but in any event, no argument has been advanced of that being relevant.

The appropriate award

132. The Tribunal considers that the offence is not the most serious of those for which a rent repayment order may be made. The Tribunal determines that in general- and the extent will differ from one case to the next- cases involving unlawful eviction and/ or violence to obtain entry are likely to be more serious that offences which relate solely to the absence of HMO Licence. The period of lack of the Licence may be relevant and so too matters be may affect whether the given property would be capable of receiving a licence- for example fire risks as highlighted in an Upper Tribunal decision above. The period of lack of Licence is relatively short and that has some relevance.

133. Set against that must be the findings made as to conduct and the fact that some of that is of the nature of matters which could create a potential case based on harassment or similar under the Prevention from Eviction Act 1977 if such a ground had been advanced. The conduct is fairly serious.

134. The Tribunal has carefully weighed the seriousness of the offence and conduct and has considered the appropriate percentage of the relevant rent paid which reflects the weighing of those matters.

135. The Tribunal awards the Applicants a sum equivalent to 70% of the rent paid in respect of the period in which the offence of failing to hold an HMO Licence was committed

The amount of the repayment

136. The Applicants are therefore awarded by way of rent repayment order 70% of £1200 in respect of Ms Dossi, namely £840, and 70% of £1500 in respect of Mr Pearce, namely £1050.

Application for refund of fees

137. The Applicants asked the Tribunal to award the fees paid in respect of the application should they be successful, namely reimbursement of the £100 issue fee and the £200 hearing fee.

138. An application fee having needed to be paid in order to bring the claim and the Applicants having been successful in the proceedings, the Tribunal considered that the fees should be paid by the Respondent. The Respondent had not argued otherwise and indeed Mr Alan Morgan conceded the fees if the Applicants were successful, and the Tribunal could identify no reason why the Applicants ought not to recover the fees for their successful application against the Respondent.

139. The Tribunal does order the Respondent to pay all of the fees paid by the Applicant and so the sum of £300.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.